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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

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

For the quarterly period ended September 30, 2002

or

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

Commission file number 0-27275

Akamai Technologies, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**04-3432319**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification Number)*

8 Cambridge Center

Cambridge, MA 02142
(617) 444-3000
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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 o

The number of shares outstanding of the registrant's common stock as of November 11, 2002: 116,655,482 shares.

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AKAMAI TECHNOLOGIES, INC.

FORM 10-Q

For the Quarterly Period Ended September 30, 2002

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PART I. FINANCIAL INFORMATION

Item 1. ***Financial Statements***

AKAMAI TECHNOLOGIES, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

	September 30, 2002	December 31, 2001
	(In thousands, except share and per share data) (Unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 123,494	$ 78,774
Marketable securities (including restricted securities of $12,748 and $11,166 at September 30, 2002 and December 31, 2001, respectively)	13,416	113,906
Accounts receivable, net of allowance for doubtful accounts of $2,376 and $3,832 at September 30, 2002 and December 31, 2001, respectively	16,059	20,067
Prepaid expenses and other current assets	9,406	15,252
Total current assets	162,375	227,999
Property and equipment, net	81,273	132,237
Restricted marketable securities	5,072	17,831
Goodwill (Note 8)	4,937	3,979
Other intangible assets, net (Note 8)	4,704	15,372
Other assets	8,023	24,060
Total assets	$ 266,384	$ 421,478
Liabilities and Stockholders' (Deficit) Equity		
Current liabilities:		
Accounts payable	$ 25,406	$ 32,076
Accrued expenses	25,040	27,986
Accrued interest payable	4,125	8,250
Deferred revenue	3,079	4,948
Current portion of obligations under capital leases and vendor financing	1,199	405
Current portion of accrued restructuring (Note 11)	13,354	17,633
Total current liabilities	72,203	91,298
Obligations under capital leases and vendor financing, net of current portion	1,303	113
Accrued restructuring, net of current portion (Note 11)	4,620	10,010
Other liabilities	1,069	2,823
Convertible notes	300,000	300,000
Total liabilities	379,195	404,244
Commitments and contingencies (Note 12)		
Stockholders' (deficit) equity:		
Preferred stock, $0.01 par value; 5,000,000 shares authorized (Note 10); no shares issued or outstanding at September 30, 2002 and December 31, 2001	—	—
Common stock, $0.01 par value; 700,000,000 shares authorized; 116,642,224 shares issued and outstanding at September 30, 2002; 115,099,317 shares issued and outstanding at December 31, 2001	1,166	1,151
Additional paid-in capital	3,436,962	3,438,706
Deferred compensation	(18,781)	(38,888)
Notes receivable from officers for stock	(3,440)	(3,342)
Accumulated other comprehensive loss	(7)	(515)
Accumulated deficit	(3,528,711)	(3,379,878)
Total stockholders' (deficit) equity	(112,811)	17,234
Total liabilities and stockholders' (deficit) equity	$ 266,384	$ 421,478

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

AKAMAI TECHNOLOGIES, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2002	2001	2002	2001
	(In thousands, except per share data) (Unaudited)			
Revenue:				
Service	$ 30,617	$ 33,680	$ 96,785	$ 101,513
License and other	2,212	4,324	5,193	10,146
Service and license from related parties (Note 9)	2,546	4,750	7,646	14,445
Total revenue	35,375	42,754	109,624	126,104
Cost and operating expenses:				
Cost of service (excludes $11,484, $10,991, $35,228 and $30,579, respectively, of network-related depreciation included in depreciation below)(1)	9,580	15,870	31,768	51,143
Research and development(1)	4,820	7,626	14,313	28,505
Sales and marketing(1)	15,632	19,250	45,571	64,663
General and administrative(1)	13,772	18,396	42,953	65,550
Depreciation	20,735	19,116	61,347	53,908
Amortization of goodwill	—	793	—	236,525
Amortization of other intangible assets	2,231	6,647	9,699	15,245
Impairment of goodwill	—	—	—	1,912,840
Equity-related compensation	4,616	8,717	15,633	24,269
Restructuring charge (Note 11)	6,138	—	19,149	26,194
Total cost and operating expenses	77,524	96,415	240,433	2,478,842
Loss from operations	(42,149)	(53,661)	(130,809)	(2,352,738)
Interest expense, net	(3,950)	(2,210)	(11,257)	(3,266)
Other income	—	1,002	—	1,002
Loss on investments, net (Note 6)	(1,311)	(213)	(6,398)	(14,960)
Loss before provision for income taxes	(47,410)	(55,082)	(148,464)	(2,369,962)
Provision for income taxes	123	277	369	785
Net loss	$ (47,533)	$ (55,359)	$ (148,833)	$ (2,370,747)
Basic and diluted net loss per share	$ (0.42)	$ (0.53)	$ (1.33)	$ (23.35)
Weighted average common shares outstanding	114,251	104,166	112,066	101,525
(1) Excludes non-cash equity-related compensation presented separately as follows:				
Cost of service	$ 164	$ 149	$ 491	$ 416
Research and development	1,312	2,706	3,416	7,533
Sales and marketing	1,262	3,724	4,954	10,368
General and administrative	1,878	2,138	6,772	5,952
	$ 4,616	$ 8,717	$ 15,633	$ 24,269

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

AKAMAI TECHNOLOGIES, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Nine Months Ended September 30,	
	2002	2001
	(In thousands) (Unaudited)	
Cash flows from operating activities:		
Net loss	$(148,833)	$(2,370,747)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation, amortization and impairment of long-lived assets	76,346	2,223,782
Equity-related compensation	15,633	24,269
Interest income on notes receivable from officers for stock	(98)	(248)
Non-cash portion of restructuring charge	3,671	—
Loss on investments and disposal of property and equipment	6,994	14,960
Changes in operating assets and liabilities:		
Accounts receivable, net	3,929	1,121
Prepaid expenses and other current assets	2,531	5,492
Accounts payable, accrued expenses and other current liabilities	(11,425)	(2,082)
Deferred revenue	(1,857)	959
Other noncurrent assets and liabilities	(2,272)	16,837
Net cash used in operating activities	(55,381)	(85,657)
Cash flows from investing activities:		
Purchases of property and equipment and additions to internal-use software	(13,303)	(57,291)
Purchases of investments	(24,550)	(66,188)
Proceeds from sales of property and equipment	299	—
Proceeds from sales and maturities of investments	136,611	155,392
Net cash provided by investing activities	99,057	31,913
Cash flows from financing activities:		
Payments on capital leases and equipment financing loan	(1,349)	(895)
Proceeds from the issuance of common stock under stock option and employee stock purchase plans	1,676	5,044
Net cash provided by financing activities	327	4,149
Effects of exchange rate translation on cash and cash equivalents	717	119
Net increase (decrease) in cash and cash equivalents	44,720	(49,476)
Cash and cash equivalents, beginning of period	78,774	150,130
Cash and cash equivalents, end of period	$ 123,494	$ 100,654
Supplemental disclosure of cash flows information:		
Cash paid for interest	$ 16,630	$ 17,050
Assets acquired under capital lease obligations and vendor financing	$ 3,332	$ 141

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

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business:

Akamai Technologies, Inc. ("Akamai" or the "Company") provides secure, outsourced, e-business infrastructure services and software. These services and software enable enterprises to reduce the complexity and cost of deploying and operating a uniform Internet Protocol, or IP, infrastructure while ensuring superior performance, reliability, scalability and manageability. Akamai's globally distributed edge computing platform comprises more than 12,900 servers in more than 1,100 networks in 66 countries, ensuring the highest levels of availability, reliability and performance. The Company was incorporated in Delaware in 1998 and is headquartered in Cambridge, Massachusetts. Akamai currently operates in one business segment: outsourced e-business infrastructure services and software.

2. Basis of Presentation and Principles of Consolidation:

The accompanying interim condensed consolidated financial statements, together with the related notes, are unaudited and reflect all adjustments, consisting only of normal recurring adjustments, that in the opinion of management are necessary for a fair presentation of the Company's financial position, results of operations and cash flows as of the dates and for the periods presented. The interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information. Consequently, these interim financial statements do not include all disclosures normally required by accounting principles generally accepted in the United States of America for annual audited financial statements. Accordingly, reference should be made to the Company's annual report on Form 10-K for the year ended December 31, 2001 which was filed with the Securities and Exchange Commission (the "SEC") on February 27, 2002. Results of the interim periods are not necessarily indicative of results for the entire year.

The interim condensed consolidated financial statements include the accounts of Akamai and its wholly-owned subsidiaries. All intercompany transactions have been eliminated in consolidation. Certain reclassifications of prior period amounts have been made to conform with current period presentation.

3. Recent Accounting Pronouncements:

In June 2001, the Financial Accounting Standards Board (the "FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 143, "Accounting for Asset Retirement Obligations," which will be effective in January 2003. SFAS No. 143 addresses financial accounting and reporting requirements for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The Company does not expect the adoption of SFAS No. 143 to have a significant impact on its financial statements.

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements SFAS Nos. 4, 44 and 64, Amendment of FASB Statement No. 13 and Technical Corrections." Among other things, SFAS No. 145 rescinds Statement No. 4, "Reporting Gains and Losses from Extinguishments of Debt" and an amendment of that Statement, FASB Statement No. 64, "Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements." The provision of SFAS No. 145 related to the rescission of Statement No. 4 are effective in 2003. Early application of the provisions of this Statement is encouraged. The Company does not expect the adoption of SFAS No. 145 to have a significant impact on its results of operations, financial position or cash flows.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." SFAS No. 146 requires that a liability be recognized when it is incurred and should initially

be measured and recorded at fair value. This statement is effective for exit or disposal activities that are initiated after December 31, 2002 and the adoption is not expected to have a material impact on the financial statements of the Company.

4. Net Loss per Share:

Basic net loss per share is computed using the weighted average number of common shares outstanding during the period. Diluted net loss per 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, warrants, unvested restricted common stock, convertible notes and contingently issuable common stock.

The following table sets forth the components of potential common stock excluded from the calculation of diluted net loss per share because their inclusion would be antidilutive:

	As of September 30,	
	2002	2001
Stock options	17,180,592	9,756,096
Warrants	1,052,694	1,052,694
Unvested restricted common stock	2,046,573	9,153,001
Convertible notes	2,598,077	2,598,077
Contingently issuable common stock (Note 12)	12,048,193	3,436,426

5. Comprehensive Loss:

The following table presents the calculation of comprehensive loss and its components for the three and nine-month periods ended September 30, 2002 and 2001 (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2002	2001	2002	2001
Net loss	$(47,533)	$(55,359)	$(148,833)	$(2,370,747)
Other comprehensive income (loss):				
Foreign currency translation adjustment	172	75	453	75
Unrealized loss on investments	(56)	(1,196)	(48)	(2,941)
Reclassification adjustment for investment losses included in net loss	343	217	103	8,637
Comprehensive loss	$(47,074)	$(56,263)	$(148,325)	$(2,364,976)

Accumulated other comprehensive loss as of September 30, 2002 and December 31, 2001, respectively, consisted of (in thousands):

	As of September 30, 2002	As of December 31, 2001
Foreign currency translation adjustment	$ 3	$(450)
Unrealized loss on investments	(10)	(65)
Total accumulated other comprehensive loss	$ (7)	$(515)

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

6. Loss on Investments:

For the three months ended March 31, 2002, the Company recorded a loss of $4.3 million related to its investment in Netaxs, Inc. ("Netaxs"), a related party. In April 2002, FASTNET Corporation ("FASTNET") acquired all of the outstanding capital stock of Netaxs in a merger transaction. As a result of the merger, the Company received total consideration of $278,000 in the form of cash and FASTNET common stock in exchange for the Company's equity holdings in Netaxs. In addition, prior to the completion of the merger, the Company settled the amounts due under an outstanding subordinated note issued by Netaxs for $400,000 in cash. The aggregate carrying amount of the investment and subordinated note prior to the sale was $5.0 million. As a result of the exchange of stock in the merger transaction and the settlement of the subordinated note, the Company has included the $4.3 million loss in loss on investments in the statement of operations for the three months ended March 31, 2002. See Note 9 for further discussion.

During the three months ended June 30, 2002, the Company recorded a loss of $902,000 to adjust the cost basis of its equity investment in a publicly-traded company to fair value as a result of a reduction in the market value of such investment that, in the opinion of management, was other-than-temporary. During the second quarter of 2002, the Company also recorded $143,000 of realized investment gains.

During the three months ended September 30, 2002, the Company recorded a loss of $960,000 to adjust the carrying amount of its investment in a privately-held company to its estimated fair value. The Company estimated the realizable value based on the recent market capitalization of publicly traded companies in the investee's industry. Additionally, the Company recorded a loss of $361,000 to adjust the cost basis of its equity investment in a publicly-traded company to fair value as a result of a reduction in the market value of such investment that, in the opinion of management, was other-than-temporary. Loss on investments during the three months ended September 30, 2002, includes approximately $10,000 of realized investment gains.

During the nine months ended September 30, 2001 the Company recorded a loss of $10.3 million to adjust the cost basis of its investments to fair value, a realized loss of $2.7 million on the sale of an equity holding in a private company and $2.0 million of losses on investments in an affiliate accounted for under the equity method.

7. Software Development Costs:

Costs incurred during the application development stage of internal-use software projects are capitalized in accordance with American Institute of Certified Public Accountants Statement of Position 98-1 ("SOP 98-1"), "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use." Capitalized costs include payroll and payroll-related costs for employees in the Company's engineering 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. 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.

Should a plan exist to market the software externally, costs incurred during the application development stage are not eligible for capitalization under SOP 98-1 and are expensed as incurred until the software reaches technological feasibility as defined by SFAS No. 86, "Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed." To date, the Company's development of software to be sold externally has been completed concurrently with the establishment of technological feasibility and, accordingly, no costs have been eligible for capitalization.

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

During the nine months ended September 30, 2002, the Company capitalized $5.0 million of payroll and payroll-related costs for the development and enhancement of internal-use software applications. The internal-use software primarily operates and monitors the Company's network, delivers the Company's services and provides other internal tools such as management reporting and asset tracking. The $5.0 million represents $174,000, $4.2 million and $609,000 for employees included in the cost of service, research and development and general and administrative expense categories, respectively, of the statement of operations. In the third quarter of 2002, the Company impaired $122,000 of in-process internal-use software for projects that were cancelled, in part due to a reduction in the Company's engineering staff in the fourth quarter of 2002. See Note 13. The impairment was recorded in research and development expense. As of September 30, 2002, the Company had amortized approximately $650,000 of capitalized software costs. No costs were capitalized in the prior year as the amount eligible for capitalization was not considered material to the financial statements. The Company amortizes capitalized internal-use software over its estimated useful life of two years. Capitalized software is evaluated each reporting period for impairment and is written down if it is no longer probable that the software will be placed in service or if the software becomes obsolete.

8. Goodwill and Other Intangible Assets:

The Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets," in January 2002. Prior to the adoption of SFAS No. 142, the carrying amount of goodwill was $4.0 million. In accordance with the provisions of SFAS No. 142, the Company reclassified its assembled workforce intangible assets of approximately $1.0 million to goodwill. The Company concluded that it had one reporting unit and assigned the entire balance of goodwill to this reporting unit for purposes of performing a transitional impairment test as of January 1, 2002. The fair value of the reporting unit was determined using the Company's market capitalization as of January 1, 2002. The fair value on January 1, 2002 exceeded the net assets of the reporting unit, including goodwill. Accordingly, the Company concluded that no impairment existed as of that date. Unless changes in events or circumstances indicate that an impairment test is required, the Company will next test goodwill for impairment on January 1, 2003. In accordance with SFAS No. 142, the Company discontinued the amortization of goodwill as of January 1, 2002.

The following table reconciles reported net loss to adjusted net loss, which excludes amortization of goodwill and assembled workforce, for the three and nine months ended September 30, 2001 (in thousands except loss per share amounts), as if SFAS No. 142 had been adopted by the Company as of the beginning of each period:

	For the Three Months Ended September 30, 2001	For the Nine Months Ended September 30, 2001
Reported net loss	$(55,359)	$(2,370,747)
Goodwill amortization	793	236,525
Assembled workforce amortization	3,834	6,806
Adjusted net loss	$(50,732)	$(2,127,416)
Reported net loss per share	$ (0.53)	$ (23.35)
Goodwill amortization per share	0.01	2.33
Assembled workforce amortization per share	0.04	0.07
Adjusted net loss per share	$ (0.48)	$ (20.95)

Prior to the adoption of SFAS No. 142, the Company's other intangible assets consisted of completed technology, trademarks and trade names, assembled workforce and acquired license rights. In 2002, the Company reclassified assembled workforce to goodwill and concluded that the remaining intangible assets had definite useful lives equivalent to their original useful lives. During the first quarter of 2002, the Company

discontinued the sales of a service line that had utilized technology acquired from Network*24* Communications, Inc. ("Network*24*") in February 2000. During the first quarter of 2002, the Company recorded an impairment loss of $2.3 million to adjust the intangible assets related to the Network*24* technology to fair value. The impairment loss was included in amortization of other intangible assets.

Intangible assets subject to amortization consisted of the following (in thousands):

	As of September 30, 2002		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Completed technology	$26,769	$(22,979)	$3,790
Trademarks and trade names	4,527	(3,912)	615
Acquired license rights	490	(191)	299
Total	$31,786	$(27,082)	$4,704

	As of December 31, 2001		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Completed technology	$28,683	$(16,670)	$12,013
Trademarks and trade names	4,925	(2,871)	2,054
Acquired license rights	490	(154)	336
Assembled workforce	12,411	(11,442)	969
Total	$46,509	$(31,137)	$15,372

Aggregate amortization expense for intangible assets was $2.2 million and $6.6 million for the three months ended September 30, 2002 and 2001, respectively, and $9.7 million and $15.2 million for the nine months ended September 30, 2002 and 2001, respectively. Amortization expense is expected to be $2.2 million for the fourth quarter of 2002, $2.2 million in 2003 and $50,000 in each of 2004, 2005 and 2006.

During the first quarter of 2001, the Company reviewed goodwill and other long-lived assets for impairment under the guidance of SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of." The Company considered several factors in determining whether an impairment may have occurred, including the Company's market capitalization compared to its book value, the overall business climate and recent estimates for operating results of acquired businesses. A review of these factors as of March 31, 2001 indicated that an impairment assessment was required for long-lived assets of acquired businesses. The Company grouped all long-lived assets for acquired businesses, including goodwill and other intangible assets, and estimated the future discounted cash flows related to these long-lived assets. The discount rate used was based on the risks associated with the acquired businesses. As a result of this analysis, the Company recorded an impairment charge of $1,912.8 million during the first quarter of 2001 to adjust the carrying amount of goodwill arising from the acquisitions of Network*24* and InterVU Inc. ("InterVu") to its fair value as of March 31, 2001.

9. Related Party Transactions:

From time to time, the Company engages in transactions with parties that have relationships with officers or directors of the Company, entities in which the Company has a direct ownership interest or entities with which the Company shares an interest in a joint venture. Under the Company's current policy, proposed transactions with these related parties are reviewed by the Audit Committee. If a majority of the Audit Committee members who did not have a personal interest in the applicable transaction recommends proceeding with the transaction, such transaction shall then be presented to the full Board of Directors of the

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Company for approval by a disinterested majority of the Directors in attendance at the applicable meeting. Only upon receipt of such approval may the Company proceed with the proposed transaction. Prior to the adoption of the current policy by the Board of Directors in July 2002, related party transactions involving the Company were reviewed by the full Board of Directors and were subject to the prior approval of members of the Board of Directors who did not have a personal interest in the applicable transaction. During the three and nine months ended September 30, 2002 and 2001, the Company engaged in the following transactions with related parties:

Akamai Australia

In August 2002, the Company and ES Group Ventures Pty Ltd ("ES Group") formed a joint venture to create Akamai Technologies AA/P Pty Limited ("Akamai Australia"). Akamai Australia is owned 60% by ES Group and 40% by the Company. In exchange for its 40% ownership interest, the Company contributed rights to use its tradename and trademarks and the exclusive right to market and resell Akamai's services in Australia, New Zealand and, in certain circumstances, Singapore. The Company recorded its investment in the joint venture at the historical cost basis of the assets contributed, which was zero. The Company accounts for its investment in Akamai Australia using the equity method. Under the equity method, recognition of the Company's portion of the joint venture's net income or losses is suspended when the investment's basis is reduced to zero, unless the Company guarantees the obligations of the investee, makes loans to the investee, or otherwise commits to provide future financing to the investee. To date, Akamai Australia has not had material net income or losses. Akamai does not guarantee the obligations of Akamai Australia and has no obligation to provide future financing to Akamai Australia.

The Company has entered into a five year reseller agreement with Akamai Australia whereby Akamai Australia has a quarterly minimum resale commitment under which it is required to make quarterly payments to the Company. For the three months ended September 30, 2002, the Company recognized $40,000 in revenue under this reseller agreement. In order to establish the reseller relationship, Akamai Australia paid to Akamai a set-up fee of $300,000, which is being recognized as revenue ratably over the expected life of the relationship.

Akamai Japan

In April 2001, Akamai and SOFTBANK Broadmedia Corporation ("SBBM"), a subsidiary of SOFTBANK Group, formed a joint venture to create Akamai Technologies Japan KK ("Akamai Japan"). Akamai Japan is the exclusive provider of Akamai's services in Japan. Akamai Japan is owned 60% by SBBM and 40% by Akamai. Akamai accounts for its investment in Akamai Japan using the equity method.

To date, Akamai has not recognized $2.2 million of its share of Akamai Japan's losses because the carrying amount of its investment is zero. Akamai does not guarantee the obligations of Akamai Japan and has no obligation to provide future financing to Akamai Japan. If, in the future, the Company guarantees the obligations of Akamai Japan or otherwise makes investments in or loans to Akamai Japan, the Company will record the suspended equity-method losses to the extent of the guarantee, investment or loan. During the first quarter of 2002, in connection with entering into the technology license agreement with SBBM described below, Akamai agreed to reduce the amount of Akamai Japan's quarterly minimum resale commitment through the remainder of 2002. Akamai recognized $1.1 million and $3.3 million of revenue from Akamai Japan during the three and nine months ended September 30, 2002, respectively. Akamai recognized $750,000 and $1.5 million of revenue from Akamai Japan during the three and nine months ended September 30, 2001, respectively. As of September 30, 2002, $1.1 million due from Akamai Japan is included in the Company's accounts receivable. This amount was paid in full in October 2002.

During the first quarter of 2002, Akamai entered into a technology license agreement with SBBM. Akamai recognized $1.2 million and $3.6 million of revenue from this license agreement during the three and

nine months ended September 30, 2002, respectively. As of September 30, 2002, there were no amounts due from SBBM.

Sockeye Networks, Inc.

During the three and nine months ended September 30, 2002, the Company recognized $252,000 and $752,000, respectively, of revenue from Sockeye Networks, Inc. ("Sockeye") under a quarterly service agreement. Payments due under the service agreement are based on a percentage of Sockeye's revenue, subject to monthly minimum commitments. As of September 30, 2002, there were no amounts due from Sockeye. In November 2002, Sockeye terminated the service agreement. During the nine months ended September 30, 2001, fees payable by Sockeye to Akamai under the service agreement totaled $8.9 million. In addition, during the nine months ended September 30, 2001, Sockeye paid Akamai $4.0 million for technology development work performed by Akamai. From January 2001 to November 2002, Akamai owned 40% of Sockeye and recorded its share of Sockeye's losses under the equity method. During this period, the Company recognized $2.0 million of equity method losses, which are included in loss on investments for the nine months ended September 30, 2001. From the time that the carrying amount of its investment in Sockeye was reduced to zero in 2001, Akamai has not recognized $8.4 million of its share of Sockeye's losses.

In November 2002, Sockeye completed a secondary round of funding in which Akamai did not participate. In addition, Akamai agreed to the cancellation of its warrant to purchase preferred stock in exchange for shares of common stock of Sockeye. Following these events, Akamai's ownership interest in Sockeye decreased from 40% to 2%. Upon expiration of a 90-day transition period, Akamai will no longer have designated representatives on Sockeye's board of directors. The Company will account for its remaining investment in Sockeye under the cost method.

Netaxs/FASTNET

Akamai's Chief Network Scientist was an officer of, and held a significant ownership in, Netaxs until Netaxs was acquired by FASTNET in a merger transaction in April 2002. In connection with the merger, this person became a director, employee and 5% stockholder of FASTNET. During the three and nine months ended September 30, 2002, Akamai purchased approximately $706,000 and $2.3 million, respectively, of bandwidth and co-location space from Netaxs. During the three and nine months ended September 30, 2001, Akamai purchased approximately $340,000 and $1.3 million, respectively, of bandwidth and co-location space from Netaxs. The Company believes that bandwidth and co-location are purchased at fair value. See Note 6 for further discussion.

10. Stockholders' (Deficit) Equity and Stock Plans:

Rights Plan and Series A Junior Participating Preferred Stock

On September 10, 2002, the Board of Directors of the Company declared a dividend of one preferred stock purchase right (collectively, the "Rights") for each outstanding share of the Company's common stock to 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 million authorized shares of undesignated preferred stock as Series A Junior Participating Preferred Stock, par value $.01 per share (the "Preferred Stock"). 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 (the "Purchase Price"). The description and terms of the Rights are set forth in a rights agreement dated September 10, 2002 (the "Rights Agreement") between the Company and EquiServe Trust Company, N.A., as Rights Agent, as filed with the SEC on September 11, 2002 as Exhibit 4.1 to the Company's Current Report on the Form 8-K.

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Initially, the Rights are not exercisable and will be attached to all certificates representing outstanding shares of common stock, and no separate certificates representing the Rights will be distributed. The Rights will separate from the common stock, and the "Distribution Date" will occur, upon the earlier of (i) ten business days following the later of (a) the first date of a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of common stock or (b) the first date on which an executive officer of the Company has actual knowledge that a person or group of affiliated or associated persons has become such, or (ii) ten business days following the commencement of a tender offer or exchange offer that would result in a person or group beneficially owning 15% or more of the outstanding shares of common stock. The Distribution Date may be deferred in circumstances determined by the Board of Directors. In addition, certain inadvertent acquisitions will not trigger the occurrence of the Distribution Date. The Rights will not be exercisable until the Distribution Date and will expire upon the close of business on September 10, 2012 or such earlier time as provided in the Rights Agreement.

If the Rights become exercisable, the type and amount of securities receivable upon exercise of the Rights would depend on the circumstances at the time of exercise. Initially, each Right would entitle holders to purchase one one-thousandth of a share of Preferred Stock at an exercise price of $9.00. If a person acquires 15% or more of the Company's common stock in a transaction that was not approved by the Board of Directors, each Right, other than those owned by the acquiring person, would instead entitle the holder to purchase $18.00 worth of the Company's common stock for the $9.00 exercise price. If the Company is involved in a merger or other transaction with another company that is not approved by the Board of Directors, in which the Company is not the surviving corporation, or which transfers more than 50% of the Company's assets to another company, then each Right, other than those owned by the acquiring person, would instead entitle the holder to purchase $18.00 worth of the acquiring company's common stock for the $9.00 exercise price.

Stock Plans

During the nine months ended September 30, 2002, the Company granted 1.4 million fully vested options to purchase common stock at below market value to employees for the payment of equity bonus awards. The weighted average exercise price of these stock options was $0.47 per share. The Company recorded the intrinsic value of these options as equity-related compensation expense. In addition, the Company repurchased 698,000 shares of unvested restricted common stock as a result of employee terminations and, consequently, reversed $1.3 million of previously recorded equity-related compensation. During the three months ended March 31, 2002, the Company agreed to waive its right to repurchase the remaining unvested restricted common stock held by a member of the Board of Directors who did not seek reelection in May 2002. The Company recorded $283,000 as equity-related compensation for the intrinsic value of the restricted common stock as of the date of the modification. Accelerations of stock option vesting during the nine months ended September 30, 2002 resulted in equity-related compensation of $49,000.

In July 2002, the Company granted options to purchase 750,000 shares of common stock at an exercise price of $1.26 per share, the fair market value on the date of grant, to its Chief Executive Officer, George Conrades. The options are scheduled to vest on the third anniversary of the grant; however, vesting accelerates upon the achievement of certain performance objectives. In September 2002, the Company granted options to purchase 375,000 shares of common stock at an exercise price of $0.90 per share, the fair market value on the date of grant, to its President, Paul Sagan. The options vest 25% on the date of grant and 6.25% per quarter thereafter through September 2005. Vesting will accelerate for a portion of the options upon the achievement of certain performance objectives.

In December 2001, the Company reduced the interest rates payable on full recourse notes issued in July 1999 by certain officers in exchange for shares of restricted common stock. The interest rates were adjusted to

the Applicable Federal Rate (the "AFR") at such time. The AFR, in the Company's opinion, was below market rate for these individual borrowers on the date of the modification. As a result, the shares of restricted common stock purchased with the funds loaned to the officers in connection with the issuance of the notes are subject to variable accounting until the loans are paid in full, which will constitute an exercise of the equity awards. The Company will continue to amortize previously recognized deferred compensation with respect to these restricted stock awards as the awards vest. In addition, the Company will record compensation expense each quarter based on the closing price of the Company's stock on the last trading day of such quarter if the stock price exceeds $13.00 per share for the number of shares of restricted stock purchased with the unpaid portion of the loan. No additional accounting charges have been required to date.

11. Restructuring and Lease Terminations:

During the year ended December 31, 2001, the Company recorded a restructuring charge of $34.1 million for exit costs related to abandoned real property leases. The charge was estimated as the amount of probable future rent payments and termination fees for the vacant properties, less estimated sublease income.

In March 2002, the Company terminated its facility leases for 500 and 600 Technology Square ("500 Tech" and "600 Tech," respectively) in Cambridge, Massachusetts, for a fee of $15.0 million. In addition, the Company incurred approximately $900,000 in brokerage and legal fees directly related to the termination. Total fees allocable to 600 Tech were $14.0 million. As of March 31, 2002, the accrued restructuring liability attributable to 600 Tech was $7.2 million. Accordingly, the Company recorded an additional restructuring charge during the three months ended March 31, 2002 in the amount of $6.8 million for the difference between the actual termination fee and the amount previously accrued. Total fees allocable to 500 Tech were $1.9 million, which was recorded as a restructuring charge during the three months ended March 31, 2002.

As a result of the termination of the 500 Tech lease, which was effective October 1, 2002, the Company changed the estimated useful lives of certain capitalized leasehold improvements. The leasehold improvements were fully amortized through September 2002. Due to the change in the estimate of such useful lives, depreciation expense and net loss increased by $3.0 million and $5.2 million for the three and nine months ended September 30, 2002, respectively.

During first quarter of 2002, the Company revised its sublease income estimates related to certain leases vacated by the Company in 2001. Due to continued adverse real estate conditions, the Company has not located sublease tenants for certain of its vacated properties. As a result, during first the quarter of 2002, the Company recorded an additional $3.7 million restructuring charge, which represents a reduction in anticipated sublease income. In addition, during the second quarter of 2002, the Company recorded a non-cash restructuring charge of $602,000 to write-off long-lived assets and deferred rent related to these vacated properties.

The Company is negotiating with the landlord of its Santa Clara facility to modify the lease for such property. The Company substantially vacated the Santa Clara facility in 2001. The Company believes that it is probable that it will reach agreement with the landlord to modify the lease. As a result, for the three months ended September 30, 2002, the Company recorded an incremental restructuring charge of $2.1 million representing the difference between the probable amount payable under the modified lease plus brokerage and legal costs, and the previously recorded restructuring liability for the Santa Clara property. In addition, as a result of the expected modification of the lease, the Company impaired leasehold improvements, deposits and deferred rent related to the Santa Clara property in the amount of $3.1 million. During the third quarter, the Company also increased its estimated loss on other restructured properties by approximately $900,000 as a result of lower sublease income expectations. In summary, the total restructuring charge of $6.1 million for the third quarter of 2002 was comprised of $5.2 million in probable lease modification costs and asset impairments

for the Santa Clara facility and $900,000 for adjustments to sublease income expectations for other vacant properties.

The following table summarizes the establishment, usage and adjustments to the restructuring liabilities related to facility leases (in millions):

	Restructuring Liabilities
Restructuring charge for the twelve months ended December 31, 2001	$ 34.1
Cash payments for the twelve months ended December 31, 2001	(6.5)
Ending balance, December 31, 2001	27.6
Restructuring charge for the nine months ended September 30, 2002	19.1
Cash payments for the nine months ended September 30, 2002	(25.0)
Non-cash restructuring charges for nine months ended September 30, 2002	(3.7)
Ending balance, September 30, 2002	$ 18.0
Current portion of accrued restructuring	$ 13.4
Long-term portion of accrued restructuring	$ 4.6

The amount of restructuring liabilities associated with operating leases has been estimated based on the most recent available market data and discussions with the Company's lessors and real estate advisors. In the event that these operating leases are terminated at a higher or lower cost than the amount accrued as of September 30, 2002, the Company will record an adjustment to the restructuring liability in the period in which the adjustment becomes probable and estimable.

12. Commitments and Contingencies:

Operating and Capital Lease Obligations

The Company leases its facilities and certain equipment under operating and capital leases. In June 2002, the Company entered into a real property sublease agreement, which expires in May 2009, for its new corporate headquarters in Cambridge, Massachusetts. The minimum aggregate future obligations under non-cancelable leases, including the Santa Clara facility, as of September 30, 2002 are as follows (in thousands):

	Operating Leases	Capital Leases (including vendor financing)
Remaining 2002	$ 3,986	$ 257
2003	13,421	1,363
2004	14,245	880
2005	12,752	291
2006	11,758	—
2007	10,482	—
Thereafter	23,393	—
Total	$90,037	2,791
Less: interest		(289)
Total principal obligations		2,502
Less: current portion		(1,199)
Noncurrent portion of principal obligation		$ 1,303

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NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Legal Matters

The Company is subject to legal proceedings, claims and litigation arising in the ordinary course of business. The Company does not expect that the ultimate costs to resolve these matters will have a material adverse effect on its consolidated financial position, results of operations or cash flows.

On September 13, 2000, the Company, together with the Massachusetts Institute of Technology ("MIT"), filed suit in the United States District Court for the District of Massachusetts against Digital Island Inc. ("Digital Island"), a wholly-owned subsidiary of Cable and Wireless, plc, for infringing an MIT patent licensed exclusively to us (the "703 patent"). On December 21, 2001, a jury found that Digital Island's Footprint 2.0 content delivery network and service offering infringe seven asserted claims of the 703 patent. In August 2002, the Court issued a permanent injunction against Digital Island restraining it from violating certain claims of the 703 patent. Digital Island has appealed this ruling. The Court will set a schedule for a separate trial to be held on the damages payable by Digital Island as a result of its infringement of the 703 patent.

Between July 2, 2001 and August 31, 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 and several of its current and former officers and directors 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 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. On July 15, 2002, the Company joined in an omnibus motion to dismiss filed by all issuer defendants named in similar actions. The motion to dismiss challenges the legal sufficiency of the plaintiffs' claims, including those in the consolidated amended complaint. Plaintiffs have opposed that motion, which has not yet been heard by the Court. In addition, in August 2002, the plaintiffs agreed to dismiss without prejudice all of the individual defendants from the consolidated complaint, although those dismissals have not yet been filed. The Company is not presently able to estimate potential losses, if any, related to these lawsuits.

In January 2000, a former employee of InterVu filed an action against InterVu alleging that InterVu had breached two restricted stock purchase agreements by failing to deliver certain shares of stock after the employee's resignation. The plaintiff sought specific performance and monetary damages. In April 2001, the court ruled in favor of the plaintiff. The court assessed damages against the Company in the amount of $1.9 million. The Company has appealed the trial court's decision in this case. The Company has accrued for the potential loss and has placed $2.5 million, which includes interest, into an escrow account pending the appeal.

In August 2001, Network Caching Technology, L.L.C. ("NCT") amended an existing patent infringement action pending in the United States District Court for the Northern District of California to join Akamai as a co-defendant. The case alleged that Novell, Inc., Volera, Inc., CacheFlow, Inc., Inktomi Corporation and Akamai, infringe four patents relating to network file services and cache mechanisms. In October 2002, NCT and the Company reached an agreement to settle this dispute, and the case against Akamai was dismissed.

In June 2002, Speedera Networks, Inc. ("Speedera") filed suit against the Company in the United States District Court for the Northern District of California alleging that the Company's dissemination of a sales presentation document constitutes false advertising and unfair competition under the Federal Lanham Act and various California statutes. This suit was voluntarily dismissed by Speedera in September 2002.

AKAMAI TECHNOLOGIES, INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

In June 2002, the Company filed suit against Speedera in California Superior Court alleging theft of Akamai trade secrets from an independent company that provides Website performance testing services. In connection with this suit, in September 2002, the Court issued a preliminary injunction to restrain Speedera from continuing to access Akamai's confidential information from the independent company's database and from using any data obtained from such access. In October 2002, Speedera filed a cross-claim against the Company seeking monetary damages and injunctive relief and alleging that Akamai engaged in various unfair trade practices, made false and misleading statements and engaged in unfair competition. Management believes that Akamai has meritorious defenses to the claims made in Speedera's cross-claim and intends to contest the allegations vigorously. However, there can be no assurance that the Company will be successful. The Company is not presently able to reasonably estimate potential losses, if any, related to this cross-claim.

In July 2002, Cable and Wireless Internet Services ("C&W"), formerly known as Digital Island, filed suit against the Company in the United States District Court for the District of Massachusetts alleging that certain Akamai services infringe a newly-issued C&W patent. C&W is seeking a preliminary injunction restraining the Company from offering services that infringe such patent. Subsequently, in August 2002, C&W filed a suit against the Company in the United States District Court for the Northern District of California alleging that certain Akamai services infringe a second C&W patent. The Company believes that it has meritorious defenses to the claims made in the complaints and intends to contest the lawsuit vigorously. However, there can be no assurance that the Company will be successful. The Company is not presently able to reasonably estimate potential losses, if any, related to these lawsuits.

In September 2002, Teknowledge Corporation ("Teknowledge") filed suit in the United States District Court for the District of Delaware against the Company, C&W and Inktomi Corporation alleging that certain services offered by each company infringe a Teknowledge patent relating to automatic retrieval of changed files by a network software agent. Although the Company has not filed an answer in this matter, the Company believes that it has meritorious defenses to the claims made in the complaint and intends to contest the lawsuit vigorously. However, there can be no assurance that the Company will be successful. The Company is not presently able to reasonably estimate potential losses, if any, related to this lawsuit.

CNN Advertising Agreement

In November 1999, InterVu, which was acquired by Akamai in April 2000, entered into an advertising agreement with the CNN News Group ("CNN"). Under the terms of such agreement, InterVu issued common stock valued at $20.0 million to CNN. In return, CNN agreed to provide InterVu with three years of on-air and online advertising and promotional opportunities across CNN's properties. As part of the purchase price allocation made in accounting for its acquisition of InterVu, Akamai estimated the fair value of these services to be $18.4 million. This amount has been recorded as an asset and is being amortized over the remaining life of the advertising agreement, based on usage, to advertising expense. To date, $17.0 million has been amortized to advertising expense. The remaining balance of $1.4 million is classified as a prepaid expense on the consolidated balance sheet and will be amortized in full during 2002.

In connection with its acquisition of InterVu, Akamai issued shares of its common stock to CNN in exchange for shares of InterVu common stock held by CNN and assumed certain obligations relating to such shares, including a guarantee that the price of such shares would be above a specified price on the third anniversary of the advertising agreement. At the time of the acquisition of InterVu, the Company estimated the fair value of the price guarantee and included the estimated value of the guarantee in the purchase price of InterVu. In November 2002, the Company agreed to satisfy the $10 million price guarantee through a cash payment to CNN of $2.7 million and the release of a $3.8 million letter of credit issued to CNN. Settlement will become effective when CNN receives the cash payment and draws on the letter of credit. The $6.5 million payment is considered a component of the purchase price of InterVu and will be recorded as Additional

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Paid-In Capital. The fair value of the shares of common stock issued in the InterVu acquisition will be reduced by $6.5 million, thus the total purchase price of $2.8 billion remains the same.

13. Subsequent Events:

In October 2002, the Company reduced its workforce by approximately 200 employees, or 29%, from all functional areas. As a result, the Company will record a charge of $3.0 million to $3.4 million during the fourth quarter of 2002 for one-time termination benefit payments.

The Company announced that its Chief Financial Officer, Timothy Weller, will leave the Company effective November 15, 2002. Robert Cobuzzi has been hired by Akamai to serve as its Chief Financial Officer effective as of November 18, 2002.

Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

This Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. For this purpose, statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, the words "believes," "anticipates," "plans," "expects" and similar expressions are intended to identify forward-looking statements. These forward-looking statements involve risks and uncertainties and are not guarantees of future performance. Actual results may differ materially from those indicated in such forward-looking statements as a result of certain factors including, but not limited to, those set forth under the heading "Factors Affecting Future Operating Results."

Overview

Akamai provides secure, outsourced, e-business infrastructure services and software. We market our services and software worldwide through a direct sales force and a reseller channel. Our services and software enable enterprises to reduce the complexity and cost of deploying and operating a uniform Web infrastructure while ensuring superior performance, reliability, scalability and manageability.

We have incurred significant costs to develop our technology, build our worldwide network, sell and market our services and software and support our operations. We have incurred significant amortization expense and write-offs of goodwill and other intangible assets from the acquisition of businesses. We have incurred significant restructuring expenses related to employee severance payments and under-utilized leased office space. Since our inception, we have incurred significant losses and negative cash flows from operations. We have not achieved profitability on a quarterly or annual basis, and we anticipate that we will continue to incur net losses in the future. As of September 30, 2002, we have $300 million of convertible notes which are scheduled to become due in 2007. We believe that our success is dependent on increasing our customer base, developing new services and software that leverage our proprietary technology and achieving a proper alignment between our cost structure, particularly our cash operating expenses, and our revenue.

The following represents selected highlights of our financial condition and results of operations for the quarter ended September 30, 2002 as compared to the same period in the prior year, a complete discussion of which appears elsewhere in the Management's Discussion and Analysis section of this quarterly report on Form 10-Q:

- Total revenue was $35.4 million for the quarter ended September 30, 2002, compared to $42.8 million for the same period in the prior year.
- As of September 30, 2002, we had 243 customers of EdgeSuite, our leading service, compared to 100 at September 30, 2001. Average per-customer monthly recurring revenue for these customers for the quarter ended September 30, 2002 was approximately $20,200 as compared to $24,200 for the same period in the prior year.
- As of September 30, 2002, we had 975 customers under recurring revenue contracts compared to 1,096 at September 30, 2001. Average monthly recurring revenue for these customers was approximately $11,400 for the quarter ended September 30, 2002, as compared to $10,400 for the same period in the prior year.
- Gross margins, excluding network depreciation expenses, for the quarter ended September 30, 2002 were 73%, compared to 63% for the same period in the prior year.
- Total capital expenditures were $7.0 million for the quarter ended September 30, 2002, compared to $14.7 million for the same period in the prior year.
- As of September 30, 2002, we had 789 full time employees, compared to 1,111 full time employees as of September 30, 2001.

Recent Events

In October 2002, we reduced our workforce by 29%, or approximately 200 employees. The reduction affected all of our functional areas. We expect to record a restructuring charge in the fourth quarter of 2002 of approximately $3.0 to $3.4 million for one-time benefit payments to affected employees. As a result of these actions, we expect payroll and payroll-related costs to decline by approximately $5 million per quarter starting in the first quarter of 2003. We expect to complete the fiscal year ending December 31, 2002 with approximately 550 employees.

Our Chief Financial Officer, Timothy Weller, will leave Akamai effective November 15, 2002. Robert Cobuzzi has been hired by Akamai to serve as our Chief Financial Officer effective as of November 18, 2002.

We are negotiating with the landlord of our Santa Clara facility to modify our lease for such property. We substantially vacated the property in 2001. The contractual lease term for the Santa Clara facility runs through 2010 and has minimum contractual lease payments of $55 million as of September 30, 2002. We believe that it is probable that we will reach agreement with our landlord to modify this lease. As a result, we recorded a restructuring charge of $5.2 million for probable lease modification costs. In addition, we increased our restructuring liabilities by $900,000 to reflect reduced sublease income expectations for other vacant properties.

Sockeye Networks Inc., or Sockeye, terminated its service agreement with us effective November 2002. In addition, Sockeye obtained a secondary round of funding that resulted in a dilution in our equity ownership from 40% to 2%. As a result of these events, we expect to recognize insignificant amounts of revenue from Sockeye in the fourth quarter of 2002 and in the future.

In November 2002, we settled our $10 million stock price appreciation guarantee to CNN News Group by agreeing to make a $2.7 million cash payment and to release a $3.8 million letter of credit.

Critical Accounting Policies and Estimates

In preparing the condensed consolidated financial statements included in this quarterly report on Form 10-Q, we have not made changes to our critical accounting policies as described in our annual report on Form 10-K for the year ended December 31, 2001. We have, however, modified the categories on our consolidated statements of operations based on a further refinement of employee functional roles. Specifically, for the three and nine months ended September 30, 2002 and for the same periods in the prior year:

- We included in cost of service the salaries, benefits and other direct costs of employees who operate our network. These costs were previously included under the engineering and development category.
- We disaggregated our sales, general and administrative category into two categories: sales and marketing and general and administrative.
- We moved internal information technology and network operation costs from engineering and development to general and administrative and cost of service, respectively.
- We renamed engineering and development to research and development.

All prior period amounts have been reclassified to conform to current period presentation. These modifications had no impact on loss from operations or net loss.

The preparation of these interim condensed consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates and judgments, including those related to revenue recognition, allowance for doubtful accounts, investments, intangible assets, income taxes, depreciable lives of property and equipment, restructuring accruals and contingency accruals. We base our estimates on historical experience and on other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates.

Recent Accounting Pronouncements

In June 2001, the Financial Accounting Standards Board, or FASB, issued Statement of Financial Accounting Standards, or SFAS, No. 143, "Accounting for Asset Retirement Obligations," which will be effective in January 2003. SFAS No. 143 addresses the financial accounting and reporting requirements for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. We do not expect the adoption of SFAS No. 143 to have a significant impact on our financial statements.

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements SFAS Nos. 4, 44 and 64, Amendment of FASB Statement No. 13 and Technical Corrections." Among other things, SFAS No. 145 rescinds Statement No. 4, "Reporting Gains and Losses from Extinguishments of Debt" and an amendment of that Statement, FASB Statement No. 64, "Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements." The provision of SFAS No. 145 related to the rescission of Statement No. 4 are effective in 2003. Early application of the provisions of this Statement is encouraged. We do not expect the adoption of SFAS No. 145 to have a significant impact on our results of operations, financial position or cash flows.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." SFAS No. 146 requires that a liability be recognized when it is incurred and should initially be measured and recorded at fair value. This statement is effective for exit or disposal activities that are initiated after December 31, 2002 and the adoption of this statement is not expected to have a material impact on our financial statements.

Results of Operations

The following sets forth, as a percentage of revenue, consolidated statements of operations data for the periods indicated:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2002	2001	2002	2001
Revenue	100.0%	100.0%	100.0%	100.0%
Cost of service	27.1	37.1	29.0	40.6
Research and development	13.6	17.8	13.1	22.6
Sales and marketing	44.2	45.0	41.6	51.3
General and administrative	38.9	43.0	39.2	52.0
Depreciation	58.6	44.7	56.0	42.7
Amortization of goodwill	—	1.9	—	187.5
Amortization of other intangible assets	6.3	15.6	8.8	12.1
Impairment of goodwill	—	—	—	1,516.9
Equity-related compensation	13.0	20.4	14.3	19.2
Restructuring charge	17.4	—	17.5	20.8
Total cost and operating expenses	219.1	225.5	219.5	1,965.7

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2002	2001	2002	2001
Loss from operations	(119.1)	(125.5)	(119.5)	(1,865.7)
Interest expense, net	(11.2)	(5.2)	(10.3)	(2.6)
Other income	—	2.3	—	0.8
Loss on investments, net	(3.7)	(0.5)	(5.8)	(11.9)
Loss before provision for income taxes	(134.0)	(128.9)	(135.6)	(1,879.4)
Provision for income taxes	0.3	0.6	0.3	0.6
Net loss	(134.3)%	(129.5)%	(135.9)%	(1,880.0)%

Revenue. We recognize revenue from our services and licensed technology when a contract to deliver the service or the licensed technology has been signed by both parties, the service or licensed technology has been delivered or made available to, and accepted (when applicable) by, the customer, the fee for the service or licensed technology is fixed or determinable and collection is reasonably assured. We recognize revenue from our content delivery and streaming services based on the customer's minimum monthly usage commitment plus usage in excess of the minimum commitment as defined in the service arrangement. We record installation and set-up fees as deferred revenue and recognize these fees ratably over the life of the customer contract. We recognize revenue from resellers based on the resellers' contracted non-refundable minimum purchase commitment, plus amounts sold by the resellers to end customers in excess of the minimum commitment. We recognize revenue from professional services under time-and-material arrangements as the services are performed.

We recognize revenue from fixed-fee arrangements using the percentage-of-completion method in accordance with Accounting Research Bulletin No. 45, or ARB 45, "Long-Term Construction-Type Contracts", and with the applicable guidance provided by Statement of Position 81-1, or SOP 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts" based on the percentage of cost incurred to date compared to the estimated total cost-to-complete. The impact of any revisions in estimates are recorded in the period in which they are identified. At the outset of a fixed-fee arrangement, if we are not able to estimate the total cost-to-complete, we account for the arrangement using the completed-contract method. 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 purchase goods or services for our operations from customers at or about the same time that we enter into contracts to sell services or software to these organizations. These transactions are separately negotiated and recorded at terms we consider to be arm's length. For all periods presented, revenue recognized from vendors where we purchased goods or services from the vendor at or about the same time that we entered into contracts to sell services or license software was less than 10% of total revenue.

For the three and nine months ended September 30, 2002, no customer accounted for more than 10% of revenue. For the nine months ended September 30, 2001, one customer, Sockeye, accounted for 10% of total revenue. No customer accounted for more than 10% of total revenue for the three months ended September 30, 2001. Resellers accounted for 22% of total revenue in the quarter ended September 30, 2002 as compared to 16% in the same period in the prior year. For the three and nine months ended September 30, 2002, 14% and 13%, respectively, of our revenue was derived from our operations located outside of the United States compared to 9% and 7% for the three and nine months ended September 30, 2001, respectively. As of September 30, 2002, we had 975 customers under recurring revenue contracts as compared to 1,096 at September 30, 2001. Average monthly revenue for these customers was approximately $11,400 in the three months ended September 30, 2002 as compared to $10,400 in the same period in the prior year. We increased our EdgeSuite customer base to 243 as of September 30, 2002 with average per-customer monthly recurring revenue of approximately $20,200, as compared to 100 EdgeSuite customers generating average recurring revenue of approximately $24,200 during the same period in the prior year.

Total revenue decreased 17%, or $7.4 million, to $35.4 million for the three months ended September 30, 2002 compared to $42.8 million for the same period in the prior year. Total revenue decreased 13%, or $16.5 million, to $109.6 million for the nine months ended September 30, 2002 compared to $126.1 million for the same period in the prior year. Service revenue decreased 9%, or $3.1 million, to $30.6 million for the quarter ended September 30, 2002 as compared to $33.7 million for the same period in the prior year. Service revenue decreased 5%, or $4.7 million, to $96.8 million for the nine months ended September 30, 2002 as compared to $101.5 million for the same period in the prior year. The decrease in service revenue in both periods was attributable to a decrease in customers under recurring revenue contracts, partially offset by an increase in average monthly recurring revenue per customer as we increased the number of EdgeSuite customers as a percentage of total customers.

License and other revenue decreased 49%, or $2.1 million, to $2.2 million for the three months ended September 30, 2002, compared to $4.3 million for the same period in the prior year. License and other revenue decreased 49%, or $4.9 million, to $5.2 million for the nine months ended September 30, 2002, compared to $10.1 million for the same period in the prior year. For both periods, we entered into fewer technology licenses in the current year as compared to the same period in the prior year. License and other revenue in the current quarter includes $1.2 million in sales of our Enterprise Content Delivery solution, an offering that provides our content delivery technology behind an enterprise's firewall. We have decided to postpone the general commercial release of this offering and focus our efforts in this area on sales to governmental customers and strategic enterprise customers. As a result, we may not realize revenue from this offering in the next several quarters, if at all. License and other revenue for the three and nine months ended September 2002 also includes $700,000 and $1.9 million, respectively, for customized solutions delivered under long-term contracts. We account for these arrangements under long-term contract accounting.

Revenue from related parties decreased 46%, or $2.3 million, to $2.5 million for the three months ended September 30, 2002 compared to $4.8 million for the same period in the prior year. Revenue from related parties decreased 47%, or $6.8 million, to $7.6 million in the nine months ended September 30, 2002 compared to $14.4 million for the same period in the prior year. The decline in revenue from related parties in both periods was primarily attributable to the reduction in revenue from Sockeye as a result of the restructuring of our agreement with Sockeye in the third quarter of 2001. As a result of Sockeye's termination of its service agreement with us, we expect that revenue from Sockeye will decrease in the future.

Cost of Service. Cost of service consists primarily of fees paid to network providers for bandwidth and monthly fees for housing our servers in third-party network data centers. We include the depreciation of our network equipment used to deliver our services under the heading depreciation on the consolidated statements of operations. Cost of service also includes network operation employee costs; storage costs; live event costs including costs for production, encoding and signal acquisition; and cost of professional services. During the nine months ended September 30, 2002, we capitalized $174,000 of payroll costs for network operations personnel related to the development of internal-use software used to operate and monitor our network. We did not capitalize payroll costs for network operations personnel during the three months ended September 30, 2002.

Cost of service decreased 40% to $9.6 million during the three months ended September 30, 2002 compared to $15.9 million in the same period in the prior year. For the nine months ended September 30, 2002, cost of service decreased 38% to $31.8 million compared to $51.1 million for the same period in the prior year. Gross margins were 73% and 71% for the three and nine months ended September 30, 2002, respectively, compared to 63% and 59%, respectively, in the same periods in the prior year. Cost of service decreased and gross margins increased in both periods due lower bandwidth costs and a decrease in the number of employees who manage our network. In addition, gross margins increased 5% in the three months ended September 30, 2002 due to the reversal of previously accrued contractual bandwidth amounts as a result of contract settlements with certain of our bandwidth providers who are bankrupt.

Research and Development. Research and development expenses consist primarily of salaries and related expenses for the design, development, testing and enhancement of our services and our network. Research and development costs are expensed as incurred, except certain software development costs eligible

for capitalization. During the three and nine months ended September 30, 2002, we capitalized $1.2 million and $4.1 million, respectively, of payroll costs related to the development of internal-use software used to deliver our services and operate our network.

Research and development expenses decreased 37% to $4.8 million for the three months ended September 30, 2002 compared to $7.6 million for the same period in the prior year. For the nine months ended September 30, 2002, research and development expenses decreased 50% to $14.3 million compared to $28.5 million for the same period in the prior year. The decrease during these periods was primarily due to a decrease in personnel and payroll-related expenses as a result of reduced headcount in our research and development organization, a reduction in the use of consulting services and an increase in capitalization of internal-use software costs during 2002. In October 2002, we decreased the number of employees in our research and development organization by approximately 30%. As a result, we expect research and development expenses to decline over the next several quarters.

Sales and Marketing. Sales and marketing expenses consist primarily of salaries, commissions and related expenses for personnel engaged in marketing, sales and service support functions, as well as trade shows and promotional expenses. Sales and marketing expenses decreased 19% to $15.6 million for the three months ended September 30, 2002 compared to $19.3 million for the same period in the prior year. For the nine months ended September 30, 2002, sales and marketing expenses decreased 30% to $45.6 million compared to $64.7 million for the same period in the prior year. The decrease in both periods is primarily due to a decrease in public relations and promotional costs, a reduction in travel expenses, and a decrease in personnel and payroll-related expenses as a result of a reduction in the number of employees in the sales and marketing organization. In October 2002, we decreased our sales and marketing employee base by approximately 30%. As a result, we expect sales and marketing expenses to decline over the next several quarters.

General and Administrative. General and administrative, or G&A, expenses consist primarily of salaries and related expenses for executive, finance, information technology, or IT, human resources and other administrative personnel, fees for professional services, telecommunications costs, the provision for doubtful accounts and rent and other facility-related expenditures for leased properties. During the three and nine months ended September 30, 2002, we capitalized $206,000 and $609,000, respectively, of payroll costs for IT personnel related to the development of internal-use software. General and administrative expenses decreased 25% to $13.8 million for the three months ended September 30, 2002 compared to $18.4 million for the same period in the prior year. For the nine months ended September 30, 2002, general and administrative expenses decreased 34% to $43.0 million compared to $65.6 million for the same period in the prior year. The decrease in both periods is primarily due to reduced payroll-related costs as a result of reductions in headcount and a decrease in provision for doubtful accounts, telephone costs and legal expenses. In October 2002, we decreased our G&A employee base by approximately 30%. As a result, we expect G&A expenses to decline over the next several quarters.

Depreciation. Depreciation expense consists of depreciation of network equipment and property and equipment used by us internally. Depreciation expense increased 8% to $20.7 million in the three months ended September 30, 2002 compared to $19.1 million in the same period in the prior year. For the nine months ended September 30, 2002, depreciation expense increased 14% to $61.3 million compared to $53.9 million for the same period in the prior year. Depreciation expense increased in both periods primarily due to accelerated leasehold improvement amortization. As a result of terminating the lease for our previous headquarters building, we changed the estimated useful lives of certain capitalized leasehold improvements. The leasehold improvements were fully amortized through September 2002. Due to the change in our estimate of such useful lives, depreciation expense increased by $3.0 million and $5.2 million for the three and nine months ended September 30, 2002, respectively.

Amortization of Goodwill. We no longer amortize goodwill as a result of our adoption of SFAS No. 142, “Goodwill and Other Intangible Assets,” in January 2002. As of January 1, 2002, we reclassified assembled workforce intangible assets of approximately $1.0 million to goodwill. The resulting balance of goodwill was $4.9 million on January 1, 2002. We determined that we had one reporting unit and we assigned

the entire balance of goodwill to this reporting unit as of January 1, 2002 for purposes of performing a transitional impairment test. The fair value of the reporting unit was determined using the market capitalization of Akamai as of January 1, 2002. The fair value on January 1, 2002 exceeded the net assets of the reporting unit, including goodwill. Accordingly, we concluded that no impairment existed on that date. Unless changes in events or circumstances indicate that an impairment test is required, we will next test goodwill for impairment on January 1, 2003. Amortization of goodwill was $793,000 for the three months ended September 30, 2001 and $236.5 million for the nine months ended September 30, 2001. In accordance with SFAS No. 142, we discontinued the amortization of goodwill as of January 1, 2002.

Amortization of Other Intangible Assets. Amortization of other intangible assets decreased 67% to $2.2 million in the three months ended September 30, 2002 compared to $6.6 million in the same period in the prior year. For the nine months ended September 30, 2002, amortization of other intangible assets decreased 36% to $9.7 million compared to $15.2 million for the same period in the prior year. The decrease during both periods was primarily due to discontinuance of assembled workforce amortization in 2002.

Impairment of Goodwill. During the first quarter of 2001, we reviewed goodwill and other long-lived assets for impairment under the guidance of SFAS No. 121, “Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of.” We considered several factors in determining whether an impairment may have occurred, including our market capitalization compared to book value, the overall business climate and recent estimates for operating results of acquired businesses. A review of these factors as of March 31, 2001 indicated that an impairment assessment was required for long-lived assets of acquired businesses. We grouped all long-lived assets for acquired businesses, including goodwill and other intangible assets, and estimated the future discounted cash flows related to these long-lived assets. The discount rate used was based on the risks associated with the acquired businesses. As a result of this analysis, we recorded an impairment charge of $1,912.8 million during the first quarter of 2001 to adjust the carrying amount of goodwill to its fair value as of March 31, 2001.

Equity-Related Compensation. Equity-related compensation consists of the intrinsic value of accelerated stock options or restricted stock awards, the intrinsic value of equity bonus awards, the fair value of equity awards issued to non-employees, adjustments to previously recognized equity-related compensation for awards that are forfeited due to termination of employment, and the amortization of deferred compensation resulting from the grant of stock options or shares of restricted stock to employees at exercise or sale prices deemed to be less than the fair value of the common stock on the grant date. Equity-related compensation decreased 47% to $4.6 million for the three months ended September 30, 2002 compared to $8.7 million for the same period in the prior year. For the nine months ended September 30, 2002, equity-related compensation decreased 36% to $15.6 million compared to $24.3 million for the same period in the prior year. The decrease in both periods was primarily due to a reduction in stock award accelerations and a reduction in deferred compensation amortization due to the repurchase and cancellation of restricted stock in connection with employee terminations.

Restructuring Charge. Restructuring charges were $19.1 million for the nine months ended September 30, 2002, compared to $26.2 million for the same period in the prior year. We recorded a restructuring charge of $6.1 million during the three months ended September 30, 2002. During the year ended December 31, 2001, we recorded a restructuring charge of $34.1 million for exit costs related to under-utilized real property leases. The charge was estimated as the estimated amount of probable future rent payments and termination fees for the vacant properties, less estimated sublease income.

In March 2002, we terminated our facility leases for 500 and 600 Technology Square in Cambridge, Massachusetts, for a fee of $15.0 million. In addition, we incurred approximately $900,000 in brokerage and legal fees directly related to these lease terminations. Total fees allocable to 600 Technology Square were $14.0 million. As of March 31, 2002, the accrued restructuring liability attributable to 600 Technology Square was $7.2 million. Accordingly, for the three months ended March 31, 2002, we recorded an additional restructuring charge of $6.8 million for the difference between the actual termination fee and the amount previously accrued. The total amount of fees allocable to 500 Technology Square were $1.9 million, which was recorded as a restructuring charge during the three months ended March 31, 2002.

During the first quarter of 2002, we revised our sublease income estimates related to certain other leases vacated in 2001. Due to continued adverse real estate conditions, we have not located sublease tenants for certain of our vacated properties. As a result, we recorded an additional $3.7 million restructuring charge for the three months ended March 31, 2002, which represents a reduction in anticipated sublease income. In addition, during the second quarter of 2002, we recorded a non-cash restructuring charge of $602,000 to write-off long-lived assets and deferred rent related to vacated properties.

We are negotiating with the landlord of our Santa Clara facility to modify our lease for such property. We substantially vacated the property in 2001. The contractual lease term for the Santa Clara facility runs through 2010 and has minimum contractual lease payments of $55 million as of September 30, 2002. We believe that it is probable that we will reach agreement with our landlord to modify this lease. As a result, during the three months ended September 30, 2002, we recorded an incremental restructuring charge of $2.1 million representing the difference between the amount payable under the modified lease plus brokerage and legal costs, and the previously recorded restructuring liability for the Santa Clara property. In addition, as a result of the expected modification, we impaired leasehold improvements, deposits and deferred rent related to the Santa Clara property in the amount of $3.1 million. During the third quarter, we also increased our estimated loss on other restructured properties by approximately $900,000 as a result of lower sublease income expectations. In summary, the total restructuring charge of $6.1 million for the third quarter of 2002 was comprised of $5.2 million in probable lease modification costs and asset impairments for the Santa Clara facility and $900,000 for adjustments to sublease income expectations for other vacant properties.

The following table summarizes the establishment and usage of the restructuring liabilities related to facility leases (in millions):

	Restructuring Liabilities
Restructuring charge for the twelve months ended December 31, 2001	$ 34.1
Cash payments for the twelve months ended December 31, 2001	(6.5)
Ending balance, December 31, 2001	27.6
Restructuring charges for the nine months ended September 30, 2002	19.1
Cash payments for the nine months ended September 30, 2002	(25.0)
Non-cash restructuring charges for the nine months ended September 30, 2002	(3.7)
Ending balance, September 30, 2002	$ 18.0
Current portion of accrued restructuring	$ 13.4
Long-term portion of accrued restructuring	$ 4.6

The amount of restructuring liabilities associated with operating leases has been estimated based on the most recent available market data and discussions with our lessors and real estate advisors. In the event that these operating leases are terminated at a higher or lower cost than the amount accrued as of September 30, 2002, we will record an adjustment to the restructuring liability in the period in which the adjustment becomes probable and estimable.

Interest Expense, Net. Net interest expense includes interest earned on invested cash balances and interest paid on our debt obligations. Net interest expense increased 82% to $4.0 million for the three months ended September 30, 2002 compared to $2.2 million for the same period in the prior year. For the nine months ended September 30, 2002, net interest expense increased 242% to $11.3 million compared to $3.3 million for the same period in the prior year. The increase in both periods was primarily due to a decrease in our invested cash balance and a decrease in rates earned on our investments.

Other Income. We received $1.0 million in proceeds on a key-person life insurance policy as a result of the death in September 2001 of Daniel M. Lewin, Akamai's co-founder.

Loss on Investments, Net. Loss on investments increased 510% to $1.3 million for the three months ended September 30, 2002 compared to $213,000 in the same period in the prior year. Loss on investments in the three months ended September 30, 2002 reflects losses of $1.3 million to adjust the cost basis of equity investments to fair value.

For the nine months ended September 30, 2002, loss on investments decreased 57% to $6.4 million compared to $15.0 million for the same period in the prior year. Loss on investments during the nine months ended September 30, 2002 included a loss of $4.3 million related to our investment in Netaxs, Inc., or Netaxs, which we realized as a result of a merger transaction between Netaxs and FASTNET Corporation in April 2002, losses of $2.2 million to adjust the cost basis of equity investments to fair value and approximately $147,000 of realized investment gains. During the nine months ended September 30, 2001, loss on investments includes a loss of $10.3 million for the adjustment to market value of equity investments to fair value, realized losses of $2.7 million and a loss of $2.0 million in an investment accounted for under the equity method.

Liquidity and Capital Resources

To date, we have financed our operations primarily through private sales of capital stock, the issuance of senior subordinated notes totaling approximately $124.6 million in net proceeds, an initial public offering of our common stock in October 1999 that provided $217.6 million after underwriters' discounts and commissions, and the sale in June 2000 of $300 million in 5 1/2% convertible subordinated notes due July 2007, which generated net proceeds of $290.5 million. We have secured financing with our largest equipment vendors for future capital expenditures. As of September 30, 2002, we have utilized $3.3 million of this vendor financing for services and capital expenditures. As of September 30, 2002, cash, cash equivalents and marketable securities totaled $142.0 million, of which $17.8 million consists of restricted marketable securities.

Cash used in operating activities decreased 35% to $55.4 million for the nine months ended September 30, 2002 compared to $85.7 million for the same period in the prior year. The decrease was primarily due to a 57% decrease in net losses before non-cash expenses such as depreciation, amortization, impairment charges, loss on investments and equity-related compensation, partially offset by an increase of $19.5 million in restructuring payments over the prior period and a $12.3 million increase in working capital, primarily related to a reduction in accounts payable, accrued expenses and other current liabilities. We expect to make approximately $3 million in severance payments to employees whom were terminated in our October 2002 reduction-in-force.

Cash provided by investing activities was $99.1 million for the nine months ended September 30, 2002 compared to $31.9 million for the same period in the prior year. Cash provided by investing activities in the nine months ended September 30, 2002 reflects net purchases, sales and maturities of investments of $112.1 million less capital expenditures of $13.3 million consisting of servers for the deployment of our network, internal IT infrastructure and capitalization of internal-use software development costs. Capital expenditures include approximately $4.4 million in leasehold improvements for our new corporate headquarters. Cash provided by investing activities for the nine months ended September 30, 2001 reflects net investment purchases, sales and maturities of $89.2 million and capital expenditures of $57.3 million. In November 2002, we settled our stock price appreciation guarantee to CNN News Group by agreeing to make a $2.7 million cash payment and to release a $3.8 million letter of credit. See Note 12 to the interim financial statements for further discussion.

Cash provided by financing activities was $327,000 for the nine months ended September 30, 2002 compared to $4.1 million for the same period in the prior year. Cash provided by financing activities in both periods reflects proceeds from the issuance of common stock under our stock plans and payments on our capital lease obligations. During the second and third quarter of 2002, we entered into capital leases and vendor financing agreements totaling $3.3 million, under which we have paid $973,000 as of September 30, 2002. The remaining obligations will be paid over the next 21 to 33 months.

We believe, based on our present business plan, that our current cash, cash equivalents and marketable securities of $142.0 million 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 expenditures change or if unexpected opportunities or needs arise, we may seek to raise additional cash by selling equity or debt securities. If additional funds are raised through the issuance of 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 could result in additional dilution to our stockholders. See "Factors Affecting Future Operating Results."

Factors Affecting Future Operating Results

The following important factors, among other things, could cause our actual operating results to differ materially from those indicated or suggested by forward-looking statements made in this quarterly report on Form 10-Q or presented elsewhere by management from time to time.

We believe that this report 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 our management. Use of words such as "believes," "expects," "anticipates," "intends," "plans," "estimates," "should," "likely" or similar expressions, indicate a forward-looking statement. Forward-looking statements involve risks, uncertainties and assumptions. Certain of the information contained in this quarterly report on Form 10-Q consists of forward-looking statements. Important factors that could cause actual results to differ materially from the forward-looking statements include the following:

Failure to increase our revenue or unexpected increases in expenses would prevent us from achieving and maintaining profitability.

We have never been profitable. We have incurred significant losses since inception and expect to continue to incur losses in the future. We cannot be certain that our revenue will grow or that we will produce sufficient revenue to achieve profitability. We have large fixed expenses, and we expect to continue to incur significant sales and marketing, product development, administrative, interest and other expenses, including fees to obtain access to bandwidth for the transport of data over our network. As a result, we will need to generate significantly higher revenue to achieve and maintain profitability. Our failure to significantly increase our revenue would seriously harm our business and operating results.

Our revenue growth is primarily dependent on continued customer demand for our Internet-related services and software.

Our future growth currently depends on the commercial success of our outsourced infrastructure services and software for enterprises that use the Internet to streamline processes, improve productivity and increase efficiencies. We refer to such enterprises as e-businesses. While we have been selling our services commercially since April 1999, sales may not continue in the future for a variety of reasons. First, the market for our services and software is relatively new and issues concerning the commercial use of the Internet, including security, reliability, speed, cost, ease of access, quality of service, regulatory initiatives and necessary increases in bandwidth availability remain unresolved and are likely to affect its development. Furthermore, our new services, including EdgeSuite and our services under development, may not achieve widespread market acceptance. Failure of our current and planned services and software to operate as expected could also hinder or prevent their adoption. If a broad-based, sustained market for our services does not emerge and our target customers do not adopt, purchase and successfully deploy our current and planned services and software, our revenue will not grow significantly and our business, results of operations and financial condition will be seriously harmed.

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

If our revenue grows more slowly than we anticipate or if our operating expenses increase more than we expect or cannot be reduced in the event of lower revenue, we may need to obtain funding from outside

sources. If we are unable to obtain needed outside 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 to such outside sources securities with greater rights than those currently possessed by holders of our outstanding securities. 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.

We have significant long-term debt, and we may not be able to make interest or principal payments when due.

As of September 30, 2002, our total long-term debt was approximately $307.0 million and our stockholders' deficit was $112.8 million. Our 5 1/2% convertible subordinated notes due 2007, which we refer to as our 5 1/2% notes, do not restrict our ability or our subsidiaries' ability to incur additional indebtedness, including debt that ranks senior to the 5 1/2% notes. Our ability to satisfy our obligations will depend upon our future performance, which is subject to many factors, including factors beyond our control. The conversion price for the 5 1/2% notes is $115.47 per share. The current market price for shares of our common stock is significantly below the conversion price of our convertible subordinated notes. If the market price for our common stock does not exceed the conversion price, the holders of the notes may not convert their securities into common stock.

Historically, we have had negative cash flow from operations. For the nine months ended September 30, 2002, net cash used in operating activities was approximately $55.4 million. The annual debt service on our debentures and notes, assuming no securities are converted or redeemed, is approximately $16.5 million. Unless we are able to generate sufficient operating cash flow to service the notes, we will be required to raise additional funds or default on our obligations under the debentures and notes.

Our business may be adversely affected by unfavorable economic and market conditions.

Adverse economic conditions worldwide have contributed to slowdowns in capital expenditures by businesses, particularly capital spending in the IT market, which has affected our business. This economic situation may continue to impact our business, resulting in reduced demand for our services and software and increased price competition in our markets. If the economic and market conditions in the United States and globally do not improve, or if they deteriorate further, we may continue to experience material adverse impacts on our business, operating results and financial condition. We do not expect the trend of lower capital spending among service providers to reverse itself in the near term.

Our stock price has been and may continue to be volatile, which could result in litigation against us.

The market price of our common stock has been extremely volatile and has fluctuated significantly in the past. The following factors could cause the market price of common stock to continue to fluctuate significantly:

- variations in our quarterly operating results;
- the addition or departure of our key personnel;
- announcements by us or our competitors of significant contracts, litigation developments, new or enhanced products or service offerings, acquisitions, distribution partnerships, joint ventures or capital commitments;
- changes in financial estimates by securities analysts;
- our sales of common stock or other securities in the future;
- changes in market valuations of networking, Internet and telecommunications companies;
- fluctuations in stock market prices and volumes; and
- changes in general economic conditions, including interest rate levels.

In the past, class action litigation has often been brought against companies following periods of volatility in the market price of those companies' common stock. Litigation is often expensive and diverts management's attention and resources which could materially adversely affect our business and results of operations.

Our business is difficult to evaluate and our business strategy may not successfully address risks we face because we have a limited operating history.

We were founded in August 1998 and began offering our services commercially in April 1999. We have limited historical financial data upon which to base planned operating expenses and upon which investors may evaluate our prospects and us. In addition, while our operating expenses are largely based on anticipated but unpredictable revenue trends, a high percentage of these expenses is and will continue to be fixed in the short-term. Because of our limited operating history, our business strategy may not successfully address all of the risks we face.

Any failure of our network infrastructure could lead to significant costs and disruptions that could reduce our revenue and harm our business, financial results and reputation.

Our business is dependent on providing our customers with fast, efficient and reliable Internet distribution application and content delivery services. To meet these customer requirements, we must protect our network infrastructure against damage from:

- sabotage and vandalism;
- human error;
- physical or electronic intrusion and security breaches;
- fire, earthquake, flood and other natural disasters;
- power loss; and
- similar events.

For our EdgeSuite, FreeFlow and FreeFlow Streaming services, we currently provide a content delivery service guarantee that our networks will deliver Internet content 24 hours a day, seven days a week, 365 days a year. If we do not provide this service, the customer does not pay for its services on that day. Any widespread loss or interruption of services would reduce our revenue and could harm our business, financial results and reputation.

Our services and our network may be subject to intentional disruption.

Although we believe we have sufficient controls in place to prevent intentional disruptions of our services, such as disruptions caused by software viruses specifically designed to impede the performance of our services, we may be an ongoing target of such disruptions. Similarly, experienced computer programmers, or "hackers," may attempt to penetrate our network security or the security of our Web site in order to misappropriate proprietary information or cause interruptions of our operations. Our activities could be substantially disrupted and our reputation and future sales harmed if these efforts are successful.

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. As of September 30, 2002, our network consisted of over 12,900 servers across more than 1,100 different networks. Our customers and we have from time to time discovered 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. If we are unable to efficiently fix errors or other problems that may be identified, we could experience:

- loss of or delay in revenues and loss of market share;
- diversion of development and engineering resources;
- loss of credibility or damage to business reputation;
- increased service costs; and
- legal actions by our customers.

Any failure of our telecommunications and network providers to provide required transmission capacity to us could result in interruptions in our services.

Our operations are dependent in part upon transmission capacity provided by third-party telecommunications network providers. A number of these network providers have recently filed for protection under the federal bankruptcy laws. As a result, there is uncertainty about whether such providers or others that enter into bankruptcy will be able to continue to provide services to us. Any failure of these network providers to provide the capacity we require may result in a reduction in, or interruption of, service to our customers. This failure may be a result of the telecommunications providers or Internet service providers ceasing operations, experiencing interruptions or other failures, failing to comply with or terminating their existing agreements with us, otherwise denying or interrupting service, refusing to enter into relationships with us or only agreeing to enter into relationships with us on terms that are not commercially acceptable to us. 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, our business and financial results could suffer. In addition, our telecommunications and network providers typically provide rack space for our servers. 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.

Some of our current customers have funding and liquidity difficulties and may not pay us for our services on a timely basis or at all.

Some of our customers have funding and liquidity difficulties, and we expect to earn a portion of our future revenue from this customer base. Given these customers' financial situation, there is a risk that they will encounter financial difficulties and fail to pay for our services or delay payment substantially. The failure of a significant number of customers to pay our fees on a timely basis or at all or to continue to purchase our services in accordance with their contractual commitments could adversely affect our revenue collection periods, our future revenue in general and other financial results.

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

We compete in markets that are new, 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. 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 services with other services, software or hardware in a manner that may discourage Web site owners from purchasing any service we offer or Internet service providers from installing our servers.

As competition in the Internet content, streaming media and applications delivery markets continues to intensify, new solutions will come to market. We are aware of other companies that are focusing or may in the future focus significant resources on developing and marketing products and services or entering into strategic

alliances that will compete with us. These companies include networking hardware and software manufacturers, content distribution providers, traditional hardware manufacturers, telecommunications providers, software database companies and large diversified software and technology companies. Increased competition could result in:

- price and revenue reductions and lower profit margins;
- increased cost of service from telecommunications providers;
- loss of customers; and
- loss of market share.

Any one of these could materially and adversely affect our business, financial condition and results of operations.

If we do not respond rapidly to technological changes, we may lose customers.

The market for outsourced e-business infrastructure services and software is likely to continue to be characterized by rapid technological change, frequent new product and service introductions and changes in customer requirements. We may be unable to respond quickly or effectively to these developments. If our competitors introduce products, services or technologies that are better than ours or that gain greater market acceptance, or if new industry standards emerge and our services become obsolete, our business, results of operations and financial condition could be materially and adversely affected.

If we are not successful in entering into technology licensing, development or other strategic technology arrangements in the future, our results of operations could be adversely affected.

We derived a portion of our revenue in the nine months ended September 30, 2002 from fees under license and development agreements. We expect to derive a portion of our revenue in the future from license agreements that we have entered into as well as additional licensing arrangements, development agreements and other strategic technology arrangements that we may enter into. We may not be successful in completing any additional arrangements within the time periods we anticipate or at all, which could have an adverse effect on our results of operations.

If the estimates we make, and the assumptions on which we rely, in preparing our financial statements prove inaccurate, our actual results may vary from these reflected in our projections and accruals.

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 that 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 restructurings, 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. There can be no assurance, however, that our estimates, or the assumptions underlying them, will be correct. If, for example, the costs associated with terminating certain real property leases vacated by us in our restructurings is greater than the amount we have accrued in connection therewith, our net income would be reduced which could have a negative impact on our financial condition and results of operations. This, in turn, could adversely affect our stock price.

If we are unable to scale our network as demand increases, the quality of our services may diminish and we may lose customers.

Our network of servers may not be scalable to expected customer levels while maintaining superior performance. We cannot be certain that our network of servers will connect and manage a substantially larger number of customers at high transmission speeds. In addition, as customers' usage of bandwidth increases, we will need to make additional investments in our infrastructure to maintain adequate data transmission speeds. We cannot ensure that we will be able to make these investments successfully or at an acceptable or

commercially reasonable cost. Our failure to achieve or maintain high capacity data transmission could significantly reduce demand for our services, reducing our revenue in general and causing our business and financial results to suffer.

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

We have licensed from the Massachusetts Institute of Technology, or MIT, technology covered by various patent applications and copyrights relating to Internet content delivery technology. Some of our technology is based in part on the technology covered by these patent applications and copyrights. Our license is effective for the life of the patent and patent applications; however, under limited circumstances, such as 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 could incur substantial costs defending our intellectual property from infringement or a claim of infringement.

Other companies or individuals, including our competitors, may obtain patents or other proprietary rights that would prevent, limit or interfere with our ability to make, use or sell our services. As a result, we may be found to infringe on the proprietary rights of others. In the event of a successful claim of infringement against us and our failure or inability to license the infringed technology, our business and operating results would be significantly harmed. Companies in the Internet market are increasingly bringing suits alleging infringement of their proprietary rights, particularly patent rights. We have been named as a defendant in several lawsuits alleging that we have violated other companies' intellectual property rights. Any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources. Intellectual property litigation or claims could force us to do one or more of the following:

- cease selling, incorporating or using products or services that incorporate the challenged intellectual property;
- obtain a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all; and
- redesign products or services.

If we are forced to take any of these actions, our business may be seriously harmed. Although we carry insurance, our insurance may not cover potential claims of this type or may not be adequate to indemnify us for all liability that may be imposed.

Our business will be adversely affected if we are unable to protect our intellectual property rights from third-party challenges.

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. 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 and proprietary technology covered by United States patents, we cannot be certain that any such patents will not be challenged, invalidated or circumvented. Moreover, although we have filed international patent applications, none of our technology is patented abroad. 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.

The rates we charge for our services may decline over time, which would reduce our revenue and could cause our business and financial results to suffer.

We expect that our cost to obtain bandwidth capacity for the transport of data over our network will decline over time as a result of, among other things, volume discounts available to us as our network usage increases. We expect the prices we charge for our services may also decline over time as a result of, among other things, existing and new competition in the markets we address. Consequently, our historical revenue rates may not be indicative of future revenue based on comparable traffic volumes. If we fail to accurately predict the decline in costs of bandwidth or, in any event, if we are unable to sell our services at acceptable prices relative to our bandwidth costs, our revenue will decrease and our business and financial results will suffer.

Our business will suffer if we fail to manage our growth properly.

We have expanded our operations rapidly since our inception. This growth has placed, and our anticipated growth in future operations will continue to place, a significant strain on our management systems and resources. Our ability to successfully offer our services and implement our business plan in a rapidly evolving market requires an effective planning and management process. We expect that we will need to continue to improve our financial and managerial controls, reporting systems and procedures, and will need to continue to train and manage our workforce worldwide. In order to grow and achieve future success, we must also improve our ability to effectively manage multiple relationships with our customers, suppliers and other third parties. In addition, from time to time, we have been required to downsize our operations in order to effectively manage our business. Failure to take any of the steps necessary to manage our growth properly would have a material adverse effect on our business, results of operations and financial condition.

We depend on our key personnel to manage our business effectively. 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 that they rely on in implementing our business plan. None of our officers or key employees is bound by an employment agreement for any specific term. We have a “key person” life insurance policy covering only the life of F. Thomson Leighton. 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.

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

We have expanded our international operations to Munich, Germany; London, England and Paris, France. In addition, in April 2001, we formed a joint venture with SOFTBANK Broadmedia Corporation to create Akamai Technologies Japan KK, of which we own 40% of the common stock. In August 2002, we formed a joint venture with ES Group Ventures Pty Ltd to create Akamai Technologies AA/P Pty Limited, an Australian company, of which we own 40% of the common stock. A key aspect of our business strategy is to continue to expand our sales and support organizations internationally. Therefore, we expect to commit significant resources to expand our international sales and marketing activities. 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:

- market acceptance of our products and services in countries outside the United States;
- increased expenses associated with marketing services in foreign countries;
- general economic conditions in international markets;
- currency exchange rate fluctuations;
- unexpected changes in regulatory requirements resulting in unanticipated costs and delays;
- tariffs, export controls and other trade barriers;

- longer accounts receivable payment cycles and difficulties in collecting accounts receivable; and
- potentially adverse tax consequences, including restrictions on the repatriation of earnings.

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, 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, in September 2002, our Board of Directors adopted a shareholder rights plans the provisions of which could make it more difficult for a potential acquirer of Akamai to consummate an acquisition transaction.

The unpredictability of our quarterly results may adversely affect the trading price of our common stock.

Our revenue and operating results may vary significantly from quarter to quarter due to a number of factors, many of which are outside of our control and any of which may cause our stock price to fluctuate. The primary factors that may affect us include the following:

- changes in the demand for outsourced e-business infrastructure services and software;
- the timing and size of sales of our services;
- the timing of recognizing revenue and deferred revenue;
- new service and software introductions and enhancements by our competitors and us;
- changes in our pricing policies or the pricing policies of our competitors;
- our ability to develop, introduce and deliver new services and enhancements that meet customer requirements in a timely manner;
- the length of the sales cycle for our services;
- increases in the prices and availability of the products, services, components or raw materials we purchase, including bandwidth;
- our ability to attain and maintain high quality levels for our services;
- costs related to acquisitions of technology or businesses; and
- general economic conditions as well as those specific to the Internet and related industries.

Due to the above factors, we believe that quarter-to-quarter comparisons of our operating results are not a good indication of our future performance. It is likely that in some future quarters, our operating results may be below the expectations of public market analysts and investors. In this event, the price of our common stock will probably decrease.

The length of time required to engage a customer and to implement our services and software may be lengthy and unpredictable.

The timing of the sales and implementation of our software and services is lengthy and not predictable with any degree of accuracy. The potential purchase of our services and the licensing of our software is often an enterprise-wide decision by prospective customers and generally requires us to provide a significant level of education to prospective customers regarding the use and benefits of our services and software. Therefore, the period between initial contact and the implementation of our services and software is often lengthy and is subject to a number of factors that may cause significant delays. Because of this uncertainty, our revenue pipeline estimates may not consistently correlate to actual revenues in a particular quarter or over a longer period of time. A variation in the pipeline or in the conversion of the pipeline into contracts could cause us to

plan and budget improperly and thereby could adversely affect our business, financial condition or results of operations.

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 Network*24* Communications, Inc. in February 2000, InterVu Inc. in April 2000 and CallTheShots Inc. in July 2000. As a part of our business strategy, we may enter into additional business combinations and acquisitions. 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.

If we are not successful in completing acquisitions that we may pursue in the future, we may be required to reevaluate our growth strategy, and we may have incurred substantial expenses and devoted significant management time and resources in seeking to complete proposed acquisitions that will not generate benefits for us. In addition, with future acquisitions, we could use substantial portions of our available cash as all or a portion of the purchase price. We could also issue additional securities as consideration for these acquisitions, which could cause our stockholders to suffer significant dilution. Our past and future acquisitions may not ultimately help us achieve our strategic goals and may pose other risks to us.

Internet-related 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 consumer protection and privacy laws, both in the United States and abroad, that may impose additional burdens on companies conducting business online. This could negatively affect the businesses of our customers and reduce their demand for our services. Internet-related laws, however, remain largely unsettled, even in areas where there has been some legislative action. The adoption or modification of laws or regulations relating to the Internet, or interpretations of existing law, could adversely affect our business.

Terrorist activities and resulting military and other actions could adversely affect our business.

Terrorist attacks in New York, Pennsylvania and Washington, D.C. in September 2001 disrupted commerce throughout the United States and other parts of the world. The continued threat of terrorism within the United States and abroad and the potential for military action and heightened security measures in response to such threat may cause significant disruption to commerce throughout the world. To the extent that such disruptions result in delays or cancellations of customer orders, a general decrease in corporate spending on information technology, or our inability to effectively market and sell our services and software, our business and results of operations could be materially and adversely affected. We are unable to predict whether the threat of terrorism or the responses to any such threats will result in any long-term commercial disruptions or if such activities or responses will have a long-term material adverse effect on our business, results of operations or financial condition.

Several class action lawsuits have been filed against us which may result in litigation that is costly to defend and the outcome of which is uncertain and may harm our business.

We and several of our officers and current and former directors are named as defendants in several purported class action complaints which have been filed allegedly on behalf of certain persons who purchased our common stock during different time periods. 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 compliant alleges violations of the Securities Act of 1933 and the Securities Exchange Act of

1934 based on the allegations that the underwriters received undisclosed compensation in connection with our initial public offering.

We can provide no assurance as to the outcome of this action. Any conclusion of these matters in a manner adverse to us would have a material adverse affect on our financial position and results of operations. In addition, the costs to us of defending any litigation or other proceeding, even if resolved in our favor, could be substantial. Such litigation could also substantially divert the attention of our management and our resources in general. Uncertainties resulting from the initiation and continuation of any litigation or other proceedings could harm our ability to compete in the marketplace.

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

In the ordinary course of business, we 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 3. ***Quantitative and Qualitative Disclosures About Market Risk***

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. We do not use derivative financial instruments in our portfolio. 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 obligations and certificates of deposit. We expect to hold our marketable debt securities until maturity and do not expect to realize significant losses on the sale of marketable debt securities prior to maturity. We also hold investments in the common or preferred stock of several public and private companies. The carrying amount of these investments at September 30, 2002 was approximately $708,000, which we believe approximates their fair value. Due to the limited operating histories of these companies, many of which are in the start-up stage, we may not be able to recover our investment.

We have operations in Europe, and we have joint ventures in Japan and Australia. As a result, we are exposed to fluctuations in foreign exchange rates. However, we do not expect that changes in foreign exchange rates will have a significant impact on our consolidated results of operations, financial position or cash flows. We may continue to expand our operations globally and sell to customers in foreign locations, which may increase our exposure to foreign exchange fluctuations.

Item 4. ***Controls and Procedures***

(a) *Evaluation of disclosure controls and procedures.* Based on their evaluation of the Company's disclosure controls and procedures, as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, as of a date within 90 days of the filing date of this quarterly report on Form 10-Q, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and are operating in an effective manner.

(b) *Changes in internal controls.* There were no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of the evaluation referenced above.

PART II. OTHER INFORMATION

Item 1. ***Legal Proceedings***

On September 13, 2000, Akamai, together with the Massachusetts Institute of Technology, or MIT, filed suit in the United States District Court for the District of Massachusetts against Digital Island Inc., or Digital Island, a wholly-owned subsidiary of Cable and Wireless, plc, for infringing an MIT patent licensed exclusively to us. We refer to such patent as the 703 patent. On December 21, 2001, a jury found that Digital Island's Footprint 2.0 content delivery network and service offering infringe seven asserted claims of the 703 patent. In August 2002, the Court issued a permanent injunction against Digital Island restraining it from violating certain claims of the 703 patent. Digital Island has appealed this ruling. The Court will set a schedule for a separate trial to be held on the damages payable by Digital Island as a result of its infringement of the 703 patent.

Between July 2, 2001 and August 31, 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 and several of our officers and directors 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 Securities Exchange Act of 1934 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. On July 15, 2002, we joined in an omnibus motion to dismiss filed by all issuer defendants named in similar actions which challenges the legal sufficiency of the plaintiffs' claims, including those in the consolidated amended complaint. Plaintiffs have opposed that motion, which has not yet been heard by the Court. In addition, in August 2002, the plaintiffs agreed to dismiss without prejudice all of the individual defendants from the consolidated complaint, although those dismissals have not yet been filed. We are not presently able to estimate potential losses, if any, related to these lawsuits.

In June 2002, we filed suit against Speedera Networks, Inc., or Speedera, in California Superior Court alleging theft of Akamai trade secrets from an independent company that provides Website performance testing services. In connection with this suit, in September 2002, the Court issued a preliminary injunction to restrain Speedera from continuing to access our confidential information from the independent company's database and from using any data obtained from such access. In October 2002, Speedera filed a cross-claim against us seeking monetary damages and injunctive relief and alleging that we engaged in various unfair trade practices, made false and misleading statements and engaged in unfair competition. Although we have not filed an answer in this matter, we believe that we have meritorious defenses to the claims made in Speedera's cross-claim and intend to contest the allegations vigorously. However, there can be no assurance that we will be successful. We are not presently able to reasonably estimate potential losses, if any, related to this cross-claim.

In June 2002, Speedera filed suit against us in the United States District Court for the Northern District of California alleging that our dissemination of a sales presentation document constitutes false advertising and unfair competition under the Federal Lanham Act and various California statutes. This suit was voluntarily dismissed by Speedera in September 2002.

In August 2001, Network Caching Technology, L.L.C., or NCT, amended an existing patent infringement action pending in the United States District Court for the Northern District of California to join Akamai as a co-defendant. The case alleges that numerous entities, namely, Novell, Inc., Volera, Inc., CacheFlow, Inc., Inktomi Corporation and Akamai, infringe four patents relating to network file services and cache mechanisms. In October 2002, we reached an agreement with NCT to settle this dispute, and the case against us was dismissed with prejudice.

In July 2002, Cable and Wireless Internet Services, or C&W, formerly known as Digital Island, filed suit against us in the United States District Court for the District of Massachusetts alleging that certain Akamai services infringe a newly-issued C&W patent. C&W is seeking a preliminary injunction restraining us from offering services that infringe such patent. Subsequently, in August 2002, C&W filed a suit against us in the United States District Court for the Northern District of California alleging that certain Akamai services infringe a second C&W patent. We believe that we have meritorious defenses to the claims made in the complaints and intend to contest the lawsuit vigorously. However, there can be no assurance that we will be successful. We are not presently able to reasonably estimate potential losses, if any, related to these lawsuits.

In September 2002, Teknowledge Corporation, or Teknowledge, filed suit in the United States District Court for the District of Delaware against Akamai, C&W and Inktomi Corporation alleging that certain services offered by each company infringes a Teknowledge patent relating to automatic retrieval of changed files by a network software agent. We believe that we have meritorious defenses to the claims made in the complaint and intend to contest the lawsuit vigorously. However, there can be no assurance that we will be successful. We are not presently able to reasonably estimate potential losses, if any, related to this lawsuit.

See Item 3 of Part I of our annual report on Form 10-K for the year ended December 31, 2001, Item 1 of Part II of our quarterly report on Form 10-Q for the quarter ended March 31, 2002 and Item 1 of Part II of our quarterly report on Form 10-Q for the quarter ended June 30, 2002 for a discussion of legal proceedings as to which there were no material developments during the quarter ended September 30, 2002.

Item 2. ***Changes in Securities and Use of Proceeds***

On September 10, 2002, the Board of Directors of the Company declared a dividend of one preferred stock purchase right (collectively, the “Rights”) for each outstanding share of the Company’s common stock to 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 million authorized shares of undesignated preferred stock as Series A Junior Participating Preferred Stock, par value $.01 per share (the “Preferred Stock”). 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 (the “Purchase Price”). The description and terms of the Rights are set forth in a rights agreement dated September 10, 2002 (the “Rights Agreement”) between the Company and EquiServe Trust Company, N.A., as Rights Agent, as filed with the Commission on September 11, 2002 as Exhibit 4.1 to the Company’s Current Report on Form 8-K.

Initially, the Rights are not exercisable and will be attached to all certificates representing outstanding shares of common stock, and no separate certificates representing the Rights will be distributed. The Rights will separate from the common stock, and the “Distribution Date” will occur, upon the earlier of (i) ten business days following the later of (a) the first date of a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of common stock or (b) the first date on which an executive officer of the Company has actual knowledge that a person or group of affiliated or associated persons has become such, or (ii) ten business days following the commencement of a tender offer or exchange offer that would result in a person or group beneficially owning 15% or more of the outstanding shares of common stock. The Distribution Date may be deferred in circumstances determined by the Board of Directors. In addition, certain inadvertent acquisitions will not trigger the occurrence of the Distribution Date. The Rights will not be exercisable until the Distribution Date and will expire upon the close of business on September 10, 2012 or such earlier time as provided in the Rights Agreement.

If the Rights become exercisable, the type and amount of securities receivable upon exercise of the Rights would depend on the circumstances at the time of exercise. Initially, each Right would entitle holders to purchase one one-thousandth of a share of Preferred Stock at an exercise price of $9.00. If a person acquires 15% or more of the Company’s common stock in a transaction that was not approved by the Board of Directors, each Right, other than those owned by the acquiring person, would instead entitle the holder to purchase $18.00 worth of the Company’s common stock for the $9.00 exercise price. If the Company is involved in a merger or other transaction with another company that is not approved by the Board of Directors,

in which the Company is not the surviving corporation, or which transfers more than 50% of the Company's assets to another company, then each Right, other than those owned by the acquiring person, would instead entitle the holder to purchase $18.00 worth of the acquiring company's common stock for the $9.00 exercise price.

Item 6. ***Exhibits and Reports on Form 8-K***

(a) Exhibits

Exhibit 3.3	Certificate of Designations of Series A Junior Participating Preferred Stock of the Registrant.
Exhibit 10.17	Incentive Stock Option Agreement dated September 19, 2002 between the Registrant and Paul Sagan.
Exhibit 10.18	Agreement dated November 6, 2002 between the Registrant and San Tomas Properties, LLC
Exhibit 10.19	Agreement dated November 11, 2002 between the Registrant and Robert Cobuzzi.
Exhibit 10.20	Office Lease dated June 30, 2000 between the Registrant and San Tomas Properties, LLC.
Exhibit 99.1	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.
Exhibit 99.2	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.

(b) Reports on Form 8-K

On August 23, 2002, we filed a Current Report on Form 8-K under Item 5 (Other Events) to report that, in a press release issued on August 22, 2002, the Company had announced that, in an order dated August 21, 2002, the Federal District Court in Boston enjoined Cable & Wireless Internet Services, Inc. from making, using, selling, offering for sale, or importing into the United States, the patented inventions of Claims 1, 3, 5, and 9 of Akamai's U.S. Patent No. 6,108,703, and from active inducement of infringement of these claims.

On September 11, 2002, we filed a Current Report on Form 8-K under Item 5 (Other Events) to report that, on September 10, 2002, the Board of Directors of the Company had adopted a shareholder rights plan.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

AKAMAI TECHNOLOGIES, INC.

By: /s/ TIMOTHY WELLER

Timothy Weller
Chief Financial Officer

Date: November 14, 2002

CERTIFICATIONS

I, George H. Conrades, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Akamai Technologies, Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) designed such disclosure controls and procedures 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 quarterly report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ GEORGE H. CONRADES

George H. Conrades
Chief Executive Officer

Dated: November 14, 2002

I, Timothy Weller, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Akamai Technologies, Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) designed such disclosure controls and procedures 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 quarterly report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ TIMOTHY WELLER

Timothy Weller
Chief Financial Officer

Dated: November 14, 2002

EXHIBIT 3.3

CERTIFICATE OF DESIGNATIONS

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

OF

AKAMAI TECHNOLOGIES, INC.

Akamai Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation at a meeting duly called and held on September 10, 2002:

RESOLVED: That pursuant to the authority granted to and vested in the Board of Directors of the Corporation (hereinafter called the "Board") in accordance with the provisions of the Certificate of Incorporation, as amended, the Board hereby creates a series of Preferred Stock, $0.01 par value per share (the "Preferred Stock"), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences and limitations thereof as follows:

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK:

Section 1. DESIGNATION AND AMOUNT. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be seven hundred thousand (700,000). Such number of shares may be increased or decreased by resolution of the Board prior to issuance; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. DIVIDENDS AND DISTRIBUTIONS.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value $0.01 per share (the "Common Stock"), of the Corporation, and of any

other junior stock, shall be entitled to receive, when, as and if declared by the Board out of funds of the Corporation legally available for the payment of dividends, quarterly dividends payable in cash on the last day of each fiscal quarter of the Corporation in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $10 or (b) subject to the provision for adjustment hereinafter set forth, 1000 times the aggregate per share amount of all cash dividends, and 1000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. In the event the Corporation shall at any time declare or pay any dividend on the Series A Preferred Stock payable in shares of Series A Preferred Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Series A Preferred Stock (by reclassification or otherwise than by payment of a dividend in shares of Series A Preferred Stock) into a greater or lesser number of shares of Series A Preferred Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the first sentence of this Section 2(A) shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Series A Preferred Stock that were outstanding immediately prior to such event and the denominator of which is the number of shares of Series A Preferred Stock outstanding immediately after such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock) and the Corporation shall pay such dividend or distribution on the Series A Preferred Stock before the dividend or distribution declared on the Common Stock is paid or set apart; provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $10 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first

Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. VOTING RIGHTS. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. In the event the Corporation shall at any time declare or pay any dividend on the Series A Preferred Stock payable in shares of Series A Preferred Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Series A Preferred Stock (by reclassification or otherwise than by payment of a dividend in shares of Series A Preferred Stock) into a greater or lesser number of shares of Series A Preferred Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Series A Preferred Stock that were outstanding immediately prior to such event and the denominator of which is the number of shares of Series A Preferred Stock outstanding immediately after such event.

(B) Except as otherwise provided herein, in the Certificate of Incorporation or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Series A Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, the holders of the Series A Preferred Stock, voting as a separate series from all other series of Preferred Stock and classes of capital stock, shall be entitled to elect two members of the Board in addition to any Directors elected by

any other series, class or classes of securities and the authorized number of Directors will automatically be increased by two. Promptly thereafter, the Board of the Corporation shall, as soon as may be practicable, call a special meeting of holders of Series A Preferred Stock for the purpose of electing such members of the Board. Such special meeting shall in any event be held within 45 days of the occurrence of such arrearage.

(ii) During any period when the holders of Series A Preferred Stock, voting as a separate series, shall be entitled and shall have exercised their right to elect two Directors, then, and during such time as such right continues, (a) the then authorized number of Directors shall be increased by two, and the holders of Series A Preferred Stock, voting as a separate series, shall be entitled to elect the additional Directors so provided for, and (b) each such additional Director shall not be a member of any existing class of the Board, but shall serve until the next annual meeting of stockholders for the election of Directors, or until his successor shall be elected and shall qualify, or until his right to hold such office terminates pursuant to the provisions of this Section 3(C).

(iii) A Director elected pursuant to the terms hereof may be removed with or without cause by the holders of Series A Preferred Stock entitled to vote in an election of such Director.

(iv) If, during any interval between annual meetings of stockholders for the election of Directors and while the holders of Series A Preferred Stock shall be entitled to elect two Directors, there is no such Director in office by reason of resignation, death or removal, then, promptly thereafter, the Board shall call a special meeting of the holders of Series A Preferred Stock for the purpose of filling such vacancy and such vacancy shall be filled at such special meeting. Such special meeting shall in any event be held within 45 days of the occurrence of such vacancy.

(v) At such time as the arrearage is fully cured, and all dividends accumulated and unpaid on any shares of Series A Preferred Stock outstanding are paid, and, in addition thereto, at least one regular dividend has been paid subsequent to curing such arrearage, the term of office of any Director elected pursuant to this Section 3(C), or his successor, shall automatically terminate, and the authorized number of Directors shall automatically decrease by two, the rights of the holders of the shares of the Series A Preferred Stock to vote as provided in this Section 3(C) shall cease, subject to renewal from time to time upon the same terms and conditions, and the holders of shares of the Series A Preferred Stock shall have only the limited voting rights elsewhere herein set forth.

(D) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. CERTAIN RESTRICTIONS.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued

and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. REACQUIRED SHARES. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. LIQUIDATION, DISSOLUTION OR WINDING UP.

(A) Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received $1000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether

or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

(B) Neither the consolidation, merger or other business combination of the Corporation with or into any other corporation nor the sale, lease, exchange or conveyance of all or any part of the property, assets or business of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 6.

(C) In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of paragraph (A) of this Section 6 shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. In the event the Corporation shall at any time declare or pay any dividend on the Series A Preferred Stock payable in shares of Series A Preferred Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Series A Preferred Stock (by reclassification or otherwise than by payment of a dividend in shares of Series A Preferred Stock) into a greater or lesser number of shares of Series A Preferred Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of paragraph (A) of this Section 6 shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Series A Preferred Stock that were outstanding immediately prior to such event and the denominator of which is the number of shares of Series A Preferred Stock outstanding immediately after such event.

Section 7. CONSOLIDATION, MERGER, ETC. Notwithstanding anything to the contrary contained herein, in case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares

of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. In the event the Corporation shall at any time declare or pay any dividend on the Series A Preferred Stock payable in shares of Series A Preferred Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Series A Preferred Stock (by reclassification or otherwise than by payment of a dividend in shares of Series A Preferred Stock) into a greater or lesser number of shares of Series A Preferred Stock, then in each such case the amount set forth in the first sentence of this Section 7 with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Series A Preferred Stock that were outstanding immediately prior to such event and the denominator of which is the number of shares of Series A Preferred Stock outstanding immediately after such event.

Section 8. NO REDEMPTION. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. RANK. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Preferred Stock issued either before or after the issuance of the Series A Preferred Stock, unless the terms of any such series shall provide otherwise.

Section 10. AMENDMENT. At such time as any shares of Series A Preferred Stock are outstanding, the Certificate of Incorporation, as amended, of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

Section 11. FRACTIONAL SHARES. Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of holders of Series A Preferred Stock.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its President this 10th day of September, 2002.

AKAMAI TECHNOLOGIES, INC.

By: /s/ Paul Sagan

Name: Paul Sagan
Title: President

EXHIBIT 10.17

AKAMAI TECHNOLOGIES, INC.

Incentive Stock Option Agreement Granted Under
SECOND AMENDED AND RESTATED 1998 STOCK INCENTIVE PLAN, AS AMENDED

1. GRANT OF OPTION.

This Incentive Stock Option Agreement (this "Agreement") evidences the grant by Akamai Technologies, Inc., a Delaware corporation (the "Company"), on September 19, 2002 (the "Grant Date") to Paul Sagan, an employee of the Company (the "Participant"), of an option to purchase, in whole or in part, on the terms provided herein, in the Company's Second Amended and Restated 1998 Stock Incentive Plan, as amended (the "Plan"), a total of 375,000 shares (the "Shares") of common stock, $0.01 par value per share, of the Company ("Common Stock") at $0.90 per Share. Unless earlier terminated, this option shall expire on September 19, 2012 (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"). Under the terms of the Code, all or a portion of this option may not qualify as an incentive 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. Subject to the terms and conditions set forth in this Agreement, including the accelerated vesting provisions set forth in Sections 2(b) and (c) below, this option will be 25% vested on the Grant Date and vest at the rate of 6.25% per quarter until the option is fully vested three years from the Grant Date.

(b) ACCELERATED VESTING UPON CERTAIN CORPORATE MILESTONES. In addition to the vesting set forth above, this option, as to the number of shares set forth below, shall become vested as to 31,250 shares, on the last day of each of the first three calendar quarters that the Company has Revenue (as defined below) of at least $50,000,000 and a Gross Profit Percentage (as defined below) of at least sixty-five percent.

Notwithstanding the foregoing, upon a Change in Control Event (as defined in the Plan), the provisions of this Section 2(b) shall cease to apply.

(c) ACCELERATED VESTING UPON A CHANGE IN CONTROL EVENT. If within twelve months following a Change in Control Event, Mr. Sagan terminates his employment for Good Reason (as defined below) or if Mr. Sagan is terminated for any reason other than Cause (as defined below), the number of shares as to which this option has vested under

Sections 2(a) and 2(b) shall be increased by the number of shares determined by a calculation pursuant to Section 2(a) as though the Grant Date were the date that is one year prior to the Grant Date.

(d) CUMULATIVE. The right of exercise in Sections 2(b) and (c) hereof 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.

(e) DEFINITIONS.

(i) Cause shall mean willful misconduct by the Participant or willful failure by the Participant to perform his responsibilities to the Company (including, without limitation, breach by the Participant of any provision of that certain Invention and Non-Disclosure Agreement, dated October 28, 1998, by and between the Company and the Participant (the "Invention Agreement"), that certain Non-Competetion and Non-Solicitation Agreement, dated October 28, 1998, by and between the Company and the Participant (the "Non-Competition Agreement"), or any other employment, consulting, advisory, nondisclosure, non-competition or other similar agreement between the Participant and the Company), as determined by the Board of Directors of the Company, which determination shall be conclusive. The Participant shall be considered to have been discharged for "cause" if the Company determines, within 30 days after the Participant's resignation, that discharge for cause was warranted.

(ii) Good Reason shall mean the occurrence, without the Participant's written consent, of any of the events or circumstances set forth in clauses (A) through (E) below. Notwithstanding the occurrence of any such event or circumstance, such occurrence shall not be deemed to constitute Good Reason if, prior to the date of termination specified in the notice of termination given by the Participant in respect thereof, such event or circumstance has been corrected and the Participant has been reasonably compensated for any losses or damages resulting there from.

(A) the assignment to the Participant of duties inconsistent in any material respect with the Participant's position (including status, offices, titles and reporting requirements), authority or responsibilities, or any other action or omission by the Company which results in a material diminution in such position, authority or responsibilities. Changes in job title, reporting relationship, and responsibilities alone shall not constitute Good Reason provided the resulting position does not result in a material diminution in the Participant's position, authority, or responsibilities.

(B) a material reduction in the Participant's annual base salary as in effect on the Grant Date or as the same was or may be increased thereafter from time to time, other than in the case of reductions in salary or bonus

eligibility with respect to similarly situated employees of the Company generally;

(C) the failure by the Company to (1) continue in effect any material compensation or benefit plan or program (including without limitation any life insurance, medical, health and accident or disability plan and any vacation or automobile program or policy) (a "Benefit Plan") in which the Participant participates or which is applicable to the Participant immediately prior to the Grant Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan or cash compensation) has been made with respect to such plan or program, (2) continue the Participant's participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Participant's participation relative to other participants, than the basis existing immediately prior to the Grant Date or (3) award cash bonuses to the Participant in amounts and in a manner substantially consistent with past practice in light of the Company's financial performance; provided, however, that Good Reason shall not exist if the Company takes measures to discontinue(1), (2) or (3) above with respect to similarly situated employees of the Company generally;

(D) a change by the Company in the location at which the Participant performs his principal duties for the Company to a new location that is both (i) outside a radius of 35 miles from the Participant's principal residence immediately prior to the Grant Date and (ii) more than 20 miles from the location at which the Participant performed his principal duties for the Company immediately prior to the Grant Date; and

(E) any material breach by the Company of this Agreement.

(iv) Gross Profit Percentage means the fraction, expressed as a percentage, the numerator of which is the gross profit of the Company for the applicable period as reported in the Company's condensed consolidated financial statements as filed with the Securities and Exchange Commission in the Company's applicable Form 10-K or Form 10-Q (the "Financial Statements") and the denominator of which is the total revenue of the Company for the applicable period as reported in the Financial Statements.

(v) Revenue shall mean revenue, including, but not limited to, one-time streaming and EdgeSuite event revenue and revenue derived from already signed relationships ongoing as of the date hereof with Akamai Technologies Japan KK and Sockeye Networks Inc. that is: (A) derived from products and services related to contracts that exceed 12 months in original term and that has the potential to recur indefinitely; or (B) from software licenses that are sold on a perpetual or term basis and maintenance on such licenses that is recurring in nature. Notwithstanding the foregoing, the definition of revenue shall not include: (A) strategic revenue booked from new barter

deals or one-time special deals; or (B) revenue to be booked from possible new affiliated deals, not outstanding on the date hereof. All revenue associated with products or services sold on a recurring basis, including bursting, is reflected as recurring revenue for external reporting purposes.

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 provisions of the Invention Agreement, the Non-Competition Agreement, or the non-competition or confidentiality provisions of any other 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, the right to exercise this option shall terminate immediately upon the effective date of such discharge.

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 any such 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. ADJUSTMENTS FOR CHANGES IN CAPITALIZATION

At any time in which an adjustment pursuant to the provisions of Section 8(a) of the Plan is made to the Shares set forth in Section 1 hereof, a similar adjustment shall be made to the shares set forth in Section 2(b) hereof.

8. 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: September 20, 2002

By: /s/ George H. Conrades

George H. Conrades
Chairman and CEO

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's Second Amended and Restated 1998 Stock Incentive Plan, as amended.

PARTICIPANT:

/s/ Paul Sagan

Signature
Name: Paul Sagan

Address:

EXHIBIT 10.18

November 6, 2002

DIVCO West Group, LLC
San Tomas Properties, LLC
150 Spear Street
San Francisco, CA 94105

Re: Office Lease

Dear Sir or Madam:

Reference is made to that certain Office Lease by and between San Tomas Properties, LLC ("Landlord") and Akamai Technologies, Inc. ("Akamai"), dated June 30, 2000 (the "Lease") and ongoing discussions of the parties regarding restructuring of the same. All capitalized terms used and not defined herein shall have the meanings given to them in the Lease. This is to confirm the agreement of the parties that effective upon receipt by Landlord of payment of Rent for the month of October 2002 in the amount of $$578,811.39, such payment date shall be retroactive, and such payment shall be considered to have been made under the Lease without default, nunc pro tunc, as of October 1, 2002. Also effective upon receipt of such payment by Landlord, Landlord waives any default that may have occurred relating to delay in payment of Rent for October 2002. All other provisions of the Lease shall remain in full force and effect. By signing in the space provided below, you represent that you are authorized to sign this letter agreement on behalf of Landlord, and you agree to the terms set forth above.

Very truly yours,

Akamai Technologies, Inc.

By: /s/ Akamai Technologies, Inc.

Name: Kathryn J. Meyer
Title: VP, General Counsel

Agreed and Acknowledged:

San Tomas Properties, LLC

/s/ San Tomas Properties LLC
- ---
Name: Stuart Shiff
Title: Authorized Signatory
Date: 11-06-02

EXHIBIT 10.19

November 7, 2002

Robert Cobuzzi
[address]

Dear Robert:

On behalf of Akamai Technologies, Inc. (referred to in this letter collectively with its subsidiaries as the "Company"), I am pleased to confirm the offer of full-time employment with the Company that I made to you for the position of Chief Financial Officer in our Cambridge office. You will report to me in this capacity starting on November 11, 2002.

Your base salary will be $7,692.31 bi-weekly ($200,000.00 on an annualized basis). Beginning in fiscal year 2003 you will also be eligible to receive a performance-based incentive bonus of $100,000 annually. The bonus will be earned based on the achievement of profitability and operating targets to be established after you join the company. Your salary and incentive shall be subject to review annually.

We would also recommend to the Akamai Board of Directors a grant of 250,000 fair market value stock options as follows:

* 200,000 fair market value options with Akamai's regular four-year vesting schedule: 25% after one year, and 6.25% quarterly thereafter.

* 50,000 fair market value options with a four-year cliff vesting. In addition, these options would become fully vested on the last day of the first quarter that the Company has Revenue of at least $50,000,000 and a Gross Profit Percentage of at least sixty-five percent.

All options would be priced to the fair market value of the Common Stock as determined by the Board on the date the Board of Directors approves the stock options.
..
You will be eligible to participate in the Employee Stock Purchase Program beginning in the December 2002 offering period. This plan allows you to contribute between 1% and 10% of your salary through regular payroll deductions. The Akamai plan provides for a two-year offering period, that includes four, six-month purchase periods. At the end of each six-month purchase period, the money that has been deducted will be used to purchase shares of Akamai common stock at 85% of the closing price of the Common Stock at the beginning of the offer period or end of the purchase period, whichever is lower.

You will be eligible for health insurance, dental insurance, life insurance, and short/long term disability coverage and other benefits that are and may become available generally to employees of the Company. You will also be eligible to contribute to the Akamai Technologies, Inc. 401(k) Plan immediately upon employment.

You will be eligible for a maximum of three weeks of vacation per year. The number of vacation days for which you are eligible in each year shall accrue at the rate of 1.25 days per month that you are employed and working during such year. Akamai also observes ten holidays each year. This year eight of the holidays are scheduled days, while two holidays are floating days.

Prior to the commencement of your employment, you will be required to execute a Non-Competition, Non-Solicitation, Proprietary and Confidential Information and Developments Agreement. Execution of this agreement is a condition of employment.

You represent that you are not bound by any employment contract, restrictive covenant or other restriction preventing you from entering into this agreement or carrying out your responsibilities for the Company as contemplated hereby, or which is in any way inconsistent with any of the terms hereof.

Akamai Technologies is an at will employer which means that either you or Akamai may terminate the employment relationship at any time with or without notice and with or without cause. This letter is not to be construed as an agreement, either expressed or implied to employ you for any stated term. No employee, officer or other representative of Akamai, other than the Chief Executive Officer, has any authority to enter into any agreement to the contrary.

In the event that Akamai terminates your employment for reasons other than cause during the first three years of your employment, you would be eligible for severance on the following terms, provided you sign a separation agreement acceptable to Akamai that includes, among other things, a full release, a one-year non-competition clause, a future cooperation clause, and a non-disparagement clause:

> If the company terminates your employment during the first three years of your employment for reasons other than cause, Akamai will pay you an amount equal to one year of your then-base salary. The company will make an additional one-time lump sum, taxable payment to you equal to one year's worth of the company's current contribution to the medical and dental plan. You may use that money to cover the costs of medical and dental coverage under COBRA. In addition, Akamai will vest your options as follows:
>
> > If the company terminates your employment in year one, Akamai will vest the first year of the Initial Grant (i.e., any options from the Initial Grant that you would have vested in the first twelve months), so that you will leave the company with 25% of your Initial Grant vested.

If the company terminates your employment in year two, Akamai will vest the second year of the Initial Grant (i.e., any options from the Initial Grant that would have vested in the second twelve months of your employment that you were not already vested as of the termination date). This would mean that you would leave the company with 50% of your Initial Grant vested.

If the company terminates your employment in year three, Akamai will vest the third year of the Initial Grant (i.e., any options that would have vested in the third year of your employment that were not already vested as of the termination date), so that you will leave the company with 75% of your Initial Grant vested.

If the company terminates your employment for ANY reason after the completion of your third year of employment, you will be treated under the Akamai policy then in effect for other senior executives who leave the company involuntarily.

In the event that there is a Change in Control, as that term is defined in the Plan, and within the first ninety (90) days the surviving entity fails to offer to employ you in a position with responsibilities that are commensurate (but not necessarily identical) with your responsibilities at Akamai, and as a result your employment terminates voluntarily or involuntarily, you will receive an amount equal to one year of your then-base salary. Whether you have been offered a position with commensurate responsibilities is to be determined without regard to the title or reporting relationship of the new position.

This employment offer from Akamai Technologies is contingent upon your submitting an I-9 Employment Eligibility Verification Form acceptable to Akamai Technologies, Inc. on your date of employment. YOU MUST BE PREPARED TO OFFER PROOF OF YOUR EMPLOYABILITY IN THE UNITED STATES IN ACCORDANCE WITH THE REQUIREMENTS LISTED ON THE I-9 FORM ON YOUR FIRST DAY OF EMPLOYMENT. YOU WILL NOT BE PLACED ON THE AKAMAI PAYROLL AS AN ACTIVE EMPLOYEE UNTIL YOU HAVE PROVIDED THIS DOCUMENTATION.

Please accept Akamai's offer of employment by signing the enclosed copy of this letter and the agreements attached and returning all documents to me. We look forward to your joining Akamai on November11, 2002.

Sincerely,

AKAMAI TECHNOLOGIES, INC.

/s/ Akamai Technologies, Inc.

George H. Conrades
Chairman & CEO

Enclosures:

(1) Non-Competition, Non-Solicitation, Proprietary and Confidential Information and Developments Agreement. - 2 copies

(2) I-9 Employment Eligibility Verification Form

I hereby accept employment with Akamai Technologies, Inc.

/S/ Robert Cobuzzi	November 11, 2002
- ----------	----------
Robert Cobuzzi	Date

EXHIBIT 10.20

OFFICE LEASE

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

SUMMARY OF BASIC LEASE INFORMATION

	TERMS OF LEASE	DESCRIPTION
1.	Date	June 30, 2000
2.	Premises	
	2.1 Building:	For purposes of this Lease, the "Building" shall mean, collectively, the building located at 2800 San Tomas Expressway, Santa Clara, California (the **"2800 Building"**) and the building located at 2860 San Tomas Expressway, Santa Clara, California (the **"2860 Building"**).
	2.2 Initial Premises:	Approximately 60,650 rentable square feet of space consisting of the entire 2800 Building and 12,468 rentable square feet of space in the 2860 Building, as further set forth in **Exhibit A** to the Office Lease.
	2.3 Additional Premises:	Approximately 35,714 rentable square feet of space, located in the 2860 Building, as further set forth in **Exhibit A-1** to the Office Lease.

Prior to the Additional Premises Commencement Date, references to the "Premises" shall be deemed to refer to the Initial Premises, and on and after the Additional Premises Commencement Date, references to the "Premises" shall be deemed to refer to the Initial Premises and the Additional Premises.

	2.4 Project:	The 2800 Building and the 2860 Building are part of an office project known as "San Tomas Business Park," as further set forth in Section 1.1.2 of this Lease.

3. Lease Term (Article 2):

3.1 Length of Term: Ten (10) Years.

3.2 Lease Commencement Date: September 1, 2000, subject to extension pursuant to Article 2 of the Lease.

3.3 Lease Expiration Date (for the entire Premises): August 31, 2010, subject to extension based on the actual Lease Commencement Date.

4. Base Rent (Article 3):

4.1 Amounts Due

Lease Year	Annual Base Rent	Monthly Installment of Base Rent
1*	$3,639,000.00	$303,250.00
1**	$5,781,840.00	$481,820.00
2	$6,013,113.60	$501,092.80
3	$6,253,638.10	$521,136.51
4	$6,503,783.60	$541,981.97
5	$6,763,935.00	$563,661.25
6	$7,034,492.40	$586,207.70
7	$7,315,872.10	$609,656.01
8	$7,608,507.00	$634,042.25
9	$7,912,847.30	$659,403.94
10	$8,229,361.20	$685,780.10

* Prior to the Additional Premises Commencement Date

** On and after the Additional Premises Commencement Date

4.2 Rent Payment Address: San Tomas Properties LLC
P.O. Box 641387
San Jose, CA 95134-1387

5. Intentionally Deleted

6. Tenant's Share (Article 4):

	6.1 Tenant's Building Share	Prior to the Additional Premises Commencement Date, 100% for the 2800 Building and 25.88% for the 2860 Building; on and after the Additional Premises Commencement Date, 100% for each of the 2800 and 2860 Buildings.
	6.2 Tenant's Phase Share	Prior to the Additional Premises Commencement Date, 25.413%; on and after the Additional Premises Commencement Date, 40.38%.
	6.3 Tenant's Project Share	Prior to the Additional Premises Commencement Date, 12.73%; on and after the Additional Premises Commencement Date, 20.224%.
7.	Permitted Use (Article 5):	General office use only.
8.	Letter of Credit: (Article 21):	$5,781,840.00.
9.	Parking Passes (Article 28):	Prior to the Additional Premises Commencement Date, one hundred eighty-eight (188) unreserved passes; after the Additional Premises Commencement Date, two hundred ninety-nine (299) unreserved passes.
10.	Address of Tenant (Section 29.18):	Akamai Technologies, Inc. 500 Technology Square Cambridge, Massachusetts 02139-3539 Attention: Vice President of Real Estate and Facilities With a copy to: Hale and Dorr LLP 60 State Street Boston, Massachusetts 02109 Attention: Sean T. Boulger, Esq.
11.	Address of Landlord:	See Section 29.18 of this Lease.

12.	Broker(s) (Section 29.24):	Colliers International 1960 The Alameda Suite 100 San Jose, California 95126 and CRESA Partners 2483 East Bayshore Road, Suite 102 Palo Alto, California 94303
13.	Tenant Improvement Allowance	None.

ARTICLE 1
PREMISES, BUILDING, PROJECT,
AND COMMON AREAS; ADDITIONAL PREMISES

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

1.1.1 **The Premises**. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Sections 2.2 and 2.3 of the Summary (the **"Premises"**), which premises are referred to individually as the **"Initial Premises"** and the "**Additional Premises**" respectively. The outline of the Premises is set forth in **Exhibit A and Exhibit A-1** attached hereto. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of **Exhibits A and A-1** is to show the approximate location of the Premises in the **"Building,"** as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the **"Common Areas,"** as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the **"Project,"** as that term is defined in Section 1.1.2, below. Tenant hereby acknowledges that Tenant shall accept the Premises (including both the Initial Premises and the Additional Premises) in its existing, "as-is" condition as of the dates of Landlord's delivery thereof, and that Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises; provided that Landlord shall deliver the Premises in a clean and sanitary condition, with all building systems operating and in good working order. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good and sanitary order, condition and repair.

1.1.2 **The Building and The Project**. The Premises are or will be comprised of the buildings or portions thereof as set forth in Section 2.1 of the Summary (hereinafter referred to collectively or individually as the **"Building"**). The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, (ii) the land (which is improved with landscaping, subterranean parking facilities and other improvements) upon which the Building and the Common Areas are located, (iii) those certain buildings located at 2600, 2650, 2700, 2730, 2770, 2820, 2840, and 2880 San Tomas Expressway and the land upon which such adjacent buildings are located, and (iv) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto outside of the Project.

1.1.3 **Common Areas**. Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, including certain

areas designated for the exclusive use of certain tenants, or to be shared by Landlord and certain tenants, are collectively referred to herein as the "**Common Areas**"). The Common Areas shall consist of the **"Project Common Areas"** and the "**Building Common Areas**." The term "**Project Common Areas**," as used in this Lease, shall mean the portion of the Project designated as such by Landlord. The term "**Building Common Areas**," as used in this Lease, shall mean the portions of the Common Areas located within the Building designated as such by Landlord. The manner in which the Common Areas are maintained and operated shall be at the sole discretion of Landlord and the use thereof shall be subject to such rules, regulations and restrictions as Landlord may make from time to time; provided that Landlord shall maintain and operate the Common Areas in a manner consistent with that of other first class office buildings in the vicinity of the Project. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas.

1.2 **Verification of Rentable Square Feet of Premises**. For purposes of this Lease, "rentable square feet" and "usable square feet" of the Premises shall be deemed as set forth in Sections 2.2 and 2.3 of the Summary and shall not be subject to remeasurement or modification.

1.3 **Additional Premises**. Effective as of the date of Landlord's delivery of the Additional Premises to Tenant (the**"Additional Premises Commencement Date")**, which is anticipated to occur as of February 1, 2001, subject to the terms of Article 2, below, Tenant shall lease from Landlord and Landlord shall lease to Tenant, in addition to the Initial Premises, the Additional Premises. Effective upon the Additional Premises Commencement Date and notwithstanding any contrary provision of this Lease, the Premises shall be increased to include the Additional Premises. Except as provided in this Section 1.3, Tenant's lease of the Additional Premises shall be subject to the terms and conditions set forth in this Lease. The lease term for the Additional Premises shall commence, and Tenant shall commence payment of "Rent," as that term is defined in Section 4.1, below, for the Additional Premises on the Additional Premises Commencement Date, and shall terminate on the "Lease Expiration Date," as set forth in Section 3.3 of the Summary.

ARTICLE 2

LEASE TERM

The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the **"Lease Term"**) shall be as set forth in Section 3.1 of the Summary, shall commence on the date set forth in Section 3.2 of the Summary (the **"Lease Commencement Date"**), provided that the term of Tenant's lease of the Additional Premises shall commence as set forth in Section 1.3, above. Notwithstanding anything in the foregoing to the contrary, Tenant hereby acknowledges that Landlord shall deliver the Initial Premises and Additional Premises following the vacation and surrender of the Initial Premises or the Additional Premises by the respective tenant occupying each of the Initial Premises and the Additional Premises as of the date hereof (each, individually, the "**Existing Tenant**"), and that Landlord shall not be liable to Tenant as a result of a delay in the delivery to Tenant of the Initial Premises or Additional Premises due to a holdover in the Initial Premises or the Additional Premises by the Existing Tenant; provided, however, Landlord shall use commercially reasonable efforts to remove any Existing Tenant from the applicable Premises as soon as reasonably practical. Notwithstanding

of the foregoing, in the event that Landlord has not delivered the Initial Premises or has not delivered the Additional Premises within ninety (90) days following the Lease Commencement Date or the estimated Additional Premises Commencement Date set forth in Section 1.3, above, as applicable (each of the foregoing hereinafter referred to as the **"Outside Delivery Date")**, then Tenant shall have the right to terminate its lease of such portion of the Premises, but only as to that portion of the Premises which has not been delivered by the applicable Outside Delivery Date, by delivering written notice of such termination (**"Tenant's Termination Notice"**) to Landlord within ten (10) days following the applicable Outside Delivery Date. In the event Tenant timely delivers Tenant's Termination Notice, then Tenant's Lease of the applicable portion of the Premises shall immediately be of no further force or effect, and Landlord and Tenant shall promptly execute an amendment to this Lease with respect thereto. The term of Tenant's lease of the Initial Premises and the Additional Premises shall terminate on the date set forth in Section 3.3 of the Summary (the **"Lease Expiration Date"**), unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term **"Lease Year"** shall mean each consecutive twelve (12) month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end on the last day of the eleventh month thereafter and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in **Exhibit C**, attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) days of receipt thereof.

ARTICLE 3

BASE RENT

Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the address set forth in Section 4.2 of the Summary, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent (**"Base Rent"**) as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever, except as expressly provided in this Lease. The Base Rent for the first full month of the Lease Term which occurs after the expiration of any free rent period shall be paid at the time of Tenant's execution of this Lease. If any Rent payment date (including the Lease Commencement Date and the Additional Premises Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

ARTICLE 4

ADDITIONAL RENT

4.1 **General Terms**. In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay (i) **"Tenant's Building Share"** of the annual **"Building Direct Expenses**," (ii) **"Tenant's Phase Share"** of the annual **"Phase Direct Expenses"**, and (iii) **"Tenant's Project Share"** of the annual **"Project Direct Expenses"** as those terms are defined in Section 4.2, below. Landlord's estimate of **"Tenant's Share of Direct Expenses**," as that term is defined in Section 4.2.1, below, for the first full month of the Lease Term shall be paid at the time of Tenant's execution of this Lease. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the **"Additional Rent"**, and the Base Rent and the Additional Rent are herein collectively referred to as **"Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

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

4.2.1 **"Tenant's Share of Direct Expenses"** shall mean, collectively, Tenant's Project Share of Project Direct Expenses, Tenant's Phase Share of Phase Direct Expenses, and Tenant's Building Share of Building Direct Expenses.

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

4.2.3 **"Project Direct Expenses"** shall mean the portion of "Direct Expenses," as equitably determined by Landlord, which is not attributable to any particular building in the Project, and is not solely attributable to "Phase 1" or "Phase 2" of the Project, as those terms are defined in Section 4.2.5, below, but which instead relate to the Project as a whole.

4.2.4 **"Building Direct Expenses"** shall mean the portion of Direct Expenses, as equitably determined by Landlord, which is attributable solely to the 2800 Building or the 2860 Building, as applicable (as opposed to the Project as a whole or either particular phase of the Project).

4.2.5 **"Phase Direct Expenses"** shall mean the portion of Direct Expenses, as equitably determined by Landlord, which is solely attributable to "Phase 1" of the Project, as that term is defined, below, and which is neither attributable solely to the Building nor the Project as a whole. For purposes of this Lease, (i) "Phase 1" of the Project shall be comprised of the buildings located at 2800, 2820, 2840, 2860 and 2880 San Tomas Expressway and the corresponding real property and common areas associated with such phase, as equitably designated by Landlord, and (ii) "Phase 2" of the Project shall be comprised of the buildings located at 2600, 2650, 2700, 2730 and 2770 San Tomas Expressway and the corresponding real property and common areas associated with such phase, as equitably designated by Landlord.

4.2.6 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Direct Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.7 "**Operating Expenses**" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) costs incurred in connection with the parking areas servicing the Project; (vi) fees and other costs, including Landlord's management fee (not to exceed the greater of (A) three percent (3%) of gross rental revenues of the Project, adjusted and grossed up to reflect a one hundred percent (100%) occupancy, with all tenants paying rent, including base rent and pass-throughs (but excluding the cost of after hours services or utilities) from the Project for any calendar year or portion thereof and (B) the market rate as evidenced by management fees being charged by landlord's of comparable buildings in the Silicon Valley area), consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project; (vii) payments under any equipment rental agreements and the fair rental value of any management office space; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Building; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in common areas (provided that at such time as Tenant occupies only full buildings, such common areas shall be limited to Project Common Areas), maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including interest on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project; (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, to the extent of cost savings reasonably anticipated by Landlord at the time of such expenditure to be incurred in connection therewith, or (B) that are required under any governmental law or regulation or by a federal, state or local governmental agency, except for capital repairs, replacements or other improvements to remedy a condition existing prior to the Lease Commencement Date, which an applicable governmental authority, if it had knowledge of such

condition prior to the Lease Commencement Date, would have then required to be remedied pursuant to then current governmental laws or regulations in their form existing as of the Lease Commencement Date, and pursuant to the then current interpretation of such governmental laws or regulations by the applicable authority as of the Lease Commencement Date; provided, however, that any capital expenditure shall be amortized with interest over its useful life as Landlord shall reasonably determine; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.4.1, below; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building.

Notwithstanding the foregoing, Operating Expenses for purposes of this Lease shall not include (A) except as set forth in items (xii) and (xiii) above, depreciation, interest and principal payments on mortgages and other debt costs, if any, penalties and interest, costs of capital repairs and alterations, and costs of capital improvements and equipment; (B) amounts paid as ground rental for the Project by the Landlord; (C) any costs included as a Tax Expense pursuant to Section 4.2.8.1 below; (D) costs of leasing commissions, attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Project; (E) costs, including marketing costs, legal fees, space planners' fees, advertising and promotional expenses, and brokerage fees incurred in connection with the original construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for new tenants in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project; (F) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-à-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Project manager or Project engineer; (G) costs incurred due to the violation by Landlord or any other tenant of the terms and conditions of any lease of space in the Project; (H) costs of overhead or profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for services in or in connection with the Project to the extent the same exceeds the cost of such services which could be obtained from third parties on a competitive basis; (I) costs arising from Landlord's charitable or political contributions; (J) costs incurred to comply with laws relating to hazardous material (as defined by applicable law), which was in existence in the Building or the Project prior to the Lease Commencement Date, and was of such a nature that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such hazardous material, in the state, and under the conditions that it then existed in the Building or the Project, would have then required the removal of such hazardous material or other remedial or containment action with respect thereto; and costs incurred to remove, remedy, contain, or treat hazardous material, which hazardous material is brought into the Building or the Project after the date hereof by Landlord or any other tenant of the Project and is of such a nature, at that time, that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such hazardous material, in the state, and under the conditions, that it then existed in the Building or the Project, would have then required the removal of such hazardous

material or other remedial or containment action with respect thereto; (K) all items and services for which Tenant or any other tenant in the Project reimburses Landlord or which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement; (L) costs of services or other benefits which are either not offered to Tenant or for which Tenant is charged directly, but which are provided to other tenants of the Building without a separate charge; (M) entertainment and travel expenses of Landlord, its employees, agents, partners and affiliates; (N) costs for which the Landlord is reimbursed by any tenant or occupant of the Project or by insurance by its carrier or any tenant's carrier or by anyone else, and electric power costs for which any tenant directly contracts with the local public service company; (O) costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants, and Landlord's general corporate overhead and general and administrative expenses; and (P) cost of tenants' signs.

If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant (solely with respect to the determination of the Building Direct Expenses for a particular building in which the Premises are located, this provision shall apply only as long as Tenant is occupying a portion of such building as opposed to the whole building). If the Project is not at least ninety-five percent (95%) occupied during all or a portion of any Expense Year, Landlord may elect to make an appropriate adjustment to the components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Project been ninety-five percent (95%) occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year.

4.2.8 **Taxes**.

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

4.2.8.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or

charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election (**"Proposition 13"**) and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; and (iv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises.

4.2.8.3 Any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid. Refunds of Tax Expenses shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses included by Landlord as Tax Expenses pursuant to the terms of this Lease. Notwithstanding anything to the contrary contained in this Section 4.2.8 (except as set forth in Section 4.2.8.1, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, and (iii) any items paid by Tenant under Section 4.4 of this Lease.

4.2.9 **"Tenant's Building Share"** shall mean the applicable percentage set forth in Section 6.1 of the Summary.

4.2.10 **"Tenant's Phase Share"** shall mean the applicable percentage set forth in Section 6.2 of the Summary.

4.2.11 **"Tenant's Project Share"** shall mean the applicable percentage set forth in Section 6.3 of the Summary.

4.3 **Allocation of Direct Expenses**.

4.3.1 **Method of Allocation**. The parties acknowledge that the Buildings are a part of a multi-building project and that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) should be shared between the Tenant with respect to the Buildings and the tenants of the other buildings in the Project. Accordingly, as set forth in Section 4.2 above, Direct Expenses (which consists of Operating Expenses and Tax Expenses) are determined annually for the Project as a whole, and a portion of the Direct Expenses, which portion shall be determined by Landlord on an equitable basis, shall be allocated to Tenant with respect to the Buildings (as opposed to the tenants of any other buildings in the Project) and such portion shall be the Direct Expenses for purposes of this Lease. Such portion of Direct Expenses allocated to the Buildings shall include all Direct Expenses attributable solely to the Buildings and an equitable portion of the Direct Expenses attributable to the Project as a whole, and not solely to any other buildings within the Project.

4.4 **Calculation and Payment of Additional Rent**. For each Expense Year during the Lease Term, Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, an amount equal to Tenant's Share of Direct Expenses.

4.4.1 **Statement of Actual Direct Expenses and Payment by Tenant**. Landlord shall endeavor to give to Tenant following the end of each Expense Year, a statement (the "**Statement**") which shall state the Direct Expenses incurred or accrued for such preceding Expense Year. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, Tenant shall pay, with its next installment of Base Rent due, the full amount of Tenant's Share of the Direct Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as **"Estimated Expenses,"** as that term is defined in Section 4.4.2, below. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord such amount. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term.

4.4.2 **Statement of Estimated Direct Expenses**. In addition, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the **"Estimate Statement"**) which shall set forth Landlord's reasonable estimate (the **"Estimate"**) of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated Tenant's Share of Direct Expenses (the **"Estimated Expenses"**). The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Expenses under this Article 4, nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Expenses theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, with its next installment of Base Rent due, a fraction of the Estimated Expenses for the then-current Expense Year (reduced by any amounts paid pursuant to the next to last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly,

with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5 **Taxes and Other Charges for Which Tenant Is Directly Responsible**.

4.5.1 Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

4.5.2 If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the Tax Expenses levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 4.5.1, above.

4.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the Project parking facility; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

4.6 **Landlord's Books and Records**. Within ninety (90) days after receipt of a Statement by Tenant, if Tenant disputes the amount of Additional Rent set forth in the Statement, an independent certified public accountant (which accountant is a member of a nationally recognized accounting firm, and has had previous experience in reviewing financial operating records of landlords of office buildings, and is not compensated on a contingent fee basis), designated and paid for by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records with respect to the Statement at Landlord's offices, provided that Tenant is not then in default under this Lease beyond any applicable notice and cure period set forth in this Lease, and Tenant has paid all amounts required to be paid under the applicable Estimate Statement and Statement, as the case may be. In connection with such inspection, Tenant and Tenant's agents must agree in advance to follow Landlord's reasonable rules and procedures regarding inspections of Landlord's records, and shall execute a commercially reasonable confidentiality agreement regarding such inspection. Tenant's failure to dispute the amount of Additional Rent set forth in any Statement within ninety (90) days of Tenant's receipt

of such Statement shall be deemed to be Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement. If, after such inspection, Tenant still disputes such Additional Rent, a final determination (the **"Final Inspection Determination"**) as to the proper amount shall be made, at Tenant's expense, by an independent certified public accountant (the **"Accountant"**) selected by Landlord and subject to Tenant's reasonable approval. Tenant shall be responsible for all costs and expenses associated with Tenant's review, provided that if such determination by the Accountant proves that Direct Expenses were overstated by more than seven percent (7%), then the cost of the Accountant and the cost of the determination by the Accountant shall be paid for by Landlord. Tenant hereby acknowledges that Tenant's sole right to inspect Landlord's books and records and to contest the amount of Direct Expenses payable by Tenant shall be as set forth in this Section 4.6, and Tenant hereby waives any and all other rights pursuant to applicable law to inspect such books and records and/or to contest the amount of Direct Expenses payable by Tenant. In no event shall this Section 4.6 be deemed to allow any review of any of Landlord's records by any subtenant of Tenant.

ARTICLE 5

USE OF PREMISES

5.1 **Permitted Use**. Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

5.2 **Prohibited Uses**. The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political subdivision thereof; (iii) offices of any health care professionals or service organization; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (v) retail or restaurant uses; or (vi) communications firms such as radio and/or television stations. Tenant shall not allow occupancy density of use of the Premises which is greater than that permitted pursuant to applicable law. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit D**, attached hereto, or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project) including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect. Tenant shall not do or permit anything to be done in or about the Premises which will in any way damage the reputation of the Project or obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Project.

ARTICLE 6

SERVICES AND UTILITIES

6.1 **In General**. Tenant will be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Premises, including, but not limited to heating, ventilation and air-conditioning, electricity, water, telephone, janitorial and security services. The Premises shall be separately metered, at Tenant's expense, for electricity and water and other utilities, and Tenant shall pay the cost of such utilities directly to the applicable utility provider.

6.2 **Interruption of Use**. Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by, inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any services or utilities.

6.3 **No Obligation**. Provided that Landlord agrees to provide service utility connections to the Project, including electricity, water and sewage connections, Landlord shall have no obligation to provide any services or utilities to the Building, including, but not limited to heating, ventilation and air-conditioning, electricity, water, telephone, janitorial and Building security services.

ARTICLE 7

REPAIRS

Tenant shall, at Tenant's own expense, pursuant to the terms of this Lease, including without limitation Article 8 hereof, keep, maintain, repair and improve the Premises, and every portion thereof, including, without limitation, all improvements, fixtures and furnishings therein and all equipment within the Premises or serving the Premises, and the floor or floors of the Building on which the Premises are located, in good order, repair and condition at all times during the Lease Term. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, pursuant to the terms of this Lease, including without limitation Article 8 hereof, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that, at Landlord's option, or if Tenant fails to make such repairs, Landlord may, but need not, make such repairs

and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building and/or the Project) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations**. Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the **"Alterations"**) without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions or the systems or equipment of the Building or is visible from the exterior of the Building. Notwithstanding anything in this Article 8 to the contrary, Tenant shall have the right, without Landlord's consent but upon five (5) business days prior written notice to Landlord, to make strictly cosmetic, non-structural additions and alterations to the Premises that do not (i) involve the expenditure of more than $50,000.00 in any Lease Year, (ii) affect the exterior appearance of the Building, or (iii) affect the Building's electrical, ventilation, plumbing, elevator, mechanical, air conditioning or other similar systems. The construction of the initial improvements to the Premises shall be governed by the terms of this Article 8.

8.2 **Manner of Construction**. Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its sole discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, subcontractors, materials, mechanics and materialmen selected by Tenant from a list provided and approved by Landlord, the requirement that upon Landlord's request, made at the time Landlord's consent to an Alteration is granted if Tenant's request for approval thereof requests a designation of whether or not Tenant shall be required to remove a particular Alteration upon the expiration or earlier termination of this Lease (a **"Removal Designation Request"**), Tenant shall, at Tenant's expense, remove such Alterations upon the expiration or any early termination of the Lease Term, and the requirement that all Alterations conform in terms of quality and style to the Building's standards established by Landlord for the Project. If Tenant delivers a Removal Designation Request and Landlord shall not indicate in its approval that the applicable Alteration will be required to be removed by Tenant upon the expiration or any early termination of the Lease Term, then the applicable Alteration will not be required to be removed by Tenant. If such Alterations will involve the use

of or disturb hazardous materials or substances existing in the Premises, Tenant shall comply with Landlord's rules and regulations concerning such hazardous materials or substances. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit, issued by the City of Santa Clara, all in conformance with Landlord's construction rules and regulations. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "**Base Building**," as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. The "Base Building" shall include the structural portions of the Building, and the public restrooms and the systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Santa Clara in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Project management office a reproducible copy of the "as built" drawings of the Alterations as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements**. If payment is made directly to contractors, Tenant shall comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors. Whether or not Tenant orders any work directly from Landlord, Tenant shall pay to Landlord a percentage of the cost of such work sufficient to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work.

8.4 **Construction Insurance**. In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries **"Builder's All Risk"** insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property**. All Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant and shall be and become the property of Landlord, except that Tenant may remove any Alterations, improvements, fixtures and/or equipment which Tenant can

substantiate to Landlord have not been paid for with any Tenant improvement allowance funds provided to Tenant by Landlord, provided Tenant repairs any damage to the Premises and Building caused by such removal and returns the affected portion of the Premises to a building standard tenant improved condition as determined by Landlord. Furthermore, Landlord may, by written notice to Tenant prior to the end of the Lease Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to remove any Alterations or improvements constructed by or on behalf of Tenant in the Premises, and to repair any damage to the Premises and Building caused by such removal and to return the affected portion of the Premises to a building standard tenant improved condition as determined by Landlord, provided that, as set forth in Section 8.2, above, Tenant shall have the right to require a designation of any such removal obligation at the time of Landlord's consent to a particular tenant improvement or Alteration. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations or improvements in the Premises, and returns the affected portion of the Premises to a building standard tenant improved condition as determined by Landlord, then at Landlord's option, either (A) Tenant shall be deemed to be holding over in the Premises and Rent shall continue to accrue in accordance with the terms of Article 16, below, until such work shall be completed, or (B) Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within five (5) days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

ARTICLE 10

INSURANCE

10.1 **Indemnification and Waiver**. Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors (collectively, **"Landlord Parties"**) shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws; any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Project or any breach of the terms of this Lease, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the gross negligence or willful misconduct of Landlord. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Further, Tenant's agreement to indemnify Landlord pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 **Landlord's Fire and Casualty Insurance**. Landlord shall carry commercial general liability insurance with respect to the Building during the Lease Term, and shall further insure the Building during the Lease Term against loss or damage due to fire and other casualties covered within the classification of fire and extended coverage, vandalism coverage and malicious mischief, sprinkler leakage, water damage and special extended coverage. Such coverage shall be in such amounts, from such companies, and on such other terms and conditions, as Landlord may from time to time reasonably determine. Additionally, at the option of Landlord, such insurance coverage may include the risks of earthquakes and/or flood damage and additional hazards, a rental loss endorsement and one or more loss payee endorsements in favor of the holders of any mortgages or deeds of trust encumbering the interest of Landlord in the Building or the ground or underlying lessors of the Building, or any portion thereof. Notwithstanding the foregoing provisions of this Section 10.2, the coverage and amounts of insurance carried by Landlord in connection with the Building shall, at a minimum, be comparable to the coverage and amounts of insurance which are carried by reasonably prudent landlords of comparable buildings in the vicinity of the Building (provided that in no event shall

Landlord be required to carry earthquake insurance), and Worker's Compensation and Employer's Liability coverage as required by applicable law. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance**. Tenant shall maintain the following coverages in the following amounts.

10.3.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities (covering the performance by Tenant of its indemnity agreements) including a Broad Form endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease, for limits of liability not less than:

Bodily Injury and	$5,000,000 each occurrence
Property Damage Liability	$5,000,000 annual aggregate
Personal Injury Liability	$5,000,000 each occurrence $5,000,000 annual aggregate
	0% Insured's participation

10.3.2 Physical Damage Insurance covering (i) all office furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, and (ii) any existing or subsequently installed improvements in the Premises, including any future alterations and additions to the Premises (collectively, the "**Tenant Improvements**"). Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion, and providing business interruption coverage for a period of one year.

10.3.3 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations.

10.4 **Form of Policies**. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, Landlord's lender, and any other party the Landlord so specifies, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's

obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is noncontributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

10.5 **Subrogation**. Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor.

10.6 **Additional Insurance Obligations**. Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord**. Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Base Building and such Common Areas. Such restoration shall be to substantially the same condition of the Base Building and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice (the "**Landlord Repair Notice**") to

Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 10.3 of this Lease, and Landlord shall repair any injury or damage to the Tenant Improvements installed in the Premises and shall return such Tenant Improvements to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage. In the event that Landlord does not deliver the Landlord Repair Notice within sixty (60) days following the date the casualty becomes known to Landlord, Tenant shall, at its sole cost and expense, repair any injury or damage to the Tenant Improvements installed in the Premises and shall return such Tenant Improvements to their original condition. Whether or not Landlord delivers a Landlord Repair Notice, prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, Landlord shall allow Tenant a proportionate abatement of Rent during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result thereof; provided, further, however, that if the damage or destruction is due to the gross negligence or willful misconduct of Tenant or any of its agents, employees, contractors, invitees or guests, Tenant shall be responsible for any reasonable, applicable insurance deductible (which shall be payable to Landlord upon demand) and there shall be no rent abatement. In the event that Landlord shall not deliver the Landlord Repair Notice, Tenant's right to rent abatement pursuant to the preceding sentence shall terminate as of the date which is reasonably determined by Landlord to be the date Tenant should have completed repairs to the Premises assuming Tenant used reasonable due diligence in connection therewith.

11.2 **Landlord's Option to Repair**. Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, and in such event any remaining proceeds are insufficient to complete the required repairs, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Landlord's insurance policies; or (iv) the damage occurs during the last twelve (12) months of the Lease Term and the damage, in the reasonable opinion of Landlord, cannot be repaired within sixty (60) days from the date of discovery of such damage, and, in such event, Tenant shall also be entitled to terminate this Lease by delivering written notice to Landlord within ten (10) days after the earlier of (A) the

date of Landlord's notification that the repairs cannot be completed within sixty (60) days, or (B) the expiration of such sixty (60) day period after discovery of such damage, unless Landlord has commenced such repairs within such sixty (60) day period and diligently pursues same to completion.

11.3 **Waiver of Statutory Provisions**. The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

ARTICLE 12

NONWAIVER

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 13

CONDEMNATION

If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises, Building or Project, or if Landlord shall grant a deed or other

instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. If more than twenty-five percent (25%) of the rentable square feet of the Premises is taken, or if access to the Premises is substantially impaired, in each case for a period in excess of one hundred eighty (180) days, Tenant shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord, its ground lessor with respect to the Building or Project or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 **Transfers**. Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as **"Transfers"** and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a **"Transferee"**). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the **"Transfer Notice"**) shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the **"Subject Space"**), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the **"Transfer Premium"**, as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and an executed copy of all documentation effectuating the proposed Transfer, including all operative documents to evidence such Transfer and all agreements incidental or related to such Transfer, provided that Landlord shall have the right to reasonably approve the form of Tenant's Transfer documents in connection with the

documentation of such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space and (v) an executed estoppel certificate from Tenant in the form attached hereto as Exhibit E. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord.

14.2 **Landlord's Consent**. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.5 The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease;

14.2.6 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right);

14.2.7 Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Project at the time of the request for consent, or (ii) is negotiating with Landlord to lease space in the Project at such time; or

14.2.8 The Transferee does not intend to occupy the entire Premises and conduct its business therefrom for a substantial portion of the term of the Transfer.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right of recapture, if any, under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, Tenant hereby waives any right at law or in equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee, but Tenant retains the right to sue Landlord for any damages suffered by Tenant and/or for specific performance if Landlord unreasonably withholds, conditions or delays its consent to a proposed Transfer (other than damages or injury to, or interference with, Tenant's business, including without limitation, loss of profits, however occurring). Tenant shall indemnify, defend and hold harmless Landlord from any and all liability, losses, claims, damages, costs, expenses, causes of action and proceedings involving any third party or parties (including without limitation Tenant's proposed subtenant or assignee) who claim they were damaged by Landlord's wrongful withholding or conditioning of Landlord's consent.

14.3 **Transfer Premium**. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord seventy-five percent (75%) of any "Transfer Premium," as that term is defined in this Section 14.3, received by Tenant from such Transferee. **"Transfer Premium"** shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, (ii) any free base rent reasonably provided to the Transferee, and (iii) any brokerage commissions and reasonable legal fees in connection with the Transfer. For purposes of this Section 14.3 only, when calculating the Transfer Premium, Tenant's Rent shall be designated as $5.50 per rentable square foot. "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer (provided Tenant may amortize such consideration over the term of the transfer to reflect the effective rate), and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. In the calculations of the Rent (as it relates to the Transfer Premium calculated under this Section 14.3), and the Transferee's Rent and Quoted Rent under Section 14.2 of this Lease, the Rent paid during each annual period for the Subject Space, and the Quoted Rent shall be computed after adjusting such rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions granted in connection therewith, including, but

not limited to, any rent credit and tenant improvement allowance. For purposes of calculating any such effective rent all such concessions shall be amortized on a straight-line basis over the relevant term.

14.4 **Landlord's Option as to Subject Space**. Notwithstanding anything to the contrary contained in this Article 14, in the event that (i) Tenant intends to Transfer any portion of the Premises for a term that does not expire prior to the expiration of the third (3rd) Lease Year, or (ii) Tenant intends to Transfer any space that will result in the assignment or sublease, in the aggregate, of in excess of 24,091 rentable square feet of the Premises, regardless of the term of any such Transfer, then Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Transfer Notice, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in the Transfer Notice as the effective date of the proposed Transfer. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner to recapture the Subject Space under this Section 14.4, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed Transferee, subject to provisions of this Article 14.

14.5 **Effect of Transfer**. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than two percent (2%), Tenant shall pay Landlord's costs of such audit.

14.6 **Additional Transfers**. For purposes of this Lease, the term **"Transfer"** shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of twenty-five percent (25%) or more of the partners, or transfer of twenty-five percent (25%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation *(i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization

of Tenant or (B) the sale or other transfer of an aggregate of twenty-five percent (25%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of twenty-five percent (25%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period, it being expressly agreed that any of the foregoing matters set forth in class (ii) shall not be deemed to be a Transfer if Tenant is a publicly held corporation.

14.7 **Occurrence of Default**. Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

14.8 **Non-Transfers**. Notwithstanding anything to the contrary contained in this Article 14, neither (i) an assignment to a transferee of all or substantially all of the assets of Tenant, (ii) an assignment to a transferee which is the resulting entity of a merger or consolidation of Tenant with another entity, (iii) an initial public offering of Tenant's stock on a nationally recognized stock exchange, nor (iv) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an **"Affiliate"**) (an entity which is controlled by, controls, or is under common control with, Tenant), shall be deemed a Transfer under this Article 14, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such assignment or sublease or such affiliate, and further provided that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease. **"Control,"** as used in this Section 14.8, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises**. No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant**. Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal (A) 150% of the greater of (i) the Rent applicable during the last rental period of the Lease Term under this Lease, and (ii) the then current market rent for the Premises (as determined by Landlord) during the first sixty (60) days of holdover, and (B) 200% of the greater of (i) and (ii), above, thereafter. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. For purposes of this Article 16, a holding over shall include Tenant’s remaining in the Premises after the expiration or earlier termination of the Lease Term, as required pursuant to the terms of Section 8.5, above, to remove any required improvements or Alterations (and to complete any corresponding repairs or restorations, as set forth in Section 8.5 of this Lease). Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding

over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within ten (10) days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of **Exhibit E**, attached hereto (or such other form as may be required by any prospective mortgagee or purchaser of the Project, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term, Landlord may require Tenant to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE 18

SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. In consideration of, and as a condition precedent to, Tenant's agreement to permit its interest pursuant to this Lease to be subordinated to any particular future ground or underlying lease of the Building or the Project or to the lien of any future mortgage or trust deed, and to any renewals, extensions, modifications, consolidations and replacements thereof, Landlord shall

deliver to Tenant a commercially reasonable non-disturbance agreement executed by the landlord under such ground lease or underlying lease or the holder of such mortgage or trust deed. Within forty-five (45) days after the Lease Commencement Date, Landlord shall provide Tenant with a nondisturbance agreement in a commercially reasonable form from Landlord's presently existing lender holding a first deed of trust on the Project. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within five (5) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

ARTICLE 19

DEFAULTS; REMEDIES

19.1 **Events of Default**. The occurrence of any of the following shall constitute a default of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within three (3) days after notice; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default, but in no event exceeding a period of time in excess of one hundred twenty (120) days after written notice thereof from Landlord to Tenant; or

19.1.3 To the extent permitted by law, a general assignment by Tenant or any guarantor of this Lease for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an

insolvency or bankruptcy law, or the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

19.1.4 Abandonment or vacation of all or a substantial portion of the Premises by Tenant, provided this term shall not apply so long as Tenant is actively marketing the Premises for assignment or sublease; or

19.1.5 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than three (3) business days after notice from Landlord, with respect to Articles 17 or 18, or more than five (5) business days with respect to Articles 5 or 14; or

19.1.6 Tenant's failure to occupy the Premises within thirty (30) business days after the Lease Commencement Date.

The notice periods provided herein are; in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default**. Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of any unpaid rent which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

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

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term **"rent"** as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 25 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant**. Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Form of Payment After Default**. Following the occurrence of an event of default by Tenant, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord hereunder, whether to cure the default in question or otherwise, be paid in the form of cash, money order, cashier's or certified check drawn on an institution

acceptable to Landlord, or by other means approved by Landlord, notwithstanding any prior practice of accepting payments in any different form.

19.5 **Efforts to Relet**. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant; provided Landlord shall attempt to mitigate Landlord's damages to the extent required by applicable laws. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

19.6 **Abatement of Rent**. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of (i) any repair, maintenance or alteration performed by Landlord, or which Landlord failed to perform, after the Lease Commencement Date and required by this Lease, which substantially interferes with Tenant's use of the Premises, (ii) any failure by Landlord to provide services, utilities or access to the Premises as required by this Lease, or (iii) the presence of hazardous materials not brought on the Premises by Tenant or Tenant's agents, employees, licensees, invitees, transferees or independent contractors (any such set of circumstances as set forth in items (i), (ii), or (iii) above, to be known as an **"Abatement Event")**, then Tenant shall give Landlord notice of such Abatement Event, and if such Abatement Event continues for five (5) consecutive business days after Landlord's receipt of any such notice (the **"Eligibility Period"**), then the Base Rent and Tenant's Share of Direct Expenses shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, a portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Base Rent and Tenant's Share of Direct Expenses for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. To the extent Tenant is entitled to abatement because of an event covered by Articles 11 or 13 of this Lease, then the Eligibility Period shall not be applicable. Such right to abate Base Rent and Tenant's Share of Direct Expenses shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 21

LETTER OF CREDIT

21.1 **Letter of Credit**.

21.1.1 **Delivery of Letter of Credit**. Tenant shall deliver to Landlord concurrent with Tenant's execution of this Lease, an unconditional, clean, irrevocable letter of credit (the **"L-C"**) in the amount of $5,781,840.00, which L-C shall be issued by a money-center bank (a bank which accepts deposits, maintains accounts, has a local San Francisco office which will negotiate a letter of credit, and whose deposits are insured by the FDIC) reasonably acceptable to Landlord, and which L-C shall be in a form and content as set forth on Exhibit F, or otherwise reasonably acceptable to Landlord. Tenant shall pay all expenses, points and/or fees incurred by Tenant in obtaining the L-C.

21.1.2 **Application of Letter of Credit**. The L-C shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Lease Term. The L-C shall not be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord. If Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, or if Tenant fails to renew the L-C at least thirty (30) days before its expiration, Landlord may, but shall not be required to, draw upon all or any portion of the L-C for payment of any Rent or any other sum in default, or for the payment of any amount that Landlord may reasonably spend or may become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage that Landlord may suffer by reason of Tenant's default. The use, application or retention of the L-C, or any portion thereof, by Landlord shall not (a) prevent Landlord from exercising any other right or remedy provided by this Lease or by law, it being intended that Landlord shall not first be required to proceed against the L-C, nor (b) operate as a limitation on any recovery to which Landlord may otherwise be entitled. Any amount of the L-C which is drawn upon by Landlord, but is not used or applied by Landlord shall be held by Landlord and deemed a security deposit (the **"L-C Security Deposit"**). If any portion of the L-C is drawn upon, Tenant shall, within five (5) days after written demand therefor, either (i) deposit cash with Landlord (which cash shall be applied by Landlord to the L-C Security Deposit) in an amount sufficient to cause the sum of the L-C Security Deposit and the amount of the remaining L-C to be equivalent

to the amount of the L-C then required under this Lease, or (ii) reinstate the L-C to the amount then required under this Lease, and if any portion of the L-C Security Deposit is used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord (which cash shall be applied by Landlord to the L-C Security Deposit) in an amount sufficient to restore the L-C Security Deposit to the amount then required under this Lease, and Tenant's failure to do so shall be a default under this Lease. Tenant acknowledges that Landlord has the right to transfer or mortgage its interest in the Project and the Building and in this Lease and Tenant agrees that in the event of any such transfer or mortgage, Landlord shall have the right to transfer or assign the L-C Security Deposit and/or the L-C to the transferee or mortgagee, and in the event of such transfer, Tenant shall look solely to such transferee or mortgagee for the return of the L-C Security Deposit and/or the L-C. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the L-C Security Deposit and/or the L-C, or any balance thereof, shall be returned to Tenant within thirty (30) days following the expiration of the Lease Term.

ARTICLE 22

INTENTIONALLY DELETED

ARTICLE 23

SIGNS

23.1 **Full Building**. Subject to Landlord's prior written approval, in its reasonable discretion, and provided all signs are in keeping with the quality, design and style of the Building and Project, Tenant, at its sole cost and expense, may install identification signage anywhere in (i) the 2800 Building at any time on or after the Lease Commencement Date, and (ii) the 2860 Building on or after the Additional Premises Commencement Date, provided that such signs must not be visible from the exterior of the Building, except as hereinafter provided.

23.2 **Prohibited Signage and Other Items**. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Tenant may not, except as hereinafter provided, install any signs on the exterior or roof of the Building, the Project or the Common Areas. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

23.3 **Building Monument Signage**. Tenant shall have (i) the non-exclusive right to have a sign on each of the existing monuments at the entrances to the Project on San Tomas Expressway and Walsh Road and the exclusive right to have a sign on the existing monument in front of the 2860 Building, (collectively, the **"Monument Signage"**); and (ii) the exclusive right to maintain and have a sign on the awning currently attached to the 2800 Building (the **"Building Signage"**) provided that (A) the size, materials, design, quality, style, content and other specifications of Tenant's Building Signage and Tenant's Monument Signage (collectively, **"Tenant's Signs"**) shall be subject to Landlord's prior written consent, which consent may be

withheld in Landlord's reasonable discretion; (B) Tenant's Signs shall comply with all applicable governmental rules and regulations; (C) Tenant's right to Tenant's Signs shall be exercisable by Tenant or any Transferee of Tenant permitted under this Lease while Tenant or such Transferee is in occupancy of the entire Premises or at least one entire Building of the Premises; and (D) Tenant's Signs on the Project entrance monuments shall be in the position determined by Landlord in its sole and absolute discretion. Tenant shall be responsible for all costs associated with Tenant's Signs, including, without limitation, all costs incurred in connection with the design, installation, maintenance, repair, compliance with laws and removal of Tenant's Signs. Should the name of Tenant be legally changed to another name (the "**New Name**"), or should Tenant assign any of its signage rights as provided hereunder, such Transferee's name shall also be deemed to be a New Name, and Tenant (or such Transferee) shall be entitled to modify, at Tenant's sole cost and expense, Tenant's name on Tenant's Monument Signage or Building Signage to reflect the New Name, so long as the New Name is not an "**Objectionable Name**." The term "**Objectionable Name**" shall mean any name which relates to an entity which is of a character or reputation, or is associated with a political orientation or faction, which is inconsistent with the quality of the Project, or which would otherwise reasonably offend a landlord of comparable buildings in the vicinity of the Project. Further, notwithstanding the transfer by Tenant of any of Tenant's signage rights hereunder to any Transferee, Tenant's signage rights hereunder shall not be, in any manner, increased, and Tenant shall only be entitled to allocate signage rights specifically granted hereunder to Tenant between itself and its Transferee. Tenant shall be responsible for the removal (and for any resulting required repairs to the applicable monument, awning, or building) of Tenant's Signs upon the expiration or earlier termination of this Lease, or upon the expiration of Tenant's right to Tenant's Signs hereunder.

ARTICLE 24

COMPLIANCE WITH LAW

Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Premises as are required to comply with the governmental rules, regulations, requirements or standards described in this Article 24. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

ARTICLE 25

LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after said amount is due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after the date they are due shall bear interest from the date when due until paid at a rate per annum equal to the lesser of (i) the annual **"Bank Prime Loan"** rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

ARTICLE 26

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 **Landlord's Cure**. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 **Tenant's Reimbursement**. Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

ARTICLE 27

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, or mortgagees or to current or prospective mortgagees, ground or underlying lessors or insurers, or, during the last twelve (12) months of the Lease Term, to prospective tenants; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises or the Building, or for structural alterations, repairs or improvements to the Building or the Building's systems and equipment. Notwithstanding anything to the contrary contained in this Article 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord, including janitorial service; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent and may take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein.

ARTICLE 28

TENANT PARKING

28.1 **Tenant Parking Passes**. Tenant shall be permitted to use, without charge, throughout the Lease Term, the number of parking passes set forth in Section 9 of the Summary, which passes shall relate to the Project's parking facilities. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility by Tenant, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations and Tenant not being in default under this Lease.

28.2 **Other Terms**. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder

to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. Any parking passes provided to Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval.

28.3 **Parking Procedures**. The parking passes initially will not be separately identified; however Landlord reserves the right in its sole and absolute discretion to separately identify by signs or other markings the area to which Tenant's parking passes relate. Landlord shall have no obligation to monitor the use of such parking facility, nor shall Landlord be responsible for any loss or damage to any vehicle or other property or for any injury to any person. Tenant's parking passes shall be used only for parking of automobiles no larger than full size passenger automobiles, sport utility vehicles or pick-up trucks. Tenant shall comply with all rules and regulations which may be adopted by Landlord from time to time with respect to parking and/or the parking facilities servicing the Project. Tenant shall not at any time use more parking passes than the number so allocated to Tenant or park its vehicles or the vehicles of others in any portion of the Project parking facility not designated by Landlord. Tenant shall not have the exclusive right to use any specific parking space. All trucks (other than pick-up trucks) and delivery vehicles shall be (i) parked at the loading dock of the Building, (ii) loaded and unloaded in a commercially reasonable manner, and (iii) permitted to remain on the Project only so long as is reasonably necessary to complete loading and unloading. In the event Landlord elects in its sole and absolute discretion or is required by any law to limit or control parking, whether by validation of parking tickets or any other method of assessment, Tenant agrees to participate in such validation or assessment program under such reasonable rules and regulations as are from time to time established by Landlord.

ARTICLE 29

MISCELLANEOUS PROVISIONS

29.1 **Terms; Captions**. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect**. Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights**. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the

Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Modification of Lease**. Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor.

29.5 **Transfer of Landlord's Interest**. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 **Prohibition Against Recording**. Except as provided in Section 29.4 of this Lease, neither this Lease, nor any affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, provided, Tenant may record a memorandum of this Lease, provided on the expiration or earlier termination of this Lease Tenant shall deliver to Landlord any documentation required to remove such memorandum from record.

29.7 **Landlord's Title**. Landlords title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 **Relationship of Parties**. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

29.9 **Application of Payments**. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

29.10 **Time of Essence**. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.11 **Partial Invalidity**. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty**. In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

29.13 **Landlord Exculpation**. The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Building or (b) the equity interest Landlord would have in the Building if the Building were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Building (as such value is determined by Landlord), provided that in no event shall such liability extend to any sales or insurance proceeds received by Landlord or the Landlord Parties in connection with the Project, Building or Premises. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

29.14 **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

29.15 **Right to Lease**. Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure**. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Articles 5 and 24 of this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.17 **Waiver of Redemption by Tenant**. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.18 **Notices**. All notices, demands, statements, designations, approvals or other communications (collectively, **"Notices"**) given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested (**"Mail"**), (B) transmitted by telecopy, if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made or attempted to be made. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant. As of the date of this Lease, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

Divco West Group, LLC
150 Spear Street
San Francisco, California 94105
Attention: Lesli Wang

and

DivcoWest Group, LLC
150 Almaden Boulevard
Suite 700
San Jose, California 95113

Attention: Asset Manager

and

Allen, Matkins, Leck, Gamble & Mallory
1999 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

29.19 **Joint and Several**. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority**. If Tenant is a corporation, trust or partnership, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation and (ii) qualification to do business in California.

29.21 **Attorneys' Fees**. In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law; WAIVER OF TRIAL BY JURY**. This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT

LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

29.23 **Submission of Lease**. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

29.24 **Brokers**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 12 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party.

29.25 **Independent Covenants**. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

29.26 **Project or Building Name and Signage**. Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts**. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Confidentiality**. Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants.

29.29 **Transportation Management**. Tenant shall fully comply with all present or future governmentally mandated programs intended to manage parking, transportation or traffic

in and around the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

29.30 **Building Renovations**. It is specifically understood and agreed that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant except as specifically set forth herein. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the **"Renovations"**) the Project, the Building and/or the Premises including without limitation the parking structure, common areas, systems and equipment, roof, and structural portions of the same, which Renovations may include, without limitation, (i) installing sprinklers in the Building common areas and tenant spaces, (ii) modifying the common areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions, and building safety and security, and (iii) installing new floor covering, lighting, and wall coverings in the Building common areas, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Project, including portions of the common areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or Landlord's actions in connection with such Renovations, or for any inconvenience or annoyance occasioned by such Renovations or Landlord's actions.

29.31 **No Violation**. Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Tenant's breach of this warranty and representation.

29.32 **Communications and Computer Lines**. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the **"Lines"**) at the Project in or serving the Premises, provided that (i) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Articles 7 and 8 of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by a protective conduit reasonably acceptable to

Landlord, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, (v) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove existing Lines located in or serving the Premises and repair any damage in connection with such removal, and (vi) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws or represent a dangerous or potentially dangerous condition.

29.33 **Development of the Project**.

29.33.1 **Subdivision**. Landlord reserves the right to further subdivide all or a portion of the Project. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from such subdivision.

29.33.2 **The Other Improvements**. If portions of the Project or property adjacent to the Project (collectively, the **"Other Improvements"**) are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Direct Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project, provided no such action results in an increase in Tenant's rental obligations under this Lease. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease.

29.33.3 **Construction of Project and Other Improvements**. Tenant acknowledges that portions of the Project and/or the Other Improvements may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a fully constructed project. Tenant hereby waives any and all rent offsets or claims of constructive eviction which may arise in connection with such construction.

29.34 **Office and Communications Services**.

29.34.1 **The Provider**. Landlord has advised Tenant that certain office and communications services may be offered at the Project by a concessionaire under contract to Landlord (**"Provider"**). Tenant shall be permitted to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree.

29.34.2 **Other Terms**. Tenant acknowledges and agrees that: (i) Landlord has made no warranty or representation to Tenant with respect to the availability of any such

services, or the quality, reliability or suitability thereof; (ii) the Provider is not acting as the agent or representative of Landlord in the provision of such services, and Landlord shall have no liability or responsibility for any failure or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider, or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility or liability for the installation, alteration, repair, maintenance, furnishing, operation, adjustment or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services, equipment or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, or entitle Tenant to any abatement of rent or additional rent or any other payment required to be made by Tenant hereunder, or constitute any accrual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

"Landlord":

SAN TOMAS PROPERTIES, LLC,
a Delaware limited liability company

By: DivcoWest Group, LLC,
a Delaware limited liability company

Its: Agent

By: /s/ Scott L.S.

Name: Scott L.S.

Its:

"Tenant":

AKAMAI TECHNOLOGIES, INC.,
a Delaware corporation

By: /s/ Paul Sagan

Name: Paul Sagan

Its: President & CEO

By: /s/ Kathryn L. Jorden

Name: Kathryn L. Jorden

Its: General Counsel & Secretary

EXHIBIT A

SAN TOMAS BUSINESS PARK

OUTLINE OF INITIAL PREMISES

2800 San Tomas Expressway

(Plans Not Exact)

(First Floor Plan)

(Second Floor Plan)

EXHIBIT A

SAN TOMAS BUSINESS PARK

OUTLINE OF INITIAL PREMISES

2860 San Tomas Expressway

(Plans Not Exact)

(First Floor Plan)

(Second Floor Plan)

EXHIBIT A-1

OUTLINE OF ADDITIONAL PREMISES

2800 San Tomas Expressway

(Plans Not Exact)

(First Floor Plan)

(Second Floor Plan)

EXHIBIT B

SAN TOMAS BUSINESS PARK
INTENTIONALLY OMITTED

EXHIBIT C

SAN TOMAS BUSINESS PARK
NOTICE OF LEASE TERM DATES

To:

_____

_____

_____

_____

Re: Office Lease dated _____, 20____ between _____, a ____("Landlord"), and _____, a _____ ("Tenant") concerning the buildings located at _____, Santa Clara, California.

Gentlemen:

In accordance with the Office Lease (the "Lease"), we wish to advise you and/or confirm as follows:

1. The Lease Term shall commence on or has commenced on _____ for a term of _____ ending on _____.

2. Rent commenced to accrue on _____, in the amount of _____.

3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

4. Your rent checks should be made payable to _____ at _____.

5.

"Landlord":

_____

a

_____

By:

_____

Its:

_____

Name:

_____

Its:

_____

Agreed to and Accepted
as of _____, 20___.

"Tenant":

_____

a

_____

By:_____

Its:_____

EXHIBIT D

SAN TOMAS BUSINESS PARK

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, Tenant and in the event of the loss of keys so furnished, Tenant shall pay to Landlord the cost of replacing same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the Santa Clara, California area. Tenant, its employees and agents must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable to Landlord for all acts of such persons. The Landlord and his agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment of any kind shall be brought into the Building without prior notice to Landlord. All moving activity into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord designates. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in

and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility and expense of Tenant.

5. The requirements of Tenant will be attended to only upon application at the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

6. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without the prior written consent of the Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and its agents of Landlord to prevent same.

7. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused same.

8. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent. Tenant shall not purchase spring water, ice, towel, linen, maintenance or other like services from any person or persons not approved by Landlord.

9. Except for vending machines intended for the sole use of Tenant's employees and invitees, no vending machine or machines other than fractional horsepower office machines shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

10. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic fumes, or other inflammable or combustible fluid chemical, substitute or material. Tenant shall provide material safety data sheets for any Hazardous Material used or kept on the Premises.

11. Tenant shall not without the prior written consent of Landlord use any method of heating or air conditioning other than that supplied by Landlord.

12. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors, or vibrations, or interfere with other tenants or those having business therein, whether by the use of any musical instrument, radio, phonograph, or in any other way. Tenant shall not throw anything out of doors, windows or skylights or down passageways.

13. Tenant shall not bring into or keep within the Project, the Building or the Premises any animals, birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.

14. No cooking shall be done or permitted on the Premises, nor shall the Premises be used for the storage of merchandise, for lodging or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

15. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises provided for in the Summary. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises.

16. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

17. Tenant, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

18. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall refrain from attempting to adjust any controls. Tenant shall participate in recycling programs undertaken by Landlord.

19. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in San Jose, California without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

20. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

21. Any persons employed by Tenant to do janitorial work shall be subject to the prior written approval of Landlord, and while in the Building and outside of the Premises, shall be subject to and under the control and direction of the Building manager (but not as an agent or servant of such manager or of Landlord), and Tenant shall be responsible for all acts of such persons.

22. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord, and no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard drapes. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and a warm white bulb color approved in advance in writing by Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the prior written consent of Landlord. Tenant shall be responsible for any damage to the window film on the exterior windows of the Premises and shall promptly repair any such damage at Tenant's sole cost and expense. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights. Tenant shall abide by Landlord's regulations concerning the opening and closing of window coverings which are attached to the windows in the Premises, if any, which have a view of any interior portion of the Building or Building Common Areas.

23. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

24. Tenant must comply with requests by the Landlord concerning the informing of their employees of items of importance to the Landlord.

25. Tenant must comply with all applicable **"NO-SMOKING"** or similar ordinances. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building.

26. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant

desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

27. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise and annoyance.

28. Tenant shall not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.

29. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

30. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

31. Tenant shall not purchase spring water, towels, janitorial or maintenance or other similar services from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with the security and proper operation of the Building.

32. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked and properly operational fire extinguisher next to any duplicating or photocopying machines or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, Building, the Common Areas and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT D

EXHIBIT E

SAN TOMAS BUSINESS PARK

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Office Lease (the "Lease") made and entered into as of _____, 20__ by and between _____ as Landlord, and the undersigned as Tenant, for Premises on the _____ floor(s) of the office building located at _____, Santa Clara, California _____, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.

2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on _____, and the Lease Term expires on _____, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.

3. Base Rent became payable on _____.

4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.

5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:

6. Tenant shall not modify the documents contained in Exhibit A without the prior written consent of Landlord's mortgagee.

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

8. To the best of Tenant's knowledge, except as set forth on Exhibit B attached hereto, if any, all conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.

9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.

10. To the best of Tenant's knowledge, except as set forth on Exhibit B attached hereto, if any, as of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.

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

14. To the undersigned's knowledge, all tenant improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at _____on the _____ day of ___, 20___.

"Tenant":

_____

a _____

By: _____

Its: _____

Name: _____

Its: _____

EXHIBIT F

SAN TOMAS BUSINESS PARK

FORM OF LETTER OF CREDIT
(Letterhead of a money center bank
acceptable to the Landlord)

_____, 2000

San Tomas Properties, LLC
c/o DivcoWest Group, LLC
150 Almaden Boulevard
Suite 700
San Jose, California 95113

Gentlemen:

We hereby establish our Irrevocable Letter of Credit and authorize you to draw on us at sight for the account of AKAMAI TECHNOLOGIES, INC., a Delaware corporation, the aggregate amount of Five Million Seven Hundred Eighty-One Thousand Eight Hundred Forty and No/100 Dollars ($5,781, 840.00).

Funds under this Letter of Credit are available to the beneficiary hereof as follows:

Any or all of the sums hereunder may be drawn down at any time and from time to time from and after the date hereof by a representative of SAN TOMAS PROPERTIES, LLC, a Delaware limited liability company ("Beneficiary"), when accompanied by this Letter of Credit and a written statement, certifying that such moneys are due and owing to Beneficiary.

This Letter of Credit is transferable in its entirety. Should a transfer be desired, such transfer will be subject to the return to us of this advice, together with written instructions.

The amount of each draft must be endorsed on the reverse hereof by the negotiating bank. We hereby agree that this Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Letter of Credit shall expire on _____, 200___.

Notwithstanding the above expiration date of this Letter of Credit, the term of this Letter of Credit shall be automatically renewed for successive, additional one (1) year periods unless, at least thirty (30) days prior to any such date of expiration, the undersigned shall give written notice to Beneficiary, by certified mail, return receipt requested and at the address set forth above or at such other address as may be given to the undersigned by Beneficiary, that this Letter of Credit will not be renewed.

This Letter of Credit is governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500.

Very truly yours,
(Name of Issuing Bank)

By: _____

EXHIBIT F

Exhibit 99.1

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 quarterly report on Form 10-Q of Akamai Technologies, Inc. (the "Company") for the period ended September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, George H. Conrades, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ George H. Conrades

George H. Conrades
Chief Executive Officer

Dated: November 14, 2002

Exhibit 99.2

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 quarterly report on Form 10-Q of Akamai Technologies, Inc. (the "Company") for the period ended September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Timothy Weller, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Timothy Weller

Timothy Weller
Chief Financial Officer

Dated: November 14, 2002