



# City of Palo Alto

## Finance Committee Staff Report

(ID # 12304)

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**Report Type: Action Items**

**Meeting Date: 6/15/2021**

**Summary Title: 1900 Embarcadero Lease Agreement**

**Title: Staff Recommends the Finance Committee Review the Lease Agreement With BioScience Properties for the Regional Water Quality Control Plant Workspace at 1900 Embarcadero Road in an Estimated Total Amount of \$1.73 Million for a Period of Five Years and Recommend City Council Approval**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that the Finance Committee review the Lease Agreement (Attachment A) with BioScience Properties for Regional Water Quality Control Plant work, storage, and parking space at 1900 Embarcadero Road in the approximate amount of \$1.73 million for a five-year lease term, and recommend to City Council that the City Manager be authorized to execute the Agreement.

### **Executive Summary**

The City's Regional Water Quality Control Plant (Plant) is entering a period of concentrated Capital Improvement Projects over the next five years with a likely total cost of over \$250 million. Six major projects are in the design and construction phases. To facilitate those projects and provide room for construction, staging, consultants, and contractors, some City staff and equipment must be moved from their current location, while maintaining quick and ready access to the Plant. Lease space is currently available immediately adjacent to the Plant at 1900 Embarcadero Road. Staff proposes that the Wastewater Treatment Enterprise Fund lease approximately 5,500 square feet of space in that building for a term of five years at an estimated total cost of \$1.73 million. During that time, it is envisioned that different personnel and equipment would be moved in and out of that space to facilitate different needs during Capital Improvement Program (CIP) construction.

### **Background**

The Plant treats wastewater from six communities including the City of Palo Alto. Palo Alto contributes approximately one-third of the wastewater to the Plant and pays for approximately one-third of the expenses. Much of the Plant is now 50 years old and must be refurbished or

rebuilt as discussed at the April 20, 2021 Finance Committee meeting ([SR #12170](#)). In addition, new processes must be added to meet emerging environmental requirements for discharge to the San Francisco Bay and to supply recycled water for irrigation and highly purified water for other uses. These needs resulted in a 2012 Long Range Facilities Plan, which was accepted by City Council. Subsequently, individual CIP projects were developed and six are now in the design and construction process.

### **Discussion**

In order to move the six CIP projects into the construction phase, space must be created at the Plant for staging, materials storage, contractor and consultant workspace, parking, and the construction itself. One immediate need is to move City employees and materials out of the existing temporary trailers and use these for consultants and contractors. A second need is to move City employees, equipment, and materials out of the Administration Building, which will enable the repurposing of the building for pumping and electronic control of recycled and purified water in the future, consistent with several CIP projects. This move also relocates employees to more appropriate distances from motors, pumps, and electronics, which are in the current facility. In addition, the move frees up a large open space for larger gatherings with necessary distancing for meetings and job walks with contractors. The Plant currently does not have a space that serves this function. While it had been hoped to accomplish these moves much sooner, good alternatives did not exist.

Just recently, space for personnel, materials, equipment, and parking has become available at 1900 Embarcadero Road, immediately adjacent to the Plant. This location will act as a modest extension of the Plant, in a way that no other available property would. Employees will be able to walk and move materials, equipment, and samples around at the Plant much as they would have from their current locations. The new location will allow staff to perform inspection, investigation, repair, design, construction oversight, and outreach material preparation functions. These functions cannot be efficiently performed at remote locations. The effort to work at home in response to the pandemic confirmed that most Plant workers cannot efficiently perform most of their tasks remotely. Some Plant workers can perform some tasks at home but space will still be needed at the Plant to store, lay out work, and work with materials.

Understanding that the Plant space requirements would likely exceed the current footprint, staff has had an ongoing dialogue for the past decade with the two owners of appropriate buildings adjacent to the Plant. Until just recently, opportunities for leasing space of the right size in one of those buildings was not available. Now, for the first time in more than 20 years, the City has an opportunity to lease space adjacent to the Plant. Approximately 5,500 square feet of space is available in 1900 Embarcadero Road, at the corner of Embarcadero Road and Embarcadero Way. This is sufficient for approximately 25 employees (and their materials) most in need of relocation to allow the CIP projects to move forward. Since it is not known when this opportunity will present itself again, staff is recommending that Finance Committee review the attached Lease Agreement (Attachment A) with BioScience Properties and recommend its approval to City Council.

One of the CIP projects in the group of six near-term CIP projects referred to above is the New Laboratory and Environmental Services Building (WQ-14002) or “Laboratory Building”. This new building would replace a number of functional areas around the Plant and the 50-year-old facilities they are in. A preliminary design of this building resulted in a new cost estimate of almost \$60 million. This estimate is much higher than an earlier estimate included in the 2012 Long Range Facilities Plan. Therefore, creative alternatives are now being explored to reduce the size of this building and reduce its cost. One potential alternative is to purchase the building and thereby reduce the amount of space needed for a Laboratory Building. This possibility will be analyzed in greater detail in the coming months. In the interim, leasing the 5,500 square feet moves the Plant in this direction, with continuing to lease or to purchase the building becoming options.

**Key Terms of the Lease Agreement**

*COMMENCEMENT DATE:* July 1, 2021

*EXPIRATION DATE:* June 30, 2026 (i.e., sixty (60) months after the Commencement Date)

*PREMISES TO BE LEASED:* Suites 110, 201, 205 and 207

*RENTABLE AREA OF PREMISES:* 5,469 square feet

*RENTABLE AREA OF BUILDING:* 25,303 square feet

*BASE RENT:*

Months of Term	Base Rent per Rentable Square Foot	Monthly Base Rent
1-12	\$5.30	\$28,985.70
13-24	\$5.46	\$29,855.27
25-36	\$5.62	\$30,750.93
37-48	\$5.79	\$31,673.46
49-60	\$5.97	\$32,623.66

Rent for the second (2<sup>nd</sup>), thirteenth (13<sup>th</sup>), twenty-fifth (25<sup>th</sup>) and thirty-seventh (37<sup>th</sup>) months of the Term shall not be charged.

*CITY’S SHARE:* 21.6% of Rentable space in the Building

*BASE YEAR:* Calendar year 2021

*PARKING SPACES:* Sixteen (16) unreserved spaces

**Rent Amount:**

As noted above, the proposed lease includes four months of free rent spaced out over the term of the lease. When the four free months are factored in, the \$5.30 per rentable square foot base monthly rate is equivalent to an approximately \$4.95 starting rate, which is slightly higher than the appraised value of \$4.75 per square foot. This rental rate, as adjusted, is higher than

the rate the City currently pays for space at Elwell Court (\$3.95), but does reflect a negotiated reduction from the original asking price of \$5.70 per square foot. The Elwell Court space, located approximately one mile away from 1900 Embarcadero, is used by the Utilities Department. Unlike the current situation where the City is dealing with a new owner and uncertain rental environment, the City has leased the Elwell Court facility since 1998, so enjoys the benefit of a long-standing business relationship. The rental rate for 1900 Embarcadero is higher due to its location, condition, parking, amenities, and appearance. The site's location is beneficial for the City, because staff's availability and proximity to the Plant are important for efficient day to day operational needs in order to have easy access the various Plant facilities.

### **Rent Increases Over Time:**

The type of lease the Owner uses for this building is known as "Full Service", where a Base Rent (\$5.30 per square foot per month, in this case) and a Base Year (2021, in this case) are established. The Base Rent will increase 3 percent annually. The Landlord pays all building's operating expenses in the Base (first) Year. The tenant then pays its proportionate share (21.61%) of incremental *increases* in expenses, over the Base Year, in subsequent years. Projected increases in expenses, if any, are calculated on an annual basis and added to the monthly rental as "Additional Expenses." Additional Expenses include on-going operating costs, such as utilities, insurance, property tax, and repair and maintenance. To the degree the expenses are controllable – management and administrative costs, cleaning, security – any increase is capped at 7%. This creates some uncertainty in the rental amount in the four subsequent years of this lease as the owner is new so there is no historical data to review to assess operational performance. The lease does contain a "non-appropriation" clause which provides that if Council does not agree to fund the lease in any year it may be terminated without a penalty. A remaining concern is that property taxes could increase if the building is sold again. However, this is unlikely as the building just sold in the year before the City's Base Year, and the property taxes are therefore aligned with current market valuation.

### **Resource Impact**

The total cost of the new lease is estimated to be \$1.73 million over the five-year lease term, including an annual increase in the Base Rent of 3 percent. Palo Alto treats the combined wastewater from Palo Alto, Los Altos, Los Altos Hills, Mountain View, Stanford University, and the East Palo Alto Sanitary District, and shares the costs of operating the Plant proportionally with the other partners. Similar to other shared costs for the Plant, Palo Alto's cost share of the rent is approximately 35 percent and the other five agencies' share is approximately 65 percent (outlined in below table).

The lease is a "Full Service" type lease in which expenses are paid by the Landlord except that increases in expenses are paid by the City with a cap of 7 percent per year on controllable expenses. This constitutes a 0 to 7+ percent range for years 2 through 5 (FY 2023 through FY 2026) of the lease term and is not built into the estimated cost projection below. No such increases will apply to the first year (FY 2022) and any subsequent increase will be assessed in the subsequent years of the lease term and addressed as needed through the annual budget

development process. Additionally, monthly fiber costs for the office suites are estimated at \$330 per month or approximately \$3,960 annually. These costs are not included in the rental lease agreement, and will be funded separately through the Utility portion of the operating Budget for the RWQCP.

Due to the timing of this agreement, these expenses were not included in the FY 2022 Proposed Operating Budget for the Wastewater Treatment Fund. Pending Finance Committee’s recommendation to Council to approve this lease agreement, a budget amendment in the Wastewater Treatment Fund will be brought to City Council as a recommendation for approval subsequent to the adoption of the FY 2022 Operating Budget on June 21, 2021. Funding for future fiscal years of the five-year lease term is subject to the annual appropriation of funds through the annual budget process.

<b>Fiscal Year</b>	<b>Total Cost</b>	<b>CPA Cost Share</b>
FY 2022	\$318,843	\$110,224
FY 2023	\$328,408	\$113,531
FY 2024	\$338,260	\$116,937
FY 2025	\$348,408	\$120,445
FY 2026	\$391,484	\$135,336
<b>TOTAL</b>	<b>\$1,725,403</b>	<b>\$596,472</b>

Note: Estimated amounts include an annual 3 percent increase and one month of free rent in years 1, 2, 3, and 4 of the five-year lease term.

**Stakeholder Engagement**

Leasing this space will not impact neighbors or Baylands visitors as no activities producing noise or emissions will be transferred to the new location. Therefore, a formal outreach program was not conducted. However, the immediate neighbors were notified, as were the Partners of the Plant. The lease expense is approximately 1.0 percent of the Plant’s estimated annual operating expenses and was not a concern to the Partners. On the contrary, should the lease be extended, or the building purchased, it could result in construction of a considerably smaller Laboratory Building than currently under consideration. This would likely save a large amount of money for all of the Partners. This possibility will be analyzed in the coming months.

**Environmental Review**

Approval of the Lease Agreement is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guideline Section 15301, Existing Facilities, involving negligible expansion of existing or former use.

**Attachments:**

- Attachment A: Lease Agreement for A Portion of 1900 Embarcadero Road

**LEASE AGREEMENT**

BETWEEN

1900 EMBARCADERO PROPERTY OWNER, LP,  
A DELAWARE LIMITED PARTNERSHIP

LANDLORD

AND

CITY OF PALO ALTO,  
A CALIFORNIA CHARTERED MUNICIPAL CORPORATION

TENANT

1900 EMBARCADERO ROAD  
PALO ALTO, CALIFORNIA

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A Diagram/Description of Premises

B Rules and Regulations

Addendum I: Option to Extend Term

Schedule I: Tenant's Insurance Requirements



**BASIC LEASE INFORMATION**

*BUILDING:* 1900 Embarcadero Road  
Palo Alto, California 94303

*LANDLORD'S ADDRESS:* 1900 Embarcadero Property Owner, LP  
c/o BioScience Properties, Inc.  
514 Via De La Valle, Suite 300A  
Solana Beach, CA 92075  
Attn: Steve Bollert  
Email: steve@bioscienceprop.com  
Telephone: (858) 263-0770

With a copy to:

1900 Embarcadero Property Owner, LP  
c/o BioScience Properties, Inc.  
1900 Embarcadero Road, Suite 201  
Palo Alto, CA 94303  
Attn: Tina Long  
Email: tina@bioscienceprop.com  
Telephone: (650) 867-5981

*TENANT'S ADDRESS:* City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303  
Attn: Real Property Manager  
Email: real.property@cityofpaloalto.org  
Telephone: (650) 329-2264

With a copy to:

City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303  
Attn: Public Works – Watershed Protection  
Email: cleanbay@cityofpaloalto.org  
Telephone: (650) 329-2598

*COMMENCEMENT DATE:* July 1, 2021.

*EXPIRATION DATE:* June 30, 2026 (i.e., sixty (60) months after the Commencement Date).

*PREMISES:* Suites 110, 201, 205 and 207 in the Building

*RENTABLE AREA OF PREMISES:* Suite 110: 1,011 rentable square feet  
Suite 201: 1,600 rentable square feet  
Suites 205 & 207: 2,858 rentable square feet  
Total: 5,469 rentable square feet

*RENTABLE AREA OF BUILDING:* 25,303 rentable square feet

*DIAGRAM OF PREMISES:* See Exhibit A

*BASE RENT:*

<b>Months of Term</b>	<b>Base Rent per Rentable Square Foot</b>	<b>Monthly Base Rent</b>
1-12	\$5.30	\$28,985.70
13-24	\$5.46	\$29,855.27
25-36	\$5.62	\$30,750.93
37-48	\$5.79	\$31,673.46
49-60	\$5.97	\$32,623.66

\*Notwithstanding the foregoing, provided that Tenant is not in default under this Lease beyond any applicable notice and cure period, the Base Rent for the second (2<sup>nd</sup>), and thirteenth (13<sup>th</sup>), twenty-fifth (25<sup>th</sup>) and thirty-seventh (37<sup>th</sup>) months of the Term shall be abated.

*SECURITY DEPOSIT:* \$32,623.66

*TENANT'S SHARE:* 21.61%

*BASE YEAR:* Calendar year 2021

*PERMITTED USE:* General office, administration, incidental storage, and other ancillary uses as approved by the City of Palo Alto and otherwise in compliance with all applicable laws, ordinances, rules and regulation.

*PARKING SPACES:* Sixteen (16) unreserved spaces (i.e., 3 per 1,000 rentable square feet of the Premises)

*PARKING FEE:* \$0 per unreserved space

*INSURANCE AMOUNT:* \$1,000,000 per occurrence, \$2,000,000 aggregate

*BROKERS:* None

## LEASE AGREEMENT

THIS LEASE, dated as of \_\_\_\_\_, 2021, is between 1900 EMBARCADERO PROPERTY OWNER, LP, a Delaware limited partnership (“**Landlord**”), and CITY OF PALO ALTO, a California chartered municipal corporation (“**Tenant**”). Landlord and Tenant hereby covenant and agree as follows:

### 1. DEFINITIONS

#### 1.1. *Basic Lease Information*

The Basic Lease Information is hereby incorporated into and made a part of this Lease.

### 2. PREMISES

#### 2.1. *Premises Defined*

Landlord leases to Tenant and Tenant hires from Landlord on the terms and conditions contained in this Lease the Premises specified in the Basic Lease Information. Tenant accepts the Rentable Area as specified in the Basic Lease Information as the Rentable Area of the Premises and such area shall not be subject to recalculation. Landlord warrants to Tenant that the Premises and Building have been measured substantially in accordance with industry standards. The terms “common area” and “common areas” shall mean spaces, facilities, and installations such as toilets, janitor, telephone, electrical, and mechanical rooms and closets, trash facilities, stairs, public lobbies, corridors and other circulation areas, wherever located in the Building. The Building, the real property upon which the Building stands, common areas, drives, walkways and other amenities appurtenant to or servicing the Building, are herein sometimes collectively called the “**Real Property**” or the “**Project**.”

### 3. TERM

#### 3.1. *Term Commencement*

The “**Term**” shall commence on the Commencement Date and shall terminate on the Expiration Date, each as described in the Basic Lease Information. Any occupancy or possession of the Premises by Tenant with Landlord’s permission prior to the date specified for the commencement of the Term shall be upon and subject to all terms, covenants and conditions of this Lease, including the payment of rent. Landlord will make all commercially reasonable efforts to deliver the Premises to Tenant in the condition required by this Lease on the Commencement Date. If, for any reason whatsoever, Landlord cannot deliver possession of the Premises to Tenant on or prior to the Commencement Date as set forth in the Basic Lease Information, then (A) the validity of this Lease shall not be affected except that the Term shall begin at such time that the Premises are delivered to Tenant; and (B) Tenant shall have no claim against Landlord on account of such late delivery, provided, however, that Tenant shall owe no rent until at such time that the Premises is delivered to Tenant and provided further, however, that if Landlord fails to deliver the Premises to Tenant within six (6) months following the Commencement Date as set forth in the Basic Lease Information, then Tenant shall have the right, in its sole discretion, to terminate this Lease. Following the Commencement Date, Landlord will deliver to Tenant a notice identifying the Commencement Date, a copy of which notice shall be executed by Tenant and returned to Landlord.

### 4. RENT; ADDITIONAL CHARGES

#### 4.1. *Annual Rental*

Tenant shall pay to Landlord during the Term at the address set forth in the Basic Lease Information, without demand, offset or deduction, Base Rent as set forth in the Basic Lease Information. Base Rent shall be payable on or before the first day of each month, in advance, provided that the first month’s rent shall be payable no later than ten (10) days following the execution of this Lease by Tenant. If the

Commencement Date or the Expiration Date should occur on a day other than the first or last day of a calendar month, respectively, then the Base Rent for such period shall be prorated.

#### **4.2. Additional Charges**

Tenant shall pay to Landlord as and when due all charges, expense and tax reimbursements (including, without limitation, Tenant's Share of Excess Expenses and Excess Taxes), fees, expenses, and all other amounts as provided in this Lease ("**Additional Charges**"). Unless otherwise specifically provided for herein, all Additional Charges shall be due 30 days following Tenant's receipt of Landlord's invoice for the Additional Charges. Base Rent and Additional Charges shall constitute the "**Rent**" payable by Tenant for the Premises.

#### **4.3. Late Charges**

If Tenant fails to pay any Rent within five (5) business days after the date Landlord gives Tenant notice, such unpaid amounts will be subject to a late payment charge equal to five percent (5%) of the unpaid amounts in each instance. This late payment charge has been agreed upon by Landlord and Tenant, after negotiation, as liquidated damages and a reasonable estimate of the additional administrative costs and detriment that will be incurred by Landlord as a result of any such failure by Tenant, the actual damages and costs thereof being extremely difficult if not impossible to determine.

#### **4.4. Security Deposit**

Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord the Security Deposit described in the Basic Lease Information. The Security Deposit shall be held by Landlord as security for Tenant's performance of the terms of this Lease. Landlord may (but shall not be required to) use all or any part of the Security Deposit to remedy any default of Tenant under the Lease or to compensate Landlord for any loss or damage which Landlord may incur as a result of Tenant's default. If any portion of the Security Deposit is so used, Tenant shall redeposit said amount with Landlord within ten (10) days of Landlord's demand therefor. Tenant shall not be entitled to interest on the Security Deposit and Landlord shall not be required to keep the Security Deposit separate from its general funds.

### **5. EXPENSES AND TAXES**

#### **5.1. Definitions**

For purposes of this Article 5, the following terms shall have the following meanings:

(a) "**Real Estate Taxes**" shall mean any and all real property taxes and any and all general, supplemental and special assessments and reassessments, transit charges, fees or assessments, housing fund assessments, security charges, maintenance fees, payments in lieu of taxes, fees or charges, and any other tax, fee, assessment, charge or excise levied or assessed (whether at the date of this Lease or thereafter) (i) on the Real Property, any portion thereof or Landlord's interest therein, or Landlord's personal property used in the operation of the Real Property, (ii) on the use or occupancy of the Real Property or any portion thereof, including, without limitation, any tax or levy made against Rent or gross receipts from the Real Property, (iii) on the sale or other transfer of the Real Property or any portion thereof, or any improvements thereto or recapitalization thereof, (iv) in connection with the business of renting space in the Real Property, or in connection with entering into this Lease or any other lease with respect to the Real Property, or (v) for housing, police, fire, or other governmental services provided by any governmental or public entity and collected by a lien upon the Real Property. Real Estate Taxes shall also include any other tax, fee, or charge that may be levied or assessed as a substitute for any other Real Estate Taxes. Real Estate Taxes shall not include those amounts payable by Tenant pursuant to Section 26, or similar amounts payable directly by other tenants of the Building. Real Estate Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes, to the extent the reduction in Real Estate Taxes exceeds such costs. Tenant may in its sole discretion

challenge the assessed value of the Project with the applicable authority, and Landlord will take such commercially reasonable action, at no cost to Landlord, to cooperate with Tenant in any such challenge.

(b) “**Expenses**” shall mean all reasonable actual costs and expenses paid and/or incurred by Landlord in connection with the management, operation, maintenance and repair of the Real Property, including, without limitation, (i) the cost of heating, ventilation, air conditioning, steam, electricity, gas, water, sewer service, mechanical, elevator and other systems and all other utilities, and the cost of supplies and equipment and maintenance and service contracts in connection therewith, (ii) the cost of repairs, replacements, general maintenance and cleaning, including, without limitation, the cost of janitorial and other service agreements and trash removal, (iii) the cost of insurance Landlord reasonably deems appropriate to carry, or is required to carry by any mortgagee under any mortgage against the Real Property or any portion thereof or interest therein with respect to the Real Property (including, without limitation, earthquake and flood insurance) or any of Landlord’s or a property manager’s personal property used in the operation of the Real Property, (iv) wages, salaries, payroll taxes and other labor costs and employee benefits of all on-site employees, and the allocable share of all off-site employees to the extent engaged in the operation, management, maintenance and repair of the Real Property, (v) reasonable fees, charges and other costs, including, without limitation, property management fees, consulting fees, attorneys’ fees and accounting fees of all independent contractors engaged by Landlord, or that are charged by Landlord if Landlord performs equivalent services in connection with the Real Property, (vi) the cost of supplying, replacing and cleaning employee uniforms, (vii) fifty percent (50%) of the fair market rental value of the property manager’s offices in the Building, (viii) the cost of any capital improvements or alterations made to the Real Property after the date of this Lease that are intended as a labor-saving measure or to effect other economies in the operation or maintenance of the Real Property or that are required under any governmental law or regulation that was not applicable to the Real Property at the date of this Lease (in either case amortized over such reasonable period as Landlord shall determine), together with interest on the unamortized balance(s) at the a rate equal to Landlord’s borrowing costs as reasonably determined by Landlord, (ix) all costs and fees for licenses, inspections or permits that Landlord may be required to obtain, (x) exterior and interior landscaping, (xi) depreciation on personal property used by Landlord exclusively on the Real Property, (xii) legal fees, costs and disbursements incurred in connection with proceedings to contest, determine, or reduce Expenses, to the extent the reduction exceeds the costs (xiii) reasonable reserves for any periodic items or improvements that would constitute an Expense when paid (provided that payment of an Expense out of such reserves shall be excluded in calculating Expenses for the applicable period), and (xiv) any other reasonable expenses and costs, whether foreseeable or unforeseeable, incurred in managing, operating, maintaining and repairing the Real Property.

(c) “**Base Year**” shall be as provided on the Basic Lease Information.

(d) “**Comparison Year**” shall mean each calendar year after the Base Year.

(e) “**Tenant’s Share**” of Taxes and Expenses shall be as provided on the Basic Lease Information. If the rentable area of the Premises or the Building is changed for any reason, Tenant’s Share shall be recalculated to equal an amount determined by dividing the rentable area of the Premises after such occurrence by the rentable area of the entire Building after such occurrence.

(f) “**Excess Taxes**” with respect to a given Comparison Year shall mean the excess of Real Estate Taxes for that Comparison Year over Real Estate Taxes for the Base Year.

(g) “**Excess Expenses**” with respect to a given Comparison Year shall mean the excess of Expenses for that Comparison Year over Expenses for the Base Year.

## **5.2. Special Allocations**

Real Estate Taxes and Expenses which are, in Landlord’s reasonable discretion, properly chargeable solely to a single tenant or to a group of tenants shall be so allocated. Any amount so allocated to Tenant shall, notwithstanding any other provision of this Lease, be paid by Tenant as Additional Charges.

### **5.3. Real Estate Taxes and Expense Gross-Up**

Real Estate Taxes and Expenses for any period (including, without limitation, the Base Year) in which the Building is not at least ninety-five percent (95%) occupied shall be adjusted according to Landlord's reasonable estimate to reflect the Real Estate Taxes and Expenses which would be payable if the Building were ninety-five percent (95%) occupied.

### **5.4. Payment of Tenant's Share of Excess Taxes and Expenses**

Commencing on the first anniversary of the Commencement Date, Tenant shall pay to Landlord, in advance, as Additional Charges one twelfth (1/12th) of Tenant's Share of Excess Taxes and Excess Expenses for each Comparison Year in an amount estimated by Landlord and billed by Landlord to Tenant. As soon as reasonably possible after the expiration of the Base Year and each Comparison Year, Landlord shall furnish Tenant with a statement ("**Landlord's Statement**") setting forth the actual amount of Real Estate Taxes and Expenses for such Base Year or Comparison Year, as applicable, and Tenant's Share of Excess Taxes and Expenses for such Comparison Year, which Landlord's Statement shall include reasonably detailed calculations of such amounts. Tenant may request, within thirty (30) days of receipt of Landlord's Statement, such additional documentation as is reasonably necessary to review Landlord's Statement; provided however, that any such request will not affect the timing of any payments required under this Lease and provided further that Landlord shall be obligated to provide only such documentation which is within Landlord's possession. Upon Tenant's request, Landlord shall provide such additional documentation within twenty (20) days following the request. If the actual amount of Tenant's Share of Excess Taxes and Expenses due for such Comparison Year is greater than the estimated amount of Tenant's Share of Excess Taxes and Expenses paid by Tenant for such Comparison Year, the difference shall be paid by Tenant (whether or not this Lease has terminated) within thirty (30) days after delivery of Landlord's Statement or paid with the next installment of Base Rent. If the actual amount of Tenant's Share of Excess Taxes and Expenses due for such Comparison Year is less than the estimated amount of Tenant's Share of Excess Taxes and Expenses paid by Tenant for such Comparison Year, the difference shall be paid by Landlord (whether or not this Lease has terminated) along with delivery of Landlord's Statement, or credited against the next installments of Excess Taxes or Excess Expenses due from Tenant hereunder; provided, however, that in no event shall Excess Taxes or Excess Expenses for a given Comparison Year be less than zero. Tenant's Share of Excess Taxes and Excess Expenses for any Comparison Year that is less than a full year shall be prorated equitably by Landlord.

### **5.5. Controllable Expenses**

Notwithstanding any provision of this Lease to the contrary, for the sole purpose of calculating Tenant's Share of Excess Expenses, the Controllable Expenses (as defined below) for each calendar year after the Base Year shall not increase by more than seven percent (7%) over the maximum permitted Controllable Expenses for the immediately preceding calendar year (i.e., on a cumulative, compounding basis and regardless of the actual Controllable Expenses incurred for such preceding year); provided, however, that if the actual Controllable Expenses for any calendar year are greater than the maximum amount permitted to be charged to Tenant hereunder, then the difference shall be added to the actual Controllable Expenses for succeeding years of the Term until exhausted. The term "**Controllable Expenses**" mean those actual Expenses for which increases are reasonably within the control of Landlord, and shall specifically exclude, without limitation, Utility Expenses (as defined below), Insurance Expenses (as defined below), Real Estate Taxes, assessments, the cost of any Project amenities, collectively bargained union wages, costs to comply with governmental laws enacted or first applicable after the Commencement Date, trash removal and any services provided by monopolies or where there is otherwise only one (1) provider available to Landlord. For purposes of this Lease, the following definitions shall apply: (i) "**Utility Expenses**" shall mean the actual cost of supplying all utilities to the Project and the Building (other than utilities for which tenants of the Building are separately metered), including utilities for the heating, ventilation and air conditioning system for the Building and the Common Areas; and (ii) "**Insurance**

**Expenses**” shall mean the actual cost of insurance required or allowed to be carried by Landlord under this Lease. There shall be no limitation on the amount of increase from year to year on Expenses which are not Controllable Expenses.

#### **5.6. Objections to Statements**

Provided that Tenant is not then in default under this Lease beyond any applicable notice and cure period, Tenant shall have sixty (60) days following receipt of Landlord’s Statement, or receipt of additional information requested pursuant to Section 5.4, whichever is later, to raise any objection to the calculations contained therein, and to request adjustments to the data and/or calculations. If Landlord grants Tenant’s request, the Expenses shall be adjusted accordingly. If Landlord disputes Tenant’s request, the Parties agree to seek to resolve the dispute through good faith negotiations. If good faith negotiations fail to resolve the dispute, the Parties agree to mutually select a certified public account (CPA) with not less than 10 years’ experience auditing financial statements related to commercial properties in the San Francisco Bay Area, to review the records and determine whether Tenant’s request for adjustment is justified. The CPA shall not be paid on a contingency fee basis. The Parties agree to accept the CPA’s determination as final. If the CPA confirms Tenant’s request, Tenant’s share of the expenses shall be adjusted retroactively to the start date for such expenses. All costs incurred in connection therewith, including, without limitation, all fees charged by the CPA, shall be the sole responsibility of Tenant, unless the CPA determines that Landlord overstated the Expenses and Taxes by more than five percent (5%), in which event Landlord shall be responsible for the costs of the CPA.

Failure of Tenant to object within the sixty (60) day period shall be deemed a waiver of any such objection, absent manifest error. Tenant shall continue to make all payments required hereunder pending resolution of any objection or request for adjustment. No delay by Landlord in providing any Landlord’s Statement shall be deemed a default by Landlord or a waiver of Landlord’s right to require payment of Tenant’s obligations for actual or estimated Excess Taxes or Excess Expenses.

### **6. CONDITION OF PREMISES**

The Premises shall be delivered to Tenant as-is, in good, clean and tenantable condition, with all Building Systems working, and in compliance with all applicable laws in effect as of the Commencement Date. Except as expressly set forth herein, Landlord shall have no obligation to perform any work, improvements or alterations to the Premises. Tenant shall be responsible, at its sole cost and expense, for the performance of all work necessary or desirable for Tenant’s occupancy of the Premises (“**Tenant’s Work**”). All such work shall be subject to the requirements of Section 10.2 below. Landlord makes no representation or warranty as to the nature, quality or suitability for Tenant’s business of the Building or the Premises, and Tenant shall have no rights against Landlord by reason of any claimed deficiencies therein. For the period of ninety (90) consecutive days after the Commencement Date, Landlord shall, at its sole cost and expense, be responsible for any repairs that are required to be made to the Premises, unless Tenant was responsible for the cause of such repair, in which case Tenant shall pay the cost. Landlord and Tenant acknowledge and agree that as of the Commencement Date, the floor of the Premises on the second floor of the Building has a moderate slope (which has a corresponding impact on the ceiling of the Premises on the first floor of the Building), but such slope does not currently impair the tenantability of the Premises for the uses permitted under this Lease. If, at any time during the Term of this Lease, Tenant reasonably determines that such slope materially impairs the tenantability of the Premises for the uses permitted under this Lease, Tenant may deliver a written request to Landlord to remedy such slope (including the ceiling of the first floor Premises) in a manner that will make the Premises tenantable for the uses permitted under this Lease (“**Slope Repair Request**”). Within forty-five (45) days after receipt of the Slope Repair Request, Landlord shall deliver a written notice to Tenant (“**Slope Repair Response**”) indicating whether or not Landlord elects, in its sole discretion, to repair the slope (including the ceiling of the first floor Premises) as set forth in the Slope Repair Request. If Landlord elects not to repair the slope (including the ceiling of the first floor Premises) as set forth in the Slope Repair Request, Tenant shall have the right to terminate

this Lease by providing written notice to Landlord no later than ten (10) business days following delivery of Landlord's Slope Repair Response, which termination shall be effective no earlier than ninety (90) days after the date of Landlord's Slope Repair Response. If, during such ninety (90) day period, Landlord elects to repair the slope as set forth in the Slope Repair Request, Landlord shall deliver prior written notice thereof to Tenant, after which Tenant may elect to either proceed with termination as aforesaid or retract such termination by delivering written notice of such retraction to Landlord no later than ten (10) business days following delivery of Landlord's notice. In any event, if at any time Landlord elects to repair the slope, Landlord shall, at its sole cost and expense, be responsible for the repair work, and the cost and expense for such shall not be considered an Expense, for purposes of Section 5(b), above, and shall not be passed through in any form to Tenant.

## **7. COMMON AREAS**

### **7.1. *Right to Use Common Areas***

Tenant and Tenant's agents, representatives, employees and visitors, shall have the right to use during the Term the common areas of the Real Property in common with other persons approved by Landlord, subject to Landlord's rules and regulations and the provisions of this Lease, including all security requirements imposed from time to time by Landlord at or for the Real Property.

### **7.2. *Alteration by Landlord***

Landlord shall at all times maintain and operate the common areas in good repair and condition and in a manner consistent with comparable buildings in the vicinity of the Project. Landlord hereby reserves the right, at any time and from time to time, without the consent of or liability of any kind whatsoever to Tenant, Tenant's agents, representatives, employees or visitors, to make reasonable alterations or additions to the Real Property, to reasonably change, add to, eliminate or reduce the extent, size, location, shape, number or configuration of any aspect of the Real Property, including any entrances or passageways, doors and doorways, corridors, stairs, building equipment, or any Building Systems or facilities; to close to the general public all or any portion of the Real Property, to the extent and for the period necessary to avoid any dedication to the public, to effect any repairs or further construction, or in case of any other circumstances rendering such action advisable in Landlord's reasonable opinion; to change any common areas to rental space and any rental space to common areas; to utilize portions of the common areas for entertainment, displays, product shows, the leasing of temporary or permanent kiosks or other such uses as, in Landlord's reasonable judgment, may attract the public; and to change the name, address, number or other designation by which the Real Property is commonly known. In undertaking any activity provided for in this Section 7.2, Landlord shall not unreasonably restrict Tenant's access to and use and enjoyment of the Premises and any other portion of the Real Property; Landlord shall use commercially reasonable efforts to limit any interference with the use of the Premises by Tenant in connection therewith, but shall incur no liability for any such interference that may occur, and Tenant shall have no right to abate rent in connection therewith.

## **8. USE**

### **8.1. *Permitted Use***

The Premises shall be used for the Permitted Use specified in the Basic Lease Information only, and for no other purpose, without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed, subject to the terms and conditions of this Lease.

### **8.2. *No Nuisance***

Tenant shall not allow, suffer or permit the Premises or any use thereof to constitute a nuisance, to violate any insurance policy restrictions, or to unreasonably interfere with the safety, comfort or enjoyment of the Building by Landlord or any other occupants of the Building or their customers, invitees or any others lawfully in, upon or about the Real Property.



### **8.3. Compliance with Laws**

Tenant, at Tenant's expense, shall comply with, and cause all of Tenant's agents, employees, contractors, representatives, and visitors to comply with, all applicable laws, ordinances, rules and regulations of governmental authorities applicable to the Premises or the use or occupancy thereof, including, without limitation, the federal Americans With Disabilities Act, as amended; provided that Tenant shall not be obligated pursuant to this Section 8.3 to make or pay for any alterations to the electrical, mechanical, heating, ventilation or air conditioning, life safety or plumbing systems of the Building (collectively the "**Building Systems**"), any structural elements of the Building, or any common area, unless such alterations are required as a result of Tenant's actions or Tenant's default under this Lease or result from particular alterations or improvements to the Premises made by or for Tenant.

### **8.4. Hazardous Materials**

Tenant shall not cause or suffer or permit any Hazardous Material, as defined below, to be brought upon, kept, used, discharged, deposited or released in, on, or about the Premises or the Real Property by Tenant, or any of Tenant's agents, employees, representatives, contractors or visitors, provided that Tenant may keep on the Premises such Hazardous Materials as are customarily used by typical office tenants and are maintained in full compliance with all applicable laws. Landlord represents and warrants that to Landlord's actual knowledge there are no Hazardous Materials at the Project in violation of any local, state, or federal environmental laws or regulations. Each party shall indemnify, defend and hold the other party harmless from and against any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the Real Property, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of any breach by the indemnifying party of this Section 8.4 or any contamination on or affecting the Real Property which is caused by such breach or for which Tenant or Landlord is otherwise legally responsible under this Lease or applicable law. This indemnification obligation shall survive any termination of this Lease and shall include, without limitation, costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal or restoration work on or affecting the Real Property. "**Hazardous Material**" means any hazardous, toxic or dangerous substance, material or waste which is or becomes regulated by or under any local, state or federal governmental authority or environmental law, including without limitation (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, and (iv) polychlorinated biphenyls.

## **9. ALTERATIONS AND TENANT'S PROPERTY**

### **9.1. Alterations**

Tenant shall not before or during the Term make or suffer to be made any alterations, additions or improvements in or to the Premises (herein collectively called "**Alterations**") without first obtaining Landlord's written consent therefor based on reasonable plans and specifications submitted by Tenant. Landlord's consent may be withheld in Landlord's sole and absolute discretion if any Alterations could in Landlord's reasonable judgment negatively affect the structure of the Building or the Building Systems, or require additional code compliance or similar work not included in the Alterations; otherwise, Landlord's consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything herein to the contrary, Tenant shall be permitted to make nonstructural alterations to the Premises following ten (10) days' written notice to Landlord, but without Landlord's prior consent, to the extent that such alterations do not adversely affect the systems and equipment of the Building, exterior appearance of the Building, or structural aspects of the Building, and provided that such alterations cost less than \$20,000 in each instance and are made in compliance with all of Landlord's rules and regulations for the Project applicable to alterations.

### **9.2. Removal of Property**

All Alterations shall become the property of Landlord, and shall be surrendered to Landlord, upon the expiration or earlier termination of this Lease; except for movable equipment, trade fixtures, personal

property and furniture owned by Tenant (“**Tenant Owned Property**”). At Landlord’s sole election made at the time that Landlord approves any Alterations, such Alterations shall be removed from the Premises at Tenant’s sole cost and expense at the expiration or sooner termination of this Lease, and the Premises shall be restored, at Tenant’s sole cost and expense, to their condition before the making of such Alterations, ordinary wear and tear excepted, and such obligations shall survive the expiration or any earlier termination of this Lease.

## **10. REPAIRS AND OTHER WORK**

### ***10.1. Tenant’s Obligations***

Tenant shall at all times during the Term maintain the Premises in good, clean and sanitary condition, ordinary wear and tear excepted, and, at Tenant’s cost and expense, make all repairs and replacements as and when necessary to preserve the Premises in good working order and such condition; provided that Tenant shall not be obligated to repair or maintain the Building Systems or the structural elements of the Building unless such repair or maintenance is necessitated by any act of Tenant, its agents, representatives, employees, contractors or visitors. Notwithstanding the foregoing, Tenant shall not be responsible for the repair of any latent defect in the original construction of the Building or installation of any Landlord installed improvements regardless of time of discovery, and Landlord shall repair the same at its sole cost within a reasonable time, but in no event later than thirty (30) days after discovery of the defect. Landlord shall not be liable for, and there shall be no abatement of Rent with respect to, any injury to or interference with Tenant’s business arising from any repairs, maintenance, alteration or improvement in or to any portion of the Real Property, or in or to any fixtures, appurtenances or equipment therein, except to the extent arising from Landlord’s gross negligence or willful misconduct. Tenant hereby waives the provisions of Sections 1941 and 1942 of the California Civil Code and any similar law now or hereafter in effect, as such laws relate to the condition of the Premises or Tenant’s right to effect repairs in the Premises and deduct the cost thereof from the Rent.

### ***10.2. Conditions Applicable to Repairs and Other Work***

All repairs, replacements, and reconstruction (including without limitation all Alterations) made by or on behalf of Tenant shall be made and performed (a) at Tenant’s cost and expense and at such time and in such manner as Landlord may reasonably require, (b) by contractors or mechanics reasonably approved by Landlord, (c) so as to be at least equal in quality of materials and workmanship to the original work or installation, (d) in accordance with such reasonable requirements as Landlord may impose with respect to insurance and bonds to be obtained by Tenant, (e) in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the Premises and all Rules and Regulations for the Real Property adopted by Landlord from time to time, (f) so as not to interfere with the use and enjoyment of the Building by Landlord, other tenants of the Building or any other persons, and (g) in compliance with such other requirements as Landlord may reasonably impose (including without limitation a requirement that Tenant furnish Landlord with as-built drawings upon completion of the work).

## **11. LIENS**

Tenant shall keep the Premises and the Real Property free from any liens arising from any acts or omissions of Tenant, or Tenant’s agents, employees, representatives, contractors or visitors. Tenant shall, within thirty (30) days following notice of the imposition of any such lien, cause the same to be released of record by payment or posting of a bond fully satisfactory to Landlord in form and substance, and if Tenant fails to do so Landlord shall have, in addition to all other remedies provided herein and by law, the right (but not the obligation) to cause the lien to be released by such means as Landlord shall deem proper, including without limitation payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be Additional Charges payable by Tenant. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or that Landlord shall deem proper for the protection of Landlord, the Premises, the Real

Property and any other party having an interest therein, from mechanics', materialmen's and other liens. In addition to all other requirements contained in this Lease, Tenant shall give to Landlord at least five (5) business days' prior written notice of commencement of any construction by or for Tenant on the Premises.

## **12. SUBORDINATION**

This Lease and Tenant's rights and interests thereunder shall be subject and subordinate at all times to (a) all existing and future ground leases or underlying leases affecting any portion of the Real Property, and (b) the lien of any existing or future mortgage, deed of trust, or other security instrument in any amount for which any portion of the Real Property or any interest therein is specified as security. Notwithstanding the foregoing, Landlord or the holder of any such ground or underlying lease or such lien shall have the right to cause the same to be subordinated to this Lease, and in such event Tenant shall, at the option of the party who succeeds to the interest of Landlord under this Lease upon any termination of any such ground or underlying lease or upon any foreclosure or assignment in lieu of foreclosure relating to such lien, attorn to and become the tenant of such successor in interest to Landlord, provided that such successor in interest shall recognize and agree to be bound by the terms of this Lease so long as Tenant is not in default. The foregoing provisions shall be self operative and no further instrument shall be required to effect the provisions of this Section; provided that Tenant's right to possession of the Premises shall not be disturbed so long as Tenant is not in default under this Lease beyond any applicable notice and cure period, and Tenant covenants and agrees to execute and deliver, within ten (10) business days after demand by Landlord and in the reasonable form requested by Landlord, any additional documents evidencing the foregoing, provided such documents contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises.

## **13. INABILITY TO PERFORM**

If by reason of force majeure, including, without limitation, acts of God, governmental restrictions, pandemics (including, without limitation, COVID-19), strikes, labor disturbances, shortages of materials or supplies, or any other cause or event beyond Landlord's reasonable control, whether similar or dissimilar to the foregoing ("**Force Majeure**"), Landlord is unable to perform or is delayed in performing any of Landlord's obligations under this Lease, no such inability or delay shall (a) constitute an actual or constructive eviction, in whole or in part, (b) entitle Tenant to any abatement or reduction of Rent, (c) relieve Tenant from any of its obligations under this Lease, or (d) impose any liability upon Landlord or its agents or contractors by reason of inconvenience or annoyance to Tenant or by reason of injury to or interruption of Tenant's business, or otherwise. If this Lease specifies a time period for performance of an obligation of Landlord, that time period shall be extended by the period of any delay in Landlord's performance caused by any of the events of Force Majeure described above. The provisions of this Lease shall supersede California Civil Code Section 1932(1) as it relates to the condition of the Premises or Tenant's occupancy thereof, and Tenant hereby waives any right to terminate this Lease under Section 1932(1) or under any similar laws, statutes or ordinances now or hereafter in effect.

## **14. DESTRUCTION**

### ***14.1. Repair***

Subject to the provisions of Sections 14.3 and 14.4 below, if any portion of the Real Property is damaged by any casualty (the "**Damaged Property**"), then to the extent that the Premises or common areas is made unusable for the normal operation of Tenant's business on the Premises and the Damaged Property can, in Landlord's reasonable opinion, be repaired within one hundred eighty (180) days after the date of damage, Landlord shall proceed immediately to make such repairs in accordance with Section 14.4 below. Landlord's opinion regarding time to repair shall be delivered to Tenant within thirty (30) days after the date of the damage. Rent for the portion(s) of the Premises affected by such repair shall be abated during the period of repair to the extent that Tenant is unable to use such portion(s) of the Premises for the normal

operation of Tenant's business, which shall include repairs to the common areas which prevent Tenant from using the Premises for the normal operating of Tenant's business.

**14.2. Tenant's Right to Terminate**

If such damage causes all or any material portion of the Premises to be unusable by Tenant for the normal operation of Tenant's business on the Premises and in Landlord's reasonable opinion damage to the Premises cannot be repaired within three hundred sixty (360) days from the date of the damage, Tenant may terminate this Lease by delivery of written notice to Landlord within thirty (30) days after the date on which Landlord's opinion regarding time and repair is delivered to Tenant. Landlord's opinion regarding reparability shall be delivered to Tenant within sixty (60) days after the date of the damage. Upon termination, Rent shall be apportioned as of the date of the damage.

**14.3. Landlord's Right to Terminate**

In the event (i) the Building is totally or substantially destroyed, or (ii) the cost of repair of the Real Property following the damage or destruction equals or exceeds ten percent (10%) of the replacement cost of the Building and such cost is not fully covered by insurance proceeds actually paid or payable to Landlord (and not claimed by Landlord's mortgagee); or (iii) the Term will expire within one (1) year from the date of any material damage to or destruction of the Premises and Tenant fails to extend the term in accordance with any right expressly granted in this Lease within thirty (30) days after the date of damage; or (iv) the Damaged Property cannot, in Landlord's reasonable opinion, be repaired within one hundred eighty (180) days after the date of damage or be feasibly restored to substantially the same condition as immediately prior to the damage, then Landlord may elect to terminate this Lease (A) by delivery of written notice to Tenant within thirty (30) days after the date of damage or destruction (in the case of a termination pursuant to clauses (i), (ii) or (iv) above, or (B) by delivery of written notice to Tenant within forty-five (45) days after the date of the damage or destruction (in the case of a termination pursuant to clause (iii) above).

**14.4. Extent of Repair Obligations**

If this Lease is not terminated pursuant to Section 14.2 or 14.3 above, Landlord shall repair the Building and all improvements (except those constructed or installed by Tenant, if any). All such repairs shall be performed in a good and workmanlike manner and shall restore the items repaired to substantially the same usefulness, design and construction as existed immediately before the damage. All work by Tenant shall be performed in accordance with the requirements of Section 10.2. In the event of any termination of this Lease, the proceeds from any insurance carried by Landlord and paid by reason of damage to or destruction of the Real Property or any portion thereof shall belong to and be paid to Landlord.

**14.5. Waiver of Subrogation**

As long as their respective insurance policies so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall obtain any special policy endorsements, if required to evidence compliance with such waiver.

**14.6. Non-Application of Certain Statutes**

The provisions of this Lease constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, or any other portion of the Real Property. Any statute or regulation of the State of California or any other governmental authority or body, including without limitation California Civil Code Sections 1932(2), 1933(4), 1941 and 1942, relating to any rights or obligations of a landlord and tenant upon damage or destruction of the leased premises shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Building, and Tenant hereby waives the provisions of any such statute or regulation.

## **15. INSURANCE**

Tenant shall during the Term, or during any occupancy or use of the Premises by Tenant prior to the commencement of the Term, provide insurance coverage conforming in all respects to the requirements of Schedule I (Insurance) attached hereto. Tenant shall not do anything, or suffer or permit anything to be done, in, on or about the Premises that shall invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Building or any property located therein. Tenant, at Tenant's cost and expense, shall comply with, and shall cause all occupants of the Premises to comply with, all applicable customary rules, orders, regulations or requirements of any board of fire underwriters or other similar body.

Landlord shall provide property damage insurance during the Term covering the Building. The amounts and terms and conditions of coverage shall be determined by Landlord and shall be as required or approved by Landlord's mortgagee, if any, and otherwise shall be consistent with property damage policies carried for comparable properties in the immediate vicinity of the Building.

## **16. EMINENT DOMAIN**

### ***16.1. Effect of Taking***

If the entirety of the Premises is condemned or taken (or any transfer is made in lieu thereof), other than a temporary taking, before or during the Term for public or quasi-public use (each of which events shall be referred to as a "taking"), this Lease shall automatically terminate as of the earlier of the date (the "effective date of taking") (i) of the vesting of title in the condemning authority, or (ii) the date the condemning authority is authorized to take possession of the Premises. If only a part of the Premises is so taken, this Lease shall automatically terminate as to the portion of the Premises so taken as of the effective date of taking. If any portion of the Real Property is taken so as to render the Building incapable of economically feasible operation as reasonably determined by Landlord, this Lease may be terminated by Landlord, as of the effective date of taking, by written notice to Tenant given at any time prior to the effective date of taking. If a portion of the Premises is taken so as to render the Premises or the remaining portion thereof unusable by Tenant for the normal operation of Tenant's business on the Premises, this Lease may be terminated by Tenant as of the date of the effective date of such taking, by written notice to Landlord given at any time prior to the effective date of taking. If this Lease is not terminated as a result of a taking, Landlord shall restore the Building to an architecturally whole unit; provided, however, that Landlord shall not be obligated to expend on such restoration more than the amount of the condemnation award actually received by Landlord (and not claimed by Landlord's mortgagee), nor do more work than that described in Section 14.4, unless Tenant pays to Landlord in advance (and without any credit against Rent or any other obligation of Tenant under this Lease) the difference between the cost of such restoration and the amount of the condemnation award so actually received by Landlord.

### ***16.2. Award***

Landlord shall be entitled to the entire award for any taking, including, without limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award that may be made in any taking; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in any separate award made to Tenant for its relocation expenses, the taking of personal property and fixtures belonging to Tenant, the unamortized value of improvements made or paid for by Tenant, or the interruption of or damage to Tenant's business.

### ***16.3. Abatement of Rent***

In the event of a partial taking that does not result in a termination of this Lease as to the entire Premises, the Rent shall abate in proportion to the portion of the Premises so taken or rendered unusable by Tenant for the normal operation of Tenant's business on the Premises. The provisions of this Lease specifically supercede California Code of Civil Procedure Sections 1265.120 and 1265.130 or any similar

statute or regulation now or hereafter in effect relating to abatement of rent or termination of a lease in the event of a taking or condemnation of the Premises, and Tenant hereby waives the provisions of any such statute or regulation.

#### ***16.4. Temporary Taking***

If all or any portion of the Building or the Premises is taken for a limited period of time before or during the Term, this Lease shall remain in full force and effect; provided, however, that the Rent shall abate during such limited period in proportion to the portion of the Premises that is rendered not usable by Tenant by reason of such taking. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

### **17. ASSIGNMENT AND SUBLETTING**

#### ***17.1. Consent Required***

Neither Tenant nor any sublessee or assignee of Tenant shall, directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (each such act is herein referred to as an "**Assignment**"), or sublet the Premises or any portion thereof or permit the Premises to be occupied by anyone other than Tenant (each such act is herein referred to as a "**Sublease**"), without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Assignment or Sublease that is not in compliance with this Article 17 shall be void. The acceptance of Rent by Landlord from a proposed assignee, sublessee or occupant of the Premises shall not constitute consent to any Assignment or Sublease by Landlord. In the event Landlord approves any Assignment or Sublease, fifty percent (50%) of the excess, after amortization of the reasonable cost of leasing commissions and tenant improvement costs actually incurred by Tenant in connection with such Sublease or Assignment, of the total amount of rent and other consideration paid under or in consideration for any such Sublease or Assignment over the Rent payable hereunder, shall be payable to Landlord as Additional Charges. As an alternative to approving any Sublease or Assignment, Landlord shall have the right to elect, within the response period provided in Section 17.2 below, to terminate this Lease as to the portion of the Premises which is the subject of such proposed Assignment or Sublease (the "recaptured space"), in which event this Lease shall terminate as to the recaptured space only and the Rent shall be abated as to such recaptured space.

#### ***17.2. Notice***

Any request by Tenant for Landlord's consent to a specific Assignment or Sublease shall include (a) the name of the proposed assignee, sublessee or occupant, (b) the nature of the proposed assignee's sublessee's or occupant's business to be carried on in the Premises, (c) a copy of the proposed Assignment or Sublease, and (d) such financial and other information as Landlord may reasonably request concerning the proposed assignee, sublessee or occupant or its business. Landlord shall have a response period of fifteen (15) business days after receipt of all information reasonably necessary to evaluate the proposed Assignment or Sublease in which to respond in writing to Tenant's request, either approving the proposed Assignment or Sublease or stating the reasons for any disapproval, or alternatively notifying Tenant of Landlord's election to recapture the affected space, as applicable. Tenant shall pay to Landlord the reasonable costs of processing each request for approval of an Assignment or Sublease plus the reasonable amount of all direct and indirect expenses incurred by Landlord arising from any assignee, occupant or sublessee taking occupancy.

#### ***17.3. No Release***

No consent by Landlord to any Assignment or Sublease by Tenant, and no specification in this Lease of a right of Tenant to make any Assignment or Sublease, shall relieve Tenant of any obligation to be performed by Tenant under this Lease. The consent by Landlord to any Assignment or Sublease shall not

relieve Tenant or any successor of Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease.

**17.4. Entity Transfers**

Any sale, assignment or other transfer, including without limitation by consolidation, merger or reorganization, of twenty-five percent (25%) or more (whether in a single transaction or series of transfers) of the equity ownership or beneficial interests in Tenant, if Tenant is a corporation, trust or limited liability company, or of any general partnership interest in Tenant if Tenant is a general or limited partnership, shall be an Assignment for purposes of this Lease. If Tenant is a corporation, the provisions of this Section 17.4 shall not apply at any time when the stock of Tenant is traded on a national exchange.

**17.5. Assumption of Obligations**

Each assignee or other transferee of Tenant's interest hereunder, other than Landlord, shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Rent, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. Each sublessee of all or any portion of the Premises shall, as a condition to such sublease, agree in writing for the benefit of and pursuant to a written instrument satisfactory to Landlord (a) to comply with all provisions of this Lease applicable to the subleased premises (other than the amount of Rent payable under this Lease in the case of any sublease of less than all of the Premises), and (b) that, at Landlord's option, such sublease (and all further subleases of any portion of the Premises) shall terminate upon any termination of this Lease, regardless of whether or not such termination is voluntary, or such sublessee shall attorn to Landlord on and subject to all provisions of the sublease.

**17.6. No Signs**

Tenant shall not, without Landlord's consent, place or allow to be placed in, on or about the Building any sign or other notice indicating Tenant's desire to assign this Lease or sublet the Premises. Landlord's consent shall not be unreasonably withheld, conditioned, or delayed.

**18. UTILITIES AND SERVICES**

**18.1. Landlord to Furnish**

Landlord shall furnish during the Term, subject to reimbursement pursuant to Article 5 above, (a) heating, ventilation and air conditioning (to the extent available in the Building) to the Premises during the hours of 6:00 a.m. until 6:00 p.m. Monday through Friday (excluding holidays), (b) automatic elevator service to the floor or floors where the Premises are located at all times, (c) electric power (110 volt) for task lights, appliances and a reasonable number of computers (Tenant's power requirements shall be consistent with other tenants in the Building and shall not exceed the capacity of the Building taking into account the uses by other tenants), (d) hot and cold water, if any, at those points of supply shown on the approved plans for the Premises, and (e) janitorial service five nights per week (except labor holidays).

**18.2. Excess Usage**

Whenever heat generating machines or equipment or lighting are used in the Premises by Tenant which materially affect the temperature otherwise maintained by the air conditioning system, Landlord shall have the right to install supplementary air conditioning facilities in the Premises or otherwise modify the ventilating and air conditioning system serving the Premises, and the reasonable cost of such facilities and modifications shall be paid by Tenant as Additional Charges. Tenant shall also pay as Additional Charges the cost, as determined by Landlord from time to time and applied consistently to other similar tenants of the Building, of providing all heating or cooling energy to the Premises during hours other than those specified in clause (a) of Section 18.1 above. Landlord shall furnish such after-hours heating or cooling energy only upon at least twenty-four (24) hours' advance notice from Tenant. If Tenant installs lighting or

other equipment which results in an average electrical load per floor in the Premises in excess of the amount specified in Section 18.1(c) above, Tenant shall pay for the reasonable cost of such excess power and the cost of installing any additional risers or other facilities that may be necessary to furnish such excess power to the Premises; provided, however, that Tenant shall have no right to install lighting or other equipment which results in an average electrical load per floor in excess of the amount specified in Section 18.1(c) above without Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

### **18.3. Interruption of Services**

Landlord reserve the rights to disconnect, discontinue or limit Tenant's use of any Building Systems or Building services when reasonably necessary as determined by Landlord; provided that Landlord shall give Tenant advance notice of any such interruption of services when reasonably possible, and shall restore such services as soon as practical and in a manner so as to cause as little interference with Tenant's use of the Premises as is practical; provided further that Landlord shall not be obligated to perform work during other than normal business hours, except in emergency situations. In addition, Landlord reserves the right to limit or restrict any services or utilities serving the Premises or the Building, in compliance with the requirements or voluntary guidelines or requests of federal, state or local governmental agencies or utility suppliers for the purpose of reducing energy or other resources consumption and to make all alterations to the Real Property or any Building Systems reasonably necessary therefor. Any such actions by Landlord under this Section 18.3, or any other interruption of services provided for herein (unless caused by Landlord's gross negligence or willful misconduct) shall not (a) constitute an actual or constructive eviction, in whole or in part, (b) entitle Tenant to any abatement or diminution of Rent, (c) relieve Tenant from any of its obligations under this Lease, or (d) impose any liability on Landlord or its agents or contractors by reason of inconvenience or annoyance to Tenant or by reason of injury to or interruption of Tenant's business, or otherwise, Tenant hereby waives its right to terminate this Lease under California Civil Code Section 1932(1) and Sections 1941 and 1942 or any other similar laws, statutes or ordinances now or hereafter in effect. Tenant shall cooperate reasonably with any voluntary energy conservation program initiated by Landlord in cooperation with the efforts of federal, state or local governmental agencies or utility suppliers to reduce the consumption of energy or other resources. Notwithstanding the foregoing, in the event that Tenant is prevented from using, and does not use, the Premises or any material portion thereof for more than three (3) consecutive business days as a result of any of the following, to the extent within Landlord's reasonable control: (i) a failure to provide any utilities to the Premises which Landlord is required to provide under this Lease, (ii) Landlord making or failing to make any repairs, alterations, additions or improvements in or to any portion of the Premises or the Property which Landlord is required to provide under this Lease, or (iii) lack of access to the Premises (each, an "**Abatement Event**"), then Tenant shall give Landlord written notice of such Abatement Event, and if such Abatement Event continues for an additional two (2) consecutive business days after Landlord's receipt of any such notice ("**Eligibility Period**") and Landlord does not diligently commence and pursue to completion the remedy of such Abatement Event, then, except to the extent covered by business interruption or similar insurance carried or required to be carried by Tenant hereunder, Base Rent 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. If, however, Tenant reoccupies any portion of the Premises during such period, the Base Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Such right to abate Base Rent shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event. Except as expressly provided in this Section 18.3, nothing contained herein shall be interpreted to mean that Tenant is excused from paying rent due hereunder.



#### **18.4. Security Systems and Programs**

Landlord shall have no obligation or liability to Tenant, or any of Tenant's agents, employees, representatives, contractors or visitors, to provide any safety or security devices on or for the Real Property or for the manner or quality of any such devices or services that Landlord may elect to provide on or for the Real Property. The risk that any safety or security device, service or program may not be effective, or may malfunction or be circumvented, is assumed by Tenant with respect to the property, personnel, and interests of Tenant, and any of Tenant's agents, employees, representatives, contractors and visitors, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against criminal acts or other losses. Tenant agrees to cooperate fully at Tenant's expense with any reasonable safety or security program developed by Landlord on or for the Real Property or required by law.

### **19. DEFAULT**

#### **19.1. Events of Default**

The occurrence of any one or more of the following events shall constitute a default or breach of this Lease by Tenant:

(a) Failure of Tenant to make any payment of Rent when and as the same becomes due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay Rent within five (5) business days of any such notice.

(b) Failure of Tenant to perform any obligation of Tenant under this Lease, other than as described in Section 19.1(a), where such failure shall continue for ten (10) business days after notice of such failure by Landlord to Tenant; provided that if more than ten (10) business days are reasonably required for cure of such failure, Tenant shall not be deemed to be in default if Tenant commences such cure within such ten (10) business day period and thereafter diligently prosecutes such cure to completion.

(c) The filing by or against Tenant of any action or proceeding under any federal or state insolvency, reorganization, bankruptcy or other debtor relief statute now or hereafter existing (unless in the case of such action taken against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or receiver for Tenant or its business, or the attachment of Tenant's leasehold estate in the Premises or Tenant's assets at the Premises, unless the same is dismissed within thirty (30) days after such appointment or attachment.

#### **19.2. Remedies**

Upon the occurrence of a default by Tenant under this Lease that is not remedied by Tenant within the applicable cure periods specified in Section 19.1, Landlord shall use commercially reasonable efforts to mitigate damages and have the following rights and remedies in addition to and without limiting any and all other rights and remedies provided in Section 4.4 or otherwise available to Landlord at law or in equity:

(a) The rights and remedies provided by California Civil Code Section 1951.2, including without limitation the right to terminate Tenant's right to possession of the Premises and to recover the amounts specified in California Civil Code Subsections 1951.2(a)(1)-(4);

(b) The rights and remedies provided by California Civil Code Section 1951.4, including, without limitation, the right to continue the Lease in effect after Tenant's breach and abandonment and recover any and all Rent as it becomes due. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, shall not in and of themselves constitute a termination of Tenant's right to possession;

(c) The right and power to enter the Premises and remove all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply the proceeds thereof pursuant to applicable California law;

(d) The right to have a receiver appointed for Tenant, upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises; and

(e) The right to specific performance of any or all of Tenant's obligations hereunder, and to damages for delay in or failure of such performance.

(f) The right to remedy such default at Tenant's expense, upon two (2) days prior notice to Tenant except that prior notice shall not be required in the case of an imminent threat to life or safety of any person or to the impairment of the Building or its efficient operation.

### **19.3. Remedies Cumulative**

The exercise of any remedy provided by law or the provisions of this Lease shall not exclude any other remedies. Tenant hereby waives any right of redemption or relief from forfeiture following termination of, or exercise of any remedy by Landlord with respect to, this Lease.

### **19.4. Default by Landlord**

If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after receipt of written notice specifically describing such default from Tenant or, when more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after receipt of written notice thereof from Tenant, said failure shall constitute a default by Landlord under this Lease. Tenant shall give written notice to any beneficiary of a deed of trust or mortgage covering the Premises whose address shall have been furnished to Tenant of any default on the part of Landlord under this Lease, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, in no event less than sixty (60) days, including time to obtain possession of the Premises by power of sale or a judicial foreclosure if necessary to effect a cure.

## **20. INDEMNITY; WAIVER; INTEREST ON OVERDUE OBLIGATIONS**

### **20.1. Indemnity and Waiver**

Except to the extent caused by the negligence or willful misconduct of Landlord, Tenant shall indemnify, defend through attorneys reasonably satisfactory to Landlord, and hold harmless Landlord, all partners or members of any partnership or limited liability company constituting Landlord, and their respective officers, directors, shareholders, employees, servants and agents, all mortgagees or beneficiaries of Landlord's interest in all or any portion of the Real Property, and the lessor or lessors under all ground or underlying leases affecting any portion of the Real Property (sometimes collectively referred to herein as "**Landlord Related Entities**") from and against any and all claims, losses, costs, liabilities, damages and expenses, including without limitation reasonable attorneys' fees (collectively, "**Claims and Liabilities**"), that are incurred in connection with or arise from (a) any default by Tenant in the observance or performance of any of the terms, covenants, conditions or other obligations of this Lease, (b) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any person occupying the Premises, (c) the condition of the Premises or any occurrence or happening on the Premises between the Commencement Date or Tenant's earlier entry onto the Premises and the time Landlord has accepted the surrender of the Premises after the expiration or termination of the Term, including, without limitation, COVID-19 or any other pandemics and any conditions arising from or related thereto, (d) any negligence or willful act or omission of Tenant or any assignee or subtenant of the Premises or any of their respective agents, employees, representatives, contractors or visitors while on the Real Property, or (e) Landlord's inability to obtain access to any portion of the Premises with respect to which Landlord has not been furnished a key (if locked) or access has been otherwise restricted. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property (including, without limitation, any damage to personal property or scientific research, including loss of records kept by Tenant within the Premises (in each case, regardless of whether such damage is foreseeable)) or injury to Tenant or any other

Tenant Parties in, upon or about the Premises or any other part of the Real Property from any cause whatsoever (including, without limitation, COVID-19 or any other pandemics and any conditions arising from or related thereto) and hereby waives all Claims and Liabilities (including consequential damages and claims for injury to Tenant's business or loss of income arising out of any loss of use of the Premises or any other part of the Real Property or any equipment or facilities therein, or relating to any such damage or destruction of personal property as described in this Section) in respect thereof against Landlord and each Landlord Related Entity, except that which is solely caused by, or solely the result of the grossly negligent acts or willful misconduct of Landlord. Landlord shall not be liable for any damages arising from any act, omission or neglect of any other tenant in the Building or of any other third party. The terms of this Section 20.1 shall survive the expiration or earlier termination of this Lease.

#### **20.2. Interest on Past Due Obligations**

Any amount due from Tenant to Landlord under this Lease which is not paid within five (5) business days from the date when due shall bear interest from the due date until paid at the lesser of the highest rate then permitted by law or a rate per annum equal to four percent (4%) plus the highest rate identified as the "prime rate" in the Wall Street Journal between the date such amount was due and the date such payment was received. Payment of such interest shall not excuse or cure any default under this Lease.

### **21. LANDLORD'S ACCESS TO PREMISES**

Landlord reserves for itself and its agents, employees and contractors the right to enter the Premises at all reasonable times (upon reasonable telephonic notice, if possible) to inspect the Premises, to supply any service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers, mortgagees, beneficiaries or (during the last twelve (12) months of the Term) prospective tenants, to post notices of nonresponsibility, to determine whether Tenant is complying with its obligations under this Lease, and to alter, improve or repair the Premises or any other portion of the Building. Tenant shall not place any locks on any interior doors in the Premises without the consent of Landlord, which consent shall not be unreasonable withheld, conditioned, or delayed, and without providing Landlord with copies of the keys for such locks. In the event of an emergency, Landlord shall have the right to enter the Premises at any time without notice. Landlord shall have the right to use any and all means that Landlord may reasonably deem necessary or proper to open doors in an emergency, in order to obtain entry to any portion of the Premises; provided, however, that Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's business at the Premises. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, any right to abatement of Rent, or any other loss occasioned by Landlord's exercise of any of its rights under this Article 21. Tenant waives all rights to consequential damages (including, without limitation, damages for lost profits and lost opportunities) arising in connection with Landlord's exercise of its rights under this Section 21.

### **22. NOTICES**

Any payment required to be made by Tenant to Landlord, and any bills, statements, notices, demands, requests or other communications given or required to be given under this Lease, shall be effective only if rendered or given in writing, sent by personal delivery or registered or certified mail, return receipt requested, by overnight courier service, or by confirmed email transmission with a following copy by first class mail, addressed (a) to Tenant at the address set forth in the Basic Lease Information, (b) to Landlord at the address set forth in the Basic Lease Information, or (c) to such other address as either Landlord or Tenant may designate as its new address in California for such purpose by notice given to the other in accordance with the provisions of this Section 22. Any such bill, statement, notice, demand, request or other communication shall be deemed to have been rendered or given on the date of receipt or refusal to accept delivery.

## **23. NO WAIVER**

No provision of this Lease may be waived, and no breach thereof shall be waived, except by a written instrument signed by the party against which the enforcement of the waiver is sought. No failure by Landlord to insist upon the strict performance of any obligation of Tenant under this Lease, and no course of conduct between Landlord and Tenant, shall constitute a waiver of any breach or a waiver or modification of any term, covenant or condition of this Lease. No payment by Tenant of a lesser amount than the aggregate of all Rent then due under this Lease shall be deemed to be other than on account of the first items of such Rent then accruing or becoming due, unless Landlord elects otherwise.

## **24. TENANT'S ESTOPPEL CERTIFICATES**

Tenant, at any time and from time to time, within ten (10) business days after written request, shall execute, acknowledge and deliver to Landlord, addressed (at Landlord's request) to any prospective purchaser, ground or underlying lessor, or mortgagee or beneficiary of any part of the Real Property, an estoppel certificate in form and substance reasonably designated by Landlord. Tenant's failure to do so within such ten (10) business day period shall be conclusive upon Tenant that all facts set forth in Landlord's proposed certificate are true and correct.

## **25. RULES AND REGULATIONS**

Tenant shall at all times observe and comply with, and cause all occupants of the Premises to observe and comply with, the rules and regulations attached to this Lease as Exhibit B, and with all reasonable modifications thereof from time to time adopted by Landlord (the "**Rules and Regulations**").

## **26. TENANT'S TAXES**

In addition to all other sums to be paid by Tenant under this Lease, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the Term, whether or not now customary or within the contemplation of the parties hereto, (a) upon, measured by or reasonably attributable to Tenant's improvements, equipment, furniture, fixtures and other personal property located in the Premises, including without limitation Tenant's Work and all Alterations, (b) upon or measured by any Rent payable under this Lease, including without limitation any gross income tax or excise tax levied by any federal, state or local governmental body with respect to the receipt of such rental by Landlord; (c) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

## **27. CORPORATE AUTHORITY**

Each person executing this Lease on behalf of Tenant or any entity constituting Tenant at any ownership tier hereby represents and warrants that such person is duly authorized and has full right, power and authority to enter into this Lease and bind Tenant, without qualification.

## **28. MISCELLANEOUS**

### ***28.1. Non-Appropriation***

This Lease is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. In the event the Palo Alto City Council does not appropriate funds for payment of Rent due under this Lease in any year, this Lease shall terminate upon 90-days prior written notice thereof. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Lease.

### **28.2. Financial Statements**

Upon Landlord's written request from time to time (not more frequently than twice per year), Tenant shall promptly furnish Landlord with certified financial statements reflecting Tenant's then-current financial condition, in such form and detail as Landlord may reasonably request; provided, however, that if Tenant is a corporation, then so long as the stock of Tenant is traded on a national exchange, Tenant may furnish its annual or most recent quarterly report instead of financial statements. If Tenant is a municipality, Tenant may furnish a digital copy of its fiscal year end Comprehensive Annual Financial Report.

### **28.3. Successors and Assigns**

Without limiting Section 17 and subject to Section 28.10, the terms, covenants and conditions in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective representatives, successors and assigns.

### **28.4. Severability**

If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to any other persons or circumstances, shall not be affected thereby, and each provision of this Lease shall remain in effect and shall be enforceable to the fullest extent permitted by law.

### **28.5. Applicable Law**

This Lease shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law. If suit shall be brought by either party to this Lease, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

### **28.6. Integration; Interpretation**

The terms of this Lease (including, without limitation, the Exhibits and Schedules hereto) are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Lease and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding or negotiation (whether oral or written). The word "including" shall mean "including without limitation," the singular shall include the plural and vice-versa, and each gender shall include any other gender. Time is of the essence of each and every provision of this Lease.

### **28.7. Quiet Enjoyment**

Upon Tenant paying the Rent and performing all of Tenant's obligations under this Lease, Tenant may peacefully and quietly enjoy the Premises during the Term as against all persons or entities claiming by or through Landlord; subject, however, to the provisions of this Lease, including Section 12.

### **28.8. Holding Over**

If Tenant holds over after the expiration or earlier termination of the Term, the Term shall not be extended thereby, and Tenant shall pay Base Rent equal to one hundred twenty-five percent (125%) of the Base Rent payable during the final full lease year (exclusive of abatements, if any), together with an amount reasonably estimated by Landlord for the monthly Additional Charges and other sums payable under this Lease, and such holding over shall otherwise be on the terms and conditions herein specified so far as applicable (but expressly excluding all renewal or extension rights).

### **28.9. Broker's Commissions**

Each party represents and warrants to the other that it has not entered into any agreement or incurred or created any obligation which might require the other party to pay any broker's commission, finder's fee or other commission or fee relating to the leasing of the Premises, except for the brokers specified in the

Basic Lease Information, whose commissions or fees shall be payable by the party designated in a separate agreement with such brokers, and each party shall indemnify, defend and hold harmless the other and the other's constituent partners and members, and their respective officers, directors, agents and employees, from and against any and all claims and liabilities for any such commissions or fees made by anyone claiming by or through the indemnifying party.

**28.10. Recovery Against Landlord**

Tenant shall look solely to Landlord's interest in the Real Property for any recovery of any judgment against Landlord related in to this Lease and/or the Project. Neither Landlord, nor any of its partners (whether general or limited), members, or any other equity or beneficial owners, directors, officers and shareholders at any ownership tier, shall be personally liable for any such judgment. In the event that any Landlord transfers or conveys its interest in the Building, all liabilities and obligations on the part of such Landlord under this Lease accruing after the effective date of such transfer or conveyance shall terminate and all such liabilities and obligations, including responsibility for the application or return of any security deposit, shall be binding upon the new owner.

**28.11. Amendments**

No amendments or modifications of this Lease or any agreements in connection therewith shall be valid unless in writing duly executed by both Landlord and Tenant. No amendment to this Lease shall be binding on any mortgagee or beneficiary of Landlord (or purchaser at any foreclosure sale) unless such mortgagee or beneficiary shall have consented thereto in writing.

**28.12. Attorneys' Fees**

If either party commences an action against the other party arising out of or in connection with this Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other party or any or all of its property or assets, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and court costs, including fees incurred on appeal and any other post-judgment proceeding.

**28.13. Parking.**

Throughout the Term, Landlord shall provide Tenant with number of parking spaces specified in the Basic Lease Information in the Building's parking area, such spaces to be unassigned. Landlord's obligation to make such parking spaces available to Tenant shall be subject to ordinances and regulations of the applicable governmental authority concerning off street parking and loading facilities, either now existing or hereafter enacted.

**28.14. CASp Disclosure.**

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant that the common areas and the Premises, as of the date of this Lease, have not been inspected by a Certified Access Specialist (CASp), as that term is defined in California Civil Code Section 55.52. In accordance with subsection (e) of Section 1938 of the California Civil Code, Tenant is further notified as follows:

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

**28.15. Binding**

This Lease shall be binding upon the parties hereto only upon full execution and delivery by both Landlord and Tenant. In the event that Landlord executes this Lease prior to Tenant, Landlord's counterpart shall be deemed an offer only and shall expire on the date which is thirty (30) days thereafter unless accepted and executed by Tenant prior to the expiration of such thirty (30) day period.

**28.16. Exhibits and Schedules**

Exhibits A and B, Addendum I, and Schedule I, are attached hereto and by this reference incorporated herein.

[signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant have each caused their duly authorized representatives to execute this Lease on their behalf as of the dates written below.

*LANDLORD:* 1900 EMBARCADERO PROPERTY OWNER, LP,  
a Delaware limited partnership

By: HSRE-BPI II GP, LLC, a Delaware limited liability  
company, its general partner

By:  \_\_\_\_\_

Name: Steve Bollert

Title: Authorized Signatory

Date: 5-26-21 \_\_\_\_\_

*TENANT:* THE CITY OF PALO ALTO,  
a California municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

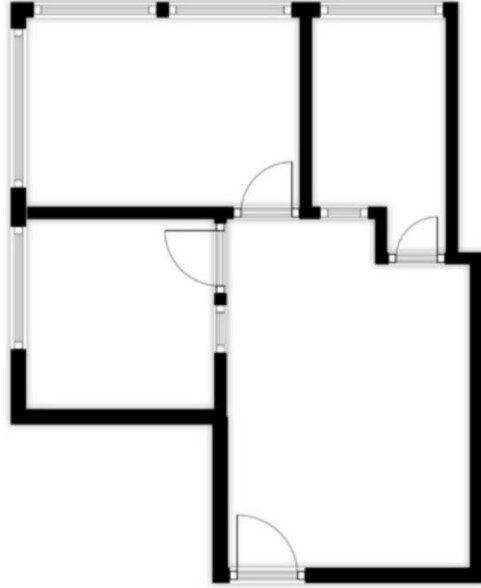
Title: City Attorney (Special Counsel)

Date: \_\_\_\_\_



EXHIBIT A

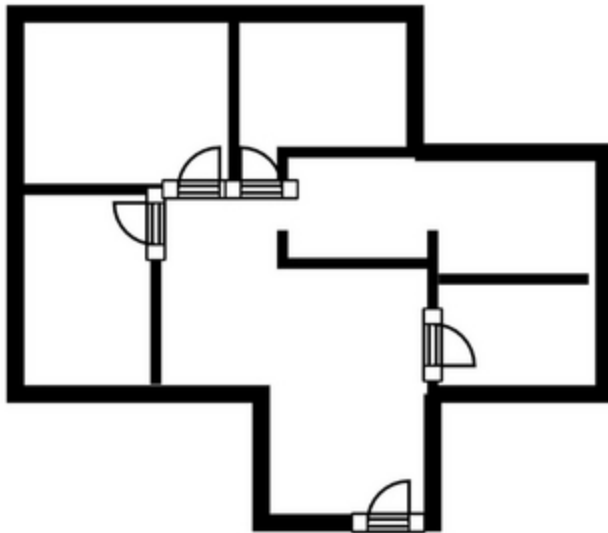
DIAGRAM/DESCRIPTION OF PREMISES



1,011 sf

Suite 110

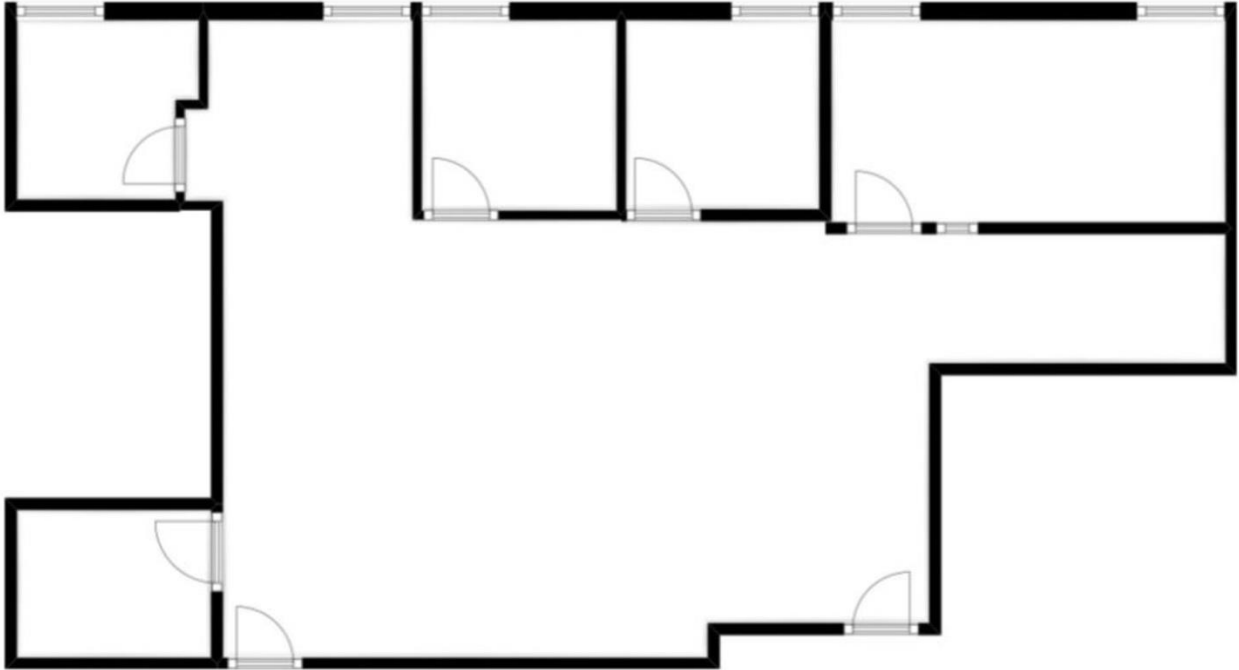
1900 Embarcadero Road, Palo Alto



1,600 sf

Suite 201

1900 Embarcadero Road, Palo Alto



2,858 sf

Suites 205-207

1900 Embarcadero Road, Palo Alto

## EXHIBIT B

### RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, elevators, malls, and stairways of the Building shall not be obstructed by Tenant or any of Tenant's agents, employees, representatives, contractors or visitors ("**Tenant Parties**"), or used by Tenant or any Tenant Party for any purpose other than for ingress to or egress from the Premises. The halls, passages, exits, entrances, corridors and stairways are not for the use of the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord might be prejudicial to the safety, character, reputation or interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal or dangerous activities. Tenant and Tenant Parties shall not go upon the roof of the Building, except in areas that Landlord may designate from time to time.

2. No awning canopy or other projection of any kind over or around the windows or entrances of the Premises shall be installed by Tenant, and only such window coverings as are Building standard shall be used in the Premises.

3. The Premises shall not be used for lodging or sleeping, and no cooking shall be done or permitted by Tenant on the Premises, except that the preparation of food in microwave ovens and machines for vending coffee, tea, hot chocolate and similar small food or drink items for Tenant and its employees shall be permitted.

4. Landlord will furnish Tenant with ten (10) keys per floor of the Premises, free of charge. Landlord may make a reasonable charge equal to Landlord's cost for any additional keys. No additional locking devices shall be installed without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Landlord may make reasonable charges for the removal of any additional lock or any bolt installed on any door of the Premises without the prior consent of Landlord. Tenant shall in each case furnish Landlord with a key for any such lock. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Building and the Premises.

5. Landlord shall have the right to prescribe the method of reinforcement or weight distribution (as Landlord shall reasonably determine in its sole discretion) for all equipment, materials, supplies, furniture or other property brought into the Building that will impose a load of more than fifty (50) pounds per square foot. Landlord will not be responsible for loss of or damage to any such property from any cause (except to the extent resulting from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors), and all damage done to the Building by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.

6. Tenant shall not use or suffer to be used or kept in the Premises or the Building any kerosene, gasoline or flammable or combustible fluids or materials except as customarily used in offices, or use any method of heating or air conditioning other than that supplied by Landlord.

7. Tenant shall use reasonable efforts to ensure that all doors and windows of the Premises are closed and securely locked and all water faucets, water apparatus and utilities are shut off at such time as Tenant's employees leave the Premises.

8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein, and any damage resulting to such facilities from misuse by Tenant or its employees or invitees shall be paid for by Tenant.

9. Except as permitted in this Lease, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or corridor adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for manufacturing or assembly of any kind, or for any business or activity other than that specifically provided for in this Lease.

10. Tenant shall not install any radio or television antenna, microwave dish, telecommunications apparatus, loudspeaker, or other device on the roof or exterior walls of the Building, without Landlord's prior consent, which shall not be unreasonably withheld or delayed.

11. Tenant and Tenant Parties shall not use in the Premises, or in the common areas of the Building, any handtrucks except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve, and Tenant shall use reasonable efforts to cause its invitees to comply with the provisions of this Paragraph. No other vehicles of any kind shall be brought by Tenant or any Tenant Party into the Building or kept in or about the Premises.

12. Tenant shall store all its trash and garbage within the Premises until removal. All trash placed in any portion of the Real Property for pick-up shall be placed in locations and containers approved by Landlord.

13. All loading, unloading and delivery of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and elevators and at such times as Landlord shall designate. While loading and unloading, Tenant and any Tenant Party shall not obstruct or permit the obstruction of the entryways to the Building or any tenant's space therein.

14. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Building is prohibited, and Tenant shall cooperate to prevent such acts.

15. Tenant shall not permit the use or the operation of any video or mechanical games or pay telephones on the Premises.

16. Landlord may direct the use of all reasonable and qualified pest extermination and scavenger contractors to eliminate pests caused or introduced into the Premises by Tenant or any Tenant Party at such intervals as Landlord may reasonably require, upon notice to Tenant, at Tenant's sole cost and expense.

17. Tenant shall immediately, upon request from Landlord (which request need not be in writing), reduce its lighting or other non-critical electrical usage in the Premises for temporary periods designated by Landlord (but not more than one-third (1/3) of the total lighting or non-critical electrical usage in the Premises for more than two (2) hours in any twenty-four (24) hour period), when required in Landlord's reasonable judgment to prevent overloads of the mechanical or electrical systems of the Building.

18. Landlord reserves the right to select and change the name and address of the Building as it may deem appropriate from time to time, and Tenant shall not refer to the Building by any name other than: (i) the name as designated by Landlord from time to time, or (ii) the postal address used for the Building. Tenant shall not use the name of the Building in any respect other than as an address of its business operations in the Building without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed..

19. Any requests made by Tenant of Landlord shall be made by telephone or in person by Tenant's designated representative at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

20. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, and no such waiver by Landlord shall be construed as a waiver of these Rules

and Regulations in favor of any other tenant or tenants or prevent Landlord from thereafter enforcing any Rule or Regulation against any or all tenants of the Building.

21. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, any terms, covenants, agreements and conditions of the Lease or any other lease of premises in the Building which expressly contradict these Rules and Regulations.

22. Landlord reserves the right to make such other and reasonable rules and regulations as in its reasonable judgment may from time to time be needed for the safety, care and cleanliness of the Building, and for the preservation of good order therein.

23. Tenant shall not obtain for use in the Premises ice, drinking water, food, beverage, towel or other similar services, except at reasonable hours and under reasonable regulations fixed by Landlord.

24. Tenant shall be entitled to its proportionate share (based on rentable area) of listings in the Building lobby directory. All signage, lettering or other writing or decoration on or visible from the exterior of the Premises shall require Landlord's reasonable prior written approval.

## ADDENDUM I

### OPTION TO EXTEND TERM

(a) Landlord hereby grants to Tenant the option (“**Extension Option**”) to extend the Term of this Lease for an additional term (the “**Option Term**”) of five (5) years upon and subject to the terms and conditions set forth in this Addendum. The Extension Option shall be exercised, if at all, by written notice given to Landlord no more than one (1) year and no less than nine (9) months prior to the Expiration Date of the Term. If Tenant exercises the Extension Option, each of the terms, covenants and conditions of this Lease shall apply during the Option Term except the expiration date of the Option Term will be the date five (5) years after the originally set forth herein as the Expiration Date of the Term, provided that (i) the Rent to be paid during the Option Term shall be ninety-five percent (95%) of the Prevailing Market Rental, as hereinafter defined, for the Premises for the Option Term, (ii) the Expiration Date for this Lease shall become the expiration date for the Option Term; and (iii) there shall be no additional option terms. Anything contained herein to the contrary notwithstanding, if Tenant is in monetary or material non-monetary default under any of the terms, covenants or conditions of this Lease either at the time Tenant exercises the Extension Option or at any time thereafter prior to the commencement date of the Option Term, Landlord shall have, in addition to all of Landlord’s other rights and remedies provided in this Lease, the right to terminate the Extension Option upon notice to Tenant. As used herein, the term “**Prevailing Market Rental**” for the Premises shall mean the annual basic rental, payments for Expenses and Taxes as defined in this Lease, and all other monetary payments that Landlord could obtain for the Option Term from a third party desiring to lease the Premises for the Option Term taking into account the age and condition of the Building and the Premises, the services provided under the terms of this Lease, the annual basic rental, payments for Expenses and Taxes and all other monetary payments then being obtained for new leases of space comparable to the Premises in the vicinity of the Building, provided however, no allowance for the construction of tenant improvements, the payment of leasing commissions or moving expenses, or any other tenant inducement shall be taken into account in determining Prevailing Market Rental.

(b) If Tenant exercises the Extension Option, Landlord shall send to Tenant a notice setting forth the Prevailing Market Rental for the Premises for the Option Term, on or before the date that is one hundred fifty (150) days prior to the Expiration Date of the Term. If Tenant disputes Landlord’s determination of the Prevailing Market Rental for the Option Term, Tenant shall, within thirty (30) days after the date of Landlord’s notice setting forth the Prevailing Market Rental for the Option Term, send to Landlord a notice stating that Tenant disagrees with Landlord’s determination of Prevailing Market Rental for the Option Term and elects to resolve the disagreement as provided below in subparagraph (c). If Tenant does not send to Landlord a notice as provided in the previous sentence, Landlord’s determination of the Prevailing Market Rental shall be conclusive and shall be the basis for determining the annual basic rental, payments for Expenses and Taxes and all other monetary payments to be paid by Tenant hereunder during the Option Term. If Tenant elects to resolve the disagreement as provided in subparagraph (c) and such procedures shall not have been concluded prior to the commencement date of the Option Term, Tenant shall pay annual basic rental, payments for Expenses and Taxes and all other monetary payments to Landlord hereunder adjusted to reflect the Prevailing Market Rental as stated by Landlord in its original notice to Tenant of Landlord’s determination thereof. If the amount of Prevailing Market Rental as finally determined pursuant to subparagraph (c) is greater than Landlord’s determination, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the Prevailing Market Rental as so determined pursuant to subparagraph (c) within thirty (30) days after the determination. If the Prevailing Market Rental as finally determined pursuant to subparagraph (c) is less than Landlord’s determination, the difference between the amount paid by Tenant and the Prevailing Market Rental as so determined pursuant to subparagraph (c) shall be credited against the next installments of annual basic rental, payments for Expenses and Taxes and all other monetary payments due from Tenant to Landlord hereunder.

(c) Any disagreement regarding the Prevailing Market Rental as defined in this Section shall be resolved as follows:

(i) Within thirty (30) days after Tenant's written response to Landlord's notice to Tenant of the Prevailing Market Rental, Landlord and Tenant shall meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(ii) If within the thirty (30) day period referred to in clause (i) above, Landlord and Tenant cannot reach Agreement as to the Prevailing Market Rental, they shall each select one appraiser to determine the Prevailing Market Rental. Each appraiser shall arrive at a determination of the Prevailing Market Rental, as defined in this Addendum, and submit its conclusions to Landlord and Tenant within thirty (30) days after the expiration of the thirty (30) day consultation period described in clause (i) above.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Prevailing Market Rental. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, the average of the two shall be the Prevailing Market Rental. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who shall within thirty (30) days after his or her selection make a determination of the Prevailing Market Rental and submit such determination to Landlord and Tenant. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Prevailing Market Rental.

(iv) All appraisers specified pursuant to this subparagraph (c) shall be members of the American Institute of Real Estate Appraisers with not less than ten (10) years' experience appraising commercial properties in the San Francisco area. Each party shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other reasonable third party costs (excluding legal fees and disbursements) incurred in resolving the dispute pursuant to this Section.

If the commencement date of the Option Term is other than on the first day of a calendar month, then the installment of Base Rent and Additional Charges for Expenses and Taxes payable on the first day of any month during which an increase in the Rent, as provided for hereinabove, is to occur shall be prorated based on the number of days in such month prior to the effective date of the increase and the number of days in such month on or after the effective date of the increase.

(d) The Extension Option is intended to be personal to Tenant. Notwithstanding anything to the contrary contained herein, if Tenant agrees to assign its interest in this Lease or to sublet all or any part of the Premises prior to the commencement of the Extension Option, then unless otherwise expressly consented to by Landlord in writing, the Extension Option shall immediately become null and void and of no further force or effect.



## SCHEDULE I

### TENANT'S INSURANCE REQUIREMENTS

During the Term of this Lease, and during any period prior to the commencement of the Term in which Tenant shall enter onto, occupy or use the Premises, Tenant shall provide at Tenant's cost and expense the following insurance coverage:

1. Property Damage Insurance. Tenant shall provide insurance coverage for all risks of physical loss or damage insuring the full replacement value of Tenant's Work, Alterations, Tenant's trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal property of Tenant.

2. Liability Insurance. Tenant shall provide broad form commercial general liability insurance, and automobile liability insurance, each with a minimum combined single limit of liability of at least the amount set forth in the Basic Lease Information, and statutory worker's compensation insurance with an employer's liability limit in the amount set forth in the Basic Lease Information covering all of Tenant's employees. Such broad form commercial general liability insurance shall include products and completed operations liability insurance, fire legal liability insurance, contractual liability insurance applicable to all of Tenant's indemnity obligations under this Lease (provided that the amount of such insurance shall not be a limitation on Tenant's indemnity obligations), and such other coverage as Landlord may reasonably require from time to time. At Landlord's request, but not more frequently than every two (2) years, Tenant shall increase such insurance coverage to a level that is reasonably required by Landlord.

3. Form of Policies. All insurance policies required to be carried by Tenant under this Lease shall (i) be written by companies rated A 8 or better in "Best's Insurance Guide" and authorized to do business in California, (ii) name Landlord and any other parties designated by Landlord as additional insureds, (iii) as to liability coverages, be written on an "occurrence" basis, (iv) provide that Landlord shall receive thirty (30) days' notice from the insurer before any cancellation or change in coverage, and (v) contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurer to pay the amount of any loss sustained. Each such policy shall contain a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance. Any deductible amounts under any insurance policies required hereunder shall be subject to Landlord's prior written approval (which shall not be unreasonably withheld), and in any event Tenant shall be liable for payment of any deductible in the event of any loss or casualty. Tenant shall deliver reasonably satisfactory evidence of such insurance to Landlord on or before the Commencement Date, and thereafter at least thirty (30) days before the expiration dates of expiring policies; and in the event Tenant shall fail to procure such insurance or to deliver reasonably satisfactory evidence thereof within five (5) business days after written notice from Landlord of such failure, Landlord may, at its option and in addition to Landlord's other remedies in the event of a default by Tenant hereunder, procure such insurance for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Charges. The limits of the insurance required under this Lease shall not limit any obligation or liability of Tenant under this Lease.