

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**Form 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2007

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File number 0-27275

**Akamai Technologies, Inc.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**

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

**8 Cambridge Center, Cambridge, MA**

*(Address of Principal Executive Offices)*

**04-3432319**

*(I.R.S. Employer  
Identification No.)*

**02142**

*(Zip Code)*

**Registrant's telephone number, including area code: (617) 444-3000**

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

<u>Title of Each Class</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, \$.01 par value	NASDAQ Global Select Market

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

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes  No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Exchange Act Rule 12b-2).

Large accelerated filer

Accelerated Filer

Non-accelerated filer  (Do not check if smaller reporting company)

Smaller reporting company

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant was approximately \$7,789.2 million based on the last reported sale price of the common stock on the Nasdaq Stock Market on June 29, 2007.

The number of shares outstanding of the registrant's Common Stock, par value \$0.01 per share, as of February 21, 2008: 167,129,148 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission relative to the registrant's 2008 Annual Meeting of Stockholders to be held on May 20, 2008 are incorporated by reference into Items 10, 11, 12, 13 and 14 of Part III of this annual report on Form 10-K.

---

---

[Table of Contents](#)

**AKAMAI TECHNOLOGIES, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
**For the Fiscal Year Ended December 31, 2007**

**TABLE OF CONTENTS**

PART I

Item 1.	<a href="#">Business</a>	3
Item 1A.	<a href="#">Risk Factors</a>	11
Item 1B.	<a href="#">Unresolved Staff Comments</a>	18
Item 2.	<a href="#">Properties</a>	18
Item 3.	<a href="#">Legal Proceedings</a>	18
Item 4.	<a href="#">Submission of Matters to a Vote of Security Holders</a>	19

PART II

Item 5.	<a href="#">Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	20
Item 6.	<a href="#">Selected Consolidated Financial Data</a>	21
Item 7.	<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	23
Item 7A.	<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	41
Item 8.	<a href="#">Financial Statements and Supplementary Data</a>	42
Item 9.	<a href="#">Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</a>	90
Item 9A.	<a href="#">Controls and Procedures</a>	90
Item 9B.	<a href="#">Other Information</a>	91

PART III

Item 10.	<a href="#">Directors and Executive Officers and Corporate Governance</a>	92
Item 11.	<a href="#">Executive Compensation</a>	92
Item 12.	<a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	92
Item 13.	<a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	93
Item 14.	<a href="#">Principal Accountant Fees and Services</a>	93

PART IV

Item 15.	<a href="#">Exhibits and Financial Statement Schedules</a>	94
----------	--	----

	<a href="#">Signatures</a>	95
--	----------------------------	----

## PART I

### Item 1. **Business**

*This annual report on Form 10-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to risks and uncertainties and are based on the beliefs and assumptions of our management based on information currently available to them. Use of words such as “believes,” “continues,” “expects,” “anticipates,” “intends,” “plans,” “estimates,” “should,” “likely” or similar expressions indicates a forward-looking statement. Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and assumptions. Important factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, those set forth under the heading “Risk Factors.” We disclaim any obligation to update any forward-looking statements as a result of new information, future events or otherwise.*

#### Overview

Akamai provides services for accelerating and improving the delivery of content and applications over the Internet — from live and on-demand streaming videos to conventional content on websites, to tools that help people transact business. Our solutions are designed to help businesses, government agencies and other enterprises enhance their revenue streams and reduce costs by maximizing the performance of their online businesses. By relying on our infrastructure, customers can reduce expenses associated with internal infrastructure build-ups while also gaining access to unique technology offerings and information. In short, we strive to help our customers efficiently offer better websites that improve visitor experiences and increase the effectiveness of their Internet-focused operations.

We were incorporated in Delaware in 1998 and have our corporate headquarters at 8 Cambridge Center, Cambridge, Massachusetts. We have been offering content delivery services and streaming media services since 1999. In subsequent years, we introduced private content delivery networks; Web-based delivery of applications such as store/dealer locators and user registration; large-scale software distribution capabilities; content targeting technology and enhanced security features.

We completed two significant strategic transactions in 2007. In March, we acquired Netli, Inc., or Netli, in an effort to enhance our application acceleration solutions, which are designed to improve the performance of Web- and other Internet-based applications. In April, we acquired Red Swoosh, Inc., or Red Swoosh, which had developed innovative client-side technology for supporting the management and distribution of media files while respecting publishers’ rights restrictions and copyrights. We also introduced a number of service innovations during 2007, including:

- StreamOS technology — a rich media-management solution designed to help content owners distribute their content on the Internet
- Live streaming for use with Adobe’s Flash® FLV format
- Delivery of High Definition, or HD, Internet video
- IP Application Accelerator service — a managed service solution designed to improve the delivery of any enterprise IP-based application delivered over the Internet

Our Internet website address is [www.akamai.com](http://www.akamai.com). We make available, free of charge, on or through our Internet website our Periodic Reports and amendments to those Periodic Reports as soon as reasonably practicable after we electronically file them with the Securities and Exchange Commission, or the Commission. We are not, however, including the information contained on our website, or information that may be accessed through links on our website, as part of, or incorporating it by reference into, this annual report on Form 10-K.

## Meeting the Challenges of the Internet

The Internet plays a crucial role in the way companies, government agencies and other entities conduct business and reach the public. The Internet, however, is a complex system of networks that was not originally created to accommodate the volume or sophistication of today's communication demands. As a result, information is frequently delayed or lost on its way through the Internet due to many challenges, including:

- inefficient or nonfunctioning peering points, or points of connection, between Internet service providers, or ISPs;
- traffic congestion at data centers;
- Internet traffic exceeding the capacity of routing equipment;
- growth in the transmission of rich content due to the increasingly widespread use of broadband connectivity to the Internet for videos, music and games; and
- Internet bandwidth constraints between an end user and the end user's network provider, such as an ISP, cable provider or digital subscriber line provider.

The challenges inherent in the Internet are compounded by the internal technology challenges facing enterprises. Driven by competition, globalization and cost-containment strategies, companies need an agile Internet-facing infrastructure that cost-effectively meets real-time strategic and business objectives. For example, many companies use the Internet as a key marketing tool for product launches, distribution of promotional videos or contests. These one-time events may draw millions of visitors to a company's website over a brief period of time so the enterprise must have in place the capacity to deal with a flood of visitors seeking to view content or use applications. In addition, as reliance on the Internet has become more pervasive, website operators have been experiencing higher levels of traffic to their sites on a constant basis, which place extensive demands on infrastructure. At the same time, budget limitations may preclude a company from putting in place extensive internal infrastructure knowing that it will handle less traffic during the rest of the year.

To address these challenges, we have developed solutions designed to help companies, government agencies and other enterprises increase revenues and reduce costs by improving the performance, reliability and security of their Internet-facing operations. We particularly seek to address the following market needs:

*Superior Performance.* Commercial enterprises invest in websites to attract customers, transact business and provide information about themselves. If, however, a company's Internet site fails to provide visitors with a fast and dependable experience, they will likely abandon that site, potentially leading to lost revenues and damage to the enterprise's reputation. Through a combination of people, processes and technology, we help our customers improve the scalability and predictability of their websites without the need for them to spend a lot of money to develop their own Internet-related infrastructure. Instead, we have a presence in more than 900 networks around the world so that content can be delivered from Akamai servers located closer to website visitors — from what we call the “edge” of the Internet. We are thus able to reduce the impact of traffic congestion, bandwidth constraints and capacity limitations. At the same time, our customers have access to control features to enable them to provide content to end users that is current and customized for visitors accessing the site from different parts of the world.

*Scalability.* We believe that scalability is one of the keys to reliability. Many Akamai customers experience seasonal or erratic demand for access to their websites and almost all websites experience demand peaks at different points during the day. With the proliferation of Internet video, enterprises of all types must be able to cope with rapidly increasing numbers of requests for bandwidth-intensive digital media assets and the storage of those assets. In all of these instances, it can be difficult and expensive to plan for, and deploy solutions to meet, such peaks and valleys. With more than 30,000 servers deployed worldwide managed by our proprietary software technology, our network is designed with the robustness and flexibility to handle planned and unplanned traffic

## [Table of Contents](#)

peaks and related storage needs, without additional hardware investment and configuration on the part of our customers. As a result, we are able to provide an on-demand solution to address our customers' capacity needs in the face of unpredictable traffic spikes, which helps them avoid expensive investment in a centralized infrastructure.

*Security.* Security is one of the most significant challenges facing use of the Internet for business and government processes. Security threats — in the form of attacks, viruses, worms and intrusions — can impact every measure of performance, including information security, speed, reliability and customer confidence. Unlike traditional security strategies that can negatively impact performance, Akamai's approach is designed to allow for proactive monitoring and rapid response to security incidents and anomalies. We rely on both built-in defense mechanisms and the ability to route traffic around potential security issues so performance is not compromised. Perhaps most significantly, our distributed network of thousands of servers is designed to eliminate a single point of failure and can reduce the impact of security attacks.

### **Our Core Solutions**

We offer services and solutions for digital media and software distribution and storage, content and application delivery, application performance services and other specialized Internet-based offerings.

### ***Digital Asset Solutions***

The Internet provides end users with access to new and varied types of media, and content providers are rapidly finding ways to monetize the content they offer. Akamai's Digital Asset Solutions are designed to enable enterprises to execute their large file management and distribution strategies by improving the end-user experience, boosting reliability and scalability and reducing the cost of Internet-related infrastructure. Within our Digital Asset Solutions, customers can choose from the following:

#### *Akamai Media Delivery*

As the demand for Internet access to music, movies, games, streaming news, sports events and social networking communities grows, there are many challenges to profitably offering media assets online, particularly with respect to user-generated content. In particular, media companies need cost-effective means to deliver large files to millions of users in different formats compatible with multiple end-user devices and platforms. Akamai Media Delivery takes on these challenges by delivering media content on behalf of our customers. By relying on our technology, customers are able to bypass internal constraints such as traditional server and bandwidth limitations to better handle peak traffic conditions and provide their site visitors with access to larger file sizes. We support all major streaming formats, and our technology and breadth of deployment provide capacity levels that individual enterprises or other outsourced providers may not be able to cost-effectively replicate on their own. Complementary features include digital rights management protections, storage, media management tools and reporting functionalities.

Our Akamai Media Delivery solution is primarily used by companies in the following industries: entertainment, including television, radio, sports, music and media; gaming and social networking and Internet search/portal access. The solution can accommodate the many different business models used by our customers including pay-per-view, subscription, advertising and syndication.

#### *Electronic Software Delivery*

Due to the expanding prevalence of broadband access, distribution of computer software is increasingly occurring over the Internet. As a result, companies no longer need to mail CDs with new software to their many customers. Internet traffic conditions and high loads can, however, dramatically impact software download speed and reliability. Furthermore, surges in traffic from product launches or periodic distributions of anti-virus

## [Table of Contents](#)

security updates can overwhelm traditional centralized software delivery infrastructure, adversely affecting website performance and causing users to be unable to download software. Our Electronic Software Delivery solution handles the distribution of software for our customers. Our network is designed to withstand large surges in traffic related to software launches and other distributions with a goal of improved customer experiences, increased use of electronic delivery and successful online product launches. We also offer a number of tools to enhance the effectiveness of this distribution model including electronic download receipts, storage, a download manager to provide end users with control over the handling of files received and reporting. This solution is appropriate for software companies of all types including consumer, enterprise, anti-virus and gaming software companies.

### *Akamai Stream OS*

Akamai Stream OS is a Web-based suite of configurable tools that enables publishing of rich media to the Web. Customers of these services include enterprises offering streaming of live and on-demand content in all major media formats, software downloads and delivery of electronic documents. These tools include:

- Content Manager for uploading, storing, managing and editing media files and information about those files
- RSS Manager for managing, delivering and distributing content via automatically-generated Really Simple Syndication, or RSS, feeds
- Tools for scheduling and provisioning live streaming events
- Digital rights management and profile tools for targeting, protecting and controlling the distribution of content based on business rules, licensing terms, geography and other criteria

Stream OS customers include all types of media content owners seeking to reach consumers over the Web, including sports leagues, music companies and broadcasters of news, sports and other forms of entertainment.

### *Dynamic Site Solutions*

Akamai's Dynamic Site Solutions — particularly our core Dynamic Site Accelerator offering — are designed for accelerating business-to-consumer websites that integrate rich, collaborative content and applications into their online architecture. Leveraging our international network of servers and sophisticated mapping and routing technologies, we provide whole-site and object delivery for our customers' websites. As a result, our customers have access to a more efficient way to implement and maintain a global Internet presence. While site owners maintain a source copy of their content and applications, Dynamic Site Accelerator provides global delivery, load balancing and storage of content and applications, enabling businesses to focus valuable resources on strategic matters, rather than on technical infrastructure issues.

Our Dynamic Site Solutions include advanced site delivery service features such as:

- *Secure Content Distribution* — distribution of content over the Internet using Secure Sockets Layer, or SSL, transport, a protocol to secure transmission of content over the Internet
- *Site Failover* — delivery of default content in the event that the primary, or source, version of the website of a customer becomes unavailable
- *Content Targeting* — a feature that enables content providers to deliver localized content, customized store-fronts, targeted advertising and adaptive marketing to their customers
- *EdgeComputing* — a service that enables enterprises to deliver Java (J2EE) Web applications that scale on demand and are designed to perform more quickly and reliably than a customer's own internal information technology, or IT, infrastructure

## [Table of Contents](#)

- *Cache Optimization* — features designed to enhance the cacheability of content including setting expiration dates and similar availability conditions and enabling other parameters for the handling of stored content
- *Compression* — compression of content before it is sent to an end user so as to reduce transfer times for users on slow connections, particularly for transactional content
- *Capacity On-Demand* — offers dynamic load-balancing decisions that are based on real-time analysis of an end user's location, Internet conditions, server and data center infrastructure capacity and overall demand

Akamai's Dynamic Site Accelerator solution is appropriate for any enterprise that has a website, particularly, retail and travel companies dependent on their commerce-related websites and enterprises that rely on the Internet for brand-building through research, discussion and other interactive tools for their current and potential customers.

### ***Application Performance Solutions***

Akamai's Application Performance Solutions are designed to improve the performance of highly dynamic applications common on networks used by enterprises to connect with their employees, suppliers and customers. Traditionally, this market has been addressed primarily by hardware and software products. We believe our managed service approach offers a more cost-effective and comprehensive solution in this area without requiring customers to make significant infrastructure investments. In addition to reducing infrastructure costs, our Application Performance Solutions are intended for customers that want to offer more effective and reliable portal applications and other Web-based systems for communicating with their customers, employees and business partners.

#### *Web Application Accelerator*

Our Web Application Accelerator service is designed to improve the performance of Web-based applications through a combination of dynamic caching, compression, routing and connection optimization. This service is appropriate for companies involved in technology, business services, travel and leisure, manufacturing and other industries where there is a movement to Internet-based communication with remote customers, suppliers and franchisees. Enterprise customers are using the Web Application Accelerator services to run applications such as online airline reservations systems, training tools, customer relationship management and human resources applications. Akamai's Web Application Accelerator is designed to allow enterprise customers and their remote customers, suppliers and franchisees to enjoy improved performance through connection and route optimization techniques that avoid problem spots on the Internet and otherwise accelerate application performance without the enterprise customer needing to undertake significant internal infrastructure build-out.

#### *IP Application Accelerator*

With a growing global workforce accessing IP-based applications online and from mobile devices, enterprises that rely on such applications find high quality and performance to be crucial. Examples of IP-based applications include voice over IP, or VoIP, email hosting services and sales order processing tools. While enterprises have been using the Internet to support communication needs for web-based applications for some time, businesses are increasingly relying on the Internet to support connection needs for IP-based applications. Akamai's IP Application Accelerator solution is designed to address core Internet weaknesses to optimize the performance, availability and real-time sensitivity associated with IP-enabled applications delivered over Internet-related protocols such as SSL, IPSec, UDP and FTP. IP Application Accelerator uses Akamai's global network of servers and optimized routing and connection technologies to improve the stability and reliability of connections between end users and the IP-based application.

## **Other Solutions**

### ***Site Intelligence Offerings***

Akamai's offerings in this area include our network data feeds and our website analytics offering, which provide customers with real time data about the performance of their content and applications over the Internet and Akamai's network. In addition, our business performance management services help customers better understand their Web operations with tools that measure all aspects of an application's performance. For example, a customer could use website data feeds from Akamai's customer portal to assist in managing their online distribution costs and budget. The core of these offerings is our EdgeControl tools, which provide comprehensive reporting and management capabilities.

EdgeControl tools are web-portal based and can be integrated with existing enterprise management systems, allowing our customers to manage their distributed content and applications. EdgeControl also provides integration with popular third-party network management tools, including those offered by IBM, Hewlett-Packard and BMC Software. Having created one of the industry's first examples of a commercially proven utility computing platform, Akamai now provides a global network of servers that can be utilized by customers for troubleshooting, monitoring and reporting, based on their individual business requirements.

### ***Custom Solutions***

In addition to our core commercial services, we are able to leverage the expertise of our technology, networks and support personnel to provide custom solutions to both commercial and government customers. These solutions include replicating our core technologies to facilitate content delivery behind the firewall, combining our technology with that of other providers to create unique solutions for specific customers and supporting mission-critical applications that rely on the Internet and intranets. Additionally, numerous federal government agencies rely on Akamai for tailored solutions to their content delivery needs as well as information about traffic conditions and activity on the Internet.

## **Our Technology and Network**

Our expansive network infrastructure and sophisticated technology are the foundation of our services. We believe Akamai has deployed the world's largest globally distributed computing platform, with more than 30,000 servers located in more than 900 networks around the world. Applying our proprietary technology, we deliver our customers' content and computing applications across a system of widely distributed networks of servers; the content and applications are then processed at the most efficient places within the network. Servers are deployed in networks ranging from large, backbone network providers to medium and small ISPs, to cable modem and satellite providers to universities and other networks. By deploying servers within a wide variety of networks, we are better able to manage and control routing and delivery quality to geographically diverse users. We also have more than 1,000 peering relationships that provide us with direct paths to end user networks, which reduces data loss, while also potentially giving us more options for delivery at reduced cost.

To make this wide-reaching deployment effective, we use specialized technologies, such as advanced routing, load balancing, data collection and monitoring. Our intelligent routing software is designed to ensure that website visitors experience fast page loading, access to applications and content assembly wherever they are on the Internet, regardless of global or local traffic conditions. Dedicated professionals staff our Network Operations Control Center on a 24/7 basis to monitor and react to Internet traffic patterns and trends. We deploy frequent enhancements to our software globally to introduce new service offerings and to ensure that our network continues to run effectively. Technology updates are efficiently replicated across the system. Customers are also able to control the extent of their use of Akamai services to scale on demand, using as much or as little capacity of the global platform as they require, to support widely varying traffic and rapid e-business growth without the need for an expensive and complex internal infrastructure.



## **Business Segments and Geographic Information**

We operate in one business segment: providing services for accelerating delivery of content and applications over the Internet. For the years ended December 31, 2007, 2006 and 2005, approximately 23%, 22% and 21%, respectively, of our total revenues was derived from our operations outside the United States, of which 17%, 18% and 16% of overall revenues, respectively, was derived from Europe. No single country outside of the United States accounted for 10% or more of our revenues in any of such years. For more segment and geographic information, including revenue from customers, a measure of profit or loss and total assets for each of the last three fiscal years, see our consolidated financial statements included in this annual report on Form 10-K, including Note 19 thereto.

## **Customers**

Our customer base is centered on enterprises. As of December 31, 2007, our customers included many of the world's leading corporations, including Apple, Audi, BestBuy, FedEx Corporation, Hitachi, L'Oreal, Microsoft, MTV Networks, the National Basketball Association, Nintendo, Qantas Airways, SAP and Victoria's Secret. We also actively sell to government agencies. As of December 31, 2007, our public sector customers included the Federal Emergency Management Agency, the Internal Revenue Service, the National Center for Missing and Exploited Children, the U.S. Air Force, the U.S. Department of Defense, the U.S. Food and Drug Administration and the U.S. Department of Labor. No customer accounted for 10% or more of total revenues for the years ended December 31, 2007, 2006 or 2005. Less than 10% of our total revenues in each of the years ended December 31, 2007, 2006 and 2005 was derived from contracts or subcontracts terminable at the election of the federal government, and we do not expect such contracts to account for more than 10% of our total revenues in 2008.

## **Sales, Service and Marketing**

Our sales and service professionals are located in 20 offices in the United States, Europe and Asia. We market and sell our services and solutions domestically and internationally through our direct sales and services organization and through more than 50 active resellers including Electronic Data Systems Corporation, IBM Corporation, Verizon and Telefonica Group. In addition to entering into agreements with resellers, we have several other types of sales- and marketing-focused alliances with entities such as system integrators, application service providers, sales agents and referral partners. By aligning with these companies, we believe we are better able to market our services and encourage increased adoption of our technology throughout the industry.

Our sales and service organization includes employees in direct and channel sales, professional services, account management and technical consulting. As of December 31, 2007, we had approximately 590 employees in our sales and support organization, including 139 direct sales representatives whose performance is measured on the basis of achievement of quota objectives. Our ability to achieve revenue growth in the future will depend in large part on whether we successfully recruit, train and retain sufficient global sales, technical and services personnel, and how well we establish and maintain our strategic alliances. We believe that the complexity of our services will continue to require a number of highly trained global sales and services personnel.

To support our sales efforts and promote the Akamai brand, we conduct comprehensive marketing programs. Our marketing strategies include an active public relations campaign, print advertisements, online advertisements, participation at trade shows, strategic alliances and on-going customer communication programs. As of December 31, 2007, we had 73 employees in our global marketing organization, which is a component of our sales and support organization.

## **Research and Development**

Our research and development personnel are continuously undertaking efforts to enhance and improve our existing services, strengthen our network and create new services in response to our customers' needs and market

## [Table of Contents](#)

demand. As of December 31, 2007, we had approximately 350 research and development engineers, many of whom hold advanced degrees in their fields. Our research and development expenses were \$44.1 million, \$33.1 million and \$18.1 million for the years ended December 31, 2007, 2006 and 2005, respectively. In addition, for each of the years ended December 31, 2007, 2006 and 2005, we capitalized \$17.8 million, \$11.7 million and \$8.5 million, respectively, net of impairments, of external consulting and payroll and payroll-related costs related to the development of internal-use software used to deliver our services and operate our network. Additionally, during the years ended December 31, 2007 and 2006, we capitalized \$6.4 million and \$4.3 million, respectively, of stock-based compensation.

### **Competition**

The market for our services is intensely competitive and characterized by rapidly changing technology, evolving industry standards and frequent new product and service installations. We expect competition for our services to increase both from existing competitors and new market entrants. We compete primarily on the basis of:

- performance of services;
- return on investment in terms of cost savings and new revenue opportunities for our customers;
- reduced infrastructure complexity;
- scalability;
- ease of implementation and use of service;
- customer support; and
- price.

We compete primarily with companies offering products and services that address Internet performance problems, including companies that provide Internet content delivery and hosting services, streaming content delivery services and equipment-based solutions to Internet performance problems, such as load balancers and server switches. Some of our competitors also resell our services. Other companies have recently emerged that offer online distribution of digital media assets through advertising-based billing or revenue-sharing models that may represent an alternative to our services. In addition, potential customers may decide to purchase or develop their own hardware, software and other technology solutions rather than rely on an externally managed services provider like Akamai.

We believe that we compete favorably with other companies in our industry, as well as alternative approaches to content and application delivery over the Internet, on the basis of the quality of our offerings, our customer service and price.

### **Proprietary Rights and Licensing**

Our success and ability to compete are dependent on our ability to develop and maintain the proprietary aspects of our technology and operate without infringing on the proprietary rights of others. We rely on a combination of patent, trademark, trade secret and copyright laws and contractual restrictions to protect the proprietary aspects of our technology. We currently have numerous issued United States and foreign-country patents covering our content and application delivery technology, and we have numerous additional patent applications pending. Our issued patents extend to various dates between approximately 2015 and 2020. In October 1998, we entered into a license agreement with the Massachusetts Institute of Technology, or MIT, under which we were granted a royalty-free, worldwide right to use and sublicense the intellectual property rights of MIT under various patent applications and copyrights relating to Internet content delivery technology. Two of these patent applications have now been issued. These patents will expire in 2018. We seek to limit disclosure of our intellectual property by requiring employees and consultants with access to our proprietary information to execute confidentiality agreements with us and by restricting access to our source code.

## Employees

As of December 31, 2007, we had a total of approximately 1,300 full-time and part-time employees. Our future success will depend in part on our ability to attract, retain and motivate highly qualified technical and management personnel for whom competition is intense. Our employees are not represented by any collective bargaining unit. We believe our relations with our employees are good.

## Item 1A. Risk Factors

The following are certain of the important factors that could cause our actual operating results to differ materially from those indicated or suggested by forward-looking statements made in this annual report on Form 10-K or presented elsewhere by management from time to time.

### ***The markets in which we operate are highly competitive, and we may be unable to compete successfully against new entrants with innovative approaches and established companies with greater resources.***

We compete in markets that are intensely competitive, highly fragmented and rapidly changing. We have experienced and expect to continue to experience increased competition. Many of our current competitors, as well as a number of our potential competitors, have longer operating histories, greater name recognition, broader customer relationships and industry alliances and substantially greater financial, technical and marketing resources than we do. Some of our existing resellers are potential competitors. If one or more resellers that generate substantial revenues for us were to terminate our relationship and become a competitor or a reseller for a competitor, our business could be adversely affected. Other competitors may attract customers by offering less-sophisticated versions of services than we provide at lower prices than those we charge. Our competitors may be able to respond more quickly than we can to new or emerging technologies and changes in customer requirements. Some of our current or potential competitors may bundle their offerings with other services, software or hardware in a manner that may discourage website owners from purchasing any service we offer. Increased competition could result in price and revenue reductions, loss of customers and loss of market share, which could materially and adversely affect our business, financial condition and results of operations.

In addition, potential customers may decide to purchase or develop their own hardware, software and other technology solutions rather than rely on an external provider like Akamai. As a result, our competitors include hardware manufacturers, software companies and other entities that offer Internet-related solutions that are not service-based. It is an important component of our growth strategy to educate enterprises and government agencies about our services and convince them to entrust their content and applications to an external service provider, and Akamai in particular. If we are unsuccessful in such efforts, our business, financial condition and results of operations could suffer.

### ***Prices we have been charging for some of our services have declined in recent years. We expect that this decline may continue in the future as a result of, among other things, existing and new competition in the markets we serve.***

In recent quarters, we have lowered the prices we charge our customers for our content delivery services in order to remain competitive. Consequently, our historical revenue rates may not be indicative of future revenues based on comparable traffic volumes. In addition, our operating expenses have increased on an absolute basis in each of 2005, 2006 and 2007. If we are unable to sell our services at acceptable prices relative to our costs or if we are unsuccessful with our strategy of selling additional services and features to our existing content delivery customers, our revenues and gross margins will decrease, and our business and financial results will suffer.

## [Table of Contents](#)

### ***Failure to increase our revenues and keep our expenses consistent with revenues could prevent us from maintaining profitability at recent levels or at all.***

We may not be able to maintain our current level of profitability on a quarterly or annual basis. We have large fixed expenses, and we expect to continue to incur significant bandwidth, sales and marketing, product development, administrative and other expenses. Therefore, we will need to generate higher revenues to maintain profitability at recent levels or at all. There are numerous factors that could, alone or in combination with other factors, impede our ability to increase revenues and/or moderate expenses, including:

- market pressure to decrease our prices;
- significant increases in bandwidth costs or other operating expenses;
- failure to increase sales of our core services;
- any failure of our current and planned services and software to operate as expected;
- loss of any significant customers or loss of existing customers at a rate greater than we increase our number of, and sales to, new customers or our sales to existing customers;
- unauthorized use or access to content delivered over our network or network failures;
- failure of a significant number of customers to pay our fees on a timely basis or at all or failure to continue to purchase our services in accordance with their contractual commitments; and
- inability to attract high-quality customers to purchase and implement our current and planned services.

### ***Our failure to manage growth, diversification and changes to our business could harm us.***

We are continuing to grow, diversify and evolve our business both in the United States and internationally. As a result of the diversification of our business, personnel growth, acquisitions and international expansion in the recent years, many of our employees are now based outside of our Cambridge, Massachusetts headquarters. If we are unable to effectively manage a large and geographically dispersed group of employees or to anticipate our future growth and personnel needs, our business may be adversely affected.

As we grow and diversify our business, we must also expand and adapt our operational infrastructure. Our business relies on our data systems, billing systems, and other operational and financial reporting and control systems. All of these systems have become increasingly complex in the recent past due to the growing diversification and complexity of our business, acquisitions of new businesses with different systems and increased regulation over controls and procedures. To effectively manage our technical support infrastructure, we will need to continue to upgrade and improve our data systems, billing systems and other operational and financial systems, procedures and controls. These upgrades and improvements will require a dedication of resources and in some cases are likely to be complex. If we are unable to adapt our systems in a timely manner to accommodate our growth, our business may be adversely affected.

### ***Any unplanned interruption in the functioning of our network or services could lead to significant costs and disruptions that could reduce our revenues and harm our business, financial results and reputation.***

Our business is dependent on providing our customers with fast, efficient and reliable distribution of application and content delivery services over the Internet. For our core services, we currently provide a standard guarantee that our networks will deliver Internet content 24 hours a day, 7 days a week, 365 days a year. If we do not meet this standard, our customer does not pay for all or a part of its service on that day. Our network or services could be disrupted by numerous events, including natural disasters, unauthorized access to our servers, failure or refusal of our third-party network providers to provide the necessary capacity, power losses and intentional disruptions of our services, such as disruptions caused by software viruses or attacks by unauthorized users. Although we have taken steps to prevent such disruptions, there can be no assurance that attacks by

## [Table of Contents](#)

unauthorized users will not be attempted in the future, that our enhanced security measures will be effective or that a successful attack would not be damaging. Any widespread interruption of the functioning of our network or services would reduce our revenues and could harm our business, financial results and reputation.

### ***We may have insufficient transmission and server capacity, which could result in interruptions in our services and loss of revenues.***

Our operations are dependent in part upon transmission capacity provided by third-party telecommunications network providers. In addition, our distributed network must be sufficiently robust to handle all of our customers' traffic. We believe that we have access to adequate capacity to provide our services; however, there can be no assurance that we are adequately prepared for unexpected increases in bandwidth demands by our customers. In addition, the bandwidth we have contracted to purchase may become unavailable for a variety of reasons, including payment disputes or network providers going out of business. Any failure of these network providers to provide the capacity we require, due to financial or other reasons, may result in a reduction in, or interruption of, service to our customers. If we do not have access to third-party transmission capacity, we could lose customers. If we are unable to obtain transmission capacity on terms commercially acceptable to us or at all, our business and financial results could suffer. We may not be able to deploy on a timely basis enough servers to meet the needs of our customer base or effectively manage the functioning of those servers. In addition, damage or destruction of, or other denial of access to, a facility where our servers are housed could result in a reduction in, or interruption of, service to our customers.

### ***Because our services are complex and are deployed in complex environments, they may have errors or defects that could seriously harm our business.***

Our services are highly complex and are designed to be deployed in and across numerous large and complex networks. From time to time, we have needed to correct errors and defects in our software. In the future, there may be additional errors and defects in our software that may adversely affect our services. We may not have in place adequate quality assurance procedures to ensure that we detect errors in our software in a timely manner. If we are unable to efficiently fix errors or other problems that may be identified, or if there are unidentified errors that allow persons to improperly access our services, we could experience loss of revenues and market share, damage to our reputation, increased expenses and legal actions by our customers.

### ***As part of our business strategy, we have entered into and may enter into or seek to enter into business combinations and acquisitions that may be difficult to integrate, disrupt our business, dilute stockholder value or divert management attention.***

We acquired three companies in late 2006 and early 2007: Nine Systems Corporation, or Nine Systems, Netli and Red Swoosh. If attractive acquisition opportunities arise in the future, we may seek to enter into additional business combinations or purchases. Acquisitions are typically accompanied by a number of risks, including the difficulty of integrating the operations and personnel of the acquired companies, the potential disruption of our ongoing business, the potential distraction of management, expenses related to the acquisition and potential unknown liabilities associated with acquired businesses. Any inability to integrate completed acquisitions in an efficient and timely manner could have an adverse impact on our results of operations. If we are not successful in completing acquisitions that we may pursue in the future, we may incur substantial expenses and devote significant management time and resources without a successful result. In addition, future acquisitions could require use of substantial portions of our available cash or, as in the Nine Systems, Netli and Red Swoosh acquisitions, dilutive issuances of securities.

### ***Our stock price has been volatile.***

The market price of our common stock has been volatile. Trading prices may continue to fluctuate in response to a number of events and factors, including the following:

- quarterly variations in operating results and announcements of innovations;

## Table of Contents

- new products, services and strategic developments by us or our competitors;
- business combinations and investments by us or our competitors;
- variations in our revenue, expenses or profitability;
- changes in financial estimates and recommendations by securities analysts;
- failure to meet the expectations of public market analysts;
- performance by other companies in our industry; and
- geopolitical conditions such as acts of terrorism or military conflicts.

Any of these events may cause the price of our shares to fall. In addition, the stock market in general and the market prices for technology companies in particular have experienced significant volatility that often has been unrelated to the operating performance of such companies. These broad market and industry fluctuations may adversely affect the market price of our shares, regardless of our operating performance.

***If we are unable to continue to innovate and respond to emerging technological trends and customers' changing needs, our operating results may suffer.***

The market for our services is characterized by rapidly changing technology, evolving industry standards and new product and service introductions. Other companies may develop technological or business model innovations that address content delivery and application acceleration requirements in ways that are, or are perceived to be, equivalent or superior to our services. In addition, our customers' business models may change in ways that we do not anticipate and these changes could reduce or eliminate our customers' needs for our services. Our operating results depend on our ability to adapt to market changes and develop and introduce new services into existing and emerging markets. The process of developing new technologies is complex and uncertain; we must commit significant resources to developing new services or enhancements to our existing services before knowing whether our investments will result in services the market will accept. Furthermore, we may not execute successfully our technology initiatives because of errors in planning or timing, technical hurdles that we fail to overcome in a timely fashion, misunderstandings about market demand or a lack of appropriate resources. Failures in execution or market acceptance of new services we introduce could result in competitors providing those solutions before we do and, consequently, loss of market share, revenues and earnings.

***If the estimates we make, and the assumptions on which we rely, in preparing our financial statements prove inaccurate, our actual results may be adversely affected.***

Our financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments about, among other things, taxes, revenue recognition, stock-based compensation costs, capitalization of internal-use software, contingent obligations, doubtful accounts, intangible assets and restructuring charges. These estimates and judgments affect the reported amounts of our assets, liabilities, revenues and expenses, the amounts of charges accrued by us, such as those made in connection with our restructuring charges, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances and at the time they are made. If our estimates or the assumptions underlying them are not correct, we may need to accrue additional charges that could adversely affect our results of operations, which in turn could adversely affect our stock price.

***A substantial portion of our short-term marketable securities is invested in highly-rated auction rate securities. Failures in these auctions may affect our liquidity.***

A substantial percentage of our marketable securities portfolio is invested in highly-rated municipal auction rate securities. Auction rate securities are securities that are structured to allow for short-term interest rate resets but with contractual maturities that can be well in excess of ten years. At the end of each reset period, which typically occurs every 28 days, investors can sell or continue to hold the securities at par. During February 2008,

## [Table of Contents](#)

the majority of auction rate securities in the marketplace, including certain auction rate securities that we held in our portfolio, failed auction due to sell orders exceeding buy orders. Such failures resulted in the interest rate on these investments resetting to predetermined rates in accordance with the underlying loan agreement, which might be higher or lower than the current market rate of interest. In the event we need to liquidate our investments in these types of securities, we will not be able to do so until a future auction on these investments is successful, the issuer redeems the outstanding securities, a buyer is found outside the auction process, the securities mature, or there is a default requiring immediate repayment from the issuer. In the future, should the auction rate securities we hold be subject to additional auction failures and/or we determine that the decline in value of auction rate securities are other than temporary, we would recognize a loss in our consolidated statement of operations, which could be material. In addition, any future failed auctions may adversely impact the liquidity of our investments. Furthermore, if one or more issuers of the auction rate securities held in our portfolio are unable to successfully close future auctions and their credit ratings deteriorate, we may be required to adjust the carrying value of these investments through an impairment charge, which could be material.

### ***Future changes in financial accounting standards may adversely affect our reported results of operations.***

A change in accounting standards can have a significant effect on our reported results. New accounting pronouncements and interpretations of accounting pronouncements have occurred and may occur in the future. These new accounting pronouncements may adversely affect our reported financial results.

### ***If we are unable to retain our key employees and hire qualified sales and technical personnel, our ability to compete could be harmed.***

Our future success depends upon the continued services of our executive officers and other key technology, sales, marketing and support personnel who have critical industry experience and relationships. There is increasing competition for talented individuals in the areas in which our primary offices are located. This affects both our ability to retain key employees and hire new ones. None of our officers or key employees is bound by an employment agreement for any specific term. The loss of the services of any of our key employees could delay the development and introduction of, and negatively impact our ability to sell, our services.

### ***If our license agreement with MIT terminates, our business could be adversely affected.***

We have licensed technology from MIT covered by various patents, patent applications and copyrights relating to Internet content delivery technology. Some of our core technology is based in part on the technology covered by these patents, patent applications and copyrights. Our license is effective for the life of the patents and patent applications; however, under limited circumstances, such as a cessation of our operations due to our insolvency or our material breach of the terms of the license agreement, MIT has the right to terminate our license. A termination of our license agreement with MIT could have a material adverse effect on our business.

### ***We may need to defend our intellectual property and processes against patent or copyright infringement claims, which would cause us to incur substantial costs.***

Other companies or individuals, including our competitors, may hold or obtain patents or other proprietary rights that would prevent, limit or interfere with our ability to make, use or sell our services or develop new services, which could make it more difficult for us to increase revenues and improve or maintain profitability. Companies holding Internet-related patents or other intellectual property rights are increasingly bringing suits alleging infringement of such rights against both technology providers and customers that use such technology. We have agreed to indemnify our customers if our services infringe specified intellectual property rights; therefore, we could become involved in litigation brought against customers if our services and technology are implicated. Any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources and require us to do one or more of the following:

- cease selling, incorporating or using products or services that incorporate the challenged intellectual property;
- pay substantial damages and incur significant litigation expenses;

## [Table of Contents](#)

- obtain a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign products or services.

If we are forced to take any of these actions, our business may be seriously harmed. In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology, our business and operating results could be materially adversely affected.

### ***Our business will be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties.***

We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. These legal protections afford only limited protection. We have previously brought lawsuits against entities that we believe are infringing our intellectual property rights. Such lawsuits can be expensive and require a significant amount of attention of our management and technical personnel, and the outcomes are unpredictable. Monitoring unauthorized use of our services is difficult and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. Although we have licensed from other parties proprietary technology covered by patents, we cannot be certain that any such patents will not be challenged, invalidated or circumvented. Furthermore, we cannot be certain that any pending or future patent applications will be granted, that any future patent will not be challenged, invalidated or circumvented, or that rights granted under any patent that may be issued will provide competitive advantages to us.

### ***We face risks associated with international operations that could harm our business.***

We have operations in several foreign countries and may continue to expand our sales and support organizations internationally. Such expansion could require us to make significant expenditures. We are increasingly subject to a number of risks associated with international business activities that may increase our costs, lengthen our sales cycle and require significant management attention. These risks include:

- increased expenses associated with marketing services in foreign countries;
- currency exchange rate fluctuations;
- unexpected changes in regulatory requirements resulting in unanticipated costs and delays;
- interpretations of laws or regulations that would subject us to regulatory supervision or, in the alternative, require us to exit a country, which could have a negative impact on the quality of our services or our results of operations;
- longer accounts receivable payment cycles and difficulties in collecting accounts receivable; and
- potentially adverse tax consequences.

### ***Any failure to meet our debt obligations would damage our business.***

We have long-term debt. As of December 31, 2007, our total long-term debt was \$199.9 million. If we are unable to remain profitable or if we use more cash than we generate in the future, our level of indebtedness could adversely affect our future operations by increasing our vulnerability to adverse changes in general economic and industry conditions and by limiting or prohibiting our ability to obtain additional financing for future capital expenditures, acquisitions and general corporate and other purposes. In addition, if we are unable to make interest or principal payments when due, we would be in default under the terms of our long-term debt obligations, which would result in all principal and interest becoming due and payable which, in turn, would seriously harm our business.



***Internet-related and other laws could adversely affect our business.***

Laws and regulations that apply to communications and commerce over the Internet are becoming more prevalent. In particular, the growth and development of the market for online commerce has prompted calls for more stringent tax, consumer protection and privacy laws, both in the United States and abroad, that may impose additional burdens on companies conducting business online or providing Internet-related services such as ours. This could negatively affect both our business directly as well as the businesses of our customers, which could reduce their demand for our services. Tax laws that might apply to our servers, which are located in many different jurisdictions, could require us to pay additional taxes that would adversely affect our continued profitability. We have recorded certain tax reserves to address potential exposures involving our sales and use and franchise tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different jurisdictions. Our reserves, however, may not be adequate to reflect our total actual liability. Congress has been contemplating net neutrality legislation. The impact of the adoption of laws regulating the operation of the Internet could impact our business. As a government contractor, we are also subject to numerous laws and regulations. If we fail to comply with applicable requirements, then we could face penalties, contract terminations and damage to our reputation. We also may be required to devote substantial resources to the development and improvement of procedures to ensure compliance with applicable regulations.

***Economic conditions may have an adverse impact on our operating performance and results of operations.***

Our business could be affected by general economic conditions. Weakness in the United States or worldwide economy could have a negative effect on our operating results, including decreases in revenues and operating cash flows. Additionally, in a down-cycle economic environment, we may experience the negative effects of increased competitive pricing pressure and customer turnover. There can be no assurance that current economic conditions or worsening economic conditions or a prolonged or recurring recession will not have a significant adverse impact on our operating results.

***Provisions of our charter documents, our stockholder rights plan and Delaware law may have anti-takeover effects that could prevent a change in control even if the change in control would be beneficial to our stockholders.***

Provisions of our amended and restated certificate of incorporation, amended and restated by-laws and Delaware law could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our stockholders. In addition, our Board of Directors has adopted a stockholder rights plan the provisions of which could make it more difficult for a potential acquirer of Akamai to consummate an acquisition transaction without the approval of our Board of Directors.

***If we are required to seek additional funding, such funding may not be available on acceptable terms or at all.***

If our revenues decrease or grow more slowly than we anticipate, if our operating expenses increase more than we expect or cannot be reduced in the event of lower revenues, or if we seek to acquire significant businesses or technologies, we may need to obtain funding from outside sources. If we are unable to obtain this funding, our business would be materially and adversely affected. In addition, even if we were to find outside funding sources, we might be required to issue securities with greater rights than the securities we have outstanding today. We might also be required to take other actions that could lessen the value of our common stock, including borrowing money on terms that are not favorable to us. In addition, we may not be able to raise any additional capital.

***A class action lawsuit has been filed against us and an adverse resolution of such action could have a material adverse effect on our financial condition and results of operations in the period in which the lawsuit is resolved.***

We are named as a defendant in a purported class action lawsuit filed in 2001 alleging that the underwriters of our initial public offering received undisclosed compensation in connection with our initial public offering of

## [Table of Contents](#)

common stock in violation of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. See Item 3 of Part I of this annual report on Form 10-K for more information. Any conclusion of these matters in a manner adverse to us could have a material adverse effect on our financial position and results of operations.

### ***We may become involved in other litigation that may adversely affect us.***

In the ordinary course of business, we are or may become involved in litigation, administrative proceedings and governmental proceedings. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, there can be no assurance that the results of any of these actions will not have a material adverse effect on our business, results of operations or financial condition.

### **Item 1B. *Unresolved Staff Comments***

None.

### **Item 2. *Properties***

Our headquarters are located in approximately 131,000 square feet of leased office space in Cambridge, Massachusetts. Of this space, we have subleased approximately 12,000 square feet to another company. Our primary west coast office is located in approximately 59,000 square feet of leased office space in San Mateo, California. We maintain offices in several other locations in the United States, including in or near each of Los Angeles and San Diego, California; Denver, Colorado; Atlanta, Georgia; Chicago, Illinois; New York, New York; Dallas, Texas; Reston, Virginia and Seattle, Washington. We also maintain offices in Europe and Asia in or near the following cities: Bangalore, India; Beijing, China; Munich, Germany; Paris, France; London, England; Tokyo, Japan; Singapore; Madrid, Spain; and Sydney, Australia. All of our facilities are leased. We believe our facilities, including those identified below, are sufficient to meet our needs for the foreseeable future and, if needed, additional space will be available at a reasonable cost.

In November 2007, we entered into facility lease agreements with our landlord to expand our corporate headquarters in Cambridge, Massachusetts. As of June 1, 2009, we will be occupying an additional 110,000 square feet at our current location in Cambridge.

### **Item 3. *Legal Proceedings***

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. We do not expect the ultimate costs to resolve these matters to have a material adverse effect on our consolidated financial position, results of operations or cash flows. In addition to ordinary-course litigation, we are a party to the litigation described below.

Between July 2, 2001 and November 7, 2001, purported class action lawsuits seeking monetary damages were filed in the United States District Court for the Southern District of New York against us as well as against the underwriters of our October 28, 1999 initial public offering of common stock. The complaints were filed allegedly on behalf of persons who purchased our common stock during different time periods, all beginning on October 28, 1999 and ending on various dates. The complaints are similar and allege violations of the Securities Act of 1933 and the Exchange Act primarily based on the allegation that the underwriters received undisclosed compensation in connection with our initial public offering. On April 19, 2002, a single consolidated amended complaint was filed, reiterating in one pleading the allegations contained in the previously filed separate actions. The consolidated amended complaint defines the alleged class period as October 28, 1999 through December 6, 2000. A Special Litigation Committee of our Board of Directors authorized management to negotiate a

## [Table of Contents](#)

settlement of the pending claims substantially consistent with a Memorandum of Understanding that was negotiated among class plaintiffs, all issuer defendants and their insurers. The parties negotiated a settlement that was subject to approval by the Court. On February 15, 2005, the Court issued an Opinion and Order preliminarily approving the settlement, provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to a modification narrowing the scope of the bar order, and on August 31, 2005, the Court issued an order preliminarily approving the settlement. On December 5, 2006, the United States Court of Appeals for the Second Circuit overturned the District Court's certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Thereafter, the District Court ordered a stay of all proceedings in all of the lawsuits pending the outcome of plaintiffs' petition to the Second Circuit for rehearing en banc and resolution of the class certification issue. On April 6, 2007, the Second Circuit denied plaintiffs' rehearing petition, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. On June 25, 2007, the District Court signed an order terminating the settlement. We believe that we have meritorious defenses to the claims made in the complaint, and we intend to contest the lawsuit vigorously. An adverse resolution of this action could have a material adverse effect on our financial condition and results of operations in the period in which the lawsuit is resolved. We are not presently able to estimate potential losses, if any, related to this lawsuit.

In addition, on or about October 3, 2007, Vanessa Simmonds, a purported Akamai shareholder, filed a complaint in the United States District Court for the Western District of Washington, against the underwriters involved in our 1999 initial public offering of common stock, alleging violations of Section 16(b) of the Exchange Act. The complaint alleges that the combined number of shares of our common stock beneficially owned by the lead underwriters and certain unnamed officers, directors, and principal shareholders exceeded ten percent of our outstanding common stock from the date of our initial public offering on October 29, 1999, through at least October 28, 2000. The complaint further alleges that those entities and individuals were thus subject to the reporting requirements of Section 16(a) and the short-swing trading prohibition of Section 16(b) and failed to comply with those provisions. The complaint seeks to recover from the lead underwriters any "short-swing profits" obtained by them in violation of Section 16(b). Akamai was named as a nominal defendant in the action, but has no liability for the asserted claims. We do not expect the results of this action to have a material adverse effect on our business, results of operations or financial condition.

#### **Item 4.        *Submission of Matters to a Vote of Security Holders***

None.

**PART II****Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock, par value \$0.01 per share, trades under the symbol "AKAM" on The NASDAQ Global Select Market. Prior to July 1, 2006, our common stock traded on the NASDAQ National Market. The following table sets forth, for the periods indicated, the high and low sale price per share of the common stock on The NASDAQ Global Select Market or The NASDAQ National Market, as applicable:

	<u>High</u>	<u>Low</u>
<b>Fiscal 2006:</b>		
First Quarter	\$ 33.17	\$ 19.57
Second Quarter	\$ 36.94	\$ 27.14
Third Quarter	\$ 50.90	\$ 29.28
Fourth Quarter	\$ 56.80	\$ 44.77
<b>Fiscal 2007:</b>		
First Quarter	\$ 59.69	\$ 46.60
Second Quarter	\$ 56.25	\$ 41.02
Third Quarter	\$ 50.98	\$ 27.75
Fourth Quarter	\$ 41.45	\$ 28.26

As of February 19, 2008, there were 756 holders of record of our common stock.

We have never paid or declared any cash dividends on shares of our common stock or other securities and do not anticipate paying any cash dividends in the foreseeable future. We currently intend to retain all future earnings, if any, for use in the operation of our business. We did not repurchase any equity securities in 2007.

**Item 6. Selected Consolidated Financial Data**

The following selected consolidated financial data should be read in conjunction with our consolidated financial statements and related notes and with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and other financial data included elsewhere in this annual report on Form 10-K. The consolidated statement of operations data and balance sheet data for all periods presented is derived from audited consolidated financial statements included elsewhere in this annual report on Form 10-K or in annual reports on Form 10-K for prior years on file with the Commission.

Loss from operations for the year ended December 31, 2003 included a restructuring benefit of \$8.5 million for the reversal of previously accrued restructuring liabilities and a loss on early extinguishment of debt of \$2.1 million as a result of our repurchase of \$74.0 million in aggregate principal amount of our 5 1/2% convertible subordinated notes in that year. Income from operations for the years ended December 31, 2005 and 2004 included a loss on early extinguishment of debt of \$1.4 million and \$6.8 million, respectively, as a result of our repurchase of \$56.6 million and \$169.4 million in aggregate principal amount of our 5 1/2% convertible subordinated notes, respectively, in those years.

In 2005, we acquired Speedera Networks, Inc., or Speedera, which was accounted for under the purchase method of accounting, for a purchase price of \$142.2 million, comprised primarily of our common stock. We allocated \$138.1 million of the cost of this acquisition to goodwill and other intangible assets. Income from operations for the years ended December 31, 2005, 2006 and 2007 included \$5.1 million, \$8.3 million and \$7.4 million, respectively, for the amortization of other intangible assets related to this acquisition.

In 2005, we released nearly all of our United States and foreign deferred tax asset valuation allowance. Based upon our cumulative operating results and an assessment of our expected future results, we determined at that time that it was more likely than not that our deferred tax assets would be realized. During 2005, the total valuation allowance release recorded as an income tax benefit in the statement of operations was \$285.8 million.

In January 2004 and December 2003, we issued \$200.0 million in aggregate principal amount of our 1% senior convertible notes due December 15, 2033, which we refer to as our 1% senior convertible notes, for proceeds of \$194.1 million net of offering expenses. Additionally, in 2005, we completed an equity offering of 12.0 million shares of our common stock at a price of \$16.855 per share for proceeds of \$202.1 million, net of offering expenses.

On January 1, 2006, we adopted, on a modified prospective basis, the provisions of Statement of Financial Accounting Standards, or SFAS, No. 123R, “Share-Based Payment,” or SFAS No. 123R, which requires us to record compensation expense for employee stock awards at fair value at the time of grant. As a result, our stock-based compensation expense increased in 2006, causing our net income to decrease significantly. For the year ended December 31, 2006, our pre-tax stock-based compensation expense was \$49.6 million.

In 2006, we acquired Nine Systems for a purchase price of \$157.5 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated \$168.4 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the years ended December 31, 2006 and 2007 included \$0.1 million and \$3.3 million, respectively, for the amortization of other intangible assets related to this acquisition.

On March 13, 2007, we acquired Netli for a purchase price of \$154.4 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated \$148.4 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the year ended December 31, 2007 included \$0.7 million for the amortization of other intangible assets related to this acquisition.

## [Table of Contents](#)

On April 17, 2007, we acquired Red Swoosh, Inc. for a purchase price of \$18.7 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated \$16.9 million of the cost of this acquisition to goodwill and other intangible assets. As of December 31, 2007, the other intangible assets had not begun to be amortized.

	For the Years Ended December 31,				
	2007	2006	2005	2004	2003
(In thousands, except per share data)					
<b>Consolidated Statements of Operations Data:</b>					
Revenues	\$ 636,406	\$ 428,672	\$ 283,115	\$ 210,015	\$ 161,259
Total costs and operating expenses	491,478	345,566	209,740	161,048	172,370
Operating income (loss)	144,928	83,106	73,375	48,967	(11,111)
Net income (loss)	100,967	57,401	327,998	34,364	(29,281)
Net income (loss) per weighted average share:					
Basic	\$ 0.62	\$ 0.37	\$ 2.41	\$ 0.28	\$ (0.25)
Diluted	\$ 0.56	\$ 0.34	\$ 2.11	\$ 0.25	\$ (0.25)
Weighted average shares used in per share calculation:					
Basic	162,959	155,366	136,167	124,407	118,075
Diluted	185,094	176,767	156,944	146,595	118,075

	As of December 31,				
	2007	2006	2005	2004	2003
(In thousands)					
<b>Consolidated Balance Sheet Data:</b>					
Cash, cash equivalents and marketable securities	\$ 629,895	\$ 430,247	\$ 309,574	\$ 103,763	\$ 198,707
Restricted cash	—	—	—	—	5,000
Restricted marketable securities	3,613	4,207	4,555	4,654	4,648
Working capital	606,667	285,409	293,122	61,903	139,756
Total assets	1,656,047	1,247,932	891,499	182,743	278,941
Current portion of 5 1/2% convertible subordinated notes	—	—	—	—	15,000
Other long-term liabilities	9,265	3,657	3,565	3,035	1,994
1% convertible senior notes	199,855	200,000	200,000	200,000	175,000
5 1/2% convertible subordinated notes, net of current portion	—	—	—	56,614	211,000
Total stockholders' equity (deficit)	\$ 1,358,552	\$ 954,693	\$ 624,214	\$ (125,931)	\$ (175,354)

## [Table of Contents](#)

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

#### Overview

We provide services for accelerating and improving the delivery of content and applications over the Internet. We primarily derive income from the sale of services to customers executing contracts with terms of one year or longer, which we refer to as recurring revenue contracts or long-term contracts. These contracts generally commit the customer to a minimum monthly level of usage with additional charges applicable for actual usage above the monthly minimum. In recent years, however, we have entered into increasing numbers of customer contracts that have minimum usage commitments that are based on quarterly, twelve-month or longer periods. Our goal of having a consistent and predictable base level of income is important to our financial success. Accordingly, to be successful, we must maintain our base of recurring revenue contracts by eliminating or reducing lost monthly or annual recurring revenue due to customer cancellations or terminations and build on that base by adding new customers and increasing the number of services, features and functions that our existing customers purchase. At the same time, we must ensure that our expenses do not increase faster than, or at the same rate as, our revenues. Accomplishing these goals requires that we compete effectively in the marketplace on the basis of quality, price and the attractiveness of our services and technology.

This Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, should be read in conjunction with our consolidated financial statements and notes thereto which appear elsewhere in this annual report on Form 10-K. See "Risk Factors" elsewhere in this annual report on Form 10-K for a discussion of certain risks associated with our business. The following discussion contains forward-looking statements. The forward-looking statements do not include the potential impact of any mergers, acquisitions, or divestitures of business combinations that may be announced after the date hereof.

Our improved financial results in 2007 as compared to 2006 and 2005 reflect the success of our efforts to increase our monthly and annual recurring revenues while limiting the expenses needed to support such growth. The following sets forth, as a percentage of revenues, consolidated statements of operations data for the years indicated:

	<u>2007</u>	<u>2006</u>	<u>2005</u>
Revenues	100%	100%	100%
Cost of revenues	26	22	20
Research and development	7	8	6
Sales and marketing	23	28	28
General and administrative	19	21	19
Amortization of other intangible assets	2	2	2
Total costs and operating expenses	<u>77</u>	<u>81</u>	<u>75</u>
Income from operations	23	19	25
Interest income	4	4	2
Interest expense	—	(1)	(2)
Other income (expense), net	—	—	—
Gain (loss) on investments, net	—	—	—
Loss on early extinguishment of debt	—	—	—
Income before provision for (benefit from) income taxes	27	22	25
Provision for (benefit from) income taxes	<u>11</u>	<u>9</u>	<u>(91)</u>
Net income	<u>16%</u>	<u>13%</u>	<u>116%</u>

## [Table of Contents](#)

We were profitable for fiscal years 2007, 2006 and 2005; however, we cannot guarantee continued profitability or profitability at the levels we have recently experienced for any period in the future. We have observed the following trends and events that are likely to have an impact on our financial condition and results of operations in the foreseeable future:

- During each quarter of 2007, the dollar volume of new recurring revenue contracts that we booked exceeded the dollar volume of the contracts we lost through cancellations, terminations and non-payment. A continuation of this trend would lead to increased revenues.
- During each quarter of 2007, unit prices offered to some new and existing customers declined, including contracts signed with certain customers at higher committed service levels, which contributed to the declining unit prices due to volume discounts. Additionally, increased competition from new entrants into the market that are willing to use low unit prices as a method of differentiation contributed to these price declines. If we continue to experience decreases in unit prices for new and existing customers, our operating profit percentage could decrease.
- During each quarter of 2007, we continued to reduce our network bandwidth costs per unit by entering into new supplier contracts with lower pricing and amending existing contracts to take advantage of price reductions offered by our existing suppliers. Additionally, we continue to invest in internal-use software development to improve the performance and efficiency of our network. However, due to increased traffic delivered over our network, our total bandwidth costs increased during these periods. We believe that our overall bandwidth costs will continue to increase as a result of expected higher traffic levels, but we anticipate continued reductions in bandwidth costs per unit. If we do not experience lower per unit bandwidth pricing or we are unsuccessful at effectively routing traffic over our network through lower cost providers, network bandwidth costs could increase in excess of our expectations in 2008.
- During each quarter of 2007, no customer accounted for 10% or more of our total revenues. We expect that customer concentration levels will continue to decline compared to those in prior years if our customer base continues to grow.
- During the year ended December 31, 2007, revenues derived from customers outside the United States accounted for 23% of our total revenues. We expect revenues from such customers as a percentage of our total revenues to be between 20% and 25% in 2008.
- As of January 1, 2006, we adopted SFAS No. 123R, which requires us to record compensation expense for employee stock awards at fair value at the time of grant. For the years ended December 31, 2007 and 2006, our stock-based compensation expense was \$66.6 million and \$49.6 million, respectively. We expect that stock-based compensation expense will continue at the current level, or slightly increase in the future, because we have a significant number of unvested employee awards outstanding and plan to continue to grant stock-based compensation awards in the future. As of December 31, 2007, our total unrecognized compensation costs for stock-based awards were \$100.7 million, which we expect to recognize as expense over a weighted average period of 1.3 years. This expense is expected to be recognized through 2011.
- Depreciation expense related to our network equipment increased during 2007 as compared to 2006. Due to expected future purchases of network equipment during 2008, we believe that depreciation expense related to our network equipment will continue to increase in 2008. We expect to continue to enhance and add functionality to our service offerings and capitalize stock-based compensation expense attributable to employees working on such projects, which would increase the amount of capitalized internal-use software costs. As a result, we believe that the amortization of internal-use software development costs, which we include in cost of revenues, will increase in 2008 compared to 2007.
- During the year ended December 31, 2007, our effective income tax rate, including discrete items, was 40.0%. While we expect our annual effective income tax rate to remain relatively constant during 2008, we do not expect to make significant cash tax payments due to the continued utilization of our deferred tax assets.



## [Table of Contents](#)

Based on our analysis of, among other things, the aforementioned trends and events, as of the date of this annual report on Form 10-K, we expect to continue to generate net income on a quarterly and annual basis during 2008; however, our future results are likely to be affected by many factors identified in the section captioned "Risk Factors" and elsewhere in this annual report on Form 10-K, including our ability to:

- increase our revenue by adding customers through long-term contracts and limiting customer cancellations and terminations;
- offset unit price declines for our services with higher volumes of traffic delivered on our network;
- prevent disruptions to our services and network due to accidents or intentional attacks; and
- maintain our network bandwidth costs and other operating expenses consistent with our revenues.

As a result, there is no assurance that we will achieve our expected financial objectives, including generating positive net income, in any future period.

### **Application of Critical Accounting Policies and Estimates**

#### **Overview**

Our MD&A is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. These principles require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, cash flow and related disclosure of contingent assets and liabilities. Our estimates include those related to revenue recognition, accounts receivable and related reserves, capitalized internal-use software costs, intangible assets and goodwill, income and other taxes, impairment and useful lives of long-lived assets, loss contingencies and stock-based compensation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances at the time such estimates are made. Actual results may differ from these estimates. For a complete description of our significant accounting policies, see Note 2 to our consolidated financial statements included in this annual report on Form 10-K.

#### **Definitions**

We define our "critical accounting policies" as those accounting principles generally accepted in the United States of America that require us to make subjective estimates about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations as well as the specific manner in which we apply those principles. Our estimates are based upon assumptions and judgments about matters that are highly uncertain at the time the accounting estimate is made and applied and require us to assess a range of potential outcomes.

#### **Review of Critical Accounting Policies and Estimates**

##### *Revenue Recognition:*

We recognize service revenue in accordance with the Commission's Staff Accounting Bulletin No. 104, "Revenue Recognition," and the Financial Accounting Standards Board, or FASB, Emerging Issues Task Force Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables." Revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability of the resulting receivable is reasonably assured.

We primarily derive revenues from the sale of services to customers executing contracts with terms of one year or longer. These contracts generally commit the customer to a minimum monthly or annual level of usage and specify the rate at which the customer must pay for actual usage above the monthly or annual minimum. For these services, we recognize the monthly minimum as revenue each month provided that an enforceable contract

## [Table of Contents](#)

has been signed by both parties, the service has been delivered to the customer, the fee for the service is fixed or determinable and collection is reasonably assured. Should a customer's usage of our service exceed the monthly minimum, we recognize revenue for such excess usage in the period of the usage. For annual or other non-monthly period revenue commitments, we recognize revenue monthly based upon the customer's actual usage each month and only recognize any remaining committed amount for the applicable period in the last month thereof.

We typically charge customers an installation fee when the services are first activated. The installation fees are recorded as deferred revenue and recognized as revenue ratably over the estimated life of the customer arrangement. We also derive income from services sold as discrete, non-recurring events or based solely on usage. For these services, we recognize revenue after an enforceable contract has been signed by both parties, the fee is fixed or determinable, the event or usage has occurred, and collection is reasonably assured.

When more than one element is contained in a single arrangement, we allocate revenue between the elements based on each element's relative fair value, provided that each element meets the criteria as a separate unit of accounting. An item is considered a separate unit of accounting if it has value to the customer on a standalone basis and there is objective and verifiable evidence of the fair value of the separate elements. Fair value is generally determined based upon the price charged when the element is sold separately. If the fair value of each element cannot be objectively determined, the total value of the arrangement is recognized ratably over the entire service period to the extent that all services have begun to be provided at the outset of the period. For most multi-element service arrangements to date, the fair value of each element has not been objectively determinable. Therefore, all revenue under these arrangements has been recognized ratably over the related service period provided that all services have begun to be provided at the outset of the period.

At the inception of a customer contract for service, we make an estimate as to that customer's ability to pay for the services provided. We base our estimate on a combination of factors, including the successful completion of a credit check or financial review, our collection experience with the customer and other forms of payment assurance. Upon the completion of these steps, we recognize revenue monthly in accordance with our revenue recognition policy. If we subsequently determine that collection from the customer is not reasonably assured, we record an allowance for doubtful accounts and bad debt expense for all of that customer's unpaid invoices and cease recognizing revenue for continued services provided until cash is received. Changes in our estimates and judgments about whether collection is reasonably assured would change the timing of revenue or amount of bad debt expense that we recognize.

We also sell our services through a reseller channel. Assuming all other revenue recognition criteria are met, we recognize revenue from reseller arrangements based on the reseller's contracted non-refundable minimum purchase commitments over the term of the contract, plus amounts sold by the reseller to its customers in excess of the minimum commitments. These excess commitments are recognized as revenue in the period in which the service is provided.

In limited instances (resulting in less than 1% of total revenue in each year reported), we also license software under perpetual and term license agreements. We apply the provisions of Statement of Position, or SOP, 97-2, "Software Revenue Recognition," as amended by SOP 98-9, "Modifications of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions." As prescribed by this guidance, we apply the residual method of accounting. The residual method requires that the portion of the total arrangement fee attributable to undelivered elements, as indicated by vendor-specific objective evidence of fair value, be deferred and subsequently recognized when delivered. The difference between the total arrangement fee and the amount deferred for the undelivered elements is recognized as revenue related to the delivered elements so long as all other revenue recognition criteria of SOP 97-2 are met.

We recognize revenue from fixed-fee arrangements and software arrangements that require significant customization or modification using the percentage-of-completion method in accordance with Accounting Research Bulletin, or ARB, No. 45, "Long-Term Construction-Type Contracts," and with the applicable guidance provided by SOP 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type

## [Table of Contents](#)

Contracts.” We generally recognize revenue under these arrangements based on the percentage of cost incurred to date compared to the estimated total cost to complete the project. In certain customer arrangements, we recognize revenue based on the progress made towards achieving milestones under the contract. The impact of any change in estimate is recorded prospectively from the date of the change. At the outset of a fixed-fee arrangement, if we are not able to estimate the total cost to complete, nor able to measure progress towards the achievement of contract milestones, we account for the arrangement using the completed-contract method of accounting. Under this method, we recognize revenue when the contract is complete and there are no remaining costs or deliverables. In the event that the estimated total cost on a fixed-fee contract indicates a loss, we will record the loss immediately.

From time to time, we enter into contracts to sell our services or license our technology to unrelated companies at or about the same time we enter into contracts to purchase products or services from the same companies. If we conclude that these contracts were negotiated concurrently, we record as revenue only the net cash received from the vendor, unless the product or service received has a separate and identifiable benefit and the fair value to us of the vendor’s product or service can be objectively established.

We may from time to time resell licenses or services of third parties. We record revenue for these transactions on a gross basis when we have risk of loss related to the amounts purchased from the third party and we add value to the license or service, such as by providing maintenance or support for such license or service. If these conditions are present, we recognize revenue when all other revenue recognition criteria are satisfied.

Deferred revenue includes amounts billed to customers for which revenue has not been recognized. Deferred revenue primarily consists of the unearned portion of monthly billed service fees; prepayments made by customers for future periods; deferred installation and activation set-up fees; and amounts billed under extended payment terms.

### *Accounts Receivable and Related Reserves:*

Trade accounts receivable are recorded at the invoiced amounts and do not bear interest. In addition to trade accounts receivable, our accounts receivable balance includes unbilled accounts that represent revenue recorded for customers that is typically billed within one month. We record reserves against our accounts receivable balance. These reserves consist of allowances for doubtful accounts and revenue from certain customers on a cash basis. Increases and decreases in the allowance for doubtful accounts are included as a component of general and administrative expenses. Increases in the reserve for cash basis customers are recorded as reduction of revenue. The reserve for cash basis customers increases as services are provided to customers for which collection is no longer assured. The reserve decreases and revenue is recognized when and if cash payments are received.

Estimates are used in determining these reserves and are based upon our review of outstanding balances on a customer-specific, account-by-account basis. The allowance for doubtful accounts is based upon a review of customer receivables from prior sales with collection issues where we no longer believe that the customer has the ability to pay for prior services provided. We perform on-going credit evaluations of our customers. If such an evaluation indicates that payment is no longer reasonably assured for services provided, any future services provided to that customer will result in creation of a cash basis reserve until we receive consistent payments.

### *Valuation and impairment of investments and marketable securities:*

The fair value of our investments and marketable securities is generally determined from quoted market prices based upon transactions in active markets. We also have investments in auction rate securities that consist entirely of municipal debt securities, recorded at cost, which approximates fair market value (unless the auction fails) due to their variable interest rates, which reset through an auction process typically every 28 days. This auction mechanism generally allows existing investors to continue to own their securities with a revised interest

## [Table of Contents](#)

rate based on the auction or liquidate their holdings by selling their securities at par value. Because of these short intervals between interest reset dates, we monitor these auctions to ensure they are successful, which provides evidence that the recorded values of these investments approximate their fair values. To the extent an auction were to fail such that the securities were deemed to be not liquid, we would need to seek other alternatives to determine the fair value of these securities, which may not be based on quoted market transactions.

Investments and marketable securities are considered to be impaired when a decline in fair value below cost basis is determined to be other than temporary. We periodically evaluate whether a decline in fair value below cost basis is other than temporary by considering available evidence regarding these investments including, among other factors, the duration of the period that, and extent to which, the fair value is less than cost basis; the financial health of and business outlook for the issuer, including industry and sector performance and operational and financing cash flow factors; and overall market conditions and trends. Once a decline in fair value is determined to be other than temporary, a write-down is recorded and a new cost basis in the security is established. Assessing the above factors involves inherent uncertainty. Write-downs, if recorded, could be materially different from the actual market performance of investments and marketable securities in our portfolio, if, among other things, relevant information related to our investments and marketable securities was not publicly available or other factors not considered by us would have been relevant to the determination of impairment.

### *Impairment and Useful Lives of Long-Lived Assets:*

We review our long-lived assets, such as fixed assets and intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. Events that would trigger an impairment review include a change in the use of the asset or forecasted negative cash flows related to the asset. When such events occur, we compare the carrying amount of the asset to the undiscounted expected future cash flows related to the asset. If this comparison indicates that impairment is present, the amount of the impairment is calculated as the difference between the carrying amount and the fair value of the asset. If a readily determinable market price does not exist, fair value is estimated using discounted expected cash flows attributable to the asset. The estimates required to apply this accounting policy include forecasted usage of the long-lived assets, the useful lives of these assets and expected future cash flows. Changes in these estimates could materially impact results from operations.

### *Goodwill and Other Intangible Assets:*

We test goodwill for impairments on an annual basis or more frequently if events or changes in circumstances indicate that the asset might be impaired. We performed an impairment test of goodwill as of December 31, 2007 and December 31, 2006. These tests did not result in an impairment of goodwill. Other intangible assets consist of completed technologies, customer relationships, trademarks and non-compete agreements arising from acquisitions of businesses and acquired license rights. Purchased intangible assets, other than goodwill, are amortized over their estimated useful lives based upon the economic value derived from the related intangible assets. Goodwill is carried at its historical cost.

### *Loss Contingencies:*

We define a loss contingency as a condition involving uncertainty as to a possible loss related to a previous event that will not be resolved until one or more future events occur or fail to occur. Our primary loss contingencies relate to pending or threatened litigation. We record a liability for a loss contingency when we believe that it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. When we believe the likelihood of a loss is less than probable and more than remote, we do not record a liability. Material loss contingencies are disclosed in the notes to the consolidated financial statements.

## [Table of Contents](#)

### *Tax Reserves:*

Our provision for income taxes is comprised of a current and a deferred portion. The current income tax provision is calculated as the estimated taxes payable or refundable on tax returns for the current year. The deferred income tax provision is calculated for the estimated future tax effects attributable to temporary differences and carryforwards using expected tax rates in effect in the years during which the differences are expected to reverse or the carryforwards are expected to be realized.

We currently have significant deferred tax assets, comprised of net operating loss carryforwards, tax credit carryforwards and deductible temporary differences. Our management periodically weighs the positive and negative evidence to determine if it is more likely than not that some or all of the deferred tax assets will not be realized. During 2005, our management determined it was more likely than not that substantially all of the deferred tax assets would be realized, and, accordingly released substantially all of our valuation allowance. This decision was based on our cumulative history of earnings before taxes for financial reporting purposes over a twelve-quarter period and on the projections of expected future taxable income at that time.

We have recorded certain tax reserves to address potential exposures involving our income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. Our estimate of the value of our tax reserves contains assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the costs of the ultimate tax liability or benefit from these matters may be materially more or less than the amount that we estimated.

In November 2005, the FASB issued FASB Staff Position SFAS 123R-3, "Transition Election to Accounting for the Tax Effect of Share-Based Payment Awards." We elected to adopt the modified prospective transition method for calculating the tax effects of stock-based compensation pursuant to SFAS No. 123R. Under the modified prospective transition method, no adjustment is made to the deferred tax balances associated with stock-based payments that continue to be classified as equity awards. Additionally, we elected to use the "long-form method," as provided in paragraph 81 of SFAS No. 123R, to determine the pool of windfall tax benefits upon adoption of SFAS No. 123R. The long-form method required us to analyze the book and tax compensation for each award separately as if it had been issued following the recognition provisions of SFAS No. 123, subject to adjustments for net operating loss, or NOL, carryforwards.

In June 2006, the FASB issued FASB Interpretation, or FIN, No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109." FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. We adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, we had unrecognized tax benefits of \$2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48. As of December 31, 2007, we had unrecognized tax benefits of \$4.0 million, including accrued interest and penalties.

### *Accounting for Stock-Based Compensation:*

Since January 1, 2006, we have accounted for stock-based compensation in accordance with SFAS No. 123R. Prior to that date, we recognized stock-based compensation costs pursuant to Accounting Principles Bulletin No. 25, "Accounting for Stock Issued to Employees," and elected to disclose the impact of expensing stock options pursuant to SFAS No. 123, "Share-Based Payment," in the notes to our financial

## [Table of Contents](#)

statements. See Note 16 to our consolidated financial statements included elsewhere in this annual report on Form 10-K. Under the fair value recognition provisions of SFAS No. 123R, stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the vesting period. We have selected the Black-Scholes option pricing model to determine fair value of stock option awards. Determining the fair value of stock-based awards at the grant date requires judgment, including estimating the expected life of the stock awards and the volatility of the underlying common stock. Our assumptions may differ from those used in prior periods because of adjustments to the calculation of such assumptions based upon the guidance of SFAS No. 123R and Staff Accounting Bulletin No. 107, "Share-Based Payment." Changes to the assumptions may have a significant impact on the fair value of stock options, which could have a material impact on our financial statements. In addition, judgment is also required in estimating the amount of stock-based awards that are expected to be forfeited. Should our actual forfeiture rates differ significantly from our estimates, our stock-based compensation expense and results of operations could be materially impacted.

For stock options, restricted stock, restricted stock units and deferred stock units, we recognize compensation cost on a straight-line basis over the awards' vesting periods for those awards that contain only a service vesting feature. For awards with a performance condition vesting feature, we recognize compensation cost on a graded-vesting basis over the awards' expected vesting periods.

### *Capitalized Internal-Use Software Costs:*

We capitalize the salaries and payroll-related costs of employees and consultants who devote time to the development of internal-use software projects. If a project constitutes an enhancement to previously developed software, we assess whether the enhancement is significant and creates additional functionality to the software, thus qualifying the work incurred for capitalization. Once the project is complete, we estimate the useful life of the internal-use software, and we periodically assess whether the software is impaired. Changes in our estimates related to internal-use software would increase or decrease operating expenses or amortization recorded during the period.

### **Results of Operations**

*Revenues.* Total revenues increased 48%, or \$207.7 million, to \$636.4 million for the year ended December 31, 2007 as compared to \$428.7 million for the year ended December 31, 2006. Total revenues increased 51%, or \$145.6 million, to \$428.7 million for the year ended December 31, 2006 as compared to \$283.1 million for the year ended December 31, 2005. The increases in revenue during the years presented were primarily attributable to an increase in the number of customers under recurring revenue contracts, as well as increases in traffic and additional services sold to new and existing customers, the latter leading to increases in the average revenue per customer during each year, partially offset by reduced unit prices offered to new and renewing customers. We believe that the continued growth in use of the Internet by businesses and consumers, particularly in the media and entertainment segment, is the principal factor driving increased purchases of our services. We expect this trend to continue in 2008. Also contributing to the increase in revenues for the year ended December 31, 2007 were revenues generated through our acquisitions of Netli and Nine Systems. As of December 31, 2007, we had 2,645 customers under recurring revenue contracts as compared to 2,347 at December 31, 2006, and 1,910 at December 31, 2005.

For 2007 and 2006, 23% and 22%, respectively, of our total revenues was derived from our operations located outside of the United States, of which 17% and 18% of total revenues, respectively, was derived from operations in Europe. For 2005, 21% of our total revenues was derived from our operations located outside of the United States, of which 16% of total revenues was derived from operations in Europe. Other than the United States, no single country accounted for 10% or more of our total revenues during these periods. We expect international sales to increase slightly as a percentage of our overall sales in 2008 as compared to prior years. Resellers accounted for 18% of revenues in 2007, 20% in 2006 and 24% in 2005. For 2007, 2006 and 2005, no single customer accounted for 10% or more of total revenues.

## [Table of Contents](#)

*Cost of Revenues.* Cost of revenues includes fees paid to network providers for bandwidth and co-location of our network equipment. Cost of revenues also includes payroll and related costs and stock-based compensation for network operations personnel, cost of software licenses, depreciation of network equipment used to deliver our services and amortization of internal-use software.

Cost of revenues was comprised of the following (in millions):

	For the Year Ended December 31,		
	2007	2006	2005
Bandwidth, co-location and storage fees	\$ 103.2	\$ 59.2	\$ 36.3
Payroll and related costs of network operations personnel	8.8	5.8	3.8
Stock-based compensation	3.3	2.0	—
Depreciation and impairment of network equipment	41.1	19.4	9.0
Amortization of internal-use software	11.0	7.7	6.6
Total cost of revenues	<u>\$ 167.4</u>	<u>\$ 94.1</u>	<u>\$ 55.7</u>

Cost of revenues increased 78%, or \$73.3 million, to \$167.4 million for the year ended December 31, 2007 as compared to \$94.1 million for the year ended December 31, 2006. Cost of revenues increased 69%, or \$38.4 million, to \$94.1 million for the year ended December 31, 2006 as compared to \$55.7 million for the year ended December 31, 2005. These increases were primarily due to an increase in the amounts paid to network providers due to higher traffic levels, partially offset by reduced bandwidth costs per unit, and an increase in depreciation expense of network equipment as we continued to invest in our infrastructure. Additionally, in 2007 and 2006, cost of revenues included stock-based compensation expense, which increased by \$1.4 million and \$2.0 million, respectively, as compared to 2006 and 2005, respectively. Cost of revenues during 2007, 2006 and 2005 also included credits received of approximately \$3.4 million, \$1.5 million and \$1.2 million, respectively, from settlements and renegotiations entered into in connection with billing disputes related to bandwidth contracts. Credits of this nature may occur in the future; however, the timing and amount of future credits, if any, will vary.

We have long-term purchase commitments for bandwidth usage and co-location with various networks and Internet service providers. For the years ending December 31, 2008, 2009 and 2010, the minimum commitments related to bandwidth usage and co-location services are approximately \$38.2 million, \$6.6 million and \$2.4 million, respectively.

We believe cost of revenues will increase in 2008. We expect to deliver more traffic on our network, which would result in higher expenses associated with the increased traffic; however, such costs are likely to be partially offset by lower bandwidth costs per unit. Additionally, for 2008, we anticipate increases in depreciation expense related to our network equipment and amortization of internal-use software development costs, along with increased payroll and related costs, as we continue to make investments in our network with the expectation that our customer base will continue to expand. Additionally, cost of revenues is expected to increase as a result of higher stock-based compensation expense due to additional equity awards we expect to grant to network-related personnel.

*Research and Development.* Research and development expenses consist primarily of payroll and related costs and stock-based compensation for research and development personnel who design, develop, test and enhance our services and our network. Research and development costs are expensed as incurred, except for certain internal-use software development costs eligible for capitalization. During the years ended December 31, 2007, 2006 and 2005, we capitalized software development costs of \$17.8 million, \$11.7 million and \$8.5 million, respectively, net of impairments. These development costs consisted of external consulting and payroll and payroll-related costs for personnel involved in the development of internal-use software used to deliver our services and operate our network. Additionally, for the years ended December 31, 2007 and 2006, we

## [Table of Contents](#)

capitalized \$6.4 million and \$4.3 million, respectively, of non-cash stock-based compensation in accordance with SFAS No. 123R. These capitalized internal-use software costs are amortized to cost of revenues over their estimated useful lives of two years.

Research and development expenses increased 33%, or \$11.0 million, to \$44.1 million for the year ended December 31, 2007 as compared to \$33.1 million for the year ended December 31, 2006. Research and development expenses increased 83%, or \$15.0 million, to \$33.1 million for the year ended December 31, 2006, as compared to \$18.1 million for the year ended December 31, 2005. The research and development expense increases in both 2007 and 2006 as compared to the prior years were due to increases in payroll and related costs resulting from higher headcount, as well as additional stock-based compensation expense.

The following table quantifies the net increase in the various components of our research and development expenses for the periods presented (in millions):

	Increase (Decrease) in Research and Development Expenses	
	2007 to 2006	2006 to 2005
Payroll and related costs	\$ 12.5	\$ 5.9
Stock-based compensation	4.2	10.4
Capitalized salaries and other	(5.7)	(1.3)
Total net increase	<u>\$ 11.0</u>	<u>\$ 15.0</u>

We believe that research and development expenses will increase in 2008, as we expect to continue to hire additional development personnel in order to make investments in our core technology, develop new services and make refinements to our other service offerings.

*Sales and Marketing.* Sales and marketing expenses consist primarily of payroll and related costs, stock-based compensation expense and commissions for personnel engaged in marketing, sales and support functions, as well as advertising and promotional expenses.

Sales and marketing expenses increased 23%, or \$27.9 million, to \$147.6 million for the year ended December 31, 2007 as compared to \$119.7 million for the year ended December 31, 2006. Sales and marketing expenses increased 54%, or \$41.8 million, to \$119.7 million for the year ended December 31, 2006 as compared to \$77.9 million for the year ended December 31, 2005. The increase in sales and marketing expenses during these periods was primarily due to higher payroll and related costs, particularly commissions for sales and marketing personnel, attributable to revenue growth and as a result of higher stock-based compensation expense, particularly for the year ended December 31, 2006, as compared to the year ended December 31, 2005.

The following table quantifies the net increase in the various components of our sales and marketing expenses for the periods presented (in millions):

	Increase (Decrease) in Sales and Marketing Expenses	
	2007 to 2006	2006 to 2005
Payroll and related costs	\$ 12.6	\$ 23.4
Stock-based compensation	7.8	17.8
Marketing and related costs	2.9	(0.4)
Other expense	4.6	1.0
Total net increase	<u>\$ 27.9</u>	<u>\$ 41.8</u>



## [Table of Contents](#)

We expect that sales and marketing expenses will increase in 2008 due to an expected increase in commissions on higher forecasted sales of our services, the expected increase in hiring of sales and marketing personnel and additional expected increases in other marketing costs such as advertising.

*General and Administrative.* General and administrative expenses consist primarily of the following components:

- payroll, stock-based compensation and other related costs, including expenses for executive, finance, business applications, network management, human resources and other administrative personnel;
- depreciation of property and equipment we use internally;
- fees for professional services;
- rent and other facility-related expenditures for leased properties;
- the provision for doubtful accounts;
- insurance costs; and
- non-income related taxes.

General and administrative expenses increased 34%, or \$30.9 million, to \$121.1 million for the year ended December 31, 2007 as compared to \$90.2 million for the year ended December 31, 2006. General and administrative expenses increased 70%, or \$37.2 million, to \$90.2 million for the year ended December 31, 2006 as compared to \$53.0 million for the year ended December 31, 2005. The increase in general and administrative expenses during both periods was primarily due to an increase in payroll and related costs as a result of headcount growth, as well as higher stock-based compensation expense. Additionally, facilities-related costs have increased due to office expansions, and we have incurred increased expenditures for professional services, particularly legal fees related to current litigation matters.

The following table quantifies the net increase in various components of our general and administrative expenses for the periods presented (in millions):

	Increase (Decrease) in General and Administrative Expenses	
	2007 to 2006	2006 to 2005
Payroll and related costs	\$ 7.8	\$ 10.0
Stock-based compensation	3.5	15.6
Non-income taxes	(0.5)	3.7
Facilities-related costs	5.2	1.2
Depreciation and amortization	3.4	1.4
Provision for doubtful accounts	1.2	0.2
Legal fees	6.9	(0.1)
Consulting and advisory services	0.8	0.7
Other expenses	2.6	4.5
Total net increase	<u>\$ 30.9</u>	<u>\$ 37.2</u>

We expect general and administrative expenses to increase in 2008 due to increased payroll and related costs attributable to increased hiring, an increase in rent and facilities costs, and higher litigation-related expenses in connection with a trial that commenced in February 2008.

*Amortization of Other Intangible Assets.* Amortization of other intangible assets consists of the amortization of intangible assets acquired in business combinations and amortization of acquired license rights. Amortization of other intangible assets increased 35%, or \$2.9 million, to \$11.4 million for the year ended December 31, 2007

## [Table of Contents](#)

as compared to \$8.5 million for the year ended December 31, 2006. Amortization of other intangible assets for the year ended December 31, 2006 increased by \$3.4 million, or 66%, over amortization of other intangible assets in the year ended December 31, 2005 of \$5.1 million. The increase in amortization of other intangible assets in 2007 as compared to 2006 was due to the amortization of intangible assets from the acquisitions of Netli in March 2007 and Nine Systems in December 2006. The increase in amortization of intangible assets in 2006 as compared to 2005 was due to the amortization of intangible assets from the acquisition of Speedera in June 2005. Based on our currently owned intangible assets, we expect amortization of other intangible assets to be approximately \$13.4 million, \$13.6 million, \$12.9 million, \$12.3 million and \$11.5 million for the years ending December 31, 2008, 2009, 2010, 2011 and 2012, respectively.

*Interest Income.* Interest income includes interest earned on invested cash balances and marketable securities. Interest income increased 46%, or \$8.1 million, to \$25.8 million for the year ended December 31, 2007 as compared to \$17.7 million for the year ended December 31, 2006. Interest income increased 315%, or \$13.4 million, to \$17.7 million for the year ended December 31, 2006 as compared to \$4.3 million for the year ended December 31, 2005. The increase in 2007 as compared to 2006 was primarily due to an increase in our total invested marketable securities as a result of an increase in our cash from operations. The increase in interest income in 2006 as compared to 2005 was also due to an increase in our invested marketable securities in 2006 as compared to 2005, an increase in cash from operations, as well as the investment of the \$202.1 million in net proceeds we received from our public equity offering of 12.0 million shares of our common stock in November 2005.

*Interest Expense.* Interest expense includes interest paid on our debt obligations as well as amortization of deferred financing costs. Interest expense decreased 3%, or \$85,000, to \$3.1 million for the year ended December 31, 2007 compared to \$3.2 million for the year ended December 31, 2006. Interest expense decreased 41%, or \$2.2 million, to \$3.2 million for the year ended December 31, 2006 compared to \$5.3 million for the year ended December 31, 2005. Based upon our outstanding indebtedness at December 31, 2007, we believe that interest expense on our debt obligations, including deferred financing amortization, will not exceed \$3.1 million in 2008.

*Other Income (Expense), net.* Other income (expense), net primarily represents net foreign exchange gains and losses incurred during the periods presented, as well as gains and losses on legal settlements. Other income, net decreased 8%, or \$43,000, to other income, net of \$527,000 for the year ended December 31, 2007 as compared to other income, net of \$570,000 for the year ended December 31, 2006. Other expense, net was \$507,000 for the year ended December 31, 2005. Other income, net for the year ended December 31, 2007 consisted of \$35,000 of foreign exchange gains and \$492,000 of net gains on legal settlements. Other income, net of \$570,000 for the year ended December 31, 2006 consisted of approximately \$90,000 of foreign exchange gains and \$480,000 of net gains on legal settlements. For the year ended December 31, 2005, other expense, net of \$507,000 consisted of approximately \$1.5 million of foreign exchange losses, offset by \$1.0 million of net gains on legal settlements. Other income (expense), net may fluctuate in the future based upon movements in foreign exchange rates, the outcome of legal proceedings and other events.

*Gain (Loss) on Investments, net.* During the year ended December 31, 2007, we recorded a net gain on investments of \$24,000 on the sale of marketable securities. During the years ended December 31, 2006 and 2005, we recorded a net gain on investments of \$261,000 and a net loss on investments of \$27,000, respectively, from the sale of marketable securities. We do not expect significant gains or losses on investments in 2008.

*Loss on Early Extinguishment of Debt.* Loss on early extinguishment of debt for the year ended December 31, 2005 was \$1.4 million as a result of our redemption of \$56.6 million in aggregate principal amount of our 5 1/2% convertible subordinated notes during 2005. This loss of \$1.4 million consisted of \$889,000 in premiums above par value paid to redeem such notes and \$481,000 of deferred financing costs associated with redeeming such notes prior to their maturity.

## [Table of Contents](#)

*Provision for (Benefit from) Income Taxes.* For the year ended December 31, 2007, our effective tax rate of 40.0% was higher than the 35% statutory federal income tax rate applicable to corporations due primarily to state income taxes, the effect of non-deductible stock-based compensation, and an increase in our tax valuation allowance for capital loss carryforwards; partially offset by the benefit recorded for research and development tax credits. For the year ended December 31, 2006, our effective tax rate of 41.5% was higher than the 35% statutory federal income tax rate due primarily to state income taxes and the effect of non-deductible stock-based compensation, partially offset by the benefit recorded for research and development tax credits. For the year ended December 31, 2005, our effective tax rate was a benefit of 363.5% and was higher than the 35% statutory federal income tax rate due primarily to a tax benefit of \$285.8 million recorded in connection with the release of substantially all of the valuation allowance recorded against net deferred tax assets.

Provision for income taxes increased by 64%, or \$26.2 million, to \$67.2 million for the year ended December 31, 2007 as compared to \$41.1 million during the year ended December 31, 2006. Benefit from income taxes was \$257.6 million for the year ended December 31, 2005. During 2005, in connection with the release of our deferred tax asset valuation allowance, we recorded an income tax benefit of \$285.8 million which was offset by provisions for income taxes primarily related to our alternative minimum tax obligations and income earned in profitable foreign jurisdictions. As a result of the release of the deferred tax asset valuation allowance in 2005, we recorded a provision for income taxes of \$41.1 million and \$67.2 million in 2006 and 2007, respectively.

Based upon our cumulative history of earnings over a twelve-quarter period and an assessment of our expected future results of operations, during the third quarter of 2005, we determined that it had become more likely than not that we would be able to realize a substantial portion of our United States and foreign NOL carryforward tax assets prior to their expiration. As a result, during 2005, we released a total of \$349.5 million of our United States and foreign deferred tax asset valuation allowance. Of such amount, \$285.8 million was recorded as an income tax benefit in our statement of operations; \$61.0 million was attributable to stock option exercises, which was recorded as an increase in additional paid-in capital on our balance sheet; and approximately \$2.7 million was recorded as a reduction to acquired goodwill and intangible assets.

As of December 31, 2007, we had a total valuation allowance of \$11.2 million. During the fourth quarter of 2007, we recorded a valuation allowance of \$6.7 million against capital loss carryforwards that are expected to expire unused and also reversed an existing valuation allowance of \$1.9 million related to certain state NOL carryforwards.

While we expect our consolidated annualized effective tax rate in 2008 to remain relatively consistent with 2007, this expectation does not take into consideration the effect of discrete items recorded as a result of our compliance with SFAS No. 123R or any potential tax planning strategies. Our effective tax rate could be materially different depending on the nature and timing of the disposition of incentive and other employee stock options. Further, our effective tax rate may fluctuate within a fiscal year and from quarter to quarter, due to items arising from discrete events, including settlements of tax audits and assessments, the resolution or identification of tax position uncertainties and acquisitions of other companies.

Because of the availability of the NOLs discussed above, a significant portion of our future provision for income taxes is expected to be a non-cash expense; consequently, the amount of cash paid with respect to income taxes is expected to be a relatively small portion of the total annualized tax expense during periods in which the NOLs are utilized. In determining our net deferred tax assets and valuation allowances, annualized effective tax rates, and cash paid for income taxes, management is required to make judgments and estimates about domestic and foreign profitability, the timing and extent of the utilization of NOL carryforwards, applicable tax rates, transfer pricing methodologies and tax planning strategies. Judgments and estimates related to our projections and assumptions are inherently uncertain; therefore, actual results could differ materially from our projections.

## [Table of Contents](#)

We have recorded certain tax reserves to address potential exposures involving our income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. Our estimate of the value of these tax reserves reflects assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the ultimate tax liability or benefit from of these matters may be materially greater or less than the amount that we have estimated.

### **Liquidity and Capital Resources**

To date, we have financed our operations primarily through the following transactions:

- private sales of capital stock and subordinated notes, which notes were repaid in 1999;
- an initial public offering of our common stock in October 1999, which generated net proceeds of \$217.6 million;
- the sale in June 2000 of an aggregate of \$300 million in principal amount of our 5 1/2% convertible subordinated notes, which generated net proceeds of \$290.2 million and were repaid or redeemed in full between December 2003 and September 2005;
- the sale in December 2003 and January 2004 of an aggregate of \$200 million in principal amount of our 1% convertible senior notes, which generated net proceeds of \$194.1 million;
- the public offering of 12.0 million shares of our common stock in November 2005, which generated net proceeds of \$202.1 million;
- proceeds from the exercise of stock awards; and
- cash generated by operations.

As of December 31, 2007, our cash, cash equivalents and marketable securities, which consisted of corporate debt securities, U.S. treasury and government agency securities, commercial paper, municipal debt securities, and municipal auction rate securities, totaled \$633.5 million. We place our cash investments in instruments that meet high credit quality standards, as specified in our investment policy. Our investment policy also limits the amount of our credit exposure to any one issue or issuer and seeks to manage these assets to achieve our goals of preserving principal, maintaining adequate liquidity at all times, and maximizing returns subject to our investment policy.

We held approximately \$280.0 million in municipal auction rate securities at December 31, 2007. These investments consisted solely of municipal debt securities; none of the auction rate securities in our portfolio are mortgage-backed. In mid-February 2008, many of our municipal auction rate securities experienced failed auctions. Of the \$280.0 million of auction rate securities we held at December 31, 2007, approximately \$145.5 million had experienced failed auctions through February 26, 2008. The continued uncertainty in the credit markets, which has caused our auction rate securities to fail, prevented us from liquidating certain of our holdings of auction rate securities. Based on our ability to access our cash and other short-term investments, our expected operating cash flows, and our other sources of cash, we do not anticipate the current lack of liquidity on these investments to have a material impact on our financial condition or results of operation.

Net cash provided by operating activities increased \$103.4 million to \$235.4 million for the year ended December 31, 2007 compared to \$132.0 million for the year ended December 31, 2006. Cash provided by operating activities increased \$49.2 million to \$132.0 million for the year ended December 31, 2006 compared to \$82.8 million for the year ended December 31, 2005. We expect that cash provided by operating activities will continue to increase as a result of an expected increase in cash collections related to higher revenues, partially

## [Table of Contents](#)

offset by an expected increase in operating expenses that require cash outlays such as salaries in connection with expected increases in headcount and higher commissions. The timing and amount of future working capital changes and our ability to manage our days sales outstanding will also affect the future amount of cash used in or provided by operating activities.

Net cash used in investing activities was \$226.7 million for the year ended December 31, 2007, compared to \$205.6 million for the year ended December 31, 2006. Cash provided by investing activities was \$183.8 million for the year ended December 31, 2005. Cash used in investing activities for 2007 reflects net purchases of short- and long-term available-for-sale securities of \$550.6 million and purchases of property and equipment of \$100.5 million, including the capitalization of internal-use software development costs related to our current and future service offerings. Amounts attributable to these purchases and investments were offset, in part, by the proceeds from the sales and maturities of short- and long-term marketable securities of \$415.8 million and \$7.9 million of net cash acquired in our acquisitions of Netli in March 2007 and Red Swoosh in April 2007. Additionally, cash used in investing activities during 2007 included a decrease of \$0.7 million in restricted investments previously held for security deposits. Cash used in investing activities for 2006 reflects net purchases of short- and long-term investments of \$395.9 million and purchases of property and equipment of \$69.3 million. In addition, approximately \$5.1 million of cash, including transaction costs, was used to acquire Nine Systems in December 2006. These purchases and investments were offset by the proceeds from the sales and maturities of short- and long-term securities of \$264.3 million and a decrease of \$0.4 million in restricted investments previously held for security deposits. Cash used in investing activities for the year ended December 31, 2005 reflects purchases of property and equipment of \$36.2 million and net purchases of short- and long-term marketable securities of \$215.6 million primarily related to the cash received from our equity financing in November 2005. These investments were offset by sales and maturities of short- and long-term securities of \$66.1 million, acquisition of \$1.7 million in cash through the acquisition of Speedera and a decrease of \$0.2 million in restricted investments previously held for security deposits. For 2008, we expect total capital expenditures, a component of cash used in investing activities, to be approximately 16% of total revenues.

Cash provided by financing activities was \$52.5 million for the year ended December 31, 2007, compared to \$60.4 million for the year ended December 31, 2006. Cash provided by financing activities was \$159.1 million for the year ended December 31, 2005. Cash provided by financing activities for the year ended December 31, 2007 included proceeds of \$31.6 million from the issuance of common stock upon the exercise of stock options and the sale of shares under our employee stock purchase plan. Cash provided by financing activities for the year ended December 31, 2007 also included \$20.9 million related to excess tax benefits resulting from the exercise of stock options. Cash provided by financing activities for the year ended December 31, 2006 included proceeds of \$27.9 million from the issuance of common stock upon the exercise of stock options and the sale of shares under our employee stock purchase plan. Cash provided by financing activities for the year ended December 31, 2006 also included \$32.5 million related to excess tax benefits resulting from the exercise of stock options. Cash provided by financing activities in 2005 reflects net proceeds from our November 2005 equity offering of \$202.1 million and proceeds from issuances of common stock under our equity compensation plans of \$14.5 million, offset by payments made to redeem \$56.6 million in principal amount of our outstanding 5 1/2% convertible subordinated notes and payments on capital lease obligations of \$0.8 million.

Changes in cash, cash equivalents and marketable securities are dependent upon changes in, among other things, working capital items such as deferred revenue, accounts payable, accounts receivable and various accrued expenses, as well as changes in our capital and financial structure, including debt repurchases and issuances, stock option exercises, sales of equity investments and similar events.

## [Table of Contents](#)

The following table represents the net inflows and outflows of cash, cash equivalents and marketable securities for the periods presented (in millions):

	<b>For the Year Ended December 31,</b>		
	<b>2007</b>	<b>2006</b>	<b>2005</b>
Cash, cash equivalents and marketable securities balance as of December 31, 2006, 2005 and 2004, respectively	\$ 434.5	\$ 314.1	\$ 108.4
Changes in cash, cash equivalents and marketable securities:			
Receipts from customers	627.8	412.3	271.7
Payments to vendors	(322.1)	(201.0)	(135.1)
Payments for employee payroll	(179.6)	(134.6)	(90.4)
Debt repurchases	—	—	(58.1)
Debt interest and premium payments	(2.0)	(2.0)	(5.1)
Stock option exercises and employee stock purchase plan issuances	31.6	27.9	14.5
Equity offering proceeds	—	—	202.1
Cash acquired (used) in business acquisitions	8.8	(4.5)	3.9
Interest income	25.8	17.7	4.3
Other	8.7	4.6	(2.1)
Net increase	<u>199.0</u>	<u>120.4</u>	<u>205.7</u>
Cash, cash equivalents and marketable securities balance as of December 31, 2007, 2006 and 2005, respectively	<u>\$ 633.5</u>	<u>\$ 434.5</u>	<u>\$ 314.1</u>

We believe, based on our present business plan, that our cash, cash equivalents and marketable securities and forecasted cash flows from operations will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 24 months. If the assumptions underlying our business plan regarding future revenue and expenses change or if unexpected opportunities or needs arise, we may seek to raise additional cash by selling equity or debt securities. We may not, however, be able to sell equity or debt securities on terms we consider reasonable or at all. If additional funds are raised through the issuance of equity or debt securities, these securities could have rights, preferences and privileges senior to those accruing to holders of common stock, and the terms of such debt could impose restrictions on our operations. The sale of additional equity or convertible debt securities would also result in additional dilution to our existing stockholders. See "Risk Factors" elsewhere in this annual report on Form 10-K for a discussion of additional factors that could affect our liquidity.

### **Contractual Obligations, Contingent Liabilities and Commercial Commitments**

The following table presents our contractual obligations and commercial commitments, as of December 31, 2007, over the next five years and thereafter (in millions):

<b>Contractual Obligations</b>	<b>Payments Due by Period</b>				
	<b>Total</b>	<b>Less than 12 Months</b>	<b>12 to 36 Months</b>	<b>36 to 60 Months</b>	<b>More than 60 Months</b>
1% convertible senior notes	\$ 199.9	\$ —	\$ —	\$ —	\$ 199.9
Interest on convertible notes outstanding assuming no early redemption or repurchases	52.0	2.0	4.0	4.0	42.0
Real estate operating leases	152.3	12.8	27.8	25.7	86.0
Bandwidth and co-location agreements	47.2	38.2	9.0	—	—
Vendor equipment purchase obligations	0.5	0.5	—	—	—
Open vendor purchase orders	14.3	14.3	—	—	—
<b>Total contractual obligations</b>	<u>\$466.2</u>	<u>\$ 67.8</u>	<u>\$ 40.8</u>	<u>\$ 29.7</u>	<u>\$ 327.9</u>

## [Table of Contents](#)

In accordance with FIN No. 48, as of December 31, 2007, we had unrecognized tax benefits of \$4.0 million, which included approximately \$0.8 million of accrued interest and penalties. We do not expect to recognize any of these tax benefits in 2008. We are not, however, able to provide a reasonable reliable estimate of the timing of future payments relating to these obligations.

### **Letters of Credit**

As of December 31, 2007, we had outstanding \$8.6 million in irrevocable letters of credit issued by us in favor of third-party beneficiaries, primarily related to facility leases. Approximately \$3.6 million of these letters of credit are collateralized by restricted marketable securities, of which \$3.1 million are classified as long-term marketable securities and \$0.5 million are classified as short-term marketable securities on our consolidated balance sheet at December 31, 2007. The restrictions on these marketable securities lapse as we fulfill our obligations or as such obligations expire under the terms of the letters of credit. These restrictions are expected to lapse at various times through May 2011. The remaining \$5.0 million irrevocable letters of credit are unsecured and are expected to remain in effect until December 2019.

### **Off-Balance Sheet Arrangements**

We have entered into various indemnification arrangements with third parties, including vendors, customers, landlords, our officers and directors, shareholders of acquired companies, joint venture partners and third party licensees of our technology. Generally, these indemnification agreements require us to reimburse losses suffered by third parties due to various events, such as lawsuits arising from patent or copyright infringement or our negligence. These indemnification obligations are considered off-balance sheet arrangements in accordance with FASB Interpretation 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." To date, we have not encountered material costs as a result of such obligations and have not accrued any significant liabilities related to such indemnification obligations in our financial statements. See Note 11 to our consolidated financial statements included in this annual report on Form 10-K for further discussion of these indemnification agreements.

The conversion features of our 1% convertible senior notes due December 15, 2033 are equity-linked derivatives. As such, we recognize these instruments as off-balance sheet arrangements. The conversion features associated with these notes would be accounted for as derivative instruments, except that they are indexed to our common stock and classified in stockholders' equity. Therefore, these instruments meet the scope exception of paragraph 11(a) of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," and are accordingly not accounted for as derivatives for purposes of SFAS No. 133. See Note 12 to our consolidated financial statements included in this annual report on Form 10-K for more information.

### **Litigation**

We are party to litigation which we consider routine and incidental to our business. Management does not expect the results of any of these actions to have a material adverse effect on our business, results of operations or financial condition. See "Legal Proceedings" elsewhere in this annual report on Form 10-K for further discussion on litigation.

### **Recent Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," or SFAS No. 157, which addresses how companies should measure fair value when they are required to use a fair value measure for recognition or disclosure purposes under generally accepted accounting principles. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS No. 157 is effective for financial statements issued for fiscal

---

## [Table of Contents](#)

years beginning after November 15, 2007 and should be applied prospectively, except in the case of a limited number of financial instruments that require retrospective application. In February 2008, the FASB deferred the implementation of SFAS No. 157 for certain non-financial assets and liabilities for fiscal years beginning after November 15, 2008. We are currently evaluating the potential impact of SFAS No. 157 on our financial position and results of operations.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities — including an amendment of SFAS 115,” or SFAS No. 159. The new statement allows entities to choose, at specified election dates, to measure eligible financial assets and liabilities at fair value that are not otherwise required to be measured at fair value. If a company elects the fair value option for an eligible item, changes in that item’s fair value in subsequent reporting periods must be recognized in current earnings. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. We are currently evaluating the potential impact of SFAS No. 159 on our financial position and results of operations.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), “Business Combinations,” or SFAS No. 141R. This statement establishes principles and requirements for how the acquirer in a business combination (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree, (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for fiscal years beginning after December 15, 2008. We are currently evaluating the potential impact of SFAS No. 141R on our financial position and results of operations.



**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Our exposure to market risk for changes in interest rates relates primarily to our debt and investment portfolio. In our investment portfolio, we do not use derivative financial instruments. We place our investments with high quality issuers and, by policy, limit the amount of risk by investing primarily in money market funds, United States Treasury obligations, high-quality corporate and municipal obligations and certificates of deposit. Our investment policy also limits the amount of our credit exposure to any one issue or issuer and seeks to manage these assets to achieve our goals of preserving principal, maintaining adequate liquidity at all times and maximizing returns subject to our investment policy. Our investment portfolio at December 31, 2007 included minimal positions in two asset-backed securities that were acquired during 2005. We have received the return of the majority of the principal and do not expect to realize a loss on these positions.

We held approximately \$280.0 million in municipal auction rate securities at December 31, 2007. Such investments consisted solely of municipal debt securities; none of the auction rate securities in our portfolio are mortgage-backed. Through February 26, 2008, approximately \$145.5 million of the municipal auction rate securities we held had experienced failed auctions. The continued uncertainty in the credit markets, which caused our auction rate securities to fail, prevented us from liquidating certain of our holdings of auction rate securities. Based on our ability to access our cash and other short-term investments, our expected operating cash flows, and our other sources of cash, we do not anticipate the current lack of liquidity on these investments to have a material impact on our financial condition or results of operation.

Our 1% convertible senior notes are subject to changes in market value. Under certain conditions, the holders of our 1% convertible senior notes may require us to redeem the notes on or after December 15, 2010. As of December 31, 2007, the aggregate outstanding principal amount and the fair value of the 1% convertible senior notes were \$199.9 million and \$227.5 million, respectively.

We have operations in Europe, Asia, Australia and India. As a result, we are exposed to fluctuations in foreign exchange rates. Additionally, we may continue to expand our operations globally and sell to customers in foreign locations, which may increase our exposure to foreign exchange fluctuations. We do not have any foreign hedge contracts.

[Table of Contents](#)

**Item 8. Financial Statements and Supplementary Data**

**AKAMAI TECHNOLOGIES, INC.  
Index to Consolidated Financial Statements and Schedule**

	<u>Page</u>
<a href="#">Report of Independent Registered Public Accounting Firm</a>	43
<a href="#">Consolidated Balance Sheets as of December 31, 2007 and 2006</a>	44
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2007, 2006 and 2005</a>	45
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2007, 2006 and 2005</a>	46
<a href="#">Consolidated Statements of Stockholders' Equity for the years ended December 31, 2007, 2006 and 2005</a>	47
<a href="#">Notes to Consolidated Financial Statements</a>	49
<b>Schedule:</b>	
<a href="#">Schedule II — Valuation and Qualifying Accounts</a>	S-1

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of Akamai Technologies, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Akamai Technologies, Inc. and its subsidiaries at December 31, 2007 and December 31, 2006, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2007 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 18 to the consolidated financial statements, the Company changed the manner in which it accounts for uncertain tax positions in 2007.

As discussed in Note 16 to the consolidated financial statements, the Company changed the manner in which it accounts for share-based compensation in 2006.

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

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

/s/ PricewaterhouseCoopers LLP

Boston, Massachusetts  
February 29, 2008

**AKAMAI TECHNOLOGIES, INC.**  
**CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2007	2006
	(in thousands, except share data)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 145,078	\$ 80,595
Marketable securities (including restricted securities of \$511 and \$1,105 at December 31, 2007 and 2006, respectively)	401,091	189,246
Accounts receivable, net of reserves of \$10,391 and \$5,468 at December 31, 2007 and 2006, respectively	118,944	86,232
Prepaid expenses and other current assets	23,782	13,252
Deferred income tax assets	6,147	5,348
Total current assets	695,042	374,673
Property and equipment, net	134,546	86,623
Marketable securities (including restricted securities of \$3,102 at December 31, 2007 and 2006)	87,339	164,613
Goodwill	361,637	239,580
Other intangible assets, net	87,500	58,683
Deferred income tax assets, net	285,463	319,504
Other assets	4,520	4,256
Total assets	<u>\$ 1,656,047</u>	<u>\$ 1,247,932</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 18,540	\$ 22,630
Accrued expenses and other current liabilities	56,233	58,083
Deferred revenue	12,995	6,731
Accrued restructuring	607	1,820
Total current liabilities	88,375	89,264
Deferred revenue	1,453	794
Other liabilities	7,812	3,181
1% convertible senior notes	199,855	200,000
Total liabilities	297,495	293,239
Commitments, contingencies and guarantees (Note 11)		
Stockholders' equity:		
Preferred stock, \$0.01 par value; 5,000,000 shares authorized; 700,000 shares designated as Series A Junior Participating Preferred Stock; no shares issued or outstanding at December 31, 2007 and 2006	—	—
Common stock, \$0.01 par value; 700,000,000 shares authorized; 166,212,638 shares issued and outstanding at December 31, 2007; 160,298,922 shares issued and outstanding at December 31, 2006	1,662	1,603
Additional paid-in capital	4,446,703	4,145,627
Accumulated other comprehensive income, net	3,053	1,296
Accumulated deficit	(3,092,866)	(3,193,833)
Total stockholders' equity	1,358,552	954,693
Total liabilities and stockholders' equity	<u>\$ 1,656,047</u>	<u>\$ 1,247,932</u>

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

**AKAMAI TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	For the Years Ended December 31,		
	2007	2006	2005
	(in thousands, except per share amounts)		
<b>Revenues</b>	<b>\$ 636,406</b>	<b>\$ 428,672</b>	<b>\$ 283,115</b>
<b>Cost and operating expenses:</b>			
Cost of revenues	167,444	94,100	55,655
Research and development	44,141	33,102	18,071
Sales and marketing	147,556	119,689	77,876
General and administrative	121,101	90,191	53,014
Amortization of other intangible assets	11,414	8,484	5,124
Restructuring benefit	(178)	—	—
Total cost and operating expenses	<u>491,478</u>	<u>345,566</u>	<u>209,740</u>
<b>Income from operations</b>	<b>144,928</b>	<b>83,106</b>	<b>73,375</b>
Interest income	25,815	17,703	4,263
Interest expense	(3,086)	(3,171)	(5,330)
Other income (expense), net	527	570	(507)
Gain (loss) on investments, net	24	261	(27)
Loss on early extinguishment of debt	(3)	—	(1,370)
Income before provision for (benefit from) income taxes	168,205	98,469	70,404
Provision for (benefit from) income taxes	67,238	41,068	(257,594)
<b>Net income</b>	<b><u>\$ 100,967</u></b>	<b><u>\$ 57,401</u></b>	<b><u>\$ 327,998</u></b>
Net income per weighted average share:			
Basic	\$ 0.62	\$ 0.37	\$ 2.41
Diluted	\$ 0.56	\$ 0.34	\$ 2.11
Shares used in per share calculations:			
Basic	162,959	155,366	136,167
Diluted	185,094	176,767	156,944

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

**AKAMAI TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	For the Years Ended December 31,		
	2007	2006	2005
	(in thousands)		
<b>Cash flows from operating activities:</b>			
Net income	\$ 100,967	\$ 57,401	\$ 327,998
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	71,895	40,585	24,153
Amortization of deferred financing costs	840	841	1,017
Stock-based compensation	66,555	49,556	3,849
Provision for (benefit from) deferred income taxes, net, including release of deferred tax asset valuation allowance in 2005	65,272	38,510	(258,669)
Provision for doubtful accounts	2,901	830	1,147
Excess tax benefit from stock-based compensation	(20,862)	(32,511)	—
Non-cash portion of loss on early extinguishment of debt	3	—	481
Non-cash portion of restructuring benefit	(178)	—	—
Foreign currency (gains) losses, net	(1,565)	(756)	814
Losses (gains) on investments and disposal of property and equipment, net	23	(228)	36
Changes in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable	(31,937)	(28,020)	(19,455)
Prepaid expenses and other current assets	(12,009)	(8,062)	1,483
Accounts payable, accrued expenses and other current liabilities	(12,965)	15,382	(1,032)
Deferred revenue	5,297	343	3,267
Accrued restructuring	(2,722)	(1,970)	(1,816)
Other non-current assets and liabilities	3,874	66	(475)
<b>Net cash provided by operating activities</b>	<b>235,389</b>	<b>131,967</b>	<b>82,798</b>
<b>Cash flows from investing activities:</b>			
Cash of acquired businesses, net of cash paid (cash paid for acquisitions, net of cash acquired)	7,875	(5,127)	1,717
Purchases of property and equipment	(81,405)	(56,752)	(26,947)
Capitalization of internal-use software costs	(19,057)	(12,576)	(9,213)
Purchases of short- and long-term marketable securities	(550,614)	(395,871)	(215,633)
Proceeds from sales and maturities of short- and long-term marketable securities	415,771	264,308	66,099
Decrease in restricted investments held for security deposits	723	400	202
<b>Net cash used in investing activities</b>	<b>(226,707)</b>	<b>(205,618)</b>	<b>(183,775)</b>
<b>Cash flows from financing activities:</b>			
Proceeds from the issuance of common stock under stock option and employee stock purchase plans	31,621	27,918	14,462
Excess tax benefits from stock-based compensation	20,862	32,511	—
Proceeds from equity offering, net of issuance costs	—	—	202,068
Payments on capital leases	(23)	—	(818)
Repurchase of 5 1/2% convertible subordinated notes	—	—	(56,614)
<b>Net cash provided by financing activities</b>	<b>52,460</b>	<b>60,429</b>	<b>159,098</b>
Effect of exchange rate changes on cash and cash equivalents	3,341	2,025	(1,647)
Net increase (decrease) in cash and cash equivalents	64,483	(11,197)	56,474
Cash and cash equivalents at beginning of year	80,595	91,792	35,318
Cash and cash equivalents at end of year	<u>\$ 145,078</u>	<u>\$ 80,595</u>	<u>\$ 91,792</u>
<b>Supplemental disclosure of cash flow information:</b>			
Cash paid for interest	\$ 2,005	\$ 2,005	\$ 5,704
Cash paid for income taxes	3,147	3,455	1,494
<b>Non-cash financing and investing activities:</b>			
Capitalization of stock-based compensation, net of impairments	\$ 6,353	\$ 4,262	\$ —
Acquisition of equipment through capital leases	—	—	586
Common stock and vested stock options issued in connection with acquisitions of businesses	171,957	152,560	130,510
Common stock issued upon conversion of 1% convertible senior notes	145	—	—
Common stock returned upon settlement of escrow claims related to prior business acquisitions	(177)	—	—
Value of deferred compensation recorded for issuance of deferred stock units and restricted stock	—	—	930

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

**AKAMAI TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**For the Years Ended December 31, 2007, 2006 and 2005**  
**(in thousands, except share data)**

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Deferred Compensation</u>	<u>Accu- mulated Other Compre- hensive Income</u>	<u>Accu- mulated Deficit</u>	<u>Total Stock- holders' Equity</u>	<u>Compre- hensive Income</u>
	<u>Shares</u>	<u>Amount</u>						
<b>Balance at December 31, 2004</b>	126,771,799	\$ 1,268	\$3,451,578	\$ (937)	\$ 1,392	\$(3,579,232)	\$(125,931)	
Comprehensive income:								
Net income						327,998	327,998	\$ 327,998
Foreign currency translation adjustment					(855)		(855)	(855)
Change in market value of investments					(66)		(66)	(66)
Comprehensive income								<u>\$ 327,077</u>
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	3,086,158	31	9,815				9,846	
Issuance of common stock under employee stock purchase plan	475,776	5	4,611				4,616	
Deferred compensation for the issuance of deferred stock units			930	(930)				
Repurchase and cancellation of restricted stock due to employee terminations	(250)	—	(3)	3				
Issuance of common stock for acquisition of a business	10,588,609	105	121,431				121,536	
Stock options issued in acquisition of a business			18,239	(9,265)			8,974	
Acceleration of employee stock option vesting				181			181	
Issuance of common stock in equity offering, net of offering costs	12,000,000	120	201,948				202,068	
Stock-based compensation from awards issued to non-employees for services rendered			257				257	
Release of deferred tax asset valuation allowance			72,179				72,179	
Amortization of deferred compensation				3,411			3,411	
<b>Balance at December 31, 2005</b>	<u>152,922,092</u>	<u>1,529</u>	<u>3,880,985</u>	<u>(7,537)</u>	<u>471</u>	<u>(3,251,234)</u>	<u>624,214</u>	
Comprehensive income:								
Net income						57,401	57,401	\$ 57,401
Foreign currency translation adjustment					756		756	756
Change in market value of investments					69		69	69
Comprehensive income								<u>\$ 58,226</u>
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	4,182,931	42	21,383				21,425	
Issuance of common stock under employee stock purchase plan	295,113	3	6,490				6,493	
Stock-based compensation			53,338				53,338	
Issuance of common stock for acquisition of a business	2,664,650	27	133,463				133,490	
Stock options issued in acquisition of a business			19,070				19,070	
Other	234,136	2	(2)					
Reclassification of deferred compensation to additional paid-in capital upon adoption of SFAS No. 123R			(7,537)	7,537				
Tax benefits from the exercise of stock options and vesting of restricted common stock			37,944				37,944	
Stock-based compensation from awards issued to non-employees for services rendered			493				493	
<b>Balance at December 31, 2006</b>	<u>160,298,922</u>	<u>1,603</u>	<u>4,145,627</u>	<u>—</u>	<u>1,296</u>	<u>(3,193,833)</u>	<u>954,693</u>	

**AKAMAI TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY—(Continued)**  
**For the Years Ended December 31, 2007, 2006 and 2005**  
**(in thousands, except share data)**

	Common Stock		Additional Paid-in Capital	Deferred Compensation	Accu- mulated Other Compre- hensive Income	Accu- mulated Deficit	Total Stock- holders' Equity	Compre- hensive Income
	Shares	Amount						
<b>Balance at December 31, 2006</b>	160,298,922	1,603	4,145,627	—	1,296	(3,193,833)	954,693	
Comprehensive income:								
Net income						100,967	100,967	\$ 100,967
Foreign currency translation adjustment					1,343		1,343	1,343
Change in market value of investments					414		414	414
Comprehensive income								<u>\$ 102,724</u>
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	2,803,496	28	21,930				21,958	
Issuance of common stock under employee stock purchase plan	279,356	3	9,667				9,670	
Stock-based compensation			72,770				72,770	
Common stock returned upon settlement of escrow claims related to prior business acquisitions	(3,525)	—	(177)				(177)	
Issuance of common stock for acquisitions of businesses	2,825,010	28	157,808				157,836	
Stock options issued in acquisitions of businesses			14,121				14,121	
Issuance of common stock upon conversion of 1% convertible senior notes	9,379	—	145				145	
Tax benefits from the exercise of stock options and vesting of restricted common stock			24,672				24,672	
Stock-based compensation from awards issued to non-employees for services rendered			140				140	
<b>Balance at December 31, 2007</b>	<u>166,212,638</u>	<u>\$ 1,662</u>	<u>\$4,446,703</u>	<u>\$ —</u>	<u>\$ 3,053</u>	<u>\$(3,092,866)</u>	<u>\$1,358,552</u>	

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



**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Nature of Business and Basis of Presentation:**

Akamai Technologies, Inc. (“Akamai” or the “Company”) provides services for accelerating and improving the delivery of content and applications over the Internet. Akamai’s globally distributed platform comprises thousands of servers in hundreds of networks in approximately 70 countries. The Company was incorporated in Delaware in 1998 and is headquartered in Cambridge, Massachusetts. Akamai currently operates in one industry segment: providing services for accelerating and improving the delivery of content and applications over the Internet.

The accompanying consolidated financial statements include the accounts of Akamai and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in the accompanying financial statements.

**2. Summary of Significant Accounting Policies:**

***Use of Estimates***

The Company prepares its consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. These principles require management to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, together with amounts disclosed in the related notes to the consolidated financial statements. Actual results and outcomes may differ from management’s estimates, judgments and assumptions. Significant estimates, judgments and assumptions used in these financial statements include, but are not limited to, those related to revenues, accounts receivable and related reserves, contingencies, useful lives and realizability of long-term assets and goodwill, capitalized software, income and other taxes, and the fair value of stock-based compensation. Estimates are periodically reviewed in light of changes in circumstances, facts and experience. The effects of material revisions in estimates are reflected in the consolidated financial statements prospectively from the date of the change in estimate.

***Revenue Recognition***

The Company recognizes service revenues in accordance with the Securities and Exchange Commission’s (the “Commission”) Staff Accounting Bulletin No. 104, “Revenue Recognition,” and the Financial Accounting Standards Board’s (“FASB”) Emerging Issues Task Force Issue No. 00-21, “Revenue Arrangements with Multiple Deliverables.” Revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability of the resulting receivable is reasonably assured.

Akamai primarily derives revenues from the sale of services to customers executing contracts having terms of one year or longer. These contracts generally commit the customer to a minimum monthly or annual level of usage and specify the rate at which the customer must pay for actual usage above the monthly or annual minimum. For these services, Akamai recognizes the monthly minimum as revenue each month provided that an enforceable contract has been signed by both parties, the service has been delivered to the customer, the fee for the service is fixed or determinable and collection is reasonably assured. Should a customer’s usage of Akamai services exceed the monthly or annual minimum, Akamai recognizes revenue for such excess in the period of the usage. For annual or other non-monthly period revenue commitments, the Company recognizes revenue monthly based upon the customer’s actual usage each month and only recognizes any remaining committed amount for the applicable period in the last month thereof.

**AKAMAI TECHNOLOGIES, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The Company typically charges its customers an installation fee when the services are first activated. The installation fees are recorded as deferred revenue and recognized as revenue ratably over the estimated life of the customer arrangement. The Company also derives revenue from services sold as discrete, non-recurring events or based solely on usage. For these services, the Company recognizes revenue after an enforceable contract has been signed by both parties, the fee is fixed or determinable, the event or usage has occurred and collection is reasonably assured.

When more than one element is contained in a single arrangement, the Company allocates revenue between the elements based on each element's relative fair value, provided that each element meets the criteria as a separate unit of accounting. An item is considered a separate unit of accounting if it has value to the customer on a standalone basis and there is objective and verifiable evidence of the fair value of the separate element. Fair value is generally determined based upon the price charged when the element is sold separately. If the fair value of each element cannot be objectively determined, the total value of the arrangement is recognized ratably over the entire service period to the extent that all services have begun to be provided at the outset of the period. For most multi-element service arrangements to date, the fair value of each element has not been objectively determinable. Therefore, all revenue under these arrangements has been recognized ratably over the applicable service period provided that all services have begun to be provided at the outset of the period.

At the inception of a customer contract for service, the Company makes an assessment as to that customer's ability to pay for the services provided. The Company bases its assessment on a combination of factors, including the successful completion of a credit check or financial review, its collection experience with the customer and other forms of payment assurance. Upon the completion of these steps, the Company recognizes revenue monthly in accordance with its revenue recognition policy. If the Company subsequently determines that collection from the customer is not reasonably assured, the Company records an allowance for doubtful accounts and bad debt expense for all of that customer's unpaid invoices and ceases recognizing revenue for continued services provided until cash is received from the customer. Changes in the Company's estimates and judgments about whether collection is reasonably assured would change the timing of revenue or amount of bad debt expense that the Company recognizes.

The Company also sells its services through a reseller channel. Assuming all other revenue recognition criteria are met, the Company recognizes revenue from reseller arrangements based on the reseller's contracted non-refundable minimum purchase commitments over the term of the contract, plus amounts sold by the reseller to its customers in excess of the minimum commitments. These excess minimum commitments are recognized as revenue in the period in which the service is provided.

In limited instances (resulting in less than 1% of total revenue in each year reported), the Company also licenses software under perpetual and term license agreements. The Company applies the provisions of Statement of Position ("SOP") 97-2, "Software Revenue Recognition," as amended by SOP 98-9, "Modifications of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions." As prescribed by this guidance, the Company applies the residual method of accounting. The residual method requires that the portion of the total arrangement fee attributable to undelivered elements, as indicated by vendor-specific objective evidence of fair value, is deferred and subsequently recognized when delivered. The difference between the total arrangement fee and the amount deferred for the undelivered elements is recognized as revenue related to the delivered elements, so long as all other revenue recognition criteria of SOP 97-2 are met.

Akamai recognizes revenue from fixed-fee arrangements and software arrangements that require significant customization or modification using the percentage-of-completion method in accordance with Accounting

**AKAMAI TECHNOLOGIES, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Research Bulletin (“ARB”) No. 45, “Long-Term Construction-Type Contracts,” and with the applicable guidance provided by SOP 81-1, “Accounting for Performance of Construction-Type and Certain Production-Type Contracts.” The Company generally recognizes revenue under these arrangements based on the percentage of cost incurred to date compared to the estimated total cost to complete the project. In certain customer arrangements, the Company recognizes revenue based on the progress made toward achieving milestones under the contract. The impact of any change in estimate is recorded prospectively from the date of the change. At the outset of a fixed-fee arrangement, if the Company is not able to estimate the total cost to complete, nor able to measure progress towards the achievement of contract milestones, the Company accounts for the arrangement using the completed-contract method of accounting. Under this method, the Company recognizes revenue when the contract is complete and there are no remaining costs or deliverables. In the event that the estimated total cost on a fixed-fee contract indicates a loss, the Company will record the loss immediately.

From time to time, the Company enters into contracts to sell its services or license its technology to unrelated enterprises at or about the same time that it enters into contracts to purchase products or services from the same enterprise. If the Company concludes that these contracts were negotiated concurrently, the Company records as revenue only the net cash received from the vendor, unless the product or service received has a separate identifiable benefit and the fair value to the Company of the vendor’s product or service can be established objectively.

The Company may from time to time resell licenses or services of third parties. The Company records revenue for these transactions on a gross basis when the Company has risk of loss related to the amounts purchased from the third party and the Company adds value to the license or service, such as by providing maintenance or support for such license or service. If these conditions are present, the Company recognizes revenue when all other revenue recognition criteria are satisfied.

Deferred revenue includes amounts billed to customers for which revenue has not been recognized. Deferred revenue primarily consists of the unearned portion of monthly billed service fees; prepayments made by customers for future periods; deferred installation and activation set-up fees; and amounts billed under extended payment terms.

***Cost of Revenues***

Cost of revenues consists primarily of fees paid to network providers for bandwidth and for housing servers in third-party network data centers, also known as co-location costs. Cost of revenues also includes network operation employee costs, network storage costs, cost of software licenses, depreciation of network equipment used to deliver the Company’s services, amortization of network-related internal-use software and costs for the production of live events. The Company enters into contracts for bandwidth with third-party network providers with terms typically ranging from several months to two years. These contracts generally commit Akamai to pay minimum monthly fees plus additional fees for bandwidth usage above the committed level. In some circumstances, Internet service providers (“ISPs”) make available to Akamai rack space for the Company’s servers and access to their bandwidth at discounted or no cost. In exchange, the ISP and its customers benefit by receiving content through a local Akamai server resulting in better content delivery. The Company does not consider these relationships to represent the culmination of an earnings process. Accordingly, the Company does not recognize as revenue the value to the ISPs associated with the use of Akamai’s servers, nor does the Company recognize as expense the value of the rack space and bandwidth received at discounted or no cost.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

***Accounting for Stock-Based Compensation***

On January 1, 2006, the Company adopted Statement of Financial Accounting Standard (“SFAS”) No. 123R, “Share-Based Payment” (“SFAS No. 123R”). SFAS No. 123R requires recognizing compensation costs for all share-based payment awards made to employees and directors based upon the awards’ grant date fair value. The standard covers employee stock options, restricted stock, restricted stock units, deferred stock units and employee stock purchases related to the Company’s employee stock purchase plan. Previously, the Company elected to account for these share-based payment awards under Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB No. 25”) and elected to only disclose the impact of expensing the fair value of stock options in the notes to its financial statements. The Company adopted SFAS No. 123R using the modified prospective transition method, which does not result in the restatement of results of prior periods. Accordingly, the results of operations for 2006 and subsequent periods are not comparable to the Company’s historical results of operations prior to 2006.

Under the modified prospective transition method, SFAS No. 123R applies to new equity awards and to equity awards modified, repurchased or canceled after the adoption date of January 1, 2006. Additionally, compensation costs for the portion of awards granted prior to the adoption date for which the requisite service was not rendered as of the adoption date are recognized as the requisite service is rendered. Compensation costs for that portion of awards are based on the grant-date fair value of those awards as calculated in the prior period pro forma disclosures under SFAS No. 123, “Accounting for Stock-Based Compensation” (“SFAS No. 123”). Changes to the grant-date fair value of equity awards granted before the effective date are precluded. The compensation cost for those earlier awards is attributed to periods beginning on or after the adoption date using the attribution method that was used under SFAS No. 123, which was the straight-line method. The Company estimates an expected forfeiture rate which is factored into the determination of the Company’s quarterly expense. Deferred compensation related to those earlier awards was eliminated against additional paid-in capital in fiscal 2006. SFAS No. 123R also changes the reporting of tax-related amounts within the statement of cash flows. The excess amount of windfall tax benefits resulting from stock-based compensation is reported as financing inflows.

For stock options, the Company has selected the Black-Scholes option-pricing model to determine the fair value of stock option awards. For stock options, restricted stock, restricted stock units and deferred stock units, the Company recognizes compensation cost on a straight-line basis over the awards’ vesting periods for those awards that contain only a service vesting feature. For awards with a performance condition vesting feature, the Company recognizes compensation cost on a graded-vesting basis over the awards’ expected vesting periods.

***Research and Development Costs***

Research and development costs consist primarily of payroll and related personnel costs for the design, development, deployment, testing, operation and enhancement of the Company’s services and network. Costs incurred in the development of the Company’s services are expensed as incurred, except certain software development costs eligible for capitalization. Costs incurred during the application development stage of internal-use software projects, such as those used in the Company’s network operations, are capitalized in accordance with SOP 98-1, “Accounting for the Costs of Computer Software Developed or Obtained for Internal Use.” Capitalized costs include external consulting fees and payroll and payroll-related costs for employees in the Company’s development and information technology groups who are directly associated with, and who devote time to, the Company’s internal-use software projects during the application development stage. Capitalization begins when the planning stage is complete and the Company commits resources to the software project. Capitalization ceases when the software has been tested and is ready for its intended use. Amortization of

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

the asset commences when the software is complete and placed in service. The Company amortizes completed internal-use software to cost of revenues over an estimated life of two years. Costs incurred during the planning, training and post-implementation stages of the software development life-cycle are expensed as incurred. Costs related to upgrades and enhancements of existing internal-use software that increase the functionality of the software are also capitalized.

***Concentrations of Credit Risk and Fair Value of Financial Instruments***

The amounts reflected in the consolidated balance sheets for cash and cash equivalents, accounts receivable and accounts payable approximate their fair value due to their short-term maturities. The fair value and the carrying amount of the Company's 1% convertible senior notes were \$227.5 million and \$199.9 million, respectively, as of December 31, 2007. The fair value is based upon the trading price of the debt. The Company maintains the majority of its cash, cash equivalents and marketable securities balances principally with domestic financial institutions that the Company believes to be of high credit standing. The Company believes that, as of December 31, 2007, its concentration of credit risk related to cash equivalents and marketable securities was not significant. (See Note 21 for further discussion of subsequent events related to certain investments held by the Company). Concentrations of credit risk with respect to accounts receivable are primarily limited to certain customers to which the Company makes substantial sales. The Company's customer base consists of a large number of geographically dispersed customers diversified across several industries. To reduce risk, the Company routinely assesses the financial strength of its customers. Based on such assessments, the Company believes that its accounts receivable credit risk exposure is limited. For the years ended December 31, 2007, 2006 and 2005, no customer accounted for more than 10% of total revenues. As of December 31, 2007 and 2006, no customer had an account receivable balance greater than 10% of total accounts receivable. The Company believes that, as of December 31, 2007, its concentration of credit risk related to accounts receivable was not significant.

***Taxes***

The Company's provision for income taxes is comprised of a current and a deferred portion. The current income tax provision is calculated as the estimated taxes payable or refundable on tax returns for the current year. The deferred income tax provision is calculated for the estimated future tax effects attributable to temporary differences and carryforwards using expected tax rates in effect in the years during which the differences are expected to reverse or the carryforwards are expected to be realized.

The Company currently has significant deferred tax assets consisting of net operating loss ("NOL") carryforwards, tax credit carryforwards and deductible temporary differences. Management periodically weighs the positive and negative evidence to determine if it is more likely than not that some or all of the deferred tax assets will not be realized. During 2005, management determined it was more likely than not that substantially all of the deferred tax assets would be realized, and, accordingly released substantially all of its valuation allowance. This decision was based on the Company's cumulative history of earnings before taxes for financial reporting purposes over a 12-quarter period and on the projections of expected future taxable income at that time.

In November 2005, the FASB issued FASB Staff Position SFAS 123R-3, "Transition Election to Accounting for the Tax Effect of Share-Based Payment Awards." The Company elected to adopt the modified prospective transition method for calculating the tax effects of stock-based compensation pursuant to SFAS No. 123R. Under the modified prospective transition method, no adjustment is made to the deferred tax balances associated with stock-based payments that continue to be classified as equity awards. Additionally, the Company elected to use the "long-form method," as provided in paragraph 81 of SFAS No. 123R to determine the pool of windfall tax benefits upon adoption of SFAS 123R. The long-form method required the Company to

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

analyze the book and tax compensation for each award separately as if it had been issued following the recognition provisions of SFAS No. 123, subject to adjustments for NOL carryforwards.

The Company has recorded certain tax reserves to address potential exposures involving its income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. The Company's estimate of the value of its tax reserves contains assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the costs of the ultimate tax liability or benefit from these matters may be materially more or less than the amount that the Company estimated.

In June 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The Company adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, the Company had unrecognized tax benefits of \$2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48. As of December 31, 2007, the Company had unrecognized tax benefits of \$4.0 million, including accrued interest and penalties (see Note 18).

***Foreign Currency Translation***

Akamai has determined that the functional currency of its foreign subsidiaries is each respective subsidiary's local currency. The assets and liabilities of these subsidiaries are translated at the applicable exchange rate as of the balance sheet date and revenues and expenses are translated at an average rate over the period. Resulting currency translation adjustments are recorded as a component of other comprehensive income within stockholders' equity. Gains and losses on inter-company transactions are recorded in other income (expense), net. For the years ended December 31, 2007, 2006 and 2005, the Company recorded foreign currency gain (loss) of approximately \$35,000, \$90,000 and (\$1.5) million, respectively.

***Cash, Cash Equivalents and Marketable Securities***

Cash and cash equivalents consist of cash held in bank deposit accounts and short-term, highly liquid investments with remaining maturities of three months or less at the date of purchase. Cash equivalents are carried at amortized cost plus accrued interest, which approximates fair value. Total cash and cash equivalents were \$633.5 million and \$434.5 million at December 31, 2007 and 2006, respectively.

Short-term marketable securities consist of high quality corporate and government securities with remaining maturities of more than three months at the date of purchase and less than one year from the date of the balance sheet. Long-term marketable securities consist of high quality corporate and government securities with maturities of more than one year from the date of the balance sheet. Short-term and long-term marketable securities include investments that are restricted as to use. As of December 31, 2007 and 2006, the Company had \$3.6 million and \$4.2 million, respectively, of restricted marketable securities generally representing security for irrevocable letters of credit related to facility leases.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company classifies all debt securities and equity securities with readily determinable market values as “available for sale” in accordance with SFAS No. 115, “Accounting for Certain Investments in Debt and Equity Securities.” These investments are classified as marketable securities on the consolidated balance sheet and are carried at fair market value, with unrealized gains and losses considered to be temporary in nature reported as a separate component of other comprehensive income (loss). Investments in securities of private companies are initially carried at cost. The Company reviews all investments for reductions in fair value that are other-than-temporary. When such reductions occur, the cost of the investment is adjusted to fair value through recording a loss on investments in the consolidated statement of operations. Gains and losses on investments are calculated on the basis of specific identification.

The fair value of the Company’s investments and marketable securities is generally determined from quoted market prices based upon transactions in active markets. The Company also has investments in auction rate securities that consist entirely of municipal debt securities, which are recorded in its financial statements at cost, which approximates fair market value (unless auction fails) due to their variable interest rates, which reset through an auction process typically every 28 days. This auction mechanism generally allows existing investors to continue to own their securities with a revised interest rate based on the auction or liquidate their holdings by selling these auction rate securities at par value. Because of these short intervals between interest reset dates, the Company monitors the auctions to ensure they are successful, which provides evidence that the recorded values of these investments approximate their fair values. To the extent an auction were to fail such that the securities were deemed to be not liquid, the Company would need to seek other alternatives to determine the fair value of these securities, which may not be based on quoted market transactions. In addition, due to the Company’s inability to quickly liquidate these investments, the Company may reclassify those investments with failed auctions as long-term assets in its consolidated balance sheet (see Note 21).

Investments and marketable securities are considered to be impaired when a decline in fair value below cost basis is determined to be other than temporary. The Company periodically evaluates whether a decline in fair value below cost basis is other than temporary by considering available evidence regarding these investments including, among other factors; the duration of the period that, and extent to which, the fair value is less than cost basis; the financial health of and business outlook for the issuer, including industry and sector performance and operational and financing cash flow factors; and overall market conditions and trends. Once a decline in fair value is determined to be other than temporary, a write-down is recorded and a new cost basis in the security is established. Assessing the above factors involves inherent uncertainty. Write-downs, if recorded, could be materially different from the actual market performance of investments and marketable securities in the Company’s portfolio, if, among other things, relevant information related to its investments and marketable securities was not publicly available or other factors not considered by the Company would have been relevant to the determination of impairment.

***Accounts Receivable and Related Reserves***

The Company’s accounts receivable balance includes unbilled amounts that represent revenues recorded for customers that are typically billed monthly.

The Company records reserves against its accounts receivable balance. These reserves consist of allowances for doubtful accounts and reserves for cash-basis customers. Increases and decreases in the allowance for doubtful accounts are included as a component of general and administrative expenses. The Company’s reserve for cash-basis customers increases as services are provided to customers where collection is no longer assured. Increases to the reserve for cash-basis customers are recorded as reductions of revenues. The reserve decreases and revenue is recognized when and if cash payments are received.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Estimates are used in determining these reserves and are based upon the Company's review of outstanding balances on a customer-specific, account-by-account basis. The allowance for doubtful accounts is based upon a review of customer receivables from prior sales with collection issues where the Company no longer believes that the customer has the ability to pay for services provided. The Company performs on-going credit evaluations of its customers. If such an evaluation indicates that payment is no longer reasonably assured for services provided, any future services provided to that customer will result in the creation of a cash-basis reserve until the Company receives consistent payments. The Company does not have any off-balance sheet credit exposure related to its customers.

***Property and Equipment***

Property and equipment are recorded at cost, net of accumulated depreciation and amortization. Property and equipment generally includes purchases of items with a per unit value greater than \$1,000 and a useful life greater than one year. Depreciation and amortization are computed on a straight-line basis over the estimated useful lives of the assets.

Leasehold improvements are amortized over the shorter of related lease terms or their estimated useful lives. Property and equipment acquired under capital leases are depreciated over the shorter of the related lease terms or the useful lives of the assets. The Company periodically reviews the estimated useful lives of property and equipment. Changes to the estimated useful lives are recorded prospectively from the date of the change. Upon retirement or sale, the cost of the assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is included in income (loss) from operations. Repairs and maintenance costs are expensed as incurred.

***Goodwill and Other Intangible Assets***

The Company tests goodwill for impairment on an annual basis or more frequently if events or changes in circumstances indicate that the asset might be impaired. The Company performed an impairment test of goodwill as of December 31, 2007 and 2006. These tests did not result in an impairment to goodwill. Other intangible assets consist of completed technologies, customer relationships, trademarks, non-compete agreements arising from acquisitions of businesses and acquired license rights. Purchased intangible assets, other than goodwill, are amortized over their estimated useful lives based upon the economic value derived from the related intangible asset. Goodwill is carried at its historical cost.

***Valuation of Other Long-Lived Assets***

Long-lived assets are reviewed for impairment under the guidance of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Under SFAS No. 144, long-lived assets are reviewed for impairment whenever events or changes in circumstances, such as service discontinuance, technological obsolescence, a significant decrease in the Company's market capitalization, facility closure or work-force reductions indicate that the carrying amount of the long-lived asset may not be recoverable. When such events occur, the Company compares the carrying amount of the asset to the undiscounted expected future cash flows related to the asset. If this comparison indicates that an impairment is present, the amount of the impairment is calculated as the difference between the carrying amount and the fair value of the asset.

***Restructuring Charges***

A restructuring liability related to employee terminations is recorded by the Company when a one-time benefit arrangement is communicated to an employee who is involuntarily terminated as part of a reorganization



AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

and the amount of the termination benefit is known, provided that the employee is not required to render future services in order to receive the termination benefit.

The Company previously recorded real property-related restructuring expenses and liabilities when management approved and committed the Company to a plan to exit a facility lease, the plan specifically identified the actions to be taken and the actions were scheduled to begin soon after management approved the plan. Beginning in 2003, in accordance with SFAS No. 146, "Accounting for costs Associated with Exit or Disposal Activities," the Company records restructuring liabilities, discounted at the appropriate rate, for facility leases only when the space is both vacated and all actions needed to make the space readily available for sublease have been completed. The Company records restructuring liabilities for estimated costs to terminate a facility lease before the end of its contractual term or for estimated costs that will continue to be incurred under the lease for its remaining term where there is no economic benefit to the Company, net of an estimate of sublease income.

**Litigation**

The Company is currently involved in certain legal proceedings. The Company estimates the range of liability related to pending litigation where the amount and range of loss can be estimated. The Company records its best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, the Company records the minimum estimated liability related to the claim. As additional information becomes available, the Company reassesses the potential liability related to the Company's pending litigation and revises its estimate.

**Advertising Expense**

The Company recognizes advertising expense as incurred. The Company recognized total advertising expense of \$0.5 million, \$0.5 million and \$0.9 million for the years ended December 31, 2007, 2006 and 2005, respectively.

**Recent Accounting Pronouncements**

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"), which addresses how companies should measure fair value when they are required to use a fair value measure for recognition or disclosure purposes under generally accepted accounting principles. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and should be applied prospectively, except in the case of a limited number of financial instruments that require retrospective application. In February 2008, the FASB deferred implementation of SFAS No. 157 for certain non-financial assets and liabilities for fiscal years beginning after November 15, 2008. The Company is currently evaluating the potential impact of SFAS No. 157 on its financial position and results of operations.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities—including an amendment of SFAS 115" ("SFAS No. 159"). The new statement allows entities to choose, at specified election dates, to measure eligible financial assets and liabilities at fair value that are not otherwise required to be measured at fair value. If a company elects the fair value option for an eligible item, changes in that item's fair value in subsequent reporting periods must be recognized in current earnings. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the potential impact of SFAS No. 159 on its financial position and results of operations.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In December 2007, the FASB issued SFAS No. 141 (revised 2007), “Business Combinations” (“SFAS No. 141R”). This statement establishes principles and requirements for how the acquirer in a business combination (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree, (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the potential impact of SFAS No. 141R on its financial position and results of operations.

**3. Business Acquisitions:**

In June 2005, December 2006, March 2007 and April 2007, the Company acquired Speedera Networks, Inc. (“Speedera”), Nine Systems Corporation (“Nine Systems”), Netli, Inc. (“Netli”) and Red Swoosh, Inc. (“Red Swoosh”), respectively. The consolidated financial statements include the operating results of each business from the date of acquisition. Pro forma results of operations for these acquisitions have not been presented because the effects of the acquisitions, individually and in the aggregate, were not material to the Company’s financial results.

**Red Swoosh**

On April 12, 2007, the Company acquired all of the outstanding common and preferred stock of Red Swoosh, including vested stock options, in exchange for approximately 350,000 shares of Akamai common stock. The purchase of Red Swoosh was intended to augment Akamai’s distributed Internet presence by combining client-side file management and distribution software with the Company’s existing network of edge servers. The aggregate purchase price was \$18.7 million, which consisted of \$18.4 million in shares of Akamai common stock, \$4,000 in fair value of Akamai stock options issued, and transaction costs of \$0.2 million, which primarily consisted of fees for legal services. In accordance with the FASB’s Emerging Issues Task Force Issue No. 99-12, “Determination of the Measurement Date for the Market Price of Acquirer Securities Issued in a Purchase Business Combination” (“EITF No. 99-12”), the value of the common stock issued in the transaction was calculated using the average closing price of the Company’s common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

The acquisition of Red Swoosh was accounted for using the purchase method of accounting. The results of operations of the acquired business since April 12, 2007, the date of acquisition, are included in the consolidated financial statements of the Company for the year ended December 31, 2007. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management. The purchase price allocation is preliminary pending the Company’s review of additional pre-acquisition contingent liabilities, which is expected to be completed during the first quarter of 2008. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, cost synergies expected to be realized and a trained technical workforce. In accordance with current accounting standards, goodwill associated with the Red Swoosh acquisition will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142, “Goodwill and Other Intangible Assets” (“SFAS No. 142”) (see Note 9).

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table presents the preliminary allocation of the purchase price for Red Swoosh:

	<u>(In thousands)</u>
<b>Total consideration:</b>	
Value of common stock issued	\$ 18,449
Fair value of stock options issued	4
Transaction costs	237
<b>Total purchase consideration</b>	<u>\$ 18,690</u>
<b>Allocation of the purchase consideration:</b>	
Current assets, including cash and cash equivalents of \$2,677	\$ 3,236
Long-term assets	14
Identifiable intangible assets	3,731
Deferred tax assets	1,355
Goodwill	13,188
Deferred tax liabilities	(1,458)
Other liabilities assumed	(1,376)
	<u>\$ 18,690</u>

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the estimated future demand for the acquired technology. The fair value of identifiable intangible assets was based upon both the cost avoidance and opportunity cost savings approaches. The rate used to discount the expected future net cash flows from the intangible assets to their present values was based upon a weighted average cost of capital of 20%, with a tax rate of 40%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital and the risk associated with achieving forecasted sales and cost savings related to the technology and assets acquired.

The Company has valued the acquired completed technologies at \$3.7 million with a weighted average useful life of 4.4 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flow savings from such assets. None of the goodwill or identifiable intangible assets resulting from the Red Swoosh acquisition are deductible for income tax purposes.

#### **Netli**

On March 13, 2007, the Company acquired all of the outstanding common and preferred stock, including vested and unvested stock options, of Netli in exchange for approximately 2.8 million shares of Akamai common stock and options to purchase approximately 400,000 shares of Akamai common stock. Akamai acquired Netli with a goal of expanding the Company's application acceleration technology, as well as broadening its customer base.

The aggregate purchase price was \$154.4 million, consisting of \$139.4 million in shares of Akamai common stock, \$14.1 million in fair value of Akamai stock options issued, and transaction costs of \$0.8 million, which primarily consisted of fees for financial advisory and legal services. In accordance with EITF No. 99-12, the value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In accordance with an escrow agreement between Akamai and Netli, a certain number of the issued Akamai shares are held in escrow, the terms of which relate to the retention of specific Netli customers. As a result, approximately 0.3 million shares of Akamai common stock, having a value of \$17.1 million, have been excluded from the aggregate purchase price, as it is not certain that such shares will be released from escrow and issued to Netli stockholders upon the expiration of the contingency period. As of December 31, 2007, these shares have been excluded from Akamai's outstanding common stock and weighted average basic and diluted earnings per share calculations.

The fair value of the Company's stock options issued to Netli employees was estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

Expected life (years)	2.1
Risk-free interest rate	4.5%
Expected volatility	60.1%
Dividend yield	—

The acquisition of Netli was accounted for using the purchase method of accounting. The results of operations of the acquired business since March 13, 2007, the date of acquisition, are included in the consolidated financial statements of the Company for the year ended December 31, 2007. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities to provide Akamai services to Netli customers; a trained technical workforce in place in the United States; an existing sales pipeline and a trained sales force; and cost synergies expected to be realized. In accordance with current accounting standards, goodwill associated with Netli will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

The following table presents the allocation of the purchase price for Netli:

	<b>(In thousands)</b>
<b>Total consideration:</b>	
Value of common stock issued	\$ 139,387
Fair value of stock options issued	14,117
Transaction costs	847
<b>Total purchase consideration</b>	<b>\$ 154,351</b>
<b>Allocation of the purchase consideration:</b>	
Current assets, including cash and cash equivalents of \$6,160	\$ 7,835
Fixed assets	1,989
Deferred tax assets	15,241
Identifiable intangible assets	36,500
Goodwill	111,913
Deferred tax liabilities	(13,302)
Other liabilities assumed, including deferred revenue of \$1,037	(5,825)
	<u>\$ 154,351</u>

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following were the identified intangible assets acquired and the respective estimated periods over which such assets will be amortized:

	<u>Amount</u> <u>(In thousands)</u>	<u>Weighted</u> <u>Average</u> <u>useful life</u> <u>(In years)</u>
Completed technologies	\$ 17,700	4.4
Customer relationships	18,500	5.9
Non-compete agreements	300	2.5
Total	<u>\$ 36,500</u>	

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the historical and estimated future demand for Netli services. The fair value of intangible assets was based upon the income approach. In applying this approach, the values of the intangible assets acquired were determined using projections of revenues and expenses specifically attributed to the intangible assets. The income streams were then discounted to present value using estimated risk adjusted discount rates. The rate used to discount the expected future net cash flows from the intangible assets to their present values was based upon a weighted average cost of capital of 16%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital and the risk associated with achieving forecasted sales related to the technology and assets acquired from Netli.

The customer relationships were valued using the discounted cash flow method of income approach. The key assumptions used in valuing the customer relationships were as follows: discount rate of 16%, tax rate of 40% and estimated average economic life of 11 years.

The relief-from-royalty method was used to value the completed technologies acquired from Netli. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets. Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the completed technologies are as follows: royalty rate of 15%, discount rate of 16%, tax rate of 40% and estimated average economic life of eight years.

The lost-profits method was used to value the non-compete agreements Akamai entered into with certain members of Netli's management team. The lost-profits method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefits protected by clauses within an agreement. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without an agreement. The key assumptions used in valuing the non-compete agreements were as follows: discount rate of 16%, tax rate of 40% and estimated average economic life of three years.

The total weighted average amortization period for the intangible assets acquired from Netli is 5.1 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flows generated from such assets. None of the goodwill or identifiable intangible assets resulting from the Netli acquisition are deductible for income tax purposes.

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In connection with the acquisition of Netli, the Company promptly commenced integration activities, which have resulted in recognizing approximately \$0.8 million in liabilities for employee termination benefits. The Company expects to pay the liabilities associated with the employee termination benefits throughout the remainder of 2008.

**Nine Systems**

On December 13, 2006, the Company acquired all of the outstanding common and preferred stock, including vested and unvested stock options, of Nine Systems in exchange for approximately 2.7 million shares of Akamai common stock, approximately \$4.5 million in cash and options to purchase approximately 400,000 shares of Akamai common stock. The purchase of Nine Systems was intended to increase the quantity and types of rich media management tools sold by the Company.

The aggregate purchase price, net of cash received, was approximately \$157.5 million, which consisted of \$133.3 million in shares of Akamai common stock, \$19.1 million in fair value of Akamai's stock options issued, \$4.5 million in cash and \$0.6 million of transaction costs, which primarily consisted of fees for financial advisory and legal services. The value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

The fair value of the Company's stock options issued to Nine Systems employees was estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

Expected life (years)	—
Risk-free interest rate	5.2%
Expected volatility	67.4%
Dividend yield	—

The acquisition was accounted for using the purchase method of accounting. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management and, with respect to identifiable intangible assets, by management with the assistance of an appraisal provided by a third-party valuation firm. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities of providing Akamai services to Nine Systems customers; a trained technical workforce in place in the United States; an existing sales pipeline and a trained sales force; and cost synergies expected to be realized. In accordance with current accounting standards, goodwill associated with Nine Systems will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table presents the allocation of the purchase price for Nine Systems:

	<u>(In thousands)</u>
<b>Total consideration:</b>	
Common stock issued	\$ 133,313
Cash paid	4,462
Fair value of stock options	19,070
Transaction costs	634
Total purchase consideration	<u>\$ 157,479</u>
<b>Allocation of the purchase consideration:</b>	
Current assets	\$ 4,553
Fixed assets	912
Deferred tax assets	5,732
Identifiable intangible assets	28,900
Goodwill	139,475
Deferred tax liabilities	(10,463)
Other liabilities assumed, including deferred revenue of \$830	(11,630)
	<u>\$ 157,479</u>

The following were the identified intangible assets acquired and the respective estimated periods over which the assets will be amortized:

	<u>Amount</u> <u>(In thousands)</u>	<u>Weighted</u> <u>Average</u> <u>Useful Life</u> <u>(In years)</u>
Completed technologies	\$ 3,400	1.7
Customer relationships	25,000	4.5
Trademarks	500	2.1
Total	<u>\$ 28,900</u>	

In determining the purchase price allocation, the Company considered, among other factors, the Company's intention to use the acquired assets and historical and estimated future demand for Nine Systems services. The fair value of intangible assets was based upon the income approach. The rate used to discount the net cash flows to their present values was based upon a weighted average cost of capital of 18%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital, and the risk associated with achieving forecasted sales related to the technology and assets acquired from Nine Systems.

The customer relationships were valued using the income approach. The key assumptions used in valuing the customer relationships were as follows: discount rate of 18%, tax rate of 40% and estimated average economic life of nine years.

The relief-from-royalty method was used to value the completed technologies acquired from Nine Systems. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the completed technologies were as follows: royalty rate of 10.5%, discount rate of 18%, tax rate of 40% and estimated average economic life of four years.

The relief-from-royalty method was used to value trademarks. The relief-from-royalty method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefit in the use of trademarks and domain names. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without the specific trademarks and domain names. The key assumptions used in valuing trademarks were as follows: royalty rate of 1%, discount rate of 18%, tax rate of 40% and estimated average economic life of five years.

The total weighted average amortization period for the intangible assets is 4.1 years. The intangible assets are being amortized based upon the pattern in which the economic benefit of the intangible assets is being utilized, which in general reflects the cash flows generated from such assets. None of the goodwill or identifiable intangible assets are deductible for income tax purposes.

In connection with the acquisition of Nine Systems, the Company commenced integration activities, which resulted in recognizing approximately \$0.6 million in liabilities for employee termination benefits, most of which was paid during 2007.

***Speedera***

On June 10, 2005, the Company acquired all of the outstanding common and preferred stock and vested and unvested stock options of Speedera in exchange for 10.6 million shares of Akamai common stock and stock options to purchase approximately 1.7 million shares of Akamai common stock. The Company acquired Speedera because Akamai believed it would enable the Company to better compete against larger managed services vendors and other content delivery providers by expanding its customer base and providing customers with a broader suite of services.

The aggregate purchase price was \$142.2 million, which consisted of \$121.5 million in shares of common stock, \$18.2 million in fair value of Akamai stock options issued and transaction costs of \$2.5 million, which primarily consisted of fees for financial advisory and legal services. The value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced. The acquisition was accounted for using the purchase method of accounting. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management. The purchase price allocation resulted in the recording of \$94.9 million of goodwill; \$43.2 million of identifiable intangible assets (consisting primarily of customer relationships with a value of \$40.9 million, which are being amortized over a period of eight years); \$10.6 million of current assets, including cash of \$3.9 million; and current liabilities of \$19.8 million, among other assets and liabilities recorded.

The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities of providing Akamai services to Speedera customers; a trained technical workforce in place in the United States and India; existing sales pipeline and trained sales force; and cost synergies expected to be realized. None of the goodwill or identifiable intangible assets resulting from the Speedera acquisition are deductible for income tax purposes.



## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following data reflects the unaudited pro forma results of operations of the Company for the years ended December 31, 2005 assuming that the Speedera acquisition had occurred on January 1, 2005: Revenues: \$302.2 million; Net income: \$326.0 million; Net income per share — basic: \$2.23; Net income per share — diluted: \$1.97.

**4. Net Income per Share:**

Basic net income per weighted average share is computed using the weighted average number of common shares outstanding during the applicable period. Diluted net income per weighted average share is computed using the weighted average number of common shares outstanding during the period, plus the dilutive effect of potential common stock. Potential common stock consists of stock options, deferred stock units, restricted stock units and convertible notes.

The following table sets forth the components used in the computation of basic and diluted net income per common share (in thousands, except per share data):

	For the Year Ended December 31,		
	2007	2006	2005
<b>Numerator:</b>			
Net income	\$ 100,967	\$ 57,401	\$ 327,998
Add back of interest expense on 1% convertible senior notes	2,840	2,841	2,841
Numerator for diluted net income	<u>\$ 103,807</u>	<u>\$ 60,242</u>	<u>\$ 330,839</u>
<b>Denominator:</b>			
Denominator for basic net income per common share	162,959	155,366	136,167
<b>Effect of dilutive securities:</b>			
Stock options	7,354	7,704	7,691
Effect of escrow contingencies	1,051	—	—
Restricted stock units and deferred stock units	798	752	141
Assumed conversion of 1% convertible senior notes	12,932	12,945	12,945
Denominator for diluted net income per common share	<u>185,094</u>	<u>176,767</u>	<u>156,944</u>
Basic net income per common share	\$ 0.62	\$ 0.37	\$ 2.41
Diluted net income per common share	\$ 0.56	\$ 0.34	\$ 2.11

Outstanding options to acquire an aggregate of 1.4 million, 0.5 million and 4.4 million shares of common stock as of December 31, 2007, 2006 and 2005, respectively, were excluded from the calculation of diluted earnings per share because the exercise prices of these stock options were greater than the average market price of the Company's common stock during the respective periods. Additionally, 3.5 million and 2.3 million shares issuable in respect of outstanding restricted stock units were excluded from the computation of diluted net income per share for the years ended December 31, 2007 and 2006 because the performance conditions had not been met as of those dates.

The calculation of assumed proceeds used to determine the diluted weighted average shares outstanding under the treasury stock method in the periods presented was adjusted by tax windfalls and shortfalls associated with all of the Company's outstanding stock awards. Such windfalls and shortfalls are computed by comparing the tax deductible amount of outstanding stock awards to their grant date fair values and multiplying the results by the applicable statutory tax rate. A positive result creates a windfall, which increases the assumed proceeds, and a negative result creates a shortfall, which reduces the assumed proceeds.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. **Accumulated Other Comprehensive Income:**

Comprehensive income consists of net income and other comprehensive income (loss), which includes foreign currency translation adjustments and changes in unrealized gains and losses on investment securities. For the purposes of comprehensive income disclosures, the Company does not record tax provisions or benefits for the net changes in the foreign currency translation adjustment, as the Company intends to permanently reinvest undistributed earnings of its foreign subsidiaries. Accumulated other comprehensive income is reported as a component of stockholders' equity and consisted of the following (in thousands):

	December 31,	
	2007	2006
Net unrealized gain (loss) on investments	\$ 17	\$ (397)
Foreign currency translation adjustments	3,036	1,693
Accumulated other comprehensive income	<u>\$3,053</u>	<u>\$1,296</u>

6. **Marketable Securities and Investments:**

The following is a summary of marketable securities held at December 31, 2007 (in thousands). Fair value was determined based upon quoted market prices for the applicable security.

	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Certificates of deposit	\$ 835	\$ —	\$ —	\$ 835
Commercial paper	47,669	27	(9)	47,687
U.S. government agency obligations	119,961	305	(423)	119,843
U.S. corporate debt securities	37,998	106	(1)	38,103
Municipal obligations	281,950	12	—	281,962
	<u>\$ 488,413</u>	<u>\$ 450</u>	<u>\$ (433)</u>	<u>\$ 488,430</u>

The following is a summary of marketable securities held at December 31, 2006 (in thousands). Fair value was determined based upon quoted market prices for the applicable security.

	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Certificates of deposit	\$ 1,377	\$ —	\$ —	\$ 1,377
Commercial paper	100,302	15	(168)	100,149
U.S. government agency obligations	106,153	19	(151)	106,021
U.S. corporate debt securities	52,410	63	(161)	52,312
Municipal obligations	94,000	—	—	94,000
	<u>\$ 354,242</u>	<u>\$ 97</u>	<u>\$ (480)</u>	<u>\$ 353,859</u>

The Company evaluates investments with unrealized losses to determine if the losses are other than temporary. The Company has determined that the gross unrealized losses at December 31, 2007 are temporary. In making this determination, the Company considered the financial condition and near-term prospects of the issuers, the magnitude of the losses compared to the investments' cost, the length of time the investments have been in an unrealized loss position and the Company's ability to hold the investments to maturity.

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Available-for-sale securities by contractual maturity were as follows (in thousands):

	December 31,	
	2007	2006
Due in one year or less	\$ 124,243	\$ 98,348
Due after 1 year through 5 years	84,237	161,511
Due after 5 years	279,950	94,000
	<u>\$ 488,430</u>	<u>\$ 353,859</u>

The Company's auction rate securities with contractual lives of greater than one year are included in short-term marketable securities due to their reset through an auction process every 28 days. As of December 31, 2007, \$3.6 million of the Company's marketable securities were classified as restricted. These securities primarily represent security for irrevocable letters of credit in favor of third-party beneficiaries, mostly related to facility leases. The letters of credit are collateralized by restricted marketable securities, of which \$3.1 million are classified as long-term marketable securities and \$0.5 million are classified as short-term marketable securities on the consolidated balance sheets. The restrictions on these marketable securities lapse as the Company fulfills its obligations or such obligations expire under the terms of the letters of credit. These restrictions are expected to lapse at various times through May 2011.

For the years ended December 31, 2007 and 2006, the Company recorded net gains on investments of \$24,000 and \$261,000, respectively, on sales of marketable securities. For the year ended December 31, 2005, the Company recorded net losses on investments of \$27,000 on sales of marketable securities.

**7. Accounts Receivable:**

Net accounts receivable consisted of the following (in thousands):

	December 31,	
	2007	2006
Trade accounts receivable	\$ 113,357	\$ 75,771
Unbilled accounts	15,978	15,929
Gross accounts receivable	129,335	91,700
Allowance for doubtful accounts	(6,878)	(3,228)
Reserve for cash basis customers	(3,513)	(2,240)
Total accounts receivable reserves	(10,391)	(5,468)
Accounts receivable, net	<u>\$ 118,944</u>	<u>\$ 86,232</u>

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**8. Property and Equipment:**

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

	December 31,		Estimated Useful Lives in Years
	2007	2006	
Computer and networking equipment	\$ 264,949	\$ 208,237	3
Purchased software	24,776	29,412	3
Furniture and fixtures	6,265	4,960	5
Office equipment	3,870	3,697	3
Leasehold improvements	11,344	7,243	5-7
Internal-use software	73,622	48,211	2
	<u>384,826</u>	<u>301,760</u>	
Accumulated depreciation and amortization	(250,280)	(215,137)	
	<u>\$ 134,546</u>	<u>\$ 86,623</u>	

Depreciation and amortization expense on property and equipment and capitalized internal-use software for the years ended December 31, 2007, 2006 and 2005 were \$60.5 million, \$32.1 million and \$19.1 million, respectively.

During the years ended December 31, 2007 and 2006, the Company wrote off \$25.7 million and \$17.0 million, respectively, of long-lived asset costs, with accumulated depreciation and amortization costs of \$25.2 million and \$16.3 million, respectively. These write-offs were primarily related to purchased software and computer and networking equipment that were no longer in use.

During the years ended December 31, 2007, 2006 and 2005, the Company capitalized \$19.1 million, \$12.6 million and \$9.2 million, net of impairments, respectively, of external consulting fees and payroll and payroll-related costs for the development and enhancement of internal-use software applications. Additionally, during the years ended December 31, 2007 and 2006, the Company capitalized \$6.4 million and \$4.3 million, respectively, of equity-related non-cash compensation related to employees who developed and enhanced internal-use software applications. The internal-use software is used by the Company primarily to operate, manage and monitor its deployed network and deliver its services to customers.

The following table summarizes capitalized internal-use software costs (in thousands):

	December 31,	
	2007	2006
Gross costs capitalized	\$ 74,672	\$ 49,204
Less: cumulative impairments	(1,050)	(993)
	<u>73,622</u>	<u>48,211</u>
Less: accumulated amortization	(38,390)	(26,723)
Net book value of capitalized internal-use software	<u>\$ 35,232</u>	<u>\$ 21,488</u>

**9. Goodwill and Other Intangible Assets:**

The Company acquired goodwill and other intangible assets through business acquisitions during 2007, 2006, 2005 and 2000. The Company also acquired license rights from the Massachusetts Institute of Technology

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

in 1999. During the year ended December 31, 2007, the Company recorded goodwill of \$125.1 million and acquired intangible assets of \$40.2 million as a result of the acquisitions of Netli and Red Swoosh. During the year ended December 31, 2006, the Company recorded goodwill of \$142.5 million and acquired intangible assets of \$28.9 million as a result of the acquisition of Nine Systems.

During 2007, the Company made purchase accounting adjustments to reflect the net deferred tax assets recorded as a result of filing the final pre-acquisition income tax return for Nine Systems. Consequently, the Company increased its net deferred tax assets by \$3.0 million and reduced goodwill by the same amount. During 2006, the Company made purchase accounting adjustments to reflect the net deferred tax assets recorded as a result of filing the final pre-acquisition income tax return for Speedera. Consequently, the Company increased its net deferred taxes by \$1.5 million mainly due to an increase in the federal and state research and development credits, which resulted in a reduction of goodwill.

The changes in the carrying amount of goodwill for the years ended December 31, 2007 and 2006 were as follows:

	<u>In thousands</u>
Ending balance, December 31, 2005	\$ 98,519
Nine Systems acquisition	142,519
Tax assets recorded in connection with the 2005 Speedera acquisition	<u>(1,458)</u>
Ending balance, December 31, 2006	239,580
Netli acquisition	111,913
Red Swoosh acquisition	13,188
Tax assets recorded in connection with the 2006 Nine Systems acquisition	<u>(3,044)</u>
Ending balance, December 31, 2007	<u>\$ 361,637</u>

The Company reviews goodwill and other intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may exceed their fair value. The Company concluded that it had one reporting unit and assigned the entire balance of goodwill to this reporting unit as of December 31, 2007 and 2006 for purposes of performing an impairment test. The fair value of the reporting unit was determined using the Company's market capitalization as of December 31, 2007 and 2006. The fair value on December 31, 2007 and 2006 exceeded the net assets of the reporting unit, including goodwill, as of both dates. Accordingly, the Company concluded that no impairment existed as of these dates. Unless changes in events or circumstances indicate that an impairment test is required, the Company will next test goodwill for impairment as of December 31, 2008.

Other intangible assets that are subject to amortization consist of the following (in thousands):

	<u>December 31, 2007</u>		
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Completed technologies	\$ 25,831	\$ (2,631)	\$23,200
Customer relationships	84,400	(21,029)	63,371
Non-compete agreements	1,600	(1,108)	492
Trademarks	500	(109)	391
Acquired license rights	490	(444)	46
Total	<u>\$112,821</u>	<u>\$ (25,321)</u>	<u>\$87,500</u>

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

	December 31, 2006		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Completed technologies	\$ 4,400	\$ (863)	\$ 3,537
Customer relationships	65,900	(11,970)	53,930
Non-compete agreements	1,300	(674)	626
Trademarks	500	(5)	495
Acquired license rights	490	(395)	95
Total	<u>\$72,590</u>	<u>\$ (13,907)</u>	<u>\$58,683</u>

Aggregate expense related to amortization of other intangible assets was \$11.4 million, \$8.5 million and \$5.1 million for the years ended December 31, 2007, 2006 and 2005, respectively. Based on current circumstances, amortization expense is expected to be approximately \$13.4 million, \$13.6 million, \$12.9 million, \$12.3 million and \$11.5 million for the years ending December 31, 2008, 2009, 2010, 2011 and 2012 respectively.

**10. Accrued Expenses and Other Current Liabilities:**

Accrued expenses and other current liabilities consisted of the following (in thousands):

	December 31,	
	2007	2006
Payroll and other related benefits	\$ 27,381	\$ 31,429
Bandwidth and co-location	12,968	9,628
Property, use and other taxes	10,182	13,636
Legal professional fees	1,781	1,100
Other	3,921	2,290
Total	<u>\$ 56,233</u>	<u>\$ 58,083</u>

**11. Commitments, Contingencies and Guarantees:**

***Operating Lease Commitments***

The Company leases its facilities under non-cancelable operating leases. These operating leases expire at various dates through December 2019 and generally require the payment of real estate taxes, insurance, maintenance and operating costs. In October 2007, the Company entered into facility lease agreements with its landlord to expand its corporate headquarters in Cambridge, Massachusetts. As of June 1, 2009, the Company will be occupying an additional 110,000 square feet at its current location in Cambridge. These lease obligations have been included in the future lease commitment table below.

The minimum aggregate future obligations under non-cancelable leases as of December 31, 2007 are as follows (in thousands):

	Operating Leases
2008	\$ 12,836
2009	12,649
2010	15,158
2011	13,495
2012	12,211
Thereafter	85,974
Total	<u>\$ 152,323</u>

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Rent expense for the years ended December 31, 2007, 2006 and 2005 was \$11.0 million, \$6.6 million and \$5.7 million, respectively.

As of December 31, 2007, the Company had outstanding letters of credit in the amount of \$8.6 million related to certain of its real estate leases. Approximately \$3.6 million of these letters of credit are collateralized by marketable securities that have been restricted as to use (see Note 6). The letters of credit expire as the Company fulfills its operating lease obligations. Certain of the Company's facility leases include rent escalation clauses. The Company normalizes rent expense on a straight-line basis over the term of the lease for known changes in lease payments over the life of the lease. In the event that the landlord provided funding for lease improvements to leased facilities, the Company amortizes such amount as part of rent expense on a straight-line basis over the life of the lease.

**Purchase Commitments**

The Company has long-term commitments for bandwidth usage and co-location with various networks and ISPs. For the years ending December 31, 2008, 2009 and 2010, the minimum commitments were, as of December 31, 2007, approximately \$38.2 million, \$6.6 million and \$2.4 million, respectively. As of December 31, 2007, the Company had an equipment purchase commitment of approximately \$500,000, which expires in August 2008 in accordance with the terms of the applicable agreement. Additionally, as of December 31, 2007, the Company had entered into purchase orders with various vendors for aggregate purchase commitments of \$14.3 million, which are expected to be paid in 2008.

**Litigation**

Between July 2, 2001 and November 7, 2001, purported class action lawsuits seeking monetary damages were filed in the United States District Court for the Southern District of New York against the Company as well as against the underwriters of its October 28, 1999 initial public offering of common stock. The complaints were filed allegedly on behalf of persons who purchased the Company's common stock during different time periods, all beginning on October 28, 1999 and ending on various dates. The complaints are similar and allege violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 primarily based on the allegation that the underwriters received undisclosed compensation in connection with the Company's initial public offering. On April 19, 2002, a single consolidated amended complaint was filed, reiterating in one pleading the allegations contained in the previously filed separate actions. The consolidated amended complaint defines the alleged class period as October 28, 1999 through December 6, 2000. A Special Litigation Committee of the Board of Directors authorized management to negotiate a settlement of the pending claims substantially consistent with a Memorandum of Understanding that was negotiated among class plaintiffs, all issuer defendants and their insurers. The parties negotiated a settlement that was subject to approval by the Court. On February 15, 2005, the Court issued an Opinion and Order preliminarily approving the settlement, provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to a modification narrowing the scope of the bar order, and on August 31, 2005, the Court issued an order preliminarily approving the settlement. On December 5, 2006, the United States Court of Appeals for the Second Circuit overturned the District Court's certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Thereafter, the District Court ordered a stay of all proceedings in all of the lawsuits pending the outcome of plaintiffs' petition to the Second Circuit for rehearing en banc and resolution of the class certification issue. On April 6, 2007, the Second Circuit denied plaintiffs' rehearing petition, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. On June 25, 2007, the District Court signed an order terminating the settlement. The Company believes that it has meritorious defenses to the claims made in the complaint, and it

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

intends to contest the lawsuit vigorously. An adverse resolution of the action could have a material adverse effect on the Company's financial condition and results of operations in the period in which the lawsuit is resolved. The Company is not presently able to estimate potential losses, if any, related to this lawsuit.

In addition, on or about October 3, 2007, a purported Akamai stockholder filed a complaint in the United States District Court for the Western District of Washington, against the underwriters involved in the Company's 1999 initial public offering of its common stock, alleging violations of Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b). The complaint alleges that the combined number of shares of the Company's common stock beneficially owned by the lead underwriters and certain unnamed officers, directors, and principal shareholders exceeded ten percent of its outstanding common stock from the date of the Company's initial public offering on October 29, 1999, through at least October 28, 2000. The complaint further alleges that those entities and individuals were thus subject to the reporting requirements of Section 16(a) and the short-swing trading prohibition of Section 16(b), and failed to comply with those provisions. The complaint seeks to recover from the lead underwriters any "short-swing profits" obtained by them in violation of Section 16(b). The Company was named as a nominal defendant in the action, but has no liability for the asserted claims. Management does not expect the results of this action to have a material adverse effect on the Company's business, results of operation or financial condition.

The Company is party to various other litigation matters that management considers routine and incidental to its business. Management does not expect the results of any of these actions to have a material adverse effect on the Company's business, results of operations or financial condition.

**Guarantees**

The Company has identified the guarantees described below as disclosable in accordance with FASB Interpretation 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34." The Company evaluates estimated losses for guarantees under SFAS No. 5, "Accounting for Contingencies, as Interpreted by FIN 45." The Company considers such factors as the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of loss. To date, the Company has not encountered material costs as a result of such obligations and has not accrued any liabilities related to such guarantees in its financial statements.

As permitted under Delaware law, the Company's Certificate of Incorporation provides that Akamai indemnify each of its officers and directors during his or her lifetime for certain events or occurrences that happen by reason of the fact that the officer or director is or was or has agreed to serve as an officer or director of the Company. In addition, the Company has acquired other companies that had similar director and officer indemnification provisions in their bylaws. The Company has generally become responsible for such indemnification obligations as a result of the acquisition. The maximum potential amount of future payments the Company could be required to make under these indemnification obligations is unlimited; however, the Company has a director and officer insurance policy that limits its exposure and would enable the Company to recover a portion of certain future amounts paid. In the case of obligations assumed as a result of acquisitions, the Company may have the right to be indemnified by the selling stockholders of such acquired companies for director and officer indemnification expenses incurred by the Company for matters arising prior to the acquisition which would eliminate or mitigate the impact of any such obligations.

The Company enters into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, the Company agrees to indemnify, hold harmless, and reimburse the indemnified party for



**AKAMAI TECHNOLOGIES, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

losses suffered or incurred by the indemnified party, generally Akamai's business partners or customers, in connection with Akamai's provision of its services and software. Generally, these obligations are limited to claims relating to infringement of a U.S. patent, or any copyright or other intellectual property or the Company's negligence, willful misconduct or violation of the law (provided that there is not gross negligence or willful misconduct on the part of the other party). Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company carries insurance that covers certain third party claims relating to its services and could limit the Company's exposure.

The Company acquired all of the stock of three companies in 2000, one company in each of 2005 and 2006, and two companies in 2007. As part of those acquisitions, the Company assumed the liability for undisclosed claims and losses previously incurred by such companies. Subject to applicable statutes of limitations, these obligations are generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make in connection with these obligations is unlimited. The Company may have the right to be indemnified by the selling stockholders of such acquired companies for losses and expenses incurred by the Company for matters arising prior to the acquisition, which would eliminate or mitigate the impact of any such obligations.

The Company leases space in certain buildings, including a corporate headquarters building, under operating leases. The Company has standard indemnification arrangements under such operating leases that require it to indemnify the landlord against losses, liabilities, and claims incurred in connection with the premises covered by the Company leases, its use of the premises, property damage or personal injury, and breach of the lease agreement, as well as occurrences arising from the Company's negligence or willful misconduct. The Company also subleases certain space and agrees to indemnify the sublessee for losses caused by the Company's employees on the premises. Subject to applicable statutes of limitation, the terms of these indemnification agreements are generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company entered into three joint ventures in 2001 and 2002, which have since terminated. The terms of the joint venture agreements generally provide that the Company indemnify the joint venture partner against property damage or bodily injury arising from the Company's negligence or willful misconduct; third party claims of copyright infringement or trade secret theft associated with the software or marks licensed from the Company by the partner; and losses arising from any breach by the Company of its representations and warranties. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company leases certain equipment under operating leases that require it to indemnify the lessor against losses, liabilities and claims in connection with the lease agreement, possession or use of the leased equipment, and in some cases certain tax issues. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company licenses technology to certain third parties under license agreements that provide for Akamai to indemnify the third parties against claims of patent and copyright infringement. This indemnity does not apply in the event that the licensed technology has been modified by the third party or combined with other technology, hardware, or data that the Company has not approved. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company licenses technology from third parties under agreements that contain standard indemnification provisions that require the Company to indemnify the third party against losses, liabilities and claims arising from the Company's unauthorized use or modification of the licensed technology. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

Based upon the Company's historical experience and information known as of December 31, 2007, the Company believes its liabilities related to the above guarantees and indemnifications are immaterial.

**12. Convertible Notes:**

***1% Convertible Senior Notes***

In January 2004 and December 2003, Akamai issued \$200.0 million in aggregate principal amount of 1% convertible senior notes due December 15, 2033 for aggregate proceeds of \$194.1 million, net of an initial purchaser's discount and offering expenses of \$5.9 million. The initial conversion price of the 1% convertible senior notes was \$15.45 per share (equivalent to 64.7249 shares of common stock per \$1,000 principal amount of 1% convertible senior notes). During 2007, the Company issued 9,379 shares of common stock in connection with the conversion of \$145,000 in aggregate principal amount of its 1% convertible senior notes (at a conversion price of \$15.45 per share). As of December 31, 2007, the carrying amount and fair value of the 1% convertible senior notes were \$199.9 million and \$227.5 million, respectively.

The notes may be converted at the option of the holder in the following circumstances:

- during any calendar quarter commencing after March 31, 2004, if the closing sale price of the common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 120% of the conversion price in effect on such last trading day;
- if the convertible notes are called for redemption;
- if the Company makes specified distributions on its common stock or engages in specified transactions; and
- during the five trading day period immediately following any ten-consecutive trading day period in which the trading price per \$1,000 principal amount of the convertible notes for each day of such ten-day period is less than 95% of the product of the closing sale price per share of the Company's common stock on that day multiplied by the number of shares of its common stock issuable upon conversion of \$1,000 principal amount of the convertible notes.

The Company may redeem the 1% convertible senior notes on or after December 15, 2010 at the Company's option at 100% of the principal amount together with accrued and unpaid interest. Conversely,

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

holders of the 1% convertible senior notes may require the Company to repurchase the notes at par value on certain specified dates beginning on December 15, 2010. In the event of a change of control, the holders may require Akamai to repurchase their 1% convertible senior notes at a repurchase price of 100% of the principal amount plus accrued interest. Interest on the 1% convertible senior notes began to accrue as of the issue date and is payable semiannually on June 15 and December 15 of each year. Deferred financing costs of \$5.9 million, including the initial purchaser's discount and other offering expenses, for the 1% convertible senior notes are being amortized over the first seven years of the term of the notes to reflect the put and call rights discussed above. Amortization of deferred financing costs of the 1% convertible senior notes was approximately \$0.8 million for each of the years ended December 31, 2007, 2006 and 2005. The Company records the amortization of deferred financing costs using the interest method as interest expense in the consolidated statement of operations.

**5 1/2% Convertible Subordinated Notes**

During the year ended December 31, 2005, the Company redeemed an aggregate of \$56.6 million in principal amount of its remaining outstanding 5 1/2% convertible subordinated notes due 2007 (the "5 1/2% convertible subordinated notes") for total cash payments of \$58.1 million. The redemption price was \$1,015.71 for each \$1,000 in principal amount repurchased. The Company charged the outstanding deferred financing costs relating to these repurchased notes and premium paid of \$0.5 million and \$0.9 million, respectively, for the year ended December 31, 2005, to loss on early extinguishment of debt. For the year ended December 31, 2005, amortization of deferred financing costs related to these notes was approximately \$0.2 million.

**13. Restructurings and Lease Terminations:**

As of December 31, 2007, the Company had \$607,000 of accrued restructuring liabilities. In connection with the Speedera, Nine Systems, Netli and Red Swoosh acquisitions, the Company's management committed to plans to exit certain activities of these entities. In accordance with EITF No. 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination," the Company recorded, as part of the purchase price, liabilities of \$0.5 million and \$1.4 million related to workforce reductions during the years ended December 31, 2006 and 2007, respectively. These liabilities primarily consisted of employee severance and outplacement costs. The Company expects that these liabilities will be fully paid in 2008.

The following table summarizes the accrual and usage of the restructuring charges (in millions):

	<u>Leases</u>	<u>Severance</u>	<u>Total</u>
Ending balance, December 31, 2004	\$ 3.6	\$ —	\$ 3.6
Accrual recorded in purchase accounting	—	1.8	1.8
Cash payments	<u>(1.3)</u>	<u>(0.5)</u>	<u>(1.8)</u>
Ending balance, December 31, 2005	2.3	1.3	3.6
Accrual recorded in purchase accounting	—	0.5	0.5
Cash payments	<u>(1.4)</u>	<u>(0.6)</u>	<u>(2.0)</u>
Ending balance, December 31, 2006	0.9	1.2	2.1
Accrual recorded in purchase accounting	—	1.4	1.4
Restructuring benefit	<u>(0.2)</u>	—	<u>(0.2)</u>
Cash payments	<u>(0.7)</u>	<u>(2.0)</u>	<u>(2.7)</u>
Ending balance, December 31, 2007	<u>\$ —</u>	<u>\$ 0.6</u>	<u>\$ 0.6</u>

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

**14. Rights Plan and Series A Junior Participating Preferred Stock:**

On September 10, 2002, the Board of Directors of the Company (the “Board of Directors”) declared a dividend of one preferred stock purchase right for each outstanding share of the Company’s common stock held by stockholders of record at the close of business on September 23, 2002. To implement the rights plan, the Board of Directors designated 700,000 shares of the Company’s 5.0 million authorized shares of undesignated preferred stock as Series A Junior Participating Preferred Stock, par value \$.01 per share. Each right entitles the registered holder to purchase from the Company one one-thousandth of a share of preferred stock at a purchase price of \$9.00 in cash, subject to adjustment. No shares of Series A Junior Participating Preferred Stock are outstanding as of December 31, 2007. In January 2004, the Board of Directors of the Company approved an amendment to the rights plan in which the purchase price of each right issued under the plan increased from \$9.00 per share to \$65.00 per share.

**15. Stockholders’ Equity:**

***Common Stock***

Holders of the Company’s common stock are entitled to one vote per share. At December 31, 2007, the Company had reserved approximately 8.4 million shares of common stock for issuance under its 1999 Employee Stock Purchase Plan (the “1999 ESPP”) and upon the exercise of options and vesting of deferred stock units and restricted stock units under its other stock incentive plans. Additionally, the Company had reserved approximately 12.9 million shares issuable upon conversion of its 1% senior convertible notes.

***Equity Offering***

In November 2005, the Company completed an equity offering of 12.0 million shares of its common stock at a price of \$16.855 per share for proceeds of \$202.1 million, net of offering expenses.

**16. Stock-Based Compensation:**

***Equity Plans***

In 1998, the Company’s Board of Directors (the “Board of Directors”) adopted the 1998 Stock Incentive Plan (the “1998 Plan”) for the issuance of incentive and nonqualified stock options, restricted stock awards and other types of equity awards. Options to purchase common stock and other equity awards are granted at the discretion of the Board of Directors or a committee thereof. In October 2005, the Board of Directors delegated to the Company’s Chief Executive Officer the authority to grant equity incentive awards to employees of the Company below the level of Vice President, subject to certain specified limitations. In December 2001, the Board of Directors adopted the 2001 Stock Incentive Plan (the “2001 Plan”) for the issuance of nonqualified stock options, restricted stock awards and other types of equity awards. In March 2006, the Board of Directors adopted the Akamai Technologies, Inc. 2006 Stock Incentive Plan (the “2006 Plan”) for the issuance of incentive and nonqualified stock options, restricted stock awards, restricted stock units and other types of equity awards. The stockholders of the Company approved the adoption of the 2006 Plan in May 2006. The total number of shares of common stock issuable under the 1998 Plan, the 2001 Plan and the 2006 Plan is 48,255,600, 5,000,000 and 7,500,000 shares, respectively. Equity incentive awards may not be issued to the Company’s directors or executive officers under the 2001 Plan.

Under the terms of the 1998 Plan and the 2006 Plan, the exercise price of incentive stock options may not be less than 100% (110% in certain cases) of the fair market value of the common stock on the date of grant. Incentive stock options may not be issued under the 2001 Plan. The exercise price of nonqualified stock options issued under the 1998 Plan, the 2001 Plan and the 2006 Plan may be less than the fair market value of the

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

common stock on the date of grant, as determined by the Board of Directors, but in no case may the exercise price be less than the statutory minimum. Stock option vesting typically occurs over four years under all of the plans, and options are granted at the discretion of the Board of Directors. Under the 1998 Plan and 2001 Plan, the term of options granted may not exceed ten years, or five years for incentive stock options granted to holders of more than 10% of the Company's voting stock. Under the 2006 Plan, the term of options granted may not exceed seven years.

The Company has assumed certain stock option plans and the outstanding stock options of companies that it has acquired ("Assumed Plans"). Stock options outstanding as of the date of acquisition under the Assumed Plans have been exchanged for the Company's stock options and adjusted to reflect the appropriate conversion ratio as specified by the applicable acquisition agreement, but are otherwise administered in accordance with the terms of the Assumed Plans. Stock options under the Assumed Plans generally vest over four years and expire ten years from the date of grant. No additional stock options have been or will be granted under the Assumed Plans.

In August 1999, the Board of Directors adopted the 1999 ESPP. The Company reserved 3,100,000 shares of common stock for issuance under the 1999 ESPP. In May 2002, the stockholders of the Company approved an amendment to the 1999 ESPP that allows for an automatic increase in the number of shares of common stock available under the 1999 ESPP each June 1 and December 1 to restore the number of shares available for issuance to 1,500,000 shares, provided that the aggregate number of shares issued under the 1999 ESPP shall not exceed 20,000,000. In April 2005, the Company's Board of Directors approved amendments to the 1999 ESPP as follows: the duration of the offering periods was decreased from 24 months to six months; the number of times a participant may elect to change his or her percentage during an offering period was changed from four times to two times; the definition of "compensation" was amended to clarify that it includes cash bonuses and other cash incentive programs; and a provision was added to clarify that upon termination of an offering period, each eligible participant will be automatically enrolled in the next offering period. These amendments became effective in June 2005. The 1999 ESPP allows participants to purchase shares of common stock at a 15% discount from the fair market value of the stock as determined on specific dates at six-month intervals. During the years ended December 31, 2007, 2006 and 2005, the Company issued 279,356, 295,113 and 475,776 shares under the 1999 ESPP, respectively, with a weighted average purchase price per share of \$34.62, \$22.00 and \$9.70, respectively. Total cash proceeds from the purchase of shares under the 1999 ESPP in 2007, 2006 and 2005 were \$9.7 million, \$6.5 million and \$4.6 million, respectively. As of December 31, 2007, approximately \$860,000 had been withheld from employees for future purchases under the 1999 ESPP.

***Impact of the Adoption of SFAS No. 123R***

The Company adopted SFAS No. 123R using the modified prospective transition method, which requires the application of the accounting standard as of January 1, 2006, the first day of Akamai's fiscal year 2006. Under the modified prospective transition method, stock-based compensation expense recognized during the years ended December 31, 2007 and 2006 results from: shares issued under the 1999 ESPP during the offering period commencing on December 1, 2005, based on the grant-date fair value estimated in accordance with the original provisions of SFAS No. 123; shares issued under the 1999 ESPP during the offering period commencing on each of June 1, 2006, December 1, 2006, June 1, 2007, and December 1, 2007, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R; stock options and deferred stock units granted prior to, but not yet vested as of January 1, 2006 based on the grant-date fair value estimated in accordance with the original provisions of SFAS No. 123; and stock options, deferred stock units and restricted stock units granted after December 31, 2005, based on the grant-date fair value, in accordance with the provisions of SFAS No. 123R. Under the modified prospective transition method, results for prior periods are not restated; accordingly, the results of operations for the years ended December 31, 2006 and 2007 and future periods are not be comparable to the Company's historical results prior to 2006.

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Akamai has selected the Black-Scholes option pricing model to determine the fair value of the Company's stock option awards. The estimated fair value of Akamai's stock-based awards, less expected forfeitures, is amortized over the awards' vesting period on a straight-line basis. Deferred compensation related to awards granted prior to January 1, 2006 has been included in additional paid-in capital on the balance sheet at December 31, 2006 and December 31, 2007; as of and prior to December 31, 2005, it was carried as a separate line item entitled "deferred compensation" in the stockholders' equity portion of the balance sheet. SFAS No. 123R also changes the reporting of tax-related amounts within the statement of cash flows. The excess windfall tax benefits resulting from stock-based compensation has been reported as a separate line item in net cash provided by financing activities entitled "excess tax benefits from stock-based compensation" in the consolidated statement of cash flows.

The effect of recording stock-based compensation in accordance with SFAS No. 123R for the years ended December 31, 2007 and 2006 was as follows (in thousands):

	For the Year Ended December 31,	
	2007	2006
Stock-based compensation expense by type of award:		
Stock options	\$ 29,171	\$ 24,572
Deferred stock units	925	1,976
Restricted stock units	38,958	25,410
Shares issued under the 1999 ESPP	3,854	1,903
Amounts capitalized as internal-use software	(6,353)	(4,293)
Total stock-based compensation before income taxes	66,555	49,568
Less: Income tax benefit	(20,380)	(16,011)
Total stock-based compensation, net of tax	<u>\$ 46,175</u>	<u>\$ 33,557</u>
Effect of stock-based compensation on income by line item:		
Cost of revenues	\$ 3,349	\$ 1,960
Research and development expense	15,658	11,435
Sales and marketing expense	26,252	18,403
General and administrative expense	21,296	17,770
Provision for income taxes	(20,380)	(16,011)
Total cost related to stock-based compensation	<u>\$ 46,175</u>	<u>\$ 33,557</u>

The fair values of Akamai's stock option awards granted during the years ended December 31, 2007 and 2006 were estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Year Ended December 31,	
	2007	2006
Expected life (years)	4.0	3.9
Risk-free interest rate (%)	4.5	4.7
Expected volatility (%)	60.5	67.5
Dividend yield (%)	—	—

For the years ended December 31, 2007 and 2006, the weighted average fair value of Akamai's stock option awards granted was \$24.24 per share and \$18.10 per share, respectively.

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The fair values of Akamai's ESPP awards granted during the years ended December 31, 2007 and 2006 were estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Year Ended December 31,	
	2007	2006
Expected life (years)	0.5	1.1
Risk-free interest rate (%)	4.6	4.0
Expected volatility (%)	47.4	77.7
Dividend yield (%)	—	—

For the years ended December 31, 2007 and 2006, the weighted average fair value of Akamai's ESPP awards granted was \$6.24 per share and \$7.39 per share, respectively.

Expected volatilities are based on the Company's historical stock price volatility and implied volatility from traded options in its stock. The Company uses historical data to estimate the expected life of options granted within the valuation model. The risk-free interest rate for periods commensurate with the expected life of the option is based on the United States Treasury yield rate in effect at the time of grant.

As of December 31, 2007, total pre-tax unrecognized compensation cost for stock options, restricted stock units, deferred stock units and stock issued under ESPP was \$100.7 million. This non-cash expense will be recognized through 2011 over a weighted average period of 1.3 years. Nearly all of the Company's employees have received grants through these equity compensation programs.

**Prior to the Adoption of SFAS No. 123R**

For periods prior to 2006, the Company elected to apply APB No. 25 and related interpretations in accounting for its stock-based compensation. The following is a reconciliation of pro forma net income per weighted average share calculated as if the Company had adopted the fair value recognition provisions of SFAS No. 123 for the year ended December 31, 2005 from the Company's reported net income per weighted average share (in thousands, except per share data):

	For the Year Ended December 31, 2005
Net income, as reported	\$ 327,998
Add: stock-based employee compensation costs, net of tax included in reported net income	3,219
Deduct: stock-based employee compensation costs, net of tax determined under fair value method for all awards	(31,288)
Incremental stock option expense per SFAS No. 123	(28,069)
Pro forma net income	\$ 299,929
Net income per weighted average share, basic:	
As reported	\$ 2.41
Pro forma	\$ 2.20
Net income per weighted average share, diluted:	
As reported	\$ 2.11
Pro forma	\$ 1.93

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In accordance with APB No. 25, during the year ended December 31, 2005, the Company recorded the following stock-based compensation expense on the following income statement line items:

	For the Year Ended December 31, 2005
Cost of revenues	\$ —
Research and development expenses	1,034
Sales and marketing expenses	636
General and administrative expenses	2,179
Total cost related to stock-based compensation	<u>\$ 3,849</u>

The fair value of Akamai's stock options issued prior to the adoption of SFAS No. 123R was estimated using the Black-Scholes option pricing model. This model requires the input of subjective assumptions, including expected stock price volatility and estimated life of each award.

The fair value of Akamai's 1999 ESPP awards granted during the year ended December 31, 2005 was estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Year Ended December 31, 2005
Expected life (years)	0.5-2.0
Risk-free interest rate (%)	2.1
Expected volatility (%)	103.2
Dividend yield (%)	—

For the year ended December 31, 2005, the weighted average fair value of Akamai's ESPP awards granted was \$5.12 per share.

The fair value of Akamai's stock option awards granted during the year ended December 31, 2005 was estimated using the following weighted-average assumptions:

	For the Year Ended December 31, 2005
Expected life (years)	5.0
Risk-free interest rate (%)	4.0
Volatility (%)	72.8
Dividend yield (%)	—

For the year ended December 31, 2005, the weighted average fair value of Akamai's stock option awards granted was \$8.86 per share.



**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Stock Options**

The following tables summarize the stock option activity under all equity plans for the years ended December 31, 2007, 2006 and 2005 (in thousands, except exercise prices):

	Shares	Weighted Average Exercise Price
Outstanding at December 31, 2004	14,126	\$ 6.92
Granted (including those for business acquisitions)	6,345	10.67
Exercised	(3,029)	3.28
Forfeited and expired	(1,166)	12.23
Outstanding at December 31, 2005	16,276	8.65
Granted (including those for business acquisitions)	1,932	26.96
Exercised	(4,153)	5.18
Forfeited and expired	(808)	12.19
Outstanding at December 31, 2006	13,247	12.33
Granted (including those for business acquisitions)	1,629	36.97
Exercised	(2,493)	8.80
Forfeited and expired	(349)	26.17
Outstanding at December 31, 2007	<u>12,034</u>	15.83
Exercisable at December 31, 2007	<u>7,962</u>	10.03

The total pre-tax intrinsic value of options exercised during the years ended December 31, 2007, 2006 and 2005 was \$91.7 million, \$131.6 million and \$35.9 million, respectively. The total fair value of options vested for the years ended December 31, 2007, 2006 and 2005 was \$22.7 million, \$20.3 million and \$25.5 million, respectively. The aggregate fair values of stock options vested for the years ended December 31, 2007 and 2006 were calculated net of capitalized equity-related compensation of \$6.4 million and \$4.3 million, respectively. Cash proceeds from the exercise of stock options were \$22.0 million, \$21.4 million and \$9.8 million for the years ended December 31, 2007, 2006 and 2005, respectively. Income tax benefits realized from the exercise of stock options during the years ended December 31, 2007, 2006 and 2005 were approximately \$83.2 million, \$103.3 million and \$27.9 million, respectively.

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table summarizes stock options that are outstanding and expected to vest and stock options exercisable at December 31, 2007:

Range of Exercise Price (\$)	Options Outstanding and Expected to Vest				Options Exercisable			
	Number of Options (In thousands)	Weighted Average Remaining Contractual Life (In years)	Weighted Average Exercise Price	Aggregate Intrinsic Value (In thousands)	Number of Options (In thousands)	Weighted Average Remaining Contractual Life (In years)	Weighted Average Exercise Price	Aggregate Intrinsic Value (In thousands)
0.01-0.90	843	4.6	\$ 0.70	\$ 28,580	800	4.5	\$ 0.72	\$ 27,117
0.96-1.65	1,225	4.7	1.38	40,707	1,225	4.7	1.38	40,702
2.27-4.08	452	4.8	3.26	14,180	440	4.8	3.29	13,744
4.10-5.44	1,702	5.2	4.82	50,672	1,604	5.1	4.85	47,737
5.49-6.35	49	4.2	5.68	1,423	49	4.2	5.68	1,423
8.55-12.81	717	6.7	11.82	16,326	490	6.4	11.68	11,224
12.85-14.86	3,870	6.8	14.29	78,618	2,290	6.5	14.22	46,662
15.22-22.47	661	5.4	17.22	11,488	497	4.6	16.55	8,976
22.97-32.55	894	7.9	27.54	6,309	338	7.9	27.00	2,569
35.05-55.16	1,070	7.8	46.15	—	141	6.9	43.16	—
55.90-93.94	373	6.5	59.39	—	86	4.7	69.94	—
197.50	2	0.7	197.50	—	2	0.7	197.50	—
	<u>11,858</u>	<u>6.2</u>	<u>15.51</u>	<u>\$248,303</u>	<u>7,962</u>	<u>5.6</u>	<u>10.03</u>	<u>\$200,154</u>
Expected forfeitures	176							
Total options outstanding	<u>12,034</u>							

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on Akamai's closing stock price of \$34.60 on December 31, 2007, that would have been received by the option holders had all option holders exercised their "in-the-money" options as of that date. The total number of shares related to "in-the-money" options exercisable as of December 31, 2007 was approximately 7.7 million.

#### Deferred Stock Units

In May 2007, the Company granted an aggregate of 21,869 deferred stock units ("DSUs") under the Company's 1998 Plan to non-employee members of its Board of Directors and its Executive Chairman. During 2006 and 2005, the Company granted an aggregate of approximately 105,000 DSUs to non-employee members of its Board of Directors and to the Company's Executive Chairman. Each DSU represents the right to receive one share of the Company's common stock upon vesting. The holder may elect to defer receipt of all or a portion of the vested shares of stock represented by the DSU for a period for at least one year but not more than ten years from the grant date. The DSUs typically vest 50% upon the first anniversary of grant date, with the remaining 50% vesting in equal installments of 12.5% each quarter thereafter.

In September 2006, the Company's Board of Directors adopted a policy (the "Policy") with respect to the payment of compensation to a director in good standing upon such director's departure from the Board. Pursuant to the Policy, upon a director's departure from the Board, such director will receive a cash payment equal to the annual cash retainer payable to such director under the Company's non-employee director compensation plan pro-rated through the date of departure and 100% of the unvested shares underlying the DSUs held by such director will accelerate at the time of departure and become exercisable in full. In addition, if a director has completed three years of Board service at the time of departure, 100% of the unvested options initially granted to such director upon joining the Board will accelerate at the time of departure and become fully exercisable.

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the DSU activity for the years ended December 31, 2007, 2006 and 2005 (in thousands, except grant date fair values):

	<u>Units</u>	<u>Weighted Average Grant Date Fair Value</u>
Outstanding at December 31, 2004	189	\$ 6.43
Granted	71	13.13
Vested and distributed	(57)	13.93
Forfeited	(9)	13.84
Outstanding at December 31, 2005	194	9.34
Granted	34	31.15
Vested and distributed	(30)	40.63
Outstanding at December 31, 2006	198	12.55
Granted	22	42.30
Vested and distributed	(24)	18.87
Outstanding at December 31, 2007	<u>196</u>	<u>15.03</u>

The total fair value of DSUs that vested during the year ended December 31, 2007 was \$0.9 million. The grant date fair value is calculated based upon the Company's closing stock price on the date of grant. As of December 31, 2007, 28,291 DSUs were unvested, with an aggregate intrinsic value of approximately \$1.0 million and a weighted average remaining contractual life of approximately 1.1 years. These units are expected to vest through May 2009. All DSUs vest upon fulfilling service conditions or upon a director's departure from the Board under the terms of the Policy. The total fair values of DSUs that vested during the years ended December 31, 2006 and 2005 were \$1.2 million and \$0.8 million, respectively. The grant date fair value is calculated based upon the Company's closing stock price on the date of grant.

**Restricted Stock Units**

The following table summarizes the different types of restricted stock units ("RSUs") granted by the Company (in thousands):

	<u>For the Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
RSUs with service-based vesting conditions	588	834
Performance-based RSUs	1,409	2,412
Total	<u>1,997</u>	<u>3,246</u>

Each RSU represents the right to receive one share of the Company's common stock upon vesting. The fair value of these RSUs was calculated based upon the Company's closing stock price on the date of grant, and the stock-based compensation expense is being recognized over the vesting period. Most RSUs with service-based vesting provisions vest in either three equal annual installments over the three-year period following the grant date so that all such RSUs are vested at the end of three years, or in quarterly installments of 6.25% so that all such RSUs are vested at the end of four years.

The Company also granted performance-based RSUs in 2007 and 2006 to certain employees. These performance-based RSUs will only vest if the Company exceeds specified cumulative revenue and earnings per

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

share targets over a period of three consecutive fiscal years commencing with the year in which the RSU was granted. The maximum number of performance-based RSUs that may vest is equal to 300% of the number of non-performance-based RSUs granted on the same date; such maximum vesting would only occur if the Company meets or exceeds 110% of both its cumulative revenue and earnings per share targets for the three designated fiscal years. No performance-based RSUs will vest if the Company fails to exceed the applicable targets. If the Company's cumulative revenue and/or earnings per share results for the applicable years is between 100% and 110% of the targets, the holder would receive between zero performance-based RSUs and the maximum deliverable amount set forth above. For the years ended December 31, 2007 and 2006, management measured compensation expense for these performance-based RSUs based upon a review of the Company's expected achievement of future cumulative performance. Such compensation cost is being recognized ratably over three years for each series of grants, as these awards vest only in their entirety upon achievement of the specified targets. Management will continue to review the Company's expected performance and adjust the compensation cost, if needed, at such time.

The following table summarizes the RSU activity for the years ended December 31, 2007 and 2006 (in thousands, except grant date fair values):

	Units	Weighted Average Grant Date Fair Value
Granted	3,246	\$ 25.45
Forfeited	(106)	25.54
Outstanding at December 31, 2006	3,140	25.44
Granted	1,997	52.67
Exercised	(286)	26.66
Forfeited	(256)	35.78
Outstanding at December 31, 2007	<u>4,595</u>	36.67

The grant date fair value of each RSU is calculated based upon the Company's closing stock price on the date of grant. As of December 31, 2005, no RSUs were outstanding. As of December 31, 2006, 3.1 million RSUs were outstanding and unvested, with an aggregate intrinsic value of \$166.8 million and a weighted average remaining contractual life of approximately 2.1 years. As of December 31, 2007, 4.6 million RSUs were outstanding and unvested, with an aggregate intrinsic value of \$159.0 million and a weighted average remaining contractual life of approximately 1.5 years. These RSUs are expected to vest on various dates through April 2011.

**17. Employee Benefit Plan:**

In January 1999, the Company established a savings plan for its employees that is designed to be qualified under Section 401(k) of the Internal Revenue Code. Eligible employees are permitted to contribute to the 401(k) plan through payroll deductions within statutory and plan limits. Participants may select from a variety of investment options. Investment options do not include Akamai common stock. For 2007, 2006 and 2005, the Company made matching contributions of 1/2 of the first 2% of employee contributions in each year and then matched 1/4 of the next 4% of employee contributions. The maximum amount of the Company match is \$1,000 per employee per year. The Company's contributions vest 25% per annum. The Company contributed approximately \$904,000, \$627,000 and \$467,000 of cash to the savings plan for the years ended December 31, 2007, 2006 and 2005, respectively. Effective January 1, 2008, the Company amended its matching contribution to 1/2 of the first 8% of employee contributions in each year, with the maximum amount of the Company match at \$2,000 per employee per year.

**AKAMAI TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**18. Income Taxes:**

The components of income before provision for (benefit from) income taxes were as follows (in thousands):

	For the Year Ended December 31,		
	2007	2006	2005
Domestic	\$ 156,219	\$ 90,009	\$ 64,216
Foreign	11,986	8,460	6,188
Income before provision for (benefit from) income taxes	<u>\$ 168,205</u>	<u>\$ 98,469</u>	<u>\$ 70,404</u>

The provision for (benefit from) income taxes consisted of the following (in thousands):

	For the Year Ended December 31,		
	2007	2006	2005
Current tax provision (benefit)			
Federal	\$ —	\$ —	\$ —
State	292	203	132
Foreign	1,685	2,383	1,571
Deferred tax provision (benefit)			
Federal	51,567	30,624	23,405
State	6,764	8,740	3,108
Foreign	1,640	(882)	9
Change in valuation allowance	5,290	—	(285,819)
	<u>\$67,238</u>	<u>\$41,068</u>	<u>\$ (257,594)</u>

The Company's effective rate differed from the statutory rate as follows:

	For the Year Ended December 31,		
	2007	2006	2005
United States federal income tax rate	35.0%	35.0%	35.0%
State taxes	4.4	4.5	4.7
Deferred compensation	2.7	5.8	1.2
United States federal and state research and development credits	(4.6)	(4.2)	(0.7)
Change in state tax rates	—	1.7	—
Foreign earnings	0.1	0.2	0.2
Other	(0.7)	(1.5)	(0.6)
Change in the deferred tax valuation allowance	3.1	—	(403.3)
	<u>40.0%</u>	<u>41.5%</u>	<u>(363.5)%</u>

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The components of the net deferred tax asset and the related valuation allowance were as follows (in thousands):

	December 31,	
	2007	2006
Net operating loss and credit carryforwards	\$225,324	\$275,934
Depreciation and amortization	77,893	55,583
Compensation costs	28,089	15,358
Restructuring	—	353
Other	17,738	16,294
Deferred tax assets	349,044	363,522
Acquired intangible assets not deductible	(34,418)	(22,257)
Internal-use software capitalized	(12,102)	(10,319)
Deferred tax liabilities	(46,520)	(32,576)
Valuation allowance	(11,158)	(6,338)
Net deferred tax asset and liabilities	<u>\$291,366</u>	<u>\$324,608</u>

Based upon the Company's cumulative history of earnings before taxes for financial reporting purposes over a 12-quarter period and an assessment of the Company's expected future results of operations, during the third quarter of 2005, the Company determined that it had become more likely than not that it would be able to realize a substantial portion of its United States and foreign NOL carryforwards and other tax attributes prior to their expiration. As a result, during 2005, the Company released a total of \$349.5 million of its United States and foreign deferred tax asset valuation allowance. Of the \$349.5 million, \$285.8 million was recorded as a discrete benefit for income taxes on the Company's consolidated statement of operations; \$61.0 million was attributable to stock option exercises, which was recorded as an increase in additional paid-in capital on the consolidated balance sheet; and approximately \$2.7 million was recorded as a reduction to acquired goodwill and intangible assets.

As of December 31, 2007, the Company had United States federal NOL carryforwards of approximately \$539.6 million and state NOL carryforwards of approximately \$186.5 million, which expire at various dates through 2026. The Company also had foreign NOL carryforwards of approximately \$4.5 million as of December 31, 2007. The majority of the foreign NOL carryforwards have no expiration dates. As of December 31, 2006, the Company had United States federal NOL carryforwards of \$697.3 million, state NOL carryforwards of \$291.4 million, and foreign NOL carryforwards of \$7.3 million. As of December 31, 2007 and 2006, the Company had United States federal and state research and development tax credit carryforwards of \$24.8 million and \$16.0 million, respectively, which will expire at various dates through 2027. As of December 31, 2007 and 2006, the Company had foreign tax credit carryforwards of \$5.2 million and \$3.5 million, respectively, which expire at various dates through 2017.

As of December 31, 2007, the Company had a total valuation allowance of \$11.2 million. During the fourth quarter of 2007, the Company recorded a valuation allowance of \$6.7 million against capital loss carryforwards that it expects to expire unused and also reversed an existing valuation allowance of \$1.9 million related to certain state NOL carryforwards.

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company plans to reinvest indefinitely undistributed foreign earnings. As of December 31, 2007, the Company had approximately \$4.1 million of undistributed foreign earnings.

In June 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The Company adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, the Company had unrecognized tax benefits of \$2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48.

The following is a roll-forward of the Company's unrecognized tax benefits:

	<b>For the Year Ended December 31, 2007</b>
	<b>(In millions)</b>
Unrecognized tax benefits — as of January 1, 2007	\$ 1.5
Gross increases — tax positions in prior period	1.3
Gross decreases — tax positions in prior period	(0.6)
Gross increases — current-period tax positions	1.6
Lapse of statute of limitations	(0.6)
Unrecognized tax benefits — as of December 31, 2007	<u>\$ 3.2</u>

As of the FIN 48 adoption date and December 31, 2007, the Company had approximately \$2.1 million and \$4.0 million, respectively, of unrecognized tax benefits, including \$0.6 million and \$0.8 million, respectively, of accrued interest and penalties. Interest and penalties related to unrecognized tax benefits are recorded in income tax expense. If recognized, all amounts of unrecognized tax benefits would have resulted in a reduction of income tax expense, impacting the effective income tax rate.

The Company's foreign subsidiaries file income tax returns in various foreign jurisdictions. Certain of these foreign subsidiaries have unrecognized tax benefits related to transfer pricing policies that existed in prior years. The statute of limitations is expected to expire in these foreign jurisdictions in 2008, which would result in the recognition of approximately \$0.7 million of benefit.

Generally, all tax years are open for examination by the major taxing jurisdictions to which the Company is subject including federal, state and foreign jurisdictions due to net operating losses and the limited number of prior year audits by taxing jurisdictions.

**19. Segment Information:**

Akamai's chief decision-maker, as defined under SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information," is the Chief Executive Officer and the executive management team. As of December 31, 2007, Akamai operated in one industry segment: providing global services for accelerating and improving the delivery of content and applications over the Internet. The Company is not organized by market,

## AKAMAI TECHNOLOGIES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

and is managed and operated as one business. A single management team that reports to the Chief Executive Officer comprehensively manages the entire business. The Company does not operate any material separate lines of business or separate business entities with respect to its services. Accordingly, the Company does not accumulate discrete financial information with respect to separate product lines and does not have separately reportable segments as defined by SFAS No. 131.

The Company deploys its servers into networks worldwide. As of December 31, 2007, the Company had approximately \$107.9 million and \$26.6 million of property and equipment, net of accumulated depreciation, located in the United States and foreign locations, respectively. As of December 31, 2006, the Company had approximately \$69.0 million and \$17.6 million of property and equipment, net of accumulated depreciation, located in the United States and foreign locations, respectively. Akamai sells its services and licenses through a sales force located both domestically and abroad. For the years ended December 31, 2007 and 2006, approximately 23% and 22%, respectively, of revenues was derived from the Company's operations outside the United States, of which 17% and 18% of overall revenues, respectively, related to Europe. For the year ended December 31, 2005, approximately 21% of revenues were derived from the Company's operations outside the United States, of which 16% of overall revenues related to Europe. Other than the United States, no single country accounted for 10% or more of the Company's total revenues.

**20. Quarterly Financial Results (unaudited):**

The following table sets forth certain unaudited quarterly results of operations of the Company for the years ended December 31, 2007 and 2006. In the opinion of management, this information has been prepared on the same basis as the audited consolidated financial statements and all necessary adjustments, consisting only of normal recurring adjustments, have been included in the amounts below for a fair statement of the quarterly information when read in conjunction with the audited consolidated financial statements and related notes included elsewhere in this annual report on Form 10-K.

	For the Three Months Ended			
	March 31, 2007	June 30, 2007	Sept. 30, 2007	Dec. 31, 2007
	(In thousands, except per share data)			
Revenues	\$ 139,274	\$ 152,654	\$ 161,240	\$ 183,238
Cost of revenues	\$ 34,480	\$ 39,759	\$ 43,811	\$ 49,394
Net income	\$ 19,179	\$ 21,646	\$ 24,264	\$ 35,878
Basic net income per share	\$ 0.12	\$ 0.13	\$ 0.15	\$ 0.22
Diluted net income per share	\$ 0.11	\$ 0.12	\$ 0.13	\$ 0.20
Basic weighted average common shares outstanding	161,569	164,798	165,474	164,768
Diluted weighted average common shares outstanding	183,157	185,601	185,106	185,294

	For the Three Months Ended			
	March 31, 2006	June 30, 2006	Sept. 30, 2006	Dec. 31, 2006
	(In thousands, except per share data)			
Revenues	\$ 90,825	\$ 100,649	\$ 111,495	\$ 125,703
Cost of revenues	\$ 19,316	\$ 21,195	\$ 24,984	\$ 28,605
Net income	\$ 11,495	\$ 11,264	\$ 14,019	\$ 20,623
Basic net income per share	\$ 0.07	\$ 0.07	\$ 0.09	\$ 0.13
Diluted net income per share	\$ 0.07	\$ 0.07	\$ 0.08	\$ 0.12
Basic weighted average common shares outstanding	153,819	154,702	155,739	157,206
Diluted weighted average common shares outstanding	173,811	175,612	177,063	179,064



**AKAMAI TECHNOLOGIES, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**21. Subsequent Event**

In February 2008, many of the municipal auction rate securities held by the Company in its portfolio experienced failed auctions. The continued uncertainty in the credit markets, which has caused auction rate securities held by the Company to fail, prevented the Company from liquidating certain of its holdings of auction rate securities. At December 31, 2007, approximately \$280.0 million of the Company's marketable securities were municipal auction rate securities. Of this amount, as of February 26, 2008, approximately \$145.5 million represents investments in marketable securities that had failed auctions subsequent to December 31, 2007. In the event that the Company needs to access its investments in these auction rate securities, the Company will not be able to do so until a future auction on these investments is successful, the issuer redeems the outstanding securities, a buyer is found outside the auction process, the securities mature, or there is a default requiring immediate payment from the issuer. If the issuers are unable to successfully close future auctions and their credit ratings deteriorate, the Company may be required to adjust the carrying value of these investments through an impairment charge, which could be material. In addition, due to the Company's inability to quickly liquidate these investments, the Company may reclassify those investments with failed auctions as long-term assets in its consolidated balance sheet based on their contractual maturity dates.

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

None.

**Item 9A. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2007. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2007, our disclosure controls and procedures were (1) effective in that they were designed to ensure that material information relating to us, including our consolidated subsidiaries, is made known to our Chief Executive Officer and Chief Financial Officer by others within those entities, particularly during the period in which this report was being prepared, as appropriate to allow timely discussions regarding required disclosure therein and (2) effective, in that they provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms.

*Management's Annual Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by the company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

To assist management, we have established an internal audit function to verify and monitor our internal controls and procedures. Because of its inherent limitations, however, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2007. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control — Integrated Framework.

Based on our assessment, management concluded that, as of December 31, 2007, our internal control over financial reporting was effective based on those criteria at the reasonable assurance level.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2007 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report, which is included in Item 8 of this annual report on Form 10-K.

---

[Table of Contents](#)

*Changes in Internal Control over Financial Reporting*

No changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended December 31, 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The complete response to this Item regarding the backgrounds of our executive officers and directors and other information contemplated by Items 401, 405 and 406 of Regulation S-K will be contained in our definitive proxy statement for our 2008 Annual Meeting of Stockholders under the captions “Executive Compensation Matters,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Corporate Governance Matters” and is incorporated herein.

Our executive officers and directors and their positions as of February 29, 2008, are as follows:

<u>Name</u>	<u>Position</u>
Paul Sagan	President, Chief Executive Officer and Director
George H. Conrades	Executive Chairman of the Board of Directors
F. Thomson Leighton	Chief Scientist and Director
Melanie Haratunian	Senior Vice President and General Counsel
Robert W. Hughes	Executive Vice President, Global Sales, Services and Marketing
J. Donald Sherman	Chief Financial Officer
Martin M. Coyne II	Director
Ronald L. Graham	Director
Jill A. Greenthal	Director
David W. Kenny	Director
Peter J. Kight	Director
Geoffrey Moore	Director
Frederic V. Salerno	Director
Naomi O. Seligman	Director

We have adopted a written code of business ethics, as amended, that applies to our principal executive officer, principal financial or accounting officer or person serving similar functions and all of our other employees and members of our Board of Directors. The text of our amended code of ethics is available on our website at [www.akamai.com](http://www.akamai.com). We did not waive any provisions of the code of business ethics during the year ended December 31, 2007. If we amend, or grant a waiver under, our code of business ethics that applies to our principal executive officer, principal financial or accounting officer, or persons performing similar functions, we intend to post information about such amendment or waiver on our website at [www.akamai.com](http://www.akamai.com).

**Item 11. Executive Compensation**

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2008 Annual Meeting of Stockholders under the sections captioned “Executive Compensation Matters” and “Director Compensation.”

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

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2008 Annual Meeting of Stockholders under the sections captioned “Attendance and Voting

---

[Table of Contents](#)

Matters,” “Security Ownership of Certain Beneficial Owners and Management,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Securities Authorized for Issuance Under Equity Compensation Plans.”

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

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2008 Annual Meeting of Stockholders under the sections captioned “Certain Relationships and Related Party Transactions” and “Compensation Committee Interlocks and Insider Participation.”

**Item 14. *Principal Accountant Fees and Services***

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2008 Annual Meeting of Stockholders under the section captioned “Ratification of Selection of Independent Auditors.”

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

- (a) The following documents are included in this annual report on Form 10-K.
1. Financial Statements (see Item 8 — Financial Statements and Supplementary Data included in this annual report on Form 10-K).
  2. The schedule listed below and the Report of Independent Registered Public Accounting Firm on Financial Statement Schedule are filed as part of this annual report on Form 10-K:

[Schedule II — Valuation and Qualifying Accounts](#)

Page  
S-1

All other schedules are omitted as the information required is inapplicable or the information is presented in the consolidated financial statements and the related notes.

3. The exhibits required by Item 601 of Regulation S-K and Item 15(b) of this Annual Report on Form 10-K are listed in the Exhibit Index immediately preceding the exhibits and are incorporated herein.
- (b) The exhibits required by Item 601 of Regulation S-K are listed in the Exhibit Index immediately preceding the exhibits and are incorporated herein.
- (c) Not applicable.



**AKAMAI TECHNOLOGIES, INC.**  
**SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS**

<u>Description</u>	<u>Balance at beginning of period</u>	<u>Charged to operations</u>	<u>Other</u>	<u>Deductions</u>	<u>Balance at end of period</u>
<b>Year ended December 31, 2005:</b>					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	\$ 3,303	2,094	1,040 <sup>2</sup>	(1,622)	\$ 4,815
Deferred tax asset valuation allowance	\$ 366,434	(285,819)	(73,754) <sup>1</sup>	—	\$ 6,861
<b>Year ended December 31, 2006:</b>					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	\$ 4,815	3,019	115 <sup>2</sup>	(2,481)	\$ 5,468
Deferred tax asset valuation allowance	\$ 6,861	—	4,439 <sup>1</sup>	(4,962)	\$ 6,338
<b>Year ended December 31, 2007:</b>					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	\$ 5,468	6,434	337 <sup>2</sup>	(1,848)	\$ 10,391
Deferred tax asset valuation allowance	\$ 6,338	5,290	75 <sup>1</sup>	(545)	\$ 11,158

<sup>1</sup> Amounts related to items with no income statement effect such as the impact of stock options, acquired intangible assets and acquired net operating losses.

<sup>2</sup> Amount represents receivable allowances with no income statement effect recognized in connection with a business combination.



**EXHIBIT INDEX**

3.1(A)	Amended and Restated Certificate of Incorporation of the Registrant
3.2(B)	Amended and Restated By-Laws of the Registrant
3.3(C)	Certificate of Designations of Series A Junior Participating Preferred Stock of the Registrant
4.1(B)	Specimen common stock certificate
4.2(D)	Indenture, dated as of December 12, 2003 by and between the Registrant and U.S. Bank National Association
4.3(E)	Rights Agreement, dated September 10, 2002, by and between the Registrant and Equiserve Trust Company, N.A.
4.4(F)	Amendment No. 1, dated as of January 29, 2004, to the Rights Agreement, dated as of September 10, 2002, between the Registrant and EquiServe Trust Company, N.A., as Rights Agent
4.5(G)	Agreement and Plan of Merger, dated as of November 17, 2006, among Akamai, Nantucket Acquisition Corp., Nine Systems Corporation and the Stockholders identified therein
4.6(H)	Agreement and Plan of Merger dated as of February 2, 2007 among the Registrant, Lode Star Acquisition Corp., Netli, Inc. and the Principal Stockholders and Non-Competition Parties named therein
4.7(I)	Registration Rights Agreement dated as of April 12, 2007, by and among the Registrant and the individuals and entities identified therein
10.1(J)@	Second Amended and Restated 1998 Stock Incentive Plan of the Registrant, as amended
10.2(K)@	Amended and Restated 1999 Employee Stock Purchase Plan of the Registrant
10.3(L)	2001 Stock Incentive Plan of the Registrant
10.4(M)	2006 Stock Incentive Plan of the Registrant
10.5(N)	Speedera Networks, Inc. 1999 Stock Incentive Plan
10.6(O)	Nine Systems Corporation (formerly known as Streaming Media Corporation) 2002 Stock Option Plan
10.7(P)	Netli, Inc. Amended and Restated Stock Option Plan
10.8(P)	Netli, Inc. 2002 Equity Incentive Plan
10.9(B)@	Form of Restricted Stock Agreement granted under the 1998 Stock Incentive Plan of the Registrant
10.10(B)@	Form of Incentive Stock Option Agreement granted under the 1998 Stock Incentive Plan of the Registrant
10.11(B)@	Form of Nonstatutory Stock Option Agreement granted under the 1998 Stock Incentive Plan of the Registrant
10.12(Q)	Form of Incentive Stock Option Agreement granted under the 2006 Stock Incentive Plan of the Registrant
10.13(Q)	Form of Nonstatutory Stock Option Agreement granted under the 2006 Stock Incentive Plan of the Registrant
10.14(R)@	Form of Deferred Stock Unit Agreement for Directors of the Registrant

## Table of Contents

10.15(S)@	Form of Restricted Stock Unit Agreement with Annual Vesting
10.16(S)@	Form of Restricted Stock Unit Agreement with Performance-Based Vesting
10.17(T)@†	Form of Restricted Stock Unit Agreement with Annual Performance-Based Vesting
10.18	Summary of the Registrant's Compensatory Arrangements with Non-Employee Directors
10.19	Summary of the Registrant's Compensatory Arrangements with Executive Officers
10.20	Intentionally omitted.
10.21(U)	Form of Incentive Stock Option Agreement with Financial Performance-Related Vesting Provisions
10.22(V)	Sublease Agreement, dated as of May 3, 2002, by and between the Registrant and Novell, Inc., as amended by a First Amendment dated as of June 6, 2002
10.23(C)	Office Lease, dated June 30, 2000, between the Registrant and San Tomas Properties, LLC
10.24(C)	Agreement, dated November 6, 2002, between the Registrant and San Tomas Properties, LLC
10.25(W)	Amendment to Real Estate Lease, dated May 5, 2003, between the Registrant and San Tomas Properties, LLC
10.26	Four Cambridge Center Lease Agreement dated October 1, 2007
10.27	Eight Cambridge Center Lease Agreement dated October 1, 2007
10.28(B)†	Patent and Copyright License Agreement, dated as of October 26, 1998, between the Registrant and Massachusetts Institute of Technology
10.29	Incentive Stock Option Agreement, dated February 8, 2008, by and between the Registrant and Robert W. Hughes
10.30(V)@	Incentive Stock Option Agreement, dated as of July 12, 2002, by and between the Registrant and George Conrades
10.31(X)@	Employment Offer Letter, dated as of August 21, 2003, between the Registrant and Melanie Haratunian
10.32(Y)@	Incentive Stock Option Agreement, dated as of September 19, 2002, by and between the Registrant and Paul Sagan
10.33(Z)@	Employment Offer Letter Agreement dated January 4, 2005 by and between the Registrant and Paul Sagan
10.34(AA)@	Amendment to Employment Agreement dated August 9, 2006 between the Registrant and Paul Sagan
10.35	Intentionally omitted.
10.36(Z)@	Incentive Stock Option Agreement dated February 14, 2005 between the Registrant and Paul Sagan
10.37(BB)@	Incentive Stock Option Agreement, dated May 15, 2003, between the Registrant and Chris Schoettle
10.38(L)@	Employment Offer Letter, dated as of February 15, 2001, between the Registrant and Chris Schoettle

## Table of Contents

10.39(CC)@	Employment Offer Letter Agreement dated October 14, 2005 between the Registrant and J. Donald Sherman
10.40(DD)@	Form of J. Donald Sherman Restricted Stock Unit Agreement
10.41@†	Form of 2008 Executive Bonus Plan
10.42(EE)@	Akamai Technologies, Inc. 2006 Executive Severance Pay Plan
10.43(EE)@	Form of Executive Change of Control and Severance Agreement
10.44(AA)	Akamai Technologies, Inc. Policy on Departing Director Compensation
21.1	Subsidiaries of the Registrant
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Certification of Chief Executive Officer pursuant to Rule 13a- 14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2	Certification of Chief Financial Officer pursuant to Rule 13a- 14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

- 
- (A) Incorporated by reference to the Registrant’s Quarterly Report on Form 10-Q filed with the Commission on August 14, 2000.
- (B) Incorporated by reference to the Registrant’s Registration Statement on Form S-1 (File No. 333-85679), as amended, filed with the Securities and Exchange Commission on August 20, 1999.
- (C) Incorporated by reference to the Registrant’s Quarterly Report on Form 10-Q filed with the Commission on November 14, 2002.
- (D) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed with the Commission on December 16, 2003.
- (E) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed with the Commission on September 11, 2002.
- (F) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed with the Commission on February 2, 2004.
- (G) Incorporated by reference to the Registrant’s Registrant Registration Statement on Form S-1 (File No. 333-139692) filed with the Commission on December 27, 2006.
- (H) Incorporated by reference to the Registrant’s Registration Statement on Form S-3 (File No. 333-141608) filed with the Commission on March 27, 2007.
- (I) Incorporated by reference to the Registrant’s Registration Statement on Form S-3 (File No. 333-142397) filed with the Commission on April 26, 2007.
- (J) Incorporated by reference to the Registrant’s Quarterly Report on Form 10-Q filed with the Commission on August 9, 2004.
- (K) Incorporated by reference to the Registrant’s Annual Report on Form 10-K filed with the Commission on March 16, 2006.
- (L) Incorporated by reference to the Registrant’s Annual Report on Form 10-K filed with the Commission on February 27, 2002.
- (M) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed with the Commission on May 26, 2006.
- (N) Incorporated by reference to the Registrant’s Registration Statement on Form S-8 filed with the Commission on June 24, 2005.

## Table of Contents

- (O) Incorporated by reference to the Registrant's Registrant Registration Statement on Form S-8 (File No. 333-139408) filed with the Commission on December 15, 2006.
- (P) Incorporated by reference to the Registrant's Registrant Registration Statement on Form S-8 (File No. 333-141854) filed with the Commission on April 3, 2007.
- (Q) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 1, 2007.
- (R) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2003.
- (S) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on February 17, 2006.
- (T) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on January 22, 2007.
- (U) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on July 27, 2005.
- (V) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 13, 2002.
- (W) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 15, 2003.
- (X) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 10, 2004.
- (Y) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2002.
- (Z) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2005.
- (AA) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 9, 2006.
- (BB) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 14, 2003.
- (CC) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on October 20, 2005.
- (DD) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on March 8, 2006.
- (EE) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2006.
- @ Management contract or compensatory plan or arrangement filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(b) of this Annual Report.
- † Confidential Treatment has been requested as to certain portions of this Exhibit. Such portions have been omitted and filed separately with the Securities and Exchange Commission.

**Summary of Compensation for the Executive Chairman of the Board of Directors  
and the Non-Employee Members of the Board of Directors  
of Akamai Technologies, Inc.**

The Executive Chairman of the Board of Directors and the non-employee directors of Akamai Technologies, Inc. (“Akamai”) are entitled to annual compensation of \$250,000, of which \$50,000 is paid in cash and \$200,000 is paid in deferred stock units (“DSUs”) representing the right to acquire shares of Akamai common stock. The number of DSUs issued is based on the fair market value of Akamai’s common stock on the date of its annual stockholders meeting. For so long as the person remains a director, DSUs will vest over a two-year period. In addition, Akamai’s Executive Chairman and its Lead Director are entitled to \$40,000 of additional compensation, of which \$20,000 is paid in cash and \$20,000 is paid in DSUs. Chairs of the Audit Committee and the Compensation Committee are entitled to \$25,000 in additional compensation, of which \$5,000 is paid in cash and \$20,000 is paid in DSUs. The Chair of the Nominating and Corporate Governance Committee is entitled to \$10,000 of additional compensation, of which \$5,000 is paid in cash and \$5,000 is paid in DSUs. Each non-employee director is eligible to receive options to purchase shares of common stock with a fair value of \$400,000 when he or she joins the Board of Directors. Such options vest over a four-year period. Akamai also reimburses directors for reasonable out-of-pocket expenses incurred in attending meetings of the Board of Directors.

## Summary of the Registrant's Compensatory Arrangements with Executive Officers

<u>Name and Title</u>	<u>Base Salary</u>
Paul Sagan President and CEO-Elect	\$ 525,000
J. Donald Sherman Senior Vice President – CFO-Elect	\$ 415,000
George Conrades Executive Chairman	\$ 70,000 <sup>1</sup>
Melanie Haratunian Senior Vice President and General Counsel	\$ 325,000
Robert Hughes Executive Vice President – Global Sales, Services and Marketing	\$ 415,000
Tom Leighton Chief Scientist	\$ 20,000

<sup>1</sup> Reflects cash compensation for serving as Executive Chairman of the Board of Directors

FOUR CAMBRIDGE CENTER  
CAMBRIDGE, MASSACHUSETTS

TABLE OF CONTENTS

LEASE DATED October 1, 2007	1
ARTICLE I	1
Basic Lease Provisions and Enumerations of Exhibits	1
1.1 Introduction	1
1.2 Basic Data	1
1.3 Enumeration of Exhibits	4
ARTICLE II	5
Premises	5
2.1 Demise and Lease of Initial Premises	5
2.2 Must Take Premises, Potential Give Back Premises and Expansion Rights	5
2.3 Appurtenant Rights and Reservations	5
2.4 Roof Rights	6
2.5 Storage Space	6
ARTICLE III	6
Lease Term and Extension Options	6
3.1 Term	6
3.2 Extension Options	6
ARTICLE IV	8
Condition of Premises; Alterations	8
4.1 Condition of Premises	8
4.2 Quality and Performance of Work	9
4.3 Special Allowance	9
4.4 Signage	12
ARTICLE V	13
Annual Fixed Rent and Electricity	13
5.1 Fixed Rent and Electricity Charges	13
5.2 Reallocation of Electricity Charges	14
ARTICLE VI	14
Taxes	14
6.1 Introduction	14
6.2 Definitions	14
6.3 Tenant's Share of Real Estate Taxes	16

ARTICLE VII	16
Landlord’s Repairs and Services and Tenant’s Escalation Payments	16
7.1 Structural Repairs	16
7.2 Other Repairs to be Made by Landlord	17
7.3 Services to be Provided by Landlord	17
7.4 Introduction to Operating Costs	17
7.5 Operating Costs Defined	17
7.6 Tenant’s Escalation Payments	21
7.7 No Damage	23
ARTICLE VIII	24
Tenant’s Repairs	24
8.1 Tenant’s Repairs and Maintenance	24
ARTICLE IX	25
Alterations	25
9.1 Landlord’s Approval	25
9.2 Conformity of Work	26
9.3 Performance of Work, Governmental Permits and Insurance	26
9.4 Liens	27
9.5 Nature of Alterations	27
9.6 Increases in Taxes	28
9.7 Alterations Permitted Without Landlord’s Consent	28
ARTICLE X	28
Parking 28	28
10.1 Parking Privileges	28
10.2 Parking Charges	29
10.3 Garage Operation	29
10.4 Reserved Spaces	30
10.5 Limitations	30
10.6 Interim On-Grade Parking	31
ARTICLE XI	31
Certain Tenant Covenants	31
ARTICLE XII	33
Assignment and Subletting	33
12.1 Restrictions on Transfer	33
12.2 Exceptions	33
12.3 Landlord’s Termination Right	34
12.4 Consent of Landlord	34
12.5 Tenant’s Notice	35
12.6 Profit on Subleasing or Assignment	36
12.7 Additional Conditions	36
12.8 Expedited Dispute Resolution	38
ARTICLE XIII	39
Indemnity And Commercial General Liability Insurance	39
13.1 Indemnity	39
13.2 Commercial General Liability Insurance	40
13.3 Tenant’s Property Insurance	40



13.4	Non-Subrogation	40
13.5	Tenant's Risk	41
13.6	Landlord's Insurance	41
ARTICLE XIV		41
Fire, Casualty and Taking		41
14.1	Damage Resulting from Casualty	41
14.2	Uninsured Casualty	42
14.3	Rights of Termination for Taking	42
14.4	Award	43
ARTICLE XV		44
Default		44
15.1	Tenant's Default	44
15.2	Termination; Re-Entry	45
15.3	Continued Liability; Re-Letting	45
15.4	Liquidated Damages	46
15.5	Waiver of Redemption	47
15.6	Landlord's Default	47
ARTICLE XVI		47
Miscellaneous Provisions		47
16.1	Waiver	47
16.2	Cumulative Remedies	48
16.3	Quiet Enjoyment	48
16.4	Surrender	48
16.5	Brokerage	49
16.6	Invalidity of Particular Provisions	49
16.7	Provisions Binding, Etc.	49
16.8	Recording; Confidentiality	49
16.9	Notices and Time for Action	50
16.10	When Lease Becomes Binding	50
16.11	Paragraph Headings	50
16.12	Rights of Mortgagee	51
16.13	Rights of Ground Lessor	51
16.14	Notice to Mortgagee and Ground Lessor	51
16.15	Assignment of Rents	52
16.16	Status Report and Financial Statements	52
16.17	Self-Help	53
16.18	Holding Over	53
16.19	Entry by Landlord	54
16.20	Tenant's Payments	55
16.21	Late Payment	55
16.22	Counterparts	55
16.23	Entire Agreement	56
16.24	Limitation of Liability	56
16.25	No Partnership	56
16.26	Security Deposit	56
16.27	Waiver of Trial by Jury	59
16.28	Patriot Act and Executive Order 13224	59
16.29	Governing Law	60
16.30	Emergency Generator	60

16.31	Transportation Program	62
16.32	Landlord Affiliates	62
ARTICLE XVII		62
Must Take Premises, Potential Give Back Premises and Expansion Rights		62
17.1	Definitions	62
17.2	Must Take Premises	64
17.3	Potential Give Back Premises	65
17.4	First Expansion Option	65
17.5	Second Expansion Option	67
17.6	Third Expansion Option	69
17.7	Right of First Offer	71
17.8	Special Additional Right of Offer	74
17.9	Holdover Tenants	76

FOUR CAMBRIDGE CENTER  
CAMBRIDGE, MASSACHUSETTS

Lease Dated October 1, 2007

THIS INSTRUMENT IS AN INDENTURE OF LEASE in which the Landlord and the Tenant are the parties hereinafter named, and which relates to space in the building (the "Building") known as, and having an address at, Four Cambridge Center, Cambridge, Massachusetts.

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

ARTICLE I

Basic Lease Provisions and Enumerations of Exhibits

1.1 Introduction

(A) Tenant is presently in occupancy of the Initial Premises pursuant to that certain lease dated August 16, 2006, as amended by an amendment dated March 15, 2007 (the "Existing 4CC Lease"). Upon the Commencement Date under this Lease, this Lease shall supersede the Existing 4CC Lease, and the Existing 4CC Lease shall be deemed terminated as of the date immediately prior to the Commencement Date. Any obligations or liabilities of Tenant that, pursuant to the Existing 4CC Lease, survive the expiration or earlier termination of the Existing 4CC Lease shall be and are assumed by Tenant under this Lease.

(B) The following Sections 1.2 and 1.3 set forth the basic data and identifying Exhibits elsewhere hereinafter referred to in this Lease, and, where appropriate, constitute definitions of the terms hereinafter listed.

1.2 Basic Data

Date:	October 1, 2007
Landlord:	BP FOUR CC LLC, a Delaware limited liability company
Present Mailing Address of Landlord:	c/o Boston Properties Limited Partnership Prudential Tower 800 Boylston Street, Suite 1900 Boston, Massachusetts 02199-8103
Landlord's Construction Representative:	Mark Denman
Tenant:	AKAMAI TECHNOLOGIES, INC., a Delaware corporation
Present Mailing Address of Tenant:	8 Cambridge Center Cambridge, Massachusetts 02142

Tenant's Construction Representative:

Brian Murray

Lease Term (sometimes called the "Original Lease Term"):

One Hundred Forty Seven (147) calendar months from the Commencement Date with respect to the Initial Premises until December 31, 2019, unless extended or sooner terminated as hereinafter provided.

Extension Option:

Two (2) periods of five (5) years as provided in and on the terms set forth in Section 3.2 hereof.

Lease Year:

A period of twelve (12) consecutive calendar months, commencing on the first day of January in each year, except that the first Lease Year of the Lease Term hereof shall be the period commencing on the Commencement Date and ending on the succeeding December 31, and the last Lease Year of the Lease Term hereof shall be the period commencing on January 1 of the calendar year in which the Lease Term ends, and ending with the date on which the Lease Term ends.

Commencement Date:

October 1, 2007 with respect to the Initial Premises, and as to other Premises Components, the date upon which such Premises Component is incorporated into the Premises pursuant to this Lease.

Rent Commencement Date:

Either the Commencement Date or, if Annual Fixed Rent commences to be payable with respect to any Premises Component on a date later than the Commencement Date pertaining thereto pursuant to this Lease, then such later date shall constitute the Rent Commencement Date therefor, unless Tenant shall earlier commence beneficial use of all or any portion of the Premises Component, whereupon such earlier date shall constitute the Rent Commencement Date.

Initial Premises:

The entire eighth (8<sup>th</sup>) and ninth (9<sup>th</sup>) floors of the Building, in accordance with the floor plans annexed hereto as Exhibit E and incorporated herein by reference, as further defined and limited in Section 2.1 hereof.

Must Take Premises:

The entire tenth (10<sup>th</sup>), eleventh (11<sup>th</sup>) and twelfth (12<sup>th</sup>) floors of the Building, in accordance with the floor plans annexed hereto as Exhibit E and incorporated herein by reference, as further defined and limited in Section 17.2 hereof.

Potential Give Back Premises:	The entire eighth (8 <sup>th</sup> ) floor of the Building, in accordance with the floor plan annexed hereto as Exhibit E and incorporated herein by reference, as further defined and limited in Section 17.3 hereof.
Expansion Premises:	See Article XVII.
Premises Component:	Initially only the Initial Premises but, from and after the incorporation into the Premises of other rentable area in the Building, any specified portion of the rentable area of the Premises as to which specific terms and conditions of this Lease may apply, but which may not necessarily apply to other portions of the Premises.
Premises:	Collectively, all Premises Components which, in the aggregate, comprise all of the rentable area in the Building which shall, from time to time, be demised to Tenant pursuant to this Lease.
Rentable Floor Area of the Initial Premises:	40,732 square feet, including a proportionate share of common areas of the Building outside of the Premises.
Annual Fixed Rent:	See Exhibit K.
Tenant Electricity:	Initially as provided in Section 5.1 hereof, subject to adjustment as provided in Section 5.2 and Section 7.5 hereof.
Additional Rent:	All charges and other sums payable by Tenant as set forth in this Lease, in addition to Annual Fixed Rent.
Initial Minimum Limits of Tenant's Commercial General Liability:	\$5,000,000.00 combined single limit per occurrence on a per location basis, provided that if the Rentable Floor Area of the Premises should exceed 100,000 square feet, the aforesaid minimum limit shall be increased to \$10,000,000.00.
Total Rentable Office Floor Area of the Building (being Floors 2-12):	194,439 square feet.
Total Rentable Floor Area of the Building (exclusive of the basement level):	198,295 square feet.

Lot or Site:	All, and also any part of, the property described in Exhibit A, plus any additions or reduction thereto resulting from the change or any abutting street line. The terms Lot and Site are used interchangeably in this instrument.
Property:	The Building and Lot or Site.
Loading Dock:	The service dock and related driveways providing vehicular service access for the Building as specified by Landlord.
Development Area:	The area of the Cambridge Center development, as shown on Exhibit F.
Permitted Use:	General office use.
Broker:	Jones Lang LaSalle and Richards, Barry, Joyce and Partners.
Initial Security Deposit Amount:	\$1,466,733, subject to Section 16.26.

1.3 Enumeration of Exhibits

The following Exhibits attached hereto are a part of this Lease, are incorporated herein by reference, and are to be treated as a part of this Lease for all purposes. Undertakings contained in such Exhibits are agreements on the part of Landlord and Tenant, as the case may be, to perform the obligations stated therein to be performed by Landlord and Tenant, as and where stipulated therein.

Exhibit A	—	Description of the Site
Exhibit B	—	Rooftop Rights
Exhibit C	—	Form of Lien Waivers
Exhibit D	—	Landlord's Services
Exhibit E	—	Floor Plans
Exhibit F	—	Development Area Map
Exhibit G	—	Form of Commencement Date Agreement
Exhibit H	—	Memorandum Re: Procedure for Adjustment of Electricity Costs
Exhibit I	—	Broker Determination of Prevailing Market Rent.
Exhibit J	—	Form of Letter of Credit
Exhibit K	—	Schedule of Premises Components, Delivery and Rent Commencement Dates and Rent Schedule

ARTICLE II

Premises

2.1 Demise and Lease of Initial Premises

Landlord hereby demises and leases to Tenant, and Tenant hereby hires and accepts from Landlord, the Initial Premises in the Building. All of the Premises in the Building shall exclude exterior faces of exterior walls, the common stairways and stairwells, elevators and elevator walls, mechanical rooms, electric and telephone closets, janitor closets, and pipes, ducts, shafts, conduits, wires and appurtenant fixtures serving exclusively or in common other parts of the Building, and if any Premises includes less than the entire rentable area of any floor, shall also exclude the common corridors, elevator lobbies and toilets located on such floor.

2.2 Must Take Premises, Potential Give Back Premises and Expansion Rights

The provisions of Article XVII of this Lease contain the terms and conditions upon which the Must Take Premises shall become incorporated into the Premises under this Lease. Tenant may elect to surrender the Potential Give Back Premises, and have the same eliminated from the Premises prior to the Expiration Date of this Lease, pursuant to the terms and conditions of Article XVII. Tenant may further expand the Premises pursuant to expansion rights more particularly set forth in Article XVII.

2.3 Appurtenant Rights and Reservations

Subject to Landlord's right to change or alter any of the following in Landlord's discretion as herein provided, Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others, but not in a manner or extent that would materially interfere with the normal operation and use of the Building as a multi-tenant office building and subject to reasonable rules of general applicability to tenants of the Building from time to time made by Landlord of which Tenant is given notice: (a) the common lobbies, corridors, stairways, and elevators of the Building, and the pipes, ducts, shafts, conduits, wires and appurtenant meters and equipment serving the Premises in common with others, (b) the Loading Dock and the common walkways and driveways necessary for access to the Building, (c) if the Premises include less than the entire rentable floor area of any floor, the common toilets, corridors and elevator lobby of such floor and (d) common areas within Parcel 4 of the Development Area. Landlord will not unreasonably withhold consent to any request by Tenant to allow Tenant's telecommunication service provider to have access to the Building or to the Premises, provided that Landlord may condition such access, without limitation of the foregoing, on Landlord's approval of the identity of the service provider, its execution of an access and easement agreement satisfactory to Landlord and, should telecommunications services be furnished by such service provider to both Tenant and other tenants and occupants in the Building, then subject to the payment to Landlord by the service provider of fees assessed by Landlord in its reasonable discretion.

Landlord reserves the right from time to time, without unreasonable interference with Tenant's use: (a) to install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building, or either, pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises or the Building, and (b) to alter or relocate any other common facility, provided that substitutions are substantially equivalent or better. Installations, replacements and relocations referred to in clause (a) above shall be located so far as practicable in the central core area of the Building, above ceiling surfaces, below floor surfaces or within perimeter walls of the Premises. Except in the case of emergencies or for normal cleaning and maintenance work, Landlord agrees to use its best efforts to give Tenant reasonable advance notice of any of the foregoing activities which require work in the Premises.

2.4 Roof Rights

Tenant shall have the right at its sole cost and expense, in the area designated by Landlord for Tenant's rooftop equipment as shown on Schedule B-1 to Exhibit B, to install, operate and maintain communications equipment, including without limitation a satellite or microwave dish, on the roof of the Building in accordance with the terms and conditions set forth in Exhibit B attached hereto and incorporated herein by reference.

2.5 Storage Space

Landlord and Tenant agree that they shall mutually seek to identify available storage space in the lower level of the Building that will satisfy Tenant's needs, and Landlord shall reasonably cooperate to make such space available to Tenant. Tenant's use of such storage space shall be subject to the terms and conditions of Landlord's standard storage license for the Building and shall be subject to monthly payment of storage rent applicable thereto. The storage rental rate shall initially be established, as of the Commencement Date, at \$15.00 per usable square foot, increasing by a CPI adjustment every three years thereafter, all as will be more particularly set forth in the aforesaid standard storage license.

ARTICLE III

Lease Term and Extension Options

3.1 Term

The Term of this Lease shall be the period specified in Section 1.2 hereof as the "Lease Term," unless sooner terminated or extended as herein provided. The Commencement Date of the Lease Term hereof shall be the date set forth in Section 1.2.

Upon the expansion of the Premises to include any Must Take Space or other Premises Component hereinafter incorporated into the Premises, Landlord and Tenant agree to join with each other in the execution, in the form of Exhibit G hereto, of a written Declaration in which the commencement date with respect to such Premises Component shall be stated. If Tenant shall fail to execute such Declaration, such commencement date shall be as reasonably determined by Landlord in accordance with the terms of this Lease.

3.2 Extension Options

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that both at the time of exercise of the herein described option to extend and as of the commencement of the Extended Term in question (i) there exists no monetary or material non-monetary "Event of Default" (defined in Section 15.1), (ii) this Lease is still in full force and effect, (iii) if the Building and the building known as Eight Cambridge Center (the "8CC Building"), space within which Tenant is leasing herewith pursuant to a Lease of even date herewith (the "8CC Lease"), are both owned by entities affiliated with Boston Properties Limited Partnership or its successors and assigns or are otherwise affiliated with each other (as defined in Section 16.32), then provided that Tenant is contemporaneously exercising its right to extend the term of its 8CC Lease for a co-terminous period with the Extended Term, and (iv) Tenant has not sublet more than one half (1/2) of the Rentable Floor



Area of the Premises (except for subletting permitted without Landlord's consent under Section 12.2 hereof), Tenant shall have the right to extend the Term hereof upon all the same terms, conditions, covenants and agreements herein contained (except for the Annual Fixed Rent and tax and operating cost bases, which shall be adjusted during the option period as hereinbelow set forth and except that there shall be no further option to extend after exercise of Tenant's second five (5) year option to extend) for two (2) periods of five (5) years as hereinafter set forth. Each option period is sometimes herein referred to as an "Extended Term." Notwithstanding any implication to the contrary, Landlord has no obligation to make any additional payment to Tenant in respect of any construction allowance or the like or to perform any work to the Premises as a result of the exercise by Tenant of any such option.

(B) If Tenant desires to exercise said option to extend the Term, then Tenant shall give notice (the "Extension Term Exercise Notice") to Landlord, not earlier than twenty one (21) months nor later than eighteen (18) months prior to the expiration of the Lease Term, exercising such option to extend. Promptly after Landlord's receipt of the Extension Term Exercise Notice, Landlord shall provide Landlord's quotation to Tenant of a proposed annual rent for the Extended Term ("Landlord's Extension Term Rent Quotation"). If at the expiration of thirty (30) days after the date when Landlord provides such quotation to Tenant (the "Extension Term Negotiation Period"), Landlord and Tenant have not reached agreement on a determination of an annual rental for the Extended Term and executed a written instrument extending the Term of this Lease pursuant to such agreement, then Tenant shall have the right, for thirty (30) days following the expiration of the Extension Term Negotiation Period, to make a request to Landlord for a broker determination (the "Broker Determination") of the Prevailing Market Rent (as defined in Exhibit I) for the Extended Term, which Broker Determination shall be made in the manner set forth in Exhibit I. If Tenant timely shall have requested the Broker Determination, then the Annual Fixed Rent for the Extended Term shall be the Prevailing Market Rent as determined by the Broker Determination. If Tenant does not timely request the Broker Determination, then Annual Fixed Rent during the Extended Term shall be equal to Landlord's Rent Quotation.

(C) If Tenant desires to make a preliminary inquiry as to Landlord's Extension Term Rent Quotation, without giving Extension Term Exercise Notice, then Tenant may give notice ("Extension Term Rent Inquiry Notice") to Landlord, not earlier than twenty two (22) months nor later than nineteen (19) months prior to the expiration of the Lease Term, making such inquiry. Promptly after Landlord's receipt of the Extension Term Rent Inquiry Notice, Landlord shall provide Landlord's Extension Term Rent Quotation to Tenant. If Tenant should thereafter timely give Extension Term Exercise Notice to Landlord, the Extension Term Negotiation Period shall continue until the expiration of thirty (30) days after the date such Extension Term Exercise Notice is given, and the terms and conditions of Section 3.2(B) above shall be applicable.

(D) Base Taxes (as defined in Section 6.2(f)) applicable with respect to any Extended Term shall instead equal Landlord's Tax Expenses for the then current fiscal tax year as of the commencement of such Extended Term. Base Operating Expenses (as defined in Section 7.5) applicable with respect to any Extended Term shall instead equal Operating Expenses for the Property for the calendar year in which such Extended Term commences.

(D) Upon the giving of the Extension Term Exercise Notice by Tenant to Landlord exercising Tenant's option to extend the Lease Term in accordance with the provisions of Section B above, then this Lease and the Lease Term hereof shall automatically be deemed extended, for the Extended Term, without the necessity for the execution of any additional documents, except that Landlord and Tenant agree to enter into an instrument in writing setting forth the Annual Fixed Rent for the Extended Term as determined in the relevant manner set forth in this Section 3.2; and in such event all references herein to the Lease Term or the term of this Lease shall be construed as referring to the Lease Term, as

so extended, unless the context clearly otherwise requires, and except that there shall be no further option to extend the Lease Term (after exercise of Tenant's second five (5) year option to extend). Notwithstanding anything contained herein to the contrary, in no event shall Tenant have the right to exercise more than one extension option at a time and, further, Tenant shall not have the right to exercise its second extension option unless it has duly exercised its first extension option and in no event shall the Lease Term hereof be extended for more than ten (10) years after the expiration of the Original Lease Term hereof.

#### ARTICLE IV

##### Condition of Premises; Alterations

#### 4.1 Condition of Premises

(A) Except as otherwise expressly provided in Section 4.1(B), (C) and (D) below, Tenant shall accept the Initial Premises and any other Premises Component hereafter incorporated into the Premises in their as-is condition without any obligation on the Landlord's part to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto.

(B) If and to the extent the City of Cambridge requires an upgrade to the Building's base building life safety and fire alarm systems, based on Tenant's Work with respect to any Premises Component being comprised of office fit-up consistent with typical office existing in the Building, Landlord shall, at Landlord's sole cost and expense, undertake to implement such an upgrade, excluding devices, within the Premises. Landlord's Work as aforesaid shall be conducted prior to, or contemporaneously with, the conduct of Tenant's Work on the floors in question, and the parties shall reasonably cooperate and coordinate the conduct of their respective work.

(C) If and to the extent the core bathrooms on the floors comprising the Premises are not in compliance with applicable legal requirements and codes (including without limitation the Americans with Disabilities Act), Landlord shall, at its sole cost and expense, make such necessary improvements. Landlord's Work as aforesaid shall be conducted prior to, or contemporaneously with, the conduct of Tenant's Work on the floors in question, and the parties shall reasonably cooperate and coordinate the conduct of their respective work.

(D) If and to the extent (i) fixtures and lights in the core bathrooms on the floors comprising the Premises are not in good working order or (ii) any HVAC equipment (including but not limited to heat pumps and fan powered boxes) in the Premises are not in good working order and suitable for re-use, Landlord shall, at its sole cost and expense, whether by repair or replacement (as Landlord's election), rectify the same consistent with its obligations under this Lease.

(E) Landlord shall, at its sole cost and expense, install spring supports for piping and mechanical equipment located in the penthouse mechanical room above the 12<sup>th</sup> floor mens' room in order to minimize transmitted vibration. Should the aforesaid remedial action not sufficiently minimize the transmitted vibration, in Tenant's reasonable determination, Landlord shall, at Landlord's election, either (i) replace the existing springs for piping and mechanical equipment located in the penthouse mechanical room above the 12<sup>th</sup> floor mens' room, or (ii) undertake an alternative remedial measure reasonably satisfactory to Tenant, in either case at Landlord's sole cost and expense. Except for Landlord's agreement to undertake certain remedial work as aforesaid, nothing in this Section 4.1(E) shall qualify Tenant's acceptance of the 12<sup>th</sup> floor of the Building in accordance with the terms and conditions of Section 4.1(A) above.

#### 4.2 Quality and Performance of Work

All construction work required or permitted by this Lease shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and requirements of all public authorities ("Legal Requirements") and all Insurance Requirements (as defined in Section 9.1 hereof). All of Tenant's work shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations. Each party may inspect the work of the other at reasonable times and shall promptly give notice of observed defects. Each party authorizes the other to rely in connection with design and construction upon approval and other actions on the party's behalf by any Construction Representative of the party named in Section 1.2 or any person hereafter designated in substitution or addition by notice to the party relying. Except to the extent to which Tenant shall have given Landlord notice of respects in which Landlord has not performed Landlord's construction obligations under this Article IV with respect to any Premises Component (if any), not later than the end of the twelfth (12<sup>th</sup>) full calendar month next beginning after the Commencement Date with respect to such Premises Component, Tenant shall be deemed conclusively to have approved Landlord's construction with respect to such Premises Component and shall have no claim that Landlord has failed to perform any of Landlord's obligations under this Article IV (if any). Landlord agrees to correct or repair at its expense items which are then incomplete or do not conform to the work contemplated under the Plans and as to which, in either case, Tenant shall have given notice to Landlord, as aforesaid.

#### 4.3 Special Allowance

(A) Landlord shall provide to Tenant, as more particularly provided below, a special allowance (the "Tenant Allowance") for the purpose of defraying a portion of Tenant's costs of making leasehold improvements to the floors of the Building that comprise the Initial Premises (excluding the Potential Give Back Premises unless Tenant waives its right to delete the same from the Premises or elects not to exercise its right to do so) and the Must Take Premises (such floors as to which the Tenant Allowance relates being sometimes collectively referred to as the "Tenant Allowance Floors" and individually each a "Tenant Allowance Floor"). The amount of the Tenant Allowance shall be equal, in the aggregate, to the product of (i) \$35.00 and (ii) the Rentable Floor Area of the Tenant Allowance Floors, provided that the availability of the Tenant Allowance for requisition will commence only following the Commencement Date with respect of the Tenant Allowance Floor to which such portion of the Tenant Allowance relates. As each Commencement Date pertaining to a Tenant Allowance Floor occurs, the Tenant Allowance relating thereto, calculated as the rate of \$35.00 per square foot of Rentable Floor Area of such Tenant Allowance Floor, will commence to become available for requisition. Notwithstanding anything to the contrary hereinabove provided, in the case of the Potential Give Back Premises, should the Potential Give Back Premises remain included in the Premises and not be deleted from the Premises, then rather than the Commencement Date, the date upon which Tenant waives its right to delete the same from the Premises, or the date following the expiration of Tenant's right to delete the Potential Give Back Premises from the Premises without Tenant having elected to do so, shall be the date upon which the Tenant Allowance allocable thereto would commence to be available for requisition.

(B) The Tenant Allowance shall be used and applied by Tenant, in accordance with the terms of this Lease, solely on account of the cost of leasehold improvement work performed by Tenant eligible to be requisitioned and as defined in Section 4.3(D) below ("Tenant's Work") on the Tenant Allowance Floor of the Building to which such portion of the Tenant Allowance relates, except as expressly set forth below in this Section 4.3(B). The cost of Tenant's Work may include architectural and design fees ("A&D Fees") associated therewith but not in excess of \$5.00 per square foot of Rentable Floor Area ("Design Fees Limit") for each Tenant Allowance Floor. However, provided that Tenant has requisitioned and paid at least \$15.00 per square foot of Rentable Floor Area on account of

completed Tenant's Work (exclusive of A&D Fees) on a Tenant Allowance Floor, then the balance of the Tenant Allowance associated with such Tenant Allowance Floor (including without limitation any unused Tenant Allowance that might have been permissibly applied to A&D Fees) may be requisitioned and applied to costs of Tenant Work performed on other Tenant Allowance Floors.

(C) Landlord shall pay, within thirty (30) days after receipt of a complete requisition (as defined in Section 4.3(D) below) submitted by Tenant to Landlord, the requested portion of the Tenant Allowance for the Tenant Allowance Floor in question, as set forth on such requisition, to Tenant, until the entirety of the Tenant Allowance has been applied towards the appropriate components of Tenant's Work on such Tenant Allowance Floor, or otherwise applied as permitted under Section 4.3(B). A separate requisition shall be required for the Tenant Allowance allocated to each Tenant Allowance Floor, which may be applied only as contemplated by this Section 4.3.

(D) For the purposes hereof, a "requisition" shall mean written documentation, together with (i) an AIA requisition form with respect to work performed pursuant to Tenant's construction contract with its general contractor, (ii) invoices from Tenant's service providers, showing in reasonable detail the cost of the item in question or of the improvements installed to date in the Tenant Allowance Floor, (iii) lien waivers in the form attached hereto as Exhibit F-1 (provided that Tenant shall not be required to deliver any lien waivers with respect to any items of work covered by Tenant's first requisition for the Tenant Allowance to the extent Tenant had not paid the service provider(s) at issue prior to the date of such requisition, but Tenant shall deliver the lien waivers and evidence of payment in full of the items of work covered by such first requisition within twenty-one (21) days following the disbursement of the Tenant Allowance with respect to such first requisition) and (iv) certifications from Tenant that the amount of the requisition in question does not exceed the cost of the items, services and work covered by such certification. Such requisition shall be accompanied by evidence reasonably satisfactory to Landlord that the items, services and work covered by such requisition have been fully paid by Tenant. Landlord shall have the right, upon reasonable advance notice to Tenant, to inspect Tenant's books and records relating to each requisition in order to verify the amount thereof. Tenant shall submit requisition(s) no more often than monthly.

Notwithstanding anything contained herein to the contrary:

- (i) Landlord shall have no obligation to advance funds on account of the Tenant Allowance unless and until Landlord has received the requisition in question, together with the certifications required above.
- (ii) Tenant shall not be entitled to any portion of the Tenant Allowance, and Landlord shall have no obligation to pay the Tenant Allowance, in respect of any requisition submitted after the date which is one (1) year from the Commencement Date pertaining to such Tenant Allowance Floor (except with respect to the Potential Give Back Premises such one (1) year period shall be measured as provided above), it being understood and agreed that irrespective of said time period, Tenant shall not be entitled to any payment or credit on account of any unused portions of the Tenant Allowance nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under this Lease; provided, however, that such one (1) year period shall be extended, but in no event for more than twelve (12) additional months, until the date which is sixty (60) days after the date that any litigation with respect to which funding of the Tenant Allowance is withheld under Section 4.3(D)(iii) below is finally resolved.

- (iii) Landlord shall have no obligation to fund any portion of the Tenant Allowance to the extent that (a) at the time of the requisition Tenant is in default under this Lease beyond the expiration of any notice and cure period (it being understood and agreed that if Tenant cures a default prior to the expiration of the applicable cure period, or if Tenant cures a default thereafter and Landlord has not terminated this Lease, Tenant shall be entitled to such payment from Landlord), (b) there are any liens (unless bonded to the reasonable satisfaction of Landlord) filed against Tenant's interest in this Lease or against the Building or the Site arising solely out of the Tenant Work or (c) there is any litigation in which Tenant is a party relating to the Tenant Work; provided, however, that the amount held back under the foregoing clause (c) shall not exceed two hundred percent (200%) of the amount of the claim against Tenant under the applicable litigation; and provided further, however, that the amount so held back shall be paid to Tenant upon such time as the litigation is finally resolved, subject to the time limitation set forth in clause (ii) above.
- (iv) For each requisition associated with a Tenant Allowance Floor submitted by Tenant hereunder, Landlord shall only be required to disburse a portion of the Tenant Allowance associated with such floor towards the total costs set forth on each such requisition pertaining to such Tenant Allowance Floor in an amount equal to the same proportion as the total portion of the Tenant Allowance allocated by Tenant (within the limitation established by Section 4.3(B)) bears to the total costs of Tenant's Work reasonably budgeted for by Tenant towards which the Tenant Allowance may be applied (with Tenant being fully and solely responsible for the remainder of the amount shown in the requisition). Notwithstanding the foregoing, if upon completion of the Tenant's Work, the total costs of Tenant's Work equals or exceeds the total amount of the Tenant Allowance, then Landlord shall pay the unpaid balance of the Tenant Allowance to Tenant within thirty (30) days after Tenant's final requisition therefor.
- (v) By way of example of the calculation set forth in clause (iv) above, if the total Tenant Allowance for the floor at issue equals \$35.00 per square foot of Rentable Floor Area, and the total costs of Tenant's Work associated with such floor is \$70.00 per square foot of Rentable Floor Area, then the ratio of the total allocable Tenant Allowance to the total costs of Tenant's Work would be 1:2, and if Tenant submitted a requisition for \$300,000.00, Landlord would be required to disburse \$150,000.00 of the Tenant Allowance on account of such requisition and Tenant would be responsible for the remaining \$150,000.00. Also, by way of example, if by virtue of Tenant's reallocating Tenant Allowance from another Tenant Allowance Floor, due to the fact that the cost of Tenant's Work on such floor will equal only \$15.00 per square foot of Rentable Floor Area, with the result that Tenant's Allowance allocable to the Tenant Allowance Floor at issue is increased by Tenant to \$55.00 per square foot of Rentable Floor Area, then if the total costs of Tenant's Work associated with the floor at issue is \$70.00 per square foot of Rentable Floor Area, the ratio of the total allocable Tenant Allowance to the total costs of Tenant's Work would be 55:70, and if Tenant submitted a requisition for \$300,000.00, Landlord would be required to disburse \$235,714.29 of the Tenant Allowance on account of such requisition and Tenant would be responsible for the remaining \$64,285.71.
- (vi) In no event shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen on account of the Tenant Work.

(E) For the purposes hereof, the cost of Tenant's Work to be so reimbursed by Landlord shall include the cost of leasehold improvements but not the cost of any of Tenant's personal property, trade fixtures or trade equipment, moving expenses or any so-called soft costs except for architectural and design fees not exceeding the Design Fees Limit. Notwithstanding the foregoing, Landlord shall be under no obligation to apply any portion of the Tenant Allowance for any purposes other than as provided in this Section, nor shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen. Further, in no event shall Landlord be required to make application of any portion of the Tenant Allowance on account of any supervisory fees, overhead, management fees or other payments to Tenant, or any partner or affiliate of Tenant. In the event that such cost of Tenant's Work is less than the Tenant Allowance, Tenant shall not be entitled to any payment or credit nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under this Lease. Landlord shall be entitled to deduct from the Tenant Allowance an amount equal to the sum of: (i) \$150/hour for time spent by senior staff, and \$100/hour for time spent by junior staff, which shall be limited, however, to a maximum of \$2,500 per floor, plus (ii) reasonable third party expenses incurred by Landlord to review Tenant's plans and Tenant's Work, as shown by evidence reasonably satisfactory to Tenant.

#### 4.4 Signage

(A) Landlord shall provide Tenant with signage in all tenant directories in the Building and at the entrance to the Premises consistent with the standard signage of other tenants in the Building.

(B) From and after January 1, 2010, provided that (i) the Premises is comprised of at least four (4) full floors in the Building at least two (2) of which are fully occupied by Tenant, and (ii) Tenant has not assigned this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2), Tenant shall be permitted, at Tenant's expense, to erect an exterior monument sign, containing Tenant's name, in a location proximate to the main entrance to the lobby thereof designated by Landlord in its reasonable discretion. In addition, the design, proportions and color of such signage shall be subject to the prior approval of Landlord, which approval shall not be unreasonably withheld, and shall be further subject to applicable zoning requirements and any other applicable laws, and to Tenant obtaining all necessary permits and approvals therefor. In the event Tenant erects a sign pursuant to this Section 4.4(B) and Tenant subsequently assigns this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2) or reduces the size of the Premises hereunder or its occupancy of its Premises so that Tenant no longer leases from Landlord at least four (4) full floors of the Building and occupies at least two (2) full floors in the Building, Tenant agrees that it shall remove such signage at Tenant's expense. The right to signage pursuant to this Section 4.4 (B) is personal to the named tenant herein and it is not assignable or sublettable.

(C) For so long as Tenant shall have the signage rights referred to in Section 4.4(B) above, Tenant's signage as aforesaid shall be the exclusive right to tenant identification on the exterior of the Building (or the lobby of the Building to the extent designed to be visible to pedestrians outside of the Building), but such exclusivity shall continue only so long as no other tenant in the Building leases from Landlord more space in the Building than Tenant.

(D) From and after January 1, 2010, provided that (i) the Premises is comprised of at least four (4) full floors in the Building at least two (2) of which are fully occupied by Tenant, and (ii) Tenant has not assigned this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2), Tenant shall have the right to install and maintain, at Tenant's expense, in a location designated by Landlord in its reasonable discretion, an approximately 40-inch television in the Building lobby, measuring approximately 3 feet by 2 1/2 feet, for display of Akamai promotional information provided that the display of such information is consistent with a first class office building. In the event Tenant installs a television pursuant to this Section 4.4(D) and Tenant

subsequently assigns this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2) or reduces the size of the Premises hereunder or its occupancy of its Premises so that Tenant no longer leases from Landlord and occupies at least four (4) full floors of the Building at least two (2) of which are fully occupied by Tenant, Tenant agrees that it shall remove such television at Tenant's expense. This right is personal to the named tenant herein and it is not assignable or sublettable.

(E) Tenant shall install no other signage in the Building except as may be otherwise permitted to be installed in the Premises pursuant to the terms and conditions of this Lease.

## ARTICLE V

### Annual Fixed Rent and Electricity

#### 5.1 Fixed Rent and Electricity Charges

Tenant agrees to pay to Landlord, or as directed by Landlord, at Landlord's Present Mailing Address specified in Section 1.2 hereof, or at such other place as Landlord shall from time to time designate by notice, (1)(a) on the Rent Commencement Date, and thereafter monthly, in advance, on the first day of each and every calendar month during the Original Lease Term, a sum equal to one-twelfth (1/12<sup>th</sup>) of the Annual Fixed Rent specified in Section 1.2 hereof and (b) on the Rent Commencement Date and thereafter monthly, in advance, on the first day of each and every calendar month during the Original Lease Term, an amount estimated by Landlord from time to time to cover Tenant's monthly payments for electricity under Section 5.2 hereinbelow subject to adjustment as provided in Section 5.2 and Section 7.5 hereof, and (2) on the first day of each and every calendar month during each Extended Term (if exercised), a sum equal to (a) one-twelfth of the Annual Fixed Rent as determined in Section 3.2 for the Extended Term plus (b) then applicable monthly electricity charges (subject to adjustment as provided in Section 5.2 and Section 7.5 hereof). Until notice of some other designation is given, fixed rent and all other charges for which provision is herein made shall be paid by remittance to or for the order of Boston Properties Limited Partnership either (i) by mail to P.O. Box 3557, Boston, Massachusetts 02241-3557, (ii) by wire transfer to Bank of America in Dallas, Texas, Bank Routing Number 0260-0959-3 or (iii) by ACH transfer to Bank of America in Dallas, Texas, Bank Routing Number 111 000 012, and in the case of (ii) or (iii) referencing Account Number 3756454460, Account Name of Boston Properties, LP, Tenant's name and the Property address. All remittances received by BOSTON PROPERTIES LIMITED PARTNERSHIP, as Agents as aforesaid, or by any subsequently designated recipient, shall be treated as a payment to Landlord.

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

Additional Rent payable by Tenant on a monthly basis, as elsewhere provided in this Lease, likewise shall be prorated, and the first payment on account thereof shall be determined in similar fashion and shall commence on the Rent Commencement Date and other provisions of this Lease calling for monthly payments shall be read as incorporating this undertaking by Tenant.

The Annual Fixed Rent and all other charges for which provision is made in this Lease shall be paid by Tenant to Landlord without setoff, deduction or abatement except as expressly otherwise provided in this Lease.

## 5.2 Reallocation of Electricity Charges

Notwithstanding the provisions of Section 5.1 relating to the payment by Tenant for the cost of electricity, if and to the extent that Landlord is permitted from time to time by then applicable law, ordinance, rule, regulation and utility company policy, Landlord may reallocate the cost of electricity to tenants of the Building (including, but not limited to, Tenant herein) in accordance with the procedure contained in Exhibit H, and Tenant shall pay for electricity as provided in said Exhibit H. If Landlord does not so reallocate the cost of electricity as aforesaid, Tenant shall pay the charge for electricity as specified in Section 5.1 hereof and additional adjustment payments shall be made in the manner specified in Section 7.5 hereof; provided, however, that if the Landlord shall reasonably determine that the cost of the electricity furnished to the Tenant at the Premises exceeds the amount being paid under Sections 5.1 and 7.5, then the Landlord may charge the Tenant for such excess and the Tenant shall promptly pay the same upon billing therefor.

## ARTICLE VI

### Taxes

## 6.1 Introduction

It is intended that this Article VI set forth the methodology for fulfillment of Tenant's obligation to contribute its allocable share of the amount by which Landlord's Tax Expenses (as hereinafter defined) exceed Base Taxes (as hereinafter defined). Due to the fact that the Premises is contemplated to eventually be comprised of a number of Premises Components, each of which may have different Base Taxes allocable thereto (because among other reasons of the various dates upon which they are to respectively be incorporated into the Premises), Tenant's obligations under this Article VI must be calculated for each such Premises Component, and then aggregated, so that the appropriate Tax Excess (as hereinafter defined) can be established, as more particularly set forth below.

## 6.2 Definitions

With reference to the real estate taxes referred to in this Article VI, it is agreed that terms used herein are defined as follows:

- (a) "Tax Year" means the 12-month period beginning July 1 each year during the Lease Term or if the appropriate Governmental tax fiscal period shall begin on any date other than July 1, such other date.
- (b) "Landlord's Tax Expenses Allocable to the Premises" means the aggregate of Landlord's Tax Expenses allocable to all of the Premises Components which collectively comprise the Premises.
- (c) "Landlord's Tax Expenses Allocable to a Premises Component" means the same proportion of Landlord's Tax Expenses as Rentable Floor Area of the Premises Component bears to 95% of the Total Rentable Floor Area of the Building.
- (d) "Landlord's Tax Expenses" with respect to any Tax Year means the aggregate "real estate taxes" (hereinafter defined) with respect to that Tax Year, reduced by any net abatement receipts with respect to that Tax Year.



- (e) "Real estate taxes" means all taxes and special assessments of every kind and nature and user fees and other like fees assessed by any Governmental authority on the Site or the Building or the Property which the Landlord shall be obligated to pay because of or in connection with the ownership, leasing and operation of the Site and the Building (including without limitation, if applicable, the excise prescribed by Mass Gen Laws (Ter Ed) Chapter 121A, Section 10 and amounts in excess thereof paid to the City of Cambridge pursuant to agreement between Landlord and the City) and reasonable expenses of and fees for any formal or informal proceedings for negotiation or abatement of taxes (collectively, "Abatement Expenses"), which Abatement Expenses shall be excluded from Base Taxes. The amount of special taxes or special assessments to be included shall be limited to the amount of the installment (plus any interest other than penalty interest payable thereon) of such special tax or special assessment required to be paid during the year in respect of which such taxes are being determined. There shall be excluded from such taxes all income, estate, succession, inheritance and transfer taxes; provided, however, that if at any time during the Lease Term the present system of ad valorem taxation of real property shall be changed so that in lieu of, or in addition to, the whole or any part of the ad valorem tax on real property, there shall be assessed on Landlord a capital levy or other tax on the gross rents received with respect to the Site or Building, or a Federal, State, County, Municipal, or other local income, franchise, excise or similar tax, assessment, levy or charge (distinct from any now in effect in the jurisdiction in which the Property is located) measured by or based, in whole or in part, upon any such gross rents, then any and all of such taxes, assessments, levies or charges, to the extent so measured or based, shall be deemed to be included within the term "real estate taxes" but only to the extent that the same would be payable if the Site or Building were the only property of Landlord. Notwithstanding the foregoing, "real estate taxes" shall not include and Tenant shall not be required to pay any portion of any tax or assessment expense or any increase therein (a) levied on Landlord's rental income, unless such tax or assessment is imposed in lieu of real property taxes as set forth above; (b) in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term; or (c) imposed on land and improvements other than the Site.
- (f) "Base Taxes," when referring to the applicable Premises Component, means Landlord's Tax Expenses (hereinbefore defined) for the Tax Year that Exhibit K specifies as the base fiscal tax year for such Premises Component.
- (g) "Base Taxes Allocable to a Premises Component" means the same proportion of Base Taxes for the Premises Component as the Rentable Floor Area of such Premises Component bears to 95% of the Total Rentable Floor Area of the Building. The foregoing calculation shall not entitle Landlord to collect, collectively from all of the tenants of the Building, an amount exceeding one hundred percent (100%) of Landlord's Tax Expenses incurred by Landlord with respect to the pertinent Tax Year (any collected amount exceeding 100% of Landlord's Tax Expenses with respect to any such Tax Year being referred to herein as "Tax Collection Surplus"), and Landlord shall, except with respect to Base Taxes, credit any Tax Collection Surplus against the aggregate of Landlord's Tax Expenses incurred with respect to such Tax Year, which shall reduce the same for all purposes hereunder.
- (h) "Base Taxes Allocable to the Premises" means the aggregate of Base Taxes Allocable to a Premises Component for all of the Premises Components which collectively comprise the Premises.

- (i) If during the Lease Term the Tax Year is changed by applicable law to less than a full 12-month period, the Base Taxes and Base Taxes Allocable to the Premises shall each be proportionately reduced.

### 6.3 Tenant's Share of Real Estate Taxes

If with respect to any full Tax Year or fraction of a Tax Year falling within the Lease Term Landlord's Tax Expenses Allocable to the Premises for a full Tax Year exceed Base Taxes Allocable to the Premises or for any such fraction of a Tax Year exceed the corresponding fraction of Base Taxes Allocable to the Premises (such amount being hereinafter referred to as the "Tax Excess"), then Tenant shall pay to Landlord, as Additional Rent, the amount of such Tax Excess. Payments by Tenant on account of the Tax Excess shall be made monthly at the time and in the fashion herein provided for the payment of Annual Fixed Rent. The amount so to be paid to Landlord shall be an amount from time to time reasonably estimated by Landlord to be sufficient to provide Landlord, in the aggregate, a sum equal to the Tax Excess, ten (10) days at least before the day on which tax payments by Landlord would become delinquent. Not later than ninety (90) days after Landlord's Tax Expenses Allocable to the Premises are determinable for the first such Tax Year or fraction thereof and for each succeeding Tax Year or fraction thereof during the Lease Term, Landlord shall render Tenant a statement in reasonable detail certified by a representative of Landlord showing for the preceding year or fraction thereof, as the case may be, real estate taxes on the Building and Lot, abatements and refunds, if any, of any such taxes and assessments, expenditures incurred in seeking such abatement or refund, the amount of the Tax Excess, the amount thereof already paid by Tenant and the amount thereof overpaid by, or remaining due from Tenant for the period covered by such statement. Within thirty (30) days after the receipt of such statement, Tenant shall pay any sum remaining due. Any balance shown as due to Tenant shall be credited against Annual Fixed Rent next due, or refunded to Tenant if the Lease Term has then terminated or expired and Tenant has no further obligation to Landlord. Expenditures for legal fees and for other expenses incurred in obtaining an abatement or refund may be charged against the abatement or refund before the adjustments are made for the Tax Year.

To the extent that real estate taxes shall be payable to the taxing authority in installments with respect to periods less than a Tax Year, the statement to be furnished by Landlord shall be rendered and payments made on account of such installments.

## ARTICLE VII

### Landlord's Repairs and Services and Tenant's Escalation Payments

#### 7.1 Structural Repairs

Except for (a) normal and reasonable wear and use and (b) damage caused by fire or casualty and by eminent domain, Landlord shall, throughout the Lease Term, at Landlord's sole cost and expense, keep and maintain in good order, condition and repair the following portions of the Building: the structural portions of the roof, the exterior and load bearing walls, the foundation, the structural columns and floor slabs and other structural elements of the Building; provided however, that Tenant shall pay to Landlord, as Additional Rent, the cost of any and all such repairs which may be required as a result of repairs, alterations, or installations made by Tenant or any subtenant, assignee, licensee or concessionaire of Tenant or any agent, servant, employee or contractor of any of them or to the extent of any loss, destruction or damage caused by the omission or negligence of Tenant, any assignee or subtenant or any agent, servant, employee, customer, visitor or contractor of any of them.

## 7.2 Other Repairs to be Made by Landlord

Except for (a) normal and reasonable wear and use and (b) damage caused by fire or casualty and by eminent domain, and except as otherwise provided in this Lease and subject to provisions for reimbursement by Tenant as contained in Section 7.5, Landlord agrees to keep and maintain in good order, condition and repair the common areas and facilities of the Building, including heating, ventilating, air conditioning, plumbing and other Building systems equipment servicing the Premises (including all lines, pipes, wires, conduits and the like except to the extent serving the Premises exclusively), except that Landlord shall in no event be responsible to Tenant for (a) the condition of glass in and about the Premises (other than for glass in exterior walls for which Landlord shall be responsible unless the damage thereto is attributable to Tenant's negligence or misuse, in which event the responsibility therefor shall be Tenant's), or (b) for any condition in the Premises or the Building caused by any act or neglect of Tenant or any agent, employee, contractor, assignee, subtenant, licensee, concessionaire or invitee of Tenant. Without limitation, Landlord shall not be responsible to make any improvements or repairs to the Building or the Premises other than as expressly provided in Section 7.1 or in this Section 7.2, unless expressly otherwise provided in this Lease.

## 7.3 Services to be Provided by Landlord

In addition, and except as otherwise provided in this Lease and subject to provisions for reimbursement by Tenant as contained in Section 7.6 and Tenant's responsibilities in regard to electricity as provided in Section 5.2, Landlord agrees to furnish services, utilities, facilities and supplies set forth in Exhibit D hereto equal in quality comparable to those customarily provided by landlords in high quality buildings in Cambridge. In addition, Landlord agrees to furnish, at Tenant's expense, reasonable additional Building operation services which are usual and customary in similar buildings in Cambridge, and such additional special services as may be mutually agreed upon by Landlord and Tenant, upon reasonable and equitable rates from time to time established by Landlord. Tenant agrees to pay to Landlord, as Additional Rent, the cost of any such additional Building services requested by Tenant and for the cost of any additions, alterations, improvements or other work performed by Landlord in the Premises at the request of Tenant within thirty (30) days after being billed therefor.

## 7.4 Introduction to Operating Costs

It is intended that, based on calculations guided by the definitions set forth in Section 7.5 below, Section 7.6 shall provide for Tenant to be financially responsible for its allocable share of the amount by which Operating Expenses (as hereinafter defined) exceed Base Operating Expenses (as hereinafter defined). Due to the fact that the Premises is contemplated to eventually be comprised of a number of Premises Components, each of which may have different Base Operating Expenses allocable thereto (because among other reasons of the various dates upon which they are to respectively be incorporated into the Premises), Tenant's obligations under Sections 7.5 and 7.6 must be calculated for each such Premises Component, and then aggregated, so that the appropriate Operating Cost Excess (as hereinafter defined) can be established, as more particularly set forth below.

## 7.5 Operating Costs Defined

"Operating Expenses Allocable to the Premises" means the aggregate of Operating Expenses Allocable to all of the Premises Components which collectively comprise the Premises. "Operating Expenses Allocable to a Premises Component" means the same proportion of the Operating Expenses for the Property as Rentable Floor Area of the Premises Component, bears to 95% of the Total Rentable Office Floor Area of the Building. "Base Operating Expenses" means Operating Expenses

for the Property (as hereinafter defined) for the calendar year that is the period beginning January 1 and ending December 31 that Exhibit K specifies as the base escalation year for such Premises Component. Base Operating Expenses shall not include market-wide cost increases due to extraordinary circumstances, including but not limited to, Force Majeure (as defined in Section 14.1), boycotts, strikes, conservation surcharges, embargoes or shortages which apply only to the Base Year but no other year, other than the year immediately prior to the Base Year or the year immediately following the Base Year. "Base Operating Expenses Allocable to a Premises Component" means the same proportion of Base Operating Expenses as the Rentable Floor Area of the Premises Component bears to 95% of the Total Rentable Office Floor Area of the Building. "Base Operating Expenses Allocable to the Premises" means the aggregate of Base Operating Expenses allocable to all of the Premises Components which collectively comprise the Premises. "Operating Expenses for the Property" means the cost of operation of the Property incurred by Landlord, including those incurred in discharging Landlord's obligations under Sections 7.2 and 7.3. The foregoing calculations shall not entitle Landlord to collect, collectively from all of the tenants in the Building, an amount exceeding one hundred percent (100%) of the Operating Expenses for the Property incurred by Landlord with respect to the pertinent calendar year (any collected amount exceeding 100% of Operating Expenses with respect to any calendar year being referred to herein as "Operating Expense Collection Surplus"), and Landlord shall, except with respect to Base Operating Expenses, credit any Operating Expense Collection Surplus against the aggregate of Operating Expenses incurred with respect to such calendar year, which shall reduce the same for all purposes hereunder. Such costs shall exclude payments of debt service and any other mortgage or ground lease charges, brokerage commissions, real estate taxes (to the extent paid pursuant to Section 6.2 hereof), costs payable solely by any retail tenants of the Building and costs of special services rendered to tenants (including Tenant) for which a separate charge is made, but shall include, without limitation:

- (a) compensation, wages and all fringe benefits, worker's compensation insurance premiums and payroll taxes paid to, for or with respect to all persons for their services in the operating, maintaining or cleaning of the Building or the Site;
- (b) payments under service contracts with independent contractors for operating, maintaining or cleaning of the Building or the Site;
- (c) steam, water, sewer, gas, oil, electricity and telephone charges (excluding such utility charges separately chargeable to tenants for additional or separate services and electricity charges paid by Tenant in the manner set forth in Section 5.2) and costs of maintaining letters of credit or other security as may be required by utility companies as a condition of providing such services;
- (d) cost of maintenance, cleaning and repairs (other than repairs not properly chargeable against income or reimbursed from contractors under guarantees);
- (e) cost of snow removal and care of landscaping;
- (f) cost of building and cleaning supplies and equipment;
- (g) premiums for insurance carried with respect to the Property (including, without limitation, liability insurance, insurance against loss in case of fire or casualty and of monthly installments of Annual Fixed Rent and any Additional Rent which may be due under this Lease and other leases of space in the Building for not more than twelve (12) months in the case of both Annual Fixed Rent and Additional Rent and, if there be any first mortgage on the Property, including such insurance as may be required by the holder of such first mortgage);

- (h) management fees which (i) with respect to any period during which the Building is self-managed, shall be at reasonable rates based upon a percentage of gross rental income from the Building (the "Management Fee Percentage") for self managed buildings consistent with the type of occupancy and the services rendered (provided that the Management Fee Percentage used as the basis for calculation of the management fee for self-management during any period shall not exceed the Management Fee Percentage used as the basis for calculation of the management fee for self-management during the applicable Base Year), and (ii) with respect to any period during which the Building's management is furnished by an "outside" manager, at rates consistent with what are then arm's-length negotiated management fees for similar buildings consistent with the type of occupancy and the services rendered, provided that whichever of the foregoing of clauses (i) or (ii) is applicable in the calendar year with respect to which Operating Expenses are being measured, the same Management Fee Percentage used with respect to each such calendar year shall also be applicable with respect to Base Operating Expenses, and if necessary, the Management Fee Percentage with respect to Base Operating Expenses shall be recalculated accordingly so that the Management Fee Percentage that is the basis for any calculation of management fees shall be identical for both Base Operating Expenses and the Operating Expenses calculated for the comparison calendar year, and consequently any increase or decrease in such percentage shall not be the basis for an inflated or deflated Operating Expense Excess;
- (i) The Building's "Proportionate Share" of the costs of maintaining and repairing the Loading Dock and other common areas and facilities within Parcel 4 of the Development Area for use of tenants of the Building in common with tenants of other buildings in the Development Area, for which purpose the Building's Proportionate Share shall be a fraction, the numerator of which shall be the Rentable Floor Area of the Building and the denominator of which shall be the sum of (x) the Rentable Floor Area of the Building and (y) the rentable floor area of the other buildings in Parcel 4 of the Development Area;
- (j) depreciation for capital expenditures made by Landlord during the Lease Term (x) to reduce Operating Expenses if Landlord reasonably shall have determined that the annual reduction in Operating Expenses shall exceed depreciation therefor or (y) to comply with applicable Legal Requirements or (z) to maintain the Building in a quality comparable to that of other high quality office buildings owned and operated by non-institutional landlords ("institutional" landlords meaning colleges, universities, hospitals and the like) in the Boston/Cambridge metropolitan area (the capital expenditures described in subsections (x), (y) and (z) being hereinafter referred to as "Permitted Capital Expenditures") plus, in the case of (x), (y) and (z), an interest factor, reasonably determined by Landlord, as being the interest rate then charged for long term mortgages by institutional lenders on like properties within the general locality in which the Building is located, and depreciation in the case of (x), (y) and (z) shall be determined by dividing the original cost of such capital expenditure by the number of years of useful life of the capital item acquired, which useful life shall be determined reasonably by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item; and
- (k) all other reasonable and necessary expenses paid in connection with the operating, cleaning and maintenance of the Building, the Site and said common areas and facilities and properly chargeable against income.

Notwithstanding the foregoing, the following shall be excluded from Operating Expenses for the Property:

- (i) All capital expenditures and depreciation, except as otherwise explicitly provided in this Section 7.5;
- (ii) Interest on indebtedness, debt amortization, ground rent, and refinancing costs for any mortgage or ground lease of the Building or the Property;
- (iii) Legal, auditing, consulting and professional fees and other costs (other than those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Property), including, without limitation, those: (i) paid or incurred in connection with financings, refinancings or sales of any Landlord's interest in the Building or the Property, (ii) relating to any special reporting required by securities laws, (iii) relating to disputes with tenants or (iv) relating to litigation;
- (iv) The cost of any item or service to the extent reimbursed or reimbursable to Landlord by insurance required to be maintained under this Lease or by any third party;
- (v) The cost of repairs or replacements incurred by reason of fire or other casualty or condemnation other than costs not in excess of the deductible on any insurance maintained by Landlord which provides a recovery for such repair or replacement;
- (vi) Any advertising, promotional or marketing expenses for the Building;
- (vii) The cost of any service or materials provided by any party related to Landlord (other than the management fee), which shall be subject to the terms and provisions of Section 7.5(h) above), to the extent such costs exceed the reasonable cost for such service or materials absent such relationship in buildings similar to the Building in the vicinity of the Building;
- (viii) Payments for rented equipment, the cost of which equipment would constitute a capital expenditure if the equipment were purchased to the extent that such payments exceed the amount which could have been included in Operating Expenses for the Property had Landlord purchased such equipment rather than leasing such equipment;
- (ix) Penalties, damages, and interest for late payment or violations of any obligations of Landlord, including, without limitation, taxes, insurance, equipment leases and other past due amounts;
- (x) Contributions to charitable organizations;

- (xi) The cost of testing, remediation or removal of "Hazardous Materials" (as defined in Section 12.2) in the Building or on the Site required by "Hazardous Materials Laws" (as defined in Section 12.2), provided however, that with respect to the testing, remediation or removal of any material or substance which, as of the Commencement Date was not considered, as a matter of law, to be a Hazardous Material, but which is subsequently determined to be a Hazardous Material as a matter of law, the costs thereof shall be included in Operating Expenses for the Property;
- (xii) Wages, salaries, or other compensation paid to any executive employees above the grade of Building manager; and
- (xiii) The net (i.e. net of the reasonable costs of collection) amount recovered by Landlord under any warranty or service agreement from any contractor or service provider shall be credited against Operating Expenses for the Property.

Notwithstanding the foregoing, in determining the amount of Operating Expenses for the Property for any calendar year or portion thereof falling within the Lease Term (including, without limitation, any Base Year applicable to a Premises Component), if less than ninety-five percent (95%) of the Total Rentable Floor Area of the Building shall have been occupied by tenants at any time during the period in question, then those components of Operating Expenses for the Property that vary based on occupancy for such period shall be adjusted to equal the amount such components of Operating Expenses for the Property would have been for such period had occupancy been ninety-five percent (95%) throughout such period.

#### 7.6 Tenant's Escalation Payments

(A) If with respect to any calendar year falling within the Lease Term, or fraction of a calendar year falling within the Lease Term at the beginning or end thereof, the Operating Expenses Allocable to the Premises (as defined in Section 7.4) for a full calendar year exceed Base Operating Expenses Allocable to the Premises (as defined in Section 7.4) or for any such fraction of a calendar year exceed the corresponding fraction of Base Operating Expenses Allocable to the Premises (such amount being hereinafter referred to as the "Operating Cost Excess"), then Tenant shall pay to Landlord, as Additional Rent, on or before the thirtieth (30<sup>th</sup>) day following receipt by Tenant of the statement referred to below in this Section 7.5, the amount of such excess. Base Operating Expenses (as defined in Section 7.4) do not include the tenant electricity to be paid by Tenant as part of the Annual Fixed Rent. However, if and so long as Landlord is not allocating the cost of electricity among tenants of the Building in accordance with Exhibit H, then the Base Operating Expenses shall be increased by Landlord's estimate of electrical costs for the Building.

(B) Payments by Tenant on account of the Operating Cost Excess shall be made monthly at the time and in the fashion herein provided for the payment of Annual Fixed Rent. The amount so to be paid to Landlord shall be an amount from time to time reasonably estimated by Landlord to be sufficient to cover, in the aggregate, a sum equal to the Operating Cost Excess for each calendar year during the Lease Term.

(C) No later than one hundred twenty (120) days after the end of the first calendar year or fraction thereof ending December 31 and of each succeeding calendar year during the Lease Term or fraction thereof at the end of the Lease Term, Landlord shall render Tenant a statement in reasonable detail and according to usual accounting practices certified by a representative of Landlord, showing for the preceding calendar year or fraction thereof, as the case may be, the Operating Expenses for the Property and the Operating Expenses Allocable to the Premises. Said statement to be rendered to Tenant also shall show for the preceding year or fraction thereof, as the case may be, the amounts already paid by Tenant on account of Operating Cost Excess and the amount of Operating Cost Excess remaining due from, or overpaid by, Tenant for the year or other period covered by the statement.

If such statement shows a balance remaining due to Landlord, Tenant shall pay same to Landlord on or before the thirtieth (30th) day following receipt by Tenant of said statement. Any balance shown as due to Tenant shall be credited against Annual Fixed Rent next due, or refunded to Tenant if the Lease Term has then expired and Tenant has no further obligation to Landlord.

Any payment by Tenant for the Operating Cost Excess shall not be deemed to waive any rights of Tenant to claim that the amount thereof was not determined in accordance with the provisions of this Lease.

(D) Subject to the provisions of this paragraph, Tenant shall have the right, at Tenant's cost and expense, to examine all documentation and calculations prepared in the determination of Operating Cost Excess:

(1) Such documentation and calculation shall be made available to Tenant at the offices where Landlord keeps such records during normal business hours within a reasonable time after Landlord receives a written request from Tenant to make such examination.

(2) Tenant shall have the right to make such examination no more than once in respect of any period for which Landlord has given Tenant a statement of the actual amount of Operating Expenses.

(3) Except as provided by the last sentence of this Section 7.6, any request for examination in respect of any calendar year may be made no more than one hundred eighty (180) days after Landlord advises Tenant in writing of the actual amount of Operating Expenses in respect of such calendar year and provides to Tenant the year-end statement required under Paragraph C of this Section 7.6.

(4) In no event shall Tenant utilize the services of any examiner who is being paid by Tenant on a contingent fee basis.

(5) As a condition to performing any such examination, Tenant and its examiners shall be required to execute and deliver to Landlord an agreement, in form reasonably acceptable to Landlord, agreeing to keep confidential any information which it discovers about Landlord or the Building in connection with such examination, provided however, that Tenant shall be permitted to share such information with each of its permitted subtenants so long as such subtenants execute and deliver to Landlord similar confidentiality agreements.

(6) If, after the audit by Tenant of Landlord's books and records pursuant to this Section 7.6 with respect to any calendar year, it is finally determined that: (i) Tenant has made an overpayment on account of Operating Expenses Allocable to the Premises, Landlord shall credit such overpayment against the next installment(s) of Annual Fixed Rent thereafter payable by Tenant, except that if such overpayment is determined after the termination or expiration of the term of this Lease, Landlord shall promptly refund to Tenant the amount of such overpayment less any amounts then due from Tenant to Landlord; and (ii) Tenant has made an underpayment on account of Operating Expenses Allocable to the Premises, Tenant shall, within forty-five (45) days of such determination, pay such underpayment to Landlord.

(7) If, after any such audit is performed, it is finally determined that Tenant has been overcharged on account of Operating Cost Excess by more than three percent (3%) for the calendar year in question, Landlord shall reimburse Tenant for the reasonable third-party costs incurred by Tenant in performing such audit.



Landlord shall have no right to correct any year end Operating Cost Excess statement with respect to any calendar year after the date two (2) years after the end of the calendar year in question. Notwithstanding any provision hereof to the contrary, if Landlord provides Tenant with any such corrected statement, then Tenant shall have one hundred eighty (180) days from the receipt of any such corrected statement to request an examination as set forth in Section 7.6(D)(3) hereof.

7.7 No Damage

(A) Landlord shall not be liable to Tenant for any compensation or reduction of rent by reason of inconvenience or annoyance or for loss of business arising from the necessity of Landlord or its agents entering the Premises for any purposes in this Lease authorized, or for repairing the Premises or any portion of the Building however the necessity may occur. In case Landlord is prevented or delayed from making any repairs, alterations or improvements, or furnishing any services or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause reasonably beyond Landlord's control, including, without limitation, strike, lockout, breakdown, accident, order or regulation of or by any Governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, or for any cause due to any act or neglect of Tenant or Tenant's servants, agents, employees, licensees or any person claiming by, through or under Tenant, Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in this Lease, shall Tenant be entitled to any abatement or reduction of rent by reason thereof, or right to terminate this Lease, nor shall the same give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the Premises.

(B) Landlord reserves the right to stop any service or utility system, when necessary by reason of accident or emergency, or until necessary repairs have been completed; provided, however, that in each instance of stoppage, Landlord shall exercise reasonable diligence to eliminate the cause thereof. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

(C) Notwithstanding anything to the contrary in this Lease contained, if due to (i) any repairs, alterations, replacements, or improvements made by Landlord, (ii) Landlord's failure to make any repairs, alterations, or improvements required to be made by Landlord hereunder, or to provide any service required to be provided by Landlord hereunder, or (iii) failure of electric supply, any portion of the Premises becomes untenantable so that for the Premises Untenantability Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant's business is materially adversely affected, then, provided that Tenant ceases to use the affected portion of the Premises during the entirety of the Premises Untenantability Cure Period by reason of such untenantability, and that such untenantability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant's agents, employees or contractors, Annual Fixed Rent, Tax Excess and Operating Cost Excess shall thereafter be abated in proportion to such untenantability and its impact on the continued operation in the ordinary course of Tenant's business until the day such condition no longer has the material adverse effect referred to above. For the purposes hereof, the "Premises Untenantability Cure Period" shall be defined as five (5) consecutive business days after Landlord's receipt of written notice from Tenant of the condition causing untenantability in the Premises, provided however, that the Premises Untenantability Cure Period shall be ten (10) consecutive business days after Landlord's receipt of written notice from Tenant of such condition causing untenantability in the Premises if either the condition was caused by causes beyond Landlord's control or Landlord is unable to cure such condition as the result of causes beyond Landlord's control.

In addition, if due to (i) any repairs, alterations, replacements, or improvements made by Landlord, (ii) Landlord's failure to make any repairs, alterations, or improvements required to be made by Landlord hereunder, or to provide any service required to be provided by Landlord hereunder, or (iii) failure of electric supply, the operation of Tenant's business in the Premises in the normal course is materially adversely affected for a period of five (5) consecutive months after Landlord's receipt of written notice of such condition from Tenant, then, provided that Tenant ceases to use the affected portion of the Premises for the period of such untenantability and such untenantability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant, or Tenant's agents, employees or contractors, then Tenant may terminate this Lease by giving Landlord written notice as follows:

- (i) Said notice shall be given after said five (5) month period.
- (ii) Said notice shall set forth an effective date which is not earlier than thirty (30) days after Landlord receives said notice.
- (iii) If said condition is remedied on or before the date thirty (30) days after the receipt of such notice, said notice shall have no further force and effect.
- (iv) If said condition is not remedied on or before the date thirty (30) days after the receipt of such notice for any reason other than Tenant's fault, as aforesaid, the Lease shall terminate as of said effective date, and the Annual Fixed Rent and Additional Rent due under the Lease shall be apportioned as of said effective date.

The remedies set forth in this Section 7.7 shall be Tenant's sole remedies for the events described herein. The provisions of this subsection (C) shall not apply in the event of untenantability caused by fire or other casualty, or taking (which shall be subject to the terms and conditions of Article XIV below).

## ARTICLE VIII

### Tenant's Repairs

#### 8.1 Tenant's Repairs and Maintenance

Tenant covenants and agrees that, from and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant will keep neat and clean and maintain in good order, condition and repair the Premises and every part thereof, excepting only for those repairs for which Landlord is responsible under the terms of Article VII of this Lease and damage by fire or casualty and as a consequence of the exercise of the power of eminent domain. Tenant shall not permit or commit any waste, and Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to common areas in the Building, to any other building located within the Development Area caused by Tenant, Tenant's agents, contractors, employees, sublessees, licensees, concessionaires or invitees. Tenant shall maintain all its equipment, furniture and furnishings in good order and repair.

If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Landlord may (but shall not be

required to do so) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant will forthwith on demand, pay to Landlord as Additional Rent the cost thereof together with interest thereon at the rate specified in Section 16.21, and if Tenant shall default in such payment, Landlord shall have the remedies provided for non-payment of rent or other charges payable hereunder.

## ARTICLE IX

### Alterations

#### 9.1 Landlord's Approval

Tenant covenants and agrees not to make alterations, additions or improvements to the Premises, whether before or during the Lease Term, except in accordance with plans and specifications therefor first approved by Landlord in writing, which approval shall not be unreasonably withheld or delayed. Landlord shall not be deemed unreasonable:

- (a) for withholding approval of any alterations, additions or improvements which (i) in Landlord's opinion might adversely affect any structural or exterior element of the Building, any area or element outside of the Premises or any facility or base building mechanical system serving any area of the Building outside of the Premises, or (ii) involve or affect the exterior design, size, height or other exterior dimensions of the Building, or (iii) enlarge the Rentable Floor Area of the Premises, or (iv) are inconsistent in any material respect, in Landlord's reasonable judgment, with alterations satisfying Landlord's standards for new alterations in the Building, or (v) will require unusual expense to readapt the Premises to normal office use upon Lease termination or expiration or increase the cost of construction or of insurance or taxes on the Building or of the services provided by Landlord herein unless Tenant first gives assurance acceptable to Landlord for payment of such increased cost and that such readaptation will be made prior to termination and or expiration without expense to Landlord (alterations, additions or improvements described in this clause (v) being sometimes collectively referred to as "Special Improvements"); or
- (b) for making its approval of any Special Improvements conditional on Tenant's agreement to restore the Premises to its condition prior to construction of such Special Improvements at the expiration or earlier termination of the Lease Term, reasonable wear and tear excepted.

Landlord's review and approval of any such plans and specifications and consent to perform work described therein shall not be deemed an agreement by Landlord that such plans, specifications and work conform with applicable Legal Requirements and requirements of insurers of the Building and the other requirements of the Lease with respect to Tenant's insurance obligations (herein called "Insurance Requirements") nor deemed a waiver of Tenant's obligations under this Lease with respect to applicable Legal Requirements and Insurance Requirements nor impose any liability or obligation upon Landlord with respect to the completeness, design sufficiency or compliance of such plans, specifications and work with applicable Legal Requirements and Insurance Requirements. Further, Tenant acknowledges that Tenant is acting for its own benefit and account, and that Tenant shall not be acting as Landlord's agent in performing any work in the Premises, accordingly, no contractor, subcontractor or supplier shall have a right to lien Landlord's interest in the Property in connection with any such work. Within thirty (30) days after receipt of an invoice from Landlord (together with

reasonable supporting back-up documentation), Tenant shall pay to Landlord as a fee for Landlord's review of any work or plans (excluding any review respecting initial improvements performed pursuant to Section 4.1 hereof for which a fee has previously been paid but including any review of plans or work relating to any assignment or subletting), as Additional Rent, an amount equal to the sum of: (i) \$150/hour for time spent by senior staff, and \$100/hour for time spent by junior staff (which shall not exceed \$2,500 per floor project), plus (ii) reasonable third party expenses incurred by Landlord to review Tenant's plans and Tenant's work.

## 9.2 Conformity of Work

Tenant covenants and agrees that any alterations, additions, improvements or installations made by it to or upon the Premises shall be done in a good and workmanlike manner and in compliance with all applicable Legal Requirements and Insurance Requirements now or hereafter in force, that materials of good quality (but in no event of lesser quality than reasonably appropriate for the maintenance of a consistently high quality building) shall be employed therein and that the structure of the Building shall not be endangered or impaired thereby.

## 9.3 Performance of Work, Governmental Permits and Insurance.

All of Tenant's alterations and additions and installation of furnishings shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations and not to damage the Building or Site or interfere with Building construction or operation and, except for installation of furnishings, shall be performed by Landlord's general contractor or by contractors or workers first approved by Landlord in its reasonable discretion. Except for work by Landlord's general contractor, Tenant shall procure all necessary governmental permits before making any repairs, alterations, other improvements or installations. Tenant agrees to save harmless and indemnify Landlord from any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work whether the same be performed prior to or during the Term of this Lease. At Landlord's election, Tenant shall cause its contractor to maintain a payment and performance bond in such amount and with such companies as Landlord shall reasonably approve. In addition, Tenant shall cause each contractor to carry worker's compensation insurance in statutory amounts covering the employees of all contractors and subcontractors, and commercial general liability insurance or comprehensive general liability insurance with a broad form comprehensive liability endorsement with such limits as Landlord may require reasonably from time to time during the Term of this Lease, but in no event less than the minimum amount of commercial general liability insurance or comprehensive general liability insurance Tenant is required to maintain as set forth in Section 1.2 hereof and as the same may be modified as provided in Section 13.2 hereof (all such insurance to be written in companies approved reasonably by Landlord and insuring Landlord, Landlord's managing agent and Tenant as additional insureds as well as contractors) and to deliver to Landlord certificates of all such insurance. Tenant shall also prepare and submit to Landlord a set of as-built plans, in both print and electronic forms, showing such work performed by Tenant to the Premises promptly after any such alterations, improvements or installations are substantially complete and promptly after any wiring or cabling for Tenant's computer, telephone and other communications systems is installed by Tenant or Tenant's contractor. Without limiting any of Tenant's obligations hereunder except as otherwise provided in Sections 4.1(B), (C) and (D) above, Tenant shall be responsible, as Additional Rent, for the costs of any alterations, additions or improvements in or to the Building that are required in order to comply with Legal Requirements as a result of any work performed by Tenant. Landlord shall have the right to provide rules and regulations (which shall be applied in a non-discriminatory manner) relative to the performance of any alterations, additions, improvements and installations by Tenant hereunder and Tenant shall abide by all such reasonable rules and regulations and shall cause all of its contractors to so abide including, without limitation, payment for the costs of using Building services. Tenant acknowledges and agrees that Landlord shall be the owner of any additions, alterations and improvements in the Premises or the Building to the extent paid for by Landlord.

9.4 Liens

Tenant covenants and agrees to pay promptly when due the entire cost of any work done on the Premises by Tenant, its agents, employees or contractors, and not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises or the Building or the Site and promptly to discharge (whether by bonding or otherwise) any such liens which may so attach.

9.5 Nature of Alterations

All work, construction, repairs, alterations, other improvements or installations made to or upon the Premises (including, but not limited to, the construction performed by Landlord under Article IV), shall become part of the Premises and shall become the property of Landlord and remain upon and be surrendered with the Premises as a part thereof upon the expiration or earlier termination of the Lease Term, except as follows:

- (a) All furniture, equipment, other personal property, and trade fixtures (including, without limitation, any and all components of Tenant's network operations center and data center, any satellite or microwave dish or other communications equipment (including, without limitation, any telephone switch gear), and any security or monitoring equipment, including, without limitation, the Emergency Generator and Generator Connection, as set forth in Section 16.30) whether by law deemed to be a part of the realty or not, installed at any time or times by Tenant or any person claiming under Tenant shall remain the property of Tenant or persons claiming under Tenant and may be removed by Tenant or any person claiming under Tenant at any time or times during the Lease Term or any occupancy by Tenant thereafter and shall be removed by Tenant at the expiration or earlier termination of the Lease Term if so requested by Landlord. Tenant shall repair any damage to the Premises occasioned by the removal by Tenant or any person claiming under Tenant of any such property from the Premises.
- (b) At the expiration or earlier termination of the Lease Term, unless otherwise agreed in writing by Landlord, Tenant shall remove any wiring for Tenant's computer, telephone and other communication systems and equipment whether located in the Premises or in any other portion of the Building, including all risers and any alterations, additions and improvements made with Landlord's consent during the Lease Term for which such removal was made a condition of such consent under Section 9.1 (b). Upon such removal Tenant shall restore the Premises to their condition prior to such alterations, additions and improvements and repair any damage occasioned by such removal and restoration.
- (c) If Tenant shall make any alterations, additions or improvements to the Premises for which Landlord's approval is required under Section 9.1 (after giving effect to the provisions of Section 9.7), without obtaining such approval, then at Landlord's request at any time during the Lease Term, and at any event at the expiration or earlier termination of the Lease Term, Tenant shall remove such alterations, additions and improvements and restore the Premises to their condition prior to same and repair any damage occasioned by such removal and restoration. Nothing herein shall be deemed to be a consent to Tenant to make any such alterations, additions or improvements, the provisions of Section 9.1 being applicable to any such work.

9.6 Increases in Taxes

Tenant shall pay, as Additional Rent, one hundred percent (100%) of any increase in real estate taxes on the Property which shall, at any time after the Commencement Date, result from alterations, additions or improvements to the Premises made by Tenant if the taxing authority specifically determines such increase results from such alterations, additions or improvements made by Tenant.

9.7 Alterations Permitted Without Landlord's Consent

Notwithstanding the terms of Section 9.1, Tenant shall have the right, without obtaining the prior consent of Landlord but upon notice to Landlord given ten (10) days prior to the commencement of any work (which notice shall specify the nature of the work in reasonable detail), to make alterations, additions or improvements to the Premises where:

- (i) the same are within the interior of the Premises within the Building, and do not affect the exterior of the Premises and the Building (including no signs on windows);
- (ii) the same do not affect the roof, any structural element of the Building, the mechanical, electrical, plumbing, heating, ventilating, air-conditioning and fire protection systems of the Building;
- (iii) the cost of any individual alteration, addition or improvement shall not exceed \$50,000.00 with respect to any floor of the Building and the aggregate cost of said alterations, additions or improvements made by Tenant during the Lease Term shall not exceed \$500,000.00 in cost; and
- (iv) Tenant shall comply with the provisions of this Lease and if such work increases the cost of insurance or taxes or of services, Tenant shall pay for any such increase in cost;

provided, however, that Tenant shall, within thirty (30) days after the making of such changes, send to Landlord plans and specifications describing the same in reasonable detail and provided further that Landlord, by notice to Tenant given at least thirty (30) days prior to the expiration or earlier termination of the Lease Term, may, if any such alterations, addition or improvement constitutes a Special Improvement, require Tenant to restore the Premises to its condition prior to construction of such Special Improvement (reasonable wear and tear excepted) at the expiration or earlier termination of the Lease Term.

ARTICLE X

Parking

10.1 Parking Privileges

Reference is made to the fact that affiliates of Landlord have constructed three (3) parking garages (hereinafter the "Garage" or the "Garages") within the Development Area shown on Exhibit F to serve the Building and other buildings constructed or to be constructed by Landlord or affiliates of Landlord within the Development Area. The existing Garage, with vehicular entrances from the south side of Broadway and the east side of Ames Street, is also sometimes hereinafter referred to as the "East

Garage.” The existing Garage, located on Parcel 2 of the Development Area with vehicular entrances from the north side of Broadway and the south side of Binney Street is also sometimes hereinafter referred to as the “North Garage.” The existing Garage located on Parcel 3 of the Development Area with vehicular entrances from the west side of Ames Street and the east side of Galileo Galilei Way, is also sometimes hereinafter referred to as the “West Garage”. Landlord shall provide to Tenant monthly parking privileges in the East Garage in number not to exceed parking for one and one half (1 1/2) passenger automobiles for each 1,000 square feet of Rentable Floor Area of the Premises (as it is contemplated to increase or decrease pursuant to Article XVII) for the parking of motor vehicles in unreserved stalls by Tenant’s employees commencing on the Commencement Date of the Lease Term. The parking privileges may be shifted from time to time to the West Garage by notice from Landlord; provided however that parking shall be provided in the East Garage for no less than eighty percent (80%) of the total number of automobiles for which Tenant elects to have parking privileges pursuant to this Section 10.1. For the avoidance of ambiguity, notwithstanding any provision hereof to the contrary, the parties agree that in no event shall the Tenant’s parking privileges be shifted to the North Garage without the express written consent of Tenant, in its sole discretion. Tenant initially shall have parking privileges for 110 automobiles, which figure shall be increased as each Premises Component is incorporated into the Premises by the amount specified by Tenant within thirty (30) days of the Commencement Date with respect to such Premises Component. Tenant shall, not less than six (6) months prior to the incorporation of each additional Premises Component into the Premises, give Landlord notice with regard to the number of additional automobiles for which Tenant desires parking privileges, not exceeding Tenant’s entitlement pursuant to this Lease, commencing upon the Commencement Date for such Premises Component. Tenant shall also have the right to adjust the number of automobiles for which it has parking privileges on an annual basis with six (6) months’ prior notice to Landlord, provided that in no event shall parking privileges exceed more than 1 1/2 parking spaces per 1,000 square feet of Rentable Floor Area, nor less than 1.13 per 1,000 square feet of Rentable Floor Area. In the event that the Rentable Floor Area of the Premises decreases at any time during the Lease Term, the number of parking privileges provided to Tenant hereunder shall be reduced proportionately. In any event that Tenant is not using the maximum parking privileges to which it is entitled hereunder, its right to increase shall be subject to the then availability of additional spaces in the Garages in Landlord’s determination.

## 10.2 Parking Charges

Tenant shall pay for parking privileges in Garages at prevailing monthly rates applicable to tenants of the Development Area from time to time charged by the operator or operators of Garages, whether or not such operator is an affiliate of Landlord. Currently the rate is \$235 per space per month. Such monthly parking charges for parking privileges in the Garage or Garages shall constitute Additional Rent and shall be payable monthly as directed by Landlord upon billing therefor by Landlord or such operator. Tenant acknowledges that said monthly charges to be paid under this Section are for the use by the Tenant of the parking privileges referred to herein, and not for any other service.

## 10.3 Garage Operation

Unless otherwise determined by Landlord, each Garage is to be operated on a self-parking basis, and Tenant shall be obligated to park and remove its own automobiles. Except as set forth in Section 10.4 below, Tenant’s parking shall be on an unreserved basis, Tenant having the right to park in any available stalls. Tenant’s access and use privileges with respect to the Garage shall be in accordance with regulations of uniform applicability to the users of the Garage from time to time established by Landlord or the operator of the Garage. Tenant shall receive one (1) identification sticker or pass and one (1) magnetic card so-called, or other suitable device providing access to the Garage, for each parking privilege paid for by Tenant. Tenant shall supply Landlord with an identification roster listing, for each identification sticker or pass, the name of the employee and the make, color and registration

number of the vehicle to which it has been assigned, and shall provide a revised roster to Landlord monthly indicating changes thereto. Any automobile found parked in the Garage during normal business hours without appropriate identification will be subject to being towed at said automobile owner's expense. The parking privileges granted herein are non-transferable (other than to a permitted assignee or subtenant pursuant to the applicable provisions of Article XII hereof). The door of the Garage will be open during normal business hours except during periods of severe inclement or cold weather. For periods during which an attendant is not on duty at the Garage entrance or when the door to the Garage is closed, or at any other periods as may from time to time be stipulated by the Garage Operator in accordance with its regulations, including normal business hours, the magnetic cards furnished to Tenant shall be used by Tenant to gain access to and egress from the Garage for motor vehicles.

#### 10.4 Reserved Spaces

Notwithstanding anything to the contrary contained herein, in addition to the foregoing parking privileges, Tenant shall have the right to five (5) reserved parking spaces designated by Landlord in the parking area located on levels 1 and 2 of the "East Garage" (the "Reserved Spaces"), which Reserved Spaces shall be subject to all the terms and conditions of this Lease applicable to Tenant's other parking privileges, except that there may be a higher monthly tenant parking rate for Reserved Spaces, and the aforesaid Reserved Spaces shall not be subject to relocation to the "West Garage" pursuant to Section 10.1. Currently the rate therefor is \$300.00 per space per month. Landlord shall not grant to anyone other than Tenant the right to use such Reserved Spaces and will use reasonable efforts, by the use of signs and markings, to designate such space to be used exclusively by Tenant, however, Landlord shall not be otherwise obligated to police the use of the Reserved Spaces which Tenant recognizes is to be operated on a self parking basis. Notwithstanding the foregoing or any other provision hereof or of the 8CC Lease to the contrary, if Tenant is a tenant in both the Building and the 8CC Building and the Building and the 8CC Building are each owned by Landlord or Affiliates of Landlord, then Tenant shall have the right to increase or decrease the number of Reserved Spaces under this Lease and the 8CC Lease, provided that the total number of Reserved Spaces under this Lease and the 8CC Lease shall not exceed twenty (20) Reserved Spaces in the aggregate. However, Tenant must give Landlord at least sixty (60) days' advance written notice of Tenant's desire to make any such increase or decrease, and may not implement any such increase or decrease more than once during any period of 365 consecutive days. Additionally, if Tenant should elect, subject to the aforesaid qualifications, to increase the number of Reserved Spaces under this Lease to more than five (5), such additional Reserved Spaces shall be located on levels 1 and 2 of the "East Garage" only on a space available basis, and otherwise they shall be located on the next higher level of the "East Garage."

#### 10.5 Limitations

Tenant agrees that it and all persons claiming by, through and under it, shall at all times abide by all reasonable rules and regulations promulgated by Landlord or the operator of the parking facilities with respect to the use of the Garage or such on-grade parking facilities as may be provided by Landlord within the Development Area. Except to the extent of gross negligence or willful acts, neither the Landlord nor the operator of such parking facilities assumes any responsibility whatsoever for loss or damage due to fire or theft or otherwise to any automobile or to any personal property therein, however caused, and Tenant agrees, upon request from the Landlord, from time to time, to notify its officers, employees and agents then using any of the parking privileges provided for herein, of such limitation of liability. Tenant further acknowledges and agrees that a license only is hereby granted, and no bailment is intended or shall be created.



#### 10.6 Interim On-Grade Parking

Notwithstanding the references to Garages in this Article X, Tenant acknowledges that, from time to time, Landlord may temporarily satisfy the requirements of providing Tenant with parking hereunder (except for parking called for as to be provided in the East Garage) by providing such parking in on-grade paved parking lots within the Development Area which provide industry standard lighting and security; provided, however, that (i) Landlord shall exercise its right to satisfy the parking requirements by providing such parking in such on-grade parking lots only on a temporary basis following the occurrence of an emergency or during the period of performance of repairs to the Garages; (ii) the rates payable by Tenant for parking shall not exceed the prevailing monthly rates from time to time charged by the operator or operators of such on-grade lots in the vicinity thereof, whether or not such operator or operators are affiliates of Landlord, and (iii) the number of Tenant's parking spaces that are relocated to such on-grade parking lots shall be in proportion to the number of parking spaces of other tenants of the Building that are relocated from the Garages to on-grade parking lots in connection with the applicable emergency or repair work (based upon the floor area of the Building occupied by Tenant and such other tenants of the Building). Without limiting the foregoing, in the event Landlord is required to provide parking in such parking lots, Landlord shall relocate the parking spaces of all garage tenants on a pro rata basis according to the number of spaces allocated to each tenant.

### ARTICLE XI

#### Certain Tenant Covenants

Tenant covenants and agrees to the following during the Lease Term and for such further time as Tenant occupies any part of the Premises:

- 11.1 To pay when due all Annual Fixed Rent and Additional Rent and all charges for utility services rendered to the Premises and service inspections therefor (except as is otherwise provided in Exhibit D) and, as further Additional Rent, all charges for additional and special services rendered pursuant to Section 7.3.
- 11.2 To use and occupy the Premises for the Permitted Use only, and not to injure or deface the Premises or the Property, not to permit in the Premises any auction sale, vending machine (other than vending machines for use by Tenant's employees and business invitees) or flammable fluids or chemicals, or nuisance, or the emission from the Premises of any objectionable noise or odor, nor to permit in the Premises anything which would in any way result in the leakage of fluid or the growth of mold, and not to use or devote the Premises or any part thereof for any purpose other than the Permitted Uses, nor any use thereof which is inconsistent with the maintenance of the Building as an office building of the first-class in the quality of its maintenance, use and occupancy, or which is improper, offensive, contrary to law or ordinance or liable to invalidate or increase the premiums for any insurance on the Building or its contents or liable to render necessary any alteration or addition to the Building. Further, (i) Tenant shall not, nor shall Tenant permit its employees, invitees, agents, independent contractors, contractors, assignees or subtenants to, keep, maintain, store or dispose of (into the sewage or waste disposal system or otherwise) or engage in any activity which might produce or generate any substance which is or may hereafter be classified as a hazardous material, waste or substance (collectively "Hazardous Materials"), under federal, state or local laws, rules and regulations, including, without limitation, 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 9601 et seq., 42 U.S.C. Section 2601 et seq., 49 U.S.C. Section 1802 et seq. and Massachusetts General Laws, Chapter 21E and the rules and regulations promulgated under any of the foregoing, as such laws, rules and regulations may be amended from time to time (collectively "Hazardous Materials Laws"), (ii)

Tenant shall promptly notify Landlord of any incident in, on or about the Premises, the Building or the Site that would require the filing of a notice under any Hazardous Materials Laws, (iii) Tenant shall comply and shall cause its employees, invitees, agents, independent contractors, contractors, assignees and subtenants to comply with each of the foregoing and (iv) Landlord shall have the right to make such inspections (including testing) as Landlord shall elect from time to time to determine that Tenant is complying with the foregoing (provided that, except in cases of emergency, Landlord provides Tenant at least two (2) business days' prior written notice of any such inspection). Notwithstanding the foregoing, Tenant may use normal amounts and types of substances typically used for office uses, provided that Tenant uses such substances in the manner which they are normally used, and in compliance with all Hazardous Materials Laws and other applicable laws, ordinances, bylaws, rules and regulations, and Tenant obtains and complies with all permits required by Hazardous Materials Laws or any other laws, ordinances, bylaws, rules or regulations prior to the use or presence of any such substances in the Premises.

- 11.3 Not to obstruct in any manner any portion of the Building not hereby leased or any portion thereof or of the Site used by Tenant in common with others; not without prior consent of Landlord (or as otherwise provided in this Lease) to permit the painting or placing of any signs, curtains, blinds, shades, awnings, aerals or flagpoles, or the like, visible from outside the Premises; and to comply with all reasonable rules and regulations now or hereafter made by Landlord, of which Tenant has been given notice, for the care and use of the Building and the Site and their facilities and approaches, but Landlord shall not be liable to Tenant for the failure of other occupants of the Building to conform to such rules and regulations. Landlord shall not enforce such rules and regulations other than in a non-discriminatory manner.
- 11.4 To keep the Premises equipped with all safety appliances required by law or ordinance or any other regulation of any public authority because of any use made by Tenant other than normal office use, and to procure all licenses and permits so required because of any use made by Tenant other than normal office use, and, if requested by Landlord, to do any work so required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way Tenant's Permitted Use.
- 11.5 Not to place a load upon any floor in the Premises exceeding an average rate of 70 pounds of live load (including partitions) per square foot of floor area; and not to move any safe, vault or other heavy equipment in, about or out of the Premises except in such manner and at such time as Landlord shall in each instance authorize. Tenant's business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient to absorb and prevent vibration or noise that may be transmitted to the Building structure or to any other space in the Building.
- 11.6 To pay promptly when due all taxes which may be imposed upon personal property (including, without limitation, fixtures and equipment) in the Premises to whomever assessed.
- 11.7 To pay, as Additional Rent, all reasonable out-of-pocket costs, counsel and other fees incurred by Landlord in connection with the successful enforcement by Landlord of any obligations of Tenant under this Lease or in connection with any bankruptcy case involving Tenant or any guarantor.
- 11.8 Not to do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of insurance on the Premises or on the Building above the standard rate applicable to premises being occupied for the use to which Tenant has agreed to devote the Premises; and Tenant further agrees that, in the event that Tenant shall do any of the foregoing, Tenant will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as Additional Rent hereunder.

- 11.9 To comply with all applicable Legal Requirements now or hereafter in force which shall impose a duty on Landlord or Tenant relating to or as a result of the use or occupancy of the Premises; provided that Tenant shall not be required to make any alterations or additions to the structure, roof, exterior and load bearing walls, foundation, structural floor slabs and other structural elements of the Building or to perform or satisfy any other obligation of Landlord under this Lease unless the same are required by such Legal Requirements as a result of or in connection with Tenant's use or occupancy of the Premises beyond normal use of space of this kind. Tenant shall promptly pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section 11.9.
- 11.10 Any vendors engaged by Tenant to perform services in or to the Premises including, without limitation, janitorial contractors and moving contractors shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations and to not unreasonably interfere with Building construction or operation, and shall be performed by vendors first approved by Landlord, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the following vendors do not require Landlord's approval: brokerage, legal, employment staffing and food catering.

## ARTICLE XII

### Assignment and Subletting

#### 12.1 Restrictions on Transfer

Except as otherwise expressly provided herein, Tenant covenants and agrees that it shall not assign, mortgage, pledge, hypothecate or otherwise transfer this Lease and/or Tenant's interest in this Lease or sublet (which term, without limitation, shall include granting of concessions, licenses or the like) the whole or any part of the Premises. Any assignment, mortgage, pledge, hypothecation, transfer or subletting not expressly permitted in or consented to by Landlord under this Article XII shall be void, ab initio; shall be of no force and effect; and shall confer no rights on or in favor of third parties. In addition, Landlord shall be entitled to seek specific performance of or other equitable relief with respect to the provisions hereof.

#### 12.2 Exceptions

Notwithstanding the foregoing provisions of Section 12.1 above and the provisions of Section 12.3 and 12.4 below, but subject to the provisions of Sections 12.5 and 12.6, Tenant shall have the right to assign this Lease or to sublet the Premises (in whole or in part) to any controlling entity of Tenant or to any entity controlled by Tenant or to any entity under common control with Tenant (such parent or subsidiary entity or entity under common control with Tenant being hereinafter called a "Tenant Affiliate") or to any entity into which Tenant may be converted or with which it may merge, or to any entity purchasing all or substantially all of Tenant's assets (each, a "Permitted Tenant Successor"), provided that in the case of a Permitted Tenant Successor, the entity to which this Lease is so assigned or which so sublets the Premises has a net worth (e.g. assets on a pro forma basis using generally accepted accounting principles consistently applied and using the most recent financial statements) equal to the net worth of the Tenant immediately before such transaction. If any Tenant Affiliate to which this Lease is assigned or the Premises sublet (in whole or in part) shall cease to be such a Tenant Affiliate, and if such cessation was contemplated at the time of the assignment or subletting, such cessation shall be considered an assignment or subletting requiring Landlord's consent.

### 12.3 Landlord's Termination Right

Notwithstanding the provisions of Section 12.1 above, in the event Tenant desires to assign this Lease or to sublet all or any portion of the Rentable Floor Area of the Premises, Tenant shall notify Landlord thereof in writing and Landlord shall have the right at its sole option, to be exercised within ten (10) business days after receipt of Tenant's notice (the "Acceptance Period"), to terminate this Lease as of a date specified in a notice to Tenant, which date shall not be earlier than sixty (60) days nor later than one hundred and twenty (120) days after Landlord's notice to Tenant; provided, however, that upon the termination date as set forth in Landlord's notice, all obligations relating to the period after such termination date (but not those relating to the period before such termination date) shall cease and promptly upon being billed therefor by Landlord, Tenant shall make final payment of all rent and additional rent due from Tenant through the termination date.

Notwithstanding the foregoing, in the event that Tenant shall only propose to sublease a portion of the Premises and/or to enter into a sublease for less than all or substantially all of the then-remaining Lease Term:

- (i) Landlord shall only have the right to so terminate this Lease with respect to the portion of the Premises which Tenant proposes to sublease (the "Terminated Portion of the Premises") and from and after the termination date the Rentable Floor Area of the Premises shall be reduced to the rentable floor area of the remainder of the Premises and the definition of Rentable Floor Area of the Premises shall be so amended and after such termination all references in this Lease to the "Premises" or the "Rentable Floor Area of the Premises" shall be deemed to be references to the remainder of the Premises and accordingly Tenant's payments for Annual Fixed Rent, operating costs, real estate taxes and electricity shall be reduced on a pro rata basis to reflect the size of the remainder of the Premises; and
- (ii) in the case of sublease for less than all or substantially all of the then-remaining Lease Term, Landlord shall only have the right to suspend the term of this Lease pro tanto for the term of the proposed sublease (i.e. the Term of the Lease in respect of the subleased premises shall be terminated for the term of the proposed sublease and then reinstated upon the expiration or earlier termination of such sublease term).

In the event that Landlord shall not exercise its termination rights as aforesaid, or shall fail to give any or timely notice pursuant to this Section the provisions of Sections 12.4-12.7 shall be applicable. In the case of a partial subletting where Landlord has exercised its termination right pursuant to this Section 12.3, Landlord shall be responsible, at its sole cost and expense, for all work necessary to separately physically demise that portion of the Premises which are being terminated from the remainder of the Premises. This Section 12.3 shall not be applicable to an assignment or sublease pursuant to Section 12.2.

### 12.4 Consent of Landlord

Notwithstanding the provisions of Section 12.1 above, but subject to the provisions of this Section 12.4 and the provisions of Sections 12.5, 12.6 and 12.7 below, in the event that Landlord shall not have exercised the termination right as set forth in Section 12.3, or shall have failed to give any or timely notice under Section 12.3, then for a period of one hundred eighty (180) days (i) after the receipt of Landlord's notice stating that Landlord does not elect the termination right, or (ii) after the expiration of the Acceptance Period, in the event Landlord shall not give any or timely notice under Section 12.3 as the case may be, Tenant shall have the right to assign this Lease or sublet the Premises in accordance with the Proposed Transfer Notice provided that, in each instance, Tenant first obtains

the express prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Without limiting the foregoing standard, Landlord shall not be deemed to be unreasonably withholding its consent to such a proposed assignment or subleasing if:

- (a) the proposed assignee or subtenant is a tenant in the Building, the 8CC Building or elsewhere in the Development Area or is in active negotiation with the landlord of the building in question, provided that the foregoing shall apply to the 8CC Building or elsewhere in the Development Area only if the landlord of this Building, and the landlord of the other pertinent building, are affiliated with each other (as defined in Section 16.32), or
- (b) the proposed assignee or subtenant is not of a character consistent with the operation of a first class office building (by way of example Landlord shall not be deemed to be unreasonably withholding its consent to an assignment or subleasing to any governmental or quasi-governmental agency), or
- (c) giving appropriate weight, if applicable, to the fact that Tenant will nevertheless remain liable under this Lease, the proposed assignee or subtenant does not possess adequate financial capability to assure the performance of the Tenant obligations as and when due or required, or
- (d) the assignee or subtenant proposes to use the Premises (or part thereof) for a purpose other than the purpose for which the Premises may be used as stated in Section 1.2 hereof, or
- (e) the character of the business to be conducted or the proposed use of the Premises by the proposed subtenant or assignee shall (i) be likely to materially increase Operating Expenses for the Property beyond that which Landlord now incurs for use by Tenant; (ii) be likely to materially increase the burden on elevators or other Building systems or equipment over the burden prior to such proposed subletting or assignment; or (iii) materially violate or be likely to materially violate any provisions or restrictions contained herein relating to the use or occupancy of the Premises, or
- (f) there shall be existing a monetary or material non-monetary Event of Default (defined in Section 15.1), or
- (g) any part of the rent payable under the proposed assignment or sublease shall be based in whole or in part on the income or profits derived from the Premises or if any proposed assignment or sublease shall potentially have any adverse effect on the real estate investment trust qualification requirements applicable to Landlord and its affiliates, or

If Tenant believes in good faith that Landlord has unreasonably withheld its consent under this Section 12.4, in any case where Landlord is required not to unreasonably withhold its consent, if Tenant shall give notice thereof to Landlord, within five (5) business days of Landlord's withholding (or deemed withholding) of consent, Tenant shall have the right to an expedited determination of such claim pursuant to Section 12.8 below.

#### 12.5 Tenant's Notice

Tenant shall give Landlord notice (the "Proposed Transfer Notice") of any proposed sublease or assignment, and said notice shall specify the provisions of the proposed assignment or subletting, including (a) the name and address of the proposed assignee or subtenant, (b) in the case of a proposed assignment or subletting pursuant to Section 12.4, such information as to the proposed assignee's or proposed subtenant's net worth and financial capability and standing as may reasonably be required for Landlord to make the determination referred to in Section 12.4 above (provided, however, that Landlord shall hold such information confidential having the right to release same to its officers, accountants, attorneys and mortgage lenders on a confidential basis), (c) all of the terms and provisions upon which the proposed assignment or subletting is to be made, (d) in the case of a proposed assignment or subletting pursuant to Section 12.4, all other information necessary to make the determination referred to in Section 12.4 above and (e) in the case of a proposed assignment or subletting pursuant to Section 12.2 above, such information as may be reasonably required by Landlord to determine that such proposed assignment or subletting complies with the requirements of said Section 12.2.

If Landlord shall consent to the proposed assignment or subletting, as the case may be, then, in such event, Tenant may thereafter sublease or assign pursuant to Tenant's notice, as given hereunder; provided, however, that if such assignment or sublease shall not be executed and delivered to Landlord within one hundred eighty (180) days after the date of Landlord's consent, the consent shall be deemed null and void and the provisions of Section 12.3 shall be applicable.

#### 12.6 Profit on Subleasing or Assignment

In addition, in the case of any assignment or subleasing as to which Landlord may consent (other than an assignment or subletting permitted under Section 12.2 hereof) such consent shall be upon the express and further condition, covenant and agreement, and Tenant hereby covenants and agrees that, in addition to the Annual Fixed Rent, Additional Rent and other charges to be paid pursuant to this Lease, fifty percent (50%) of the "Assignment/Sublease Profits" (hereinafter defined), if any shall be paid to Landlord.

The "Assignment/Sublease Profits" shall be the excess, if any, of (a) the "Assignment/Sublease Net Revenues" as hereinafter defined over (b) the Annual Fixed Rent, Additional Rent and other charges provided in this Lease (provided, however, that for the purpose of calculating the Assignment/Sublease Profits in the case of a sublease, appropriate proportions in the applicable Annual Fixed Rent, Additional Rent and other charges under this Lease shall be made based on the percentage of the Premises subleased and on the terms of the sublease). The "Assignment/Sublease Net Revenues" shall be the fixed rent, Additional Rent and all other charges and sums payable either initially or over the term of the sublease or assignment plus all other profits and increases to be derived by Tenant as a result of such subletting or assignment, less the reasonable costs of Tenant incurred in such subleasing or assignment (the definition of which shall be limited to brokerage commissions, attorneys' fees and alteration allowances, in each case actually paid), as set forth in a statement certified by an appropriate officer of Tenant and delivered to Landlord within thirty (30) days of the full execution of the sublease or assignment document, amortized over the term of the sublease or assignment.

All payments of the Assignment/Sublease Profits due Landlord shall be made within ten (10) days of receipt of same by Tenant.

#### 12.7 Additional Conditions

(A) It shall be a condition of the validity of any assignment or subletting of right under Section 12.2 above, or consented to under Section 12.4 above, that both Tenant and the assignee or sublessee enter into a separate written instrument directly with Landlord in a form and containing terms and provisions reasonably required by Landlord, including, without limitation, the agreement of the

assignee or sublessee to be bound by all the obligations of the Tenant hereunder, including, without limitation, the obligation (a) to pay the Annual Fixed Rent, Additional Rent, and other amounts provided for under this Lease (but in the case of a partial subletting, such subtenant shall agree on a pro rata basis to be so bound) and (b) to comply with the provisions of Sections 12.1 through 12.7 hereof. Such assignment or subletting shall not relieve the Tenant named herein of any of the obligations of the Tenant hereunder and Tenant shall remain fully and primarily liable therefor and the liability of Tenant and such assignee (or subtenant, as the case may be) shall be joint and several. Further, and notwithstanding the foregoing, the provisions hereof shall not constitute a recognition of the sublease or the subtenant thereunder, and at Landlord's option, upon the termination or expiration of the Lease (whether such termination is based upon a cause beyond Tenant's control, a default of Tenant, the agreement of Tenant and Landlord or any other reason), the sublease shall be terminated.

(B) As Additional Rent, Tenant shall pay to Landlord as a fee for Landlord's review of any proposed assignment or sublease requested by Tenant and the preparation of any associated documentation in connection therewith, within thirty (30) days after receipt of an invoice from Landlord, an amount equal to the sum of (i) \$1,000.00 and/or (ii) reasonable out of pocket legal fees or other expenses incurred by Landlord in connection with such request.

(C) If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may upon prior notice to Tenant, at any time and from time to time, collect Annual Fixed Rent, Additional Rent, and other charges from the assignee, sublessee or occupant and apply the net amount collected to the Annual Fixed Rent, Additional Rent and other charges herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or a waiver of the provisions of Sections 12.1 through 12.7 hereof, or the acceptance of the assignee, sublessee or occupant as a tenant or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained, the Tenant herein named to remain primarily liable under this Lease.

(D) The consent by Landlord to an assignment or subletting under any of the provisions of Sections 12.2 or 12.4 shall in no way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting.

(E) Without limiting Tenant's obligations under Article IX, Tenant shall be responsible, at Tenant's sole cost and expense, for performing all work necessary to comply with Legal Requirements and Insurance Requirements in connection with any assignment or subletting hereunder including, without limitation, any work in connection with such assignment or subletting.

(F) In addition to the other requirements set forth in this Lease and notwithstanding any other provision of this Lease, partial sublettings of the Premises shall only be permitted under the following terms and conditions: (i) the layout of both the subleased premises and the remainder of the Premises must comply with applicable laws, ordinances, rules and/or regulations and be reasonably approved by Landlord, including, without limitation, all requirements concerning access and egress; (ii) in the event the subleased premises are separately physically demised from the remainder of the Premises, Tenant shall pay all costs of separately physically demising the subleased premises (except as provided in Section 12.3); and (iii) there shall be no more than two (2) subleases in effect on any single floor of the Premises at any given time.

(G) Notwithstanding anything to the contrary provided in Section 12.6 above, Landlord shall be entitled to one hundred percent (100%) of any Assignment/Sublease Profits reasonably allocable (in Landlord's reasonable determination consistent with Section 12.6) to any calendar month of the Term during which there is or was subsisting, at any time during said calendar month, a monetary or material non-monetary Event of Default (as defined in Section 15.1).

## 12.8 Expedited Dispute Resolution.

In the event that a dispute shall arise under Section 12.4 with regard to whether or not Landlord's withholding of consent was reasonable under the circumstances, and Tenant gives Landlord the notice referred to in Section 12.8(A) below within five (5) business days of Landlord's withholding of consent, then such dispute shall be resolved in accordance with the procedure set forth in this Section 12.8 as follows:

(A) Tenant's notice to Landlord of its desire that the dispute be resolved by arbitration pursuant to this Section 12.8 must appoint a person as an arbitrator on its behalf. Within five (5) business days after the giving of such notice, Landlord by notice to Tenant shall appoint a second person as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third person to serve as an arbitrator, and such three arbitrators shall as promptly as possible determine such matter, provided, however, that:

- (i) if the second arbitrator shall not have been appointed within the five (5) business day period as aforesaid, then the first arbitrator shall petition the American Arbitration Association (Boston office) or any successor body of similar function ("AAA") to appoint the second arbitrator or, in its absence, refusal, failure or inability to act, petition a court of competent jurisdiction to appoint the second arbitrator; and
- (ii) if the two arbitrators are appointed by the parties (or the AAA or court in the case of the second arbitrator under clause (i) above) and shall be unable to agree, within five (5) business days after the appointment of the second arbitrator, upon the appointment of a third arbitrator, said two arbitrators shall give written notice to the parties of such failure to agree, and, if the parties fail to agree upon the selection of such third arbitrator within five (5) business days after the arbitrators appointed by the parties give notice as aforesaid, then within five (5) business days thereafter either of the parties upon notice to the other party may request such appointment by the AAA, or in its absence, refusal, failure or inability to act, by a court of competent jurisdiction.

(B) Each arbitrator shall be either a Boston area based partner or retired partner in a nationally recognized law or real estate brokerage firm who shall have had at least ten (10) years' experience in the area of commercial real estate transactions and/or litigation including, without limitation, commercial leasing, and in the case of the third arbitrator, may also be a retired judge. Each arbitrator shall be impartial and shall have had no prior notice, information or discussions concerning the dispute and shall not be employed by or associated with either party or any affiliate of any party during the five (5) year period preceding commencement of the arbitration.

(C) The arbitration shall be conducted in the City of Boston, Massachusetts, in accordance with the then prevailing Commercial Arbitration Rules (Expedited Procedures) of the AAA. The arbitrators shall render their decision and award in writing, upon the concurrence of at least two of their number, within fifteen (15) days after the appointment of the third arbitrator. Such decision and award shall be final and conclusive on the parties, and counterpart copies thereof shall be delivered to each of the parties. In rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Lease. Judgment may be had on the decision and award of the arbitrators so rendered in any court of competent jurisdiction.

(D) Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by or for such party and the fees and expenses of the third arbitrator, and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party) shall be borne by the parties equally.



ARTICLE XIII

Indemnity And Commercial General Liability Insurance

13.1 Indemnity

(A) Tenant's Indemnity. To the maximum extent this agreement may be made effective according to law, but subject to Section 16.24 hereof, and to the extent not resulting from any negligence or misconduct of Landlord or its contractors, agents, or employees, Tenant agrees to indemnify and save harmless Landlord and Landlord's managing agent, beneficiaries, partners, subsidiaries, officers, directors, agents and employees ("Landlord Parties") from and against all claims of whatever nature to the extent arising from or claimed to have arisen from: any breach of this Lease by Tenant or any act, omission or negligence of Tenant, or Tenant's contractors, licensees, invitees, agents, independent contractors or employees occurring in the Premises, in the Building or on the Site; any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring in or about the Premises after the date that possession of the Premises is first delivered to Tenant and until the end of the Lease Term and thereafter, provided that during any such period after the Lease Term Tenant or anyone acting by, through or under Tenant is in occupancy of the Premises or any portion thereof; or any accident, injury or damage occurring outside the Premises but within the Building, the Garage or on the Site, to the extent such accident, injury or damage results, or is claimed to have resulted, from an act, omission or negligence on the part of Tenant or Tenant's contractors, licensees, invitees, agents, independent contractors or employees; provided, however, that in no event shall Tenant be liable for any indirect or consequential damages except under Section 16.18 hereof (subject to the limitations set forth in Section 16.18(B) and (C)).

This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

(B) Landlord's Indemnity. To the maximum extent this agreement is effective according to law, but subject to Section 16.24 hereof, and to the extent not resulting from any negligence or misconduct of Tenant or its contractors, agents, licensees, invitees, servants or employees, Landlord agrees to indemnify and save harmless Tenant from and against any claim arising from any injury to any person occurring in the Premises, in the Building or on the Site after the date that possession of the Premises is first delivered to Tenant and until the expiration or earlier termination of the Lease Term, to the extent such injury results from the negligence of Landlord or Landlord's contractors, agents or employees; provided, however that in no event shall the aforesaid indemnity render Landlord responsible or liable for any loss or damage to fixtures or personal property of Tenant and Landlord shall in no event be liable for any indirect or consequential damages; and provided, further, that the provisions of this Section shall not be applicable to the holder of any mortgage now or hereafter on the Site or the Building (whether or not such holder shall be a mortgagee in possession of or shall have exercised any rights under a conditional, collateral or other assignment of leases and/or rents respecting, the Site and/or Building).

### 13.2 Commercial General Liability Insurance

Tenant agrees to maintain in full force from the date upon the earlier of (i) the date on which Tenant first enters the Premises for any reason, or (ii) the Commencement Date throughout the Lease Term of this Lease, and thereafter, so long as Tenant is in occupancy of any part of the Premises, a policy of commercial general liability or comprehensive general liability insurance written on an occurrence basis with a broad form comprehensive liability endorsement under which Tenant is the named insured and Landlord and Landlord's managing agent (and such other persons as are in privity of estate with Landlord and Landlord's managing agent as may be set out in notice from time to time) are named as additional insureds, in the broadest form of such coverage from time to time available in the jurisdiction in which the Premises are located. Any policy which Tenant is required to maintain under this Lease shall be non-cancelable and non-amendable with respect to Landlord and Landlord's said designees without twenty (20) days' prior notice to Landlord, and a duplicate original or certificate thereof, in a form reasonably acceptable to Landlord, shall be delivered to Landlord. The minimum limits of liability of such insurance shall be as specified in Section 1.2 and from time to time during the Lease Term for such higher limits, if any, as are carried customarily in the Greater Boston Area with respect to similar properties. In addition, in the event Tenant hosts a function in the Premises, Tenant agrees to obtain and maintain, and cause any persons or parties providing services for such function to obtain, the appropriate insurance coverages as determined by Landlord (including liquor liability, if applicable) and provide Landlord with evidence of the same. All insurance required to be maintained by Tenant pursuant to this Lease shall be maintained with responsible companies qualified to do business, and in good standing, in the Commonwealth of Massachusetts and which have a rating of at least "A-" and are within a financial size category of not less than "Class VIII" in the most current Best's Key Rating Guide or such similar rating as may be reasonably selected by Landlord if such Guide is no longer published.

### 13.3 Tenant's Property Insurance

Tenant, at Tenant's expense, shall maintain at all times during the Term of the Lease business interruption insurance and insurance against loss or damage covered by so-called "all risk" type insurance coverage with respect to Tenant's fixtures, equipment, goods, wares and merchandise, tenant improvements made by or paid for by Tenant, and other property of Tenant (collectively "Tenant's Property"). Such insurance shall be in an amount at least equal to the full replacement cost of Tenant's Property. Tenant shall maintain all of its equipment, furniture and furnishings in good order and repair. In addition, during such time as Tenant is performing work in or to the Premises, Tenant, at Tenant's expense, shall also maintain builder's risk insurance for the full insurable value of such work.

### 13.4 Non-Subrogation

Any insurance carried by either party with respect to the Premises or property therein or occurrences thereon shall, if it can be so written without additional premium or with an additional premium which the other party agrees to pay, include a clause or endorsement denying to the insurer rights of subrogation against the other party to the extent rights have been waived by the insured prior to occurrence of injury or loss. Each party, notwithstanding any provisions of this Lease to the contrary, hereby waives any rights of recovery against the other for injury or loss due to hazards covered by such insurance (or which would have been covered had such party carried the insurance required to be carried by it under the Lease) to the extent of the indemnification received under such insurance policy. This waiver of rights by Tenant shall apply to, and be for the benefit of, the Landlord Parties, and this waiver of rights by Landlord shall apply to, and be for the benefit of, any subtenant of Tenant so long as such subtenant similarly waives such rights for the benefit of Landlord and the Landlord Parties.

13.5 Tenant's Risk

To the maximum extent that this agreement may be made effective according to law, Tenant agrees to use and occupy the Premises and to use such other portions of the Building, the Garage or Garages, the Site and the Development Area as Tenant is herein given the right to use at Tenant's own risk; and Landlord shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of Tenant.

13.6 Landlord's Insurance

Landlord shall carry at all times during the Term of this Lease (i) commercial general liability insurance with respect to the Building in an amount not less than \$500,000 combined single limit per occurrence, (ii) insurance against loss or damage with respect to the Buildings covered by the so-called "all risk" type insurance coverage with customary exceptions in an amount equal to at least the replacement value of the Building. Landlord may also maintain such other insurance as may from time to time be required by a mortgagee holding a mortgage lien on the Building. Further, Landlord may also maintain such insurance against loss of annual fixed rent and additional rent and such other risks and perils as Landlord deems proper. Any and all such insurance (i) may be maintained under a blanket policy affecting other properties of Landlord and/or its affiliated business organizations, (ii) may be written with deductibles as determined by Landlord and (iii) shall be subject to escalation reimbursement in accordance with Article VII.

ARTICLE XIV

Fire, Casualty and Taking

14.1 Damage Resulting from Casualty

In case during the Lease Term the Building or the Site are damaged by fire or casualty, and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within two hundred ten (210) days from the time that repair work would commence, Landlord may, at its election, terminate this Lease by notice given to Tenant within sixty (60) days after the date of such fire or other casualty, specifying the effective date of termination. The effective date of termination specified by Landlord shall not be less than thirty (30) days nor more than forty-five (45) days after the date of notice of such termination. Unless terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect following any such damage subject, however, to the following provisions.

If during the last eighteen (18) months of the Lease Term as it may have been extended, the Building shall be damaged by fire or casualty and such fire or casualty damage to the Premises cannot reasonably be expected to be repaired or restored within one hundred twenty (120) days from the time that repair or restoration work would commence, then Tenant shall have the right, by giving notice to Landlord not later than thirty (30) days after such damage, to terminate this Lease, whereupon this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

If the Building or the Site or any part thereof are damaged by fire or casualty and this Lease is not so terminated, or Landlord has no right to terminate this Lease, and in either such case the holder of any mortgage which includes the Building as a part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net insurance

proceeds to be applied to the restoration of the Building (and/or the Site), Landlord, promptly after such damage and the determination of the net amount of insurance proceeds available shall use due diligence to restore the Premises and the Building in the event of damage thereto (excluding Tenant's Property ) into proper condition for use and occupation and a just proportion of the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess according to the nature and extent of the injury to the Premises shall be abated from the date of casualty until the Premises shall have been put by Landlord substantially into such condition. If such net insurance proceeds are not allowed by such mortgagee or ground lessor to be applied to, or are otherwise insufficient for, the restoration of the Building (and/or the Site) and if Landlord does not otherwise elect to spend the additional funds necessary to fully restore the Building (and/or the Site), then Landlord shall give notice ("Landlord's Insufficient Insurance Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of the insufficiency and Tenant shall thereafter have the right to terminate this Lease by providing Landlord with a notice of termination within thirty (30) days after Tenant's receipt of Landlord's Insufficient Insurance Proceeds Notice (the effective date of which termination shall not be less than sixty (60) days after the date of such notice of such termination).

Where Landlord is obligated or otherwise elects to effect restoration of the Premises, unless such restoration is completed within one (1) year from the date of the casualty or taking, such period to be subject, however, to extension where the delay in completion of such work is due to Force Majeure, as defined hereinbelow, (but in no event beyond eighteen (18) months from the date of the casualty or taking), Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease at any time after the expiration of such one-year (as extended) period until the restoration is substantially completed, such termination to take effect as of the thirtieth (30<sup>th</sup>) day after the date of receipt by Landlord of Tenant's notice, with the same force and effect as if such date were the date originally established as the expiration date hereof unless, within such thirty (30) day period such restoration is substantially completed, in which case Tenant's notice of termination shall be of no force and effect and this Lease and the Lease Term shall continue in full force and effect. When used herein, "Force Majeure" shall mean any prevention, delay or stoppage due to governmental regulation, strikes, lockouts, acts of God, acts of war, terrorists acts, civil commotions, unusual scarcity of or inability to obtain labor or materials, labor difficulties, casualty or other causes reasonably beyond Landlord's control or attributable to Tenant's action or inaction.

#### 14.2 Uninsured Casualty

Notwithstanding anything to the contrary contained in this Lease, if the Building or the Premises shall be substantially damaged by fire or casualty as the result of a risk not covered by the forms of casualty insurance at the time required to be maintained by Landlord pursuant to this Lease, and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within one hundred fifty (150) days from the time that repair work would commence, Landlord may, at its election, terminate the Term of this Lease by notice to Tenant given within sixty (60) days after such loss. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

#### 14.3 Rights of Termination for Taking

If the Building, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) unsuitable for Tenant's purposes, shall be taken by condemnation or right of eminent domain, Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its desire to do so, provided that such notice is given not later than thirty (30) days after Tenant has been deprived of possession. If either party shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Further, if so much of the Building shall be so taken that continued operation of the Building would be uneconomic, Landlord shall have the right to terminate this Lease by giving notice to Tenant of Landlord's desire to do so not later than thirty (30) days after Tenant has been deprived of possession of the Premises (or such portion thereof as may be taken). Landlord agrees not to exercise such termination right in a discriminatory manner insofar as any election Landlord makes, or refrains from making, pursuant to any termination right Landlord may have with respect to other tenants of the Building whose premises are similarly affected. If Landlord shall give such notice to Tenant hereunder, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Should any part of the Premises be so taken or condemned during the Lease Term hereof, and should this Lease not be terminated in accordance with the foregoing provisions, and the holder of any mortgage which includes the Premises as part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net condemnation proceeds to be applied to the restoration of the Building, Landlord agrees that after the determination of the net amount of condemnation proceeds available to Landlord, Landlord shall use due diligence to put what may remain of the Premises into proper condition for use and occupation as nearly like the condition of the Premises prior to such taking as shall be practicable (excluding Tenant's Property). If such net condemnation proceeds are not allowed by such mortgagee or ground lessor to be applied to, or are otherwise insufficient for, the restoration of the Building (and/or the Site) and if Landlord does not otherwise elect to spend the additional funds necessary to fully restore the Building (and/or the Site), then Landlord shall give notice ("Landlord's Insufficient Condemnation Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of the insufficiency and Tenant shall thereafter have the right to terminate this Lease by providing Landlord with a notice of termination within thirty (30) days after Tenant's receipt of Landlord's Insufficient Condemnation Proceeds Notice (the effective date of which termination shall not be less than sixty (60) days after the date of such notice of such termination).

If the Premises shall be affected by any exercise of the power of eminent domain and neither Landlord nor Tenant shall terminate this Lease as provided above, then the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant; and in case of a taking which permanently reduces the Rentable Floor Area of the Premises, a just proportion of the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess shall be abated for the remainder of the Lease Term.

#### 14.4 Award

Except as otherwise provided in this Section 14.4, Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Building, the Site and the Garage or Garages and the leasehold interest hereby created, and compensation accrued or hereafter to accrue by reason of such taking, damage or destruction, as aforesaid, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign to Landlord, all rights to such damages or compensation.

However, nothing contained herein shall be construed to prevent Tenant from prosecuting in any such proceedings a claim for its trade fixtures so taken or relocation, moving and other dislocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

Default

15.1 Tenant's Default

This Lease and the term of this Lease are subject to the limitation that Tenant shall be in default if, at any time during the Lease Term, any one or more of the following events (herein called an "Event of Default" a "default of Tenant" or similar reference) shall occur and not be cured prior to the expiration of the grace period (if any) herein provided, as follows:

- (a) Tenant shall fail to pay any installment of the Annual Fixed Rent, or any Additional Rent or any other monetary amount due under this Lease on or before the date on which the same becomes due and payable, and such failure continues for five (5) days after written notice from Landlord thereof; or
- (b) Landlord having rightfully given the notice specified in (a) above to Tenant twice in any twelve (12) month period, Tenant shall fail thereafter to pay the Annual Fixed Rent, Additional Rent or any other monetary amount due under this Lease on or before the date on which the same becomes due and payable; or
- (c) Tenant shall assign its interest in this Lease or sublet any portion of the Premises in violation of the requirements of Article XII of this Lease; or
- (d) Tenant shall fail to perform or observe some term or condition of this Lease which, because of its character, would immediately and materially jeopardize Landlord's interest (such as, but without limitation, failure to maintain general liability insurance, or the employment of labor and contractors within the Premises which interfere with Landlord's work, in violation of Section 4.3 or Section 9.3), and such failure continues for three (3) business days after written notice from Landlord to Tenant thereof; or
- (e) Tenant shall fail to perform or observe any other material requirement, term, covenant or condition of this Lease (not hereinabove in this Section 15.1 specifically referred to) on the part of Tenant to be performed or observed and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant, or if said default shall reasonably require longer than thirty (30) days to cure, if Tenant shall fail to commence to cure said default within thirty (30) days after notice thereof and/or fail to continuously prosecute the curing of the same to completion with due diligence; or
- (f) The estate hereby created shall be taken on execution or by other process of law; or
- (g) Tenant shall make an assignment or trust mortgage arrangement, so-called, for the benefit of its creditors; or
- (h) Tenant shall judicially be declared bankrupt or insolvent according to law; or
- (i) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction; or

- (j) any petition shall be filed against Tenant in any court, whether or not pursuant to any statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding, and such proceedings shall not be fully and finally dismissed within sixty (60) days after the institution of the same; or
- (k) Tenant shall file any petition in any court, whether or not pursuant to any statute of the United States or any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding; or
- (l) Tenant otherwise abandons the Premises.

15.2 Termination; Re-Entry

Upon the happening of any one or more of the aforementioned Events of Default (notwithstanding any license of a former breach of covenant or waiver of the benefit hereof or consent in a former instance), Landlord or Landlord's agents or servants may give to Tenant a notice (hereinafter called "notice of termination") terminating this Lease on a date specified in such notice of termination (which shall be not less than five (5) days after the date of the mailing of such notice of termination), and this Lease and the Lease Term, as well as any and all of the right, title and interest of the Tenant hereunder, shall wholly cease and expire on the date set forth in such notice of termination (Tenant hereby waiving any rights of redemption) in the same manner and with the same force and effect as if such date were the date originally specified herein for the expiration of the Lease Term, and Tenant shall then quit and surrender the Premises to Landlord.

In addition or as an alternative to the giving of such notice of termination, Landlord or Landlord's agents or servants may, by any suitable action or proceeding at law, immediately or at any time thereafter re-enter the Premises and remove therefrom Tenant, its agents, employees, servants, licensees, and any subtenants and other persons, and all or any of its or their property therefrom, and repossess and enjoy the Premises, together with all additions, alterations and improvements thereto; but, in any event under this Section 15.2, Tenant shall remain liable as hereinafter provided.

The words "re-enter" and "re-entry" as used throughout this Article XV are not restricted to their technical legal meanings.

15.3 Continued Liability; Re-Letting

If this Lease is terminated or if Landlord shall re-enter the Premises as aforesaid, or in the event of the termination of this Lease, or of re-entry, by or under any proceeding or action or any provision of law by reason of an Event of Default hereunder on the part of Tenant, Tenant covenants and agrees forthwith to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Annual Fixed Rent, all Additional Rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the Lease Term, or for the whole thereof, but, in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent and other charges received by Landlord in reletting, after deduction of all reasonable expenses incurred in reletting the Premises (including, without limitation, remodeling costs, brokerage fees and the like), and in collecting the rent in connection therewith, in the following manner:

Amounts received by Landlord after reletting shall first be applied against such Landlord's expenses, until the same are recovered, and until such recovery, Tenant shall pay, as of each day when a payment would fall due under this Lease, the amount which Tenant is obligated to pay under the terms of this Lease (Tenant's liability prior to any such reletting and such recovery not in any way to be diminished as a result of the fact that such reletting might be for a rent higher than the rent provided for in this Lease); when and if such expenses have been completely recovered, the amounts received from reletting by Landlord as have not previously been applied shall be credited against Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof shall be payable by Tenant. Further, Tenant shall not be entitled to any credit of any kind for any period after the date when the term of this Lease is scheduled to expire according to its terms.

Landlord agrees to use reasonable efforts to relet the Premises after Tenant vacates the same in the event this Lease is terminated based upon an Event of Default by Tenant hereunder. The marketing of the Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control within the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts" hereunder. In no event shall Landlord be required to (i) solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full and complete possession of the Premises (including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant), (ii) relet the Premises before leasing other vacant space in the Building, or (iii) lease the Premises for a rental less than the current fair market rent then prevailing for similar office space in the Building.

#### 15.4 Liquidated Damages

Landlord may elect, as an alternative, to have Tenant pay liquidated damages, which election may be made by notice given to Tenant at any time after the termination of this Lease under Section 15.2, above, and whether or not Landlord shall have collected any damages as hereinbefore provided in this Article XV, and in lieu of all other such damages beyond the date of such notice. Upon such notice, Tenant shall promptly pay to Landlord, as liquidated damages, in addition to any damages collected or due from Tenant from any period prior to such notice, such a sum as at the time of such notice represents the amount of the excess, if any, of (a) the discounted present value, at a discount rate of 6%, of the Annual Fixed Rent, Additional Rent and other charges which would have been payable by Tenant under this Lease for the remainder of the Lease Term if the Lease terms had been fully complied with by Tenant, over and above (b) the discounted present value, at a discount rate of 6%, of the Annual Fixed Rent, Additional Rent and other charges that would be received by Landlord if the Premises were re-leased at the time of such notice for the remainder of the Lease Term at the fair market value (including provisions regarding periodic increases in Annual Fixed Rent if such are applicable) prevailing at the time of such notice.

For the purposes of this Article, if Landlord elects to require Tenant to pay liquidated damages in accordance with this Section 15.4, the total rent shall be computed by assuming the Tax Excess under Section 6.1 and the Operating Cost Excess under Section 7.4 to be the same as were payable for the twelve (12) calendar months (or if less than twelve (12) calendar months have been elapsed since the date hereof, the partial year) immediately preceding such termination of re-entry.

Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeds in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.



In lieu of any other damages or indemnity and in lieu of the recovery by Landlord of all sums payable under all the foregoing provisions of this Section 15.4, Landlord may elect to collect from Tenant, by notice to Tenant, at any time after this Lease is terminated under any of the provisions contained in this Article XV or otherwise terminated by breach of any obligation of Tenant and before full recovery under such foregoing provisions, and Tenant shall thereupon pay, as liquidated damages, an amount equal to the sum of (a) the Annual Fixed Rent and all Additional Rent payable for the lesser of (i) the twelve (12) months ended next prior to such termination and (ii) the number of full plus any partial months remaining in the Lease Term, plus (b) the amount of Annual Fixed Rent and Additional Rent of any kind accrued and unpaid at the time of such election, plus (c) any and all expenses which the Landlord may have incurred for and with respect to the collection of any such rent.

15.5 Waiver of Redemption

Tenant, for itself and any and all persons claiming through or under Tenant, including its creditors, upon the termination of this Lease and of the term of this Lease in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Premises in any action or proceeding, or if Landlord shall enter the Premises by process of law or otherwise, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the term of this Lease hereby demised after having been dispossessed or ejected therefrom by process of law, or otherwise.

15.6 Landlord's Default

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. The Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim.

ARTICLE XVI

Miscellaneous Provisions

16.1 Waiver

Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Tenant or Landlord, respectively, of any of its rights hereunder.

Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's or Tenant's consent or approval to or of any subsequent similar act by the other.

No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying

such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. Further, the acceptance by Landlord of Annual Fixed Rent, Additional Rent or any other charges paid by Tenant under this Lease shall not be or be deemed to be a waiver by Landlord of any default by Tenant, whether or not Landlord knows of such default, except for such defaults as to which such payment relates.

#### 16.2 Cumulative Remedies

Except as expressly provided in this Lease, the specific remedies to which Landlord and Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress which they may be lawfully entitled to seek in case of any breach or threatened breach of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to seek specific performance of any such covenants, conditions or provisions, provided, however, that the foregoing shall not be construed as a confession of judgment by Tenant.

#### 16.3 Quiet Enjoyment

This Lease is subject and subordinate to all matters of record. Landlord agrees that, upon Tenant's paying the Annual Fixed Rent, Additional Rent and other charges herein reserved, and performing and observing the covenants, conditions and agreements hereof upon the part of Tenant to be performed and observed, Tenant shall and may peaceably hold and enjoy the Premises during the term of this Lease (exclusive of any period during which Tenant is holding over after the termination or expiration of this Lease without the consent of Landlord), without interruption or disturbance from Landlord or persons claiming through or under Landlord, subject, however, to the terms of this Lease. This covenant shall be construed as running with the land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of the Landlord's interest in the Premises, and this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and upon such subsequent owners and successors in interest of Landlord's interest under this Lease including ground or master lessees, to the extent of their respective interests, as and when they shall acquire same and then only for so long as they shall retain such interest.

#### 16.4 Surrender

(A) No act or thing done by Landlord during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises as an acceptance of a surrender of the Premises prior to the termination of this Lease; provided, however, that the foregoing shall not apply to the delivery of keys to Landlord or its agents in its (or their) capacity as managing agent or for purpose of emergency access. In any event, however, the delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of the Lease or a surrender of the Premises.

(B) Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender the Premises to Landlord in the condition as required by Sections 8.1 and 9.5, first removing all goods and effects of Tenant and completing such other removals as may be permitted or required pursuant to Section 9.5.

16.5 Brokerage

Tenant and Landlord warrant and represent that neither party has dealt with any broker in connection with the consummation of this Lease other than the broker, person or firm designated in Section 1.2 hereof; and in the event any claim is made against either party relative to dealings with brokers other than the broker designated in Section 1.2 hereof, the other party shall defend the claim against such party with counsel of the other party's selection and save harmless and indemnify such party on account of loss, cost or damage which may arise by reason of such claim. Landlord agrees that it shall be solely responsible for the payment of brokerage commissions to the broker, person or firm designated in Section 1.2 hereof in connection with the Original Lease Term.

16.6 Invalidity of Particular Provisions

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

16.7 Provisions Binding, Etc.

The obligations of this Lease shall run with the land, and except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may have later given consent to a particular assignment as required by the provisions of Article XII hereof.

16.8 Recording; Confidentiality

Each of Landlord and Tenant agree not to record the within Lease, but each party hereto agrees, on the request of the other, to execute a so-called Notice of Lease or short form lease in form recordable and complying with applicable law and reasonably satisfactory to Landlord's and Tenant's attorneys. In no event shall such document set forth the rent or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

Tenant agrees that this Lease and the terms contained herein will be treated as strictly confidential and except as required by law or the requirements of any securities exchange listing the stock of Tenant (or except with the written consent of Landlord) Tenant shall not disclose the same to any third party except for Tenant's partners, lenders, accountants and attorneys who have been advised of the confidentiality provisions contained herein and agree to be bound by the same. In the event Tenant is required by law or the requirements of any securities exchange listing the stock of Tenant to provide this Lease or disclose any of its terms, Tenant shall give Landlord prompt notice of such requirement prior to making disclosure so that Landlord may seek an appropriate protective order. If failing the entry of a protective order Tenant is compelled to make disclosure, Tenant shall only disclose portions of the Lease which Tenant is required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the information so disclosed.

16.9 Notices and Time for Action

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notices shall be in writing and shall be sent by hand, registered or certified mail, or overnight or other commercial courier, postage or delivery charges, as the case may be, prepaid as follows:

If intended for Landlord, addressed to Landlord at the address set forth in Article I of this Lease (or to such other address or addresses as may from time to time hereafter be designated by Landlord by like notice).

If intended for Tenant, addressed to Tenant at the address set forth in Article I of this Lease except that from and after the Commencement Date the address of Tenant shall be the Premises (or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice).

Except as otherwise provided herein, all such notices shall be effective when received; provided, that (i) if receipt is refused, notice shall be effective upon the first occasion that such receipt is refused, (ii) if the notice is unable to be delivered due to a change of address of which no notice was given, notice shall be effective upon the date such delivery was attempted, (iii) if the notice address is a post office box number, notice shall be effective the day after such notice is sent as provided hereinabove or (iv) if the notice is to a foreign address, notice shall be effective two (2) days after such notice is sent as provided hereinabove.

Any notice given by an attorney on behalf of Landlord or by Landlord's managing agent shall be considered as given by Landlord and shall be fully effective. Any notice given by an attorney on behalf of Tenant shall be considered as given by Tenant and shall be fully effective.

Where provision is made for the attention of an individual or department, the notice shall be effective only if the wrapper in which such notice is sent is addressed to the attention of such individual or department.

Time is of the essence with respect to any and all notices and periods for giving of notice or taking any action thereto under this Lease.

16.10 When Lease Becomes Binding

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

16.11 Paragraph Headings

The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

#### 16.12 Rights of Mortgagee

This Lease shall be subject and subordinate to any mortgage now or hereafter on the Site or the Building, or both, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor, provided that the holder of such mortgage agrees to recognize the right of Tenant to use and occupy the Premises upon the payment of rent and other charges payable by Tenant under this Lease and the performance by Tenant of Tenant's obligations hereunder. In confirmation of such subordination and recognition, Tenant shall execute and deliver promptly such instruments of subordination as such mortgagee may reasonably request, subject to receipt of such instruments of non-disturbance from such mortgagee as Tenant may reasonably request (Landlord hereby agreeing to pay any legal or other fees charged by the mortgagee in connection with providing the same). In the event that any mortgagee or its respective successor in title shall succeed to the interest of Landlord, then this Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to such mortgagee or successor and to recognize such mortgagee or successor as its landlord. If any holder of a mortgage which includes the Premises, executed and recorded prior to the Date of this Lease, shall so elect, this Lease, and the rights of Tenant hereunder, shall be superior in right to the rights of such holder, with the same force and effect as if this Lease had been executed, delivered and recorded, or a statutory Notice hereof recorded, prior to the execution, delivery and recording of any such mortgage. The election of any such holder shall become effective upon either notice from such holder to Tenant in the same fashion as notices from Landlord to Tenant are to be given hereunder or by the recording in the appropriate registry or recorder's office of an instrument in which such holder subordinates its rights under such mortgage to this Lease.

If in connection with obtaining financing a bank, insurance company, pension trust or other institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or condition its consent thereto, provided that (i) such modifications do not increase the monetary obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder and (ii) Landlord shall be responsible for the payment of all reasonable costs incurred by Tenant in complying with such request such as, for example, attorneys' fees.

#### 16.13 Rights of Ground Lessor

If Landlord's interest in property (whether land only or land and buildings) which includes the Premises is acquired by another party and simultaneously leased back to Landlord herein, the holder of the ground lessor's interest in such lease shall enter into a recognition agreement with Tenant simultaneously with the sale and leaseback, wherein the ground lessor will agree to recognize the right of Tenant to use and occupy the Premises upon the payment of Annual Fixed Rent, Additional Rent and other charges payable by Tenant under this Lease and the performance by Tenant of Tenant's obligations hereunder, and wherein Tenant shall agree to attorn to such ground lessor as its Landlord and to perform and observe all of the tenant obligations hereunder, in the event such ground lessor succeeds to the interest of Landlord hereunder under such ground lease.

#### 16.14 Notice to Mortgagee and Ground Lessor

After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Premises as part of the mortgaged premises, or that it is the ground lessor under a lease with Landlord as ground lessee, which includes the Premises as a part of the demised premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor at the address as specified in said notice (as it may from time to time be changed), and the curing of any of Landlord's defaults by such holder or ground lessor within a reasonable time after such notice (including a reasonable time to obtain possession of the premises if the mortgagee or ground lessor elects to do so) shall be treated as performance by Landlord. For the purposes of this Section 16.14, the term "mortgage" includes a mortgage on a leasehold interest of Landlord (but not one on Tenant's leasehold interest).

#### 16.15 Assignment of Rents

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

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

#### 16.16 Status Report and Financial Statements

Recognizing that the parties hereto may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, each party (the "Non-Requesting Party") on the request of the other party (the "Requesting Party") made from time to time, will promptly furnish to the Requesting Party, addressed to any existing or potential holder of any mortgage encumbering the Premises, the Building, the Site and/or the Complex or any potential purchaser of the Premises, the Building, the Site and/or the Complex (each an "Interested Party") a statement of the status of any reasonable matter pertaining to this Lease, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Lease.

In addition, unless and for so long as Tenant is a publicly-traded entity with financial statements that are freely available to the public which are certified to the governmental regulatory authorities, Tenant shall deliver to Landlord, or any Interested Party designated by Landlord, financial statements of Tenant, and any guarantor of Tenant's obligations under this Lease, as reasonably requested by Landlord including, but not limited to, financial statements for the past three (3) years.

Any such status statement and non-publicly available financial statement, which shall be certified by Tenant's executives to the same extent as publicly-available financial statements of publicly-traded entities, which are delivered pursuant to this Section 16.16 may be relied upon by any Interested Party.

#### 16.17 Self-Help

If Tenant shall at any time fail to make any payment or perform any act which Tenant is obligated to make or perform under this Lease and (except in the case of emergency) if the same continues unpaid or unperformed beyond applicable grace periods, then Landlord may, but shall not be obligated so to do, after ten (10) days' notice to and demand upon Tenant, or without notice to or demand upon Tenant in the case of any emergency, and without waiving, or releasing Tenant from, any obligations of Tenant in this Lease contained, make such payment or perform such act which Tenant is obligated to perform under this Lease in such manner and to such extent as may be reasonably necessary, and, in exercising any such rights, pay any costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. All sums so paid by Landlord and all reasonable and necessary costs and expenses of Landlord incidental thereto, together with interest thereon at the annual rate equal to the sum of (a) the Base Rate from time to time announced by Bank of America, N.A (or its successor) as its Base Rate and (b) two percent (2%) (but in no event greater than the maximum rate permitted by applicable law), from the date of the making of such expenditures by Landlord, shall be deemed to be Additional Rent and, except as otherwise in this Lease expressly provided, shall be payable to the Landlord on demand, and if not promptly paid shall be added to any rent then due or thereafter becoming due under this Lease, and Tenant covenants to pay any such sum or sums with interest as aforesaid, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Annual Fixed Rent.

If Landlord shall at any time be in default pursuant to the terms and conditions of this Lease attributable to its failure to perform any act which Landlord is obligated to perform under this Lease, and (except in the case of emergency) should such failure continue beyond applicable grace periods, Tenant may, but shall not be obligated so to do, after ten (10) business days' written notice to and demand upon Landlord explicitly setting forth the basis for Tenant's claim of default and specifying that Tenant intends to invoke Tenant's rights under this Section 16.17 (or without notice to or demand upon Landlord in the case of any emergency) ("Tenant's Self-Help Notice"), and without waiving, or releasing Landlord from, any obligations of Landlord in this Lease contained, perform such act which Landlord is obligated to perform under this Lease in such manner and to such extent as may be reasonably necessary, unless Landlord shall, within five (5) business days following Landlord's receipt of Tenant's Self-Help Notice, give Tenant notice that Landlord has commenced to cure Landlord's default as aforesaid, and thereafter Landlord diligently prosecutes such cure to completion. All sums reasonably so incurred and paid by Tenant and all reasonable and necessary costs and expenses of Tenant incidental to Tenant's proper exercise of self-help rights pursuant to this Section 16.17, together with interest thereon at the annual rate equal to the sum of (a) the Base Rate from time to time announced by Bank of America, N.A (or its successor) as its Base Rate and (b) two percent (2%) (but in no event greater than the maximum rate permitted by applicable law), from the date of the making of such expenditures by Tenant, shall be payable to the Tenant within thirty (30) days of Tenant's furnishing Landlord an invoice therefor, accompanied by reasonable substantiation, and Landlord covenants to pay any such sum or sums with interest as aforesaid if not timely paid.

#### 16.18 Holding Over

(A) Any holding over by Tenant after the expiration of the term of this Lease shall be treated as a tenancy at sufferance and shall be on the terms and conditions as set forth in this Lease, as far as applicable except that Tenant shall pay as a use and occupancy charge an amount equal to the greater of (x) 150% of the Annual Fixed Rent and Additional Rent calculated (on a daily basis) at the rate

payable under the terms of this Lease immediately prior to the commencement of such holding over, or (y) the fair market rental value of the Premises, in each case for the period measured from the day on which Tenant's hold-over commences and terminating on the day on which Tenant vacates the Premises. Notwithstanding the foregoing, for the first thirty (30) days of any holding over, the percentage figure set forth above shall instead be 125%. The payments due under this Section 16.18(A) shall sometimes hereinafter be referred to as "Holdover Use and Occupancy Payments."

(B) In addition, Tenant shall save Landlord, its agents and employees harmless and will exonerate, defend and indemnify Landlord, its agents and employees from and against any and all damages which Landlord may suffer on account of Tenant's hold-over in the Premises after the expiration or prior termination of the term of this Lease. Notwithstanding the foregoing, however, Tenant shall not have liability under the first sentence of this Section 16.18(B) for the first five (5) days of any holding over, but Tenant shall nevertheless be liable for Holdover Use and Occupancy Payments and as otherwise as provided in this Lease. With regard to the sixth (6<sup>th</sup>) through fifteenth (15<sup>th</sup>) days of any holding over, Tenant shall additionally have liability under the first sentence of this Section 16.18(B) provided that such liability shall not exceed any per diem amount that Landlord is required to pay or credit to any tenant(s) or other occupant(s), or prospective tenant(s) or other occupant(s), for whom the Premises constitutes or will constitute all or a portion of its or their premises associated with any day or days of late delivery of said premises (whether characterized as damages, credit against rent otherwise payable or otherwise), for each additional day of holding over by Tenant commencing with the sixth (6<sup>th</sup>) day of holding over. The fact that Landlord may not deliver such premises to such tenant(s) or occupant(s) until a later date, due to work Landlord must thereafter perform as a condition to such tenant(s)' or occupant(s)' occupancy, or for any other reason, shall not derogate from Tenant's liability under this Section 16.18 for the aforesaid per diem late delivery compensation, and without regard to whether or not Landlord actually must make such payment or credit.

(C) From the sixteenth (16<sup>th</sup>) day of any holding over and thereafter, there shall no longer be any qualification or limitation upon Tenant's liability under the first sentence of Section 16.18(B).

(D) Nothing in the foregoing nor any other term or provision of this Lease shall be deemed to permit Tenant to retain possession of the Premises or hold over in the Premises after the expiration or earlier termination of the Lease Term. All property which remains in the Building or the Premises after the expiration or termination of this Lease shall be conclusively deemed to be abandoned and may either be retained by Landlord as its property or sold or otherwise disposed of in such manner as Landlord may see fit. If any part thereof shall be sold, then Landlord may receive the proceeds of such sale and apply the same, at its option against the expenses of the sale, the cost of moving and storage, any arrears of rent or other charges payable hereunder by Tenant to Landlord and any damages to which Landlord may be entitled under this Lease and at law and in equity.

#### 16.19 Entry by Landlord

Landlord, and its duly authorized representatives, shall, upon at least two (2) business days' prior written notice (except in the case of emergency), have the right (i) to enter the Premises at all reasonable times (except at any time in the case of emergency) for the purposes of inspecting the condition of same and making such repairs, alterations, additions or improvements thereto as may be necessary if Tenant fails to do so as required hereunder (but the Landlord shall have no duty whatsoever to make any such inspections, repairs, alterations, additions or improvements except as otherwise provided in Sections 4.1, 4.3, 7.1 and 7.2), and (ii) to show the Premises to prospective tenants during the twelve (12) months preceding expiration of the term of this Lease as it may have been extended and at any reasonable time during the Lease Term to show the Premises to prospective purchasers and mortgagees.



#### 16.20 Tenant's Payments

Each and every payment and expenditure, other than Annual Fixed Rent, shall be deemed to be Additional Rent hereunder, whether or not the provisions requiring payment of such amounts specifically so state, and shall be payable, unless otherwise provided in this Lease, within thirty (30) days after written demand by Landlord, and in the case of the non-payment of any such amount, Landlord shall have, in addition to all of its other rights and remedies, all the rights and remedies available to Landlord hereunder or by law in the case of non-payment of Annual Fixed Rent. Unless expressly otherwise provided in this Lease, the performance and observance by Tenant of all the terms, covenants and conditions of this Lease to be performed and observed by Tenant shall be at Tenant's sole cost and expense. Except as otherwise expressly provided in Section 7.6(D), if Tenant has not objected to any statement of Additional Rent which is rendered by Landlord to Tenant within ninety (90) days after Landlord has rendered the same to Tenant, then the same shall be deemed to be a final account between Landlord and Tenant not subject to any further dispute. In the event that Tenant shall seek Landlord's consent or approval under this Lease, then Tenant shall reimburse Landlord, upon demand (accompanied by reasonable supporting documentation) as Additional Rent, for all reasonable costs and expenses, including legal and architectural costs and expenses, and costs associated with any of Landlord's senior or junior staff at the rates set forth above in this Lease, reasonably incurred by Landlord in processing such request, whether or not such consent or approval shall be given.

#### 16.21 Late Payment

If Landlord shall not have received any payment or installment of Annual Fixed Rent or Additional Rent (the "Outstanding Amount") on or before the date on which the same first becomes payable under this Lease (the "Due Date"), the amount of such payment or installment shall incur a late charge equal to the sum of: (a) five percent (5%) of the Outstanding Amount for administration and bookkeeping costs associated with the late payment and (b) interest on the Outstanding Amount from the Due Date through and including the date such payment or installment is received by Landlord, at a rate equal to the lesser of (i) the rate announced by Bank of America, N.A. (or its successor) from time to time as its prime or base rate (or if such rate is no longer available, a comparable rate reasonably selected by Landlord), plus two percent (2%), or (ii) the maximum applicable legal rate, if any. However, not more than once per calendar year, the aforesaid late charge will not be imposed until five (5) days after written notice of such delinquency is given to Tenant, in which case the aforesaid late charge shall be due only if such delinquency fails to be cured within such five (5) day period. Additionally, in the case where Tenant is entitled to such additional five (5) day cure period after notice, as provided above, interest on the Outstanding Amount shall not begin to accrue until the day following such five (5) day grace period. The aforesaid late charge and interest accrued upon any Outstanding Amount shall be deemed Additional Rent and shall be paid by Tenant to Landlord upon demand.

#### 16.22 Counterparts

This Lease may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

#### 16.23 Entire Agreement

This Lease constitutes the entire agreement between the parties hereto, Landlord's managing agent and their respective affiliates with respect to the subject matter hereof and thereof and supersedes all prior dealings between them with respect to such subject matter, and there are no verbal or collateral understandings, agreements, representations or warranties not expressly set forth in this Lease. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant, unless reduced to writing and signed by the party or parties to be charged therewith.

#### 16.24 Limitation of Liability

Tenant shall neither assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Property, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease, it being specifically agreed that neither Landlord, nor any successor holder of Landlord's interest hereunder, nor any beneficiary of any trust of which any person from time to time holding Landlord's interest is trustee, nor any such trustee nor any member, manager, partner, director or stockholder, nor Landlord's managing agent, shall ever be personally liable for any such liability. This paragraph shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors-in-interest, or to take any other action which shall not involve the personal liability of Landlord, or of any successor holder of Landlord's interest hereunder, or of any beneficiary of any trust of which any person from time to time holding Landlord's interest is trustee, or of any such trustee, or of any manager, member, partner, director or stockholder of Landlord or Landlord's managing agent to respond in monetary damages from Landlord's assets other than Landlord's interest in said Property, as aforesaid, but in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the demised premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same. In the event that Landlord shall be determined to have acted unreasonably in withholding any consent or approval under this Lease, the sole recourse and remedy of the Tenant in respect thereof shall be to specifically enforce Landlord's obligation to grant such consent or approval, and in no event shall the Landlord be responsible for any damages of whatever nature in respect of its failure to give such consent or approval nor shall the same otherwise affect the obligations of the Tenant under this Lease or act as any termination of this Lease. In the case of any dispute regarding whether or not Landlord acted reasonably in withholding its consent to a proposed assignment or subletting under Section 12.4 of this Lease, in any case where Landlord's consent is not to be unreasonably withheld in accordance therewith, the dispute may be resolved in accordance with the expedited dispute resolution procedure set forth in Section 12.8, subject to the terms and conditions thereof.

In no event shall either party hereto ever be liable for any indirect or consequential damages or loss of profits or the like, provided that the foregoing limitation of liability shall be inapplicable to Tenant's obligations pursuant to Section 16.18 hereof (subject to the limitations set forth in Sections 16.18(B) and (C) hereof).

#### 16.25 No Partnership

The relationship of the parties hereto is that of landlord and tenant and no partnership, joint venture or participation is hereby created.

#### 16.26 Security Deposit

(A) Concurrently with the execution of this Lease, Tenant shall pay to Landlord a security deposit in the amount of the Initial Security Deposit Amount set forth in Section 1.2, and Landlord shall hold the same, throughout the Term of this Lease (including the Extended Term, if applicable), unless

sooner returned to Tenant as provided in this Section 16.26, as security for the performance by Tenant of all obligations on the part of Tenant to be performed under this Lease. Such deposit may be in the form of an irrevocable, unconditional, negotiable letter of credit (the "Letter of Credit"). The Letter of Credit shall (i) be issued by and drawn on a bank reasonably approved by Landlord and at a minimum having a corporate credit rating from Standard and Poor's Professional Rating Service of BBB- or a comparable minimum rating from Moody's Professional Rating Service, (ii) be substantially in the form attached hereto as Exhibit J, (iii) permit one or more draws thereunder to be made accompanied only by certification by Landlord or Landlord's managing agent that pursuant to the terms of this Lease, Landlord is entitled to draw upon such Letter of Credit, (iv) permit transfers at any time without charge, (v) permit presentment in Boston, Massachusetts and (vi) provide that any notice to Landlord be sent to the notice address provided for Landlord in this Lease. If the credit rating for the issuer of such Letter of Credit falls below the standard set forth in (i) above or if the financial condition of such issuer changes in any other material adverse way, Landlord shall have the right to require that Tenant provide a substitute letter of credit that complies in all respects with the requirements of this Section, and Tenant's failure to provide the same within ten (10) days following Landlord's written demand therefor shall entitle Landlord to immediately draw upon the Letter of Credit. Any such Letter of Credit shall be for a term of two (2) years (or for one (1) year if the issuer thereof regularly and customarily only issues letters of credit for a maximum term of one (1) year) and shall in either case provide for automatic renewals through the date which is ninety (90) days subsequent to the scheduled expiration of this Lease (as the same may be extended) or if the issuer will not grant automatic renewals, the Letter of Credit shall be renewed by Tenant each year and each such renewal shall be delivered to and received by Landlord not later than thirty (30) days before the expiration of the then current Letter of Credit (herein called a "Renewal Presentation Date"). In the event of a failure to so deliver any such renewal Letter of Credit on or before the applicable Renewal Presentation Date, Landlord shall be entitled to present the then existing Letter of Credit for payment and to receive the proceeds thereof, which proceeds shall be held as Tenant's security deposit, subject to the terms of this Section 16.26. Any failure or refusal of the issuer to honor the Letter of Credit shall be at Tenant's sole risk and shall not relieve Tenant of its obligations hereunder with regard to the security deposit. Upon the occurrence of any Event of Default, Landlord shall have the right from time to time without prejudice to any other remedy Landlord may have on account thereof, to draw on all or any portion of such deposit held as a Letter of Credit and to apply the proceeds of such Letter of Credit or any cash held as such deposit, or any part thereof, to Landlord's damages arising from such Event of Default on the part of Tenant under the terms of this Lease. If Landlord so applies all or any portion of such deposit, Tenant shall within seven (7) days after notice from Landlord deposit cash with Landlord in an amount sufficient to restore such deposit to the full amount stated in this Section 16.26. While Landlord holds any cash deposit Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. Neither the holder of a mortgage nor the Landlord in a ground lease on property which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such holder or ground Landlord.

(B) Landlord shall return a Two Hundred Ninety Three Thousand Three Hundred Fifteen and 00/100 Dollar (\$293,315.00) portion of such deposit to Tenant so that the remainder of such deposit shall be One Million One Hundred Seventy Three Thousand Four Hundred Eighteen and 00/100 Dollars (\$1,173,418.00) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2011 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(C) Landlord shall return a Two Hundred Ninety Three Thousand Three Hundred Fifteen and 00/100 Dollar (\$293,315.00) portion of such deposit to Tenant so that the remainder of such deposit shall be Eight Hundred Eighty Thousand One Hundred Three and 00/100 Dollars (\$880,103.00) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2013 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(D) Landlord shall return a Two Hundred Ninety Three Thousand Three Hundred Fifteen and 00/100 Dollar (\$293,315.00) portion of such deposit to Tenant so that the remainder of such deposit shall be Five Hundred Eighty Six Thousand Seven Hundred Eighty Eight and 00/100 Dollars (\$586,788.00) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2015 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(E) For purposes of this Section 16.26, the "Minimum Revenue Criteria" shall be considered to have been satisfied as of any date the same is tested if, taking into account the immediately prior four (4) full fiscal quarters, based on the information contained in the audited financial statements set forth in Tenant's Form 10-Q filed with the Securities and Exchange Commission for each such fiscal quarter, Tenant's total revenue equals or exceeds Four Hundred Million and 00/100 Dollars (\$400,000,000.00). In the event that, at any time, Tenant is an entity other than a publicly-held company whose shares are traded on a national stock exchange, Tenant shall provide Landlord with a certified copy of its most recent audited financial statements, and a reasonably equivalent criteria acceptable to Landlord shall be used to determine Tenant's total revenue in a similar fashion, based on such audited annual financial statements.

(F) If Tenant believes that it has satisfied all the conditions precedent to a reduction in the amount of the security deposit, then it shall request such reduction in writing to Landlord, which request shall certify to Landlord that all such conditions have been satisfied. If Landlord agrees, in its reasonable determination, that all of the aforesaid conditions are met, the security deposit shall be so reduced in accordance with this Section 16.26. No Letter of Credit shall automatically reduce, but any reduction in the amount thereof shall require Landlord's prior written notice to the issuer of the Letter of Credit of the reduced amount. Promptly after Landlord's receipt of Tenant's request for a reduction as described above, Landlord shall determine whether such a reduction is permitted in accordance with this Section 16.26, and if it is, Landlord shall notify the issuer of the Letter of Credit of the amount to which the Letter of Credit shall be reduced.

(G) Tenant not then being in default and having performed all of its obligations under this Lease, including the payment of all Annual Fixed Rent, Landlord shall return the deposit, or so much thereof as shall not have theretofore been applied in accordance with the terms of this Section 16.26, to Tenant on the expiration or earlier termination of the term of this Lease (as the same may have been extended) and surrender possession of the Premises by Tenant to Landlord in the condition required in the Lease at such time.

16.27 Waiver of Trial by Jury

To induce Landlord to enter into this Lease, Tenant hereby waives any right to trial by jury in any action, proceeding or counterclaim brought by either Landlord or Tenant on any matters whatsoever arising out of or any way connected with this Lease, the relationship of the Landlord and the Tenant, the Tenant's use or occupancy of the Premises and/or any claim of injury or damage, including but not limited to, any summary process eviction action.

16.28 Patriot Act and Executive Order 13224

(A) As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that, to Tenant's knowledge: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Tenant is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Tenant (and any person, group, or entity which Tenant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be deemed a default by Tenant under Section 15.1(d) of this Lease and shall be covered by the indemnity provisions of Section 13.1(A) above, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, for the purposes of this subsection (B) the phrase "owned or controlled directly or indirectly by any person, group, entity or nation" and all similar such phrases shall not include any holder of a direct or indirect interest in a publicly traded company whose shares are listed and traded on a United States national stock exchange.

(B) As an inducement to Tenant to enter into this Lease, Landlord hereby represents and warrants that, to Landlord's knowledge: (i) Landlord is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or by any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Landlord is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order,

Landlord (and any person, group, or entity which Landlord controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, is expressly understood and agreed that the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, for the purposes of this subsection (B) the phrase “owned or controlled directly or indirectly by any person, group, entity or nation” and all similar such phrases shall not include (x) any shareholder of Boston Properties, Inc., (y) any holder of a direct or indirect interest in a publicly traded company whose shares are listed and traded on a United States national stock exchange or (z) any limited partner, unit holder or shareholder owning an interest of five percent (5%) or less in Boston Properties Limited Partnership or the holder of any direct or indirect interest in Boston Properties Limited Partnership.

#### 16.29 Governing Law

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

#### 16.30 Emergency Generator

Tenant may, at its sole cost and expense, install an emergency generator and diesel fuel tank (collectively, the “Emergency Generator”), in a location specified by Landlord in its reasonable discretion, subject to and in accordance with this Lease including, without limitation, Article IX.

Tenant’s use of the Emergency Generator shall be upon all of the conditions of the Lease, except as modified below:

- (a) It is understood and agreed that Tenant shall be responsible, at its sole cost and expense, for installing all necessary connections (the “Generator Connections”) between the Emergency Generator and the Premises. In addition to complying with the applicable construction provisions of this Lease, Tenant shall not install or operate the Generator Connections in any portion of the Building until (x) Tenant shall have obtained Landlord’s prior written approval, which approval will not be unreasonably withheld or delayed, of Tenant’s plans and specifications for the placement and installation of the Generator Connections, and (y) Tenant shall have obtained and delivered to Landlord copies of all required governmental and quasi-governmental permits, approvals, licenses and authorizations necessary for the lawful installation, operation and maintenance of the Generator Connections. Landlord shall inform Tenant at the time of its review of the Generator Connections whether Landlord will require the same to be removed by Tenant upon the expiration or earlier termination of this Lease.
- (b) Tenant shall have no obligation to pay Annual Fixed Rent, Tax Excess or Operating Expense Excess in respect of the Emergency Generator or the Generator Connections.

- (c) The Emergency Generator shall be used solely to provide back-up power in the event of an outage for Tenant's lights and plugs in the Premises and dedicated heating, ventilation and air conditioning systems serving the Premises, but not for the purposes of running any life-safety systems or equipment (it being understood and agreed that such dedicated HVAC systems may not function during such an outage, even if connected to the Emergency Generator, to the extent that the base building systems are not functioning).
- (d) Landlord shall have no obligation to provide any services to the Emergency Generator. Tenant shall, at its sole cost and expense and otherwise in accordance with the provisions of this Section 16.30, arrange for all utility services required for the operation of the Emergency Generator.
- (e) Tenant shall, at its sole cost and expense, be solely responsible for all maintenance and repair to the Emergency Generator and the Generator Connections. In connection therewith, Tenant shall provide Landlord with evidence on an annual basis of the existence of a maintenance contract for the Emergency Generator with a service provider reasonably acceptable to Landlord.
- (f) Tenant shall have no right to make any changes, alterations, signs, or other improvements to the Emergency Generator or the Generator Connections without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed.
- (g) Tenant shall be responsible for the cost of repairing any damage to the Building caused by its use of the Emergency Generator and the Generator Connections.
- (h) Except for assignees of this Lease or subtenants of all or a portion of the Premises, no other person, firm or entity (including, without limitation, other tenants, licensees or occupants of the Building) shall have the right to connect to the Emergency Generator other than Tenant.
- (i) To the maximum extent permitted by law, Tenant's use of the Emergency Generator and the Generator Connections shall be at the sole risk of Tenant, and Landlord shall have no liability to Tenant in the event that the Emergency Generator or the Generator Connections are damaged for any reason.
- (j) Tenant shall comply with all applicable laws, ordinances and regulations in Tenant's use of the Emergency Generator and the Generator Connections.
- (k) Landlord shall have the right, upon no less than one hundred twenty (120) days notice to Tenant and at Landlord's sole cost and expense, to relocate the Emergency Generator and the Generator Connections to another area in the vicinity of the Building. Landlord and Tenant shall cooperate with each other in good faith to schedule such relocation work on nights and weekends so as to minimize interference with Tenant's business operations. Any such relocation by Landlord shall not independently (i.e., in the absence of another cause) be deemed to constitute a failure of electric supply under Section 7.6(C) above.
- (l) In addition to the indemnification provisions set forth in this Lease which shall be applicable to the Emergency Generator and the Generator Connections, Tenant shall, to the maximum extent permitted by law, indemnify, defend, and hold Landlord, its agents, contractors and employees harmless from any and all claims, losses, demands, actions or causes of actions suffered by any person, firm, corporation, or other entity arising from Tenant's use of the Emergency Generator and the Generator Connections.

- (m) Landlord shall have the right to designate or identify the Emergency Generator with or by a lease or license number (or other marking) and to place such number (or marking) on or near such Emergency Generator.

It is expressly understood and agreed that, as Special Improvements, Landlord may require removal of the Emergency Generator and Generator Connection pursuant to Section 9.7 of this Lease and Tenant may elect to remove the Emergency Generator and Generator Connection at the expiration or earlier termination of this Lease.

#### 16.31 Transportation Program

In order to reduce peak-hour trip generation of employees within the Development Area, Landlord encourages all employers at the Building to adopt flexible work schedules for their employees and to participate in transportation programs designed to encourage the use of mass transit by persons working in the Boston area. For example, numerous greater Boston companies provide subsidies for the purchase by the employees of monthly transit passes through the Corporate Pass Program of the Massachusetts Bay Transit Authority with subsidies ranging from 10% to 100% of the cost of the transit pass. The provision of transit pass subsidies may also offer certain benefits to employers under tax law. Landlord encourages all employers at the Building to participate in programs of this nature and to inform their employees of the benefits of using monthly transit. In addition, Landlord shall obtain membership in the Charles River Transportation Management Association (or any successor thereto or replacement thereof) for Tenant and its employees throughout the Term, provided that Tenant expressly acknowledges that this expense shall constitute an Operating Expense and further provided that this expense shall be included in Base Operating Expenses for the Property.

#### 16.32 Landlord Affiliates

For all purposes of this Lease, the owner of another building in the Development Area, whether the 8CC Building or another building, shall be considered a landlord affiliated with Landlord if one entity is either the parent or subsidiary of the other, or they are both under common control, directly or indirectly, of another entity. Any building owner shall be considered an affiliate of Boston Properties Limited Partnership, or its successors or assigns, if such entity is a subsidiary of or is controlled by Boston Properties Limited Partnership, or its successors or assigns. For purposes hereof, "control" shall mean fifty percent (50%) or more of the direct or indirect beneficial ownership interest or control of fifty percent (50%) of the voting stock or interests therein.

### ARTICLE XVII

#### Must Take Premises, Potential Give Back Premises and Expansion Rights

#### 17.1 Definitions

With reference to the rights and obligations of Tenant referred to in this Article XVII, it is agreed that the terms used herein are as defined as follows:

- (a) "First Must Take Premises" means the tenth (10<sup>th</sup>) floor of the Building, in accordance with the floor plans annexed hereto as Exhibit E, and incorporated herein by reference.



- (b) "Second Must Take Premises" means the twelfth (12<sup>th</sup>) floor of the Building, in accordance with the floor plans annexed hereto as Exhibit E, and incorporated herein by reference.
- (c) "Third Must Take Premises" means the eleventh (11<sup>th</sup>) floor of the Building, in accordance with the floor plans annexed hereto as Exhibit E, and incorporated herein by reference.
- (d) "Potential Give Back Premises" is defined in Section 1.2.
- (e) "First Expansion Delivery Window" means the period commencing on June 1, 2011 and expiring on February 1, 2012.
- (f) "Second Expansion Delivery Window" means the period commencing on January 1, 2014 and expiring on January 1, 2015
- (g) "Third Expansion Delivery Window" means the period commencing on January 1, 2016 and expiring on January 1, 2017.
- (h) "Expansion Option" means each of the options to expand the Premises to which Tenant is entitled subject to and in accordance with the terms and conditions of Sections 17.4, 17.5 and 17.6.
- (i) "Expansion Premises" means any of the First Expansion Premises, Second Expansion Premises or Third Expansion Premises incorporated by Tenant into the Premises pursuant to Sections 17.4, 17.5 or 17.6.
- (j) "Qualifying Expansion Space" means a single contiguous portion of the rentable area of a single floor, on the fourth (4<sup>th</sup>) floor of the Building or above, comprised of not less than 16,000 square feet nor more than 25,000 square feet of Rentable Floor Area.
- (k) "Designated First Expansion Space" shall mean any Qualifying Expansion Space, as may from time to time be designated by Landlord, which has been encumbered by a lease or other occupancy agreement expiring prior to or during, but in any event before the expiration of the First Expansion Delivery Window, which such designation is made (or changed) by notice from Landlord to Tenant, specifying the expiration date of such lease or other occupancy agreement (or the date upon which the same may be terminated by Landlord in order to make the space available for Tenant's occupancy).
- (l) "Designated Second Expansion Space" shall mean any Qualifying Expansion Space, as may from time to time be designated by Landlord, which has been encumbered by a lease or other occupancy agreement expiring prior to or during, but in any event before the expiration of the Second Expansion Delivery Window, which such designation is made (or changed) by notice from Landlord to Tenant, specifying the expiration date of such lease or other occupancy agreement (or the date upon which the same may be terminated by Landlord in order to make the space available for Tenant's occupancy).
- (m) "Designated Third Expansion Space" shall mean any Qualifying Expansion Space, as may from time to time be designated by Landlord, which has been encumbered by a lease or other occupancy agreement expiring prior to or during, but in any event before the expiration of the Third Expansion Delivery Window, which such designation is made (or changed) by notice from Landlord to Tenant, specifying the expiration date of such lease or other occupancy agreement (or the date upon which the same may be terminated by Landlord in order to make the space available for Tenant's occupancy).

- (n) "Available ROFO Space" means any office space in the Building which, from time to time during the Lease Term, Landlord desires to lease to parties other than the then existing occupant thereof.
- (o) "ROFO Premises" means any Available ROFO Space incorporated by Tenant into the Premises pursuant to Sections 17.7 or 17.8.
- (p) "Prior Rights" means any rights of first offer, first refusal, expansion, renewal, extension or other rights to lease that encumber what would otherwise have been Available ROFO Space: (i) with respect to all office space in the Building, which rights were granted prior to the date hereof, and (ii) with respect to any Available ROFO Space offered to Tenant under Section 17.7 but not leased by Tenant pursuant thereto, which rights were granted following the expiration of Tenant's right to lease such space without Tenant having elected so to do, and (iii) as to the Potential Give Back Premises, which rights were granted following the giving by Tenant to Landlord of Give Back Notice, if applicable.
- (q) "Current Term" means, as of the date in question, the Initial Lease Term or Extension Term that is then subsisting.

17.2 Must Take Premises.

(A) The Must Take Premises is comprised of the First Must Take Premises, the Second Must Take Premises and the Third Must Take Premises. Each Premises Component of the Must Take Premises shall be added to and become part of the Premises on the date specified in Exhibit K as the Anticipated Delivery Date therefor, or upon such later date upon which Landlord delivers vacant possession of the pertinent Must Take Premises. The terms and conditions which shall apply to such Must Take Premises are as set forth in Exhibit K, and otherwise as provided in this Lease.

(B) Notwithstanding anything to the contrary set forth in Exhibit K with respect to the Anticipated Delivery Date and Anticipated Rent Commencement Date of the First Must Take Premises, unless Tenant gives Landlord notice requesting that the Anticipated Delivery Date of the First Must Take Premises be accelerated to a date prior to January 1, 2010 (the "First Must Take Premises Acceleration Request Notice"), the Anticipated Delivery Date for the First Must Take Premises shall be January 1, 2010 and the Anticipated Rent Commencement Date therefor shall be January 1, 2010. If Tenant should desire to incorporate the First Must Take Premises into the Premises sooner than January 1, 2010 (but not in any event sooner than January 1, 2008), then Tenant must give Landlord the First Must Take Premises Acceleration Request Notice, whereupon Landlord shall endeavor in good faith, without any liability to Tenant should Landlord not have success in negotiating an early surrender by the existing occupant thereof, to deliver the First Must Take Premises earlier than January 1, 2010 (but not in any event sooner than January 1, 2008). If the First Must Take Premises shall be delivered to Tenant earlier than January 1, 2010 in accordance with Tenant's request as aforesaid, then the terms of Exhibit K shall be applicable thereto. In no event shall Landlord have any obligation to incur any costs or expenses whatsoever in endeavoring to accelerate the delivery to Tenant of the First Must Take Premises.

(C) Notwithstanding anything to the contrary set forth in Exhibit K with respect to the Anticipated Delivery Date and Anticipated Rent Commencement Date of the Second Must Take Premises, unless Tenant gives Landlord notice requesting that the Anticipated Delivery Date of the Second Must Take Premises be accelerated to a date prior to January 1, 2010 (the "Second Must Take Premises Acceleration Request Notice"), the Anticipated Delivery Date for the Second Must Take Premises shall be January 1, 2010 and the Anticipated Rent Commencement Date therefor shall be

May 1, 2010. If Tenant should desire to incorporate the Second Must Take Premises into the Premises sooner than January 1, 2010 (but not in any event sooner than June 1, 2008), then Tenant must give Landlord the Second Must Take Premises Acceleration Request Notice, whereupon Landlord shall endeavor in good faith, without any liability to Tenant should Landlord not have success in negotiating an early surrender by the existing occupant thereof, to deliver the Second Must Take Premises earlier than January 1, 2010 (but not in any event sooner than June 1, 2008). If the Second Must Take Premises shall be delivered to Tenant earlier than January 1, 2010 in accordance with Tenant's request as aforesaid, then the terms of Exhibit K shall be applicable thereto. In no event shall Landlord have any obligation to incur any costs or expenses whatsoever in endeavoring to accelerate the delivery to Tenant of the Second Must Take Premises.

(D) Notwithstanding the fact that the incorporation of the Must Take Premises shall be self-executing, the parties hereby agree to properly execute a lease amendment reflecting the addition of each Premises Component of the Must Take Premises to the Premises.

### 17.3 Potential Give Back Premises.

(A) Tenant shall have the right to surrender the Potential Give Back Premises and have the same eliminated from the Premises effective May 31, 2009, by giving written notice ("Give Back Notice") to Landlord on or before May 31, 2008. If Tenant fails timely to give such notice, Tenant may not thereafter so surrender the Potential Give Back Premises, and the same shall remain part of the Premises under this Lease for the entire Lease Term.

(B) If Tenant shall timely give Landlord the Give Back Notice, Tenant must surrender the Potential Give Back Premises to Landlord on or before May 31, 2009 on the same terms and conditions as will apply to the remainder of the Premises upon the expiration or earlier termination of the Lease Term. Failure to timely so surrender the Potential Give Back Premises shall constitute an Event of Default under this Lease, without the right to any notice of default or cure period. Without limitation of any rights or remedies that Landlord may have under this Lease, at law or in equity, in connection with Tenant's failure to timely surrender the Potential Give Back Premises, Landlord may consider Tenant's continued occupancy thereof as a tenancy at sufferance, and impose use and occupancy charges with respect to the Potential Give Back Premises pursuant to the terms and conditions of Section 16.18 of this Lease.

### 17.4 First Expansion Option.

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that, both at the time that Tenant gives Landlord the First Expansion Exercise Notice, as hereinafter defined, and as of the First Expansion Premises Commencement Date, as hereinafter defined: (i) there exists no Event of Default, (ii) this Lease is still in full force and effect, (iii) Tenant has not assigned this Lease nor sublet more than thirty percent (30%) of the Rentable Floor Area of the Premises (excluding any assignment or sublease permitted without Landlord's consent under Section 12.2) and (iv) Tenant shall not have previously elected to incorporate the Designated First Expansion Space into the Premises, then, subject to Section 17.7(D), Tenant shall have the option to lease a Qualifying Expansion Space in the Building designated by Landlord, as hereinafter provided. Notwithstanding the foregoing, if Tenant shall have previously elected to incorporate less than the entirety of the Designated First Expansion Space into the Premises, then the remainder thereof shall thereafter constitute the Designated First Expansion Space, and shall constitute Qualifying Expansion Space whether or not such space is comprised of less than 16,000 square feet of Rentable Floor Area.

(B) If Tenant wishes to lease the First Expansion Premises, Tenant shall exercise its option to lease the First Expansion Premises by giving written notice ("First Expansion Exercise Notice") to Landlord on or before May 31, 2010, requesting Landlord's quotation of the annual Fair Market Rental Value for the First Expansion Premises as of the First Expansion Premises Commencement Date. If Tenant fails timely to give such notice, Tenant shall have no further right to lease the First Expansion Premises.

(C) Upon the timely giving of such First Expansion Exercise Notice, Landlord shall within thirty (30) days give written notice to Tenant of Landlord's quotation of the proposed annual rent for the First Expansion Premises as of the First Expansion Premises Commencement Date ("Landlord's First Expansion Premises Rent Quotation") which will specify, if any, the leasehold improvement allowance that Landlord proposes to offer in connection therewith ("First Expansion Improvement Allowance"). Landlord and Tenant shall negotiate in good faith to reach agreement on the rent for the First Expansion Premises. If at the expiration of thirty (30) days after the date when Landlord provides Landlord's First Expansion Premises Rent Quotation to Tenant, Landlord and Tenant have not reached agreement on a determination of an Annual Fixed Rent for the First Expansion Premises and executed a written instrument adding the First Expansion Premises to the Premises under this Lease pursuant to such agreement, then either party may initiate a Broker Determination of the Prevailing Market Rent for such First Expansion Premises, which Broker Determination shall be made in the manner set forth in Exhibit I. If Tenant leases the First Expansion Premises pursuant to this Section 1.2, Landlord shall be deemed to have leased and demised to Tenant, and Tenant shall be deemed to have hired and taken from Landlord, the First Expansion Premises, without the need for further act or deed by either party, for the Term and upon all of the same terms and conditions of this Lease, except as hereinafter set forth. Landlord shall exercise good faith efforts to deliver possession of the First Expansion Premises to Tenant within the First Expansion Delivery Window.

(D) The leasing to Tenant of the First Expansion Premises shall be upon all the same terms and conditions of the Lease except as follows:

- (1) Commencement Date and Rent Commencement Date. The First Expansion Premises shall be added to and become part of the Premises on the date (the "First Expansion Premises Commencement Date") upon which Landlord delivers vacant possession of Qualifying Expansion Space comprising the First Expansion Premises, but in no event earlier than the first day of the First Expansion Delivery Window. If Tenant shall exercise its right to lease the First Expansion Premises and if, thereafter, any occupant of the First Expansion Premises, or any portion thereof, fails to vacate possession of such space on or before the expiration of the First Expansion Delivery Window, Landlord shall use reasonable efforts and due diligence to regain such space from such occupant, and the First Expansion Premises Commencement Date shall, in the event of such holding over by such occupant, be deferred until vacant possession of such space is delivered to Tenant. The failure of the then occupant of such space to so vacate shall not give Tenant any right to terminate this Lease or to deduct from, offset against or withhold Annual Fixed Rent, Additional Rent or any other amount payable under this Lease (or any portions thereof), except as otherwise set forth herein.
- (2) Annual Fixed Rent. The Annual Fixed Rent payable in respect of the First Expansion Premises shall be as determined in accordance with subsection (C) above, and shall commence upon the First Expansion Premises Commencement Date.
- (3) Term. The term with respect to the First Expansion Premises shall be co-terminous with the remainder of the Premises and expire at the expiration of the Original Lease Term, and be considered part of the Premises with respect to extension rights pursuant to Section 3.2.

- (4) Operating Expenses and Taxes. As a distinct Premises Component, the provisions of Articles VI and VII shall be applied to the First Expansion Premises separately from other Premises Components, and the level of Base Taxes shall equal Landlord's Tax Expenses for the then current fiscal tax year as of the First Expansion Premises Commencement Date and Base Operating Expenses shall be equal to Operating Expenses for the Property for the calendar year in which the First Expansion Premises Commencement Date occurs.
- (5) Condition of First Expansion Premises. The First Expansion Premises shall be delivered by Landlord and accepted by Tenant "as-is", in its then (i.e., as of the First Expansion Premises Commencement Date) state of construction, finish and decoration, without any obligation on the part of Landlord to prepare or construct the First Expansion Premises for Tenant's occupancy, or to provide any contribution to Tenant in respect of the First Expansion Premises, except for any First Expansion Improvement Allowance specified in Landlord's First Expansion Premises Rent Quotation.
- (F) Notwithstanding the fact that Tenant's exercise of the above-described first expansion option shall be self-executing, as aforesaid, the parties hereby agree promptly to execute a lease amendment reflecting the addition of the First Expansion Premises.

17.5 Second Expansion Option.

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that, both at the time that Tenant gives Landlord the Second Expansion Exercise Notice, as hereinafter defined, and as of the Second Expansion Premises Commencement Date, as hereinafter defined: (i) there exists no Event of Default, (ii) this Lease is still in full force and effect, (iii) Tenant has not assigned this Lease nor sublet more than thirty percent (30%) of the Rentable Floor Area of the Premises (excluding any assignment or sublease permitted without Landlord's consent under Section 12.2), (iv) Tenant shall not have previously elected to incorporate the Designated Second Expansion Space into the Premises, then, subject to Section 17.7(D), Tenant shall have the option to lease a Qualifying Expansion Space in the Building designated by Landlord, as hereinafter provided. Notwithstanding the foregoing, if Tenant shall have previously elected to incorporate less than the entirety of the Designated Second Expansion Space into the Premises, then the remainder thereof shall thereafter constitute the Designated Second Expansion Space, and shall constitute Qualifying Expansion Space whether or not such space is comprised of less than 16,000 square feet of Rentable Floor Area.

(B) If Tenant wishes to lease the Second Expansion Premises, Tenant shall exercise its option to lease the Second Expansion Premises by giving written notice ("Second Expansion Exercise Notice") to Landlord on or before December 31, 2012, requesting Landlord's quotation of the annual Fair Market Rental Value for the Second Expansion Premises as of the Second Expansion Premises Commencement Date. If Tenant fails timely to give such notice, Tenant shall have no further right to lease the Second Expansion Premises.

(C) Upon the timely giving of such Second Expansion Exercise Notice, Landlord shall within thirty (30) days give written notice to Tenant of Landlord's quotation of the proposed annual rent for the Second Expansion Premises as of the Second Expansion Premises Commencement Date ("Landlord's Second Expansion Premises Rent Quotation") which will specify, if any, the leasehold improvement allowance that Landlord proposes to offer in connection therewith ("Second Expansion Improvement Allowance"). Landlord and Tenant shall negotiate in good faith to reach agreement on

the rent for the Second Expansion Premises. If at the expiration of thirty (30) days after the date when Landlord provides Landlord's Second Expansion Premises Rent Quotation to Tenant, Landlord and Tenant have not reached agreement on a determination of an Annual Fixed Rent for the Second Expansion Premises and executed a written instrument adding the Second Expansion Premises to the Premises under this Lease pursuant to such agreement, then either party may initiate a Broker Determination of the Prevailing Market Rent for such Second Expansion Premises, which Broker Determination shall be made in the manner set forth in Exhibit I. If Tenant leases the Second Expansion Premises pursuant to this Section 1.2, Landlord shall be deemed to have leased and demised to Tenant, and Tenant shall be deemed to have hired and taken from Landlord, the Second Expansion Premises, without the need for further act or deed by either party, for the Term and upon all of the same terms and conditions of this Lease, except as hereinafter set forth. Landlord shall exercise good faith efforts to deliver possession of the Second Expansion Premises to Tenant within the Second Expansion Delivery Window.

(D) The leasing to Tenant of the Second Expansion Premises shall be upon all the same terms and conditions of the Lease except as follows:

- (1) Commencement Date and Rent Commencement Date. The Second Expansion Premises shall be added to and become part of the Premises on the date (the "Second Expansion Premises Commencement Date") upon which Landlord delivers vacant possession of Qualifying Expansion Space comprising the Second Expansion Premises, but in no event earlier than the first day of the Second Expansion Delivery Window. If Tenant shall exercise its right to lease the Second Expansion Premises and if, thereafter, any occupant of the Second Expansion Premises, or any portion thereof, fails to vacate possession of such space on or before the expiration of the Second Expansion Delivery Window, Landlord shall use reasonable efforts and due diligence to regain such space from such occupant, and the Second Expansion Premises Commencement Date shall, in the event of such holding over by such occupant, be deferred until vacant possession of such space is delivered to Tenant. The failure of the then occupant of such space to so vacate shall not give Tenant any right to terminate this Lease or to deduct from, offset against or withhold Annual Fixed Rent, Additional Rent or any other amount payable under this Lease (or any portions thereof), except as otherwise set forth herein.
- (2) Annual Fixed Rent. The Annual Fixed Rent payable in respect of the Second Expansion Premises shall be as determined in accordance with subsection (C) above, and shall commence upon the Second Expansion Premises Commencement Date.
- (3) Term. The term with respect to the Second Expansion Premises shall be co-terminous with the remainder of the Premises and expire at the expiration of the Original Lease Term, and be considered part of the Premises with respect to extension rights pursuant to Section 3.2.
- (4) Operating Expenses and Taxes. As a distinct Premises Component, the provisions of Articles VI and VII shall be applied to the Second Expansion Premises separately from other Premises Components, and the level of Base Taxes shall equal Landlord's Tax Expenses for the then current fiscal tax year as of the Second Expansion Premises Commencement Date and Base Operating Expenses shall be equal to Operating Expenses for the Property for the calendar year in which the Second Expansion Premises Commencement Date occurs.

(5) Condition of Second Expansion Premises. The Second Expansion Premises shall be delivered by Landlord and accepted by Tenant “as-is”, in its then (i.e., as of the Second Expansion Premises Commencement Date) state of construction, finish and decoration, without any obligation on the part of Landlord to prepare or construct the Second Expansion Premises for Tenant’s occupancy, or to provide any contribution to Tenant in respect of the Second Expansion Premises, except for any Second Expansion Improvement Allowance specified in Landlord’s Second Expansion Premises Rent Quotation.

(F) Notwithstanding the fact that Tenant’s exercise of the above-described first expansion option shall be self-executing, as aforesaid, the parties hereby agree promptly to execute a lease amendment reflecting the addition of the Second Expansion Premises.

17.6 Third Expansion Option.

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that, both at the time that Tenant gives Landlord the Third Expansion Exercise Notice, as hereinafter defined, and as of the Third Expansion Premises Commencement Date, as hereinafter defined: (i) there exists no Event of Default, (ii) this Lease is still in full force and effect, (iii) Tenant has not assigned this Lease nor sublet more than thirty percent (30%) of the Rentable Floor Area of the Premises (excluding any assignment or sublease permitted without Landlord’s consent under Section 12.2), (iv) Tenant shall not have previously elected to incorporate the Designated Third Expansion Space into the Premises, then Tenant shall have the option to lease a Qualifying Expansion Space in the Building designated by Landlord, as hereinafter provided. Notwithstanding the foregoing, if Tenant shall have previously elected to incorporate less than the entirety of the Designated Third Expansion Space into the Premises, then the remainder thereof shall thereafter constitute the Designated Third Expansion Space, and shall constitute Qualifying Expansion Space whether or not such space is comprised of less than 16,000 square feet of Rentable Floor Area.

(B) If Tenant wishes to lease the Third Expansion Premises, Tenant shall exercise its option to lease the Third Expansion Premises by giving written notice (“Third Expansion Exercise Notice”) to Landlord on or before December 31, 2014, requesting Landlord’s quotation of the annual Fair Market Rental Value for the Third Expansion Premises as of the Third Expansion Premises Commencement Date. If Tenant fails timely to give such notice, Tenant shall have no further right to lease the Third Expansion Premises.

(C) Upon the timely giving of such Third Expansion Exercise Notice, Landlord shall within thirty (30) days give written notice to Tenant of Landlord’s quotation of the proposed annual rent for the Third Expansion Premises as of the Third Expansion Premises Commencement Date (“Landlord’s Third Expansion Premises Rent Quotation”) which will specify, if any, the leasehold improvement allowance that Landlord proposes to offer in connection therewith (“Third Expansion Improvement Allowance”). Landlord and Tenant shall negotiate in good faith to reach agreement on the rent for the Third Expansion Premises. If at the expiration of thirty (30) days after the date when Landlord provides Landlord’s Third Expansion Premises Rent Quotation to Tenant, Landlord and Tenant have not reached agreement on a determination of an Annual Fixed Rent for the Third Expansion Premises and executed a written instrument adding the Third Expansion Premises to the Premises under this Lease pursuant to such agreement, then either party may initiate a Broker Determination of the Prevailing Market Rent for such Third Expansion Premises, which Broker Determination shall be made in the manner set forth in Exhibit I. If Tenant leases the Third Expansion Premises pursuant to this Section 1.2, Landlord shall be deemed to have leased and demised to Tenant, and Tenant shall be deemed to have hired and taken from Landlord, the Third Expansion Premises, without the need for further act or deed by either party, for the Term and upon all of the same terms and conditions of this Lease, except as hereinafter set forth. Landlord shall exercise good faith efforts to deliver possession of the Third Expansion Premises to Tenant within the Third Expansion Delivery Window.

(D) The leasing to Tenant of the Third Expansion Premises shall be upon all the same terms and conditions of the Lease except as follows:

- (1) Commencement Date and Rent Commencement Date. The Third Expansion Premises shall be added to and become part of the Premises on the date (the "Third Expansion Premises Commencement Date") upon which Landlord delivers vacant possession of Qualifying Expansion Space comprising the Third Expansion Premises, but in no event earlier than the first day of the Third Expansion Delivery Window. If Tenant shall exercise its right to lease the Third Expansion Premises and if, thereafter, any occupant of the Third Expansion Premises, or any portion thereof, fails to vacate possession of such space on or before the expiration of the Third Expansion Delivery Window, Landlord shall use reasonable efforts and due diligence to regain such space from such occupant, and the Third Expansion Premises Commencement Date shall, in the event of such holding over by such occupant, be deferred until vacant possession of such space is delivered to Tenant. The failure of the then occupant of such space to so vacate shall not give Tenant any right to terminate this Lease or to deduct from, offset against or withhold Annual Fixed Rent, Additional Rent or any other amount payable under this Lease (or any portions thereof), except as otherwise set forth herein.
- (2) Annual Fixed Rent. The Annual Fixed Rent payable in respect of the Third Expansion Premises shall be as determined in accordance with subsection (C) above, and shall commence upon the Third Expansion Premises Commencement Date.
- (3) Term. The term with respect to the Third Expansion Premises shall be co-terminous with the remainder of the Premises and expire at the expiration of the Original Lease Term, and be considered part of the Premises with respect to extension rights pursuant to Section 3.2.
- (4) Operating Expenses and Taxes. As a distinct Premises Component, the provisions of Articles VI and VII shall be applied to the Third Expansion Premises separately from other Premises Components, and the level of Base Taxes shall equal Landlord's Tax Expenses for the then current fiscal tax year as of the Third Expansion Premises Commencement Date and Base Operating Expenses shall be equal to Operating Expenses for the Property for the calendar year in which the Third Expansion Premises Commencement Date occurs.
- (5) Condition of Third Expansion Premises. The Third Expansion Premises shall be delivered by Landlord and accepted by Tenant "as-is", in its then (i.e., as of the Third Expansion Premises Commencement Date) state of construction, finish and decoration, without any obligation on the part of Landlord to prepare or construct the Third Expansion Premises for Tenant's occupancy, or to provide any contribution to Tenant in respect of the Third Expansion Premises, except for any Third Expansion Improvement Allowance specified in Landlord's Third Expansion Premises Rent Quotation.

(F) Notwithstanding the fact that Tenant's exercise of the above-described first expansion option shall be self-executing, as aforesaid, the parties hereby agree promptly to execute a lease amendment reflecting the addition of the Third Expansion Premises.



17.7 Right of First Offer.

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that both at the time that the Available ROFO Space first becomes available and as of the date upon which the ROFO Premises which Tenant has elected to lease pursuant to this Section 17.7 would have otherwise become incorporated into the Premises: (i) there exists no Event of Default, (ii) this Lease is still in full force and effect, and (iii) Tenant has neither assigned this Lease nor sublet more than thirty percent (30%) of the Rentable Floor Area of the Premises (excluding any assignment or subletting permitted without Landlord's consent under Section 12.2 hereof), prior to accepting any offer to lease Available ROFO Space to a third party other than a third party with Prior Rights, Landlord will first offer such Available ROFO Space to Tenant for lease pursuant to this Section 17.7.

(B) Landlord's written notice to Tenant ("Landlord's ROFO Notice") offering Tenant any Available ROFO Space shall specify the location and rentable area of the Available ROFO Space, Landlord's quotation of a proposed annual rent for the Available ROFO Space ("Landlord's ROFO Space Rent Quotation"), Base Amounts for Operating Expenses and Taxes, tenant improvement allowances (if any), and all other material terms and conditions which will apply to the Available ROFO Space, provided that the term for the Available ROFO Space shall be co-terminous with the Initial Term or then current Extension Term of this Lease, subject to Section 17.7(C) and Section 17.7(D) below. Tenant must notify Landlord, within ten (10) days of Landlord's ROFO Notice given pursuant to this Section 17.7(B), that (i) Tenant elects to lease all of the Available ROFO Space, or a specified lesser portion thereof comprised of one or more full floors of the Building, on the terms set forth in Landlord's ROFO Notice, or (ii) Tenant elects to lease all of the Available ROFO Space or a specified lesser portion thereof comprised of one or more full floors of the Building, but that Tenant disputes Landlord's Available ROFO Space Rent Quotation; or (iii) Tenant rejects Landlord's offer. If Tenant elects to lease any Available ROFO Space as aforesaid, but disputes Landlord's ROFO Space Rent Quotation, and the parties do not agree on a mutually agreeable annual rent within thirty (30) days after delivery of such notice from Tenant, then either party may initiate a Broker Determination to determine the Prevailing Market Rent for the Available ROFO Space in question, by giving notice to the other within an additional thirty (30) days after the end of such thirty (30) day period. If Tenant has accepted Landlord's terms for such Available ROFO Space, or upon determination of the Prevailing Market Rent through a Broker Determination, Landlord and Tenant shall execute an amendment to this Lease incorporating the Available ROFO Space into the Premises upon the terms contained in Landlord's ROFO Notice, and otherwise on substantially the same terms and conditions as contained in this Lease, within ten (10) days, but failure of the parties to execute such an amendment shall have no effect on the effectiveness of the expansion of the Premises to include such Available ROFO Space and the economic terms associated therewith, as set forth above. If Tenant rejects Landlord's offer as to all, or a portion of the Available ROFO Space to the extent permissible as aforesaid, or fails to notify Landlord within said ten (10) day period that Tenant intends to lease such Available ROFO Space, Landlord shall be entitled to lease any such Available ROFO Space not elected by Tenant to become incorporated into the Premises to any third party, on such terms and conditions and for such rent, as Landlord determines in its sole discretion, and Tenant shall thereafter have no rights under this Section 17.7 with respect to such leasing to any third party by Landlord.

(C) Notwithstanding anything to the contrary provided in Section 17.7(B) above, if the Available ROFO Space shall be available for delivery to Tenant at any time during the last eighteen (18) months of the then Current Term, then: (a) if there are no further extension options which can be exercised pursuant to Section 3.2, Tenant shall not be entitled to lease the Available ROFO Space under this Section 17.7, and (b) if there is at least one (1) further extension option which can be exercised pursuant to Section 3.2, then the term for such Available ROFO Space shall not be coterminous with

the then Current Term, but shall be for a term that expires at the expiration of the next Extension Term, and in order to lease the Available ROFO Space in accordance with Section 17.7(B) above, Tenant must elect to extend the Current Term of the Lease for the entire Premises in accordance with the provisions of Section 3.2, at the same time that Tenant elects to lease the Available ROFO Space hereunder.

(D) Notwithstanding anything to the contrary provided in Section 17.7(B) above, if the Available ROFO Space shall be available for delivery to Tenant at any time during the period between three (3) years prior to the expiration of the then Current Term and eighteen (18) months prior to the expiration of the then Current Term (the "Transitional Period"), and provided that the Available ROFO Space is comprised of not more than two (2) full floors of the Building, then Landlord's ROFO Notice shall be referred to as a "Landlord's Transitional ROFO Notice," and shall be governed by the terms and conditions of this Section 17.7(D) and, if applicable, Section 17.7(E) below. If the Available ROFO Space that shall be available for delivery to Tenant during the Transitional Period, which would otherwise be governed by this Section 17.7(D), is comprised of more than two (2) full floors of the Building, then Tenant's rights thereto under this Section 17.7 shall instead be upon the same terms and conditions as apply to Available ROFO Space that shall be available for delivery to Tenant during the last eighteen (18) months of the then Current Term, pursuant to Section 17.7(C). If Landlord should give Landlord's Transitional ROFO Notice, Landlord's ROFO Space Rent Quotation shall also specify the length of the lease term that Landlord desires for a lease of the Available ROFO Space to a third party (since the term for the Available ROFO Space, if Tenant elects to lease the same pursuant to clause (ii) below, would not necessarily be co-terminous with the Initial Term or the then current Expansion Term, or even the expiration of the next Extension Term, if applicable). The net effective rental rate set forth in Landlord's Transitional ROFO Notice, taking into account the rate of Annual Base Rent and other monetary inducements, if any, shall be hereinafter referred to as "Landlord's Offered Rental Terms." In no event shall the length of the term constitute a component of Landlord's Offered Rental Terms except as necessary to calculate the net effective rental rate with respect thereto. Tenant must notify Landlord, within ten (10) days of Landlord's Transitional ROFO Notice:

- (i) on the condition that there is at least one (1) further extension option which can be exercised pursuant to Section 3.2, whether Tenant elects to lease the Available ROFO Space upon the same terms and conditions as apply to Available ROFO Space pursuant to Section 17.7(C), including without limitation the exercise of Tenant's right to extend the then Current Term, in which case the term for the Available ROFO Space shall expire at the expiration of the next Extension Term, and any disagreement between Landlord and Tenant with respect to the determination of Prevailing Market Rent shall be determined by Broker Determination, all as more particularly set forth in Sections 17.7(B) and 17.7(C) above;
- (ii) if the condition specified in clause (i) above is not satisfied, but Tenant nevertheless desires to lease the Available ROFO Space, whether Tenant elects to do so, provided that Tenant's rights under such circumstances shall be governed by Section 17.7(E) below; or
- (iii) whether Tenant rejects Landlord's offer, provided that if Tenant rejects Landlord's offer, or fails to notify Landlord within said ten (10) day period that Tenant intends to lease such Available ROFO Space, whether under clause (i) or (ii) above in this Section 17.7(D), then Landlord shall be entitled to lease any such Available ROFO Space to any third party, subject to the terms and conditions of Section 17.7(E) below.

(E) Any notice by Tenant under Section 17.7(D)(ii) to lease Available ROFO Space must provide that (i) Tenant elects to lease the entirety of the Available ROFO Space (it being agreed that Tenant has no right to lease less than the entire Available ROFO Space in such instance) on the terms set forth in Landlord's Transitional ROFO Notice, including, without limitation, Landlord's Offered Rental Terms, or (ii) Tenant rejects Landlord's offer. If Tenant elects to lease the entirety of the Available ROFO Space, Landlord and Tenant agree to enter into an amendment to this Lease memorializing the addition of the Available ROFO Space to this Lease, but failure of the parties to execute such an amendment shall have no effect on the effectiveness of the expansion of the Premises to include the Available ROFO Space, and the economic terms associated therewith, as set forth above. Notwithstanding anything otherwise provided in this Section 17.7(E), if Tenant should elect to lease Available ROFO Space under Section 17.7(D)(ii), not only shall Tenant's lease not necessarily be co-terminous with the Term of this Lease, but any such lease shall be subject to termination by Landlord, upon nine (9) months' prior written notice, so that the expiration of the aforesaid lease will be co-terminous with the then Current Term. In no event shall Landlord's termination rights hereinabove described be considered in any consideration of Landlord's Offered Rental Terms when comparing Landlord's Offered Rental Terms to Tenant and Landlord's Offered Rental Terms to any third party.

If Tenant rejects Landlord's offer in Landlord's Transitional ROFO Notice, or fails to notify Landlord within said ten (10) day period that Tenant elects to lease such Available ROFO Space, Landlord shall be entitled to lease the Available ROFO Space to any third party, on economic terms not materially more favorable to the third party, which shall be deemed to permit Landlord to lease the Available ROFO Space for a net effective rental rate equal to not less than ninety percent (90%) of the value of Landlord's Offered Rental Terms, without Tenant having any further rights under this Section 17.7. Prior to leasing the Available ROFO Space on economic terms that are materially more favorable to the third party as described above, Landlord shall re-offer the Available ROFO Space to Tenant, and Tenant shall again have the right to lease such Available ROFO Space pursuant to this Section 17.7(E). Additionally, if Landlord shall fail to enter into a lease for such Available ROFO Space with a third party within one hundred eighty (180) days after (x) the date that Tenant rejects Landlord's offer with respect to such Available ROFO Space or (y) the date of expiration of said ten (10) day period (if Tenant fails to notify Landlord of its intention to lease such Available ROFO Space during such ten (10) day period), then Landlord shall not thereafter accept any offer to lease such Available ROFO Space to any third party unless Landlord again offers such Available ROFO Space to Tenant in accordance with the foregoing provisions of this Section 17.7(E).

(F) Notwithstanding anything to the contrary provided in this Section 17.7, if Tenant should timely deliver Landlord the Give Back Notice with respect to the Potential Give Back Premises, then in no event shall the Potential Give Back Premises be eligible Available ROFO Space until following the earlier to occur of (i) January 1, 2010 or (ii) Landlord's initial leasing of the Potential Give Back Premises following Tenant's having vacated the same, and the occupancy thereof by a third party, and the subsequent fulfillment of the conditions to such space being Available ROFO Space hereunder. Landlord shall be entitled to grant third parties Prior Rights to the Potential Give Back Premises following any giving by Tenant to Landlord of Give Back Notice.

(G) Notwithstanding anything to the contrary provided in Sections 17.4, 17.5 or 17.6, if Tenant elects to incorporate Available ROFO Space into the Premises pursuant to this Section 17.7 that, at the time of Tenant's election, does not constitute Designated First Expansion Space, Designated Second Expansion Space or Designated Third Expansion Space ("Designated Expansion Space"), then Tenant's right to expand the Premises to incorporate Expansion Premises pursuant to Sections 17.4, 17.5 and 17.6 shall be modified by the elimination of the next Expansion Option to arise hereunder as to which no space has yet been designated as Designated Expansion Space therefor, provided that if a Designated Expansion Space has been identified for all remaining Expansion Options, then Landlord

shall be entitled to elect which such Expansion Option shall be eliminated. Notwithstanding the foregoing, if the ROFO Premises so incorporated comprises less than a full floor of the Building, then the next Expansion Option or the Expansion Option selected by Landlord, as the case may be, shall not be eliminated but shall remain in full force and effect subject to the following provisions: (x) if the ROFO Premises constituted a portion of any Designated Expansion Space, then the delivery of the remainder of such Designated Expansion Space shall fulfill Landlord's obligations with respect to the delivery of a Qualifying Expansion Premises with respect to the Expansion Option as to which such Designated Expansion Space was designated to fulfill or (y) if the ROFO Premises did not constitute a portion of any Designated Expansion Space, then Landlord shall have the right to make the remainder of such partial floor a Qualifying Expansion Space for purposes of fulfilling Landlord's obligations under any of Sections 17.4, 17.5 or 17.6 to deliver any future Expansion Premises, even though, in the case of either clauses (i) or (ii) above, such remaining space is comprised of less than 16,000 square feet of Rentable Floor Area.

(H) By way of example of the implementation of the provisions of the first sentence of Section 17.7(G), if Tenant elects to incorporate Available ROFO Space before any Expansion Option has been exercised, and there has previously been designated by Landlord, in a notice or notices to Tenant under this Lease, (i) a Designated First Expansion Space but none other, then upon Tenant's election to incorporate the Available ROFO Space at that time, the Second Expansion Option pursuant to Section 17.6 shall be deemed eliminated and of no further force or effect, (ii) a Designated First Expansion Space and a Designated Second Expansion Space, then the Third Expansion Option shall be eliminated instead, and (iii) a Designated First Expansion Space, Designated Second Expansion Space and Designated Third Expansion Space, then Landlord shall have the right to determine which Expansion Option shall be eliminated. By way of example of the implementation of the provisions of the second sentence of Section 17.7(G), if Tenant should elect to incorporate a portion of the 4<sup>th</sup> floor of the Building into the Premises pursuant to this Section 17.7, then (i) if the 4<sup>th</sup> floor had been designated the Designated Third Expansion Space, the remainder of the 4<sup>th</sup> floor of the Building shall constitute the Designated Third Expansion Space in fulfillment of Landlord's obligations under Section 17.6 to deliver Expansion Premises, even though such remaining space on the 4<sup>th</sup> floor is comprised of less than 16,000 square feet of Rentable Floor Area. However, if the remainder of the 4<sup>th</sup> floor had not then been a Designated Expansion Space, then Landlord may deliver the remainder of the 4<sup>th</sup> floor as Qualifying Expansion Space in fulfillment of Landlord's obligations under any of Sections 17.4, 17.5 or 17.6, even though such remaining space is comprised of less than 16,000 square feet of Rentable Floor Area.

#### 17.8 Special Additional Right of Offer.

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that both at the time that the Available ROFO Space first becomes available and as of the date upon which the ROFO Premises which Tenant has elected to lease pursuant to this Section 17.8 would otherwise then become incorporated into the Premises: (i) there exists no Event of Default, (ii) this Lease is still in full force and effect, (iii) Tenant has not assigned this Lease (except for an assignment permitted without Landlord's consent under Section 12.2 hereof) and (iv) Tenant is then in occupancy of at least one (1) full floor of the Building, and notwithstanding that Tenant may have been offered, but did not elect to lease, such Available ROFO Space pursuant to Section 17.7 above, prior to accepting any offer to lease Available ROFO Space to Limelight Networks, Brightcove, InterNAP Network Services or Versign (each a "Business Competitor" of Tenant), Landlord will re-offer to Tenant the right to lease such Available ROFO Space, by written notice to Tenant ("Landlord's Special ROFO Notice"). Landlord's Special ROFO Notice shall specify the location and rentable area of the Available ROFO Space, the Annual Base Rent for the Available ROFO Space, the Base Amounts for Operating Expenses and Taxes, tenant improvement allowances (if any), and all other material terms and conditions which will apply to the Available ROFO Space. The term for the Available ROFO Space

shall be coterminous with the Initial Term or then current Extension Term of this Lease, except that if the Available ROFO Space shall be available for delivery to Tenant at any time during the last three (3) years of the then Current Term, then: (i) if there are no further extension options which can be exercised pursuant to Section 3.2, Tenant shall not be entitled to lease the Available ROFO Space under this Section 17.8, and (ii) if there is at least one (1) further extension option which can be exercised pursuant to Section 3.2, the term for such Available ROFO Space shall not be coterminous with the then Current Term, but shall be for a term that expires at the expiration of the next Extension Term, and in order to lease the Available ROFO Space in accordance with Section 17.8(B) below, Tenant must elect to extend the Current Term of the Lease for the entire Premises, in accordance with the provisions of Section 3.2, at the same time that Tenant elects to lease the Available ROFO Space hereunder. The net effective rental rate set forth in Landlord's Special ROFO Notice, taking into account the rate of Annual Base Rent and other monetary inducements, if any, shall be hereinafter referred to as "Landlord's Offered Rental Terms." In no event shall the length of the term constitute a component of Landlord's Offered Rental Terms except as necessary to calculate the net effective rental rate with respect thereto.

(B) Tenant must notify Landlord, within three (3) business days of Landlord's Special ROFO Notice, that (i) Tenant elects to lease the entirety of the Available ROFO Space (it being agreed that Tenant has no right to lease less than the entire Available ROFO Space in such instance) on the terms set forth in Landlord's Special ROFO Notice, including, without limitation, Landlord's Offered Rental Terms, or (ii) Tenant rejects Landlord's offer. If Tenant elects to lease the entirety of the Available ROFO Space, Landlord and Tenant agree to enter into an amendment to this Lease memorializing the addition of the Available ROFO Space to this Lease, but failure of the parties to execute such an amendment shall have no effect on the effectiveness of the expansion of the Premises to include the Available ROFO Space, and the economic terms associated therewith, as set forth above.

If Tenant rejects Landlord's offer in Landlord's Special ROFO Notice, or fails to notify Landlord within said three (3) business day period that Tenant elects to lease such Available ROFO Space, Landlord shall be entitled to lease the Available ROFO Space to the Business Competitor of Tenant, on economic terms not materially more favorable to the Business Competitor of Tenant, which shall be deemed to permit Landlord to lease the Available ROFO Space for a net effective rental rate equal to not less than ninety percent (90%) of the value of Landlord's Offered Rental Terms, without Tenant having any further rights under this Section 17.8. Prior to leasing the Available ROFO Space on economic terms that are materially more favorable to the Business Competitor of Tenant as described above, Landlord shall re-offer the Available ROFO Space to Tenant, and Tenant shall again have the right to lease such Available ROFO Space pursuant to this Section 17.8. Additionally, if Landlord shall fail to enter into a lease for such Available ROFO Space with the Business Competitor of Tenant within one hundred eighty (180) days after (x) the date that Tenant rejects Landlord's offer with respect to such Available ROFO Space or (y) the date of expiration of said three (3) day period (if Tenant fails to notify Landlord of its intention to lease such Available ROFO Space during such three (3) day period), then Landlord shall not thereafter accept any offer to lease such Available ROFO Space to any Business Competitor of Tenant unless Landlord again offers such Available ROFO Space to Tenant in accordance with the foregoing provisions of this Section 17.8.

(C) Tenant's election to lease Available ROFO Space pursuant to this Section 17.8 shall have the same effect upon Tenant's right to expand the Premises to incorporate Expansion Premises pursuant to Sections 17.4, 17.5 and 17.6 as are provided in Section 17.7(G) and (H), as if such Available ROFO Space was to be incorporated into the Premises pursuant to Section 17.7.

17.9 Holdover Tenants.

(A) If any portion of any Premises Component with respect to which Tenant has duly exercised its rights under this Article XVII (any such space being hereinafter referred to as "Tenant's Expansion Space") is occupied by a third party and if such third party occupant fails to deliver possession of such space on or before the Anticipated Delivery Date associated with such Tenant's Expansion Space, Landlord shall use reasonable efforts and due diligence (which shall be limited to the commencement and prosecution of eviction proceeding but shall not require the taking of any appeal) to evict such occupant from such space, and to recover from such occupant any Hold-Over Premium, as defined in Section 17.9(B) below, payable by such occupant. The failure of the then occupant of such space to so vacate shall not give Tenant any right to terminate this Lease or to deduct from, offset against or withhold Annual Fixed Rent, Additional Rent or any other amount payable under this Lease (or any portions thereof); except that if such hold over exceeds six (6) months, then Tenant may cancel the exercise of its option to lease such portion of the Tenant's Expansion Space by giving to Landlord a written cancellation notice (an "Expansion Cancellation Notice"). If Landlord, on or before the date thirty (30) days after Landlord receives such cancellation notice, delivers such Tenant's Expansion Space to Tenant, then such cancellation notice shall be void and without further force or effect. If Landlord fails to deliver such Tenant's Expansion Space on or before the date thirty (30) days after Landlord receives such cancellation notice, then Tenant's exercise of its right to lease such portion of such Tenant's Expansion Space shall be void and without further force or effect.

(B) If the date by which the delivery to Tenant of any full floor, or portion of a full floor, comprising all or a portion of a Premises Component that, pursuant to this Article XVII, is to be incorporated into the Premises (a "Delayed Delivery Space") is delayed on account of such holding over, then with respect to the first sixty (60) days of any such holding over, Landlord shall pay to Tenant the net (i.e. net of the costs and expenses, including attorneys' fees, incurred by Landlord in obtaining such Hold-Over Premium) amount of any Hold-Over Premium actually collected from such hold-over occupant with respect to the applicable Delayed Delivery Space, but otherwise there shall be no compensation to Tenant due to the delay in delivery by Landlord to Tenant of the Delayed Delivery Space.

(C) If the delay in delivery to Tenant of the Delayed Delivery Space on account of such holding over exceeds sixty (60) days, then with respect to the one hundred twenty (120) day period that follows the aforesaid sixty (60) day period:

- (i) Landlord shall pay to Tenant the net (i.e. net of the costs and expenses, including attorneys' fees, incurred by Landlord in obtaining such Hold-Over Premium) amount of any Hold-Over Premium due from such hold-over occupant with respect to the applicable Delayed Delivery Space (notwithstanding that Landlord may not actually collect or receive any such payment), or
- (ii) Annual Fixed Rent payable by Tenant with respect to the applicable Delayed Delivery Space shall be abated by one (1) day for every day from and after the sixtieth (60<sup>th</sup>) day that the delivery of the applicable Delayed Delivery Space is delayed on account of such holding over,

whichever calculation yields the lesser amount. After such one hundred twenty (120) day period, Tenant's sole remedy for the failure to have been delivered the Delayed Delivery Space is to give an Expansion Cancellation Notice with respect to the same.

(D) For the purposes hereof, the "Hold-Over Premium" shall be defined as the amount which a hold-over occupant of the Delayed Delivery Space is required to pay to Landlord in respect of its hold-over in the premises (whether characterized as rent, damages, or use and occupation) from and after that date which is thirty (30) days from the date on which such space was required to be delivered to Tenant under this Lease in excess of the amount of fixed rent and other charges which the tenant under whom such occupant claims would have been required to pay to Landlord had the term of such tenant's lease been extended throughout the period of such hold-over at the same rental rate as such tenant was required to pay during the last month of its tenancy. In connection with the foregoing, Landlord hereby represents and warrants that all of the existing leases for potential Premises Components to be incorporated into the Premises pursuant to Article XVII do contain, and any future leases for such potential Premises Components will contain, provisions requiring hold-over tenants to pay some premium over and above their fixed rent for their continued occupancy of their premises beyond the expiration or earlier termination of their lease terms.

(The remainder of this page is intentionally left blank.)

EXECUTED as a sealed instrument in two or more counterparts by persons or officers hereunto duly authorized on the Date set forth in Section 1.2 above.

LANDLORD:

BP FOUR CC LLC, a Delaware limited liability company

By: Boston Properties Limited Partnership  
its manager

By: Boston Properties, Inc.,  
its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(The remainder of this page is intentionally left blank.)



ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary or Assistant Secretary

TENANT:

AKAMAI TECHNOLOGIES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President or Vice President  
Hereunto duly authorized

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Treasurer or Assistant Treasurer  
Hereunto duly authorized

EXHIBIT A

DESCRIPTION OF SITE

A certain parcel of land situated in Cambridge, Middlesex County, Massachusetts, shown as Tract No. 1 on a plan entitled "Plan of Land in Cambridge, Mass.", dated July 27, 1979, revised May 15, 1980, and recorded with the Middlesex South Registry of Deeds as Plan 621 of 1980, prepared by Allen & Demurjian, Inc., Engineering and Land Surveyors, Boston, Mass., bounded and described as follows:

Beginning at a point on the Southeasterly sideline of Sixth Street South 29°-29'-42"W Two Hundred Six and 8/100 (206.08) feet from the intersection of the Southeasterly sideline of Sixth Street and the Southwesterly sideline of Broadway, as shown on said plan, thence running

- South 84°-29'-07" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Twenty-Five and 65/100 (25.65) feet to a point; thence turning and running
- South 05°-30'-53" West by land now or formerly of Cambridge Redevelopment Authority, a distance of Twenty-Nine and 00/100 (29.00) feet to a point; thence turning and running
- South 84°-29'-07" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Fifty-Seven and 67/100 (57.67) feet to a point; thence turning and running
- South 05°-30'-53" West by land now or formerly of Cambridge Redevelopment Authority, a distance of Forty-Four and 25/100 (44.25) feet to a point; thence turning and running
- South 84°-29'-07" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Six and 00/100 (6.00) feet to a point; thence turning and running
- South 05°-30'-53" West by land now or formerly of Cambridge Redevelopment Authority, a distance of Nine and 9/100 (9.09) feet to a point; thence turning and running
- South 84°-29'-07" East by land now or formerly of Cambridge Redevelopment Authority, a distance of One Hundred Thirty and 33/100 (130.33) feet to a point; thence turning and running
- South 05°-30'-53" West by land now or formerly of Cambridge Redevelopment Authority, a distance of One Hundred Forty-One and 00/100 (141.00) feet to a point; thence turning and running
- North 84°-29'-07" West by land now or formerly of Cambridge Redevelopment Authority, a distance of Two Hundred Sixty-Two and 00/100 (262.00) feet to a point; thence turning and running
- North 05°-30'-53" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Twenty-Seven and 50/100 (27.50) feet to a point; thence turning and running

North 84°-29'-07" West by land now or formerly of Cambridge Redevelopment Authority, a distance of Four and 00/100 (4.00) feet to a point; thence turning and running

North 05°-30'-53" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Fifty-Seven and 00/100 (57.00) feet to a point; thence turning and running

South 84°-29'-07" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Four and 00/100 (4.00) feet to a point; thence turning and running

North 05°-30'-53" East by land now or formerly of Cambridge Redevelopment Authority, a distance of Twenty-Five and 50/100 (25.50) feet to a point of curvature which is an iron pin; thence turning and running

NORTHEASTERLY and curving to the right along the arc of a curve having a radius of Eighty-Five and 00/100 (85.00) feet, a length of Thirty-five and 58/100 (35.58) feet to an iron pin; thence turning and running

North 29°-29'-42" East by Sixth Street, a distance of Eighty-Six and 13/100 (86.13) feet to the point of beginning, the previous seven (7) courses bounding on said street.

Also together with the benefit of the leasehold estate of the lessee under the terms of a certain Parking Garage Lease, notice of which is recorded with said Deeds in Book 14824, Page 37 and filed with the Middlesex South District of the Land Court as Document No. 632264.

Containing 43,849 square feet, more or less, according to said plan.

EXHIBIT B

ROOFTOP RIGHTS

Landlord and Tenant agree as follows with respect to the Tenant's right to the roof of the Building:

1. License. Landlord grants to Tenant on the following terms and conditions a non-exclusive license (the "License"):

(a) for the use of a portion of the Roof (the "Roof Area"), in the location shown on Schedule B-1 hereto, for the installation, operation and maintenance of communication equipment (such as a satellite and/or microwave dishes) and any substantially similar replacements thereof (the "Equipment"), and for the installation of cabling, conduit and other electrical wiring (the "Conduit") connecting the Equipment to certain equipment of Tenant located in the Premises (the Equipment and the Conduit are individually and collectively referred to herein as the "Facilities");

(b) for the use of such stairwells and roof access passageways in the Building and on the Roof as may be designated by Landlord for the purpose of access to and from the Equipment; and

(c) for the placement of, and access to, Conduit in such risers and pathways (collectively, "Raceways") and utility rooms in the Building as are designated by Landlord.

2. Term. Tenant's right to operate and maintain the Equipment shall automatically expire and terminate if any of the following continue for more than fifteen (15) business days after written notice from Landlord to Tenant: (a) the Equipment is causing physical damage to the Building or the Roof, (b) the Equipment is interfering with the transmission or receipt of signals from or to the Building, (c) the Equipment is causing Landlord to be in violation of any agreement of record as of the date hereof or to which Landlord or any predecessor in interest of Landlord is a party as of the date hereof (provided that such agreement is in writing and a copy of such agreement has been provided to Tenant on or before the date hereof), (d) the Equipment is causing Landlord or Tenant to be in violation of any local, state or federal law, regulation or ordinance, or (e) an Event of Default has occurred and is continuing. The term of this License shall terminate on expiration or earlier termination of the Lease Term, as the same may be extended.

3. Use. Tenant (and its Subtenants) shall only use the Equipment to make and receive transmissions for Tenant's and its Subtenants' use in the Premises. No person or entity other than Tenant (and its subtenants) shall have the right to use or receive transmissions from the Equipment.

4. Utilities.

(a) Landlord shall have no obligation to provide Tenant with any utilities, Facilities, outlets or Building services, other than the existing electrical power serving the Roof Area.

(b) If and to the extent Tenant utilizes electricity or other utilities with respect to the Facilities that are not separately metered to, and payable directly by, Tenant, Landlord shall have the right, at Tenant's expense, to install a submeter to measure the utilities consumed by the Facilities and Tenant shall pay to Landlord, monthly, together with the payment of the Tenant Electricity as set forth in the Lease, for such usage reflected by the submeter, at the rates payable by Landlord. Landlord may estimate such charges on a monthly basis, subject to quarterly adjustments based on actual readings.

(c) Tenant shall not alter, reconfigure, relabel or in any manner manipulate the existing utility and cabling serving the Roof Area without the prior approval of Landlord which approval shall be at Landlord's reasonable discretion.

## 5. Installation of Facilities.

(a) Prior to installing the initial Facilities, Tenant shall submit to Landlord for Landlord's prior written approval, which approval shall be at Landlord's reasonable discretion, plans and specifications for the installation of the Facilities prepared by a licensed engineer reasonably satisfactory to Landlord (the "Plans"). The Plans shall be consistent with the specifications and shall show the location of the Equipment on the Roof Area, the location and type of all cabling, the way the Equipment will be placed on the Roof Area and any other information requested by Landlord, in Landlord's reasonable discretion. Landlord shall have the right to require that the Equipment be screened in a manner satisfactory to Landlord, in Landlord's reasonable discretion. Landlord shall have a right to employ an engineer or other consultant to review the Plans and the reasonable cost of such engineer or consultant shall be paid by Tenant to Landlord within ten (10) days after demand. Landlord may approve or reject all or part of the Plans for any reason, in Landlord's reasonable discretion. After Landlord has approved the Plans and prior to installing the Facilities and any cabling, Tenant shall obtain and provide to Landlord: (i) all required governmental and quasi-governmental permits, licenses, special zoning variances and authorizations, all of which Tenant shall obtain at its own cost and expense; and (ii) a policy or certificate of insurance evidencing such insurance coverage as provided for in Paragraph 12 below. Tenant shall obtain the prior written approval of Landlord (which shall not be unreasonably withheld) with respect to any Facilities that Tenant proposes to install subsequent to the initial Facilities. Without limiting the generality of the foregoing, all Facilities shall be capable of being operated without the need for engineers or other personnel to be stationed on the Roof Area.

(b) Tenant shall install the Facilities at its own cost and expense, and in compliance with all applicable federal, state and local laws and regulations; provided, however, the location and manner of any penetrations of the Roof Area or of the roof membrane shall be determined by Landlord in its reasonable discretion. Tenant shall keep the Building free and clear from any mechanics' liens, vendor liens or any other liens arising out of any construction and/or installation of activities performed or materials or equipment furnished by or for the account of Tenant. Tenant shall repair any damage to the Roof Area, roof membrane and/or the structural integrity and condition of the Roof Area and the Roof arising from Tenant's activities and reasonably satisfactorily maintain such repair. Tenant shall defend, indemnify and hold harmless, Landlord from and against any and all such liens or claims or actions thereon, and any and all costs incurred by Landlord resulting from Tenant's construction and/or installation activities relating to the Facilities, including, without limitation, reasonable attorneys' fees.

(c) The Facilities installed by Tenant shall remain the property of Tenant notwithstanding the fact that any such machinery, equipment and trade fixtures may be affixed or attached to the Building, or any portion thereof. Subject to the terms of this License, Tenant may replace and remove any Facilities during the term of this License.

(d) Any and all Conduit shall be limited in size and in aggregate diameter of space utilized in any Raceways and non-penetrating roof mount system. Landlord shall have the right to reasonably allocate riser space and designate utility rooms for access by Tenant. Any and all access by Tenant to Conduit outside of the Premises shall be subject to such rules and regulations as may be adopted from time to time by Landlord for uniform application to telecommunications vendors in the Building.

**6. Maintenance and Repair.**

(a) Tenant shall maintain all of the Facilities in good and safe condition and shall keep the Roof Area and any and all Raceways and utility rooms used by Tenant free and clear of debris, clutter, unused cabling, conduit, equipment and tools belonging to Tenant.

(b) If Landlord reasonably determines that any of the Facilities are not being maintained in the condition required by this License, and without limiting Landlord's other rights and remedies under this License, Landlord shall have the right, if Tenant fails to remedy the condition(s) identified by Landlord to the reasonable satisfaction of Landlord within five (5) business days of receipt (or evidence of attempted delivery) of such notice, to take such action, at Tenant's expense, as Landlord deems reasonably necessary to restore the Facilities to the condition required by this License. Tenant shall pay to Landlord, on demand, Landlord's reasonable costs and expenses incurred pursuant to this paragraph.

(c) Tenant acknowledges that Landlord may decide, in its sole discretion, from time to time, to repair or replace the Roof ("Roof Repairs"). If Landlord elects to make Roof Repairs, Tenant shall, upon Landlord's request, temporarily remove the Equipment so that the Roof Repairs may be completed. The cost of removing and reinstalling the Equipment shall be paid by Tenant, at Tenant's sole cost and expense, Landlord shall not be liable to Tenant for any damages, lost profits or other costs or expenses incurred by Tenant as the result of the Roof Repairs. Landlord will reasonably try to minimize any such interference with the Facilities.

7. **Access to License Areas.** Access to the Facilities by Tenant shall be limited to persons as to whom Tenant has given Landlord prior written authorization to have access. Except in the case of an emergency (including, without limitation, emergency repairs), or as otherwise prearranged with Landlord, access to the Roof by Tenant shall be limited to the Building's business hours. Subject to the prior authorization requirements hereinabove provided, notwithstanding anything in the foregoing to the contrary, Tenant may access the Facilities at any time in the case of an emergency (including, without limitation, emergency repairs) by giving Landlord such advance notice (if any) as is reasonably possible.

**8. Tenant's Release and Indemnification.**

(a) Tenant covenants that the installation, operation, maintenance and use of the Facilities shall be at Tenant's sole cost and risk. Tenant hereby waives as against Landlord, and releases Landlord from, all claims for damage to any property or injury, illness or death of any person in, upon or about the Building (including, without limitation, the Roof and the Roof Area) arising from any use or operation of, or access to, any of the Facilities, and howsoever caused (except to the extent that such damage, injury, illness or death shall have been caused in whole or in part by the act, omission, or active or passive negligence of Landlord, its employees, agents or contractors).

(b) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, actions, damages, liability, costs and expenses (including attorneys' fees) in connection with loss of life, personal injury, damage to the property or business or any other loss or injury to the extent arising out of the installation, operation or removal of the Facilities, or the access thereto by any employee, agent, contractor, invitee or other person acting on behalf of Tenant, or a breach by Tenant of the terms of this License, except to the extent caused by Landlord's or its employees', agents' or contractors' willful misconduct or negligence. Without limiting the generality of the foregoing, Tenant shall indemnify, defend and hold Landlord harmless from any claims by any occupant of the Building or occupants of residences or businesses in the immediate vicinity of the Building alleging damage or injuries based on exposure to electromagnetic fields or other consequences of the operations by Tenant of the Facilities at the Building.

9. Interruption of Services. Tenant acknowledges that interruptions in electrical power may occur in the operation of the Facilities as a result of Landlord's operation of the Building, and Tenant acknowledges that Landlord shall not be liable to Tenant as a result thereof.

10. Non-Exclusivity/Standard of Operation.

(a) Except as hereinafter provided in this Paragraph 10, the License granted hereby is non-exclusive. Landlord reserves the right to grant to other parties, including itself, other occupants of the Building and third party vendors, the right to locate and install other equipment, including, without limitation, telecommunications equipment, on the Roof; provided, however, subject to Paragraph 10(b) below, such other uses shall not interfere with the operation or use of the Facilities being made by Tenant. Tenant agrees to cooperate with Landlord in adopting (at License's sole cost and expense) commercially reasonable procedures to limit any interference to other equipment or communications facilities located on the Roof caused by or attributable to the Facilities and to enable the full utilization of the Roof by others; provided utilization by others does not, except as provided in Paragraph 10(b) below, interfere with Tenant's operations,

(b) Without limiting the generality of the terms of Paragraph 10(a) above, Landlord reserves the right to itself to provide (including by or through independent contractors) rooftop-based telecommunications services and/or transmission/reception equipment and facilities for the benefit of tenants in the Building, and to grant to any one or more tenants in the Building the right to install rooftop-based telecommunications and/or transmission/reception equipment and facilities (such as, for example, satellite dishes or microwave dishes) in connection with such tenant's business operations in the Building (any such services or facilities being referred to as "Landlord Permitted Telecommunications Services"), provided the same do not materially interfere with the operation or use of the Facilities by Tenant; provided, however, Landlord agrees to cooperate with Tenant in adopting commercially reasonable procedures to achieve compatibility between Tenant's operations and any Landlord Permitted Telecommunications Services.

11. Removal of Facilities. At the expiration or sooner termination of the Lease, Tenant shall remove the Facilities and repair any damage as a result thereof, and leave the portion of the Roof where the Facilities were located in the condition existing immediately prior to the installation of the Equipment, ordinary wear and tear expected.

12. Insurance. Tenant shall at all times during the term of this License, and at its own cost and expense, procure and continue in force the following insurance coverage, commercial general liability insurance, written on an occurrence basis, with a combined single limit per occurrence for bodily injury and property damages of not less than Five Million Dollars (\$5,000,000.00), including contractual liability coverage with this License as a designated contract. Not more frequently than once every three (3) years if, in the opinion of Landlord's insurance consultant, the amount of public liability insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as required by either Landlord's lender or insurance consultant to such higher limits as are carried customarily in the Greater Boston Area with respect to similar uses.

13. Waiver of Subrogation. Landlord and Tenant each waive the right to maintain a direct action against the other for damages arising out of any occurrence the risk of which is insured against under any insurance policies required to be maintained under this License to the extent of such insurance coverage. Each policy of such insurance shall, if obtainable from the insurer without additional expense, contain a waiver of subrogation by the insurer against Tenant or Landlord, as the case may be.

14. Relocation. Landlord, at Landlord's sole option, shall have the right to relocate the Facilities to another location on the Roof, provided such relocation does not result in a material impairment in, or loss of, communication or transmission ability. Landlord shall reimburse Tenant for any and all costs reasonably

incurred by Tenant as a result of Landlord's relocation requirement. Landlord shall notify Tenant of any proposed relocation at least sixty (60) days in advance of any proposed relocation, and shall use commercially reasonable efforts to minimize any disruption in Tenant's business operations.

15. Hazardous Materials. No Hazardous Materials (as that term is defined in Section 11.2 of this Lease) shall be used in the operation or maintenance of the Facilities or stored by Tenant on the Roof.

16. Limitation on License. Tenant acknowledges and agrees that Landlord has made no representation or warranty to Tenant that the Facilities are permitted under applicable building, land use or zoning laws, ordinances or codes, or under any federal regulations, or that the Roof Area is suitable for Tenant's intended purposes or will otherwise provide adequate reception and/or transmission capabilities. Tenant represents and warrants to Landlord that it is accepting the License based on its own determination regarding compliance with applicable federal, state and local laws and regulations and suitability of location.

17. Liability Under License. Tenant's liability under the Lease is not contingent or conditioned upon its ability to use the Equipment, and Tenant shall continue to be obligated to perform all of its obligations under the License and the Lease if for some reason Tenant is unable to use the Equipment. Nothing in this paragraph 17 is intended to excuse Landlord for interfering with Tenant's ability to use the Equipment as contemplated pursuant to this Lease.

18. No Assignment or Transfer. The contract rights granted to Tenant herein are personal to Tenant and Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, assign or transfer the rights of Tenant hereunder separate from an assignment of the Lease or sublease of the Premises, provided, however, that only one party, whether it is Tenant or a successor, assign or subtenant of Tenant, shall at any one time hold the rights granted herein (i.e., the rights granted to Tenant under this License shall never be held by more than one party). Any of the foregoing acts without the prior consent of Landlord shall be void, and shall, at the option of Landlord, constitute a breach of this License by Tenant entitling Landlord to terminate this License.



---

SCHEDULE B-1

ROOF AREA

Schedule B-1

Page 1 of 1

EXHIBIT C

FORMS OF LIEN WAIVERS

CONTRACTOR'S PARTIAL WAIVER AND SUBORDINATION OF LIEN

STATE OF \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ COUNTY Application for Payment No.: \_\_\_\_\_

OWNER: \_\_\_\_\_  
CONTRACTOR: \_\_\_\_\_  
LENDER / MORTGAGEE: \_\_\_\_\_ None \_\_\_\_\_

1. Original Contract Amount:	\$	_____
2. Approved Change Orders:	\$	_____
3. Adjusted Contract Amount: (line 1 plus line 2)	\$	_____
4. Completed to Date:	\$	_____
5. Less Retainage:	\$	_____
6. Total Payable to Date: (line 4 less line 5)	\$	_____
7. Less Previous Payments:	\$	_____
8. Current Amount Due: (line 6 less line 7)	\$	_____
9. Pending Change Orders:	\$	_____
10. Disputed Claims:	\$	_____

The undersigned who has a contract with \_\_\_\_\_ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as located in \_\_\_\_\_ (city or town), \_\_\_\_\_ County, \_\_\_\_\_ and owned by \_\_\_\_\_, upon receipt of \_\_\_\_\_ (\$\_\_\_\_\_) in payment of an invoice/requisition/application for payment dated \_\_\_\_\_ does hereby:

- (a) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date \_\_\_\_\_ (payment period), except for retainage, unpaid agreed or pending change orders, and disputed claims as stated above;

(b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

SUBCONTRACTOR'S LIEN WAIVER

General Contractor: \_\_\_\_\_  
Subcontractor: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Project: \_\_\_\_\_  
Total Amount Previously Paid: \$ \_\_\_\_\_  
Amount Paid This Date: \$ \_\_\_\_\_  
Retainage (Including This Payment) Held to Date: \$ \_\_\_\_\_

In consideration of the receipt of the amount of payment set forth above and any and all past payments received from the Contractor in connection with the Project, the undersigned acknowledges and agrees that it has been paid all sums due for all labor, materials and/or equipment furnished by the undersigned to or in connection with the Project and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, liens and rights under any Notice of Identification, Notice of Contract or statement of account with respect to the Owner, the Project and/or against the Contractor on account of any labor, materials and/or equipment furnished through the date hereof.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned and that this document binds the undersigned to the extent that the payment referred to herein is received.

The undersigned represents and warrants that it has paid in full each and every sub-subcontractor, laborer and labor and/or material supplier with whom undersigned has dealt in connection with the Project and the undersigned agrees at its sole cost and expense to defend, indemnify and hold harmless the Contractor against any claims, demands, suits, disputes, damages, costs, expenses (including attorneys' fees), liens and/or claims of lien made by such sub-subcontractors, laborers and labor and/or material suppliers arising out of or in any way related to the Project. This document is to take effect as a sealed instrument.

Signed under the penalties of perjury as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SUBCONTRACTOR:

Signature and Printed Name of  
Individual Signing this Lien Waiver

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

CONTRACTOR'S WAIVER OF CLAIMS AGAINST OWNER AND ACKNOWLEDGMENT OF FINAL PAYMENT

Commonwealth of Massachusetts  
COUNTY OF \_\_\_\_\_

Date: \_\_\_\_\_  
Invoice No.: \_\_\_\_\_

OWNER: \_\_\_\_\_  
CONTRACTOR: \_\_\_\_\_  
PROJECT: \_\_\_\_\_

- 1. Original Contract Amount: \$ \_\_\_\_\_
- 2. Approved Change Orders: \$ \_\_\_\_\_
- 3. Adjusted Contract Amount: \$ \_\_\_\_\_
- 4. Sums Paid on Account of Contract Amount: \$ \_\_\_\_\_
- 5. Less Final Payment Due: \$ \_\_\_\_\_

The undersigned being duly sworn hereby attests that when the Final Payment Due as set forth above is paid in full by Owner, such payment shall constitute payment in full for all labor, materials, equipment and work in place furnished by the undersigned in connection with the aforesaid contract and that no further payment is or will be due to the undersigned.

The undersigned hereby attests that it has satisfied all claims against it for items, including by way of illustration but not by way of limitation, items of: labor, materials, insurance, taxes, union benefits, equipment, etc. employed in the prosecution of the work of said contract, and acknowledges that satisfaction of such claims serves as an inducement for the Owner to release the Final Payment Due.

The undersigned hereby agrees to indemnify and hold harmless the Owner from and against all claims arising in connection with its Contract with respect to claims for the furnishing of labor, materials and equipment by others. Said indemnification and hold harmless shall include the reimbursement of all actual attorneys' fees and all costs and expenses of every nature, and shall be to the fullest extent permitted by law.

The undersigned hereby irrevocably waives and releases any and all liens and right of lien on such real property and other property of the Owner for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished by the undersigned, and anyone claiming by, through, or under the undersigned, in connection with the Project.

The undersigned hereby releases, remises and discharges the Owner, any agent of the Owner and their respective predecessors, successors, assigns, employees, officers, shareholders, directors, and principals, whether disclosed or undisclosed (collectively "Releasees") from and against any and all claims, losses, damages, actions and causes of action (collectively "Claims") which the undersigned and anyone claiming by, through or under the undersigned has or may have against the Releasees, including, without limitation, any claims arising in connection with the Contract and the work performed thereunder.

Notwithstanding anything to the contrary herein, payment to the undersigned of the Final Payment Due sum as set forth above, shall not constitute a waiver by the Owner of any of its rights under the contract including by way of illustration but not by way of limitation guarantees and/or warranties. Payment will not be made until a signed waiver is returned to Owner.

The undersigned individual represents and warrants that he/she is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned.

Exhibit C  
Page 6 of 7

Signed under the penalties of perjury as a sealed instrument as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it as \_\_\_\_\_ for \_\_\_\_\_, a corporation/partnership voluntarily for its stated purpose.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



EXHIBIT D

LANDLORD SERVICES

I. CLEANING

Cleaning and janitorial services shall be provided nightly, after normal business hours, Monday through Friday, exclusive of holidays observed by the cleaning company and Saturdays and Sundays.

A. OFFICE AREAS

Cleaning and janitorial services to be provided in the office areas shall include:

1. Vacuuming, damp mopping of resilient floors and trash removal.
2. Dusting of horizontal surfaces within normal reach (tenant equipment to remain in place).
3. High dusting and dusting of vertical blinds to be rendered as needed.

B. LAVATORIES

Cleaning and janitorial services to be provided in the common area lavatories of the building shall include:

1. Dusting, damp mopping of resilient floors, trash removal, sanitizing of basins, bowls and urinals as well as cleaning of mirrors and bright work.
2. Refilling of soap, towel, tissue and sanitary dispensers to be rendered as necessary.
3. High dusting to be rendered as needed.

C. MAIN LOBBIES, ELEVATORS, STAIRWELLS AND COMMON CORRIDORS

Cleaning and janitorial services to be provided in the common areas of the building shall include:

1. Trash removal, vacuuming, dusting and damp mopping of resilient floors and cleaning and sanitizing of water fountains.
2. High dusting to be rendered as needed.

D. WINDOW CLEANING

All exterior windows shall be washed on the inside and outside surfaces at a frequency necessary to maintain a first class appearance.

## II. HVAC

- A. Heating, ventilating and air conditioning equipment will be provided with sufficient capacity to accommodate a maximum population density of one (1) person per one hundred fifty (150) square feet of useable floor area served, and a combined lighting and standard electrical load of 3.0 watts per square foot of useable floor area. In the event Tenant introduces into the Premises personnel or equipment which overloads the system's ability to adequately perform its proper functions, Landlord shall so notify Tenant in writing and supplementary system(s) may be required and installed by Landlord at Tenant's expense, if within fifteen (15) days Tenant has not modified its use so as not to cause such overload.

Operating criteria of the basic system shall not be less than the following:

- (i) Cooling season indoor temperatures of not in excess of 73 - 79 degrees Fahrenheit when outdoor temperatures are 91 degrees Fahrenheit ambient.
- (ii) Heating season minimum room temperature of 68 - 75 degrees Fahrenheit when outdoor temperatures are 6 degrees Fahrenheit ambient.

- B. Landlord shall provide heating, ventilating and air conditioning as normal seasonal changes may require during the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday (legal holidays in all cases excepted) and, provided Tenant has made prior written request pertaining to each applicable Saturday, 8:00 a.m. to 1:00 p.m. each such Saturday.

If Tenant shall require air conditioning (during the air conditioning season) or heating or ventilating during any other time period, Landlord shall use landlord's best efforts to furnish such services for the area or areas specified by written request of Tenant delivered to the Building Superintendent or the Landlord before 3:00 p.m. of the business day preceding the extra usage. Landlord shall charge Tenant for such extra-hours usage at reasonable rates customary for first-class office buildings in the East Cambridge/Kendall Square market, and Tenant shall pay Landlord, as Additional Rent, upon receipt of billing therefor.

## III. ELECTRICAL SERVICES

- A. Landlord shall provide electric power for a combined load of 3.0 watts per square foot of useable area for lighting and for office machines through standard receptacles for the typical office space.
- B. In the event that Tenant has special equipment (such as computers and reproduction equipment) that requires either 3-phase electric power or any voltage other than 120, or for any other usage in excess of 3.0 watts per square foot, Landlord may at its option require the installation of separate metering (Tenant being solely responsible for the costs of any such separate meter and the installation thereof) and direct billing to Tenant for the electric power required for any such special equipment.
- C. Landlord will furnish and install, at Tenant's expense, all replacement lighting tubes, lamps and ballasts required by Tenant. Landlord will clean lighting fixtures on a regularly scheduled basis at Tenant's expense.

IV. ELEVATORS

Provide passenger elevator service for access to and from all floors of the Building that comprise the Premises at all times during the term.

V. WATER

Provide hot water for lavatory purposes and cold water for drinking, lavatory and toilet purposes.

VI. CARD ACCESS SYSTEM

Landlord will provide a card access system at one entry door of the building.

---

EXHIBIT E

FLOOR PLANS

Exhibit E  
Page 1 of 1



EXHIBIT G

FORM OF COMMENCEMENT DATE AGREEMENT

DECLARATION AFFIXING THE COMMENCEMENT DATE  
WITH RESPECT TO A PREMISES COMPONENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 200\_, by and between the TRUSTEES OF \_\_\_\_\_ TRUST (hereinafter "Landlord") and \_\_\_\_\_ (hereinafter "Tenant").

WITNESSETH THAT:

1. This Agreement is made pursuant to Section \_\_\_\_\_ of that certain Lease dated \_\_\_\_\_, between the parties aforementioned as Landlord and Tenant (the "Lease").
2. It is hereby stipulated that the Premises Component comprised of \_\_\_\_\_ is incorporated into the Premises commencing on \_\_\_\_\_, and that the Term with respect thereto shall end and expire on the scheduled expiration date under the Lease, unless sooner terminated or extended, as provided for in the Lease.

WITNESS the execution hereof under seal by persons hereunto duly authorized, the date first above written.

LANDLORD:

\_\_\_\_\_  
 As Trustee of \_\_\_\_\_ Trust,  
 for himself and co-Trustees,  
 pursuant to appropriate written delegation from the co-Trustees, but not  
 individually

TENANT:

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

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

(CORPORATE SEAL)

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF COUNTY OF MIDDLESEX

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document in my presence.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the documents are truthful and accurate to the best of [his] [her] knowledge and belief.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

EXHIBIT H

MEMORANDUM REGARDING PROCEDURE FOR ADJUSTMENT OF ELECTRICITY COSTS

This memo outlines the procedure for adjusting charges for electric power to tenants at the office building to be known as Four Cambridge Center.

1. Main electric service to this building will be provided by the local utility company to a single main meter. All charges by the utility will be read from this meter and billed to and paid by Landlord at rates established by the utility company.
2. All office tenants shall pay for electricity as part of their rental payments, including electricity for both common areas of the building and for tenant occupied areas. Each lease shall also contain a provision making such tenant responsible for its proportionate share of any increases in the cost of electricity used in the building over the base year amounts established in the Lease.
3. In order to assure that charges for electric service are apportioned fairly among tenants in relation to the relative amounts of electricity used by each tenant, additional meters (known as "check meters") will be installed by Landlord to permit periodic evaluations of electric usage to be made. On each office floor there will be one meter serving all of the floor.
4. Each meter shall be installed so that it will measure all of the electricity provided to the floor governed by that meter, including all lights and power in both tenant and common core areas (restroom, corridors, HVAC equipment room, etc.). This shall not, however, include the following, which shall be wired from the main building service and not through the check meters: stairwell and emergency lights; elevators; lighting and HVAC in the building lobby and main service areas; exterior lighting; and all main building mechanical systems. (Common areas on each floor, including the elevator lobby, corridors, and bathrooms will have service through and check meters on each floor.) In addition, further modification to the number and location of check meters may be made by Landlord if required to improve the quality of information obtained thereby.
5. The Landlord will cause the check meters to be read periodically by its employees and will perform an analysis of information for the purpose of determining whether any adjustments are required to achieve an equitable allocation of the costs of electric service among the tenants in the building in relation to the respective amounts of usage of electricity for those tenants. For this purpose, the Landlord shall, as far as possible in each case, read the meters to determine usage for periods that include one or more entire periods used by the utility company for the reading of the main building meter (so that the Landlord may, in its discretion, choose periods that are longer than those used by the utility company—for example, quarterly, semi-annual or annual periods).
6. A rent adjustment shall be made by Landlord on the following basis:
  - a. The total kilowatt hour usage for the period under evaluation shall be established for each check meter and for each floor and also for the building as a whole by a reading of the main building meter for that period.



- b. The cost of the total amount of electricity supplied for usage by tenants during the period (herein called "Tenant Electricity") shall be determined by multiplying the total cost of electricity as invoiced by the utility company for the same period by a fraction, the numerator of which is the total amount of kilowatt hour usage as measured by all of the check meters in the building (Tenant Electricity) and the denominator of which is the total amount of kilowatt hour usage for the entire building as measured by the main building electric meter.
  - c. Where one or more floors is occupied entirely by one tenant, its allocable share of Tenant Electricity cost for the period shall be determined by multiplying the total costs of Tenant Electricity by a fraction, the numerator of which is the kilowatt hour usage of tenant electricity by said tenant (calculated as the sum of kilowatt hour usage during the period measured by all check meters serving its premises) and the denominator of which is the total kilowatt hour usage of Tenant Electricity for the same period.
  - d. Where a floor is occupied by more than one tenant, the cost of Tenant Electricity for that floor shall first be determined by the same procedure as set forth in paragraph (c) above, and then the allocable share of each tenant on that floor shall be determined by multiplying the costs of Tenant Electricity for that floor by a fraction, the numerator of which is the rentable area leased to each tenant (respectively for each tenant) and the denominator of which is the total rentable area from time to time under lease to tenants on said floor.
  - e. Where part or all of the rentable area on a floor has been occupied for less than all of the period for which adjustments are being made, appropriate and equitable modifications shall be made to the allocation formula so that each tenant's allocable share of costs equitable reflects its period of occupancy, provided that in no event shall the total of all costs as allocated to tenants be less than the total costs of Tenant Electricity for said period.
7. The results of the cost adjustment analysis made by Landlord under paragraph (6) above shall be compared to the schedule of amounts due from tenants in regard to Tenant Electricity in accordance with the leases in effect during the period in question. Where the payment due pursuant to the lease is less than the cost as determined by the cost adjustment analysis, each tenant shall be billed for the difference by Landlord. Where the payment due pursuant to the lease is greater than the cost as determined by the cost adjustment analysis, the tenant shall be provided with a credit in the amount of such difference applicable to the rental payment next due (or in the case of tenants no longer in occupancy, Landlord shall refund such amount to such tenants).
- In addition, where the leases call for tenants to make periodic payments to Landlord based on estimates by Landlord of their allocable share of Tenant Electricity, such estimates by Landlord shall, so far as possible, be based on the effective distribution of costs among tenants during prior periods resulting from the application of the cost adjustment procedures established herein.
8. All costs of electricity billed to Landlord through the main electric meter for use in and around the building other than the costs of Tenant Electricity allocated pursuant to the procedures established herein, shall be treated as part of the Operating Expenses for the Property for purposes of determining the allocation of those costs.

EXHIBIT I

BROKER DETERMINATION OF PREVAILING MARKET RENT

Where in the Lease to which this Exhibit is attached provision is made for a Broker Determination of Prevailing Market Rent, the following procedures and requirements shall apply:

1. Tenant's Request. Tenant shall send a notice to Landlord by the time set for such notice in the applicable section of the Lease, requesting a Broker Determination of the Prevailing Market Rent, which notice to be effective must (i) make explicit reference to the Lease and to the specific section of the Lease pursuant to which said request is being made, (ii) include the name of a broker selected by Tenant to act for Tenant, which broker shall be affiliated with a major Boston commercial real estate brokerage firm selected by Tenant and which broker shall have at least ten (10) years experience dealing in properties of a nature and type generally similar to the Building located in the Cambridge-Boston Downtown Market, and (iii) explicitly state that Landlord is required to notify Tenant within thirty (30) days of an additional broker selected by Landlord.
2. Landlord's Response. Within thirty (30) days after Landlord's receipt of Tenant's notice requesting the Broker Determination and stating the name of the broker selected by Tenant, Landlord shall give written notice to Tenant of Landlord's selection of a broker having at least the affiliation and experience referred to above.
3. Selection of Third Broker. Within ten (10) days thereafter the two (2) brokers so selected shall select a third such broker also having at least the affiliation and experience referred to above.
4. Rental Value Determination. Within thirty (30) days after the selection of the third broker, the three (3) brokers so selected, by majority opinion, shall make a determination of the annual fair market rental value of the Premises for the period referred to in the Lease. Such annual fair market rental value determination (x) shall require rent to commence upon the commencement of the period in question, and may include provision for annual increases in rent during said term if so determined, (y) shall take into account the as-is condition of the Premises and the amount, if any, that Landlord will be making available to Tenant as a leasehold improvements allowance, as specified in Landlord's rent quotation as set forth in the Lease and (z) shall take account of, and be expressed in relation to, the applicable tax and operating cost bases expressly set forth in the Lease and provisions for paying for so-called tenant electricity as contained in the Lease. The brokers shall advise Landlord and Tenant in writing by the expiration of said thirty (30) day period of the annual fair market rental value which as so determined shall be referred to as the Prevailing Market Rent.
5. Resolution of Broker Deadlock. If the Brokers are unable to agree at least by majority on a determination of annual fair market rental value, then the brokers shall send a notice to Landlord and Tenant by the end of the thirty (30) day period for making said determination setting forth their individual determinations of annual fair market rental value, and the highest such determination and the lowest such determination shall be disregarded and the remaining determination shall be deemed to be the determination of annual fair market rental value and shall be referred to as the Prevailing Market Rent.
6. Costs. Each party shall pay the costs and expenses of the broker selected by it and each shall pay one half (1/2) of the costs and expenses of the Third Broker.

7. Failure to Select Broker or Failure of Broker to Serve. If Tenant shall have requested a Broker Determination and Landlord shall not have designated a broker within the time period provided therefor above, then Tenant's Broker shall alone make the determination of Prevailing Market Rent in writing to Landlord and Tenant within thirty (30) days after the expiration of Landlord's right to designate a broker hereunder. If Tenant and Landlord have both designated brokers but the two brokers so designated do not, within a period of fifteen (15) days after the appointment of the second broker, agree upon and designate the Third Broker willing so to act, the Tenant, the Landlord or either broker previously designated may request the Boston Bar Association (or such organization as may succeed to the Boston Bar Association) to designate the Third Broker willing so to act and a broker so appointed shall, for all purposes, have the same standing and powers as though he had been seasonably appointed by the brokers first appointed. In case of the inability or refusal to serve of any person designated as a broker, or in case any broker for any reason ceases to be such, a broker to fill such vacancy shall be appointed by the Tenant, the Landlord, the brokers first appointed or the Boston Bar Association as the case may be, whichever made the original appointment, or if the person who made the original appointment fails to fill such vacancy, upon application of any broker who continues to act or by the Landlord or Tenant such vacancy may be filled by the Boston Bar Association and any broker so appointed to fill such vacancy shall have the same standing and powers as though originally appointed.

EXHIBIT J

FORM OF LETTER OF CREDIT

BENEFICIARY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ISSUANCE DATE:

\_\_\_\_200\_\_

IRREVOCABLE STANDBY

LETTER OF CREDIT NO. \_\_\_\_\_

APPLICANT:

\_\_\_\_\_

MAXIMUM/AGGREGATE

CREDIT AMOUNT: US\$ \_\_\_\_\_

USD: \_\_\_\_\_

LADIES AND GENTLEMEN:

We hereby establish our irrevocable letter of credit in your favor for account of the applicant up to an aggregate amount not to exceed \_\_\_\_\_ and \_\_\_/100 US Dollars (US \$ \_\_\_\_\_) available by your draft(s) drawn on ourselves at sight accompanied by:

Your statement, signed by a purportedly authorized officer/official certifying that the Beneficiary is entitled to draw upon this Letter of Credit (in the amount of the draft submitted herewith) pursuant to the Lease (the "Lease") dated \_\_\_\_\_ by and between \_\_\_\_\_, as Landlord, and \_\_\_\_\_, as Tenant, together with the original copy of this Letter of Credit and any amendments thereto which have been accepted by you.

Draft(s) must indicate name and issuing bank and credit number and must be presented at this office.

You shall have the right to make partial draws against this Letter of Credit, from time to time.

This Letter of Credit shall expire at our office on \_\_\_\_\_, 200\_ (the "Stated Expiration Date"). It is a condition of this Letter of Credit that the Stated Expiration Date shall be deemed automatically extended without amendment for successive one (1) year period s from such Stated Expiration Date, unless at least forty-five (45) days prior to such Stated Expiration Date ) (or any anniversary thereof) we shall send you written notice at the address specified in this Letter of Credit (or at such other address of which you may have notified us in writing) and the Applicant in writing by registered mail (return receipt) or overnight courier that we elect not to consider this Letter of Credit extended for any such additional one (1) year period.

This Letter of Credit is transferable at any time and from time to time without cost to Beneficiary. JP Morgan Chase Bank only is authorized to act as the Transferring Bank. We shall not recognize any transfer of this Letter of Credit until this original Letter of Credit together with any amendments and a signed and completed transfer form, attached hereto, is received by us. The correctness of the signature and title of the person signing the transfer forms must be verified by Beneficiary's bank. In case of any transfer of this Letter of Credit, the draft and any required statement must be executed by the Transferee. This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. Foreign assets control regulations or other applicable U.S. Laws and Regulations.

---

Our customary and reasonable charges to transfer this Letter of Credit shall be for the Applicant's account.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the "International Standby Practice, International Chamber of Commerce, Publication No. 590."

This Letter of Credit shall be governed by, and construed in accordance with the laws of the state of New York, without regard to principles of conflict of laws.

Exhibit J  
Page 2 of 2

EXHIBIT K

SCHEDULE OF PREMISES COMPONENTS,  
DELIVERY AND RENT COMMENCEMENT DATES  
AND RENT SCHEDULE

<u>Floor</u>	<u>Floor Square Footage</u>	<u>Anticipated Delivery Date</u>	<u>Anticipated Rent Commencement Date</u>	<u>Base Rental Rate</u>	<u>Base Operating Expense Calendar Year</u>	<u>Base Tax Fiscal Year</u>
12	16,402 RSF	June 1, 2008	October 1, 2008	Rent Commencement Date – May 31, 2009: \$40.50 per RSF per annum June 1, 2009 – May 31, 2014: \$40.50 per RSF per annum June 1, 2014 – December 31, 2019: \$44.50 per RSF per annum	2008  2009  2009	2009  2010  2010
11	18,012 RSF	January 1, 2010	May 1, 2010	Rent Commencement Date – May 31, 2014: \$40.50 per RSF per annum June 1, 2014 – December 31, 2019: \$44.50 per RSF per annum	  2010  2010	  2011  2011

<u>Floor</u>	<u>Floor Square Footage</u>	<u>Anticipated Delivery Date</u>	<u>Anticipated Rent Commencement Date</u>	<u>Base Rental Rate</u>	<u>Base Operating Expense Calendar Year</u>	<u>Base Tax Fiscal Year</u>
10	19,038 RSF	January 1, 2008	January 1, 2008	Rent Commencement Date – May 31, 2009: \$40.50 per RSF per annum June 1, 2009 – May 31, 2014: \$40.50 per RSF per annum June 1, 2014 – December 31, 2019: \$44.50 per RSF per annum	2008 2009 2009 2009	2009 2010 2010 2010
9	20,107 RSF	Initial Premises	Lease Execution	Lease execution – May 31, 2009: \$39.00 per RSF per annum June 1, 2009 – May 31, 2014: \$40.50 per RSF per annum June 1, 2014 – December 31, 2019: \$44.50 per RSF per annum	2007 2009 2009	2007 2010 2010

Exhibit K  
Page 2 of 3

<u>Floor</u>	<u>Floor Square Footage</u>	<u>Anticipated Delivery Date</u>	<u>Anticipated Rent Commencement Date</u>	<u>Base Rental Rate</u>	<u>Base Operating Expense Calendar Year</u>	<u>Base Tax Fiscal Year</u>
8	20,625 RSF	Initial Premises	Lease Execution	Lease execution – May 31, 2009: \$33.00 per RSF per annum	2007	2007
				June 1, 2009 – September 30, 2009: Four month free rent period	2009	2010
				October 1, 2009 – May 31, 2014: \$40.50 per RSF per annum	2009	2010
				June 1, 2014 – December 31, 2019: \$44.50 per RSF per annum	2009	2010

Exhibit K  
Page 3 of 3



EIGHT CAMBRIDGE CENTER  
CAMBRIDGE, MASSACHUSETTS

TABLE OF CONTENTS

LEASE DATED October 1, 2007	1
ARTICLE I	1
Basic Lease Provisions and Enumerations of Exhibits	1
1.1 Introduction	1
1.2 Basic Data	1
1.3 Enumeration of Exhibits	3
ARTICLE II	4
Premises	4
2.1 Demise and Lease of Premises	4
2.2 Intentionally Omitted	4
2.3 Appurtenant Rights and Reservations	4
2.4 Roof Rights	5
ARTICLE III	5
Lease Term and Extension Options	5
3.1 Term	5
3.2 Extension Options	5
ARTICLE IV	6
Condition of Premises; Alterations	6
4.1 Condition of Premises	6
4.2 Quality and Performance of Work	7
4.3 Special Allowance	7
4.4 Signage	10
ARTICLE V	11
Annual Fixed Rent and Electricity	11
5.1 Fixed Rent	11
5.2 Electricity Charges	11
ARTICLE VI	12
Taxes	12
6.1 Introduction	12
6.2 Definitions	12
6.3 Tenant's Share of Real Estate Taxes	13

ARTICLE VII	14
Landlord's Repairs and Services and Tenant's Escalation Payments	14
7.1 Structural Repairs	14
7.2 Other Repairs to be Made by Landlord	14
7.3 Services to be Provided by Landlord	15
7.4 Introduction to Operating Costs	15
7.5 Operating Costs Defined	15
7.6 Tenant's Escalation Payments	19
7.7 No Damage	21
ARTICLE VIII	22
Tenant's Repairs	22
8.1 Tenant's Repairs and Maintenance	22
ARTICLE IX	23
Alterations	23
9.1 Landlord's Approval	23
9.2 Conformity of Work	24
9.3 Performance of Work, Governmental Permits and Insurance	24
9.4 Liens	24
9.5 Nature of Alterations	25
9.6 Increases in Taxes	25
9.7 Alterations Permitted Without Landlord's Consent	26
ARTICLE X	26
Parking	26
10.1 Parking Privileges	26
10.2 Parking Charges	27
10.3 Garage Operation	27
10.4 Reserved Spaces	28
10.5 Limitations	28
10.6 Interim On-Grade Parking	28
ARTICLE XI	29
Certain Tenant Covenants	29
ARTICLE XII	31
Assignment and Subletting	31
12.1 Restrictions on Transfer	31
12.2 Exceptions	31
12.3 Landlord's Termination Right	31
12.4 Consent of Landlord	32
12.5 Tenant's Notice	33
12.6 Profit on Subleasing or Assignment	34
12.7 Additional Conditions	34
12.8 Expedited Dispute Resolution	35
ARTICLE XIII	37
Indemnity And Commercial General Liability Insurance	37
13.1 Indemnity	37
13.2 Commercial General Liability Insurance	37
13.3 Tenant's Property Insurance	38

13.4	Non-Subrogation	38
13.5	Tenant's Risk	38
13.6	Landlord's Insurance	39
ARTICLE XIV		39
Fire, Casualty and Taking		39
14.1	Damage Resulting from Casualty	39
14.2	Uninsured Casualty	40
14.3	Rights of Termination for Taking	40
14.4	Award	41
ARTICLE XV		42
Default		
15.1	Tenant's Default	42
15.2	Termination; Re-Entry	43
15.3	Continued Liability; Re-Letting	43
15.4	Liquidated Damages	44
15.5	Waiver of Redemption	45
15.6	Landlord's Default	45
ARTICLE XVI		45
Miscellaneous Provisions		45
16.1	Waiver	45
16.2	Cumulative Remedies	46
16.3	Quiet Enjoyment	46
16.4	Surrender	46
16.5	Brokerage	46
16.6	Invalidity of Particular Provisions	47
16.7	Provisions Binding, Etc.	47
16.8	Recording; Confidentiality	47
16.9	Notices and Time for Action	47
16.10	When Lease Becomes Binding	48
16.11	Paragraph Headings	48
16.12	Rights of Mortgagee	48
16.13	Rights of Ground Lessor	49
16.14	Notice to Mortgagee and Ground Lessor	49
16.15	Assignment of Rents	50
16.16	Status Report and Financial Statements	50
16.17	Self-Help	51
16.18	Holding Over	51
16.19	Entry by Landlord	52
16.20	Tenant's Payments	52
16.21	Late Payment	53
16.22	Counterparts	53
16.23	Entire Agreement	53
16.24	Limitation of Liability	54
16.25	No Partnership	54
16.26	Security Deposit	54
16.27	Waiver of Trial by Jury	57
16.28	Patriot Act and Executive Order 13224	57
16.29	Governing Law	58
16.30	Emergency Generator	58
16.31	Transportation Program	60
16.32	Landlord Affiliates	60

EIGHT CAMBRIDGE CENTER  
CAMBRIDGE, MASSACHUSETTS

Lease Dated October 1, 2007

THIS INSTRUMENT IS AN INDENTURE OF LEASE in which the Landlord and the Tenant are the parties hereinafter named, and which relates to space in the building (the "Building") known as, and having an address at, Eight Cambridge Center, Cambridge, Massachusetts.

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

ARTICLE I

Basic Lease Provisions and Enumerations of Exhibits

1.1 Introduction

The following sets forth the basic data and identifying Exhibits elsewhere hereinafter referred to in this Lease, and, where appropriate, constitute definitions of the terms hereinafter listed.

1.2 Basic Data

Date:	October 1, 2007
Landlord:	BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership
Present Mailing Address of Landlord:	c/o Boston Properties, Inc. Prudential Tower 800 Boylston Street, Suite 1900 Boston, Massachusetts 02199-8103
Landlord's Construction Representative:	Mark Denman
Tenant:	AKAMAI TECHNOLOGIES, INC., a Delaware corporation
Present Mailing Address of Tenant:	8 Cambridge Center Cambridge, Massachusetts 02142
Tenant's Construction Representative:	Brian Murray
Lease Term (sometimes called the "Original Lease Term"):	One Hundred Twenty Seven (127) calendar months from the Commencement Date until December 31, 2019, unless extended or sooner terminated as hereinafter provided.

Extension Option:	Two (2) periods of five (5) years as provided in and on the terms set forth in Section 3.2 hereof.
Lease Year:	A period of twelve (12) consecutive calendar months, commencing on the first day of January in each year, except that the first Lease Year of the Lease Term hereof shall be the period commencing on the Commencement Date and ending on the succeeding December 31, and the last Lease Year of the Lease Term hereof shall be the period commencing on January 1 of the calendar year in which the Lease Term ends, and ending with the date on which the Lease Term ends.
Commencement Date:	June 1, 2009.
Rent Commencement Date:	Either the Commencement Date or, if Annual Fixed Rent commences to be payable with respect to any Premises Component on a date later than the Commencement Date pertaining thereto pursuant to this Lease, then such later date shall constitute the Rent Commencement Date therefor, unless Tenant shall earlier commence beneficial use of all or any portion of the Premises Component, whereupon such earlier date shall constitute the Rent Commencement Date.
Premises:	The entire first (1 <sup>st</sup> ) through ninth (9 <sup>th</sup> ) floors of the Building, in accordance with the floor plans annexed hereto as Exhibit E and incorporated herein by reference, as further defined and limited in Section 2.1 hereof.
Premises Component:	Any specified portion of the rentable area of the Premises as to which specific terms and conditions of this Lease may apply, but which may not necessarily apply to other portions of the Premises.
Annual Fixed Rent:	See Exhibit K.
Additional Rent:	All charges and other sums payable by Tenant as set forth in this Lease, in addition to Annual Fixed Rent.
Initial Minimum Limits of Tenant's Commercial General Liability:	\$10,000,000.00 combined single limit per occurrence on a per location basis.
Total Rentable Floor Area of the Building:	177,226 square feet.

Lot or Site: All, and also any part of, the property described in Exhibit A, plus any additions or reduction thereto resulting from the change or any abutting street line. The terms Lot and Site are used interchangeably in this instrument.

Property: The Building and Lot or Site.

Loading Dock: The service dock and related driveways providing vehicular service access for the Building as specified by Landlord.

Development Area: The area of the Cambridge Center development, as shown on Exhibit F.

Permitted Use: General office use.

Broker: Jones Lang LaSalle.

Initial Security Deposit Amount: \$3,533,267, subject to Section 16.26.

1.3 Enumeration of Exhibits

The following Exhibits attached hereto are a part of this Lease, are incorporated herein by reference, and are to be treated as a part of this Lease for all purposes. Undertakings contained in such Exhibits are agreements on the part of Landlord and Tenant, as the case may be, to perform the obligations stated therein to be performed by Landlord and Tenant, as and where stipulated therein.

Exhibit A	—	Description of the Site
Exhibit B	—	Rooftop Rights
Exhibit C	—	Form of Lien Waivers
Exhibit D	—	Landlord's Services
Exhibit E	—	Floor Plans
Exhibit F	—	Development Area Map
Exhibit G	—	Form of Commencement Date Agreement
Exhibit H	—	Intentionally Omitted
Exhibit I	—	Broker Determination of Prevailing Market Rent.
Exhibit J	—	Form of Letter of Credit
Exhibit K	—	Schedule of Premises Components, Rent Commencement Dates and Rent Schedule

ARTICLE II

Premises

2.1 Demise and Lease of Premises

Landlord hereby demises and leases to Tenant, and Tenant hereby hires and accepts from Landlord, the Premises in the Building. All of the Premises in the Building shall exclude exterior faces of exterior walls, the common stairways and stairwells, elevators and elevator walls, mechanical rooms, electric and telephone closets, janitor closets, and pipes, ducts, shafts, conduits, wires and appurtenant fixtures serving exclusively or in common other parts of the Building, and if any Premises includes less than the entire rentable area of any floor, shall also exclude the common corridors, elevator lobbies and toilets located on such floor.

2.2 Intentionally Omitted

2.3 Appurtenant Rights and Reservations

Subject to Landlord's right to change or alter any of the following in Landlord's discretion as herein provided, Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others, but during any period that any portion of the Building is leased by any tenant or occupant other than Tenant, not in a manner or extent that would materially interfere with the normal operation and use of the Building as a multi-tenant office building, and in any case subject to reasonable rules of general applicability to tenants of the Building from time to time made by Landlord of which Tenant is given notice: (a) the common lobbies, corridors, stairways, and elevators of the Building, and the pipes, ducts, shafts, conduits, wires and appurtenant meters and equipment serving the Premises in common with others, (b) the Loading Dock and the common walkways and driveways necessary for access to the Building, (c) if the Premises include less than the entire rentable floor area of any floor, the common toilets, corridors and elevator lobby of such floor and (d) common areas within Parcel 3 of the Development Area. Landlord will not unreasonably withhold consent to any request by Tenant to allow Tenant's telecommunication service provider to have access to the Building or to the Premises, provided that Landlord may condition such access, without limitation of the foregoing, on Landlord's approval of the identity of the service provider, its execution of an access and easement agreement satisfactory to Landlord and, during any period that any portion of the Building is leased by any tenant or occupant other than Tenant, should telecommunications services be furnished by such service provider to both Tenant and other tenants and occupants in the Building, then subject to the payment to Landlord by the service provider of fees assessed by Landlord in its reasonable discretion.

Landlord reserves the right from time to time, without unreasonable interference with Tenant's use: (a) to install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building, or either, pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises or the Building, and (b) to alter or relocate any other common facility, provided that substitutions are substantially equivalent or better. Installations, replacements and relocations referred to in clause (a) above shall be located so far as practicable in the central core area of the Building, above ceiling surfaces, below floor surfaces or within perimeter walls of the Premises. Except in the case of emergencies or for normal cleaning and maintenance work, Landlord agrees to use its best efforts to give Tenant reasonable advance notice of any of the foregoing activities which require work in the Premises.

2.4 Roof Rights

Tenant shall have the right at its sole cost and expense, in the area designated by Landlord for Tenant's rooftop equipment as shown on Schedule B-1 to Exhibit B (i.e., the area exclusive of the core area shown on such Schedule B-1), to install, operate and maintain communications equipment, including without limitation a satellite or microwave dish, on the roof of the Building in accordance with the terms and conditions set forth in Exhibit B attached hereto and incorporated herein by reference.

ARTICLE III

Lease Term and Extension Options

3.1 Term

The Term of this Lease shall be the period specified in Section 1.2 hereof as the "Lease Term," unless sooner terminated or extended as herein provided. The Commencement Date of the Lease Term hereof shall be the date set forth in Section 1.2.

3.2 Extension Options

(A) On the conditions (which conditions Landlord may waive by written notice to Tenant) that both at the time of exercise of the herein described option to extend and as of the commencement of the Extended Term in question (i) there exists no monetary or material non-monetary "Event of Default" (defined in Section 15.1), (ii) this Lease is still in full force and effect, (iii) if the Building and the building known as Four Cambridge Center (the "4CC Building"), space within which Tenant is leasing herewith pursuant to a Lease of even date herewith (the "4CC Lease"), are both owned by entities affiliated with Boston Properties Limited Partnership or its successors and assigns or are otherwise affiliated with each other (as defined in Section 16.32), then provided that Tenant is contemporaneously exercising its right to extend the term of its 4CC Lease for a co-terminous period with the Extended Term, and (iv) Tenant has not sublet more than one half (1/2) of the Rentable Floor Area of the Premises (except for subletting permitted without Landlord's consent under Section 12.2 hereof), Tenant shall have the right to extend the Term hereof upon all the same terms, conditions, covenants and agreements herein contained (except for the Annual Fixed Rent and tax and operating cost bases, which shall be adjusted during the option period as hereinbelow set forth and except that there shall be no further option to extend after exercise of Tenant's second five (5) year option to extend) for two (2) periods of five (5) years as hereinafter set forth. Each option period is sometimes herein referred to as an "Extended Term." Notwithstanding any implication to the contrary, Landlord has no obligation to make any additional payment to Tenant in respect of any construction allowance or the like or to perform any work to the Premises as a result of the exercise by Tenant of any such option.

(B) If Tenant desires to exercise said option to extend the Term, then Tenant shall give notice (the "Extension Term Exercise Notice") to Landlord, not earlier than twenty one (21) months nor later than eighteen (18) months prior to the expiration of the Lease Term, exercising such option to extend. Promptly after Landlord's receipt of the Extension Term Exercise Notice, Landlord shall provide Landlord's quotation to Tenant of a proposed annual rent for the Extended Term ("Landlord's Extension Term Rent Quotation"). If at the expiration of thirty (30) days after the date when Landlord provides such quotation to Tenant (the "Extension Term Negotiation Period"), Landlord and Tenant have not reached agreement on a determination of an annual rental for the Extended Term and



executed a written instrument extending the Term of this Lease pursuant to such agreement, then Tenant shall have the right, for thirty (30) days following the expiration of the Extension Term Negotiation Period, to make a request to Landlord for a broker determination (the "Broker Determination") of the Prevailing Market Rent (as defined in Exhibit I) for the Extended Term, which Broker Determination shall be made in the manner set forth in Exhibit I. If Tenant timely shall have requested the Broker Determination, then the Annual Fixed Rent for the Extended Term shall be the Prevailing Market Rent as determined by the Broker Determination. If Tenant does not timely request the Broker Determination, then Annual Fixed Rent during the Extended Term shall be equal to Landlord's Rent Quotation.

(C) If Tenant desires to make a preliminary inquiry as to Landlord's Extension Term Rent Quotation, without giving Extension Term Exercise Notice, then Tenant may give notice ("Extension Term Rent Inquiry Notice") to Landlord, not earlier than twenty two (22) months nor later than nineteen (19) months prior to the expiration of the Lease Term, making such inquiry. Promptly after Landlord's receipt of the Extension Term Rent Inquiry Notice, Landlord shall provide Landlord's Extension Term Rent Quotation to Tenant. If Tenant should thereafter timely give Extension Term Exercise Notice to Landlord, the Extension Term Negotiation Period shall continue until the expiration of thirty (30) days after the date such Extension Term Exercise Notice is given, and the terms and conditions of Section 3.2(B) above shall be applicable.

(D) Base Taxes (as defined in Section 6.2(f)) applicable with respect to any Extended Term shall instead equal Landlord's Tax Expenses for the then current fiscal tax year as of the commencement of such Extended Term. Base Operating Expenses (as defined in Section 7.5) applicable with respect to any Extended Term shall instead equal Operating Expenses for the Property for the calendar year in which such Extended Term commences.

(D) Upon the giving of the Extension Term Exercise Notice by Tenant to Landlord exercising Tenant's option to extend the Lease Term in accordance with the provisions of Section B above, then this Lease and the Lease Term hereof shall automatically be deemed extended, for the Extended Term, without the necessity for the execution of any additional documents, except that Landlord and Tenant agree to enter into an instrument in writing setting forth the Annual Fixed Rent for the Extended Term as determined in the relevant manner set forth in this Section 3.2; and in such event all references herein to the Lease Term or the term of this Lease shall be construed as referring to the Lease Term, as so extended, unless the context clearly otherwise requires, and except that there shall be no further option to extend the Lease Term (after exercise of Tenant's second five (5) year option to extend). Notwithstanding anything contained herein to the contrary, in no event shall Tenant have the right to exercise more than one extension option at a time and, further, Tenant shall not have the right to exercise its second extension option unless it has duly exercised its first extension option and in no event shall the Lease Term hereof be extended for more than ten (10) years after the expiration of the Original Lease Term hereof.

#### ARTICLE IV

##### Condition of Premises; Alterations

#### 4.1 Condition of Premises

(A) Tenant shall accept the Premises in their as-is condition without any obligation on the Landlord's part to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto.

(B) Landlord agrees to spend a minimum of \$175,000 upgrading the lobby of the Building, upon a timetable and in accordance with plans and finishes mutually agreeable to Landlord and Tenant. Landlord shall exercise commercially reasonable efforts to minimize any interruption of Tenant's conduct of business in the Premises in connection with performing such lobby upgrade work.

#### 4.2 Quality and Performance of Work

All construction work required or permitted by this Lease shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and requirements of all public authorities ("Legal Requirements") and all Insurance Requirements (as defined in Section 9.1 hereof). All of Tenant's work shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations. Each party may inspect the work of the other at reasonable times and shall promptly give notice of observed defects. Each party authorizes the other to rely in connection with design and construction upon approval and other actions on the party's behalf by any Construction Representative of the party named in Section 1.2 or any person hereafter designated in substitution or addition by notice to the party relying. Except to the extent to which Tenant shall have given Landlord notice of respects in which Landlord has not performed Landlord's construction obligations under this Article IV with respect to any Premises Component (if any), not later than the end of the twelfth (12<sup>th</sup>) full calendar month next beginning after the Commencement Date with respect to such Premises Component, Tenant shall be deemed conclusively to have approved Landlord's construction with respect to such Premises Component and shall have no claim that Landlord has failed to perform any of Landlord's obligations under this Article IV (if any). Landlord agrees to correct or repair at its expense items which are then incomplete or do not conform to the work contemplated under the Plans and as to which, in either case, Tenant shall have given notice to Landlord, as aforesaid.

#### 4.3 Special Allowance

(A) Landlord shall provide to Tenant, as more particularly provided below, a special allowance (the "Tenant Allowance") for the purpose of defraying a portion of Tenant's costs of making leasehold improvements to the floors of the Building that comprise the Premises (such floors as to which the Tenant Allowance relates being sometimes collectively referred to as the "Tenant Allowance Floors" and individually each a "Tenant Allowance Floor"). The amount of the Tenant Allowance shall be equal, in the aggregate, to the product of (i) \$35.00 and (ii) the Rentable Floor Area of the Tenant Allowance Floors, provided that the availability of the Tenant Allowance for requisition will commence only following the Commencement Date.

(B) The Tenant Allowance shall be used and applied by Tenant, in accordance with the terms of this Lease, solely on account of the cost of leasehold improvement work performed by Tenant eligible to be requisitioned and as defined in Section 4.3(D) below ("Tenant's Work") on the Tenant Allowance Floor of the Building to which such portion of the Tenant Allowance relates, except as expressly set forth below in this Section 4.3(B). The cost of Tenant's Work may include architectural and design fees ("A&D Fees") associated therewith but not in excess of \$5.00 per square foot of Rentable Floor Area ("Design Fees Limit") for each Tenant Allowance Floor. However, provided that Tenant has requisitioned and paid at least \$15.00 per square foot of Rentable Floor Area on account of completed Tenant's Work (exclusive of A&D Fees) on a Tenant Allowance Floor, then the balance of the Tenant Allowance associated with such Tenant Allowance Floor (including without limitation any unused Tenant Allowance that might have been permissibly applied to A&D Fees) may be requisitioned and applied to costs of Tenant Work performed on other Tenant Allowance Floors.

(C) Landlord shall pay, within thirty (30) days after receipt of a complete requisition (as defined in Section 4.3(D) below) submitted by Tenant to Landlord, the requested portion of the Tenant Allowance for the Tenant Allowance Floor in question, as set forth on such requisition, to Tenant, until the entirety of the Tenant Allowance has been applied towards the appropriate components of Tenant's Work on such Tenant Allowance Floor, or otherwise applied as permitted under Section 4.3(B). A separate requisition shall be required for the Tenant Allowance allocated to each Tenant Allowance Floor, which may be applied only as contemplated by this Section 4.3.

(D) For the purposes hereof, a "requisition" shall mean written documentation, together with (i) an AIA requisition form with respect to work performed pursuant to Tenant's construction contract with its general contractor, (ii) invoices from Tenant's service providers, showing in reasonable detail the cost of the item in question or of the improvements installed to date in the Tenant Allowance Floor, (iii) lien waivers in the form attached hereto as Exhibit F-1 (provided that Tenant shall not be required to deliver any lien waivers with respect to any items of work covered by Tenant's first requisition for the Tenant Allowance to the extent Tenant had not paid the service provider(s) at issue prior to the date of such requisition, but Tenant shall deliver the lien waivers and evidence of payment in full of the items of work covered by such first requisition within twenty-one (21) days following the disbursement of the Tenant Allowance with respect to such first requisition) and (iv) certifications from Tenant that the amount of the requisition in question does not exceed the cost of the items, services and work covered by such certification. Such requisition shall be accompanied by evidence reasonably satisfactory to Landlord that the items, services and work covered by such requisition have been fully paid by Tenant. Landlord shall have the right, upon reasonable advance notice to Tenant, to inspect Tenant's books and records relating to each requisition in order to verify the amount thereof. Tenant shall submit requisition(s) no more often than monthly.

Notwithstanding anything contained herein to the contrary:

- (i) Landlord shall have no obligation to advance funds on account of the Tenant Allowance unless and until Landlord has received the requisition in question, together with the certifications required above.
- (ii) Tenant shall not be entitled to any portion of the Tenant Allowance, and Landlord shall have no obligation to pay the Tenant Allowance, in respect of any requisition submitted after the date which is one (1) year from the Commencement Date pertaining to such Tenant Allowance Floor, it being understood and agreed that irrespective of said time period, Tenant shall not be entitled to any payment or credit on account of any unused portions of the Tenant Allowance nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under this Lease; provided, however, that such one (1) year period shall be extended, but in no event for more than twelve (12) additional months, until the date which is sixty (60) days after the date that any litigation with respect to which funding of the Tenant Allowance is withheld under Section 4.3(D)(iii) below is finally resolved.
- (iii) Landlord shall have no obligation to fund any portion of the Tenant Allowance to the extent that (a) at the time of the requisition Tenant is in default under this Lease beyond the expiration of any notice and cure period (it being understood and agreed that if Tenant cures a default prior to the expiration of the applicable cure period, or if Tenant cures a default thereafter and Landlord has not terminated this Lease, Tenant shall be entitled to such payment from Landlord), (b) there are any liens (unless bonded to the reasonable satisfaction of Landlord) filed against Tenant's interest in this Lease or against the Building or the Site arising solely out of the Tenant Work or (c) there is any litigation in which Tenant is a party relating to the Tenant Work; provided, however, that the amount held back under the foregoing

clause (c) shall not exceed two hundred percent (200%) of the amount of the claim against Tenant under the applicable litigation; and provided further, however, that the amount so held back shall be paid to Tenant upon such time as the litigation is finally resolved, subject to the time limitation set forth in clause (ii) above.

- (iv) For each requisition associated with a Tenant Allowance Floor submitted by Tenant hereunder, Landlord shall only be required to disburse a portion of the Tenant Allowance associated with such floor towards the total costs set forth on each such requisition pertaining to such Tenant Allowance Floor in an amount equal to the same proportion as the total portion of the Tenant Allowance allocated by Tenant (within the limitation established by Section 4.3(B)) bears to the total costs of Tenant's Work reasonably budgeted for by Tenant towards which the Tenant Allowance may be applied (with Tenant being fully and solely responsible for the remainder of the amount shown in the requisition). Notwithstanding the foregoing, if upon completion of the Tenant's Work, the total costs of Tenant's Work equals or exceeds the total amount of the Tenant Allowance, then Landlord shall pay the unpaid balance of the Tenant Allowance to Tenant within thirty (30) days after Tenant's final requisition therefor.
- (v) By way of example of the calculation set forth in clause (iv) above, if the total Tenant Allowance for the floor at issue equals \$35.00 per square foot of Rentable Floor Area, and the total costs of Tenant's Work associated with such floor is \$70.00 per square foot of Rentable Floor Area, then the ratio of the total allocable Tenant Allowance to the total costs of Tenant's Work would be 1:2, and if Tenant submitted a requisition for \$300,000.00, Landlord would be required to disburse \$150,000.00 of the Tenant Allowance on account of such requisition and Tenant would be responsible for the remaining \$150,000.00. Also, by way of example, if by virtue of Tenant's reallocating Tenant Allowance from another Tenant Allowance Floor, due to the fact that the cost of Tenant's Work on such floor will equal only \$15.00 per square foot of Rentable Floor Area, with the result that Tenant's Allowance allocable to the Tenant Allowance Floor at issue is increased by Tenant to \$55.00 per square foot of Rentable Floor Area, then if the total costs of Tenant's Work associated with the floor at issue is \$70.00 per square foot of Rentable Floor Area, the ratio of the total allocable Tenant Allowance to the total costs of Tenant's Work would be 55:70, and if Tenant submitted a requisition for \$300,000.00, Landlord would be required to disburse \$235,714.29 of the Tenant Allowance on account of such requisition and Tenant would be responsible for the remaining \$64,285.71.
- (vi) In no event shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen on account of the Tenant Work.

(E) For the purposes hereof, the cost of Tenant's Work to be so reimbursed by Landlord shall include the cost of leasehold improvements but not the cost of any of Tenant's personal property, trade fixtures or trade equipment, moving expenses or any so-called soft costs except for architectural and design fees not exceeding the Design Fees Limit. Notwithstanding the foregoing, Landlord shall be under no obligation to apply any portion of the Tenant Allowance for any purposes other than as provided in this Section, nor shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen. Further, in no event shall Landlord be required to make application of any portion of the Tenant Allowance on account of any supervisory fees, overhead, management fees or other payments to Tenant, or any partner or affiliate of Tenant. In the event that such cost of Tenant's Work is less than the Tenant

Allowance, Tenant shall not be entitled to any payment or credit nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under this Lease. Landlord shall be entitled to deduct from the Tenant Allowance an amount equal to the sum of: (i) \$150/hour for time spent by senior staff, and \$100/hour for time spent by junior staff, which shall be limited, however, to a maximum of \$2,500 per floor, plus (ii) reasonable third party expenses incurred by Landlord to review Tenant's plans and Tenant's Work, as shown by evidence reasonably satisfactory to Tenant.

#### 4.4 Signage

(A) Landlord shall provide Tenant with signage in all tenant directories in the Building and at the entrance to the Premises consistent with Landlord's standard signage criteria.

(B) Tenant shall be permitted, at Tenant's expense, to erect lobby identification signage, containing Tenant's name, in a location proximate to the main entrance to the lobby designated by Landlord in its reasonable discretion. In addition, the design, proportions and color of such signage shall be subject to the prior approval of Landlord, which approval shall not be unreasonably withheld, and shall be further subject to applicable zoning requirements and any other applicable laws, and to Tenant obtaining all necessary permits and approvals therefor. In the event Tenant subsequently assigns this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2) or reduces the size of the Premises hereunder so that Tenant no longer leases from Landlord at least four (4) full floors of the Building and occupies at least two (2) full floors in the Building, Tenant agrees that it shall remove such signage at Tenant's expense. This right is personal to the named tenant herein and it is not assignable or sublettable.

(C) Tenant shall be permitted, at Tenant's expense, to maintain, repair and replace subject to the terms and conditions of this Lease (as if the area in question were a portion of the Premises) the existing westerly-facing façade identification sign that is situated atop the Building, and erect a new easterly-facing façade identification sign atop the Building having the same design, subject to applicable zoning requirements and any other applicable laws, and to Tenant obtaining all necessary permits and approvals therefor. In the event Tenant subsequently assigns this Lease (except for an assignment permitted without Landlord's consent pursuant to Section 12.2) or reduces the size of the Premises hereunder or its occupancy of its Premises so that Tenant no longer leases from Landlord at least fifty percent (50%) of the Total Rentable Floor Area of the Building, Tenant agrees that it shall remove such signage at Tenant's expense. Tenant's right to identification signage visible outside of the Building is exclusive so long as Tenant continues to lease the Total Rentable Floor Area of the Building. Tenant's rights under this Section 4.4(C) are personal to the named tenant herein and it is not assignable or sublettable.

(D) For so long as Tenant shall have the signage rights referred to in Section 4.4(C) above, Tenant's signage as aforesaid shall be the exclusive right to tenant identification on the exterior of the Building (or the lobby of the Building to the extent designed to be visible to pedestrians outside of the Building), but such exclusivity shall continue only so long as no other tenant in the Building leases from Landlord more space in the Building than Tenant.

(E) Tenant shall install no other signage in the Building except as may be otherwise permitted to be installed in the Premises pursuant to the terms and conditions of this Lease.

ARTICLE V

Annual Fixed Rent and Electricity.

5.1 Fixed Rent

Tenant agrees to pay to Landlord, or as directed by Landlord, at Landlord's Present Mailing Address specified in Section 1.2 hereof, or at such other place as Landlord shall from time to time designate by notice, (1) on the Rent Commencement Date, and thereafter monthly, in advance, on the first day of each and every calendar month during the Original Lease Term, a sum equal to one-twelfth (1/12<sup>th</sup>) of the Annual Fixed Rent specified in Section 1.2 hereof, and (2) on the first day of each and every calendar month during each Extended Term (if exercised), a sum equal to one-twelfth of the Annual Fixed Rent as determined in Section 3.2 for the Extended Term. Until notice of some other designation is given, fixed rent and all other charges for which provision is herein made shall be paid by remittance to or for the order of Boston Properties Limited Partnership either (i) by mail to P.O. Box 3557, Boston, Massachusetts 02241-3557, (ii) by wire transfer to Bank of America in Dallas, Texas, Bank Routing Number 0260-0959-3 or (iii) by ACH transfer to Bank of America in Dallas, Texas, Bank Routing Number 111 000 012, and in the case of (ii) or (iii) referencing Account Number 3756454460, Account Name of Boston Properties, LP, Tenant's name and the Property address. All remittances received by BOSTON PROPERTIES LIMITED PARTNERSHIP, as Agents as aforesaid, or by any subsequently designated recipient, shall be treated as a payment to Landlord.

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

If any Rent Commencement Date shall be established by virtue of Tenant's beneficial occupancy of a Premises Component, then Landlord and Tenant agree to join with each other in the execution, in the form of Exhibit G hereto, of a written Declaration in which the Rent Commencement Date with respect to such Premises Component shall be stated. If Tenant shall fail to execute such Declaration, such Rent Commencement Date shall be as reasonably determined by Landlord in accordance with the terms of this Lease.

Additional Rent payable by Tenant on a monthly basis, as elsewhere provided in this Lease, likewise shall be prorated, and the first payment on account thereof shall be determined in similar fashion and shall commence on the Rent Commencement Date and other provisions of this Lease calling for monthly payments shall be read as incorporating this undertaking by Tenant.

The Annual Fixed Rent and all other charges for which provision is made in this Lease shall be paid by Tenant to Landlord without setoff, deduction or abatement except as expressly otherwise provided in this Lease.

5.2 Electricity Charges

Tenant shall establish an account directly with the utility company or provider and shall make payment, not later than the due date therefor, of all charges associated with the building main meter and otherwise relating to the furnishing of electricity to the Building. Tenant shall provide to Landlord from time to time, promptly following Landlord's request therefor, evidence of payment to, and good standing with, such utility company or provider as Landlord may reasonably require. Tenant further covenants and agrees to defend, save harmless and indemnify Landlord against all liability, cost and damage arising out of or in any way connected to the payment, nonpayment or late payment of any charges or deposits to such utility company or provider. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE VI

Taxes

6.1 Introduction

It is intended that this Article VI set forth the methodology for fulfillment of Tenant's obligation to contribute its allocable share of the amount by which Landlord's Tax Expenses (as hereinafter defined) exceed Base Taxes (as hereinafter defined). Due to the fact that the Premises is comprised of a number of Premises Components, some of which have different Base Taxes allocable thereto, Tenant's obligations under this Article VI must be calculated for each such Premises Component, and then aggregated, so that the appropriate Tax Excess (as hereinafter defined) can be established, as more particularly set forth below.

6.2 Definitions

With reference to the real estate taxes referred to in this Article VI, it is agreed that terms used herein are defined as follows:

- (a) "Tax Year" means the 12-month period beginning July 1 each year during the Lease Term or if the appropriate Governmental tax fiscal period shall begin on any date other than July 1, such other date.
- (b) "Landlord's Tax Expenses Allocable to the Premises" means the aggregate of Landlord's Tax Expenses allocable to all of the Premises Components which collectively comprise the Premises.
- (c) "Landlord's Tax Expenses Allocable to a Premises Component" means the same proportion of Landlord's Tax Expenses as Rentable Floor Area of the Premises Component bears to the Total Rentable Floor Area of the Building.
- (d) "Landlord's Tax Expenses" with respect to any Tax Year means the aggregate "real estate taxes" (hereinafter defined) with respect to that Tax Year, reduced by any net abatement receipts with respect to that Tax Year.
- (e) "Real estate taxes" means all taxes and special assessments of every kind and nature and user fees and other like fees assessed by any Governmental authority on the Site or the Building or the Property which the Landlord shall be obligated to pay because of or in connection with the ownership, leasing and operation of the Site and the Building (including without limitation, if applicable, the excise prescribed by Mass Gen Laws (Ter Ed) Chapter 121A, Section 10 and amounts in excess thereof paid to the City of Cambridge pursuant to agreement between Landlord and the City) and reasonable expenses of and fees for any formal or informal proceedings for negotiation or abatement of taxes (collectively, "Abatement Expenses"), which Abatement Expenses shall be excluded from Base Taxes. The amount of special taxes or special assessments to be included shall be limited to the amount of the installment (plus any interest other than penalty interest payable thereon) of such

special tax or special assessment required to be paid during the year in respect of which such taxes are being determined. There shall be excluded from such taxes all income, estate, succession, inheritance and transfer taxes; provided, however, that if at any time during the Lease Term the present system of ad valorem taxation of real property shall be changed so that in lieu of, or in addition to, the whole or any part of the ad valorem tax on real property, there shall be assessed on Landlord a capital levy or other tax on the gross rents received with respect to the Site or Building, or a Federal, State, County, Municipal, or other local income, franchise, excise or similar tax, assessment, levy or charge (distinct from any now in effect in the jurisdiction in which the Property is located) measured by or based, in whole or in part, upon any such gross rents, then any and all of such taxes, assessments, levies or charges, to the extent so measured or based, shall be deemed to be included within the term "real estate taxes" but only to the extent that the same would be payable if the Site or Building were the only property of Landlord. Notwithstanding the foregoing, "real estate taxes" shall not include and Tenant shall not be required to pay any portion of any tax or assessment expense or any increase therein (a) levied on Landlord's rental income, unless such tax or assessment is imposed in lieu of real property taxes as set forth above; (b) in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term; or (c) imposed on land and improvements other than the Site.

- (f) "Base Taxes," when referring to the applicable Premises Component, means Landlord's Tax Expenses (hereinbefore defined) for the Tax Year that Exhibit K specifies as the base fiscal tax year for such Premises Component.
- (g) "Base Taxes Allocable to a Premises Component" means the same proportion of Base Taxes for the Premises Component as the Rentable Floor Area of such Premises Component bears to the Total Rentable Floor Area of the Building. The foregoing calculation shall not entitle Landlord to collect, from Tenant if Tenant is the sole tenant of the Building, or otherwise collectively from all of the tenants of the Building, an amount exceeding one hundred percent (100%) of Landlord's Tax Expenses incurred by Landlord with respect to the pertinent Tax Year (any collected amount exceeding 100% of Landlord's Tax Expenses with respect to any such Tax Year being referred to herein as "Tax Collection Surplus"), and Landlord shall, except with respect to Base Taxes, credit any Tax Collection Surplus against the aggregate of Landlord's Tax Expenses incurred with respect to such Tax Year, which shall reduce the same for all purposes hereunder.
- (h) "Base Taxes Allocable to the Premises" means the aggregate of Base Taxes Allocable to a Premises Component for all of the Premises Components which collectively comprise the Premises.
- (i) If during the Lease Term the Tax Year is changed by applicable law to less than a full 12-month period, the Base Taxes and Base Taxes Allocable to the Premises shall each be proportionately reduced.

### 6.3 Tenant's Share of Real Estate Taxes

If with respect to any full Tax Year or fraction of a Tax Year falling within the Lease Term Landlord's Tax Expenses Allocable to the Premises for a full Tax Year exceed Base Taxes Allocable to the Premises or for any such fraction of a Tax Year exceed the corresponding fraction of Base Taxes Allocable to the Premises (such amount being hereinafter referred to as the "Tax Excess"), then



Tenant shall pay to Landlord, as Additional Rent, the amount of such Tax Excess. Payments by Tenant on account of the Tax Excess shall be made monthly at the time and in the fashion herein provided for the payment of Annual Fixed Rent. The amount so to be paid to Landlord shall be an amount from time to time reasonably estimated by Landlord to be sufficient to provide Landlord, in the aggregate, a sum equal to the Tax Excess, ten (10) days at least before the day on which tax payments by Landlord would become delinquent. Not later than ninety (90) days after Landlord's Tax Expenses Allocable to the Premises are determinable for the first such Tax Year or fraction thereof and for each succeeding Tax Year or fraction thereof during the Lease Term, Landlord shall render Tenant a statement in reasonable detail certified by a representative of Landlord showing for the preceding year or fraction thereof, as the case may be, real estate taxes on the Building and Lot, abatements and refunds, if any, of any such taxes and assessments, expenditures incurred in seeking such abatement or refund, the amount of the Tax Excess, the amount thereof already paid by Tenant and the amount thereof overpaid by, or remaining due from Tenant for the period covered by such statement. Within thirty (30) days after the receipt of such statement, Tenant shall pay any sum remaining due. Any balance shown as due to Tenant shall be credited against Annual Fixed Rent next due, or refunded to Tenant if the Lease Term has then terminated or expired and Tenant has no further obligation to Landlord. Expenditures for legal fees and for other expenses incurred in obtaining an abatement or refund may be charged against the abatement or refund before the adjustments are made for the Tax Year.

To the extent that real estate taxes shall be payable to the taxing authority in installments with respect to periods less than a Tax Year, the statement to be furnished by Landlord shall be rendered and payments made on account of such installments.

## ARTICLE VII

### Landlord's Repairs and Services and Tenant's Escalation Payments

#### 7.1 Structural Repairs

Except for (a) normal and reasonable wear and use and (b) damage caused by fire or casualty and by eminent domain, Landlord shall, throughout the Lease Term, at Landlord's sole cost and expense, keep and maintain in good order, condition and repair the following portions of the Building: the structural portions of the roof, the exterior and load bearing walls, the foundation, the structural columns and floor slabs and other structural elements of the Building; provided however, that Tenant shall pay to Landlord, as Additional Rent, the cost of any and all such repairs which may be required as a result of repairs, alterations, or installations made by Tenant or any subtenant, assignee, licensee or concessionaire of Tenant or any agent, servant, employee or contractor of any of them or to the extent of any loss, destruction or damage caused by the omission or negligence of Tenant, any assignee or subtenant or any agent, servant, employee, customer, visitor or contractor of any of them.

#### 7.2 Other Repairs to be Made by Landlord

Except for (a) normal and reasonable wear and use and (b) damage caused by fire or casualty and by eminent domain, and except as otherwise provided in this Lease and subject to provisions for reimbursement by Tenant as contained in Section 7.5, Landlord agrees to keep and maintain in good order, condition and repair the common areas and facilities of the Building, including heating, ventilating, air conditioning, plumbing and other Building systems equipment servicing the Premises (including all lines, pipes, wires, conduits and the like except to the extent serving the Premises exclusively), except that Landlord shall in no event be responsible to Tenant for (a) the condition of

glass in and about the Premises (other than for glass in exterior walls for which Landlord shall be responsible unless the damage thereto is attributable to Tenant's negligence or misuse, in which event the responsibility therefor shall be Tenant's), or (b) for any condition in the Premises or the Building caused by any act or neglect of Tenant or any agent, employee, contractor, assignee, subtenant, licensee, concessionaire or invitee of Tenant. Without limitation, Landlord shall not be responsible to make any improvements or repairs to the Building or the Premises other than as expressly provided in Section 7.1 or in this Section 7.2, unless expressly otherwise provided in this Lease.

### 7.3 Services to be Provided by Landlord

In addition, and except as otherwise provided in this Lease and subject to provisions for reimbursement by Tenant as contained in Section 7.6 and Tenant's responsibilities in regard to electricity as provided in Section 5.2, Landlord agrees to furnish services, utilities, facilities and supplies set forth in Exhibit D hereto equal in quality comparable to those customarily provided by landlords in high quality buildings in Cambridge. In addition, Landlord agrees to furnish, at Tenant's expense, reasonable additional Building operation services which are usual and customary in similar buildings in Cambridge, and such additional special services as may be mutually agreed upon by Landlord and Tenant, upon reasonable and equitable rates from time to time established by Landlord. Tenant agrees to pay to Landlord, as Additional Rent, the cost of any such additional Building services requested by Tenant and for the cost of any additions, alterations, improvements or other work performed by Landlord in the Premises at the request of Tenant within thirty (30) days after being billed therefor.

### 7.4 Introduction to Operating Costs

It is intended that, based on calculations guided by the definitions set forth in Section 7.5 below, Section 7.6 shall provide for Tenant to be financially responsible for its allocable share of the amount by which Operating Expenses (as hereinafter defined) exceed Base Operating Expenses (as hereinafter defined). Due to the fact that the Premises is comprised of a number of Premises Components, some of which have different Base Operating Expenses allocable thereto, Tenant's obligations under Sections 7.5 and 7.6 must be calculated for each such Premises Component, and then aggregated, so that the appropriate Operating Cost Excess (as hereinafter defined) can be established, as more particularly set forth below.

### 7.5 Operating Costs Defined

"Operating Expenses Allocable to the Premises" means the aggregate of Operating Expenses Allocable to all of the Premises Components which collectively comprise the Premises. "Operating Expenses Allocable to a Premises Component" means the same proportion of the Operating Expenses for the Property as Rentable Floor Area of the Premises Component, bears to the Total Rentable Floor Area of the Building. "Base Operating Expenses" means Operating Expenses for the Property (as hereinafter defined) for the calendar year that is the period beginning January 1 and ending December 31 that Exhibit K specifies as the base escalation year for such Premises Component. Base Operating Expenses shall not include market-wide cost increases due to extraordinary circumstances, including but not limited to, Force Majeure (as defined in Section 14.1), boycotts, strikes, conservation surcharges, embargoes or shortages which apply only to the Base Year but no other year, other than the year immediately prior to the Base Year or the year immediately following the Base Year. "Base Operating Expenses Allocable to a Premises Component" means the same proportion of Base Operating Expenses as the Rentable Floor Area of the Premises Component bears to the Total Rentable Floor Area of the Building. "Base Operating Expenses Allocable to the Premises" means the aggregate of Base Operating Expenses allocable to all of the Premises Components which collectively comprise the Premises. "Operating Expenses for the Property" means the cost of operation of the

Property incurred by Landlord, including those incurred in discharging Landlord's obligations under Sections 7.2 and 7.3. The foregoing calculations shall not entitle Landlord to collect, from Tenant if Tenant is the sole tenant of the Building, or otherwise collectively from all of the tenants of the Building, an amount exceeding one hundred percent (100%) of the Operating Expenses for the Property incurred by Landlord with respect to the pertinent calendar year (any collected amount exceeding 100% of Operating Expenses with respect to any calendar year being referred to herein as "Operating Expense Collection Surplus"), and Landlord shall, except with respect to Base Operating Expenses, credit any Operating Expense Collection Surplus against the aggregate of Operating Expenses incurred with respect to such calendar year, which shall reduce the same for all purposes hereunder. Such costs shall exclude payments of debt service and any other mortgage or ground lease charges, brokerage commissions, real estate taxes (to the extent paid pursuant to Section 6.2 hereof), and costs of special services rendered to tenants (including Tenant) for which a separate charge is made, but shall include, without limitation:

- (a) compensation, wages and all fringe benefits, worker's compensation insurance premiums and payroll taxes paid to, for or with respect to all persons for their services in the operating, maintaining or cleaning of the Building or the Site;
- (b) payments under service contracts with independent contractors for operating, maintaining or cleaning of the Building or the Site;
- (c) steam, water, sewer, gas, oil, electricity and telephone charges (excluding such utility charges separately chargeable to tenants for additional or separate services and electricity charges paid by Tenant in the manner set forth in Section 5.2) and costs of maintaining letters of credit or other security as may be required by utility companies as a condition of providing such services;
- (d) cost of maintenance, cleaning and repairs (other than repairs not properly chargeable against income or reimbursed from contractors under guarantees);
- (e) cost of snow removal and care of landscaping;
- (f) cost of building and cleaning supplies and equipment;
- (g) premiums for insurance carried with respect to the Property (including, without limitation, liability insurance, insurance against loss in case of fire or casualty and of monthly installments of Annual Fixed Rent and any Additional Rent which may be due under this Lease and other leases of space in the Building for not more than twelve (12) months in the case of both Annual Fixed Rent and Additional Rent and, if there be any first mortgage on the Property, including such insurance as may be required by the holder of such first mortgage);
- (h) management fees which (i) with respect to any period during which the Building is self-managed, shall be at reasonable rates based upon a percentage of gross rental income from the Building (the "Management Fee Percentage") for self managed buildings consistent with the type of occupancy and the services rendered (provided that the Management Fee Percentage used as the basis for calculation of the management fee for self-management during any period shall not exceed the Management Fee Percentage used as the basis for calculation of the management fee for self-management during the applicable Base Year), and (ii) with respect to any period during which the Building's management is furnished by an "outside" manager, at rates consistent with what are then arm's-length negotiated management

fees for similar buildings consistent with the type of occupancy and the services rendered, provided that whichever of the foregoing of clauses (i) or (ii) is applicable in the calendar year with respect to which Operating Expenses are being measured, the same Management Fee Percentage used with respect to each such calendar year shall also be applicable with respect to Base Operating Expenses, and if necessary, the Management Fee Percentage with respect to Base Operating Expenses shall be recalculated accordingly so that the Management Fee Percentage that is the basis for any calculation of management fees shall be identical for both Base Operating Expenses and the Operating Expenses calculated for the comparison calendar year, and consequently any increase or decrease in such percentage shall not be the basis for an inflated or deflated Operating Expense Excess;

- (i) The Building's "Proportionate Share" of the costs of maintaining and repairing the Loading Dock and other common areas and facilities within Parcel 3 of the Development Area for use of tenants of the Building in common with tenants of other buildings in the Development Area, for which purpose the Building's Proportionate Share shall be a fraction, the numerator of which shall be the Rentable Floor Area of the Building and the denominator of which shall be the sum of (x) the Rentable Floor Area of the Building and (y) the rentable floor area of the other buildings in Parcel 3 of the Development Area;
- (j) depreciation for capital expenditures made by Landlord during the Lease Term (x) to reduce Operating Expenses if Landlord reasonably shall have determined that the annual reduction in Operating Expenses shall exceed depreciation therefor or (y) to comply with applicable Legal Requirements or (z) to maintain the Building in a quality comparable to that of other high quality office buildings owned and operated by non-institutional landlords ("institutional" landlords meaning colleges, universities, hospitals and the like) in the Boston/Cambridge metropolitan area (the capital expenditures described in subsections (x), (y) and (z) being hereinafter referred to as "Permitted Capital Expenditures") plus, in the case of (x), (y) and (z), an interest factor, reasonably determined by Landlord, as being the interest rate then charged for long term mortgages by institutional lenders on like properties within the general locality in which the Building is located, and depreciation in the case of (x), (y) and (z) shall be determined by dividing the original cost of such capital expenditure by the number of years of useful life of the capital item acquired, which useful life shall be determined reasonably by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item; and
- (k) all other reasonable and necessary expenses paid in connection with the operating, cleaning and maintenance of the Building, the Site and said common areas and facilities and properly chargeable against income.

Notwithstanding the foregoing, the following shall be excluded from Operating Expenses for the Property:

- (i) All capital expenditures and depreciation, except as otherwise explicitly provided in this Section 7.5;
- (ii) Interest on indebtedness, debt amortization, ground rent, and refinancing costs for any mortgage or ground lease of the Building or the Property;

- (iii) Legal, auditing, consulting and professional fees and other costs (other than those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Property), including, without limitation, those: (i) paid or incurred in connection with financings, refinancings or sales of any Landlord's interest in the Building or the Property, (ii) relating to any special reporting required by securities laws, (iii) relating to disputes with tenants or (iv) relating to litigation;
- (iv) The cost of any item or service to the extent reimbursed or reimbursable to Landlord by insurance required to be maintained under this Lease or by any third party;
- (v) The cost of repairs or replacements incurred by reason of fire or other casualty or condemnation other than costs not in excess of the deductible on any insurance maintained by Landlord which provides a recovery for such repair or replacement;
- (vi) Any advertising, promotional or marketing expenses for the Building;
- (vii) The cost of any service or materials provided by any party related to Landlord (other than the management fee), which shall be subject to the terms and provisions of Section 7.5(h) above), to the extent such costs exceed the reasonable cost for such service or materials absent such relationship in buildings similar to the Building in the vicinity of the Building;
- (viii) Payments for rented equipment, the cost of which equipment would constitute a capital expenditure if the equipment were purchased to the extent that such payments exceed the amount which could have been included in Operating Expenses for the Property had Landlord purchased such equipment rather than leasing such equipment;
- (ix) Penalties, damages, and interest for late payment or violations of any obligations of Landlord, including, without limitation, taxes, insurance, equipment leases and other past due amounts;
- (x) Contributions to charitable organizations;
- (xi) The cost of testing, remediation or removal of "Hazardous Materials" (as defined in Section 12.2) in the Building or on the Site required by "Hazardous Materials Laws" (as defined in Section 12.2), provided however, that with respect to the testing, remediation or removal of any material or substance which, as of the Commencement Date was not considered, as a matter of law, to be a Hazardous Material, but which is subsequently determined to be a Hazardous Material as a matter of law, the costs thereof shall be included in Operating Expenses for the Property;
- (xii) Wages, salaries, or other compensation paid to any executive employees above the grade of Building manager; and

(xiii) The net (i.e. net of the reasonable costs of collection) amount recovered by Landlord under any warranty or service agreement from any contractor or service provider shall be credited against Operating Expenses for the Property.

Notwithstanding the foregoing, in determining the amount of Operating Expenses for the Property for any calendar year or portion thereof falling within the Lease Term (including, without limitation, any Base Year applicable to a Premises Component), if less than one hundred percent (100%) of the Total Rentable Floor Area of the Building shall have been occupied at any time during the period in question, then those components of Operating Expenses for the Property that vary based on occupancy for such period shall be adjusted to equal the amount such components of Operating Expenses for the Property would have been for such period had occupancy been one hundred percent (100%) throughout such period.

#### 7.6 Tenant's Escalation Payments

(A) If with respect to any calendar year falling within the Lease Term, or fraction of a calendar year falling within the Lease Term at the beginning or end thereof, the Operating Expenses Allocable to the Premises (as defined in Section 7.4) for a full calendar year exceed Base Operating Expenses Allocable to the Premises (as defined in Section 7.4) or for any such fraction of a calendar year exceed the corresponding fraction of Base Operating Expenses Allocable to the Premises (such amount being hereinafter referred to as the "Operating Cost Excess"), then Tenant shall pay to Landlord, as Additional Rent, on or before the thirtieth (30<sup>th</sup>) day following receipt by Tenant of the statement referred to below in this Section 7.5, the amount of such excess. Base Operating Expenses (as defined in Section 7.4) do not include the tenant electricity to be paid by Tenant as part of the Annual Fixed Rent. However, if and so long as Landlord is not allocating the cost of electricity among tenants of the Building in accordance with Exhibit H, then the Base Operating Expenses shall be increased by Landlord's estimate of electrical costs for the Building.

(B) Payments by Tenant on account of the Operating Cost Excess shall be made monthly at the time and in the fashion herein provided for the payment of Annual Fixed Rent. The amount so to be paid to Landlord shall be an amount from time to time reasonably estimated by Landlord to be sufficient to cover, in the aggregate, a sum equal to the Operating Cost Excess for each calendar year during the Lease Term.

(C) No later than one hundred twenty (120) days after the end of the first calendar year or fraction thereof ending December 31 and of each succeeding calendar year during the Lease Term or fraction thereof at the end of the Lease Term, Landlord shall render Tenant a statement in reasonable detail and according to usual accounting practices certified by a representative of Landlord, showing for the preceding calendar year or fraction thereof, as the case may be, the Operating Expenses for the Property and the Operating Expenses Allocable to the Premises. Said statement to be rendered to Tenant also shall show for the preceding year or fraction thereof, as the case may be, the amounts already paid by Tenant on account of Operating Cost Excess and the amount of Operating Cost Excess remaining due from, or overpaid by, Tenant for the year or other period covered by the statement.

If such statement shows a balance remaining due to Landlord, Tenant shall pay same to Landlord on or before the thirtieth (30<sup>th</sup>) day following receipt by Tenant of said statement. Any balance shown as due to Tenant shall be credited against Annual Fixed Rent next due, or refunded to Tenant if the Lease Term has then expired and Tenant has no further obligation to Landlord.

Any payment by Tenant for the Operating Cost Excess shall not be deemed to waive any rights of Tenant to claim that the amount thereof was not determined in accordance with the provisions of this Lease.

(D) Subject to the provisions of this paragraph, Tenant shall have the right, at Tenant's cost and expense, to examine all documentation and calculations prepared in the determination of Operating Cost Excess:

- (1) Such documentation and calculation shall be made available to Tenant at the offices where Landlord keeps such records during normal business hours within a reasonable time after Landlord receives a written request from Tenant to make such examination.
- (2) Tenant shall have the right to make such examination no more than once in respect of any period for which Landlord has given Tenant a statement of the actual amount of Operating Expenses.
- (3) Except as provided by the last sentence of this Section 7.6, any request for examination in respect of any calendar year may be made no more than one hundred eighty (180) days after Landlord advises Tenant in writing of the actual amount of Operating Expenses in respect of such calendar year and provides to Tenant the year-end statement required under Paragraph C of this Section 7.6.
- (4) In no event shall Tenant utilize the services of any examiner who is being paid by Tenant on a contingent fee basis.
- (5) As a condition to performing any such examination, Tenant and its examiners shall be required to execute and deliver to Landlord an agreement, in form reasonably acceptable to Landlord, agreeing to keep confidential any information which it discovers about Landlord or the Building in connection with such examination, provided however, that Tenant shall be permitted to share such information with each of its permitted subtenants so long as such subtenants execute and deliver to Landlord similar confidentiality agreements.
- (6) If, after the audit by Tenant of Landlord's books and records pursuant to this Section 7.6 with respect to any calendar year, it is finally determined that: (i) Tenant has made an overpayment on account of Operating Expenses Allocable to the Premises, Landlord shall credit such overpayment against the next installment(s) of Annual Fixed Rent thereafter payable by Tenant, except that if such overpayment is determined after the termination or expiration of the term of this Lease, Landlord shall promptly refund to Tenant the amount of such overpayment less any amounts then due from Tenant to Landlord; and (ii) Tenant has made an underpayment on account of Operating Expenses Allocable to the Premises, Tenant shall, within forty-five (45) days of such determination, pay such underpayment to Landlord.
- (7) If, after any such audit is performed, it is finally determined that Tenant has been overcharged on account of Operating Cost Excess by more than three percent (3%) for the calendar year in question, Landlord shall reimburse Tenant for the reasonable third-party costs incurred by Tenant in performing such audit.

Landlord shall have no right to correct any year end Operating Cost Excess statement with respect to any calendar year after the date two (2) years after the end of the calendar year in question. Notwithstanding any provision hereof to the contrary, if Landlord provides Tenant with any such corrected statement, then Tenant shall have one hundred eighty (180) days from the receipt of any such corrected statement to request an examination as set forth in Section 7.6(D)(3) hereof.

7.7 No Damage

(A) Landlord shall not be liable to Tenant for any compensation or reduction of rent by reason of inconvenience or annoyance or for loss of business arising from the necessity of Landlord or its agents entering the Premises for any purposes in this Lease authorized, or for repairing the Premises or any portion of the Building however the necessity may occur. In case Landlord is prevented or delayed from making any repairs, alterations or improvements, or furnishing any services or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause reasonably beyond Landlord's control, including, without limitation, strike, lockout, breakdown, accident, order or regulation of or by any Governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, or for any cause due to any act or neglect of Tenant or Tenant's servants, agents, employees, licensees or any person claiming by, through or under Tenant, Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in this Lease, shall Tenant be entitled to any abatement or reduction of rent by reason thereof, or right to terminate this Lease, nor shall the same give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the Premises.

(B) Landlord reserves the right to stop any service or utility system, when necessary by reason of accident or emergency, or until necessary repairs have been completed; provided, however, that in each instance of stoppage, Landlord shall exercise reasonable diligence to eliminate the cause thereof. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

(C) Notwithstanding anything to the contrary in this Lease contained, if due to (i) any repairs, alterations, replacements, or improvements made by Landlord, (ii) Landlord's failure to make any repairs, alterations, or improvements required to be made by Landlord hereunder, or to provide any service required to be provided by Landlord hereunder, or (iii) failure of electric supply, any portion of the Premises becomes untenable so that for the Premises Untenantability Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant's business is materially adversely affected, then, provided that Tenant ceases to use the affected portion of the Premises during the entirety of the Premises Untenantability Cure Period by reason of such untenability, and that such untenability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant's agents, employees or contractors, Annual Fixed Rent, Tax Excess and Operating Cost Excess shall thereafter be abated in proportion to such untenability and its impact on the continued operation in the ordinary course of Tenant's business until the day such condition no longer has the material adverse effect referred to above. For the purposes hereof, the "Premises Untenantability Cure Period" shall be defined as five (5) consecutive business days after Landlord's receipt of written notice from Tenant of the condition causing untenability in the Premises, provided however, that the Premises Untenantability Cure Period shall be ten (10) consecutive business days after Landlord's receipt of written notice from Tenant of such condition causing untenability in the Premises if either the condition was caused by causes beyond Landlord's control or Landlord is unable to cure such condition as the result of causes beyond Landlord's control.

In addition, if due to (i) any repairs, alterations, replacements, or improvements made by Landlord, (ii) Landlord's failure to make any repairs, alterations, or improvements required to be made by Landlord hereunder, or to provide any service required to be provided by Landlord hereunder, or (iii) failure of electric supply, the operation of Tenant's business in the Premises in the normal course is materially adversely affected for a period of five (5) consecutive months after Landlord's receipt of written notice of such condition from Tenant, then, provided that Tenant ceases to use the affected portion of the Premises for the period of such untenability and such untenability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant, or Tenant's agents, employees or contractors, then Tenant may terminate this Lease by giving Landlord written notice as follows:



- (i) Said notice shall be given after said five (5) month period.
- (ii) Said notice shall set forth an effective date which is not earlier than thirty (30) days after Landlord receives said notice.
- (iii) If said condition is remedied on or before the date thirty (30) days after the receipt of such notice, said notice shall have no further force and effect.
- (iv) If said condition is not remedied on or before the date thirty (30) days after the receipt of such notice for any reason other than Tenant's fault, as aforesaid, the Lease shall terminate as of said effective date, and the Annual Fixed Rent and Additional Rent due under the Lease shall be apportioned as of said effective date.

The remedies set forth in this Section 7.7 shall be Tenant's sole remedies for the events described herein. The provisions of this subsection (C) shall not apply in the event of untenantability caused by fire or other casualty, or taking (which shall be subject to the terms and conditions of Article XIV below).

## ARTICLE VIII

### Tenant's Repairs

#### 8.1 Tenant's Repairs and Maintenance

Tenant covenants and agrees that, from and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant will keep neat and clean and maintain in good order, condition and repair the Premises and every part thereof, excepting only for those repairs for which Landlord is responsible under the terms of Article VII of this Lease and damage by fire or casualty and as a consequence of the exercise of the power of eminent domain. Tenant shall not permit or commit any waste, and Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to common areas in the Building, to any other building located within the Development Area caused by Tenant, Tenant's agents, contractors, employees, sublessees, licensees, concessionaires or invitees. Tenant shall maintain all its equipment, furniture and furnishings in good order and repair.

If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Landlord may (but shall not be required to do so) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant will forthwith on demand, pay to Landlord as Additional Rent the cost thereof together with interest thereon at the rate specified in Section 16.21, and if Tenant shall default in such payment, Landlord shall have the remedies provided for non-payment of rent or other charges payable hereunder.

ARTICLE IX

Alterations

9.1 Landlord's Approval

Tenant covenants and agrees not to make alterations, additions or improvements to the Premises, whether before or during the Lease Term, except in accordance with plans and specifications therefor first approved by Landlord in writing, which approval shall not be unreasonably withheld or delayed. Landlord shall not be deemed unreasonable:

- (a) for withholding approval of any alterations, additions or improvements which (i) in Landlord's opinion might adversely affect any structural or exterior element of the Building, any area or element outside of the Premises or any facility or base building mechanical system serving any area of the Building outside of the Premises, or (ii) involve or affect the exterior design, size, height or other exterior dimensions of the Building, or (iii) enlarge the Rentable Floor Area of the Premises, or (iv) are inconsistent in any material respect, in Landlord's reasonable judgment, with alterations satisfying Landlord's standards for new alterations in the Building, or (v) will require unusual expense to readapt the Premises to normal office use upon Lease termination or expiration or increase the cost of construction or of insurance or taxes on the Building or of the services provided by Landlord herein unless Tenant first gives assurance acceptable to Landlord for payment of such increased cost and that such readaptation will be made prior to termination and or expiration without expense to Landlord (alterations, additions or improvements described in this clause (v) being sometimes collectively referred to as "Special Improvements"); or
- (b) for making its approval of any Special Improvements conditional on Tenant's agreement to restore the Premises to its condition prior to construction of such Special Improvements at the expiration or earlier termination of the Lease Term, reasonable wear and tear excepted.

Landlord's review and approval of any such plans and specifications and consent to perform work described therein shall not be deemed an agreement by Landlord that such plans, specifications and work conform with applicable Legal Requirements and requirements of insurers of the Building and the other requirements of the Lease with respect to Tenant's insurance obligations (herein called "Insurance Requirements") nor deemed a waiver of Tenant's obligations under this Lease with respect to applicable Legal Requirements and Insurance Requirements nor impose any liability or obligation upon Landlord with respect to the completeness, design sufficiency or compliance of such plans, specifications and work with applicable Legal Requirements and Insurance Requirements. Further, Tenant acknowledges that Tenant is acting for its own benefit and account, and that Tenant shall not be acting as Landlord's agent in performing any work in the Premises, accordingly, no contractor, subcontractor or supplier shall have a right to lien Landlord's interest in the Property in connection with any such work. Within thirty (30) days after receipt of an invoice from Landlord (together with reasonable supporting back-up documentation), Tenant shall pay to Landlord as a fee for Landlord's review of any work or plans (excluding any review respecting initial improvements performed pursuant to Section 4.1 hereof for which a fee has previously been paid but including any review of plans or work relating to any assignment or subletting), as Additional Rent, an amount equal to the sum of: (i) \$150/hour for time spent by senior staff, and \$100/hour for time spent by junior staff (which shall not exceed \$2,500 per floor project), plus (ii) reasonable third party expenses incurred by Landlord to review Tenant's plans and Tenant's work.

#### 9.2 Conformity of Work

Tenant covenants and agrees that any alterations, additions, improvements or installations made by it to or upon the Premises shall be done in a good and workmanlike manner and in compliance with all applicable Legal Requirements and Insurance Requirements now or hereafter in force, that materials of good quality (but in no event of lesser quality than reasonably appropriate for the maintenance of a consistently high quality building) shall be employed therein and that the structure of the Building shall not be endangered or impaired thereby.

#### 9.3 Performance of Work, Governmental Permits and Insurance.

All of Tenant's alterations and additions and installation of furnishings shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations and not to damage the Building or Site or interfere with Building construction or operation and, except for installation of furnishings, shall be performed by Landlord's general contractor or by contractors or workers first approved by Landlord in its reasonable discretion. Except for work by Landlord's general contractor, Tenant shall procure all necessary governmental permits before making any repairs, alterations, other improvements or installations. Tenant agrees to save harmless and indemnify Landlord from any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work whether the same be performed prior to or during the Term of this Lease. At Landlord's election, Tenant shall cause its contractor to maintain a payment and performance bond in such amount and with such companies as Landlord shall reasonably approve. In addition, Tenant shall cause each contractor to carry worker's compensation insurance in statutory amounts covering the employees of all contractors and subcontractors, and commercial general liability insurance or comprehensive general liability insurance with a broad form comprehensive liability endorsement with such limits as Landlord may require reasonably from time to time during the Term of this Lease, but in no event less than the minimum amount of commercial general liability insurance or comprehensive general liability insurance Tenant is required to maintain as set forth in Section 1.2 hereof and as the same may be modified as provided in Section 13.2 hereof (all such insurance to be written in companies approved reasonably by Landlord and insuring Landlord, Landlord's managing agent and Tenant as additional insureds as well as contractors) and to deliver to Landlord certificates of all such insurance. Tenant shall also prepare and submit to Landlord a set of as-built plans, in both print and electronic forms, showing such work performed by Tenant to the Premises promptly after any such alterations, improvements or installations are substantially complete and promptly after any wiring or cabling for Tenant's computer, telephone and other communications systems is installed by Tenant or Tenant's contractor. Without limiting any of Tenant's obligations hereunder, Tenant shall be responsible, as Additional Rent, for the costs of any alterations, additions or improvements in or to the Building that are required in order to comply with Legal Requirements as a result of any work performed by Tenant. Landlord shall have the right to provide rules and regulations (which shall be applied in a non-discriminatory manner) relative to the performance of any alterations, additions, improvements and installations by Tenant hereunder and Tenant shall abide by all such reasonable rules and regulations and shall cause all of its contractors to so abide including, without limitation, payment for the costs of using Building services. Tenant acknowledges and agrees that Landlord shall be the owner of any additions, alterations and improvements in the Premises or the Building to the extent paid for by Landlord.

#### 9.4 Liens

Tenant covenants and agrees to pay promptly when due the entire cost of any work done on the Premises by Tenant, its agents, employees or contractors, and not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises or the Building or the Site and promptly to discharge (whether by bonding or otherwise) any such liens which may so attach.

9.5 Nature of Alterations

All work, construction, repairs, alterations, other improvements or installations made to or upon the Premises (including, but not limited to, the construction performed by Landlord under Article IV), shall become part of the Premises and shall become the property of Landlord and remain upon and be surrendered with the Premises as a part thereof upon the expiration or earlier termination of the Lease Term, except as follows:

- (a) All furniture, equipment, other personal property, and trade fixtures (including, without limitation, any and all components of Tenant's network operations center and data center, any satellite or microwave dish or other communications equipment (including, without limitation, any telephone switch gear), and any security or monitoring equipment, including, without limitation, the Emergency Generator and Generator Connection, as set forth in Section 16.30) whether by law deemed to be a part of the realty or not, installed at any time or times by Tenant or any person claiming under Tenant shall remain the property of Tenant or persons claiming under Tenant and may be removed by Tenant or any person claiming under Tenant at any time or times during the Lease Term or any occupancy by Tenant thereafter and shall be removed by Tenant at the expiration or earlier termination of the Lease Term if so requested by Landlord. Tenant shall repair any damage to the Premises occasioned by the removal by Tenant or any person claiming under Tenant of any such property from the Premises.
- (b) At the expiration or earlier termination of the Lease Term, unless otherwise agreed in writing by Landlord, Tenant shall remove any wiring for Tenant's computer, telephone and other communication systems and equipment whether located in the Premises or in any other portion of the Building, including all risers and any alterations, additions and improvements made with Landlord's consent during the Lease Term for which such removal was made a condition of such consent under Section 9.1 (b). Upon such removal Tenant shall restore the Premises to their condition prior to such alterations, additions and improvements and repair any damage occasioned by such removal and restoration.
- (c) If Tenant shall make any alterations, additions or improvements to the Premises for which Landlord's approval is required under Section 9.1 (after giving effect to the provisions of Section 9.7), without obtaining such approval, then at Landlord's request at any time during the Lease Term, and at any event at the expiration or earlier termination of the Lease Term, Tenant shall remove such alterations, additions and improvements and restore the Premises to their condition prior to same and repair any damage occasioned by such removal and restoration. Nothing herein shall be deemed to be a consent to Tenant to make any such alterations, additions or improvements, the provisions of Section 9.1 being applicable to any such work.

9.6 Increases in Taxes

Tenant shall pay, as Additional Rent, one hundred percent (100%) of any increase in real estate taxes on the Property which shall, at any time after the Commencement Date, result from alterations, additions or improvements to the Premises made by Tenant if the taxing authority specifically determines such increase results from such alterations, additions or improvements made by Tenant.

9.7 Alterations Permitted Without Landlord's Consent

Notwithstanding the terms of Section 9.1, Tenant shall have the right, without obtaining the prior consent of Landlord but upon notice to Landlord given ten (10) days prior to the commencement of any work (which notice shall specify the nature of the work in reasonable detail), to make alterations, additions or improvements to the Premises where:

- (i) the same are within the interior of the Premises within the Building, and do not affect the exterior of the Premises and the Building (including no signs on windows);
- (ii) the same do not affect the roof, any structural element of the Building, the mechanical, electrical, plumbing, heating, ventilating, air-conditioning and fire protection systems of the Building;
- (iii) the cost of any individual alteration, addition or improvement shall not exceed \$50,000.00 with respect to any floor of the Building and the aggregate cost of said alterations, additions or improvements made by Tenant during the Lease Term shall not exceed \$500,000.00 in cost; and
- (iv) Tenant shall comply with the provisions of this Lease and if such work increases the cost of insurance or taxes or of services, Tenant shall pay for any such increase in cost;

provided, however, that Tenant shall, within thirty (30) days after the making of such changes, send to Landlord plans and specifications describing the same in reasonable detail and provided further that Landlord, by notice to Tenant given at least thirty (30) days prior to the expiration or earlier termination of the Lease Term, may, if any such alterations, addition or improvement constitutes a Special Improvement, require Tenant to restore the Premises to its condition prior to construction of such Special Improvement (reasonable wear and tear excepted) at the expiration or earlier termination of the Lease Term.

ARTICLE X

Parking

10.1 Parking Privileges

Reference is made to the fact that affiliates of Landlord have constructed three (3) parking garages (hereinafter the "Garage" or the "Garages") within the Development Area shown on Exhibit F to serve the Building and other buildings constructed or to be constructed by Landlord or affiliates of Landlord within the Development Area. The existing Garage, with vehicular entrances from the south side of Broadway and the east side of Ames Street, is also sometimes hereinafter referred to as the "East Garage." The existing Garage, located on Parcel 2 of the Development Area with vehicular entrances from the north side of Broadway and the south side of Binney Street is also sometimes hereinafter referred to as the "North Garage." The existing Garage located on Parcel 3 of the Development Area with vehicular entrances from the west side of Ames Street and the east side of Galileo Galilei Way, is also sometimes hereinafter referred to as the "West Garage". Landlord shall provide to Tenant monthly parking privileges in the West Garage in number not to exceed parking for one and one half (1 1/2) passenger automobiles for each 1,000 square feet of Rentable Floor Area of the Premises (as it is contemplated to increase or decrease pursuant to Article XVII) for the parking of motor vehicles in unreserved stalls by Tenant's employees commencing on the Commencement Date of the Lease Term.

The parking privileges may be shifted from time to time to the East Garage by notice from Landlord; provided however that parking shall be provided in the West Garage for no less than eighty percent (80%) of the total number of automobiles for which Tenant elects to have parking privileges pursuant to this Section 10.1. For the avoidance of ambiguity, notwithstanding any provision hereof to the contrary, the parties agree that in no event shall the Tenant's parking privileges be shifted to the North Garage without the express written consent of Tenant, in its sole discretion. Tenant shall, not less than six (6) months prior to the Commencement Date (i.e., on or before December 1, 2008), give Landlord notice with regard to the initial number of automobiles for which Tenant desires parking privileges, not exceeding Tenant's entitlement pursuant to this Lease, and it is contemplated that this figure shall be increased upon the occurrence of each Rent Commencement Date, with respect to each Premises Component which has a Rent Commencement Date later than the Commencement Date, by the amount specified by Tenant within thirty (30) days of the Rent Commencement Date with respect to such Premises Component, not exceeding in the aggregate Tenant's entitlement pursuant to this Lease. Tenant shall also have the right to adjust the number of automobiles for which it has parking privileges on an annual basis with six (6) months' prior notice to Landlord, provided that in no event shall parking privileges exceed more than 1 1/2 parking spaces per 1,000 square feet of Rentable Floor Area, nor less than 1.13 per 1,000 square feet of Rentable Floor Area. In the event that the Rentable Floor Area of the Premises decreases at any time during the Lease Term, the number of parking privileges provided to Tenant hereunder shall be reduced proportionately. In any event that Tenant is not using the maximum parking privileges to which it is entitled hereunder, its right to increase shall be subject to the then availability of additional spaces in the Garages in Landlord's determination.

## 10.2 Parking Charges

Tenant shall pay for parking privileges in Garages at prevailing monthly rates applicable to tenants of the Development Area from time to time charged by the operator or operators of Garages, whether or not such operator is an affiliate of Landlord. Currently the rate is \$235 per space per month. Such monthly parking charges for parking privileges in the Garage or Garages shall constitute Additional Rent and shall be payable monthly as directed by Landlord upon billing therefor by Landlord or such operator. Tenant acknowledges that said monthly charges to be paid under this Section are for the use by the Tenant of the parking privileges referred to herein, and not for any other service.

## 10.3 Garage Operation

Unless otherwise determined by Landlord, each Garage is to be operated on a self-parking basis, and Tenant shall be obligated to park and remove its own automobiles. Except as set forth in Section 10.4 below, Tenant's parking shall be on an unreserved basis, Tenant having the right to park in any available stalls. Tenant's access and use privileges with respect to the Garage shall be in accordance with regulations of uniform applicability to the users of the Garage from time to time established by Landlord or the operator of the Garage. Tenant shall receive one (1) identification sticker or pass and one (1) magnetic card so-called, or other suitable device providing access to the Garage, for each parking privilege paid for by Tenant. Tenant shall supply Landlord with an identification roster listing, for each identification sticker or pass, the name of the employee and the make, color and registration number of the vehicle to which it has been assigned, and shall provide a revised roster to Landlord monthly indicating changes thereto. Any automobile found parked in the Garage during normal business hours without appropriate identification will be subject to being towed at said automobile owner's expense. The parking privileges granted herein are non-transferable (other than to a permitted assignee or subtenant pursuant to the applicable provisions of Article XII hereof). The door of the Garage will be open during normal business hours except during periods of severe inclement or cold weather. For periods during which an attendant is not on duty at the Garage entrance or when the door to the Garage is closed, or at any other periods as may from time to time be stipulated by the Garage Operator in accordance with its regulations, including normal business hours, the magnetic cards furnished to Tenant shall be used by Tenant to gain access to and egress from the Garage for motor vehicles.

#### 10.4 Reserved Spaces

Notwithstanding anything to the contrary contained herein, in addition to the foregoing parking privileges, Tenant shall have the right to fifteen (15) reserved parking spaces designated by Landlord in the parking area located on levels P-1 and P-2 of the "West Garage" (the "Reserved Spaces"), which Reserved Spaces shall be subject to all the terms and conditions of this Lease applicable to Tenant's other parking privileges, except that there may be a higher monthly tenant parking rate for Reserved Spaces, and the aforesaid Reserved Spaces shall not be subject to relocation to the "East Garage" pursuant to Section 10.1. Currently the rate therefor is \$300.00 per space per month. Landlord shall not grant to anyone other than Tenant the right to use such Reserved Spaces and will use reasonable efforts, by the use of signs and markings, to designate such space to be used exclusively by Tenant, however, Landlord shall not be otherwise obligated to police the use of the Reserved Spaces which Tenant recognizes is to be operated on a self parking basis. Notwithstanding the foregoing or any other provision hereof or of the 4CC Lease to the contrary, if (i) Tenant is a tenant in both the Building and the 4CC Building, (ii) the Building and the 4CC Building are each owned by Landlord or Affiliates of Landlord and (iii) the "East Garage" and "West Garage" are each owned by Landlord or Affiliates of Landlord, then Tenant shall have the right to increase or decrease the number of Reserved Spaces under this Lease and the 4CC Lease, provided that the total number of Reserved Spaces under this Lease and the 4CC Lease shall not exceed twenty (20) Reserved Spaces in the aggregate. However, Tenant must give Landlord at least sixty (60) days' advance written notice of Tenant's desire to make any such increase or decrease, and may not implement any such increase or decrease more than once during any period of 365 consecutive days. Additionally, if Tenant should elect, subject to the aforesaid qualifications, to increase the number of Reserved Spaces under this Lease to more than fifteen (15), such additional Reserved Spaces shall be located on levels P-1 and P-2 of the "West Garage" only on a space available basis, and otherwise they shall be located on the next higher level of the "West Garage."

#### 10.5 Limitations

Tenant agrees that it and all persons claiming by, through and under it, shall at all times abide by all reasonable rules and regulations promulgated by Landlord or the operator of the parking facilities with respect to the use of the Garage or such on-grade parking facilities as may be provided by Landlord within the Development Area. Except to the extent of gross negligence or willful acts, neither the Landlord nor the operator of such parking facilities assumes any responsibility whatsoever for loss or damage due to fire or theft or otherwise to any automobile or to any personal property therein, however caused, and Tenant agrees, upon request from the Landlord, from time to time, to notify its officers, employees and agents then using any of the parking privileges provided for herein, of such limitation of liability. Tenant further acknowledges and agrees that a license only is hereby granted, and no bailment is intended or shall be created.

#### 10.6 Interim On-Grade Parking

Notwithstanding the references to Garages in this Article X, Tenant acknowledges that, from time to time, Landlord may temporarily satisfy the requirements of providing Tenant with parking hereunder (except for parking called for as to be provided in the East Garage) by providing such parking in on-grade paved parking lots within the Development Area which provide industry standard lighting and security; provided, however, that (i) Landlord shall exercise its right to satisfy the parking requirements by providing such parking in such on-grade parking lots only on a temporary basis following the occurrence of an emergency or during the period of performance of repairs to the

Garages; (ii) the rates payable by Tenant for parking shall not exceed the prevailing monthly rates from time to time charged by the operator or operators of such on-grade lots in the vicinity thereof, whether or not such operator or operators are affiliates of Landlord, and (iii) the number of Tenant's parking spaces that are relocated to such on-grade parking lots shall be in proportion to the number of parking spaces of other tenants of the Building that are relocated from the Garages to on-grade parking lots in connection with the applicable emergency or repair work (based upon the floor area of the Building occupied by Tenant and such other tenants of the Building). Without limiting the foregoing, in the event Landlord is required to provide parking in such parking lots, Landlord shall relocate the parking spaces of all garage tenants on a pro rata basis according to the number of spaces allocated to each tenant.

## ARTICLE XI

### Certain Tenant Covenants

Tenant covenants and agrees to the following during the Lease Term and for such further time as Tenant occupies any part of the Premises:

- 11.1 To pay when due all Annual Fixed Rent and Additional Rent and all charges for utility services rendered to the Premises and service inspections therefor (except as is otherwise provided in Exhibit D) and, as further Additional Rent, all charges for additional and special services rendered pursuant to Section 7.3.
- 11.2 To use and occupy the Premises for the Permitted Use only, and not to injure or deface the Premises or the Property, not to permit in the Premises any auction sale, vending machine (other than vending machines for use by Tenant's employees and business invitees) or flammable fluids or chemicals, or nuisance, or the emission from the Premises of any objectionable noise or odor, nor to permit in the Premises anything which would in any way result in the leakage of fluid or the growth of mold, and not to use or devote the Premises or any part thereof for any purpose other than the Permitted Uses, nor any use thereof which is inconsistent with the maintenance of the Building as an office building of the first-class in the quality of its maintenance, use and occupancy, or which is improper, offensive, contrary to law or ordinance or liable to invalidate or increase the premiums for any insurance on the Building or its contents or liable to render necessary any alteration or addition to the Building. Further, (i) Tenant shall not, nor shall Tenant permit its employees, invitees, agents, independent contractors, contractors, assignees or subtenants to, keep, maintain, store or dispose of (into the sewage or waste disposal system or otherwise) or engage in any activity which might produce or generate any substance which is or may hereafter be classified as a hazardous material, waste or substance (collectively "Hazardous Materials"), under federal, state or local laws, rules and regulations, including, without limitation, 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 9601 et seq., 42 U.S.C. Section 2601 et seq., 49 U.S.C. Section 1802 et seq. and Massachusetts General Laws, Chapter 21E and the rules and regulations promulgated under any of the foregoing, as such laws, rules and regulations may be amended from time to time (collectively "Hazardous Materials Laws"), (ii) Tenant shall promptly notify Landlord of any incident in, on or about the Premises, the Building or the Site that would require the filing of a notice under any Hazardous Materials Laws, (iii) Tenant shall comply and shall cause its employees, invitees, agents, independent contractors, contractors, assignees and subtenants to comply with each of the foregoing and (iv) Landlord shall have the right to make such inspections (including testing) as Landlord shall elect from time to time to determine that Tenant is complying with the foregoing (provided that, except in cases of emergency, Landlord provides Tenant at least two (2) business days' prior written notice of any such inspection). Notwithstanding the foregoing, Tenant may use normal amounts and types of substances typically used for office uses, provided that Tenant uses such substances in the manner which they are normally used, and in



compliance with all Hazardous Materials Laws and other applicable laws, ordinances, bylaws, rules and regulations, and Tenant obtains and complies with all permits required by Hazardous Materials Laws or any other laws, ordinances, bylaws, rules or regulations prior to the use or presence of any such substances in the Premises.

- 11.3 Not to obstruct in any manner any portion of the Building not hereby leased or any portion thereof or of the Site used by Tenant in common with others; not without prior consent of Landlord (or as otherwise provided in this Lease) to permit the painting or placing of any signs, curtains, blinds, shades, awnings, aerials or flagpoles, or the like, visible from outside the Premises; and to comply with all reasonable rules and regulations now or hereafter made by Landlord, of which Tenant has been given notice, for the care and use of the Building and the Site and their facilities and approaches, but Landlord shall not be liable to Tenant for the failure of other occupants of the Building to conform to such rules and regulations. Landlord shall not enforce such rules and regulations other than in a non-discriminatory manner.
- 11.4 To keep the Premises equipped with all safety appliances required by law or ordinance or any other regulation of any public authority because of any use made by Tenant other than normal office use, and to procure all licenses and permits so required because of any use made by Tenant other than normal office use, and, if requested by Landlord, to do any work so required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way Tenant's Permitted Use.
- 11.5 Not to place a load upon any floor in the Premises exceeding an average rate of 70 pounds of live load (including partitions) per square foot of floor area; and not to move any safe, vault or other heavy equipment in, about or out of the Premises except in such manner and at such time as Landlord shall in each instance authorize. Tenant's business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient to absorb and prevent vibration or noise that may be transmitted to the Building structure or to any other space in the Building.
- 11.6 To pay promptly when due all taxes which may be imposed upon personal property (including, without limitation, fixtures and equipment) in the Premises to whomever assessed.
- 11.7 To pay, as Additional Rent, all reasonable out-of-pocket costs, counsel and other fees incurred by Landlord in connection with the successful enforcement by Landlord of any obligations of Tenant under this Lease or in connection with any bankruptcy case involving Tenant or any guarantor.
- 11.8 Not to do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of insurance on the Premises or on the Building above the standard rate applicable to premises being occupied for the use to which Tenant has agreed to devote the Premises; and Tenant further agrees that, in the event that Tenant shall do any of the foregoing, Tenant will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as Additional Rent hereunder.
- 11.9 To comply with all applicable Legal Requirements now or hereafter in force which shall impose a duty on Landlord or Tenant relating to or as a result of the use or occupancy of the Premises; provided that Tenant shall not be required to make any alterations or additions to the structure, roof, exterior and load bearing walls, foundation, structural floor slabs and other structural elements of the Building or to perform or satisfy any other obligation of Landlord under this Lease unless the same are required by such Legal Requirements as a result of or in connection with Tenant's use or occupancy of the Premises beyond normal use of space of this kind. Tenant shall promptly pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section 11.9.

11.10 Any vendors engaged by Tenant to perform services in or to the Premises including, without limitation, janitorial contractors and moving contractors shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations and to not unreasonably interfere with Building construction or operation, and shall be performed by vendors first approved by Landlord, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the following vendors do not require Landlord's approval: brokerage, legal, employment staffing and food catering.

## ARTICLE XII

### Assignment and Subletting

#### 12.1 Restrictions on Transfer

Except as otherwise expressly provided herein, Tenant covenants and agrees that it shall not assign, mortgage, pledge, hypothecate or otherwise transfer this Lease and/or Tenant's interest in this Lease or sublet (which term, without limitation, shall include granting of concessions, licenses or the like) the whole or any part of the Premises. Any assignment, mortgage, pledge, hypothecation, transfer or subletting not expressly permitted in or consented to by Landlord under this Article XII shall be void, ab initio; shall be of no force and effect; and shall confer no rights on or in favor of third parties. In addition, Landlord shall be entitled to seek specific performance of or other equitable relief with respect to the provisions hereof.

#### 12.2 Exceptions

Notwithstanding the foregoing provisions of Section 12.1 above and the provisions of Section 12.3 and 12.4 below, but subject to the provisions of Sections 12.5 and 12.6, Tenant shall have the right to assign this Lease or to sublet the Premises (in whole or in part) to any controlling entity of Tenant or to any entity controlled by Tenant or to any entity under common control with Tenant (such parent or subsidiary entity or entity under common control with Tenant being hereinafter called a "Tenant Affiliate") or to any entity into which Tenant may be converted or with which it may merge, or to any entity purchasing all or substantially all of Tenant's assets (each, a "Permitted Tenant Successor"), provided that in the case of a Permitted Tenant Successor, the entity to which this Lease is so assigned or which so sublets the Premises has a net worth (e.g. assets on a pro forma basis using generally accepted accounting principles consistently applied and using the most recent financial statements) equal to the net worth of the Tenant immediately before such transaction. If any Tenant Affiliate to which this Lease is assigned or the Premises sublet (in whole or in part) shall cease to be such a Tenant Affiliate, and if such cessation was contemplated at the time of the assignment or subletting, such cessation shall be considered an assignment or subletting requiring Landlord's consent.

#### 12.3 Landlord's Termination Right

Notwithstanding the provisions of Section 12.1 above, in the event Tenant desires to assign this Lease or to sublet all or any portion of the Rentable Floor Area of the Premises, Tenant shall notify Landlord thereof in writing and Landlord shall have the right at its sole option, to be exercised within ten (10) business days after receipt of Tenant's notice (the "Acceptance Period"), to terminate this Lease as of a date specified in a notice to Tenant, which date shall not be earlier than sixty (60) days nor later than one hundred and twenty (120) days after Landlord's notice to Tenant; provided, however, that upon the termination date as set forth in Landlord's notice, all obligations relating to the period after such termination date (but not those relating to the period before such termination date) shall cease and promptly upon being billed therefor by Landlord, Tenant shall make final payment of all rent and additional rent due from Tenant through the termination date.

Notwithstanding the foregoing, in the event that Tenant shall only propose to sublease a portion of the Premises and/or to enter into a sublease for less than all or substantially all of the then-remaining Lease Term:

- (i) Landlord shall only have the right to so terminate this Lease with respect to the portion of the Premises which Tenant proposes to sublease (the "Terminated Portion of the Premises") and from and after the termination date the Rentable Floor Area of the Premises shall be reduced to the rentable floor area of the remainder of the Premises and the definition of Rentable Floor Area of the Premises shall be so amended and after such termination all references in this Lease to the "Premises" or the "Rentable Floor Area of the Premises" shall be deemed to be references to the remainder of the Premises and accordingly Tenant's payments for Annual Fixed Rent, operating costs, real estate taxes and electricity shall be reduced on a pro rata basis to reflect the size of the remainder of the Premises; and
- (ii) in the case of sublease for less than all or substantially all of the then-remaining Lease Term, Landlord shall only have the right to suspend the term of this Lease pro tanto for the term of the proposed sublease (i.e. the Term of the Lease in respect of the subleased premises shall be terminated for the term of the proposed sublease and then reinstated upon the expiration or earlier termination of such sublease term).

In the event that Landlord shall not exercise its termination rights as aforesaid, or shall fail to give any or timely notice pursuant to this Section the provisions of Sections 12.4-12.7 shall be applicable. In the case of a partial subletting where Landlord has exercised its termination right pursuant to this Section 12.3, Landlord shall be responsible, at its sole cost and expense, for all work necessary to separately physically demise that portion of the Premises which are being terminated from the remainder of the Premises. This Section 12.3 shall not be applicable to an assignment or sublease pursuant to Section 12.2.

#### 12.4 Consent of Landlord

Notwithstanding the provisions of Section 12.1 above, but subject to the provisions of this Section 12.4 and the provisions of Sections 12.5, 12.6 and 12.7 below, in the event that Landlord shall not have exercised the termination right as set forth in Section 12.3, or shall have failed to give any or timely notice under Section 12.3, then for a period of one hundred eighty (180) days (i) after the receipt of Landlord's notice stating that Landlord does not elect the termination right, or (ii) after the expiration of the Acceptance Period, in the event Landlord shall not give any or timely notice under Section 12.3 as the case may be, Tenant shall have the right to assign this Lease or sublet the Premises in accordance with the Proposed Transfer Notice provided that, in each instance, Tenant first obtains the express prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Without limiting the foregoing standard, Landlord shall not be deemed to be unreasonably withholding its consent to such a proposed assignment or subleasing if:

- (a) the proposed assignee or subtenant is a tenant in the Building, the 4CC Building or elsewhere in the Development Area or is in active negotiation with the landlord of the building in question, provided that the foregoing shall apply to the 4CC Building or elsewhere in the Development Area only if the landlord of this Building, and the landlord of the other pertinent building, are affiliated with each other (as defined in Section 16.32), or

- (b) the proposed assignee or subtenant is not of a character consistent with the operation of a first class office building (by way of example Landlord shall not be deemed to be unreasonably withholding its consent to an assignment or subleasing to any governmental or quasi-governmental agency), or
- (c) giving appropriate weight, if applicable, to the fact that Tenant will nevertheless remain liable under this Lease, the proposed assignee or subtenant does not possess adequate financial capability to assure the performance of the Tenant obligations as and when due or required, or
- (d) the assignee or subtenant proposes to use the Premises (or part thereof) for a purpose other than the purpose for which the Premises may be used as stated in Section 1.2 hereof, or
- (e) the character of the business to be conducted or the proposed use of the Premises by the proposed subtenant or assignee shall (i) be likely to materially increase Operating Expenses for the Property beyond that which Landlord now incurs for use by Tenant; (ii) be likely to materially increase the burden on elevators or other Building systems or equipment over the burden prior to such proposed subletting or assignment; or (iii) materially violate or be likely to materially violate any provisions or restrictions contained herein relating to the use or occupancy of the Premises, or
- (f) there shall be existing a monetary or material non-monetary Event of Default (defined in Section 15.1), or
- (g) any part of the rent payable under the proposed assignment or sublease shall be based in whole or in part on the income or profits derived from the Premises or if any proposed assignment or sublease shall potentially have any adverse effect on the real estate investment trust qualification requirements applicable to Landlord and its affiliates, or

If Tenant believes in good faith that Landlord has unreasonably withheld its consent under this Section 12.4, in any case where Landlord is required not to unreasonably withhold its consent, if Tenant shall give notice thereof to Landlord, within five (5) business days of Landlord's withholding (or deemed withholding) of consent, Tenant shall have the right to an expedited determination of such claim pursuant to Section 12.8 below.

#### 12.5 Tenant's Notice

Tenant shall give Landlord notice (the "Proposed Transfer Notice") of any proposed sublease or assignment, and said notice shall specify the provisions of the proposed assignment or subletting, including (a) the name and address of the proposed assignee or subtenant, (b) in the case of a proposed assignment or subletting pursuant to Section 12.4, such information as to the proposed assignee's or proposed subtenant's net worth and financial capability and standing as may reasonably be required for Landlord to make the determination referred to in Section 12.4 above (provided, however, that Landlord shall hold such information confidential having the right to release same to its officers, accountants, attorneys and mortgage lenders on a confidential basis), (c) all of the terms and provisions upon which the proposed assignment or subletting is to be made, (d) in the case of a proposed assignment or subletting pursuant to Section 12.4, all other information necessary to make the determination referred to in Section 12.4 above and (e) in the case of a proposed assignment or subletting pursuant to Section 12.2 above, such information as may be reasonably required by Landlord to determine that such proposed assignment or subletting complies with the requirements of said Section 12.2.

If Landlord shall consent to the proposed assignment or subletting, as the case may be, then, in such event, Tenant may thereafter sublease or assign pursuant to Tenant's notice, as given hereunder; provided, however, that if such assignment or sublease shall not be executed and delivered to Landlord within one hundred eighty (180) days after the date of Landlord's consent, the consent shall be deemed null and void and the provisions of Section 12.3 shall be applicable.

#### 12.6 Profit on Subleasing or Assignment

In addition, in the case of any assignment or subleasing as to which Landlord may consent (other than an assignment or subletting permitted under Section 12.2 hereof) such consent shall be upon the express and further condition, covenant and agreement, and Tenant hereby covenants and agrees that, in addition to the Annual Fixed Rent, Additional Rent and other charges to be paid pursuant to this Lease, fifty percent (50%) of the "Assignment/Sublease Profits" (hereinafter defined), if any shall be paid to Landlord.

The "Assignment/Sublease Profits" shall be the excess, if any, of (a) the "Assignment/Sublease Net Revenues" as hereinafter defined over (b) the Annual Fixed Rent, Additional Rent and other charges provided in this Lease (provided, however, that for the purpose of calculating the Assignment/Sublease Profits in the case of a sublease, appropriate proportions in the applicable Annual Fixed Rent, Additional Rent and other charges under this Lease shall be made based on the percentage of the Premises subleased and on the terms of the sublease). The "Assignment/Sublease Net Revenues" shall be the fixed rent, Additional Rent and all other charges and sums payable either initially or over the term of the sublease or assignment plus all other profits and increases to be derived by Tenant as a result of such subletting or assignment, less the reasonable costs of Tenant incurred in such subleasing or assignment (the definition of which shall be limited to brokerage commissions, attorneys' fees and alteration allowances, in each case actually paid), as set forth in a statement certified by an appropriate officer of Tenant and delivered to Landlord within thirty (30) days of the full execution of the sublease or assignment document, amortized over the term of the sublease or assignment.

All payments of the Assignment/Sublease Profits due Landlord shall be made within ten (10) days of receipt of same by Tenant.

#### 12.7 Additional Conditions

(A) It shall be a condition of the validity of any assignment or subletting of right under Section 12.2 above, or consented to under Section 12.4 above, that both Tenant and the assignee or sublessee enter into a separate written instrument directly with Landlord in a form and containing terms and provisions reasonably required by Landlord, including, without limitation, the agreement of the assignee or sublessee to be bound by all the obligations of the Tenant hereunder, including, without limitation, the obligation (a) to pay the Annual Fixed Rent, Additional Rent, and other amounts provided for under this Lease (but in the case of a partial subletting, such subtenant shall agree on a pro rata basis to be so bound) and (b) to comply with the provisions of Sections 12.1 through 12.7 hereof. Such assignment or subletting shall not relieve the Tenant named herein of any of the obligations of the Tenant hereunder and Tenant shall remain fully and primarily liable therefor and the liability of Tenant and such assignee (or subtenant, as the case may be) shall be joint and several. Further, and notwithstanding the foregoing, the provisions hereof shall not constitute a recognition of the sublease or the subtenant thereunder, and at Landlord's option, upon the termination or expiration of the Lease (whether such termination is based upon a cause beyond Tenant's control, a default of Tenant, the agreement of Tenant and Landlord or any other reason), the sublease shall be terminated.

(B) As Additional Rent, Tenant shall pay to Landlord as a fee for Landlord's review of any proposed assignment or sublease requested by Tenant and the preparation of any associated documentation in connection therewith, within thirty (30) days after receipt of an invoice from Landlord, an amount equal to the sum of (i) \$1,000.00 and/or (ii) reasonable out of pocket legal fees or other expenses incurred by Landlord in connection with such request.

(C) If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may upon prior notice to Tenant, at any time and from time to time, collect Annual Fixed Rent, Additional Rent, and other charges from the assignee, sublessee or occupant and apply the net amount collected to the Annual Fixed Rent, Additional Rent and other charges herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or a waiver of the provisions of Sections 12.1 through 12.7 hereof, or the acceptance of the assignee, sublessee or occupant as a tenant or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained, the Tenant herein named to remain primarily liable under this Lease.

(D) The consent by Landlord to an assignment or subletting under any of the provisions of Sections 12.2 or 12.4 shall in no way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting.

(E) Without limiting Tenant's obligations under Article IX, Tenant shall be responsible, at Tenant's sole cost and expense, for performing all work necessary to comply with Legal Requirements and Insurance Requirements in connection with any assignment or subletting hereunder including, without limitation, any work in connection with such assignment or subletting.

(F) In addition to the other requirements set forth in this Lease and notwithstanding any other provision of this Lease, partial sublettings of the Premises shall only be permitted under the following terms and conditions: (i) the layout of both the subleased premises and the remainder of the Premises must comply with applicable laws, ordinances, rules and/or regulations and be reasonably approved by Landlord, including, without limitation, all requirements concerning access and egress; (ii) in the event the subleased premises are separately physically demised from the remainder of the Premises, Tenant shall pay all costs of separately physically demising the subleased premises (except as provided in Section 12.3); and (iii) there shall be no more than two (2) subleases in effect on any single floor of the Premises at any given time.

(G) Notwithstanding anything to the contrary provided in Section 12.6 above, Landlord shall be entitled to one hundred percent (100%) of any Assignment/Sublease Profits reasonably allocable (in Landlord's reasonable determination consistent with Section 12.6) to any calendar month of the Term during which there is or was subsisting, at any time during said calendar month, a monetary or material non-monetary Event of Default (as defined in Section 15.1).

#### 12.8 Expedited Dispute Resolution.

In the event that a dispute shall arise under Section 12.4 with regard to whether or not Landlord's withholding of consent was reasonable under the circumstances, and Tenant gives Landlord the notice referred to in Section 12.8(A) below within five (5) business days of Landlord's withholding of consent, then such dispute shall be resolved in accordance with the procedure set forth in this Section 12.8 as follows:

(A) Tenant's notice to Landlord of its desire that the dispute be resolved by arbitration pursuant to this Section 12.8 must appoint a person as an arbitrator on its behalf. Within five (5) business days after the giving of such notice, Landlord by notice to Tenant shall appoint a second person as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third person to serve as an arbitrator, and such three arbitrators shall as promptly as possible determine such matter, provided, however, that:

- (i) if the second arbitrator shall not have been appointed within the five (5) business day period as aforesaid, then the first arbitrator shall petition the American Arbitration Association (Boston office) or any successor body of similar function ("AAA") to appoint the second arbitrator or, in its absence, refusal, failure or inability to act, petition a court of competent jurisdiction to appoint the second arbitrator; and
- (ii) if the two arbitrators are appointed by the parties (or the AAA or court in the case of the second arbitrator under clause (i) above) and shall be unable to agree, within five (5) business days after the appointment of the second arbitrator, upon the appointment of a third arbitrator, said two arbitrators shall give written notice to the parties of such failure to agree, and, if the parties fail to agree upon the selection of such third arbitrator within five (5) business days after the arbitrators appointed by the parties give notice as aforesaid, then within five (5) business days thereafter either of the parties upon notice to the other party may request such appointment by the AAA, or in its absence, refusal, failure or inability to act, by a court of competent jurisdiction.

(B) Each arbitrator shall be either a Boston area based partner or retired partner in a nationally recognized law or real estate brokerage firm who shall have had at least ten (10) years' experience in the area of commercial real estate transactions and/or litigation including, without limitation, commercial leasing, and in the case of the third arbitrator, may also be a retired judge. Each arbitrator shall be impartial and shall have had no prior notice, information or discussions concerning the dispute and shall not be employed by or associated with either party or any affiliate of any party during the five (5) year period preceding commencement of the arbitration.

(C) The arbitration shall be conducted in the City of Boston, Massachusetts, in accordance with the then prevailing Commercial Arbitration Rules (Expedited Procedures) of the AAA. The arbitrators shall render their decision and award in writing, upon the concurrence of at least two of their number, within fifteen (15) days after the appointment of the third arbitrator. Such decision and award shall be final and conclusive on the parties, and counterpart copies thereof shall be delivered to each of the parties. In rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Lease. Judgment may be had on the decision and award of the arbitrators so rendered in any court of competent jurisdiction.

(D) Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by or for such party and the fees and expenses of the third arbitrator, and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party) shall be borne by the parties equally.

ARTICLE XIII

Indemnity And Commercial General Liability Insurance

13.1 Indemnity

(A) Tenant's Indemnity. To the maximum extent this agreement may be made effective according to law, but subject to Section 16.24 hereof, and to the extent not resulting from any negligence or misconduct of Landlord or its contractors, agents, or employees, Tenant agrees to indemnify and save harmless Landlord and Landlord's managing agent, beneficiaries, partners, subsidiaries, officers, directors, agents and employees ("Landlord Parties") from and against all claims of whatever nature to the extent arising from or claimed to have arisen from: any breach of this Lease by Tenant or any act, omission or negligence of Tenant, or Tenant's contractors, licensees, invitees, agents, independent contractors or employees occurring in the Premises, in the Building or on the Site; any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring in or about the Premises (or any other portion of the Building during any period during which the Premises comprises the Total Rentable Floor Area of the Building) after the date that possession of the Premises is first delivered to Tenant and until the end of the Lease Term and thereafter, provided that during any such period after the Lease Term Tenant or anyone acting by, through or under Tenant is in occupancy of the Premises or any portion thereof; or any accident, injury or damage occurring outside the Premises but within the Building, the Garage or on the Site, to the extent such accident, injury or damage results, or is claimed to have resulted, from an act, omission or negligence on the part of Tenant or Tenant's contractors, licensees, invitees, agents, independent contractors or employees; provided, however, that in no event shall Tenant be liable for any indirect or consequential damages except under Section 16.18 hereof (subject to the limitations set forth in Section 16.18(B) and (C)).

This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

(B) Landlord's Indemnity. To the maximum extent this agreement is effective according to law, but subject to Section 16.24 hereof, and to the extent not resulting from any negligence or misconduct of Tenant or its contractors, agents, licensees, invitees, servants or employees, Landlord agrees to indemnify and save harmless Tenant from and against any claim arising from any injury to any person occurring in the Premises, in the Building or on the Site after the date that possession of the Premises is first delivered to Tenant and until the expiration or earlier termination of the Lease Term, to the extent such injury results from the negligence of Landlord or Landlord's contractors, agents or employees; provided, however that in no event shall the aforesaid indemnity render Landlord responsible or liable for any loss or damage to fixtures or personal property of Tenant and Landlord shall in no event be liable for any indirect or consequential damages; and provided, further, that the provisions of this Section shall not be applicable to the holder of any mortgage now or hereafter on the Site or the Building (whether or not such holder shall be a mortgagee in possession of or shall have exercised any rights under a conditional, collateral or other assignment of leases and/or rents respecting, the Site and/or Building).

13.2 Commercial General Liability Insurance

Tenant agrees to maintain in full force from the date upon the earlier of (i) the date on which Tenant first enters the Premises for any reason, or (ii) the Commencement Date throughout the Lease Term of this Lease, and thereafter, so long as Tenant is in occupancy of any part of the Premises, a policy of commercial general liability or comprehensive general liability insurance written on an occurrence basis with a broad form comprehensive liability endorsement under which Tenant is the named insured and Landlord and Landlord's managing agent (and such other persons as are in privity of estate with Landlord and Landlord's managing agent as may be set out in notice from time to time) are named as additional insureds, in the broadest form of such coverage from time to time available in the



jurisdiction in which the Premises are located. Any policy which Tenant is required to maintain under this Lease shall be non-cancelable and non-amendable with respect to Landlord and Landlord's said designees without twenty (20) days' prior notice to Landlord, and a duplicate original or certificate thereof, in a form reasonably acceptable to Landlord, shall be delivered to Landlord. The minimum limits of liability of such insurance shall be as specified in Section 1.2 and from time to time during the Lease Term for such higher limits, if any, as are carried customarily in the Greater Boston Area with respect to similar properties. In addition, in the event Tenant hosts a function in the Premises, Tenant agrees to obtain and maintain, and cause any persons or parties providing services for such function to obtain, the appropriate insurance coverages as determined by Landlord (including liquor liability, if applicable) and provide Landlord with evidence of the same. All insurance required to be maintained by Tenant pursuant to this Lease shall be maintained with responsible companies qualified to do business, and in good standing, in the Commonwealth of Massachusetts and which have a rating of at least "A-" and are within a financial size category of not less than "Class VIII" in the most current Best's Key Rating Guide or such similar rating as may be reasonably selected by Landlord if such Guide is no longer published.

### 13.3 Tenant's Property Insurance

Tenant, at Tenant's expense, shall maintain at all times during the Term of the Lease business interruption insurance and insurance against loss or damage covered by so-called "all risk" type insurance coverage with respect to Tenant's fixtures, equipment, goods, wares and merchandise, tenant improvements made by or paid for by Tenant, and other property of Tenant (collectively "Tenant's Property"). Such insurance shall be in an amount at least equal to the full replacement cost of Tenant's Property. Tenant shall maintain all of its equipment, furniture and furnishings in good order and repair. In addition, during such time as Tenant is performing work in or to the Premises, Tenant, at Tenant's expense, shall also maintain builder's risk insurance for the full insurable value of such work.

### 13.4 Non-Subrogation

Any insurance carried by either party with respect to the Premises or property therein or occurrences thereon shall, if it can be so written without additional premium or with an additional premium which the other party agrees to pay, include a clause or endorsement denying to the insurer rights of subrogation against the other party to the extent rights have been waived by the insured prior to occurrence of injury or loss. Each party, notwithstanding any provisions of this Lease to the contrary, hereby waives any rights of recovery against the other for injury or loss due to hazards covered by such insurance (or which would have been covered had such party carried the insurance required to be carried by it under the Lease) to the extent of the indemnification received under such insurance policy. This waiver of rights by Tenant shall apply to, and be for the benefit of, the Landlord Parties, and this waiver of rights by Landlord shall apply to, and be for the benefit of, any subtenant of Tenant so long as such subtenant similarly waives such rights for the benefit of Landlord and the Landlord Parties.

### 13.5 Tenant's Risk

To the maximum extent that this agreement may be made effective according to law, Tenant agrees to use and occupy the Premises and to use such other portions of the Building, the Garage or Garages, the Site and the Development Area as Tenant is herein given the right to use at Tenant's own risk; and Landlord shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of Tenant.

13.6 Landlord's Insurance

Landlord shall carry at all times during the Term of this Lease (i) commercial general liability insurance with respect to the Building in an amount not less than \$5,000,000 combined single limit per occurrence, (ii) insurance against loss or damage with respect to the Buildings covered by the so-called "all risk" type insurance coverage with customary exceptions in an amount equal to at least the replacement value of the Building. Landlord may also maintain such other insurance as may from time to time be required by a mortgagee holding a mortgage lien on the Building. Further, Landlord may also maintain such insurance against loss of annual fixed rent and additional rent and such other risks and perils as Landlord deems proper. Any and all such insurance (i) may be maintained under a blanket policy affecting other properties of Landlord and/or its affiliated business organizations, (ii) may be written with deductibles as determined by Landlord and (iii) shall be subject to escalation reimbursement in accordance with Article VII.

ARTICLE XIV

Fire, Casualty and Taking

14.1 Damage Resulting from Casualty

In case during the Lease Term the Building or the Site are damaged by fire or casualty, and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within two hundred ten (210) days from the time that repair work would commence, Landlord may, at its election, terminate this Lease by notice given to Tenant within sixty (60) days after the date of such fire or other casualty, specifying the effective date of termination. The effective date of termination specified by Landlord shall not be less than thirty (30) days nor more than forty-five (45) days after the date of notice of such termination. Unless terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect following any such damage subject, however, to the following provisions.

If during the last eighteen (18) months of the Lease Term as it may have been extended, the Building shall be damaged by fire or casualty and such fire or casualty damage to the Premises cannot reasonably be expected to be repaired or restored within one hundred twenty (120) days from the time that repair or restoration work would commence, then Tenant shall have the right, by giving notice to Landlord not later than thirty (30) days after such damage, to terminate this Lease, whereupon this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

If the Building or the Site or any part thereof are damaged by fire or casualty and this Lease is not so terminated, or Landlord has no right to terminate this Lease, and in either such case the holder of any mortgage which includes the Building as a part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net insurance proceeds to be applied to the restoration of the Building (and/or the Site), Landlord, promptly after such damage and the determination of the net amount of insurance proceeds available shall use due diligence to restore the Premises and the Building in the event of damage thereto (excluding Tenant's Property ) into proper condition for use and occupation and a just proportion of the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess according to the nature and extent of the injury to the Premises shall be abated from the date of casualty until the Premises shall have been put by Landlord substantially into such condition. If such net insurance proceeds are not allowed by such mortgagee or ground lessor to be applied to, or are otherwise insufficient for, the restoration of the Building (and/or the Site) and if Landlord does not otherwise elect to spend the additional funds

necessary to fully restore the Building (and/or the Site), then Landlord shall give notice ("Landlord's Insufficient Insurance Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of the insufficiency and Tenant shall thereafter have the right to terminate this Lease by providing Landlord with a notice of termination within thirty (30) days after Tenant's receipt of Landlord's Insufficient Insurance Proceeds Notice (the effective date of which termination shall not be less than sixty (60) days after the date of such notice of such termination).

Where Landlord is obligated or otherwise elects to effect restoration of the Premises, unless such restoration is completed within one (1) year from the date of the casualty or taking, such period to be subject, however, to extension where the delay in completion of such work is due to Force Majeure, as defined hereinbelow, (but in no event beyond eighteen (18) months from the date of the casualty or taking), Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease at any time after the expiration of such one-year (as extended) period until the restoration is substantially completed, such termination to take effect as of the thirtieth (30<sup>th</sup>) day after the date of receipt by Landlord of Tenant's notice, with the same force and effect as if such date were the date originally established as the expiration date hereof unless, within such thirty (30) day period such restoration is substantially completed, in which case Tenant's notice of termination shall be of no force and effect and this Lease and the Lease Term shall continue in full force and effect. When used herein, "Force Majeure" shall mean any prevention, delay or stoppage due to governmental regulation, strikes, lockouts, acts of God, acts of war, terrorists acts, civil commotions, unusual scarcity of or inability to obtain labor or materials, labor difficulties, casualty or other causes reasonably beyond Landlord's control or attributable to Tenant's action or inaction.

#### 14.2 Uninsured Casualty

Notwithstanding anything to the contrary contained in this Lease, if the Building or the Premises shall be substantially damaged by fire or casualty as the result of a risk not covered by the forms of casualty insurance at the time required to be maintained by Landlord pursuant to this Lease, and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within one hundred fifty (150) days from the time that repair work would commence, Landlord may, at its election, terminate the Term of this Lease by notice to Tenant given within sixty (60) days after such loss. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

#### 14.3 Rights of Termination for Taking

If the Building, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) unsuitable for Tenant's purposes, shall be taken by condemnation or right of eminent domain, Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its desire to do so, provided that such notice is given not later than thirty (30) days after Tenant has been deprived of possession. If either party shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Further, if so much of the Building shall be so taken that continued operation of the Building would be uneconomic, Landlord shall have the right to terminate this Lease by giving notice to Tenant of Landlord's desire to do so not later than thirty (30) days after Tenant has been deprived of possession of the Premises (or such portion thereof as may be taken). Landlord agrees not to exercise such termination right in a discriminatory manner insofar as any election Landlord makes, or refrains from making, pursuant to any termination right Landlord may have with respect to other tenants of the Building whose premises are similarly affected. If Landlord shall give such notice to Tenant hereunder, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Should any part of the Premises be so taken or condemned during the Lease Term hereof, and should this Lease not be terminated in accordance with the foregoing provisions, and the holder of any mortgage which includes the Premises as part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net condemnation proceeds to be applied to the restoration of the Building, Landlord agrees that after the determination of the net amount of condemnation proceeds available to Landlord, Landlord shall use due diligence to put what may remain of the Premises into proper condition for use and occupation as nearly like the condition of the Premises prior to such taking as shall be practicable (excluding Tenant's Property). If such net condemnation proceeds are not allowed by such mortgagee or ground lessor to be applied to, or are otherwise insufficient for, the restoration of the Building (and/or the Site) and if Landlord does not otherwise elect to spend the additional funds necessary to fully restore the Building (and/or the Site), then Landlord shall give notice ("Landlord's Insufficient Condemnation Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of the insufficiency and Tenant shall thereafter have the right to terminate this Lease by providing Landlord with a notice of termination within thirty (30) days after Tenant's receipt of Landlord's Insufficient Condemnation Proceeds Notice (the effective date of which termination shall not be less than sixty (60) days after the date of such notice of such termination).

If the Premises shall be affected by any exercise of the power of eminent domain and neither Landlord nor Tenant shall terminate this Lease as provided above, then the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant; and in case of a taking which permanently reduces the Rentable Floor Area of the Premises, a just proportion of the Annual Fixed Rent, the Operating Cost Excess and the Tax Excess shall be abated for the remainder of the Lease Term.

#### 14.4 Award

Except as otherwise provided in this Section 14.4, Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Building, the Site and the Garage or Garages and the leasehold interest hereby created, and compensation accrued or hereafter to accrue by reason of such taking, damage or destruction, as aforesaid, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign to Landlord, all rights to such damages or compensation.

However, nothing contained herein shall be construed to prevent Tenant from prosecuting in any such proceedings a claim for its trade fixtures so taken or relocation, moving and other dislocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

Default

15.1 Tenant's Default

This Lease and the term of this Lease are subject to the limitation that Tenant shall be in default if, at any time during the Lease Term, any one or more of the following events (herein called an "Event of Default" a "default of Tenant" or similar reference) shall occur and not be cured prior to the expiration of the grace period (if any) herein provided, as follows:

- (a) Tenant shall fail to pay any installment of the Annual Fixed Rent, or any Additional Rent or any other monetary amount due under this Lease on or before the date on which the same becomes due and payable, and such failure continues for five (5) days after written notice from Landlord thereof; or
- (b) Landlord having rightfully given the notice specified in (a) above to Tenant twice in any twelve (12) month period, Tenant shall fail thereafter to pay the Annual Fixed Rent, Additional Rent or any other monetary amount due under this Lease on or before the date on which the same becomes due and payable; or
- (c) Tenant shall assign its interest in this Lease or sublet any portion of the Premises in violation of the requirements of Article XII of this Lease; or
- (d) Tenant shall fail to perform or observe some term or condition of this Lease which, because of its character, would immediately and materially jeopardize Landlord's interest (such as, but without limitation, failure to maintain general liability insurance, or the employment of labor and contractors within the Premises which interfere with Landlord's work, in violation of Section 4.3 or Section 9.3), and such failure continues for three (3) business days after written notice from Landlord to Tenant thereof; or
- (e) Tenant shall fail to perform or observe any other material requirement, term, covenant or condition of this Lease (not hereinabove in this Section 15.1 specifically referred to) on the part of Tenant to be performed or observed and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant, or if said default shall reasonably require longer than thirty (30) days to cure, if Tenant shall fail to commence to cure said default within thirty (30) days after notice thereof and/or fail to continuously prosecute the curing of the same to completion with due diligence; or
- (f) The estate hereby created shall be taken on execution or by other process of law; or
- (g) Tenant shall make an assignment or trust mortgage arrangement, so-called, for the benefit of its creditors; or
- (h) Tenant shall judicially be declared bankrupt or insolvent according to law; or
- (i) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction; or
- (j) any petition shall be filed against Tenant in any court, whether or not pursuant to any statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding, and such proceedings shall not be fully and finally dismissed within sixty (60) days after the institution of the same; or
- (k) Tenant shall file any petition in any court, whether or not pursuant to any statute of the United States or any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding; or

(l) Tenant otherwise abandons the Premises.

15.2 Termination; Re-Entry

Upon the happening of any one or more of the aforementioned Events of Default (notwithstanding any license of a former breach of covenant or waiver of the benefit hereof or consent in a former instance), Landlord or Landlord's agents or servants may give to Tenant a notice (hereinafter called "notice of termination") terminating this Lease on a date specified in such notice of termination (which shall be not less than five (5) days after the date of the mailing of such notice of termination), and this Lease and the Lease Term, as well as any and all of the right, title and interest of the Tenant hereunder, shall wholly cease and expire on the date set forth in such notice of termination (Tenant hereby waiving any rights of redemption) in the same manner and with the same force and effect as if such date were the date originally specified herein for the expiration of the Lease Term, and Tenant shall then quit and surrender the Premises to Landlord.

In addition or as an alternative to the giving of such notice of termination, Landlord or Landlord's agents or servants may, by any suitable action or proceeding at law, immediately or at any time thereafter re-enter the Premises and remove therefrom Tenant, its agents, employees, servants, licensees, and any subtenants and other persons, and all or any of its or their property therefrom, and repossess and enjoy the Premises, together with all additions, alterations and improvements thereto; but, in any event under this Section 15.2, Tenant shall remain liable as hereinafter provided.

The words "re-enter" and "re-entry" as used throughout this Article XV are not restricted to their technical legal meanings.

15.3 Continued Liability; Re-Letting

If this Lease is terminated or if Landlord shall re-enter the Premises as aforesaid, or in the event of the termination of this Lease, or of re-entry, by or under any proceeding or action or any provision of law by reason of an Event of Default hereunder on the part of Tenant, Tenant covenants and agrees forthwith to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Annual Fixed Rent, all Additional Rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the Lease Term, or for the whole thereof, but, in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent and other charges received by Landlord in reletting, after deduction of all reasonable expenses incurred in reletting the Premises (including, without limitation, remodeling costs, brokerage fees and the like), and in collecting the rent in connection therewith, in the following manner:

Amounts received by Landlord after reletting shall first be applied against such Landlord's expenses, until the same are recovered, and until such recovery, Tenant shall pay, as of each day when a payment would fall due under this Lease, the amount which Tenant is obligated to pay under the terms of this Lease (Tenant's liability prior to any such reletting and such recovery not in any way to be diminished as a result of the fact that such reletting might be for a rent higher than the rent provided for in this Lease); when and if such expenses have been completely recovered, the amounts received from reletting by Landlord as have not previously been applied shall be credited against Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof shall be payable by Tenant. Further, Tenant shall not be entitled to any credit of any kind for any period after the date when the term of this Lease is scheduled to expire according to its terms.

Landlord agrees to use reasonable efforts to relet the Premises after Tenant vacates the same in the event this Lease is terminated based upon an Event of Default by Tenant hereunder. The marketing of the Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control within the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts" hereunder. In no event shall Landlord be required to (i) solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full and complete possession of the Premises (including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant), (ii) relet the Premises before leasing other vacant space in the Building, or (iii) lease the Premises for a rental less than the current fair market rent then prevailing for similar office space in the Building.

#### 15.4 Liquidated Damages

Landlord may elect, as an alternative, to have Tenant pay liquidated damages, which election may be made by notice given to Tenant at any time after the termination of this Lease under Section 15.2, above, and whether or not Landlord shall have collected any damages as hereinbefore provided in this Article XV, and in lieu of all other such damages beyond the date of such notice. Upon such notice, Tenant shall promptly pay to Landlord, as liquidated damages, in addition to any damages collected or due from Tenant from any period prior to such notice, such a sum as at the time of such notice represents the amount of the excess, if any, of (a) the discounted present value, at a discount rate of 6%, of the Annual Fixed Rent, Additional Rent and other charges which would have been payable by Tenant under this Lease for the remainder of the Lease Term if the Lease terms had been fully complied with by Tenant, over and above (b) the discounted present value, at a discount rate of 6%, of the Annual Fixed Rent, Additional Rent and other charges that would be received by Landlord if the Premises were re-leased at the time of such notice for the remainder of the Lease Term at the fair market value (including provisions regarding periodic increases in Annual Fixed Rent if such are applicable) prevailing at the time of such notice.

For the purposes of this Article, if Landlord elects to require Tenant to pay liquidated damages in accordance with this Section 15.4, the total rent shall be computed by assuming the Tax Excess under Section 6.1 and the Operating Cost Excess under Section 7.4 to be the same as were payable for the twelve (12) calendar months (or if less than twelve (12) calendar months have been elapsed since the date hereof, the partial year) immediately preceding such termination of re-entry.

Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeds in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

In lieu of any other damages or indemnity and in lieu of the recovery by Landlord of all sums payable under all the foregoing provisions of this Section 15.4, Landlord may elect to collect from Tenant, by notice to Tenant, at any time after this Lease is terminated under any of the provisions contained in this Article XV or otherwise terminated by breach of any obligation of Tenant and before full recovery under such foregoing provisions, and Tenant shall thereupon pay, as liquidated damages, an amount equal to the sum of (a) the Annual Fixed Rent and all Additional Rent payable for the lesser of (i) the twelve (12) months ended next prior to such termination and (ii) the number of full plus any partial months remaining in the Lease Term, plus (b) the amount of Annual Fixed Rent and Additional Rent of any kind accrued and unpaid at the time of such election, plus (c) any and all expenses which the Landlord may have incurred for and with respect to the collection of any such rent.

15.5 Waiver of Redemption

Tenant, for itself and any and all persons claiming through or under Tenant, including its creditors, upon the termination of this Lease and of the term of this Lease in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Premises in any action or proceeding, or if Landlord shall enter the Premises by process of law or otherwise, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the term of this Lease hereby demised after having been dispossessed or ejected therefrom by process of law, or otherwise.

15.6 Landlord's Default

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. The Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim.

ARTICLE XVI

Miscellaneous Provisions

16.1 Waiver

Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Tenant or Landlord, respectively, of any of its rights hereunder.

Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's or Tenant's consent or approval to or of any subsequent similar act by the other.

No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. Further, the acceptance by Landlord of Annual Fixed Rent, Additional Rent or any other charges paid by Tenant under this Lease shall not be or be deemed to be a waiver by Landlord of any default by Tenant, whether or not Landlord knows of such default, except for such defaults as to which such payment relates.



## 16.2 Cumulative Remedies

Except as expressly provided in this Lease, the specific remedies to which Landlord and Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress which they may be lawfully entitled to seek in case of any breach or threatened breach of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to seek specific performance of any such covenants, conditions or provisions, provided, however, that the foregoing shall not be construed as a confession of judgment by Tenant.

## 16.3 Quiet Enjoyment

This Lease is subject and subordinate to all matters of record. Landlord agrees that, upon Tenant's paying the Annual Fixed Rent, Additional Rent and other charges herein reserved, and performing and observing the covenants, conditions and agreements hereof upon the part of Tenant to be performed and observed, Tenant shall and may peaceably hold and enjoy the Premises during the term of this Lease (exclusive of any period during which Tenant is holding over after the termination or expiration of this Lease without the consent of Landlord), without interruption or disturbance from Landlord or persons claiming through or under Landlord, subject, however, to the terms of this Lease. This covenant shall be construed as running with the land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of the Landlord's interest in the Premises, and this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and upon such subsequent owners and successors in interest of Landlord's interest under this Lease including ground or master lessees, to the extent of their respective interests, as and when they shall acquire same and then only for so long as they shall retain such interest.

## 16.4 Surrender

(A) No act or thing done by Landlord during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises as an acceptance of a surrender of the Premises prior to the termination of this Lease; provided, however, that the foregoing shall not apply to the delivery of keys to Landlord or its agents in its (or their) capacity as managing agent or for purpose of emergency access. In any event, however, the delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of the Lease or a surrender of the Premises.

(B) Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender the Premises to Landlord in the condition as required by Sections 8.1 and 9.5, first removing all goods and effects of Tenant and completing such other removals as may be permitted or required pursuant to Section 9.5.

## 16.5 Brokerage

Tenant and Landlord warrant and represent that neither party has dealt with any broker in connection with the consummation of this Lease other than the broker, person or firm designated in Section 1.2 hereof; and in the event any claim is made against either party relative to dealings with brokers other than the broker designated in Section 1.2 hereof, the other party shall defend the claim against such party with counsel of the other party's selection and save harmless and indemnify such party on account of loss, cost or damage which may arise by reason of such claim. Landlord's broker with

respect to the 4CC Lease, Richards, Barry, Joyce and Partners, was not involved in the transaction evidenced by this Lease, and Landlord shall defend Tenant against any claim against Tenant by the aforesaid broker relative to any dealings by Landlord with the aforesaid broker. Landlord agrees that it shall be solely responsible for the payment of brokerage commissions to the broker, person or firm designated in Section 1.2 hereof in connection with the Original Lease Term.

16.6 Invalidity of Particular Provisions

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

16.7 Provisions Binding, Etc.

The obligations of this Lease shall run with the land, and except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may have later given consent to a particular assignment as required by the provisions of Article XII hereof.

16.8 Recording; Confidentiality

Each of Landlord and Tenant agree not to record the within Lease, but each party hereto agrees, on the request of the other, to execute a so-called Notice of Lease or short form lease in form recordable and complying with applicable law and reasonably satisfactory to Landlord's and Tenant's attorneys. In no event shall such document set forth the rent or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

Tenant agrees that this Lease and the terms contained herein will be treated as strictly confidential and except as required by law or the requirements of any securities exchange listing the stock of Tenant (or except with the written consent of Landlord) Tenant shall not disclose the same to any third party except for Tenant's partners, lenders, accountants and attorneys who have been advised of the confidentiality provisions contained herein and agree to be bound by the same. In the event Tenant is required by law or the requirements of any securities exchange listing the stock of Tenant to provide this Lease or disclose any of its terms, Tenant shall give Landlord prompt notice of such requirement prior to making disclosure so that Landlord may seek an appropriate protective order. If failing the entry of a protective order Tenant is compelled to make disclosure, Tenant shall only disclose portions of the Lease which Tenant is required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the information so disclosed.

16.9 Notices and Time for Action

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notices shall be in writing and shall be sent by hand, registered or certified mail, or overnight or other commercial courier, postage or delivery charges, as the case may be, prepaid as follows:

If intended for Landlord, addressed to Landlord at the address set forth in Article I of this Lease (or to such other address or addresses as may from time to time hereafter be designated by Landlord by like notice).

If intended for Tenant, addressed to Tenant at the address set forth in Article I of this Lease except that from and after the Commencement Date the address of Tenant shall be the Premises (or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice).

Except as otherwise provided herein, all such notices shall be effective when received; provided, that (i) if receipt is refused, notice shall be effective upon the first occasion that such receipt is refused, (ii) if the notice is unable to be delivered due to a change of address of which no notice was given, notice shall be effective upon the date such delivery was attempted, (iii) if the notice address is a post office box number, notice shall be effective the day after such notice is sent as provided hereinabove or (iv) if the notice is to a foreign address, notice shall be effective two (2) days after such notice is sent as provided hereinabove.

Any notice given by an attorney on behalf of Landlord or by Landlord's managing agent shall be considered as given by Landlord and shall be fully effective. Any notice given by an attorney on behalf of Tenant shall be considered as given by Tenant and shall be fully effective.

Where provision is made for the attention of an individual or department, the notice shall be effective only if the wrapper in which such notice is sent is addressed to the attention of such individual or department.

Time is of the essence with respect to any and all notices and periods for giving of notice or taking any action thereto under this Lease.

#### 16.10 When Lease Becomes Binding

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

#### 16.11 Paragraph Headings

The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

#### 16.12 Rights of Mortgagee

This Lease shall be subject and subordinate to any mortgage now or hereafter on the Site or the Building, or both, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor, provided that the holder of such mortgage agrees to recognize the right of Tenant to use and occupy the Premises upon the payment of rent and other charges payable by Tenant under this Lease and the performance by Tenant of Tenant's obligations hereunder.

In confirmation of such subordination and recognition, Tenant shall execute and deliver promptly such instruments of subordination as such mortgagee may reasonably request, subject to receipt of such instruments of non-disturbance from such mortgagee as Tenant may reasonably request (Landlord hereby agreeing to pay any legal or other fees charged by the mortgagee in connection with providing the same). In the event that any mortgagee or its respective successor in title shall succeed to the interest of Landlord, then this Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to such mortgagee or successor and to recognize such mortgagee or successor as its landlord. If any holder of a mortgage which includes the Premises, executed and recorded prior to the Date of this Lease, shall so elect, this Lease, and the rights of Tenant hereunder, shall be superior in right to the rights of such holder, with the same force and effect as if this Lease had been executed, delivered and recorded, or a statutory Notice hereof recorded, prior to the execution, delivery and recording of any such mortgage. The election of any such holder shall become effective upon either notice from such holder to Tenant in the same fashion as notices from Landlord to Tenant are to be given hereunder or by the recording in the appropriate registry or recorder's office of an instrument in which such holder subordinates its rights under such mortgage to this Lease.

If in connection with obtaining financing a bank, insurance company, pension trust or other institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or condition its consent thereto, provided that (i) such modifications do not increase the monetary obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder and (ii) Landlord shall be responsible for the payment of all reasonable costs incurred by Tenant in complying with such request such as, for example, attorneys' fees.

#### 16.13 Rights of Ground Lessor

If Landlord's interest in property (whether land only or land and buildings) which includes the Premises is acquired by another party and simultaneously leased back to Landlord herein, the holder of the ground lessor's interest in such lease shall enter into a recognition agreement with Tenant simultaneously with the sale and leaseback, wherein the ground lessor will agree to recognize the right of Tenant to use and occupy the Premises upon the payment of Annual Fixed Rent, Additional Rent and other charges payable by Tenant under this Lease and the performance by Tenant of Tenant's obligations hereunder, and wherein Tenant shall agree to attorn to such ground lessor as its Landlord and to perform and observe all of the tenant obligations hereunder, in the event such ground lessor succeeds to the interest of Landlord hereunder under such ground lease.

#### 16.14 Notice to Mortgagee and Ground Lessor

After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Premises as part of the mortgaged premises, or that it is the ground lessor under a lease with Landlord as ground lessee, which includes the Premises as a part of the demised premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor at the address as specified in said notice (as it may from time to time be changed), and the curing of any of Landlord's defaults by such holder or ground lessor within a reasonable time after such notice (including a reasonable time to obtain possession of the premises if the mortgagee or ground lessor elects to do so) shall be treated as performance by Landlord. For the purposes of this Section 16.14, the term "mortgage" includes a mortgage on a leasehold interest of Landlord (but not one on Tenant's leasehold interest).

#### 16.15 Assignment of Rents

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

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

#### 16.16 Status Report and Financial Statements

Recognizing that the parties hereto may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, each party (the "Non-Requesting Party") on the request of the other party (the "Requesting Party") made from time to time, will promptly furnish to the Requesting Party, addressed to any existing or potential holder of any mortgage encumbering the Premises, the Building, the Site and/or the Complex or any potential purchaser of the Premises, the Building, the Site and/or the Complex (each an "Interested Party") a statement of the status of any reasonable matter pertaining to this Lease, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Lease.

In addition, unless and for so long as Tenant is a publicly-traded entity with financial statements that are freely available to the public which are certified to the governmental regulatory authorities, Tenant shall deliver to Landlord, or any Interested Party designated by Landlord, financial statements of Tenant, and any guarantor of Tenant's obligations under this Lease, as reasonably requested by Landlord including, but not limited to, financial statements for the past three (3) years.

Any such status statement and non-publicly available financial statement, which shall be certified by Tenant's executives to the same extent as publicly-available financial statements of publicly-traded entities, which are delivered pursuant to this Section 16.16 may be relied upon by any Interested Party.

#### 16.17 Self-Help

If Tenant shall at any time fail to make any payment or perform any act which Tenant is obligated to make or perform under this Lease and (except in the case of emergency) if the same continues unpaid or unperformed beyond applicable grace periods, then Landlord may, but shall not be obligated so to do, after ten (10) days' notice to and demand upon Tenant, or without notice to or demand upon Tenant in the case of any emergency, and without waiving, or releasing Tenant from, any obligations of Tenant in this Lease contained, make such payment or perform such act which Tenant is obligated to perform under this Lease in such manner and to such extent as may be reasonably necessary, and, in exercising any such rights, pay any costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. All sums so paid by Landlord and all reasonable and necessary costs and expenses of Landlord incidental thereto, together with interest thereon at the annual rate equal to the sum of (a) the Base Rate from time to time announced by Bank of America, N.A. (or its successor) as its Base Rate and (b) two percent (2%) (but in no event greater than the maximum rate permitted by applicable law), from the date of the making of such expenditures by Landlord, shall be deemed to be Additional Rent and, except as otherwise in this Lease expressly provided, shall be payable to the Landlord on demand, and if not promptly paid shall be added to any rent then due or thereafter becoming due under this Lease, and Tenant covenants to pay any such sum or sums with interest as aforesaid, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Annual Fixed Rent.

If Landlord shall at any time be in default pursuant to the terms and conditions of this Lease attributable to its failure to perform any act which Landlord is obligated to perform under this Lease, and (except in the case of emergency) should such failure continue beyond applicable grace periods, Tenant may, but shall not be obligated so to do, after ten (10) business days' written notice to and demand upon Landlord explicitly setting forth the basis for Tenant's claim of default and specifying that Tenant intends to invoke Tenant's rights under this Section 16.17 (or without notice to or demand upon Landlord in the case of any emergency) ("Tenant's Self-Help Notice"), and without waiving, or releasing Landlord from, any obligations of Landlord in this Lease contained, perform such act which Landlord is obligated to perform under this Lease in such manner and to such extent as may be reasonably necessary, unless Landlord shall, within five (5) business days following Landlord's receipt of Tenant's Self-Help Notice, give Tenant notice that Landlord has commenced to cure Landlord's default as aforesaid, and thereafter Landlord diligently prosecutes such cure to completion. All sums reasonably so incurred and paid by Tenant and all reasonable and necessary costs and expenses of Tenant incidental to Tenant's proper exercise of self-help rights pursuant to this Section 16.17, together with interest thereon at the annual rate equal to the sum of (a) the Base Rate from time to time announced by Bank of America, N.A. (or its successor) as its Base Rate and (b) two percent (2%) (but in no event greater than the maximum rate permitted by applicable law), from the date of the making of such expenditures by Tenant, shall be payable to the Tenant within thirty (30) days of Tenant's furnishing Landlord an invoice therefor, accompanied by reasonable substantiation, and Landlord covenants to pay any such sum or sums with interest as aforesaid if not timely paid.

#### 16.18 Holding Over

(A) Any holding over by Tenant after the expiration of the term of this Lease shall be treated as a tenancy at sufferance and shall be on the terms and conditions as set forth in this Lease, as far as applicable except that Tenant shall pay as a use and occupancy charge an amount equal to the greater of (x) 150% of the Annual Fixed Rent and Additional Rent calculated (on a daily basis) at the rate payable under the terms of this Lease immediately prior to the commencement of such holding over, or (y) the fair market rental value of the Premises, in each case for the period measured from the day on which Tenant's hold-over commences and terminating on the day on which Tenant vacates the Premises. Notwithstanding the foregoing, for the first thirty (30) days of any holding over, the percentage figure set forth above shall instead be 125%. The payments due under this Section 16.18(A) shall sometimes hereinafter be referred to as "Holdover Use and Occupancy Payments."

(B) In addition, Tenant shall save Landlord, its agents and employees harmless and will exonerate, defend and indemnify Landlord, its agents and employees from and against any and all damages which Landlord may suffer on account of Tenant's hold-over in the Premises after the expiration or prior termination of the term of this Lease. Notwithstanding the foregoing, however, Tenant shall not have liability under the first sentence of this Section 16.18(B) for the first five (5) days of any holding over, but Tenant shall nevertheless be liable for Holdover Use and Occupancy Payments and as otherwise as provided in this Lease. With regard to the sixth (6<sup>th</sup>) through fifteenth (15<sup>th</sup>) days of any holding over, Tenant shall additionally have liability under the first sentence of this Section 16.18(B) provided that such liability shall not exceed any per diem amount that Landlord is required to pay or credit to any tenant(s) or other occupant(s), or prospective tenant(s) or other occupant(s), for whom the Premises constitutes or will constitute all or a portion of its or their premises associated with any day or days of late delivery of said premises (whether characterized as damages, credit against rent otherwise payable or otherwise), for each additional day of holding over by Tenant commencing with the sixth (6<sup>th</sup>) day of holding over. The fact that Landlord may not deliver such premises to such tenant(s) or occupant(s) until a later date, due to work Landlord must thereafter perform as a condition to such tenant(s)' or occupant(s)' occupancy, or for any other reason, shall not derogate from Tenant's liability under this Section 16.18 for the aforesaid per diem late delivery compensation, and without regard to whether or not Landlord actually must make such payment or credit.

(C) From the sixteenth (16<sup>th</sup>) day of any holding over and thereafter, there shall no longer be any qualification or limitation upon Tenant's liability under the first sentence of Section 16.18(B).

(D) Nothing in the foregoing nor any other term or provision of this Lease shall be deemed to permit Tenant to retain possession of the Premises or hold over in the Premises after the expiration or earlier termination of the Lease Term. All property which remains in the Building or the Premises after the expiration or termination of this Lease shall be conclusively deemed to be abandoned and may either be retained by Landlord as its property or sold or otherwise disposed of in such manner as Landlord may see fit. If any part thereof shall be sold, then Landlord may receive the proceeds of such sale and apply the same, at its option against the expenses of the sale, the cost of moving and storage, any arrears of rent or other charges payable hereunder by Tenant to Landlord and any damages to which Landlord may be entitled under this Lease and at law and in equity.

#### 16.19 Entry by Landlord

Landlord, and its duly authorized representatives, shall, upon at least two (2) business days' prior written notice (except in the case of emergency), have the right (i) to enter the Premises at all reasonable times (except at any time in the case of emergency) for the purposes of inspecting the condition of same and making such repairs, alterations, additions or improvements thereto as may be necessary if Tenant fails to do so as required hereunder (but the Landlord shall have no duty whatsoever to make any such inspections, repairs, alterations, additions or improvements except as otherwise provided in Sections 4.1, 4.3, 7.1 and 7.2), and (ii) to show the Premises to prospective tenants during the twelve (12) months preceding expiration of the term of this Lease as it may have been extended and at any reasonable time during the Lease Term to show the Premises to prospective purchasers and mortgagees.

#### 16.20 Tenant's Payments

Each and every payment and expenditure, other than Annual Fixed Rent, shall be deemed to be Additional Rent hereunder, whether or not the provisions requiring payment of such amounts specifically so state, and shall be payable, unless otherwise provided in this Lease, within thirty (30)

days after written demand by Landlord, and in the case of the non-payment of any such amount, Landlord shall have, in addition to all of its other rights and remedies, all the rights and remedies available to Landlord hereunder or by law in the case of non-payment of Annual Fixed Rent. Unless expressly otherwise provided in this Lease, the performance and observance by Tenant of all the terms, covenants and conditions of this Lease to be performed and observed by Tenant shall be at Tenant's sole cost and expense. Except as otherwise expressly provided in Section 7.6(D), if Tenant has not objected to any statement of Additional Rent which is rendered by Landlord to Tenant within ninety (90) days after Landlord has rendered the same to Tenant, then the same shall be deemed to be a final account between Landlord and Tenant not subject to any further dispute. In the event that Tenant shall seek Landlord's consent or approval under this Lease, then Tenant shall reimburse Landlord, upon demand (accompanied by reasonable supporting documentation) as Additional Rent, for all reasonable costs and expenses, including legal and architectural costs and expenses, and costs associated with any of Landlord's senior or junior staff at the rates set forth above in this Lease, reasonably incurred by Landlord in processing such request, whether or not such consent or approval shall be given.

#### 16.21 Late Payment

If Landlord shall not have received any payment or installment of Annual Fixed Rent or Additional Rent (the "Outstanding Amount") on or before the date on which the same first becomes payable under this Lease (the "Due Date"), the amount of such payment or installment shall incur a late charge equal to the sum of: (a) five percent (5%) of the Outstanding Amount for administration and bookkeeping costs associated with the late payment and (b) interest on the Outstanding Amount from the Due Date through and including the date such payment or installment is received by Landlord, at a rate equal to the lesser of (i) the rate announced by Bank of America, N.A. (or its successor) from time to time as its prime or base rate (or if such rate is no longer available, a comparable rate reasonably selected by Landlord), plus two percent (2%), or (ii) the maximum applicable legal rate, if any. However, not more than once per calendar year, the aforesaid late charge will not be imposed until five (5) days after written notice of such delinquency is given to Tenant, in which case the aforesaid late charge shall be due only if such delinquency fails to be cured within such five (5) day period. Additionally, in the case where Tenant is entitled to such additional five (5) day cure period after notice, as provided above, interest on the Outstanding Amount shall not begin to accrue until the day following such five (5) day grace period. The aforesaid late charge and interest accrued upon any Outstanding Amount shall be deemed Additional Rent and shall be paid by Tenant to Landlord upon demand.

#### 16.22 Counterparts

This Lease may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

#### 16.23 Entire Agreement

This Lease constitutes the entire agreement between the parties hereto, Landlord's managing agent and their respective affiliates with respect to the subject matter hereof and thereof and supersedes all prior dealings between them with respect to such subject matter, and there are no verbal or collateral understandings, agreements, representations or warranties not expressly set forth in this Lease. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant, unless reduced to writing and signed by the party or parties to be charged therewith.



#### 16.24 Limitation of Liability

Tenant shall neither assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Property, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease, it being specifically agreed that neither Landlord, nor any successor holder of Landlord's interest hereunder, nor any beneficiary of any trust of which any person from time to time holding Landlord's interest is trustee, nor any such trustee nor any member, manager, partner, director or stockholder, nor Landlord's managing agent, shall ever be personally liable for any such liability. This paragraph shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors-in-interest, or to take any other action which shall not involve the personal liability of Landlord, or of any successor holder of Landlord's interest hereunder, or of any beneficiary of any trust of which any person from time to time holding Landlord's interest is trustee, or of any such trustee, or of any manager, member, partner, director or stockholder of Landlord or Landlord's managing agent to respond in monetary damages from Landlord's assets other than Landlord's interest in said Property, as aforesaid, but in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the demised premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same. In the event that Landlord shall be determined to have acted unreasonably in withholding any consent or approval under this Lease, the sole recourse and remedy of the Tenant in respect thereof shall be to specifically enforce Landlord's obligation to grant such consent or approval, and in no event shall the Landlord be responsible for any damages of whatever nature in respect of its failure to give such consent or approval nor shall the same otherwise affect the obligations of the Tenant under this Lease or act as any termination of this Lease. In the case of any dispute regarding whether or not Landlord acted reasonably in withholding its consent to a proposed assignment or subletting under Section 12.4 of this Lease, in any case where Landlord's consent is not to be unreasonably withheld in accordance therewith, the dispute may be resolved in accordance with the expedited dispute resolution procedure set forth in Section 12.8, subject to the terms and conditions thereof.

In no event shall either party hereto ever be liable for any indirect or consequential damages or loss of profits or the like, provided that the foregoing limitation of liability shall be inapplicable to Tenant's obligations pursuant to Section 16.18 hereof (subject to the limitations set forth in Sections 16.18(B) and (C) hereof).

#### 16.25 No Partnership

The relationship of the parties hereto is that of landlord and tenant and no partnership, joint venture or participation is hereby created.

#### 16.26 Security Deposit

(A) Concurrently with the execution of this Lease, Tenant shall pay to Landlord a security deposit in the amount of the Initial Security Deposit Amount set forth in Section 1.2, and Landlord shall hold the same, throughout the Term of this Lease (including the Extended Term, if applicable), unless sooner returned to Tenant as provided in this Section 16.26, as security for the performance by Tenant of all obligations on the part of Tenant to be performed under this Lease. Such deposit may be in the form of an irrevocable, unconditional, negotiable letter of credit (the "Letter of Credit"). The Letter of Credit shall (i) be issued by and drawn on a bank reasonably approved by Landlord and at a minimum having a corporate credit rating from Standard and Poor's Professional Rating Service of BBB- or a

comparable minimum rating from Moody's Professional Rating Service, (ii) be substantially in the form attached hereto as Exhibit J, (iii) permit one or more draws thereunder to be made accompanied only by certification by Landlord or Landlord's managing agent that pursuant to the terms of this Lease, Landlord is entitled to draw upon such Letter of Credit, (iv) permit transfers at any time without charge, (v) permit presentment in Boston, Massachusetts and (vi) provide that any notice to Landlord be sent to the notice address provided for Landlord in this Lease. If the credit rating for the issuer of such Letter of Credit falls below the standard set forth in (i) above or if the financial condition of such issuer changes in any other material adverse way, Landlord shall have the right to require that Tenant provide a substitute letter of credit that complies in all respects with the requirements of this Section, and Tenant's failure to provide the same within ten (10) days following Landlord's written demand therefor shall entitle Landlord to immediately draw upon the Letter of Credit. Any such Letter of Credit shall be for a term of two (2) years (or for one (1) year if the issuer thereof regularly and customarily only issues letters of credit for a maximum term of one (1) year) and shall in either case provide for automatic renewals through the date which is ninety (90) days subsequent to the scheduled expiration of this Lease (as the same may be extended) or if the issuer will not grant automatic renewals, the Letter of Credit shall be renewed by Tenant each year and each such renewal shall be delivered to and received by Landlord not later than thirty (30) days before the expiration of the then current Letter of Credit (herein called a "Renewal Presentation Date"). In the event of a failure to so deliver any such renewal Letter of Credit on or before the applicable Renewal Presentation Date, Landlord shall be entitled to present the then existing Letter of Credit for payment and to receive the proceeds thereof, which proceeds shall be held as Tenant's security deposit, subject to the terms of this Section 16.26. Any failure or refusal of the issuer to honor the Letter of Credit shall be at Tenant's sole risk and shall not relieve Tenant of its obligations hereunder with regard to the security deposit. Upon the occurrence of any Event of Default, Landlord shall have the right from time to time without prejudice to any other remedy Landlord may have on account thereof, to draw on all or any portion of such deposit held as a Letter of Credit and to apply the proceeds of such Letter of Credit or any cash held as such deposit, or any part thereof, to Landlord's damages arising from such Event of Default on the part of Tenant under the terms of this Lease. If Landlord so applies all or any portion of such deposit, Tenant shall within seven (7) days after notice from Landlord deposit cash with Landlord in an amount sufficient to restore such deposit to the full amount stated in this Section 16.26. While Landlord holds any cash deposit Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. Neither the holder of a mortgage nor the Landlord in a ground lease on property which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such holder or ground Landlord.

(B) Landlord shall return a Seven Hundred Six Thousand Six Hundred Fifty Three and 40/100 Dollar (\$706,653.40) portion of such deposit to Tenant so that the remainder of such deposit shall be Two Million Eight Hundred Twenty Six Thousand Six Hundred Thirteen and 60/100 Dollars (\$2,826,613.60) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2011 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(C) Landlord shall return a Seven Hundred Six Thousand Six Hundred Fifty Three and 40/100 Dollar (\$706,653.40) portion of such deposit to Tenant so that the remainder of such deposit shall be Two Million One Hundred Nineteen Thousand Nine Hundred Sixty and 20/100 Dollars (\$2,119,960.20) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2013 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(D) Landlord shall return a Seven Hundred Six Thousand Six Hundred Fifty Three and 40/100 Dollar (\$706,653.40) portion of such deposit to Tenant so that the remainder of such deposit shall be One Million Four Hundred Thirteen Thousand Three Hundred Six and 80/100 Dollars (\$1,413,306.80) (or if such deposit is in the form of a Letter of Credit, Landlord shall exchange the Letter of Credit for a Letter of Credit delivered by Tenant which reduces the amount secured by the Letter of Credit by the amount stated hereinabove and otherwise in strict conformity with the requirements herein) on August 1, 2015 if (i) Tenant is not then in default under the terms of this Lease without the benefit of notice or grace, (ii) Landlord has not applied such deposit or any portion thereof to Landlord's damages arising from any default on the part of Tenant, whether or not Tenant has restored the amount so applied by Landlord, (iii) there has not been any Event of Default that occurred during the Term, even if later cured and (iv) Tenant then fulfills the Minimum Revenue Criteria (as defined in Section 16.26(E) below).

(E) For purposes of this Section 16.26, the "Minimum Revenue Criteria" shall be considered to have been satisfied as of any date the same is tested if, taking into account the immediately prior four (4) full fiscal quarters, based on the information contained in the audited financial statements set forth in Tenant's Form 10-Q filed with the Securities and Exchange Commission for each such fiscal quarter, Tenant's total revenue equals or exceeds Four Hundred Million and 00/100 Dollars (\$400,000,000.00). In the event that, at any time, Tenant is an entity other than a publicly-held company whose shares are traded on a national stock exchange, Tenant shall provide Landlord with a certified copy of its most recent audited financial statements, and a reasonably equivalent criteria acceptable to Landlord shall be used to determine Tenant's total revenue in a similar fashion, based on such audited annual financial statements.

(F) If Tenant believes that it has satisfied all the conditions precedent to a reduction in the amount of the security deposit, then it shall request such reduction in writing to Landlord, which request shall certify to Landlord that all such conditions have been satisfied. If Landlord agrees, in its reasonable determination, that all of the aforesaid conditions are met, the security deposit shall be so reduced in accordance with this Section 16.26. No Letter of Credit shall automatically reduce, but any reduction in the amount thereof shall require Landlord's prior written notice to the issuer of the Letter of Credit of the reduced amount. Promptly after Landlord's receipt of Tenant's request for a reduction as described above, Landlord shall determine whether such a reduction is permitted in accordance with this Section 16.26, and if it is, Landlord shall notify the issuer of the Letter of Credit of the amount to which the Letter of Credit shall be reduced.

(G) Tenant not then being in default and having performed all of its obligations under this Lease, including the payment of all Annual Fixed Rent, Landlord shall return the deposit, or so much thereof as shall not have theretofore been applied in accordance with the terms of this Section 16.26, to Tenant on the expiration or earlier termination of the term of this Lease (as the same may have been extended) and surrender possession of the Premises by Tenant to Landlord in the condition required in the Lease at such time.

16.27 Waiver of Trial by Jury

To induce Landlord to enter into this Lease, Tenant hereby waives any right to trial by jury in any action, proceeding or counterclaim brought by either Landlord or Tenant on any matters whatsoever arising out of or any way connected with this Lease, the relationship of the Landlord and the Tenant, the Tenant's use or occupancy of the Premises and/or any claim of injury or damage, including but not limited to, any summary process eviction action.

16.28 Patriot Act and Executive Order 13224

(A) As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that, to Tenant's knowledge: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Tenant is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Tenant (and any person, group, or entity which Tenant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be deemed a default by Tenant under Section 15.1(d) of this Lease and shall be covered by the indemnity provisions of Section 13.1(A) above, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, for the purposes of this subsection (B) the phrase "owned or controlled directly or indirectly by any person, group, entity or nation" and all similar such phrases shall not include any holder of a direct or indirect interest in a publicly traded company whose shares are listed and traded on a United States national stock exchange.

(B) As an inducement to Tenant to enter into this Lease, Landlord hereby represents and warrants that, to Landlord's knowledge: (i) Landlord is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or by any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Landlord is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Landlord (and any person, group, or entity which Landlord controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or

regulation. In connection with the foregoing, is expressly understood and agreed that the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, for the purposes of this subsection (B) the phrase "owned or controlled directly or indirectly by any person, group, entity or nation" and all similar such phrases shall not include (x) any shareholder of Boston Properties, Inc., (y) any holder of a direct or indirect interest in a publicly traded company whose shares are listed and traded on a United States national stock exchange or (z) any limited partner, unit holder or shareholder owning an interest of five percent (5%) or less in Boston Properties Limited Partnership or the holder of any direct or indirect interest in Boston Properties Limited Partnership.

#### 16.29 Governing Law

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

#### 16.30 Emergency Generator

Tenant may, at its sole cost and expense, maintain, repair and replace in the Building the existing emergency generator and diesel fuel tank (collectively, the "Emergency Generator"), in its existing location, subject to and in accordance with this Lease including, without limitation, Article IX.

Tenant's use of the Emergency Generator shall be upon all of the conditions of the Lease, except as modified below:

- (a) It is understood and agreed that Tenant shall be responsible, at its sole cost and expense, for installing all necessary connections (the "Generator Connections") between the Emergency Generator and the Premises. In addition to complying with the applicable construction provisions of this Lease, Tenant shall not install or operate the Generator Connections in any portion of the Building until (x) Tenant shall have obtained Landlord's prior written approval, which approval will not be unreasonably withheld or delayed, of Tenant's plans and specifications for the placement and installation of the Generator Connections, and (y) Tenant shall have obtained and delivered to Landlord copies of all required governmental and quasi-governmental permits, approvals, licenses and authorizations necessary for the lawful installation, operation and maintenance of the Generator Connections. Landlord shall inform Tenant at the time of its review of the Generator Connections whether Landlord will require the same to be removed by Tenant upon the expiration or earlier termination of this Lease.
- (b) Tenant shall have no obligation to pay Annual Fixed Rent, Tax Excess or Operating Expense Excess in respect of the Emergency Generator or the Generator Connections.
- (c) The Emergency Generator shall be used solely to provide back-up power in the event of an outage for Tenant's lights and plugs in the Premises and dedicated heating, ventilation and air conditioning systems serving the Premises, but not for the purposes of running any life-safety systems or equipment (it being understood and agreed that such dedicated HVAC systems may not function during such an outage, even if connected to the Emergency Generator, to the extent that the base building systems are not functioning).

- (d) Landlord shall have no obligation to provide any services to the Emergency Generator. Tenant shall, at its sole cost and expense and otherwise in accordance with the provisions of this Section 16.30, arrange for all utility services required for the operation of the Emergency Generator.
- (e) Tenant shall, at its sole cost and expense, be solely responsible for all maintenance and repair to the Emergency Generator and the Generator Connections. In connection therewith, Tenant shall provide Landlord with evidence on an annual basis of the existence of a maintenance contract for the Emergency Generator with a service provider reasonably acceptable to Landlord.
- (f) Tenant shall have no right to make any changes, alterations, signs, or other improvements to the Emergency Generator or the Generator Connections without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed.
- (g) Tenant shall be responsible for the cost of repairing any damage to the Building caused by its use of the Emergency Generator and the Generator Connections.
- (h) Except for assignees of this Lease or subtenants of all or a portion of the Premises, no other person, firm or entity (including, without limitation, other tenants, licensees or occupants of the Building) shall have the right to connect to the Emergency Generator other than Tenant.
- (i) To the maximum extent permitted by law, Tenant's use of the Emergency Generator and the Generator Connections shall be at the sole risk of Tenant, and Landlord shall have no liability to Tenant in the event that the Emergency Generator or the Generator Connections are damaged for any reason.
- (j) Tenant shall comply with all applicable laws, ordinances and regulations in Tenant's use of the Emergency Generator and the Generator Connections.
- (k) Landlord shall have the right, upon no less than one hundred twenty (120) days notice to Tenant and at Landlord's sole cost and expense, to relocate the Emergency Generator and the Generator Connections to another area in the vicinity of the Building. Landlord and Tenant shall cooperate with each other in good faith to schedule such relocation work on nights and weekends so as to minimize interference with Tenant's business operations. Any such relocation by Landlord shall not independently (i.e., in the absence of another cause) be deemed to constitute a failure of electric supply under Section 7.6(C) above.
- (l) In addition to the indemnification provisions set forth in this Lease which shall be applicable to the Emergency Generator and the Generator Connections, Tenant shall, to the maximum extent permitted by law, indemnify, defend, and hold Landlord, its agents, contractors and employees harmless from any and all claims, losses, demands, actions or causes of actions suffered by any person, firm, corporation, or other entity arising from Tenant's use of the Emergency Generator and the Generator Connections.
- (m) Landlord shall have the right to designate or identify the Emergency Generator with or by a lease or license number (or other marking) and to place such number (or marking) on or near such Emergency Generator.

It is expressly understood and agreed that, as Special Improvements, Landlord may require removal of the Emergency Generator and Generator Connection pursuant to Section 9.7 of this Lease and Tenant may elect to remove the Emergency Generator and Generator Connection at the expiration or earlier termination of this Lease.

16.31 Transportation Program

In order to reduce peak-hour trip generation of employees within the Development Area, Landlord encourages all employers at the Building to adopt flexible work schedules for their employees and to participate in transportation programs designed to encourage the use of mass transit by persons working in the Boston area. For example, numerous greater Boston companies provide subsidies for the purchase by the employees of monthly transit passes through the Corporate Pass Program of the Massachusetts Bay Transit Authority with subsidies ranging from 10% to 100% of the cost of the transit pass. The provision of transit pass subsidies may also offer certain benefits to employers under tax law. Landlord encourages all employers at the Building to participate in programs of this nature and to inform their employees of the benefits of using monthly transit. In addition, Landlord shall obtain membership in the Charles River Transportation Management Association (or any successor thereto or replacement thereof) for Tenant and its employees throughout the Term, provided that Tenant expressly acknowledges that this expense shall constitute an Operating Expense and further provided that this expense shall be included in Base Operating Expenses for the Property.

16.32 Landlord Affiliates

For all purposes of this Lease, the owner of another building in the Development Area, whether the 4CC Building or another building, shall be considered a landlord affiliated with Landlord if one entity is either the parent or subsidiary of the other, or they are both under common control, directly or indirectly, of another entity. Any building owner shall be considered an affiliate of Boston Properties Limited Partnership, or its successors or assigns, if such entity is a subsidiary of or is controlled by Boston Properties Limited Partnership, or its successors or assigns. For purposes hereof, "control" shall mean fifty percent (50%) or more of the direct or indirect beneficial ownership interest or control of fifty percent (50%) of the voting stock or interests therein.

LANDLORD:

BOSTON PROPERTIES LIMITED  
PARTNERSHIP, a Delaware limited partnership

By: Boston Properties, Inc.,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

AKAMAI TECHNOLOGIES, INC., a Delaware  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President or Vice President  
Hereunto duly authorized

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Treasurer or Assistant Treasurer  
Hereunto duly authorized

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary or Assistant Secretary



EXHIBIT A

DESCRIPTION OF SITE

Beginning at a point at the Southerly line of Broadway, said point of beginning being the point of tangency of the curve at the intersection of Broadway and the Western Connector; thence

S 60°30'18" E by Broadway a distance of one hundred eighty four and ninety eight hundredths feet (184.98') to a point; thence  
S 29°29'42" W by Tract IV B a distance of one hundred fifty one and thirty five hundredths feet (151.35') to a point; thence  
N 60°30'18" W by Parcel 3 a distance of one hundred eighty two and fifty hundredths feet (182.50') to a point at the Easterly sideline of the Western Connector; thence  
N 10°46'14" E by the Western Connector a distance of one hundred ten and ninety nine hundredths feet (110.99') to a point of curvature; thence  
Easterly and curving to the right along the arc of a curve having a radius of thirty five and no hundredths feet (35.00') and a length of sixty six and forty two hundredths feet (66.42') to the point of beginning.

The above described parcel contains an area of 30,958 square feet, more or less, and is shown as Tract IV A on a plan entitled "8 Cambridge Center Tract IV A & IV B of Parcel 3" scale: 1" = 40', dated December 18, 1997, as prepared by Allen & Major Associates, Inc. 400 West Cummings Park, Suite 5050 Woburn, MA. 01801

EXHIBIT B

ROOFTOP RIGHTS

Landlord and Tenant agree as follows with respect to the Tenant's right to the roof of the Building:

1. License. Landlord grants to Tenant on the following terms and conditions a non-exclusive license (the "License"):

(a) for the use of a portion of the Roof (the "Roof Area"), in the location shown on Schedule B-1 hereto, for the installation, operation and maintenance of communication equipment (such as a satellite and/or microwave dishes) and any substantially similar replacements thereof (the "Equipment"), and for the installation of cabling, conduit and other electrical wiring (the "Conduit") connecting the Equipment to certain equipment of Tenant located in the Premises (the Equipment and the Conduit are individually and collectively referred to herein as the "Facilities");

(b) for the use of such stairwells and roof access passageways in the Building and on the Roof as may be designated by Landlord for the purpose of access to and from the Equipment; and

(c) for the placement of, and access to, Conduit in such risers and pathways (collectively, "Raceways") and utility rooms in the Building as are designated by Landlord.

2. Term. Tenant's right to operate and maintain the Equipment shall automatically expire and terminate if any of the following continue for more than fifteen (15) business days after written notice from Landlord to Tenant: (a) the Equipment is causing physical damage to the Building or the Roof, (b) the Equipment is interfering with the transmission or receipt of signals from or to the Building, (c) the Equipment is causing Landlord to be in violation of any agreement of record as of the date hereof or to which Landlord or any predecessor in interest of Landlord is a party as of the date hereof (provided that such agreement is in writing and a copy of such agreement has been provided to Tenant on or before the date hereof), (d) the Equipment is causing Landlord or Tenant to be in violation of any local, state or federal law, regulation or ordinance, or (e) an Event of Default has occurred and is continuing. The term of this License shall terminate on expiration or earlier termination of the Lease Term, as the same may be extended.

3. Use. Tenant (and its Subtenants) shall only use the Equipment to make and receive transmissions for Tenant's and its Subtenants' use in the Premises. No person or entity other than Tenant (and its subtenants) shall have the right to use or receive transmissions from the Equipment.

4. Utilities.

(a) Landlord shall have no obligation to provide Tenant with any utilities, Facilities, outlets or Building services, other than the existing electrical power serving the Roof Area.

(b) If and to the extent Tenant utilizes electricity or other utilities with respect to the Facilities that are not separately metered to, and payable directly by, Tenant, Landlord shall have the right, at Tenant's expense, to install a submeter to measure the utilities consumed by the Facilities and Tenant shall pay to Landlord, monthly, together with the payment of the Tenant Electricity as set forth in the Lease, for such usage reflected by the submeter, at the rates payable by Landlord. Landlord may estimate such charges on a monthly basis, subject to quarterly adjustments based on actual readings.

(c) Tenant shall not alter, reconfigure, relabel or in any manner manipulate the existing utility and cabling serving the Roof Area without the prior approval of Landlord which approval shall be at Landlord's reasonable discretion.

## 5. Installation of Facilities.

(a) Prior to installing the initial Facilities, Tenant shall submit to Landlord for Landlord's prior written approval, which approval shall be at Landlord's reasonable discretion, plans and specifications for the installation of the Facilities prepared by a licensed engineer reasonably satisfactory to Landlord (the "Plans"). The Plans shall be consistent with the specifications and shall show the location of the Equipment on the Roof Area, the location and type of all cabling, the way the Equipment will be placed on the Roof Area and any other information requested by Landlord, in Landlord's reasonable discretion. Landlord shall have the right to require that the Equipment be screened in a manner satisfactory to Landlord, in Landlord's reasonable discretion. Landlord shall have a right to employ an engineer or other consultant to review the Plans and the reasonable cost of such engineer or consultant shall be paid by Tenant to Landlord within ten (10) days after demand. Landlord may approve or reject all or part of the Plans for any reason, in Landlord's reasonable discretion. After Landlord has approved the Plans and prior to installing the Facilities and any cabling, Tenant shall obtain and provide to Landlord: (i) all required governmental and quasi-governmental permits, licenses, special zoning variances and authorizations, all of which Tenant shall obtain at its own cost and expense; and (ii) a policy or certificate of insurance evidencing such insurance coverage as provided for in Paragraph 12 below. Tenant shall obtain the prior written approval of Landlord (which shall not be unreasonably withheld) with respect to any Facilities that Tenant proposes to install subsequent to the initial Facilities. Without limiting the generality of the foregoing, all Facilities shall be capable of being operated without the need for engineers or other personnel to be stationed on the Roof Area.

(b) Tenant shall install the Facilities at its own cost and expense, and in compliance with all applicable federal, state and local laws and regulations; provided, however, the location and manner of any penetrations of the Roof Area or of the roof membrane shall be determined by Landlord in its reasonable discretion. Tenant shall keep the Building free and clear from any mechanics' liens, vendor liens or any other liens arising out of any construction and/or installation of activities performed or materials or equipment furnished by or for the account of Tenant. Tenant shall repair any damage to the Roof Area, roof membrane and/or the structural integrity and condition of the Roof Area and the Roof arising from Tenant's activities and reasonably satisfactorily maintain such repair. Tenant shall defend, indemnify and hold harmless, Landlord from and against any and all such liens or claims or actions thereon, and any and all costs incurred by Landlord resulting from Tenant's construction and/or installation activities relating to the Facilities, including, without limitation, reasonable attorneys' fees.

(c) The Facilities installed by Tenant shall remain the property of Tenant notwithstanding the fact that any such machinery, equipment and trade fixtures may be affixed or attached to the Building, or any portion thereof. Subject to the terms of this License, Tenant may replace and remove any Facilities during the term of this License.

(d) Any and all Conduit shall be limited in size and in aggregate diameter of space utilized in any Raceways and non-penetrating roof mount system. Landlord shall have the right to reasonably allocate riser space and designate utility rooms for access by Tenant. Any and all access by Tenant to Conduit outside of the Premises shall be subject to such rules and regulations as may be adopted from time to time by Landlord for uniform application to telecommunications vendors in the Building.

**6. Maintenance and Repair.**

(a) Tenant shall maintain all of the Facilities in good and safe condition and shall keep the Roof Area and any and all Raceways and utility rooms used by Tenant free and clear of debris, clutter, unused cabling, conduit, equipment and tools belonging to Tenant.

(b) If Landlord reasonably determines that any of the Facilities are not being maintained in the condition required by this License, and without limiting Landlord's other rights and remedies under this License, Landlord shall have the right, if Tenant fails to remedy the condition(s) identified by Landlord to the reasonable satisfaction of Landlord within five (5) business days of receipt (or evidence of attempted delivery) of such notice, to take such action, at Tenant's expense, as Landlord deems reasonably necessary to restore the Facilities to the condition required by this License. Tenant shall pay to Landlord, on demand, Landlord's reasonable costs and expenses incurred pursuant to this paragraph.

(c) Tenant acknowledges that Landlord may decide, in its sole discretion, from time to time, to repair or replace the Roof ("Roof Repairs"). If Landlord elects to make Roof Repairs, Tenant shall, upon Landlord's request, temporarily remove the Equipment so that the Roof Repairs may be completed. The cost of removing and reinstalling the Equipment shall be paid by Tenant, at Tenant's sole cost and expense, Landlord shall not be liable to Tenant for any damages, lost profits or other costs or expenses incurred by Tenant as the result of the Roof Repairs. Landlord will reasonably try to minimize any such interference with the Facilities.

7. **Access to License Areas.** Access to the Facilities by Tenant shall be limited to persons as to whom Tenant has given Landlord prior written authorization to have access. Except in the case of an emergency (including, without limitation, emergency repairs), or as otherwise prearranged with Landlord, access to the Roof by Tenant shall be limited to the Building's business hours. Subject to the prior authorization requirements hereinabove provided, notwithstanding anything in the foregoing to the contrary, Tenant may access the Facilities at any time in the case of an emergency (including, without limitation, emergency repairs) by giving Landlord such advance notice (if any) as is reasonably possible.

**8. Tenant's Release and Indemnification.**

(a) Tenant covenants that the installation, operation, maintenance and use of the Facilities shall be at Tenant's sole cost and risk. Tenant hereby waives as against Landlord, and releases Landlord from, all claims for damage to any property or injury, illness or death of any person in, upon or about the Building (including, without limitation, the Roof and the Roof Area) arising from any use or operation of, or access to, any of the Facilities, and howsoever caused (except to the extent that such damage, injury, illness or death shall have been caused in whole or in part by the act, omission, or active or passive negligence of Landlord, its employees, agents or contractors).

(b) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, actions, damages, liability, costs and expenses (including attorneys' fees) in connection with loss of life, personal injury, damage to the property or business or any other loss or injury to the extent arising out of the installation, operation or removal of the Facilities, or the access thereto by any employee, agent, contractor, invitee or other person acting on behalf of Tenant, or a breach by Tenant of the terms of this License, except to the extent caused by Landlord's or its employees', agents' or contractors' willful misconduct or negligence. Without limiting the generality of the foregoing, Tenant shall indemnify, defend and hold Landlord harmless from any claims by any occupant of the Building or occupants of residences or businesses in the immediate vicinity of the Building alleging damage or injuries based on exposure to electromagnetic fields or other consequences of the operations by Tenant of the Facilities at the Building.

9. Interruption of Services. Tenant acknowledges that interruptions in electrical power may occur in the operation of the Facilities as a result of Landlord's operation of the Building, and Tenant acknowledges that Landlord shall not be liable to Tenant as a result thereof.

10. Non-Exclusivity/Standard of Operation.

(a) Except as hereinafter provided in this Paragraph 10, the License granted hereby is non-exclusive. Landlord reserves the right to grant to other parties, including itself, other occupants of the Building and third party vendors, the right to locate and install other equipment, including, without limitation, telecommunications equipment ("Non-Tenant Roof Equipment"), on the Roof; provided, however, subject to Paragraph 10(b) below, such other uses shall not interfere with the operation or use of the Facilities being made by Tenant. Landlord currently maintains a satellite dish on the Roof, and Tenant agrees to cooperate with Landlord in adopting (at Tenant's sole cost and expense) commercially reasonable procedures to limit any interference to the aforesaid satellite dish caused by or attributable to the Facilities, and Landlord agrees that Landlord will cooperate with Tenant in adopting (at Landlord's sole cost and expense) commercially reasonable procedures to limit any interference to the Facilities caused by or attributable to any Non-Tenant Roof Equipment, excluding the Landlord's existing satellite dish. It is intended that Landlord be able to permit the full utilization of the Roof; provided utilization by others does not, except as provided in Paragraph 10(b) below, interfere with Tenant's operations,

(b) Without limiting the generality of the terms of Paragraph 10(a) above, during any time that Tenant does not lease the Total Rentable Floor Area of the Building, Landlord reserves the right to itself to provide (including by or through independent contractors) rooftop-based telecommunications services and/or transmission/reception equipment and facilities for the benefit of tenants in the Building, and to grant to any one or more tenants in the Building the right to install rooftop-based telecommunications and/or transmission/reception equipment and facilities (such as, for example, satellite dishes or microwave dishes) in connection with such tenant's business operations in the Building (any such services or facilities being referred to as "Landlord Permitted Telecommunications Services"), provided the same do not materially interfere with the operation or use of the Facilities by Tenant; provided, however, Landlord agrees to cooperate with Tenant in adopting commercially reasonable procedures to achieve compatibility between Tenant's operations and any Landlord Permitted Telecommunications Services.

11. Removal of Facilities. At the expiration or sooner termination of the Lease, Tenant shall remove the Facilities and repair any damage as a result thereof, and leave the portion of the Roof where the Facilities were located in the condition existing immediately prior to the installation of the Equipment, ordinary wear and tear expected.

12. Insurance. Tenant shall at all times during the term of this License, and at its own cost and expense, procure and continue in force the following insurance coverage, commercial general liability insurance, written on an occurrence basis, with a combined single limit per occurrence for bodily injury and property damages of not less than Five Million Dollars (\$5,000,000.00), including contractual liability coverage with this License as a designated contract. Not more frequently than once every three (3) years if, in the opinion of Landlord's insurance consultant, the amount of public liability insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as required by either Landlord's lender or insurance consultant to such higher limits as are carried customarily in the Greater Boston Area with respect to similar uses.

13. Waiver of Subrogation. Landlord and Tenant each waive the right to maintain a direct action against the other for damages arising out of any occurrence the risk of which is insured against under any insurance policies required to be maintained under this License to the extent of such insurance coverage. Each policy of such insurance shall, if obtainable from the insurer without additional expense, contain a waiver of subrogation by the insurer against Tenant or Landlord, as the case may be.

14. Relocation. Except during any period that Tenant leases the Total Rentable Floor Area of the Building, Landlord, at Landlord's sole option, shall have the right to relocate the Facilities to another location on the Roof, provided such relocation does not result in a material impairment in, or loss of, communication or transmission ability. Landlord shall reimburse Tenant for any and all costs reasonably incurred by Tenant as a result of Landlord's relocation requirement. Landlord shall notify Tenant of any proposed relocation at least sixty (60) days in advance of any proposed relocation, and shall use commercially reasonable efforts to minimize any disruption in Tenant's business operations.

15. Hazardous Materials. No Hazardous Materials (as that term is defined in Section 11.2 of this Lease) shall be used in the operation or maintenance of the Facilities or stored by Tenant on the Roof.

16. Limitation on License. Tenant acknowledges and agrees that Landlord has made no representation or warranty to Tenant that the Facilities are permitted under applicable building, land use or zoning laws, ordinances or codes, or under any federal regulations, or that the Roof Area is suitable for Tenant's intended purposes or will otherwise provide adequate reception and/or transmission capabilities. Tenant represents and warrants to Landlord that it is accepting the License based on its own determination regarding compliance with applicable federal, state and local laws and regulations and suitability of location.

17. Liability Under License. Tenant's liability under the Lease is not contingent or conditioned upon its ability to use the Equipment, and Tenant shall continue to be obligated to perform all of its obligations under the License and the Lease if for some reason Tenant is unable to use the Equipment. Nothing in this paragraph 17 is intended to excuse Landlord for interfering with Tenant's ability to use the Equipment as contemplated pursuant to this Lease.

18. No Assignment or Transfer. The contract rights granted to Tenant herein are personal to Tenant and Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, assign or transfer the rights of Tenant hereunder separate from an assignment of the Lease or sublease of the Premises, provided, however, that only one party, whether it is Tenant or a successor, assign or subtenant of Tenant, shall at any one time hold the rights granted herein (i.e., the rights granted to Tenant under this License shall never be held by more than one party). Any of the foregoing acts without the prior consent of Landlord shall be void, and shall, at the option of Landlord, constitute a breach of this License by Tenant entitling Landlord to terminate this License.

---

SCHEDULE B-1

ROOF AREA

Schedule B-1

Page 1 of 1

EXHIBIT C

FORMS OF LIEN WAIVERS

CONTRACTOR'S PARTIAL WAIVER AND SUBORDINATION OF LIEN

STATE OF \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ COUNTY

Application for Payment No.: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

LENDER / MORTGAGEE: None

- 1. Original Contract Amount: \$ \_\_\_\_\_
- 2. Approved Change Orders: \$ \_\_\_\_\_
- 3. Adjusted Contract Amount:  
(line 1 plus line 2) \$ \_\_\_\_\_
- 4. Completed to Date: \$ \_\_\_\_\_
- 5. Less Retainage: \$ \_\_\_\_\_
- 6. Total Payable to Date:  
(line 4 less line 5) \$ \_\_\_\_\_
- 7. Less Previous Payments: \$ \_\_\_\_\_
- 8. Current Amount Due:  
(line 6 less line 7) \$ \_\_\_\_\_
- 9. Pending Change Orders: \$ \_\_\_\_\_
- 10. Disputed Claims: \$ \_\_\_\_\_

The undersigned who has a contract with \_\_\_\_\_ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as located in \_\_\_\_\_ (city or town), \_\_\_\_\_ County, \_\_\_\_\_ and owned by \_\_\_\_\_, upon receipt of \_\_\_\_\_ (\$ \_\_\_\_\_) in payment of an invoice/requisition/application for payment dated \_\_\_\_\_ does hereby:

- (a) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date \_\_\_\_\_ (payment period), except for retainage, unpaid agreed or pending change orders, and disputed claims as stated above;



(b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

CONTRACTOR:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBCONTRACTOR'S LIEN WAIVER

General Contractor: \_\_\_\_\_  
Subcontractor: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Project: \_\_\_\_\_  
Total Amount Previously Paid: \$ \_\_\_\_\_  
Amount Paid This Date: \$ \_\_\_\_\_  
Retainage (Including This Payment) Held to Date: \$ \_\_\_\_\_

In consideration of the receipt of the amount of payment set forth above and any and all past payments received from the Contractor in connection with the Project, the undersigned acknowledges and agrees that it has been paid all sums due for all labor, materials and/or equipment furnished by the undersigned to or in connection with the Project and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, liens and rights under any Notice of Identification, Notice of Contract or statement of account with respect to the Owner, the Project and/or against the Contractor on account of any labor, materials and/or equipment furnished through the date hereof.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned and that this document binds the undersigned to the extent that the payment referred to herein is received.

The undersigned represents and warrants that it has paid in full each and every sub-subcontractor, laborer and labor and/or material supplier with whom undersigned has dealt in connection with the Project and the undersigned agrees at its sole cost and expense to defend, indemnify and hold harmless the Contractor against any claims, demands, suits, disputes, damages, costs, expenses (including attorneys' fees), liens and/or claims of lien made by such sub-subcontractors, laborers and labor and/or material suppliers arising out of or in any way related to the Project. This document is to take effect as a sealed instrument.

Signed under the penalties of perjury as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SUBCONTRACTOR:

Signature and Printed Name of  
Individual Signing this Lien Waiver

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR'S WAIVER OF CLAIMS AGAINST OWNER AND ACKNOWLEDGMENT OF FINAL  
PAYMENT

Commonwealth of Massachusetts

Date: \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Invoice No.: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

PROJECT: \_\_\_\_\_

1. Original Contract Amount	\$	_____
2. Approved Change Orders:	\$	_____
3. Adjusted Contract Amount:	\$	_____
4. Sums Paid on Account of Contract Amount:	\$	_____
5. Less Final Payment Due:	\$	_____

The undersigned being duly sworn hereby attests that when the Final Payment Due as set forth above is paid in full by Owner, such payment shall constitute payment in full for all labor, materials, equipment and work in place furnished by the undersigned in connection with the aforesaid contract and that no further payment is or will be due to the undersigned.

The undersigned hereby attests that it has satisfied all claims against it for items, including by way of illustration but not by way of limitation, items of: labor, materials, insurance, taxes, union benefits, equipment, etc. employed in the prosecution of the work of said contract, and acknowledges that satisfaction of such claims serves as an inducement for the Owner to release the Final Payment Due.

The undersigned hereby agrees to indemnify and hold harmless the Owner from and against all claims arising in connection with its Contract with respect to claims for the furnishing of labor, materials and equipment by others. Said indemnification and hold harmless shall include the reimbursement of all actual attorneys' fees and all costs and expenses of every nature, and shall be to the fullest extent permitted by law.

The undersigned hereby irrevocably waives and releases any and all liens and right of lien on such real property and other property of the Owner for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished by the undersigned, and anyone claiming by, through, or under the undersigned, in connection with the Project.

The undersigned hereby releases, remises and discharges the Owner, any agent of the Owner and their respective predecessors, successors, assigns, employees, officers, shareholders, directors, and principals, whether disclosed or undisclosed (collectively "Releasees") from and against any and all claims, losses, damages, actions and causes of action (collectively "Claims") which the undersigned and anyone claiming by, through or under the undersigned has or may have against the Releasees, including, without limitation, any claims arising in connection with the Contract and the work performed thereunder.

Notwithstanding anything to the contrary herein, payment to the undersigned of the Final Payment Due sum as set forth above, shall not constitute a waiver by the Owner of any of its rights under the contract including by way of illustration but not by way of limitation guarantees and/or warranties. Payment will not be made until a signed waiver is returned to Owner.

The undersigned individual represents and warrants that he/she is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned.

Exhibit C  
Page 6 of 7

Signed under the penalties of perjury as a sealed instrument as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it as \_\_\_\_\_ for \_\_\_\_\_, a corporation/partnership voluntarily for its stated purpose.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

EXHIBIT D

LANDLORD SERVICES

I. CLEANING

Cleaning and janitorial services shall be provided nightly, after normal business hours, Monday through Friday, exclusive of holidays observed by the cleaning company and Saturdays and Sundays.

A. OFFICE AREAS

Cleaning and janitorial services to be provided in the office areas shall include:

1. Vacuuming, damp mopping of resilient floors and trash removal.
2. Dusting of horizontal surfaces within normal reach (tenant equipment to remain in place).
3. High dusting and dusting of vertical blinds to be rendered as needed.

B. LAVATORIES

Cleaning and janitorial services to be provided in the common area lavatories of the building shall include:

1. Dusting, damp mopping of resilient floors, trash removal, sanitizing of basins, bowls and urinals as well as cleaning of mirrors and bright work.
2. Refilling of soap, towel, tissue and sanitary dispensers to be rendered as necessary.
3. High dusting to be rendered as needed.

C. MAIN LOBBIES, ELEVATORS, STAIRWELLS AND COMMON CORRIDORS

Cleaning and janitorial services to be provided in the common areas of the building shall include:

1. Trash removal, vacuuming, dusting and damp mopping of resilient floors and cleaning and sanitizing of water fountains.
2. High dusting to be rendered as needed.

D. WINDOW CLEANING

All exterior windows shall be washed on the inside and outside surfaces at a frequency necessary to maintain a first class appearance.

## II. HVAC

- A. Heating, ventilating and air conditioning equipment will be provided with sufficient capacity to accommodate a maximum population density of one (1) person per one hundred fifty (150) square feet of useable floor area served, and a combined lighting and standard electrical load of 3.0 watts per square foot of useable floor area. In the event Tenant introduces into the Premises personnel or equipment which overloads the system's ability to adequately perform its proper functions, Landlord shall so notify Tenant in writing and supplementary system(s) may be required and installed by Landlord at Tenant's expense, if within fifteen (15) days Tenant has not modified its use so as not to cause such overload.

Operating criteria of the basic system shall not be less than the following:

- (i) Cooling season indoor temperatures of not in excess of 73—79 degrees Fahrenheit when outdoor temperatures are 91 degrees Fahrenheit ambient.
- (ii) Heating season minimum room temperature of 68—75 degrees Fahrenheit when outdoor temperatures are 6 degrees Fahrenheit ambient.

- B. Landlord shall provide heating, ventilating and air conditioning as normal seasonal changes may require during the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday (legal holidays in all cases excepted) and, provided Tenant has made prior written request pertaining to each applicable Saturday, 8:00 a.m. to 1:00 p.m. each such Saturday.

If Tenant shall require air conditioning (during the air conditioning season) or heating or ventilating during any other time period, Landlord shall use landlord's best efforts to furnish such services for the area or areas specified by written request of Tenant delivered to the Building Superintendent or the Landlord before 3:00 p.m. of the business day preceding the extra usage. Landlord shall charge Tenant for such extra-hours usage at reasonable rates customary for first-class office buildings in the East Cambridge/Kendall Square market, and Tenant shall pay Landlord, as Additional Rent, upon receipt of billing therefor.

## III. ELECTRICAL SERVICES

- A. Landlord shall provide electric power for a combined load of 3.0 watts per square foot of useable area for lighting and for office machines through standard receptacles for the typical office space.
- B. In the event that Tenant has special equipment (such as computers and reproduction equipment) that requires either 3-phase electric power or any voltage other than 120, or for any other usage in excess of 3.0 watts per square foot, Landlord may at its option require the installation of separate metering (Tenant being solely responsible for the costs of any such separate meter and the installation thereof) and direct billing to Tenant for the electric power required for any such special equipment.
- C. Landlord will furnish and install, at Tenant's expense, all replacement lighting tubes, lamps and ballasts required by Tenant. Landlord will clean lighting fixtures on a regularly scheduled basis at Tenant's expense.



IV. ELEVATORS

Provide passenger elevator service for access to and from all floors of the Building that comprise the Premises at all times during the term.

V. WATER

Provide hot water for lavatory purposes and cold water for drinking, lavatory and toilet purposes.

VI. CARD ACCESS SYSTEM

Landlord will provide a card access system at one entry door of the building.

---

EXHIBIT E

FLOOR PLANS

Exhibit E  
Page 1 of 1



EXHIBIT G

FORM OF RENT COMMENCEMENT DATE AGREEMENT

DECLARATION AFFIXING THE RENT COMMENCEMENT DATE WITH RESPECT TO A PREMISES COMPONENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 200\_, by and between the TRUSTEES OF \_\_\_\_\_ TRUST (hereinafter "Landlord") and \_\_\_\_\_ (hereinafter "Tenant").

WITNESSETH THAT:

1. This Agreement is made pursuant to Section \_\_\_\_\_ of that certain Lease dated \_\_\_\_\_, between the parties aforementioned as Landlord and Tenant (the "Lease").
2. It is hereby stipulated that Tenant commenced the beneficial occupancy of \_\_\_\_\_ on \_\_\_\_\_, which shall constitute the Rent Commencement Date with respect thereto. The Term with respect to such Premises Component shall end and expire on the scheduled expiration date under the Lease, unless sooner terminated or extended, as provided for in the Lease.

WITNESS the execution hereof under seal by persons hereunto duly authorized, the date first above written.

LANDLORD:

\_\_\_\_\_  
 As Trustee of \_\_\_\_\_ Trust,  
 for himself and co-Trustees, pursuant to appropriate written delegation from  
 the co-Trustees, but not individually

TENANT:

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

(CORPORATE SEAL)

ATTEST:

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document in my presence.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the documents are truthful and accurate to the best of [his] [her] knowledge and belief.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

---

EXHIBIT H

INTENTIONALLY OMITTED

Exhibit H  
Page 1 of 1

EXHIBIT I

BROKER DETERMINATION OF PREVAILING MARKET RENT

Where in the Lease to which this Exhibit is attached provision is made for a Broker Determination of Prevailing Market Rent, the following procedures and requirements shall apply:

1. Tenant's Request. Tenant shall send a notice to Landlord by the time set for such notice in the applicable section of the Lease, requesting a Broker Determination of the Prevailing Market Rent, which notice to be effective must (i) make explicit reference to the Lease and to the specific section of the Lease pursuant to which said request is being made, (ii) include the name of a broker selected by Tenant to act for Tenant, which broker shall be affiliated with a major Boston commercial real estate brokerage firm selected by Tenant and which broker shall have at least ten (10) years experience dealing in properties of a nature and type generally similar to the Building located in the Cambridge-Boston Downtown Market, and (iii) explicitly state that Landlord is required to notify Tenant within thirty (30) days of an additional broker selected by Landlord.
2. Landlord's Response. Within thirty (30) days after Landlord's receipt of Tenant's notice requesting the Broker Determination and stating the name of the broker selected by Tenant, Landlord shall give written notice to Tenant of Landlord's selection of a broker having at least the affiliation and experience referred to above.
3. Selection of Third Broker. Within ten (10) days thereafter the two (2) brokers so selected shall select a third such broker also having at least the affiliation and experience referred to above.
4. Rental Value Determination. Within thirty (30) days after the selection of the third broker, the three (3) brokers so selected, by majority opinion, shall make a determination of the annual fair market rental value of the Premises for the period referred to in the Lease. Such annual fair market rental value determination (x) shall require rent to commence upon the commencement of the period in question, and may include provision for annual increases in rent during said term if so determined, (y) shall take into account the as-is condition of the Premises and the amount, if any, that Landlord will be making available to Tenant as a leasehold improvements allowance, as specified in Landlord's rent quotation as set forth in the Lease and (z) shall take account of, and be expressed in relation to, the applicable tax and operating cost bases expressly set forth in the Lease and provisions for paying for so-called tenant electricity as contained in the Lease. The brokers shall advise Landlord and Tenant in writing by the expiration of said thirty (30) day period of the annual fair market rental value which as so determined shall be referred to as the Prevailing Market Rent.
5. Resolution of Broker Deadlock. If the Brokers are unable to agree at least by majority on a determination of annual fair market rental value, then the brokers shall send a notice to Landlord and Tenant by the end of the thirty (30) day period for making said determination setting forth their individual determinations of annual fair market rental value, and the highest such determination and the lowest such determination shall be disregarded and the remaining determination shall be deemed to be the determination of annual fair market rental value and shall be referred to as the Prevailing Market Rent.
6. Costs. Each party shall pay the costs and expenses of the broker selected by it and each shall pay one half (1/2) of the costs and expenses of the Third Broker.

7. Failure to Select Broker or Failure of Broker to Serve. If Tenant shall have requested a Broker Determination and Landlord shall not have designated a broker within the time period provided therefor above, then Tenant's Broker shall alone make the determination of Prevailing Market Rent in writing to Landlord and Tenant within thirty (30) days after the expiration of Landlord's right to designate a broker hereunder. If Tenant and Landlord have both designated brokers but the two brokers so designated do not, within a period of fifteen (15) days after the appointment of the second broker, agree upon and designate the Third Broker willing so to act, the Tenant, the Landlord or either broker previously designated may request the Boston Bar Association (or such organization as may succeed to the Boston Bar Association) to designate the Third Broker willing so to act and a broker so appointed shall, for all purposes, have the same standing and powers as though he had been seasonably appointed by the brokers first appointed. In case of the inability or refusal to serve of any person designated as a broker, or in case any broker for any reason ceases to be such, a broker to fill such vacancy shall be appointed by the Tenant, the Landlord, the brokers first appointed or the Boston Bar Association as the case may be, whichever made the original appointment, or if the person who made the original appointment fails to fill such vacancy, upon application of any broker who continues to act or by the Landlord or Tenant such vacancy may be filled by the Boston Bar Association and any broker so appointed to fill such vacancy shall have the same standing and powers as though originally appointed.



EXHIBIT J

FORM OF LETTER OF CREDIT

BENEFICIARY:

ISSUANCE DATE:

\_\_\_\_\_ 200\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IRREVOCABLE STANDBY  
LETTER OF CREDIT NO. \_\_\_\_\_

APPLICANT:

MAXIMUM/AGGREGATE

CREDIT AMOUNT: US\$ \_\_\_\_\_

USD: \_\_\_\_\_

\_\_\_\_\_

LADIES AND GENTLEMEN:

We hereby establish our irrevocable letter of credit in your favor for account of the applicant up to an aggregate amount not to exceed \_\_\_\_\_ and \_\_\_/100 US Dollars (US \$ \_\_\_\_\_) available by your draft(s) drawn on ourselves at sight accompanied by:

Your statement, signed by a purportedly authorized officer/official certifying that the Beneficiary is entitled to draw upon this Letter of Credit (in the amount of the draft submitted herewith) pursuant to the Lease (the "Lease") dated \_\_\_\_\_ by and between \_\_\_\_\_, as Landlord, and \_\_\_\_\_, as Tenant, together with the original copy of this Letter of Credit and any amendments thereto which have been accepted by you.

Draft(s) must indicate name and issuing bank and credit number and must be presented at this office.

You shall have the right to make partial draws against this Letter of Credit, from time to time.

This Letter of Credit shall expire at our office on \_\_\_\_\_, 200\_ (the "Stated Expiration Date"). It is a condition of this Letter of Credit that the Stated Expiration Date shall be deemed automatically extended without amendment for successive one (1) year periods from such Stated Expiration Date, unless at least forty-five (45) days prior to such Stated Expiration Date (or any anniversary thereof) we shall send you written notice at the address specified in this Letter of Credit (or at such other address of which you may have notified us in writing) and the Applicant in writing by registered mail (return receipt) or overnight courier that we elect not to consider this Letter of Credit extended for any such additional one (1) year period.

This Letter of Credit is transferable at any time and from time to time without cost to Beneficiary. JP Morgan Chase Bank only is authorized to act as the Transferring Bank. We shall not recognize any transfer of this Letter of Credit until this original Letter of Credit together with any amendments and a signed and completed transfer form, attached hereto, is received by us. The correctness of the signature and title of the person signing the transfer forms must be verified by Beneficiary's bank. In case of any transfer of this Letter of Credit, the draft and any required statement must be executed by the Transferee. This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. Foreign assets control regulations or other applicable U.S. Laws and Regulations.

---

Our customary and reasonable charges to transfer this Letter of Credit shall be for the Applicant's account.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the "International Standby Practice, International Chamber of Commerce, Publication No. 590."

This Letter of Credit shall be governed by, and construed in accordance with the laws of the state of New York, without regard to principles of conflict of laws.

Exhibit J  
Page 2 of 2

EXHIBIT K

SCHEDULE OF PREMISES COMPONENTS,  
RENT COMMENCEMENT DATES  
AND RENT SCHEDULE

<u>Floor(s)</u>	<u>Premises Component Square Footage</u>	<u>Anticipated Rent Commencement Date</u>	<u>Base Rental Rate</u>	<u>Base Operating Expense Calendar Year</u>	<u>Base Tax Fiscal Year</u>
1	13,088 RSF	June 1, 2009	June 1, 2009 – May 31,	2009	2010
6	20,529 RSF		2014:		
7	20,529 RSF		\$40.50 per RSF per annum		
8	20,883 RSF		June 1, 2014 – December 31,	2009	2010
Total	75,029 RSF		2019:		
			\$44.50 per RSF per annum		
2	20,138 RSF	October 1, 2009	Rent Commencement Date –	2010	2011
3	20,874 RSF		May 31,		
4	20,529 RSF		2014:		
5	20,529 RSF		\$40.50 per RSF per annum		
Total	82,070 RSF		June 1, 2014 – December 31,	2010	2011
			2019:		
			\$44.50 per RSF per annum		
9	20,127 RSF	June 1, 2010	Rent Commencement Date –	2010	2011
			May 31,		
			2014:		
			\$40.50 per RSF per annum		
			June 1, 2014 – December 31,	2010	2011
			2019:		
			\$44.50 per RSF per annum		

## AKAMAI TECHNOLOGIES, INC.

Incentive Stock Option Agreement  
Granted Under 1998 Stock Incentive Plan1. Grant of Option.

This Incentive Stock Option Agreement (this "Agreement") evidences the grant by Akamai Technologies, Inc., a Delaware corporation (the "Company"), on February 8, 2008 (the "Grant Date") to Robert W. Hughes, an employee of the Company (the "Participant"), of an option to purchase, in whole or in part, on the terms provided herein and in the Company's Second Amended and Restated 1998 Stock Incentive Plan (the "Plan"), a total of 30,000 shares (the "Shares") of common stock, \$0.01 par value per share, of the Company ("Common Stock") at \$32.34 per Share. Unless earlier terminated, this option shall expire on February 7, 2018 (the "Final Exercise Date").

It is intended that the option evidenced by this agreement shall, to the extent it so qualifies, be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended and any regulations promulgated there under (the "Code"). Schedule A hereto sets forth the number of shares with respect to which this option qualifies as an incentive stock option as of the date of grant. To the extent that the option does not on the date of grant, or hereafter ceases to, qualify as an incentive stock option, it shall be a non-qualified stock option. Except as otherwise indicated by the context, the term "Participant", as used in this option, shall be deemed to include any person who acquires the right to exercise this option validly under its terms.

2. Vesting Schedule.

(a) General. This option will become exercisable ("vest") as to 33% of the Shares on each of the second, third and fourth anniversary of the Grant Date. For purposes of this Section 2(a) the Vesting Start Date shall be February 8, 2008.

The right of exercise shall be cumulative so that to the extent the option is not exercised in any period to the maximum extent permissible it shall continue to be exercisable, in whole or in part, with respect to all shares for which it is vested until the earlier of the Final Exercise Date or the termination of this option under Section 3 hereof or the Plan.

(b) Change in Control. Upon a Change in Control Event (as defined in the Plan), the number of Shares as to which this option has vested shall be calculated pursuant to Section 2(a) as though the Grant Date were the date that is one year prior to the Grant Date.

### 3. Exercise of Option.

(a) Form of Exercise. In order to exercise this option, the Participant shall notify the Company's third-party stock option plan administrator, Charles Schwab & Co., or any successor appointed by the Company (the "Plan Administrator"), of the Participant's intent to exercise this option, and shall follow the procedures established by the Plan Administrator for exercising stock options under the Plan and provide payment in full in the manner provided in the Plan. The Participant may purchase less than the number of shares covered hereby, provided that no partial exercise of this option may be for any fractional share.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Participant, at the time he or she exercises this option, is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company or any parent or subsidiary of the Company as defined in Section 424(e) or (f) of the Code (an "Eligible Participant").

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in paragraphs (d) and (e) below, the right to exercise this option shall terminate three months after such cessation (but in no event after the Final Exercise Date), provided that (i) this option shall be exercisable only to the extent that the Participant was entitled to exercise this option on the date of such cessation, and (ii) to the extent that the option or any portion thereof is exercised at any time later than three months after the date that the Participant ceases to be an employee of the Company or any parent or subsidiary of the Company as defined in Section 424(e) or (f) of the Code, the option shall be a non-qualified stock option. Notwithstanding the foregoing, if the Participant, prior to the Final Exercise Date, violates the non-competition or confidentiality provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company, the right to exercise this option shall terminate immediately upon such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Final Exercise Date while he or she is an Eligible Participant and the Company has not terminated such relationship for "cause" as specified in paragraph (e) below, this option shall be exercisable, within the period of one year following the date of death or disability of the Participant by the Participant, provided that (i) this option shall be exercisable only to the extent that this option was exercisable by the Participant on the date of his or her death or disability, (ii) this option shall not be exercisable after the Final Exercise Date, and (iii) to the extent that the option or any portion thereof is exercised at any time later than one year after the Participant's termination as an employee of the Company or any parent or subsidiary of the Company (as defined in Section 424(e) or (f) of the Code) by reason of his or her disability (as defined in Section 22(e)(3) of the Code), the option shall be a non-qualified stock option.

(e) Discharge for Cause. If the Participant, prior to the Final Exercise Date, is discharged by the Company for “cause” (as defined below), the right to exercise this option shall terminate immediately upon the effective date of such discharge. “Cause” shall mean willful misconduct by the Participant or willful failure by the Participant to perform his or her responsibilities to the Company (including, without limitation, breach by the Participant of any provision of any employment, consulting, advisory, nondisclosure, non-competition or other similar agreement between the Participant and the Company), as determined by the Company, which determination shall be conclusive. The Participant shall be considered to have been discharged for “cause” if the Company determines, prior to or simultaneously with the Participant’s resignation, that discharge for cause was warranted.

4. Withholding.

No Shares will be issued pursuant to the exercise of this option unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of this option.

5. Nontransferability of Option.

This option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this option shall be exercisable only by the Participant.

6. Disqualifying Disposition.

If the Participant disposes of Shares acquired upon exercise of this option within two years from the Grant Date (or, in the case of Shares acquired upon exercise of an Additional Grant, the date of the Addendum) or one year after such Shares were acquired pursuant to exercise of this option, the Participant shall notify the Company in writing of such disposition.

7. Provisions of the Plan.

This option is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this option.

IN WITNESS WHEREOF, the Company has caused this option to be executed under its corporate seal by its duly authorized officer. This option shall take effect as a sealed instrument.

AKAMAI TECHNOLOGIES, INC.

Dated: February 8, 2008

/s/ Paul Sagan

Paul Sagan

President and Chief Executive Officer

Page 4 of 5

ISO – NQ AGREEMENT

---

**Schedule A**

Number of shares as to which this option qualifies as an incentive stock option on the Grant Date:

Number of shares as to which this option is a non-qualified stock option on the Grant Date:

Page 5 of 5

ISO – NQ AGREEMENT



Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisk denote omissions.

**Name:**  
**Title:**

**Performance Period: FY 2008**

This 2008 Executive Bonus Plan sets forth your annual compensation for 2008 based on the achievement of certain corporate and individual performance objectives. In order to receive your annual cash incentive bonus, you must be an employee and a member of the Office of the CEO throughout all of 2008 and the corporate and individual objectives must be met, as described more thoroughly below. The Compensation Committee will resolve all questions arising in the administration, interpretation and application of this plan, and the Compensation Committee's determination will be final and binding on all concerned. Where permitted by applicable law, the Compensation Committee reserves the right to modify, at its discretion and at any time, the terms of this plan, including, but not limited to, the performance objectives, targets, and payouts.

#### **Annual Compensation Levels at Target Performance**

Base salary:	\$ _____
Annual cash incentive bonus at target:	\$ _____
Total Cash Compensation at target:	\$ _____

#### **Performance Objectives/Targets**

Your 2008 cash incentive bonus is comprised of two components: corporate financial performance during Fiscal Year 2008 (80%) (the "Financial Component") and individual 2008 performance goals<sup>1</sup> (20%) (the "MBO Component").

The method for calculating corporate financial performance used to determine the Financial Component is described in the attached Schedule 1. In the event of any question as to whether the components of the Financial Component have been satisfied, the Compensation Committee shall make such determination. The amounts payable to you under the Financial Component are as follows:

<u>Akamai Performance Against Actual % of Targets from Schedule 1<sup>2</sup></u>	<u>Amount Payable to You</u>
97% of Target:	50% of Financial Component (\$ _____)
100% of Target:	100% of Financial Component (\$ _____)
103% or greater of Target:	200% of Financial Component (\$ _____)

Unless otherwise determined by the Compensation Committee, the Financial Components will not be paid if Akamai fails to achieve at least 97% of Targets.

The amount payable under the MBO Component ranges from 0% to 100% of that target (\$0 up to \$ \_\_\_\_\_) based on the determination of whether individual objectives have been met by you. The Chief Executive Officer shall make such determination and shall report such determination to the Compensation Committee. The Compensation Committee shall retain the right, exercisable in its discretion, to overrule the determination of the Chief Executive Officer and make an independent and binding determination as to whether you have achieved your individual objectives. Subject to the foregoing, the Chief Executive Officer's determination will be final and binding on all concerned.<sup>2</sup> Performance above the maximum may result in higher reward at the sole discretion of the Compensation Committee.

<sup>1</sup> As established by the Chief Executive Officer or, in the case of the CEO, the Compensation Committee.

<sup>2</sup> See Schedule 1 for pro-ratio formulas applicable to intermediate percentages not specified below.

<sup>3</sup> In the case of the Chief Executive Officer, the Board of Directors shall make the determination as to whether his individual performance objectives have been met. The determination of the Board of Directors will be final and binding on all concerned.

The payment of any annual incentive bonus will be made within thirty (30) days following the filing of Akamai's SEC 10-K filing for FY 2008.

Acceptance: \_\_\_\_\_

\_\_\_\_\_  
Date

Approved by: \_\_\_\_\_

\_\_\_\_\_  
Date

**SCHEDULE 1**

## CORPORATE FINANCIAL PERFORMANCE MEASUREMENT METHODOLOGY

**A. Overview; Definitions**

The executive shall only be eligible for the corporate performance-based bonus of the salary upon the Company's achievement of certain financial metrics based on target 2008 Revenue of \$[\*\*] million and target 2008 Normalized EPS of \$[\*\*] per share. The Company's performance measured against each metric shall be equally weighted to enable comparison as a percentage of a combined target. For purposes of this Agreement, such metrics shall have the following meanings:

"Revenue" shall mean the Company's revenue for fiscal year 2008 calculated in accordance with generally accepted accounting principles in the United States of America as reported in the 2008 Financial Statements.

"Normalized EPS" shall mean the Company's annual earnings per diluted share for fiscal year 2008 excluding amortization of intangible assets, equity-related compensation, restructuring charges and benefits, certain gains and losses on equity investments, loss on early extinguishment of debt, utilization of tax NOLs/credits, release of deferred tax asset valuation allowance and similar items excluded by the Company in determining normalized earnings per share in issuing its earnings announcement for fiscal year 2008.

If, on December 31, 2008, the Company is required to make periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's consolidated financial statements filed with the Securities and Exchange Commission on Form 10-K shall constitute its "Public Company Financial Statements" and shall apply. If, on December 31, 2008, the Company is not required to make periodic reports under the Exchange Act, the Company's regularly prepared annual audited financial statements prepared by management shall be its "Private Company Financial Statements" and shall apply. The applicable financial statements may be referred to herein as the "2008 Financial Statements."

**B. Calculation of Percentages**

The Company's Revenue shall be calculated as a percentage of the Company's target revenue for fiscal year 2008 of \$[\*\*] million and multiplied by 0.5 (the "Revenue Percentage Component"). The Company's Normalized EPS shall be calculated as a percentage of the Company's target normalized earnings per share for fiscal year 2008 of \$[\*\*] and multiplied by 0.5 (the "Normalized EPS Component"). The sum of the Revenue Percentage Component and the Normalized EPS Component shall be the "Actual Percentage of Targets."

**C. Bonus Amounts**

1. If the Actual Percentage of Targets equals 97%, then the executive shall receive the Minimum Bonus for Financial Performance (the "Minimum Bonus"); provided, however, that in the event that the Company has not achieved both Revenue of \$[\*\*] million and Normalized EPS of \$[\*\*] per share, then the executive shall not be entitled to any bonus hereunder.

2. If the Actual Percentage of Targets equals 100%, then the executive shall receive the Target Bonus for Financial Performance (the "Target Bonus").

3. If the Actual Percentage of Targets equals 103% or more, then the executive shall receive the Maximum Bonus for Financial Performance (the "Maximum Bonus").

4. If the Actual Percentage of Targets is between 97% and 100%, then the executive shall receive a bonus equal to the sum of (i) the Minimum Bonus plus (ii) an amount equal to the product of the Minimum Bonus multiplied by a fraction the numerator of which is the Actual Percentage of Targets Revenue minus 97% and the denominator is 3%.

5. If the Actual Percentage of Targets is between 100% and 103%, then the executive shall receive a bonus equal to the sum of the (i) the Target Bonus plus (ii) an amount equal to the product of the Target Bonus multiplied by a fraction the numerator of which is the Actual Percentage of Targets Revenue minus 100% and the denominator is 3%.

D. Effect of an Acquisition by Akamai

In the event that Akamai enters into an Acquisition Transaction during 2008, then Revenue and Normalized EPS shall be adjusted to give effect to such Acquisition Transaction. An "Acquisition Transaction" means (i) the purchase of more than 50% of the voting power of an entity, (ii) any merger, reorganization, consolidation, recapitalization, business combination, liquidation, dissolution or share exchange involving Akamai and an entity not previously owned by Akamai, or (iii) the purchase or other acquisition (including, without limitation, via license outside of the ordinary course of business or joint venture) of assets that constitute more than 50% of another entity's total assets or assets that account for more than 50% of the consolidated net revenues or net income of such entity.

As soon as practicable following the closing of an Acquisition Transaction, the Compensation Committee shall make a determination of the estimated impact of the Acquisition Transaction on the Company's 2008 Revenue and Normalized EPS. If the Acquisition Transaction is estimated to be accretive, then:

(i) in calculating Revenue for purposes of determining the Revenue Percentage Component, reported Revenue shall be reduced by the amount of estimated revenue contribution from the Acquisition Transaction; and

(ii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2008 Financial Statements, shall be reduced by the amount of the estimated Normalized EPS contribution from the Acquisition Transaction.

If the Acquisition is estimated to be non-accretive, then:

(iii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2008 Financial Statements, shall be increased by the amount of the estimated negative Normalized EPS impact from the Acquisition Transaction.

All determinations of the Compensation Committee regarding the estimated impact of an Acquisition Transaction shall be final, binding and non-appealable. The cumulative impact of all Acquisition Transactions shall be set forth in a statement delivered upon payment, if any, of the bonus contemplated by this plan. This plan shall be deemed to be automatically amended, without further action by the Company or the executive, to give effect to any adjustments required by this Section D.

**SUBSIDIARIES OF THE REGISTRANT**

AKAMAI TECHNOLOGIES LTD. – Incorporated in the United Kingdom

AKAMAI TECHNOLOGIES GMBH – Incorporated in Germany

AKAMAI TECHNOLOGIES SARL – Incorporated in France

AKAMAI TECHNOLOGIES NETHERLANDS BV–Incorporated in the Netherlands

AKAMAI INTERNAIONAL BV–Incorporated in the Netherlands

AKAMAI TECHNOLOGIES SECURITIES CORPORATION – Incorporated in Massachusetts

K STREAMING LLC– Organized in Delaware

AKAMAI SALES LLC– Organized in Delaware

AKAMAI JAPAN K.K.– Incorporated in Japan

KAHUA HK LIMITED – Organized in Hong Kong

AKAMAI TECHNOLOGIES INDIA PRIVATE LTD. – Incorporated in India

AKAMAI TECHNOLOGIES SPAIN SL – Incorporated in Spain

AKAMAI TECHNOLOGIES SINGAPORE PVT. LTD. – Incorporated in Singapore

NETLI LTD – Incorporated in the United Kingdom

AJ TECHNOLOGIES LTD – Incorporated in the Cayman Islands

KT TECHNOLOGIES (BEIJING) CO. LTD. – Incorporated in the People’s Republic of China

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-139692, 333-141608 and 333-142397) and on Form S-8 (No. 333-62072, 333-37810, 333-36518, 333-35464, 333-35470, 333-35462, 333-31668, 333-89887, 333-89889, 333-91558, 333-83502, 333-116452, 333-126114, 333-139408, 333-139255, 333-141854 and 333-142399) of Akamai Technologies, Inc. of our report dated February 29, 2008 relating to the financial statements, financial statement schedule, and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/PricewaterhouseCoopers LLP

Boston, Massachusetts  
February 29, 2008

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Paul Sagan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Akamai Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 29, 2008

/s/ Paul Sagan

---

Paul Sagan, President and CEO

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, J. Donald Sherman, certify that:

1. I have reviewed this Annual Report on Form 10-K of Akamai Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 29, 2008

/s/ J. Donald Sherman

J. Donald Sherman, Chief Financial Officer



CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report on Form 10-K of Akamai Technologies, Inc. (the "Company") for the period ended December 31, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Paul Sagan, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge:

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

Dated: February 29, 2008

/s/ Paul Sagan

Paul Sagan  
President and CEO

A signed original of this written statement required by Section 906 has been provided to Akamai Technologies, Inc. and will be retained by Akamai Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report on Form 10-K of Akamai Technologies, Inc. (the "Company") for the period ended December 31, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, J. Donald Sherman, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge:

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

Dated: February 29, 2008

/s/ J. Donald Sherman

J. Donald Sherman  
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Akamai Technologies, Inc. and will be retained by Akamai Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.