UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

In re

Allegiance Telecom, Inc

Case Number

03-13057 (RDD)

CRDID 19552

REC'D JUN 15 2004

FILED
SOUTHERN DISTRICT OF NEW YORK
ALLEGIANCE TELECOM, INC
03-13057 (RRD)
2805

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C § 503

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☒ Check box if this address differs from the address on the envelope sent to you by the court

Name of Creditor and Address

03805890019552

Transwestern Hookston Square, LLC
c/o Adam E Berman
Mason, Silver, Wenk & Mishkin, L L C
1033 Skokie Boulevard, Suite 250
Northbrook, Illinois 60062

Creditor Telephone Number (847-656-6055

If you have already filed a proof of claim with the Bankruptcy Court or BMC you do not need to file again

CREDITOR TAX I D # 36-4443066

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR Hookston Square #301+335

Check here if this claim ☐ replaces or ☐ amends a previously filed claim dated _____

1 BASIS FOR CLAIM

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☒ Other (describe briefly)

Lease Rejection Claim

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (Fill out below)

Your social security number _____

Unpaid compensation for services performed from _____ (date) to _____ (date)

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE $ 189,356.87 (unsecured) $ _____ (secured) $ _____ (unsecured priority) $ _____ (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 SECURED CLAIM

☒ Check this box if your claim is secured by collateral (including a right of setoff)

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☒ Other Security Deposit

Value of collateral $ 15,816.12

Amount of arrearage and other charges at time case filed included in secured claim above if any $ _____

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business whichever is earlier - 11 U S C § 507(a)(3)
☐ Contributions to an employee benefit plan - 11 U S C § 507(a)(4)
☐ Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)
☐ Alimony maintenance or support owed to a spouse former spouse or child -11 U S C § 507(a)(7)
☐ Taxes or penalties owed to governmental units - 11 U S C § 507(a)(8)
☐ Other Specify applicable paragraph of 11 U S C § 507(a) _____

Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 SUPPORTING DOCUMENTS *Attach copies of supporting documents,* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements, and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous attach a summary

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim

Allegiance Claim
02859

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4 00 p m , October 1, 2003, Eastern Daylight Time

BY MAIL TO United States Bankruptcy Court
re Allegiance Telecom, Inc et al
P O Box 95 Bowling Green Station
New York, NY 10274

BY HAND OR OVERNIGHT DELIVERY TO Clerk of the United States Bankruptcy Court
re Allegiance Telecom, Inc et al
One Bowling Green, 6th Floor
New York NY 10004-11408

RECEIVED
JUN 9 2004
U S BANKRUPTCY COURT
SO. DIST. OF NEW YORK

DATE SIGNED 6/8/04

SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

Adam E Berman Attorney

Penalty for presenting fraudulent claim is a fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 AND 3571

See Other Side For Instructions

Allegiance Telecom Company Worldwide				
Rejection Claim Computation				
Hookston Square, 3480 Buskirk Avenue, Suites 301 and 335, Pleasant Hills, CA				
	Avg 12 Mos Monthly Base Rent Calculation			
		Monthly Base Rent	#/months	
	6/1/2004 - 2/28/2005	$ 14,473 99	9	$ 130,265 91
	3/1/2005 - 2/28/2006	$ 14,908 21	12	$ 178,898 52
	3/1/2006 - 2/28/2007	$ 15,355 45	12	$ 184,265 40
	3/1/2007 - 2/28/2008	$ 15,816 12	12	$ 189,793 44
	Total Monthly Base Rent Remaining			$ 683,223 27
	divided by 20 months remaining in term x 12 months			x12/45
	Avg 12 Mos Monthly Base Rent			$ 182,192 87
	Description			**Charges**
	Avg 12 Mos Monthly Base Rent (see above)			$ 182,192 87
	Operating Expense ($597 00 per month [2004 est] x 12 months)			$ 7,164 00
	Total Rejection Claim - One Year Gross Rent			**$ 189,356 87**

BASIC LEASE INFORMATION

Lease Date	November 10, 2000
Landlord	**WMP IV REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership
Tenant	**ALLEGIANCE TELECOM COMPANY WORLDWIDE**, a Delaware corporation
Premises	Suites 301 and 335 containing 5,887 rentable square feet, in the office building commonly known as Hookston Square (the "**Building**"), and whose street address is 3480 Buskirk Avenue, Pleasant Hill, California 94523 The Premises are outlined on the plan attached to the Lease as Exhibit A The land on which the Building is located (the "**Land**") is described on Exhibit B The term "Building" includes the related land, driveways, parking facilities, and similar improvements, and the building located at 3478 Buskirk Avenue, Pleasant Hill, California 94523
Term	Approximately eighty-four (84) months, commencing on the Commencement Date and ending at 5 00 p m local time on the last day of the eighty-fourth (84th) full calendar month following the Commencement Date, subject to adjustment and earlier termination as provided in the Lease
Option	One (1) option for sixty (60) months
Commencement Date	The earliest of (a) the date on which Tenant occupies any portion of the Premises for the conduct of its business therein, (b) the date on which the Work (as defined in Exhibit D hereto) in the Premises is Substantially Completed (as defined in Exhibit D hereto), or (c) the date on which the Work in the Premises would have been Substantially Completed but for the occurrence of any Tenant Delay Days (as defined in Exhibit D hereto)
Basic Rent	Basic Rent shall be the following amounts for the following periods of time

Lease Month	Monthly Basic Rent
1-12	$13,245 75
13-24	$13,643 12
25-36	$14,052 42
37-48	$14,473 99
49-60	$14,908 21
61-72	$15,355 45
73-84	$15,816 12

As used herein, the term "**Lease Month**" shall mean each calendar month during the Term (and if the Commencement Date does not occur on the first day of a calendar month, the period from the Commencement Date to the first day of the next calendar month shall be included in the first Lease Month for purposes of determining the duration of the Term and the monthly Basic Rent rate applicable for such partial month)

Security Deposit	$15,816 12
Rent	Basic Rent, Tenant's Proportionate Share of Taxes, Tenant's share of Additional Rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under the Lease

Permitted Use	General office use, including, but not limited to, the marketing and sales of telecommunications services
Tenant s Proportionate Share	2 93%, which is the percentage obtained by dividing (a) the number of rentable square feet in the Premises as stated above by (b) the 200,898 rentable square feet in the Building Landlord and Tenant stipulate that the number of rentable square feet in the Premises and in the Building set forth above shall be binding upon them
Expense Stop	Operating Costs per rentable square foot in the Building for the calendar year 2001 (grossed up as provided in Section 4 (b)(5) of the Lease)
Base Tax Year	The calendar year 2001
Initial Liability Insurance Amount	$3,000,000 00
Construction Allowance	$12 00 per rentable square foot, not to exceed $70,644 00
Guarantor	Allegiance Telecom, Inc , a Delaware corporation

	For All Notices	With a Copy to
Tenant's Address	Allegiance Telecom Company Worldwide 3480 Buskirk Avenue, Suite 301 Pleasant Hill, California 94523 Attention _____ Telephone _____ Facsimile _____	Allegiance Telecom Company Worldwide 4 Westbrook Corporate Center, Suite 400 Westchester, Illinois 60154 Attention Patricia E Koide Telephone (708) 836-5210 Facsimile (708) 836-5202

	For all Notices	With a copy to
Landlord's Address	WMP IV Real Estate Limited Partnership c/o Insignia/ESG, Inc 3480 Buskirk Avenue, Suite 290 Pleasant Hill, California 94523 Attention Property Manager Telephone (925) 939-1209 Facsimile (925) 939-1253	WMP IV Real Estate Limited Partnership c/o Archon Group, L P Two California Plaza 350 S Grand Avenue, Suite 4600 Los Angeles, California 90071 Attention Nancy M Haag Telephone (213) 633-5800 Facsimile (213) 633-5870

The foregoing Basic Lease Information is incorporated into and made a part of the Lease identified above If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control

LANDLORD

WMP IV REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership

By WMP IV Gen-Par, L L C , a Delaware limited liability company, General Partner

By _____
Name Nancy M Haag
Title Assistant Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

TENANT

ALLEGIANCE TELECOM COMPANY WORLDWIDE, a Delaware corporation

By _____
Name _____
Title _____

By _____
Name _____ Patricia E. Koide
Title _____ Senior Vice President

TABLE OF CONTENTS

		Page
1	Definitions and Basic Provisions	1
2	Lease Grant	1
3	Tender of Possession	1
4	Rent	2
	(a) Payment	2
	(b) Operating Costs, Taxes	2
5	Delinquent Payment, Handling Charges	5
6	Security Deposit	5
7	Landlord's Obligations	5
	(a) Services	5
	(b) Excess Utility Use	6
	(c) Restoration of Services, Abatement	6
8	Improvements, Alterations, Repairs, Maintenance	6
	(a) Improvements, Alterations	6
	(b) Repairs, Maintenance	7
	(c) Performance of Work	7
	(d) Mechanic's Liens	7
9	Use	7
10	Assignment and Subletting	8
	(a) Transfers	8
	(b) Consent Standards	8
	(c) Request for Consent	8
	(d) Conditions to Consent	8
	(e) Cancellation	9
	(f) Additional Compensation	9
	(g) Permitted Transfers	9
11	Insurance, Waivers, Subrogation, Indemnity	9
	(a) Tenant's Insurance	9
	(b) Landlord's Insurance	10
	(c) No Subrogation	10
	(d) Indemnity	10
12	Subordination, Attornment, Notice to Landlord's Mortgagee	11
	(a) Subordination	11
	(b) Attornment	11
	(c) Notice to Landlord's Mortgagee	11
	(d) Landlord's Mortgagee's Protection Provisions	11
13	Rules and Regulations	12
14	Condemnation	12
	(a) Total Taking	12
	(b) Partial Taking - Tenant's Rights	12
	(c) Partial Taking - Landlord's Rights	12
	(d) Award	12
15	Fire or Other Casualty	12
	(a) Repair Estimate	12
	(b) Tenant's Rights	12
	(c) Landlord's Rights	13
	(d) Repair Obligation	13
	(e) Abatement of Rent	13
16	Personal Property Taxes	13
17	Events of Default	13
	(a) Payment Default	13
	(b) Abandonment	14
	(c) Estoppel	14
	(d) Other Defaults	14
	(e) Insolvency	14
18	Remedies	14

	(a)	Termination of Lease	14
19	Payment by Tenant, Non-Waiver, Cumulative Remedies		15
	(a)	Payment by Tenant	15
	(b)	No Waiver	15
	(c)	Cumulative Remedies	15
20	INTENTIONALLY DELETED		16
21	Surrender of Premises		16
22	Holding Over		16
23	Certain Rights Reserved by Landlord		16
	(a)	Building Operations	16
	(b)	Security	16
	(c)	Prospective Purchasers and Lenders	17
	(d)	Prospective Tenants	17
24	Substitution Space		17
25	Miscellaneous		17
	(a)	Landlord Transfer	17
	(b)	Landlord's Liability	17
	(c)	Force Majeure	17
	(d)	Brokerage	17
	(e)	Estoppel Certificates	18
	(f)	Notices	18
	(g)	Separability	18
	(h)	Amendments, and Binding Effect	18
	(i)	Quiet Enjoyment	18
	(j)	No Merger	18
	(k)	No Offer	18
	(l)	Entire Agreement	18
	(m)	Waiver of Jury Trial	18
	(n)	Governing Law	19
	(o)	Recording	19
	(p)	Joint and Several Liability	19
	(q)	Financial Reports	19
	(r)	Landlord's Fees	19
	(s)	Telecommunications	19
	(t)	Confidentiality	20
	(u)	Authority	20
	(v)	Hazardous Materials	20
	(x)	Parking	20
	(y)	Signage	20
	(z)	List of Exhibits	20
26	Renewal Option		21
	(a)	Grant of Option	21
	(b)	Basic Rent	21
27	Right of First Offer		22
	(a)	Grant of Offer	22
	(b)	Exercise of Offer	22
	(c)	Termination of Rights	22

LIST OF DEFINED TERMS

	Page
Additional Rent	2
Affiliate	1
Architect	1
AS-IS	22
Basic Lease Information	1
Building	ii
Building's Structure	1
Building's Systems	1
Casualty	12
Construction Allowance	3
Damage Notice	12
Estimated Delivery Date	1
GAAP	9
Guarantor	1
Hazardous Materials	20
HVAC	5
including	1
Land	ii
Landlord	1
Landlord's Contribution	13
Landlord's Mortgagee	11
Law	1
Laws	1
Lease	1
Lease Month	ii
Loss	10
Mortgage	11
Offer Notice	22
Offer Space	22
Operating Costs	2
Operating Costs and Tax Statement	4
Parking Area	20
Permitted Transfer	9
Permitted Transferee	9
Prevailing Rental Rate	21
Primary Lease	11
Refund	4
Repair Period	12
Space Plans	1
Substantial Completion	2
Substantially Completed	2
Taking	12
Tangible Net Worth	9
Taxes	3
Telecommunications Services	19
Tenant	14, 1
Tenant Delay Day	2
Tenant Party	1
Tenant's Contribution	13
Third Party Offer	22
Total Construction Costs	3
Transfer	8
Work	2
Working Drawings	2

LEASE

THIS LEASE AGREEMENT (this "**Lease**") is entered into as of November 10, 2000, between **WMP IV REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership ("**Landlord**"), and **ALLEGIANCE TELECOM COMPANY WORLDWIDE**, a Delaware corporation ("**Tenant**")

1 **Definitions and Basic Provisions** The definitions and basic provisions set forth in the Basic Lease Information (the "**Basic Lease Information**") executed by Landlord and Tenant contemporaneously herewith is incorporated herein by reference for all purposes Additionally, the following terms shall have the following meanings when used in this Lease "**Affiliate**" means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the party in question, "**Building's Structure**" means the Building's exterior walls, roof, elevator shafts, footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and structural columns and beams, "**Building's Systems**" means the Building's HVAC, life-safety, plumbing, electrical, and mechanical systems, "**including**" means including, without limitation, "**Laws**" means all federal, state, and local laws, rules and regulations, all court orders, governmental directives, and governmental orders, and all restrictive covenants affecting the Building, and "**Law**" shall mean any of the foregoing, and "**Tenant Party**" means any of the following persons Tenant, any assignees claiming by, through, or under Tenant, any subtenants claiming by, through, or under Tenant, and any of their respective agents, contractors, employees, and invitees

2 **Lease Grant** Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises

3 **Tender of Possession** Landlord and Tenant presently anticipate that possession of the Premises will be tendered to Tenant (with the Work as defined in Exhibit D to be performed by Landlord therein, if any, Substantially Completed) on or about December 1, 2000 (the "**Estimated Delivery Date**") If Landlord is unable to tender possession of the Premises in such condition to Tenant by the Estimated Delivery Date, then (a) Landlord shall not be in default hereunder or be liable for damages therefor, and (b) Tenant shall accept possession of the Premises when Landlord tenders possession thereof to Tenant By occupying the Premises, Tenant shall be deemed to have accepted the Premises in their condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Landlord, if any, and latent defects Tenant shall execute and deliver to Landlord, within ten (10) days after Landlord has requested the same, a letter substantially in the form of Exhibit E hereto confirming (1) the Commencement Date and the expiration date of the initial Term, (2) that Tenant has accepted the Premises, and (3) that Landlord has performed all of its obligations with respect to the Premises (except for punch-list items specified in such letter) Occupancy of the Premises by Tenant prior to the Commencement Date shall be subject to all of the provisions of this Lease excepting only those requiring the payment of Basic Rent, Additional Rent and Taxes (each as defined herein) Notwithstanding the foregoing, if the Work in the Premises is not Substantially Completed by the Completion Termination Date, Tenant may terminate this Lease by delivering to Landlord written notice thereof at any time before the earlier of (1) ten (10) days following the Completion Termination Date or (2) the date on which the Work in the Premises is Substantially Completed The termination right afforded to Tenant under this Section 3 shall be Tenant's sole remedy for Landlord's failure to timely Substantially Complete the Work Time is of the essence for the delivery of Tenant's termination notice under this Section 3, accordingly, if Tenant fails timely to deliver any such notice, Tenant's right to terminate this Lease under this Section 3 shall expire As used herein, "**Completion Termination Date**" means one hundred eighty (180) days after the Estimated Delivery Date, plus the number of Tenant Delay Days and the number of Force Majeure Delay Days As used herein, "**Force Majeure Delay Days**" means any delay in achieving Substantial Completion with respect to the Work for the reasons specified in Section 25 (c) of this Lease

4 **Rent**

(a) **Payment** Tenant shall timely pay to Landlord Rent, without notice, demand, deduction or set off (except as otherwise expressly provided herein), at Landlord's address provided for in this Lease or as otherwise specified by Landlord Basic Rent, adjusted as herein provided, shall be payable monthly in advance The first monthly installment of Basic Rent shall be payable contemporaneously with the execution of this Lease, thereafter, Basic Rent shall be payable on the first day of each month beginning on the first day of the second full calendar month of the Term The monthly Basic Rent for any partial month at the beginning of the Term shall equal the product of 1/365 of the annual Basic Rent in effect during the partial month and the number of days in the partial month from and after the Commencement Date, and shall be due on the Commencement Date

(b) **Operating Costs, Taxes**

(1) Tenant shall pay to Landlord the amount (per each rentable square foot in the Premises) ("**Additional Rent**") by which the annual Operating Costs (defined below) per rentable square foot in the Building exceed the Expense Stop (per rentable square foot in the Building) Landlord may make a good faith estimate of the Additional Rent to be due by Tenant for any calendar year or part thereof during the Term During each calendar year or partial calendar year of the Term after calendar year 2001, Tenant shall pay to Landlord, in advance concurrently with each monthly installment of Basic Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein From time to time, but not more than once in any calendar year, Landlord may reasonably re-estimate the Additional Rent to be due by Tenant and deliver a copy of the re-estimate to Tenant Thereafter, the monthly installments of Additional Rent payable by Tenant shall be appropriately adjusted in accordance with the re-estimation so that, by the end of the calendar year in question, Tenant shall have paid all of the Additional Rent as estimated or re-estimated by Landlord Any amounts paid based on such estimates shall be subject to adjustment as herein provided when actual Operating Costs are finally determined for each calendar year

(2) The term "**Operating Costs**" shall mean, without duplication, all expenses and disbursements (subject to the limitations and exclusions set forth below) that Landlord incurs in connection with the ownership, operation, and maintenance of the Building, determined in accordance with sound accounting principles consistently applied, including the following costs (A) wages and salaries (including reasonable and customary management fees) of all on-site employees at or below the grade of senior building manager engaged in the operation, maintenance or security of the Building (together with Landlord's reasonable allocation of expenses of off-site employees at or below the grade of senior building manager who perform a portion of their services in connection with the operation, maintenance or security of the Building), including taxes, insurance and benefits relating thereto, (B) all supplies and materials used in the operation, maintenance, repair, replacement, and security of the Building, (C) costs for improvements made to the Building which, although capital in nature, are expected to reduce the normal operating costs (including all utility costs) of the Building, as amortized using a commercially reasonable interest rate over the time period reasonably estimated by Landlord to recover the costs thereof taking into consideration the anticipated cost savings, as determined by Landlord using its good faith, commercially reasonable judgment, as well as capital improvements made in order to comply with any Law hereafter promulgated by any governmental authority or any interpretation hereafter rendered with respect to any existing Law, as amortized using a commercially reasonable interest rate over the useful economic life of such improvements as determined by Landlord in its reasonable discretion, (D) cost of all utilities, except the cost of other utilities reimbursable to Landlord by the Building's tenants other than pursuant to a provision similar to this Section 4 (b), (E) insurance expenses, (F) repairs and general maintenance of the Building, and (G) service or maintenance contracts with independent contractors for the operation, maintenance, repair, replacement, or security of the Building (including alarm service, window cleaning, and elevator maintenance)

Notwithstanding anything contained in the previous paragraph to the contrary, Operating Costs shall not include costs for (i) capital improvements made to the Building, other

than capital improvements described in Section 4 (b)(2)(C) and except for items which are generally considered maintenance and repair items, such as painting of common areas, replacement of carpet in elevator lobbies, and the like, (ii) repair, replacements and general maintenance paid by proceeds of insurance, warranties, or by Tenant or other third parties, (iii) interest, amortization, late fees, fines, penalties, or other payments on loans to Landlord, (iv) depreciation, (v) real estate brokers or leasing commissions, (vi) legal expenses for services, other than those that benefit the Building tenants generally (e g , tax disputes), (vii) renovating or otherwise improving space for occupants of the Building or vacant space in the Building (including cost of permits, licenses and inspections in connection therewith), (viii) Taxes, (ix) federal income taxes imposed on or measured by the income of Landlord from the operation of the Building, (x) rental under any ground or underlying lease, (xi) attorneys' fees incurred in connection with negotiations with tenants and prospective tenants, (xii) advertising and marketing costs relating to vacant space, (xiii) items and expenses separately billed to and paid for by other tenants, (xiv) violations by Landlord or any other tenant of the Building under any lease, license or other agreement, (xv) any bad debt loss, rent loss or reserves for bad debts or rent loss, (xvi) political lobbying or charitable contributions, (xvii) interest, fines or penalties incurred by Landlord in connection with any late payments by Landlord of taxes, loans, ground leases or similar items, (xviii) artwork, (xix) salaries, wages and other compensation paid to officers or directors of Landlord in their capacity as officers or directors, (xx) operating any retail space contained in the Building or commercial concessions operated by Landlord in the Building, (xxi) operating the business entity which constitutes Landlord (as opposed to the operation of the Building), including, but not limited to, general overhead and administrative costs and expenses, (xxii) fines or penalties incurred due to violations by Landlord of any applicable legal requirement, (xxiii) amounts paid to any person, firm or other entity related to or otherwise affiliated with Landlord which are in excess of arm's length competitive prices in the Pleasant Hill, California area for such services or goods provided, (xxiv) damage or repairs to the Building necessitated by the gross negligence or willful misconduct of Landlord or Landlord's agents or contractors, (xxv) services or installations furnished to any tenant in the Building which are not furnished or made available to Tenant, (xvi) relocating tenants in the Building, and (xxvii) any and all costs of Landlord in complying with Laws regarding Hazardous Materials including, but not limited to, the costs and expenses of clean-up, remediation, environmental surveys/assessments, compliance with environmental Laws, consulting fees, treatment and monitoring charges, transportation expenses and disposal fees, except if such costs are a result of Tenant's use of or activities in or on the Building Operating Costs for the calendar year 2001 only shall not include market-wide labor-rate increases due to extraordinary circumstances, including boycotts and strikes, utility rate increases due to extraordinary circumstances, including conservation surcharges, boycotts, embargos or other shortages, or amortized costs relating to capital improvements

(3) Tenant shall also pay its Proportionate Share of any increase in Taxes for each year and partial year falling within the Term over the Taxes for the Base Tax Year Tenant shall pay its Proportionate Share of Taxes in the same manner as provided above for Additional Rent with regard to Operating Costs "**Taxes**" shall mean taxes, assessments, and governmental charges or fees whether federal, state, county or municipal, and whether they be by taxing districts or authorities presently taxing or by others, subsequently created or otherwise, and any other taxes and assessments (including non-governmental assessments for common charges under a restrictive covenant or other private agreement that are not treated as part of Operating Costs) now or hereafter attributable to the Building (or its operation), excluding, however, (i) penalties and interest thereon, (ii) federal and state taxes on income (if the present method of taxation changes so that in lieu of the whole or any part of any Taxes, there is levied on Landlord a capital tax directly on the rents received therefrom or a franchise tax, assessment, or charge based, in whole or in part, upon such rents for the Building, then all such taxes, assessments, or charges, or the part thereof so based, shall be deemed to be included within the term "Taxes" for purposes hereof), (iii) profits or excess profits tax, franchise taxes, gift taxes, estate taxes, capital stock taxes, inheritance and succession taxes, transfer taxes, recordation taxes, intangible taxes, gross receipts taxes, capital gains taxes, corporate or unincorporated business taxes or any other taxes to the extent applicable to Landlord's general or net income, (iv) any items included as Operating Costs or expressly excluded from Operating Costs (except Taxes), and (v) any taxes imposed in connection with personal property owned, leased or used by any tenant or other occupant of the Building Taxes shall include the reasonable costs of consultants retained in an effort to lower taxes and all reasonable costs incurred in disputing any taxes or in seeking to lower the tax

valuation of the Building For property tax purposes, Tenant waives all rights to protest or appeal the appraised value of the Premises, as well as the Building, and all rights to receive notices of reappraisement In the event Landlord contests any Taxes and as a result thereof receives a refund ("**Refund**") in Taxes for any period of the Term beyond the Base Tax Year, Tenant shall receive a credit toward future Rent owing hereunder equal to its Proportionate Share of the Refund (or cash if there is not future Rent owing hereunder), which obligation shall survive the expiration or earlier termination of this Lease

(4) By April 1 of each calendar year, or as soon thereafter as practicable, Landlord shall furnish to Tenant a reasonably detailed statement of Operating Costs for the previous year, in each case adjusted as provided in Section 4 (b)(5), and of the Taxes for the previous year (the "**Operating Costs and Tax Statement**") If the Operating Costs and Tax Statement reveals that Tenant paid more for Operating Costs than the actual amount for the year for which such statement was prepared, or more than its actual share of Taxes for such year, then Landlord shall promptly credit or reimburse Tenant for such excess, likewise, if Tenant paid less than Tenant's actual Proportionate Share of Additional Rent or share of Taxes due, then Tenant shall promptly pay Landlord such deficiency

(5) In determining the Expense Stop and with respect to Operating Costs in any calendar year or partial calendar year (including calendar year 2001) in which the Building is not occupied to the extent of ninety-five percent (95%) of the rentable area thereof, those Operating Costs which are affected by Building occupancy for such period shall, for the purposes hereof, be increased to the amount which would have been incurred had the Building been occupied to the extent of ninety-five percent (95%) of the rentable area thereof In no event shall Landlord be entitled to collect in excess of one hundred percent (100%) of the total of the Building's Operating Costs from all tenants in the Building

(c) **Tenant's Inspection Right.** After giving Landlord thirty (30) days prior written notice thereof, Tenant may reasonably inspect or audit Landlord's records relating to Operating Costs and Taxes for the calendar year covered by the most recent annual Operating Costs and Tax Statement delivered by Landlord to Tenant, however, no audit or inspection shall extend to periods of time before the Commencement Date If Tenant fails to object to the calculation of Operating Costs and Taxes on an annual Operating Costs and Tax Statement within thirty (30) days after the statement has been delivered to Tenant, then Tenant shall have waived its right to object to the calculation of Operating Costs and Taxes for the year in question and the calculation of Operating Costs and Taxes set forth on such statement shall be final Tenant's audit or inspection shall be conducted only during business hours reasonably designated by Landlord Tenant shall pay the cost of such audit or inspection, including $150 00 per hour of Landlord's or the Building manager's employee time devoted to such inspection or audit to reimburse Landlord for its overhead costs allocable to the inspection or audit, unless the total Operating Costs and Taxes for the time period in question is determined to be in error by more than five percent (5%) in the aggregate, in which case Landlord shall pay the audit cost. Tenant may not conduct an inspection or have an audit performed more than once during any calendar year Tenant or the accounting firm conducting such audit shall, at no charge to Landlord, submit its audit report in draft form to Landlord for Landlord's review and comment before the final approved audit report is submitted to Landlord, and any reasonable comments by Landlord shall be incorporated into the final audit report If such inspection or audit reveals that an error was made in the Operating Costs and Taxes previously charged to Tenant, then Landlord shall refund to Tenant any overpayment of any such costs, or Tenant shall pay to Landlord any underpayment of any such costs, as the case may be, within thirty (30) days after notification thereof Provided Landlord's accounting for Operating Costs and Taxes is consistent with the terms of this Agreement, Landlord's good faith judgment regarding the proper interpretation of this Agreement and the proper accounting for Operating Costs and Taxes shall be binding on Tenant in connection with any such audit or inspection Tenant shall maintain the results of each such audit or inspection confidential and shall not be permitted to use any third party to perform such audit or inspection, other than an independent firm of certified public accountants (A) reasonably acceptable to Landlord, (B) which is not compensated on a contingency fee basis or in any other manner which is dependent upon the results of such audit or inspection (and Tenant shall deliver the fee agreement or other similar evidence of such fee arrangement to Landlord upon request), and (C) which agrees with Landlord in writing to maintain the results of such audit or inspection confidential. Notwithstanding the

foregoing, Tenant shall have no right to conduct an audit if Landlord furnishes to Tenant an audit report for the period of time in question prepare ' by an independent certified public accounting firm of recognized national standing (whether originally prepared for Landlord or another party)

5 **Delinquent Payment, Handling Charges** All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of ten percent (10%) per annum or the maximum lawful rate of interest, additionally, Landlord may charge Tenant a fee equal to five percent (5%) of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency In no event, however, shall the charges permitted under this Section 5 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest. Notwithstanding the foregoing, the late fee referenced above shall not be charged with respect to the first occurrence (but not any subsequent occurrence) during any twelve (12) month period that Tenant fails to make payment when due, until five (5) days after Landlord delivers written notice of such delinquency to Tenant

6 **Security Deposit** Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord the Security Deposit, which shall be held by Landlord to secure Tenant's performance of its obligations under this Lease The Security Deposit is not an advance payment of Rent or a measure or limit of Landlord's damages upon an Event of Default (as defined herein) Landlord may, from time to time following an Event of Default and without prejudice to any other remedy, use all or a part of the Security Deposit to perform any obligation Tenant fails to perform hereunder Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount Provided that Tenant has performed all of its obligations hereunder, Landlord shall, within thirty (30) days after the Term ends, return to Tenant the portion of the Security Deposit which was not applied to satisfy Tenant's obligations hereunder The Security Deposit may be commingled with other funds, and no interest shall be paid thereon If Landlord transfers its interest in the Premises and the transferee assumes Landlord's obligations under this Lease, then Landlord may assign the Security Deposit to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit

7 **Landlord's Obligations**

(a) **Services** Landlord shall furnish to Tenant (1) water at those points of supply provided for general use of tenants of the Building, (2) heated and refrigerated air conditioning ("**HVAC**") as appropriate, at such temperatures and in such amounts as are standard for comparable buildings in the vicinity of the Building, (3) janitorial service to the Premises on weekdays, other than holidays, for Building-standard installations and such window washing as may from time to time be reasonably required, (4) elevators for ingress and egress to the floor on which the Premises are located, in common with other tenants, provided that Landlord may reasonably limit the number of operating elevators during non-business hours and holidays, provided that, to the extent it is in Landlord's control, at least one (1) elevator shall be operable at all times, and (5) electrical current twenty-four (24) hours a day seven (7) days a week for equipment that does not require more than 110 volts and whose electrical energy consumption does not exceed normal office usage Landlord shall maintain the common areas of the Building in reasonably good order and condition. If Tenant desires any of the services specified in Section 7 (a)(2) (except electrical current) (A) at any time other than between 8 00 a.m and 6 00 p m on weekdays (other than holidays), or (B) on Saturdays, Sundays or holidays, then such services shall be supplied to Tenant upon the written request of Tenant delivered to Landlord before 3 00 p m. on the business day preceding such extra usage, and Tenant shall pay to Landlord the cost of such services within thirty (30) days after Landlord has delivered to Tenant an invoice therefor The costs incurred by Landlord in providing after-hour HVAC service to Tenant shall include costs for electricity, water, sewage, water treatment, labor, metering, filtering, and maintenance reasonably allocated by Landlord to providing such service Landlord shall provide the services referred to in clauses (1) through (5) of this Section 7.(a) and shall maintain the common areas and the Building's Systems at a level substantially similar to the level of service and maintenance that is typical in other similar class office buildings located in the submarket in the city in which the Building is located.

(b) **Excess Utility Use** Landlord shall not be required to furnish electrical current for equipment that requires more than 110 volts or other equipment whose electrical energy consumption exceeds normal office usage If Tenant's requirements for or consumption of electricity exceed the electricity to be provided by Landlord as described in Section 7 (a), Landlord shall, at Tenant's expense, make reasonable efforts to supply such service through the then-existing feeders and risers serving the Building and the Premises, and Tenant shall pay to Landlord the cost of such service within thirty (30) days after Landlord has delivered to Tenant an invoice therefor Landlord may determine the amount of such additional consumption and potential consumption by any verifiable method, including installation of a separate meter in the Premises installed, maintained, and read by Landlord, at Tenant's expense Tenant shall not install any electrical equipment requiring special wiring or requiring voltage in excess of 110 volts or otherwise exceeding Building capacity unless approved in advance by Landlord. The use of electricity in the Premises shall not exceed the capacity of existing feeders and risers to or wiring in the Premises Any risers or wiring required to meet Tenant's excess electrical requirements shall, upon Tenant's written request, be installed by Landlord, at Tenant's cost, if, in Landlord's judgment, the same are necessary and shall not cause permanent damage to the Building or the Premises, cause or create a dangerous or hazardous condition, entail excessive or unreasonable alterations, repairs, or expenses, or interfere with or disturb other tenants of the Building If Tenant uses machines or equipment in the Premises which affect the temperature otherwise maintained by the air conditioning system or otherwise overload any utility, Landlord may install supplemental air conditioning units or other supplemental equipment in the Premises, and the cost thereof, including the cost of installation, operation, use, and maintenance, shall be paid by Tenant to Landlord within thirty (30) days after Landlord has delivered to Tenant an invoice therefor

(c) **Restoration of Services, Abatement** Landlord shall use reasonable efforts to restore any service required of it that becomes unavailable, however, such unavailability shall not render Landlord liable for any damages caused thereby, be a constructive eviction of Tenant, constitute a breach of any implied warranty, or, except as provided in the next sentence, entitle Tenant to any abatement of Tenant's obligations hereunder If, however, Tenant's use of some or all of the Premises for its then-current use is materially adversely affected for more than fifteen (15) consecutive business days because of the unavailability of any such service and such unavailability was not caused by a Tenant Party, then Tenant shall, as its exclusive remedy be entitled to an equitable abatement of Rent applicable to such affected portion of the Premises for each consecutive day (after such fifteen (15) day period) that Tenant is so prevented from using the Premises

8 Improvements, Alterations, Repairs, Maintenance

(a) **Improvements, Alterations** Improvements to the Premises shall be installed at Tenant's expense only in accordance with plans and specifications which have been previously submitted to and approved in writing by Landlord, which approval shall be governed by standards in the following sentence No alterations or physical additions in or to the Premises may be made without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, however, Landlord may withhold its consent to any alteration or addition that would adversely affect (in the reasonable discretion of Landlord) (1) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (2) the exterior appearance of the Building, or (3) the appearance of the Building's common areas or elevator lobby areas Tenant shall not paint or install lighting or decorations, signs, window or door lettering, or advertising media of any type on or about the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, however, Landlord may withhold its consent to any such painting or installation which would affect the appearance of the exterior of the Building or of any common areas of the Building All alterations, additions, and improvements shall be constructed, maintained, and used by Tenant, at its risk and expense, in accordance with all Laws, Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, and Tenant shall be solely responsible for ensuring all such compliance Notwithstanding the foregoing, Tenant shall not be required to obtain Landlord's consent for repainting, recarpeting, or other alterations, tenant improvements, or physical additions to the Premises which are cosmetic in nature totaling less than $5,000 00 in

any single instance or series of related alterations performed within a six (6) month period (provided that Tenant shall not perform any improvements, alterations or additions as to the Premises in stages as a means to subvert this provision), in each case provided that (A) Tenant delivers to Landlord written notice thereof, a list of contractors and subcontractors to perform the work (and certificates of insurance for each such party) and any plans and specifications therefor prior to commencing any such alterations, additions, or improvements (for informational purposes only so long as no consent is required by Landlord as required by the Lease), (B) the installation thereof does not involve any core drilling or the configuration or location of any exterior or interior walls of the Building, and (C) such alterations, additions and improvements will not affect (i) the Building's Structure or the Building's Systems, (ii) the provision of services to other Building tenants, or (iii) the appearance of the Building's common areas or the exterior of the Building

(b) **Repairs, Maintenance** Tenant shall maintain the Premises in a clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises Tenant shall repair or replace, subject to Landlord's direction and supervision, any damage to the Building caused by a Tenant Party If Tenant fails to make such repairs or replacements within thirty (30) days after the occurrence of such damage, then Landlord may make the same at Tenant's cost. If any such damage occurs outside of the Premises, then Landlord may elect to repair such damage at Tenant's expense, rather than having Tenant repair such damage The cost of all repair or replacement work performed by Landlord under this Section 8 shall be paid by Tenant to Landlord within thirty (30) days after Landlord has invoiced Tenant therefor Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect

(c) **Performance of Work** All work described in this Section 8 shall be performed only by Landlord or by contractors and subcontractors reasonably approved in writing by Landlord Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Landlord as an additional insured against such risks, in such amounts, and with such companies as Landlord may reasonably require All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Building's Structure and the Building's Systems) All such work which may affect the Building's Structure or the Building's Systems must be approved by the Building's engineer of record, at Tenant's expense and, at Landlord's election, must be performed by Landlord's usual contractor for such work

(d) **Mechanic's Liens** Tenant shall not permit any mechanic's liens to be filed against the Premises or the Building for any work performed, materials furnished, or obligation incurred by or at the request of Tenant. If such a lien is filed, then Tenant shall, within ten (10) days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of the Building or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord If Tenant fails to timely take either such action, then Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Tenant to Landlord within ten (10) days after Landlord has invoiced Tenant therefor All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant or any contractor or subcontractor of Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Building or Landlord's interest therein due to any work performed by or for Tenant.

9 **Use** Tenant shall occupy and use the Premises only for the Permitted Use and shall comply with all Laws relating to the use, condition, access to, and occupancy of the Premises The population density within the Premises as a whole shall at no time exceed one person for each 250 rentable square feet in the Premises Tenant shall not conduct second or third shift operations within the Premises; however, Tenant may use the Premises after normal business hours, so long as

Tenant is not generally conducting business from the Premises after normal business hours. The Premises shall not be used for any use which is disreputable, creates extraordinary fire hazards, or results in an increased rate of insurance on the Building or its contents or for the storage of any Hazardous Materials (other than typical office supplies [e g., photocopier toner] and then only in compliance with all Laws) Tenant shall not use any substantial portion of the Premises for a "call center " any other telemarketing use, or any credit processing use. If, because of a Tenant Party s acts, the rate of insurance on the Building or its contents increases, then Tenant shall pay to Landlord the amount of such increase on demand, and acceptance of such payment shall not waive any of Landlord s other rights If Tenant fails to cease or remediate such acts within five (5) days after Landlord s request that Tenant do so then such acts shall be an Event of Default. Tenant shall conduct its business and control each other Tenant Party so as not to create any nuisance or unreasonably interfere with other tenants or Landlord in its management of the Building

10 **Assignment and Subletting**.

(a) **Transfers** Except as provided in Section 10 (g) Tenant shall not, without the prior written consent of Landlord, (1) assign transfer or encumber this Lease or any estate or interest herein, whether directly or by operation of law (2) permit any other entity to become Tenant hereunder by merger consolidation or other reorganization, (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant, (4) sublet any portion of the Premises, (5) grant any license concession, or other right of occupancy of any portion of the Premises or (6) permit the use of the Premises by any parties other than Tenant (any of the events listed in Section 10 (a)(1) through 10 (a)(6) being a "**Transfer**")

(b) **Consent Standards**. Landlord shall not unreasonably withhold condition or delay its consent to any assignment or subletting of the Premises, provided that the proposed transferee (A) is creditworthy (B) has a good reputation in the business community (C) will use the Premises for the Permitted Use (thus, excluding, without limitation, uses for credit processing and telemarketing) and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building, (D) is not a governmental entity or subdivision or agency thereof, and (E) is not another occupant of the Building or person or entity with whom Landlord is negotiating to lease space in the Building otherwise, Landlord may withhold its consent in its sole discretion.

(c) **Request for Consent**. If Tenant requests Landlord's consent to a Transfer then, at least fifteen (15) business days prior to the effective date of the proposed Transfer Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer copies of the proposed documentation, and the following information about the proposed transferee name and address reasonably satisfactory information about its business and business history its proposed use of the Premises, banking, financial, and other credit information, and general references sufficient to enable Landlord to determine the proposed transferee s creditworthiness and character Concurrently with Tenant s notice of any request for consent to a Transfer Tenant shall pay to Landlord a fee of $1 000 00 to defray Landlord s expenses in reviewing such request, and Tenant shall also reimburse Landlord immediately upon request for its reasonable attorneys fees incurred in connection with considering any request for consent to a Transfer

(d) **Conditions to Consent**. If Landlord consents to a proposed Transfer then the proposed transferee shall deliver to Landlord a written agreement whereby it expressly assumes Tenant s obligations hereunder; however any transferee of less than all of the space in the Premises shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer for the period of the Transfer No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor Landlord's consent to any Transfer shall not waive Landlord s rights as to any subsequent Transfers If an Event of Default occurs while the Premises or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against Rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder Tenant shall pay for

the cost of any demising walls or other improvements necessitated by a proposed subletting or assignment.

(e) **Cancellation** Landlord may, within thirty (30) days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or assigned as of the date the proposed Transfer is to be effective If Landlord cancels this Lease as to any portion of the Premises, then this Lease shall cease for such portion of the Premises and Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer Thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person) without liability to Tenant.

(f) **Additional Compensation** Tenant shall pay to Landlord, immediately upon receipt thereof, the excess of (1) all compensation received by Tenant for a Transfer less the costs reasonably incurred by Tenant with unaffiliated third parties in connection with such Transfer (i e , usual and customary advertising costs, brokerage commissions, tenant finish work, reasonable tenant concessions, and the like) over (2) the Rent allocable to the portion of the Premises covered thereby

(g) **Permitted Transfers** Notwithstanding Section 10 (a), Tenant may Transfer all or part of its interest in this Lease or all or part of the Premises (a "**Permitted Transfer**") to the following types of entities (a "**Permitted Transferee**") without the written consent of Landlord

(1) an Affiliate of Tenant,

(2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions go erning merger and consolidation of business entities, so long as (A) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation, and (B) the Tangible Net Worth of the surviving or created entity is not less than the Tangible Net Worth of Tenant as of the date hereof, or

(3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets if such entity's Tangible Net Worth after such acquisition is not less than the Tangible Net Worth of Tenant as of the date hereof

Tenant shall promptly notify Landlord of any such Permitted Transfer Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use At least thirty (30) days after the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with copies of the instrument effecting any of the foregoing Transfers and documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers "**Tangible Net Worth**" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 10

11 **Insurance, Waivers, Subrogation, Indemnity**

(a) **Tenant's Insurance** Tenant shall maintain throughout the Term the following insurance policies (1) commercial general liability insurance in amounts of $3,000,000 00 per occurrence (which may be accomplished by including Tenant's primary

coverage and Tenant's umbrella coverage(s)) or, following the expiration of the initial Term, such other amounts as Landlord may from time to me reasonably require (and, if the use and occupancy of the Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy [e g , the sale, service or consumption of alcoholic beverages], Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter [including liquor liability, if applicable] in such amounts as Landlord may reasonably require), insuring Tenant, Landlord, Landlord's agents and their respective Affiliates against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises, (2) insurance covering the full value of Tenant's property and improvements, and other property (including property of others) in the Premises, (3) contractual liability insurance sufficient to cover Tenant's indemnity obligations hereunder (but only if such contractual liability insurance is not already included in Tenant's commercial general liability insurance policy), (4) worker's compensation insurance, and (5) business interruption insurance Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy Tenant shall furnish to Landlord certificates of such insurance (or copies thereof) and such other evidence reasonably satisfactory to Landlord of the maintenance of all insurance coverages required hereunder, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days before cancellation or a material change of any such insurance policies All such insurance policies shall be in form, and issued by companies, reasonably satisfactory to Landlord

(b) **Landlord's Insurance** Throughout the Term of this Lease, Landlord shall maintain, as a minimum, the following insurance policies (1) fire and extended risk insurance for the Building's replacement value and (2) commercial general liability insurance in an amount of not less than $3,000,000 00 The cost of all insurance carried by Landlord with respect to the Building shall be included in Operating Costs The foregoing insurance policies and any other insurance carried by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control, and Tenant shall have no right or claim to any proceeds thereof or any other rights thereunder

(c) **No Subrogation** Landlord and Tenant each waives any claim it might have against the other for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property (a "**Loss**"), to the extent the same is insured against under any insurance policy that covers the Building, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such Loss Each party shall use commercially reasonable efforts to cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party

(d) **Indemnity** Subject to Section 11 (c), Tenant shall defend, protect, indemnify, and hold harmless Landlord and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising from any Loss arising from (1) any occurrence on the Premises, or (2) Tenant's failure to perform its obligations under this Lease, even though such Loss is caused or alleged to be caused by the negligence or fault of Landlord or its agents (other than a Loss arising from the sole or gross negligence or willful misconduct of Landlord or its agents), and even though any such claim, cause of action, or suit is based upon or alleged to be based upon the strict liability of Landlord or its agents This indemnity is intended to indemnify Landlord and its agents against the consequences of their own negligence or fault as provided above when Landlord or its agents are jointly, comparatively, contributively, or concurrently negligent with Tenant. Subject to Section 11 (c), Landlord shall defend, protect, indemnify, and hold harmless Tenant and its agents from and against all claims, demands, liabilities, causes of action, suits, judgments, and expenses (including reasonable attorneys' fees) for any Loss arising from any occurrence in the Building's common areas, even though caused or alleged to be caused by the negligence or fault of Tenant or its agents (other than a Loss arising from the sole or gross negligence or willful misconduct of Tenant or its agents), and even though any such claim, cause of action, or suit is based upon or alleged to be based upon the strict liability of Tenant or its agents. This indemnity is intended to

indemnify Tenant and its agents against the consequences of their own negligence or fault as provided above when Tenant or its agents are jointly, comparatively, contributively, or concurrently negligent with Landlord The indemnities set forth in this Section 11 (d) shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease If any proceeding is filed for which indemnity is required hereunder, the indemnifying party agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel reasonably satisfactory to the indemnified party

12 **Subordination, Attornment, Notice to Landlord's Mortgagee**

(a) **Subordination** This Lease shall be subordinate to any deed of trust, mortgage, or other security instrument (each, a "**Mortgage**"), or any ground lease, master lease, or primary lease (each, a "**Primary Lease**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage, beneficiary under any such deed of trust, or the lessor under any such Primary Lease is referred to herein as a "**Landlord's Mortgagee**") Any Landlord's Mortgagee may elect, at any time, unilaterally, to make this Lease superior to its Mortgage, Primary Lease, or other interest in the Premises by so notifying Tenant in writing The provisions of this Section shall be self-operative and no further instrument of subordination shall be required, however, in confirmation of such subordination, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten (10) days after written request therefor such documentation, in recordable form if required, as a Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease to such Landlord's Mortgagee's Mortgage or Primary Lease (including a subordination, non-disturbance and attornment agreement) or, if the Landlord's Mortgagee so elects, the subordination of such Landlord's Mortgagee's Mortgage or Primary Lease to this Lease

(b) **Attornment** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(c) **Notice to Landlord's Mortgagee** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder

(d) **Landlord's Mortgagee's Protection Provisions** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be (1) liable for any act or omission of any prior lessor (including Landlord), but shall be required to cure any Landlord default hereunder which continues subsequent to Landlord's Mortgagee's succession to the interest of Landlord under this Lease, (2) bound by any rent or additional rent or advance rent which Tenant might have paid for more than the current month to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment, (3) bound by any security or advance rental deposit made by Tenant which is not delivered, paid over or credited to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement, (4) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee, (5) subject to the defenses which Tenant might have against any prior lessor (including Landlord), and (6) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease, (B) relate to periods of time following the acquisition of the Building by Landlord's Mortgagee, and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Building Nothing in this Lease shall be construed to require Landlord's Mortgagee to see to the application of the

proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

13 **Rules and Regulations** Tenant shall comply with the rules and regulations of the Building which are attached hereto as Exhibit C Landlord may, from time to time, change such rules and regulations for the safety, care, or cleanliness of the Building and related facilities, provided that such changes are applicable to all tenants of the Building and will not unreasonably interfere with Tenant's use of the Premises or materially increase Tenant's costs hereunder The rules and regulations, as amended from time to time, shall be enforced by Landlord in a non-discriminatory manner Tenant shall be responsible for the compliance with such rules and regulations by each Tenant Party

14 **Condemnation**

(a) **Total Taking** If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (a "**Taking**"), this Lease shall terminate as of the date of the Taking

(b) **Partial Taking – Tenant's Rights** If any part of the Building becomes subject to a Taking and such Taking, in Tenant's reasonable determination, will prevent Tenant from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than one hundred eighty (180) days, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking, and Basic Rent and Additional Rent shall be apportioned as of the date of such Taking If Tenant does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Premises rendered untenantable by the Taking

(c) **Partial Taking – Landlord's Rights** If any material portion, but less than all, of the Building becomes subject to a Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a Landlord's Mortgagee, and, in Landlord's reasonable determination, operation of the Building is no longer viable or practicable, and Landlord is canceling the leases of all other tenants in the Building that are similarly affected, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking, and Basic Rent and Additional Rent shall be apportioned as of the date of such Taking If Landlord does not so terminate this Lease, then this Lease will continue, but if any portion of the Premises has been taken, Rent shall abate as provided in the last sentence of Section 14 (b) Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265 130 of the California Code of Civil Procedure

(d) **Award** If any Taking occurs, then Landlord shall receive the entire award or other compensation for the Land, the Building, and other improvements taken, however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, and loss of business

15 **Fire or Other Casualty**

(a) **Repair Estimate** If the Premises or the Building are damaged by fire or other casualty (a "**Casualty**"), Landlord shall, within seventy-five (75) days after such Casualty, deliver to Tenant a good faith estimate (the "**Damage Notice**") of the time needed to repair the damage caused by such Casualty

(b) **Tenant's Rights** If a material portion of the Premises is damaged by Casualty such that Tenant, in Tenant's reasonable determination, is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within two hundred ten (210) days after the Casualty (the "**Repair Period**"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.

(c) **Landlord's Rights** If a Casualty damages the Premises or a material portion of the Building and (1) Landlord reasonably estimates that the damage to the Premises cannot be repaired within the Repair Period, (2) the damage to the Premises exceeds fifty percent (50%) of the replacement cost thereof (excluding foundations and footings), as reasonably estimated by Landlord, and such damage occurs during the last two (2) years of the Term, (3) regardless of the extent of damage to the Premises, Landlord makes a good faith determination that restoring the Building would be uneconomical and is canceling the leases of all other tenants in the Building that are similarly affected, or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord's Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant

(d) **Repair Obligation** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty, however, Landlord shall only be required to reconstruct the Premises to the extent of any improvements existing therein on the date of the damage that were installed by Landlord as part of the Work (if any) pursuant to Exhibit D ("**Landlord's Contribution**"), and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question Tenant shall be responsible for repairing or replacing its furniture, equipment, fixtures, alterations and other improvements which Landlord is not obligated to restore, and shall use the proceeds of its insurance for such purpose Within thirty (30) days of Landlord's request therefor, Tenant shall pay the difference between the total cost of reconstructing the Premises and Landlord's Contribution ("**Tenant's Contribution**")

(e) **Waiver of Statutory Provisions** The provisions of this Lease, including this Section 15, 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 or the Building 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 or the Building

(f) **Abatement of Rent** If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenantable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be)

16 **Personal Property Taxes** Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises If any taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, within thirty (30) days following written request, the part of such taxes for which Tenant is primarily liable hereunder, however, Landlord shall not pay such amount if Tenant notifies Landlord that it will contest the validity or amount of such taxes before Landlord makes such payment, and thereafter diligently proceeds with such contest in accordance with Law and if the non-payment thereof does not pose a threat of loss or seizure of the Building or interest of Landlord therein or impose any fee or penalty against Landlord.

17 **Events of Default** Each of the following occurrences shall be an "**Event of Default**"

(a) **Payment Default** Tenant's failure to pay Rent within ten (10) days after Landlord has delivered written notice to Tenant that the same is due (any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law), however, an Event of Default shall occur hereunder without any obligation of Landlord to give any notice if Tenant fails to pay Rent when due if,

(c) **Landlord's Rights** If a Casualty damages the Premises or a material portion of the Building and (1) Landlord reasonably estimates that the damage to the Premises cannot be repaired within the Repair Period, (2) the damage to the Premises exceeds fifty percent (50%) of the replacement cost thereof (excluding foundations and footings), as reasonably estimated by Landlord, and such damage occurs during the last two (2) years of the Term, (3) regardless of the extent of damage to the Premises, Landlord makes a good faith determination that restoring the Building would be uneconomical and is canceling the leases of all other tenants in the Building that are similarly affected, or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord's Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.

(d) **Repair Obligation** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, Landlord shall only be required to reconstruct the Premises to the extent of any improvements existing therein on the date of the damage that were installed by Landlord as part of the Work (if any) pursuant to Exhibit D ("**Landlord's Contribution**"), and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question Tenant shall be responsible for repairing or replacing its furniture, equipment, fixtures, alterations and other improvements which Landlord is not obligated to restore, and shall use the proceeds of its insurance for such purpose Within thirty (30) days of Landlord's request therefor, Tenant shall pay the difference between the total cost of reconstructing the Premises and Landlord's Contribution ("**Tenant's Contribution**")

(e) **Waiver of Statutory Provisions** The provisions of this Lease, including this Section 15, 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 or the Building 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 or the Building

(f) **Abatement of Rent** If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenantable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be)

16 **Personal Property Taxes** Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises If any taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, within thirty (30) days following written request, the part of such taxes for which Tenant is primarily liable hereunder; however, Landlord shall not pay such amount if Tenant notifies Landlord that it will contest the validity or amount of such taxes before Landlord makes such payment, and thereafter diligently proceeds with such contest in accordance with Law and if the non-payment thereof does not pose a threat of loss or seizure of the Building or interest of Landlord therein or impose any fee or penalty against Landlord

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(a) **Payment Default**. Tenant's failure to pay Rent within ten (10) days after Landlord has delivered written notice to Tenant that the same is due (any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law), however, an Event of Default shall occur hereunder without any obligation of Landlord to give any notice if Tenant fails to pay Rent when due if,

during the twelve (12) month interval preceding such failure, Landlord has given Tenant written notice of failure to pay Rent on two (2) or more occasions,

(b) **Abandonment** Tenant abandons the Premises or any substantial portion thereof;

(c) **Estoppel** Tenant fails to provide any estoppel certificate after Landlord's written request therefor pursuant to Section 25 (e) and such failure shall continue for five (5) days after Landlord's second written notice thereof to Tenant,

(d) **Other Defaults** Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of more than thirty (30) days (or such longer time as may be reasonably required to cure such default, provided Tenant commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion) after Landlord has delivered to Tenant written notice thereof (any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law), and

(e) **Insolvency** The filing of a petition by or against Tenant (the term "**Tenant**" shall include, for the purpose of this Section 17 (e), any guarantor of Tenant's obligations hereunder) (1) in any bankruptcy or other insolvency proceeding, (2) seeking any relief under any state or federal debtor relief law, (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease, or (4) for the reorganization or modification of Tenant's capital structure, however, if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within ninety (90) days after the filing thereof

18 **Remedies** Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions, each and all of which shall be cumulative and non-exclusive, without notice or demand whatsoever

(a) **Termination of Lease** 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

(1) The worth at the time of award of any unpaid rent which has been earned at the time of such termination, plus

(2) 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

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, plus

(4) 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

(5) 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 18 (a) 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 18 (a)(1) and 18 (a)(2) above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate set forth in Section 5 of this Lease, but in no case greater than the maximum amount of such interest permitted by Law As used in Section 18 (a)(3) 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%)

(b) **Enforcement of Lease** 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, 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

(c) **Sublessees of Tenant** Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Section 18, 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

(d) **Efforts to Relet** For the purposes of this Section 18, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests hereunder The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession

19 **Payment by Tenant, Non-Waiver, Cumulative Remedies**

(a) **Payment by Tenant** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing and storing Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant, (4) performing Tenant's obligations which Tenant failed to perform, and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default To the full extent permitted by law, Landlord and Tenant agree the federal and state courts of the state in which the Premises are located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease

(b) **No Waiver** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith, accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due

(c) **Cumulative Remedies** Any and all remedies set forth in this Lease (1) shall be in addition to any and all other remedies Landlord may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future

20 **INTENTIONALLY DELETED**

21 **Surrender of Premises** No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord At the expiration or earlier termination of this Lease, Tenant shall deliver to Landlord the Premises with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and Casualty damage, as to which Sections 14 and 15 shall control) excepted, and shall deliver to Landlord all keys to the Premises At the expiration or earlier termination of this Lease, Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires or otherwise allows such removal) Additionally, at Landlord's option, provided such request was made (i) at the time Landlord gave its consent to such alterations, additions or improvements, or (ii) at any time if consent to such alterations, additions or improvements was required but not obtained, Tenant shall remove such alterations, additions, improvements, trade fixtures, personal property, equipment, wiring, cabling, and furniture as Landlord may request, however, Tenant shall not be required to remove any addition or improvement to the Premises if Landlord has specifically agreed in writing that the improvement or addition in question need not be removed Tenant shall repair all damage caused by such removal All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items The provisions of this Section 21 shall survive the end of the Term

22 **Holding Over** If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and, in addition to all other damages and remedies to which Landlord may be entitled for such holding over, (a) Tenant shall pay, in addition to the other Rent, Basic Rent equal to the greater of (1) one hundred fifty percent (150%) of the Basic Rent payable during the last month of the Term, or (2) one hundred twenty-five percent (125%) of the prevailing rental rate in the Building for similar space, and (b) Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease The provisions of this Section 22 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 fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom

23 **Certain Rights Reserved by Landlord** Provided that the exercise of such rights does not unreasonably interfere with Tenant's occupancy of the Premises or the operation of its business therein, or materially increase Tenant's obligations, or limit its rights hereunder, Landlord shall have the following rights

(a) **Building Operations** To decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Building, or any part thereof, to enter upon the Premises (with escort of Tenant upon not less than twenty-four (24) hours notice, which may be oral notice, except in cases of real or apparent emergency, in which case no notice shall be required) and, during the continuance of any such work, to temporarily close doors, entryways, public space, and corridors in the Building, to interrupt or temporarily suspend Building services and facilities, to change the name of the Building, and to change the arrangement and location of entrances or passageways, doors, and doorways, corridors, elevators, stairs, restrooms, or other public parts of the Building,

(b) **Security** To take such reasonable measures as Landlord deems advisable for the security of the Building and its occupants, evacuating the Building for cause, suspected cause, or for drill purposes, temporarily denying access to the Building, and closing the Building after normal business hours and on Sundays and holidays, subject, however, to Tenant's right to enter when the Building is closed after normal business hours under such reasonable regulations as Landlord may prescribe from time to time,

(c) **Prospective Purchasers and Lenders** To enter the Premises with escort of Tenant at all reasonable hours upon not less than twenty-four (24) hours prior notice to show the Premises to prospective purchasers or lenders, and

(d) **Prospective Tenants** At any time during the last twelve (12) months of the Term (or earlier if Tenant has notified Landlord in writing that it does not desire to renew the Term) or at any time following the occurrence of an Event of Default, to enter the Premises with escort of Tenant at all reasonable hours upon not less than twenty-four (24) hours prior notice to show the Premises to prospective tenants

24 **Substitution Space** Landlord may, at Landlord's expense, relocate Tenant within the Building to space which is comparable in size, utility, tenant improvements and condition to the Premises If Landlord relocates Tenant, Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving, including the cost to move Tenant's furniture, equipment, cabling, and supplies from the Premises to the relocation space and the cost for reprinting Tenant's stationery of the same quality and quantity as Tenant's stationery supply on hand immediately before Landlord's notice to Tenant of the exercise of this relocation right. Upon such relocation, the relocation space shall be deemed to be the Premises and the terms of this Lease shall remain in full force and shall apply to the relocation space In the event Landlord relocates Tenant pursuant to this Section 24, Landlord shall use its commercially reasonable efforts to designate space containing approximately 850 to 900 rentable square feet located adjacent to or on the same floor with the relocation space, which shall be substituted for the Offer Space as defined in Section 27, and Tenant thereafter, shall have a Right of First Offer as described in Section 27 with respect to such substituted Offer Space

25 **Miscellaneous**

(a) **Landlord Transfer** Landlord may transfer any portion of the Building and any of its rights under this Lease If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes Landlord's obligations hereunder in writing In no event shall Landlord be released from liability with regard to a return of the Security Deposit in the event of such a transfer unless the Security Deposit is delivered, paid over or credited to such assignee

(b) **Landlord's Liability** The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Building, which interest shall include condemnation and insurance proceeds attributable to the Building, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency

(c) **Force Majeure** Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e g , payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party

(d) **Brokerage** Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease, other than Landlord's broker, Cornish & Carey Commercial (B. Lutz/T. Fehr), and Tenant's broker, Grubb & Ellis (R. Steffens), whose commission shall be paid by Landlord pursuant to a separate written agreement. Tenant and Landlord shall each indemnify the other against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent other than those stated above, claiming the same by, through, or under the indemnifying party

(e) **Estoppel Certificates** From time to time, Tenant shall furnish to any party designated by Landlord, within ten (10) days after Landlord has made a request therefor, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Lease as Landlord may reasonably request Unless otherwise required by Landlord's Mortgagee or a prospective purchaser or mortgagee of the Building, the initial form of estoppel certificate to be signed by Tenant is attached hereto as Exhibit F

(f) **Notices** All notices and other communications given pursuant to this Lease shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in the Basic Lease Information, (2) hand delivered to the intended address, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder All notices shall be effective upon delivery to the address of the addressee The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

(g) **Separability** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable

(h) **Amendments, Binding Effect** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided This Lease is for the sole benefit of Landlord and Tenant, and, other than Landlord's Mortgagee, no third party shall be deemed a third party beneficiary hereof

(i) **Quiet Enjoyment** Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease

(j) **No Merger** There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate

(k) **No Offer** The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights or obligations under this Lease unless Landlord and Tenant execute a copy of this Lease and deliver it to the other

(l) **Entire Agreement** This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto

(m) **Waiver of Jury Trial** To the maximum extent permitted by law, Landlord and Tenant each waive right to trial by jury in any litigation arising out of or with respect to this Lease

(n) **Governing Law** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located

(o) **Recording** Tenant shall not record this Lease without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord

(p) **Joint and Several Liability** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease All unperformed obligations of Tenant at the end of the Term shall survive

(q) **Financial Reports** Within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports Landlord will not disclose any aspect of Tenant's financial statements that Tenant designates to Landlord as confidential except (1) to Landlord's Mortgagee or prospective mortgagees or purchasers of the Building, (2) in litigation between Landlord and Tenant, and (3) if required by court order Tenant shall not be required to deliver the financial statements required under this Section 25 (q) more than once in any twelve (12) month period unless requested by Landlord's Mortgagee or a prospective buyer or lender of the Building or an Event of Default occurs

(r) **Landlord's Fees** Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within thirty (30) days after Landlord's delivery to Tenant of a statement of such costs Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action If Landlord reasonably believes that the out-of-pocket costs payable to third parties to be incurred by Landlord in reviewing the proposed action or consent will exceed $2,500 00, Landlord will first notify Tenant of such cost estimate before proceeding with such third-party expenses If Tenant fails to consent to such additional costs and expenses within five (5) business days after Landlord's written notification to Tenant thereof, Tenant shall be deemed to have rescinded its request for such action or consent

(s) **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.

(t) **Telecommunications** Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have the right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location only upon Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord's policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to any Tenant Party in connection with the installation, operation or maintenance of Telecommunications Services or any

equipment or facilities relating thereto Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services

(u) **Confidentiality** Landlord and Tenant acknowledge that the terms and conditions of this Lease are to remain confidential for Landlord's and Tenant's benefit, and may not be disclosed by either party to anyone, by any manner or means, directly or indirectly, without the other's prior written consent The consent by Landlord or Tenant to any disclosures shall not be deemed to be a waiver on the part of each party of any prohibition against any future disclosure

(v) **Authority** Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located to the extent such qualification is required, 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 Landlord hereby represents and warrants to Tenant that Landlord is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so

(w) **Hazardous Materials** The term "**Hazardous Materials**" means any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any Law relating to pollution or the protection or regulation of human health, natural resources or the environment, or poses or threatens to pose a hazard to the health or safety of persons on the Premises or in the Building Tenant shall not use, generate, store, or dispose of, or permit the use, generation, storage or disposal of Hazardous Materials on or about the Premises or the Building except in a manner and quantity necessary for the ordinary performance of Tenant's business, and then in compliance with all Laws If Tenant breaches its obligations under this Section 25 (w), Landlord may immediately take any and all action reasonably appropriate to remedy the same, including taking all appropriate action to clean up or remediate any contamination resulting from Tenant's use, generation, storage or disposal of Hazardous Materials Tenant shall defend, protect, indemnify, and hold harmless Landlord and its representatives and agents from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees and costs of clean up and remediation) arising from Tenant's failure to comply with the provisions of this Section 25 (w) This indemnity provision shall survive termination or expiration of this Lease

(x) **Parking** Tenant shall have the right to the nonexclusive use of twenty-two (22) unreserved parking spaces in the parking garage/area associated with the Building (the "**Parking Area**") during the initial term free of charge and subject to such terms, conditions and regulations as are from time to time applicable to patrons of the Parking Area

(y) **Signage** Landlord shall, at Tenant's cost, provide Building-standard signage on or adjacent to the Premises and on the Building directory Tenant shall not erect or maintain any other temporary or permanent sign on or about the Premises or the Building or visible from the exterior without obtaining prior written approval from Landlord, which may be granted or withheld in Landlord's sole and absolute discretion Any request for approval of a sign shall be made in such detail, as Landlord shall request All signs, whether erected by Landlord or Tenant, shall conform to Landlord's building standard signage and to all laws, ordinances, rules, regulations, permits, covenants, conditions, restrictions, and easements pertaining to signs, and shall be at Tenant's expense In the event of a violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred in such removal to Tenant Tenant shall remove all approved signs, which it has erected upon the termination of the Lease and repair all damage caused by such removal

(z) **List of Exhibits** All exhibits and attachments attached hereto are incorporated herein by this reference

Exhibit A -	Outline of Premises
Exhibit B -	Description of the Land
Exhibit C -	Building Rules and Regulations
Exhibit D -	Tenant Finish-Work
Exhibit E -	Form of Confirmation of Commencement Date Letter
Exhibit F -	Form of Tenant Estoppel Certificate
Exhibit G -	Form of Offer Notice
Exhibit H -	Guaranty

26 **Renewal Option**

(a) **Grant of Option** Provided no Event of Default exists and Tenant or a Permitted Transferee is occupying more than fifty percent of the Premises at the time of such election, Tenant may renew this Lease for one (1) additional period of sixty (60) months, by delivering written notice of the exercise thereof to Landlord not earlier than twelve (12) months nor later than six (6) months before the expiration of the Term

(b) **Basic Rent** The Basic Rent payable for each month during such extended Term shall be the prevailing rental rate (the "**Prevailing Rental Rate**"), at the commencement of such extended Term, for renewals of space of equivalent quality, size, utility and location, with the length of the extended Term and the credit standing of Tenant to be taken into account Within thirty (30) days after receipt of Tenant's notice to renew, Landlord shall deliver to Tenant written notice of the Prevailing Rental Rate and shall advise Tenant of the required adjustment to Basic Rent, if any Tenant shall, within fifteen (15) days after receipt of Landlord's notice, notify Landlord in writing whether Tenant accepts or rejects Landlord's determination of Prevailing Rental Rate If Tenant timely notifies Landlord that Tenant accepts Landlord's determination of the Prevailing Rental Rate, then, on or before the commencement date of the extended Term, Landlord and Tenant shall execute an amendment to this Lease extending the Term on the same terms provided in this Lease, except as follows

(1) Basic Rent shall be adjusted to the Prevailing Rental Rate,

(2) Tenant shall have no further renewal option unless expressly granted by Landlord in writing, and

(3) Landlord shall lease to Tenant the Premises in their then-current condition, and Landlord shall not provide to Tenant any allowances (e g , moving allowance, construction allowance, and the like) or other tenant inducements

If Tenant disagrees with Landlord's determination of Prevailing Rental Rate, Tenant may, but only within fifteen (15) days after receipt of Landlord's notice, require by written notice to Landlord that the determination of Prevailing Rental Rate be made by brokers In such event, within ten (10) days thereafter, each party shall select a qualified commercial real estate broker with at least ten (10) years experience in appraising property and buildings in the city or submarket in which the Premises are located The two brokers shall give their opinion of Prevailing Rental Rate and other terms within twenty (20) days after their retention In no event, however, shall the Basic Rent in the extended term be less than the then current Basic Rent rate per rentable square foot in effect hereunder, with the new Basic Rent increasing three percent (3%) per year during such extended Term In the event the opinions of the two brokers differ and, after good faith efforts over the succeeding twenty (20) day period, they cannot mutually agree, the brokers shall immediately and jointly appoint a third broker with the qualifications specified above This third broker shall immediately (within five (5) days) choose either the determination of Landlord's broker or Tenant's broker and such choice of this third broker shall be final and binding on Landlord and Tenant Each party shall pay its own costs for its real estate broker The parties shall equally share the costs of any third broker The parties shall immediately confirm the extended Term, Basic Rent and terms and conditions so determined, in writing

27 **Right of First Offer**

(a) **Grant of Offer** Subject to then-existing renewal or expansion options of other tenants, and provided no Event of Default then exists, Landlord shall, prior to offering all or any portion of the same to any party (other than the then-current tenant therein), first offer to lease to Tenant Suite 300 consisting of approximately 861 rentable square feet (the "**Offer Space**") in an "**AS-IS**" condition, such offer shall be in writing and specify the lease terms for the Offer Space, including the rent to be paid for the Offer Space and the date on which the Offer Space shall be included in the Premises (the "**Offer Notice**") The Offer Notice shall be substantially similar to the Offer Notice attached as Exhibit G Tenant shall notify Landlord in writing whether Tenant elects to lease the entire Offer Space on the terms set forth in the Offer Notice, within five (5) days after Landlord delivers to Tenant the Offer Notice If Tenant timely elects to lease the Offer Space, then Landlord and Tenant shall execute an amendment to this Lease, effective as of the date the Offer Space is to be included in the Premises, on the terms set forth in the Offer Notice and, to the extent not inconsistent with the Offer Notice terms, the terms of this Lease, but in any event the term of this Lease respecting the Offer Space shall be coterminous with the then current term of this Lease, as the same may be extended, however, Tenant shall accept the Offer Space in an "**AS-IS**" condition and Landlord shall not provide to Tenant any allowances (e g, moving allowance, construction allowance, and the like) or other tenant inducements except as specifically provided in the Offer Notice Notwithstanding the foregoing, if prior to Landlord's delivery to Tenant of the Offer Notice, Landlord has received an offer to lease all or part of the Offer Space from a third party (a "**Third Party Offer**") and such Third Party Offer includes space in excess of the Offer Space, Tenant must exercise its rights hereunder, if at all, as to all of the space contained in the Third Party Offer

(b) **Exercise of Offer** If Tenant does not timely exercise its right hereunder, then such right shall lapse, time being of the essence with respect to the exercise thereof (it being understood that Tenant's right hereunder is a one-time right only), and Landlord may lease all or a portion of the Offer Space to third parties upon terms not materially more favorable than those offered to Tenant For purposes of the preceding sentence, such terms shall be considered "materially" more favorable than those offered Tenant if the quantitative financial terms, considering all relevant factors, are improved by more than five percent (5%) over those offered Tenant If Landlord wishes to offer the Offer Space to any other party on terms that are materially more favorable than those offered to Tenant following Tenant's non-exercise of its rights hereunder, Landlord must first make such offer to Tenant by delivering another Offer Notice to Tenant setting forth such materially more favorable terms, and Tenant shall have five (5) days from Tenant's receipt of such Offer Notice to elect to lease the Offer Space upon the terms set forth in such additional Offer Notice If Tenant again does not timely exercise its right to lease the Offer Space, Landlord shall again be free to lease the Offer Space to third parties upon terms not materially more favorable than the terms set forth in the last Offer Notice delivered to Tenant. Notwithstanding anything to the contrary set forth in this Section 27, if Landlord does not lease the Offer Space described in the Offer Notice within six (6) months after Tenant's receipt of such Offer Notice, Landlord must again offer the subject space to Tenant in accordance with the right of first offer granted to Tenant in this Section 27 Tenant may not exercise its rights under this Section 27 if an Event of Default exists or Tenant is not then occupying the entire Premises In no event shall Landlord be obligated to pay a commission with respect to any space leased by Tenant under this Section 27, and Tenant and Landlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under the indemnifying party

(c) **Termination of Rights** Tenant's rights under this Section 27 shall terminate if (a) this Lease or Tenant's right to possession of the Premises is terminated, (b) Tenant or a Permitted Transferee assigns any of its interest in this Lease or sublets more than fifty percent (50%) of the Premises, or (c) less than two (2) full calendar years remain in the initial Term of this Lease, provided, however, that in the event (and only in such event) that Landlord delivers an Offer Notice respecting the Offer Space to Tenant pursuant to Section 27 (a) above during the last two (2) full calendar years of the initial Lease Term, Tenant

shall have the right to exercise its right to renew this Lease pursuant to Section 26 (a) earlier than the time period set forth in Section 26 (a), so long as Tenant exercises its right to renew this Lease within five (5) days after Tenant's receipt of Landlord's Offer Notice

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND, EXCEPT AS SET FORTH HEREIN, TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED

Dated as of the date first above written.

LANDLORD

WMP IV REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership

By WMP IV Gen-Par, L L C ,
a Delaware limited liability company,
General Partner

By _____
Name Nancy M Haag
Title Assistant Vice President

TENANT

ALLEGIANCE TELECOM COMPANY WORLDWIDE, a Delaware corporation

By _____
Name Patricia E Koide
Title Senior Vice President

By _____
Name _____
Title _____

EXHIBIT A

OUTLINE OF PREMISES

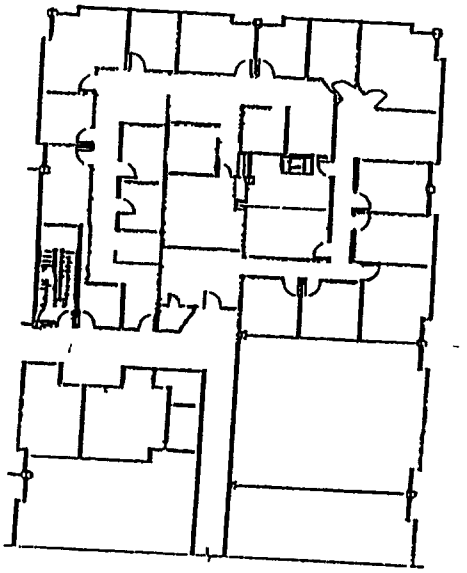

EXHIBIT B

DESCRIPTION OF THE LAND

CITY OF PLEASANT HILL

PARCEL ONE

PARCEL B AS SHOWN ON THE PARCEL MAP FILED JANUARY 8, 1969, IN BOOK 11 OF PARCEL MAPS, PAGE 30, CONTRA COSTA COUNTY RECORDS

PARCEL TWO

PARCEL A AS SHOWN ON THE PARCEL MAP FILED JULY 13, 1973, IN BOOK 29 OF PARCEL MAPS, PAGE 1, CONTRA COSTA COUNTY RECORDS

EXHIBIT C

BUILDING RULES AND REGULATIONS

The following rules and regulations shall apply to the Premises, the Building, the parking garage associated therewith, and the appurtenances thereto

1 Sidewalks, doorways, vestibules, halls, stairways, and other similar areas shall not be obstructed by tenants or used by any tenant for purposes other than ingress and egress to and from their respective leased premises and for going from one to another part of the Building

2 Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein Damage resulting to any such fixtures or appliances from misuse by a tenant or its agents, employees or invitees, shall be paid by such tenant

3 No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other part of the Building, except as set forth in the Lease No nails, hooks or screws (other than those which are necessary to hang paintings, prints, pictures, or other similar items on the Premises' interior walls or pursuant to Landlord approved Tenant Improvements being performed by Tenant's contractors) shall be driven or inserted in any part of the Building except by Building maintenance personnel No curtains or other window treatments shall be placed between the glass and the Building standard window treatments

4 Landlord shall provide and maintain an alphabetical directory for all tenants in the main lobby of the Building

5 Landlord shall provide all door locks in each tenant's leased premises, at the cost of such tenant, and no tenant shall place any additional door locks in its leased premises without Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed Landlord shall furnish to each tenant a reasonable number of keys to such tenant's leased premises, at such tenant's cost, and no tenant shall make a duplicate thereof

6 Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which require use of elevators or stairways, or movement through the Building entrances or lobby shall be conducted under Landlord's supervision at such times and in such a manner as Landlord may reasonably require Each tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for such tenant

7 Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner reasonably acceptable to Landlord which may include the use of such supporting devices as Landlord may reasonably require All damages to the Building caused by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, shall be repaired at the expense of such tenant.

8 Corridor doors, when not in use, shall be kept closed Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways No birds or animals (other than seeing-eye dogs) shall be brought into or kept in, on or about any tenant's leased premises No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters

9 Tenant shall cooperate with Landlord's employees in keeping its leased premises neat and clean. Tenants shall not employ any person for the purpose of such cleaning other than the Building's cleaning and maintenance personnel

10 To ensure orderly operation of the Building, no ice, mineral or other water, towels, newspapers, etc shall be delivered to any leased area except by persons approved by Landlord

11 Tenant shall not make or permit any vibration or improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them.

12 No machinery of any kind (other than normal office equipment, including, but not limited to, computers, computer monitors, facsimile machines, photocopy machines, microwave ovens, and coffee machines) shall be operated by any tenant on its leased area without Landlord's prior written consent, nor shall any tenant use or keep in the Building any flammable or explosive fluid or substance (other than typical office supplies [e g , photocopier toner] used in compliance with all Laws)

13 Landlord will not be responsible for lost or stolen personal property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.

14 No vending or dispensing machines (except for office-style liquid, coffee or similar dispensing machines) of any kind may be maintained in any leased premises without the prior written permission of Landlord

15 Tenant shall not conduct any activity on or about the Premises or Building which will draw pickets, demonstrators, or the like

16 All vehicles owned by Tenant or its employees, agents or contractors which are parked in the parking area are to be currently licensed, in good operating condition, parked for business purposes having to do with Tenant's business operated in the Premises, parked within designated parking spaces, one vehicle to each space No vehicle shall be parked as a "billboard" vehicle in the parking lot Any vehicle parked improperly may be towed away Tenant, Tenant's agents, employees, vendors and customers who do not operate or park their vehicles as required shall subject the vehicle to being towed at the expense of the owner or driver Landlord may place a "boot" on the vehicle to immobilize it and may levy a charge of $50 00 to remove the "boot." Tenant shall indemnify, hold and save harmless Landlord of any liability arising from the towing or booting of any vehicles belonging to a Tenant Party except in the event of Landlord's gross negligence or willful misconduct.

17 No tenant may enter into phone rooms, electrical rooms, mechanical rooms, or other service areas of the Building unless accompanied by Landlord or the Building manager

EXHIBIT D

TENANT FINISH-WORK ALLOWANCE

1 **Acceptance of Premises** Except as set forth in this Exhibit, Tenant accepts the Premises in their "**AS-IS**" condition on the date that this Lease is entered into

2 **Space Plans**

(a) **Preparation and Delivery** On or before the tenth day following the Lease Date, Landlord shall deliver to Tenant a space plan prepared by a design consultant selected by Landlord (the "**Architect**"), or selected by Tenant and approved by Landlord, depicting improvements to be installed in the Premises (the "**Space Plans**")

(b) **Approval Process** Tenant shall notify Landlord whether it approves of the submitted Space Plans within three (3) business days after Landlord's submission thereof If Tenant disapproves of such Space Plans, then Tenant shall notify Landlord thereof specifying in reasonable detail the reasons for such disapproval, in which case Landlord shall, within three (3) business days after such notice, revise such Space Plans in accordance with Tenant's objections and submit to Tenant for its review and approval Tenant shall notify Landlord in writing whether it approves of the resubmitted Space Plans within two (2) business days after its receipt thereof This process shall be repeated until the Space Plans have been finally approved by Tenant and Landlord If Tenant fails to notify Landlord that it disapproves of the initial Space Plans within three (3) business days (or, in the case of resubmitted Space Plans, within two (2) business days) after the submission thereof, then Tenant shall be deemed to have approved the Space Plans in question

3 **Working Drawings**

(a) **Preparation and Delivery** On or before the date which is fifteen (15) days following the date on which the Space Plans are approved (or deemed approved) by Tenant and Landlord, Landlord shall cause to be prepared final working drawings of all improvements to be installed in the Premises and deliver the same to Tenant for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned) Such working drawings shall be prepared by a design consultant selected by Landlord (whose fee shall be included in the Total Construction Costs [defined below])

(b) **Approval Process** Tenant shall notify Landlord whether it approves of the submitted working drawings within three (3) business days after Landlord's submission thereof If Tenant disapproves of such working drawings, then Tenant shall notify Landlord thereof specifying in reasonable detail the reasons for such disapproval, in which case Landlord shall, within three (3) business days after such notice, revise such working drawings in accordance with Tenant's objections and submit the revised working drawings to Tenant for its review and approval Tenant shall notify Landlord in writing whether it approves of the resubmitted working drawings within two (2) business days after its receipt thereof This process shall be repeated until the working drawings have been finally approved by Landlord and Tenant If Tenant fails to notify Landlord that it disapproves of the initial working drawings within three (3) business days (or, in the case of resubmitted working drawings, within two (2) business days) after the submission thereof, then Tenant shall be deemed to have approved the working drawings in question Any delay caused by Tenant's unreasonable withholding of its consent or delay in giving its written approval as to such working drawings shall constitute a Tenant Delay Day (defined below)

(c) **Landlord's Approval, Performance of Work.** If any of Tenant's proposed construction work will affect the Building's Structure or the Building's Systems, then the working drawings pertaining thereto must be approved by the Building's engineer of record. Landlord's approval of such working drawings shall not be unreasonably withheld, conditioned or delayed provided that (1) they comply with all Laws, (2) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), the exterior appearance of the Building, or the appearance of the Building's common areas or elevator lobby areas, (3) such working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (4) the improvements depicted thereon

conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant improvements (a copy of w ch has been delivered to Tenant) As used herein, "**Working Drawings**" shall mean the final working drawings approved by Landlord, as amended from time to time by any approved changes thereto, and "**Work**" shall mean all improvements to be constructed in accordance with and as indicated on the Working Drawings, together with any work required by governmental authorities to be made to other areas of the Building as a result of the improvements indicated by the Working Drawings Landlord's approval of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any Law, but shall merely be the consent of Landlord thereto Tenant shall, at Landlord's request, sign the Working Drawings to evidence its review and approval thereof After the Working Drawings have been approved, Landlord shall cause the Work to be performed in substantial accordance with the Working Drawings

4 **Bidding of Work**. Prior to commencing the Work, Landlord shall competitively bid the Work to two (2) contractors approved by Landlord If the submitted bids indicate that the estimated Total Construction Costs are expected to exceed the Construction Allowance, Tenant shall be allowed to review the submitted bids from such contractors to value engineer any of Tenant's requested alterations In such case, Tenant shall notify Landlord of any items in the Working Drawings that Tenant desires to change within three (3) business days following Tenant's receipt of the submitted bids If Tenant fails to notify Landlord of its election within such three (3) business day period, Tenant shall be deemed to have approved the bids Within five (5) business days following Landlord's submission to Tenant of the initial construction bids to Tenant under the foregoing provisions (if applicable), Tenant shall have completed all of the following items (if applicable) (a) finalized with Landlord's representative and the proposed contractor, the pricing of any requested revisions to the bids for the Work, and (b) approved in writing any overage in the Total Construction Costs in excess of the Construction Allowance, failing which each day after such five business day period shall constitute a Tenant Delay Day

5 **Change Orders** Tenant may initiate changes in the Work Each such change must receive the prior written approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed, however, (a) if such requested change would adversely affect (in the reasonable discretion of Landlord) (1) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (2) the exterior appearance of the Building, or (3) the appearance of the Building's common areas or elevator lobby areas, or (b) if any such requested change might delay the Commencement Date, Landlord may withhold its consent in its sole and absolute discretion. Tenant shall, upon completion of the Work, furnish Landlord with an accurate architectural "as-built" plan of the Work as constructed, which plan shall be incorporated into this Exhibit D by this reference for all purposes If Tenant requests any changes to the Work described in the Space Plans or the Working Drawings, then such increased costs and any additional design costs incurred in connection therewith as the result of any such change shall be added to the Total Construction Costs

6 **Definitions** As used herein, a "**Tenant Delay Day**" shall mean each day of delay in the performance of the Work that occurs (a) because of any change by Tenant to the Space Plans or Working Drawings, (b) because of any specification by Tenant of materials or installations in addition to or other than Landlord's standard finish-out materials, or (c) because a Tenant Party otherwise delays completion of the Work As used herein "**Substantial Completion**," "**Substantially Completed**," and any derivations thereof mean the Work in the Premises is substantially completed (as reasonably determined by Landlord) in substantial accordance with the Working Drawings Substantial Completion shall have occurred even though minor details of construction, decoration, landscaping and mechanical adjustments remain to be completed by Landlord

7. **Walk-Through, Punchlist**. When Landlord considers the Work in the Premises to be Substantially Completed, Landlord will notify Tenant and within three (3) business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Premises and identify any necessary touch-up work, repairs and minor completion items that are necessary for final completion of the Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punchlist items. Landlord shall use reasonable efforts to cause the contractor performing the Work to complete each punchlist item within thirty (30) days after agreement thereon, however, Landlord shall not be obligated to engage overtime labor in order to complete such items

8 **Excess Costs** The entire cost of performing the Work (including design of the Work and preparation of the Working Drawings, costs of construction labor and materials, electrical usage during construction, additional janitorial services, general tenant signage, related taxes and insurance costs, and the construction supervision fee referenced in Section 10 of this Exhibit, all of which costs are herein collectively called the "**Total Construction Costs**") in excess of the Construction Allowance (hereinafter defined) shall be paid by Tenant. Upon approval of the Working Drawings and selection of a contractor, Tenant shall promptly (a) execute a work order agreement prepared by Landlord which identifies such drawings and itemizes the Total Construction Costs and sets forth the Construction Allowance, and (b) pay to Landlord fifty percent (50%) of the amount by which Total Construction Costs exceed the Construction Allowance Upon Substantial Completion of the Work and before Tenant occupies the Premises to conduct business therein, Tenant shall pay to Landlord an amount equal to the Total Construction Costs (as adjusted for any approved changes to the Work), less (1) the amount of the advance payment already made by Tenant, and (2) the amount of the Construction Allowance In the event of default of payment of such excess costs, Landlord (in addition to all other remedies) shall have the same rights as for an Event of Default under the Lease

Must wait to move a little further West

9 **Construction Allowance** Landlord shall provide to Tenant a construction allowance in the amount of $12 00 per rentable square foot in the Premises, not to exceed $70,644 00, (the "**Construction Allowance**") to be applied toward the Total Construction Costs, as adjusted for any changes to the Work The Construction Allowance shall not be disbursed to Tenant in cash, but shall be applied by Landlord to the payment of the Total Construction Costs, if, as, and when the cost of the Work is actually incurred and paid by Landlord The Construction Allowance must be used within six (6) months following the Commencement Date or shall be deemed forfeited with no further obligation by Landlord with respect thereto

10 **Construction Management** Landlord or its Affiliate or agent shall supervise the Work, make disbursements required to be made to the contractor, and act as a liaison between the contractor and Tenant and coordinate the relationship between the Work, the Building and the Building's Systems In consideration for Landlord's construction supervision services, Tenant shall pay to Landlord a construction supervision fee equal to two percent (2%) of the Total Construction Costs

11 **Construction Representatives** Landlord and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other

Landlord's Representative

WMP IV Real Estate Limited Partnership
c/o Insignia/ESG, Inc
3480 Buskirk Avenue, Suite 290
Pleasant Hill, California 94523
Telephone (925) 939-1209
Facsimile (925) 939-1253

Tenant's Representative

_____
c/o _____
_____
_____
Telephone _____
Facsimile _____

12 **Miscellaneous** To the extent not inconsistent with this Exhibit, Sections 8 (a) and 21 of this Lease shall govern the performance of the Work and Landlord's and Tenant's respective rights and obligations regarding the improvements installed pursuant thereto

EXHIBIT E

CONFIRMATION OF COMMENCEMENT DATE

_____, ___

Allegiance Telecom Company Worldwide
3480 Buskirk Avenue, Suite 301
Pleasant Hill, California 94523

Re Lease Agreement (the "**Lease**") dated November 10, 2000, between WMP IV Real Estate Limited Partnership, a Delaware limited partnership ("**Landlord**"), and Allegiance Telecom Company Worldwide, a Delaware corporation ("**Tenant**") Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease

Ladies and Gentlemen

Landlord and Tenant agree as follows

1 **Condition of Premises** Tenant has accepted possession of the Premises pursuant to the Lease Any improvements required by the terms of the Lease to be made by Landlord have been completed to the full and complete satisfaction of Tenant in all respects except for the punchlist items described on Exhibit A hereto (the "**Punchlist Items**"), and except for such Punchlist Items, Landlord has fulfilled all of its duties under the Lease with respect to such initial tenant improvements Furthermore, Tenant acknowledges that the Premises are suitable for the Permitted Use

2 **Commencement Date** The Commencement Date of the Lease is _____, _____

3 **Expiration Date** The Term is scheduled to expire on _____, 200__

4 **Contact Person** Tenant's contact person in the Premises is

_____
_____
_____
Attention _____
Telephone ____-___-_____
Facsimile ____-___-_____

5 **Ratification** Tenant hereby ratifies and confirms its obligations under the Lease, and represents and warrants to Landlord that it has no defenses thereto Additionally, Tenant further confirms and ratifies that, as of the date hereof, (a) the Lease is and remains in good standing and in full force and effect, and (b) Tenant has no claims, counterclaims, set-offs or defenses against Landlord arising out of the Lease or in any way relating thereto or arising out of any other transaction between Landlord and Tenant

6 **Binding Effect, Governing Law** Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Landlord and Tenant and their respective successors and assigns If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail This letter shall be governed by the laws of the state in which the Premises are located

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us

Sincerely,

INSIGNIA/ESG, INC

By _____
Name _____
Title _____

Agreed and accepted

ALLEGIANCE TELECOM COMPANY WORLDWIDE,
a Delaware corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____

EXHIBIT A

PUNCHLIST ITEMS

EXHIBIT F

FORM OF TENANT ESTOPPEL CERTIFICATE

The undersigned is the Tenant under the Lease (defined below) between WMP IV Real Estate Limited Partnership, a Delaware limited partnership, as Landlord, and the undersigned as Tenant, for the Premises on the third (3rd) floor of the office building located at 3480 Buskirk Avenue, Pleasant Hill, California 94523 and commonly known as Hookston Square, and hereby certifies as follows

1 The Lease consists of the original Lease Agreement dated as of November 10, 2000 between Tenant and Landlord *['s predecessor-in-interest]* and the following amendments or modifications thereto (if none, please state "none") _____

_____

_____

The documents listed above are herein collectively referred to as the "**Lease**" and represent the entire agreement between the parties with respect to the Premises All capitalized terms used herein but not defined shall be given the meaning assigned to them in the Lease

2 The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Section 1 above

3 The Term commenced on _____, _____ and the Term expires, excluding any renewal options, on _____, 200__, and Tenant has no option to purchase all or any part of the Premises or the Building or, except as expressly set forth in the Lease, any option to terminate or cancel the Lease

4 Tenant currently occupies the Premises described in the Lease and 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 (if none, please state "none") _____

_____

_____

_____

5 All monthly installments of Basic Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through _____ The current monthly installment of Basic Rent is $_____

6 To Tenant's actual 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

7 As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's actual knowledge, claims or any basis for a claim, that the undersigned has against Landlord, and to Tenant's actual knowledge, no event has occurred and no condition exists, which, with the giving of notice or the passage of time, or both, will constitute a default under the Lease

8 No rental has been paid more than thirty (30) days in advance and no security deposit has been delivered to Landlord except as provided in the Lease

9 If Tenant is a corporation, partnership or other business entity, Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located and that, to the extent such qualification is required, 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.

10 Tenant has no actual knowledge of any actions pending against Tenant under any bankruptcy or similar laws of the United States or any state

11 Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises

12 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 the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full, except as follows _____

_____

_____

Tenant acknowledges that this Estoppel Certificate may be delivered to Landlord, Landlord's Mortgagee or to a prospective mortgagee or prospective purchaser, and their respective successors and assigns, and acknowledges that Landlord, Landlord's Mortgagee and/or such prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in disbursing loan advances or making a new loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of disbursing loan advances or making such loan or acquiring such property

Executed as of _____, ____

TENANT

ALLEGIANCE TELECOM COMPANY WORLDWIDE, a Delaware corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____

EXHIBIT G

FORM OF OFFER NOTICE

[*Insert Date of Notice*]

BY FACSIMILE AND FEDERAL EXPRESS

Allegiance Telecom Company Worldwide
3480 Buskirk Avenue, Suite 301
Pleasant Hill, California 94523
Attn Site Manager

Allegiance Telecom Company Worldwide
4 Westbrook Corporate Center, Suite 400
Westchester, Illinois 60154
Atttn Patricia E Koide

Re Lease Agreement (the "**Lease**") dated November 10, 2000, between WMP IV Real Estate Limited Partnership, a Delaware limited partnership ("**Landlord**"), and Allegiance Telecom Company Worldwide, a Delaware corporation ("**Tenant**") Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease

Ladies and Gentlemen

Pursuant to the Right of First Offer set forth in Section 27 of the Lease, enclosed please find an Offer Notice for Suite 300 The basic terms and conditions are as follows

LOCATION	3480 Buskirk Avenue, Suite 300
SIZE	861 rentable square feet
BASIC RENT RATE	$_____ per month
TERM	Coterminous with the term of the Lease, as the same may be extended
IMPROVEMENTS	_____
COMMENCEMENT	_____

OTHER MATERIAL TERMS _____

Under the terms of the Right of First Offer, you must exercise your rights, if at all, as to the Offer Space on the depiction attached to this Offer Notice within five (5) days after Landlord delivers such Offer Notice Accordingly, you have until 5 00 p.m local time on _____, 200___ to exercise your rights under the Right of First Offer and accept the terms as contained herein, failing which your rights under the Right of First Offer shall terminate and Landlord shall be free to lease the Offer Space to any third party subject to and in accordance with the terms of Section 27 of the Lease If possible, any earlier response would be appreciated. Please note that your acceptance of this Offer Notice shall be irrevocable and may not be rescinded.

Upon receipt of your acceptance herein, Landlord and Tenant shall execute an amendment to the Lease memorializing the terms of this Offer Notice including the inclusion of the Offer Space in the Premises, provided, however, that the failure by Landlord and Tenant to execute such

amendment shall not affect the inclusion of such Offer Space in the Premises in accordance with this Offer Notice

THE FAILURE TO ACCEPT THIS OFFER NOTICE BY (1) DESIGNATING THE "ACCEPTED" BOX, AND (2) EXECUTING AND RETURNING THIS OFFER NOTICE TO LANDLORD WITHOUT MODIFICATION WITHIN SUCH TIME PERIOD SHALL BE DEEMED A NONEXERCISE OF TENANT'S RIGHT TO LEASE THE OFFER SPACE, AND TENANT SHALL HAVE NO FURTHER RIGHTS TO THE OFFER SPACE, EXCEPT AS SET FORTH IN SECTION 27 OF THE LEASE

Should you have any questions, do not hesitate to call

Sincerely,

INSIGNIA/ESG, INC

By _____
Name _____
Title _____

[please check appropriate box]

ACCEPTED _____
REJECTED _____

ALLEGIANCE TELECOM COMPANY WORLDWIDE, a Delaware corporation

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

Enclosure *[attach depiction of Offer Space]*

EXHIBIT H

CONTINUING GUARANTY

As a material inducement to Landlord to enter into, modify, or grant other accommodations under, the Lease dated November 10, 2000 (the "**Lease**"), between Allegiance Telecom Company Worldwide, a Delaware corporation, as Tenant, and WMP IV Real Estate Limited Partnership, a Delaware limited partnership, as Landlord, Allegiance Telecom, Inc , a Delaware corporation ("**Guarantor**") hereby unconditionally and irrevocably guarantees for the benefit of Landlord the complete and timely performance of each obligation of Tenant (and any assignee) under the Lease and any future extensions, renewals or amendments to the Lease This Guaranty is an absolute, primary, and continuing, guaranty of payment and performance and is independent of Tenant's obligations under the Lease Guarantor shall be primarily liable, jointly and severally, with Tenant Guarantor waives any right to require Landlord to (a) join Tenant or any guarantor or surety with Guarantor in any suit arising under this Guaranty, (b) proceed against or exhaust any security given to secure the obligations of Tenant or any guarantor or surety, (c) give notice of any modification of or default under the Lease, or of any other information or circumstances which may increase Guarantor's risk (d) give notice of foreclosure of any real or personal property collateral given by Tenant or any guarantor or surety, (e) proceed against or exhaust any remedy as to Tenant, any guarantor or surety, or (f) pursue or exhaust any other remedy in Landlord's power Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant Landlord may, without notice or demand and without affecting Guarantor's liability hereunder, from time to time, compromise, release, extend or otherwise modify any or all of the terms of the Lease, or the obligations of Tenant or of any guarantor or surety, or compromise, release, modify, fail to perfect, or fail to continue the perfection of, any security interest which secures the obligations of Tenant or of any guarantor or surety, whether such modification, release or failure to perfect or continue perfection occurs intentionally or through inadvertence or negligence Guarantor waives all defenses based on any delay in enforcing Landlord's rights against Tenant, or against any guarantor or surety, or under this Guaranty, including laches and all applicable statutes of limitation Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor shall have no right of subrogation against Tenant Guarantor waives any right to participate in any security now or later held by Landlord Guarantor waives all presentments, demands for performance, notices of nonperformance, protests and notices of protest, dishonor, and notices of acceptance of this Guaranty, and waives all notices of the existence, creation, or incurring of new or additional obligations from Tenant to Landlord Guarantor waives all rights and defenses arising out of an election of remedies by Landlord, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise Without limiting the generality of the preceding waivers, Guarantor hereby expressly waives any and all benefits under California Civil Code Sections 880 020 et seq , 2809, 2810, 2819, 2822(a), 2845, 2846, 2847, 2848, 2849, 2850, 2911, and Commercial Code division 3, chapter 5, sections 3501 et seq , 3118, 9504 and 9505 The liability of Guarantor under this Guaranty will not be affected by (A) the release or discharge of Tenant from, or impairment, limitation or modification of, Tenant's obligations under the Lease in any bankruptcy, receivership, or other Tenant relief proceeding, whether state or federal and whether voluntary or involuntary, (B) the rejection or disaffirmance of the Lease in any such proceeding, or (C) the cessation from any cause whatsoever of the liability of Tenant under the Lease Guarantor agrees to pay all costs of collection, including reasonable attorney fees, incurred in enforcing this Guaranty, or in relation to any default under the Lease, including without implied limitation costs and attorney fees incurred in enforcing any guaranteed obligations against the Tenant or any guarantor or surety, settlement or workout negotiations, litigation, arbitration or mediation, bankruptcy or other insolvency proceedings, and post-judgment collection Guarantor agrees that all existing and future obligations of Tenant to Landlord shall be prior to any debts, claims, causes of action or remedies now or hereafter held by Guarantor against Tenant. Guarantor hereby subordinates all existing and future claims of Guarantor against Tenant, including any security interest securing such claims, to all existing and future claims of Landlord against Tenant The obligations of Tenant under the Lease to execute and deliver estoppel statements, as therein provided, shall be deemed to also require the Guarantor hereunder to do so and provide

the same relative to Guarantor following written request by Landlord in accordance with the terms of the Lease This Guaranty shall be binding upon the successors and assigns of Guarantor and shall inure to the benefit of Landlord's successors and assigns

ALLEGIANCE TELECOM, INC ,
a Delaware corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____