

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

Form 10-K

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

For the fiscal year ended December 31, 2005
or

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

For the transition period from to
Commission file number 001-15749

ALLIANCE DATA SYSTEMS CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)
17655 Waterview Parkway,
Dallas, Texas

(Address of Registrant's Principal Executive Offices)

31-1429215
(I.R.S. Employer
Identification No.)
75252
(Zip Code)

(972) 348-5100

(Registrant's telephone number, including area code)

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value \$0.01 per share	New York Stock Exchange

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

None
(Title of Class)

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

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

As of June 30, 2005, the last business day of the registrant's most recently completed second fiscal quarter, 83,175,616 shares of common stock were outstanding and the aggregate market value of the common stock held by non-affiliates of the registrant on that date was approximately \$2.8 billion (based upon the closing price on the New York Stock Exchange on June 30, 2005 of \$40.56 per share). Aggregate market value is estimated solely for the purposes of this report. This shall not be construed as an admission for the purposes of determining affiliate status.

As of February 28, 2006, 80,478,288 shares of common stock were outstanding.

Documents Incorporated By Reference

Certain information called for by Part III is incorporated by reference to certain sections of the Proxy Statement for the 2006 Annual Meeting of our stockholders which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

ALLIANCE DATA SYSTEMS CORPORATION

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Caution Regarding Forward-Looking Statements

This Form 10-K and the documents incorporated by reference herein contain forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements may use words such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “predict,” “project” and similar expressions as they relate to us or our management. When we make forward-looking statements, we are basing them on our management’s beliefs and assumptions, using information currently available to us. Although we believe that the expectations reflected in the forward-looking statements are reasonable, these forward-looking statements are subject to risks, uncertainties and assumptions, including those discussed in the “Risk Factors” section in Item 1A of this Form 10-K and elsewhere in this Form 10-K and the documents incorporated by reference in this Form 10-K.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary materially from what we projected. Any forward looking statements contained in this annual report or in the documents incorporated herein by reference reflect our current views with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We have no intention, and disclaim any obligation, to update or revise any forward looking statements, whether as a result of new information, future results or otherwise.

PART I

Item 1. Business

Our Company

We are a leading provider of transaction services, credit services and marketing services in North America. We partner with our clients to develop unique insight into consumer behavior. We use that insight to create and manage customized solutions that we believe change consumer behavior and enable our clients to build stronger, mutually-beneficial relationships with their customers. We focus on facilitating and managing interactions between our clients and their customers through multiple distribution channels including in-store, catalogs and on-line. Our credit and marketing services assist our clients in identifying and acquiring new customers, as well as in increasing the loyalty and profitability of their existing customers. We have a client base in excess of 450 companies, consisting mostly of specialty retailers, petroleum retailers, utilities, supermarkets and financial services companies. We generally have long-term relationships with our clients, with contracts typically ranging from three to five years in duration.

We are the result of the 1996 merger of two entities acquired by Welsh Carson Anderson & Stowe: J.C. Penney’s transaction services business, BSI Business Services, Inc., and Limited Brands, Inc.’s credit card bank operation, World Financial Network National Bank. In June 2001, we concluded the initial public offering of our common stock, which is listed on the New York Stock Exchange. During 2003, we completed two secondary public offerings whereby Limited Commerce Corp., which is a wholly owned subsidiary of Limited Brands and was our second largest stockholder, sold all of our shares of common stock it beneficially owned.

We continue to execute on our growth strategy through a combination of internal growth and acquisitions. In early 2005, we entered into long-term agreements to provide private label credit card services to Z Gallerie and to provide private label credit card and co-brand services to Hanover Direct. In April 2005, we signed an agreement with Blair Corporation to purchase Blair’s private label credit card portfolio and a ten-year agreement with Blair to provide a fully integrated private label credit card program. In April 2005, we expanded our existing commercial credit card relationship with Carter Lumber by signing a five-year agreement with Carter Lumber to provide an integrated commercial credit card and consumer private label credit card program. In May 2005, we signed a multi-year renewal with The Dress

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Barn, Inc. and Maurices Incorporated to continue providing private label credit card services, and in July we entered into a multi-year agreement with Gander Mountain Company to provide a co-brand credit card program. In October 2005, we expanded our relationship with each of Spiegel Catalog and Newport News by entering into long-term agreements to provide co-brand credit card programs for both the Spiegel and Newport News brands. In November 2005, we extended our previous agreements with Limited Brands, one of our top-ten clients, to continue providing credit and programs across the following brands: Victoria's Secret, The Limited, Express, Bath and Body Works and Henri Bendel.

In May 2005, we signed a five-year extension with Hilton HHonors Worldwide, one of our top-fifteen clients, to continue to provide integrated relationship management services for the Hilton HHonors® Guest Rewards Program. In July 2005, we expanded our relationship with Bank of America by signing a multi-year renewal to complete the construction of an enhanced consumer marketing database and to host and manage the system on behalf of Bank of America. In September 2005, we expanded our marketing capabilities with the acquisition of Bigfoot Interactive, Inc., now known as Epsilon Interactive, Inc., a leading full-service provider of strategic ROI-focused e-mail communications and marketing automation solutions.

In 2005, we renewed the participation of several of the top-ten sponsors in our AIR MILES® Reward Program in Canada. In July 2005, we signed multi-year renewals with the operating subsidiaries of Sobeys Inc. in Atlantic Canada and the Province of Quebec to continue as participating regional grocery sponsors. In October 2005, we signed a multi-year renewal with the Liquor Control Board of Ontario and a long-term renewal with Amex Bank of Canada, to continue to issue AIR MILES reward miles to Canadians holding its American Express AIR MILES Credit Cards. In December 2005, we signed a multi-year renewal with Canada Safeway Limited to continue as the Western Canada participating grocery sponsor in the AIR MILES Reward Program.

In April 2005, we signed an agreement to provide project management and systems integration services to Cobb Energy, a large co-op electric utility. In May 2005, we acquired Atrana Solutions, Inc., a leading provider of point-of-sale technology solutions that gave us additional capabilities, product offerings and client relationships. In July 2005, we signed a long-term contract renewal with Pepco Energy Services, Inc. to continue providing customer information systems services and customer care solutions. In August 2005, we signed an agreement with Hampton Roads Sanitation District to provide consulting services and an agreement with Greenville Utilities Commission to provide customer care solutions. In November 2005, we signed a seven-year agreement with PNM Resources' retail energy provider in Texas, First Choice Power, to provide a full-service customer care solution.

Our corporate headquarters are located at 17655 Waterview Parkway, Dallas, Texas 75252, and our telephone number is 972-348-5100.

Our Market Opportunity and Growth Strategy

Our services are applicable to the full spectrum of commerce opportunities involving companies that sell products and services to individual consumers. We are well positioned to benefit from trends favoring outsourcing and electronic transactions. Many companies lack the economies of scale and core competencies necessary to support their own transaction processing infrastructure and credit card and loyalty or database operations. Companies are also increasingly outsourcing the development and management of their marketing programs.

Our growth strategy is to pursue initiatives to capitalize on our market position and core competencies. Key elements of our strategy are:

- *Expanding relationships with our base of over 450 clients by offering them integrated transaction and marketing services. We offer our clients products and services that will help them more effectively understand and service their customers and allow them to build and maintain long-term relationships with their customers. By providing services directly to our clients' customers we are able to become an integral part of our clients' business.*

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- *Expanding our client base in our existing market sectors.* We will continue focusing on particular markets that are experiencing rapid growth and increasingly utilizing outsourcing, such as transaction and credit services related to our private label credit card programs for retailers, marketing services related to the AIR MILES Reward Program in Canada and database marketing in the United States, and billing and customer care services for the utility industry.
- *Continuing to establish long-term relationships with our clients that result in a stable and recurring revenue base.* We seek to maintain a stable and recurring revenue base by building and maintaining long-term relationships with our clients and entering into contracts that typically extend for three to five years. Most of our services require the payment of monthly fees based on the number of customer interactions we process, allowing us to generate recurring revenues.
- *Pursuing focused, strategic acquisitions and alliances to enhance our core capabilities, increase our scale and expand our range of services.* Since our inception, we have grown in part through selective acquisitions. We intend to continue to acquire other companies with complementary products, services or relationships to enhance and expand our offering and increase our market share. We also seek to enter into other strategic relationships that extend our customer reach and generate additional revenue.

Products and Services

Our products and services are centered around three core capabilities — Transaction Services, Credit Services and Marketing Services. We have traditionally marketed and sold our products and services on a stand-alone basis but increasingly market and sell them on an integrated basis. Our products and services and target markets are listed below. Financial information about our segments and geographic areas appears in Note 18 of our consolidated financial statements.

<u>Segment</u>	<u>Products and Services</u>	<u>Target Markets</u>
Transaction Services	• Issuer Services	• Specialty Retail
	— Card Processing	
	— Billing and Payment Processing	
	— Customer Care	
	• Utility Services	• Utility
	— Customer Information System Hosting	
— Customer Care		
Credit Services	— Billing and Payment Processing	
	• Merchant Services	• Petroleum Retail
	— Point-of-Sale Services	
	— Merchant Bankcard Services	
	• Private Label Receivables Financing	• Specialty Retail
— Underwriting and Risk Management		
— Merchant Processing		
Marketing Services	— Receivables Funding	
	• Loyalty Programs	• Financial Services
	— Coalition Loyalty	
	— One-to-One Loyalty	
	• Marketing Services	• Supermarkets
	— Database Marketing	
— E-mail Communication Solutions		
		• Petroleum Retail
		• Specialty Retail
		• Utility
		• Pharmaceuticals

Transaction Services

We facilitate and manage transactions between our clients and their customers through our scalable processing systems. Our largest clients within this segment include Limited Brands and its retail affiliates, representing approximately 13.6% of this segment's 2005 revenue.

Issuer Services. We assist clients in issuing private label credit cards with the retailers' brand that can be used by customers at the clients' store locations, catalogs or on-line. We also provide service and maintenance to our clients' private label credit card programs and assist our clients in acquiring, retaining and managing valuable repeat customers. Our Transaction Services segment performs issuer services for our Credit Services segment in connection with that segment's private label credit card programs. The inter-segment services accounted for 44.7% of Transaction Services revenue in 2005.

We have developed a proprietary private label credit card system designed specifically for retailers with the flexibility to make changes to accommodate our clients' specific needs. We have also built into the system marketing tools to assist our clients in increasing sales. We utilize our Quick Credit and On-Line Prescreen products to originate new private label credit card accounts. We believe that these products provide an effective marketing advantage over competing services.

We use automated technology for bill preparation, printing and mailing. Commingling statements, presorting and bar coding allow us to take advantage of postal discounts. In addition, we also process customer payments using image processing technology to maximize efficiency. By doing so, we improve the funds availability for both our clients and for those private label credit card receivables that we own or securitize.

Our customer care operations are influenced by our retail heritage. We focus our training programs in all areas on achieving the highest possible standards. We monitor our performance by conducting surveys with our clients and their customers. Our call centers are equipped to handle phone, mail, fax and on-line inquiries. We also provide collection activities on delinquent accounts to support our retail private label credit card programs.

Utility Services. We believe that we are one of the largest independent service providers of customer information systems for utilities in North America. We provide a comprehensive single source business solution for customer care and billing solutions. We have solutions for the regulated, de-regulated and municipal marketplace. These solutions provide not only hosting of the customer information system, but also customer care, statement generation and payment processing, focusing on successful acquisition, value enhancement and retention of our clients' customers.

In both a regulated and de-regulated environment, providers will need more sophisticated and complex billing and customer information systems to effectively compete in the marketplace. We believe that our ability to integrate transaction and marketing services effectively provides a competitive advantage for us.

Merchant Services. We are a provider of transaction processing services that based on transactions processed reflects an emphasis on the U.S. petroleum retail industry. We have built a network that enables us to process virtually all electronic payment types including credit card, debit card, prepaid card, electronic benefits and check transactions.

Credit Services

Through our Credit Services segment we are able to finance and operate private label credit card programs more effectively than a typical retailer can operate a stand alone program. We are able to use our expertise in loyalty and one-to-one marketing to help our retail partners develop deeper relationships with their customers and our cardholders. In addition, we are able to fund receivables through our securitization program to achieve lower borrowing costs while having the infrastructure to support and leverage a variety of portfolio types and a large number of account holders. Through our subsidiaries, World Financial Network National Bank and World Financial Capital Bank, we underwrite the accounts

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and fund purchases for over 80 private label credit card and commercial credit clients, representing almost 100 million cardholders and over \$3.7 billion of managed receivables as of December 31, 2005. Our clients are predominately specialty retailers, and the largest within this segment include Limited Brands and its retail affiliates, representing 30.5% of this segment's 2005 revenue, and Redcats, representing 13.6% of this segment's 2005 revenue.

We believe that an effective risk management process is important in both account underwriting and servicing. We use a risk analysis in establishing initial credit limits with cardholders. Because we process a large number of credit applications each year, we use automated proprietary scoring technology and verification procedures to process these applications. Our underwriting process involves the purchase of credit bureau information for each credit applicant. We continuously validate, monitor and maintain the scorecards, and we use the resulting data to ensure optimal risk performance. These models help segment prospects into narrower ranges within each risk score provided by credit bureau services, allowing us to better evaluate individual credit risk and to tailor our risk-based pricing accordingly. We generally receive a merchant fee for processing sales transactions charged to a private label credit card program for which we provide receivables funding. Processing includes authorization and settlement of the funds to the retailer, net of our merchant fee.

We utilize a securitization program as our primary funding vehicle for private label credit card receivables. Securitizations involve the packaging and selling of both current and future receivable balances of credit card accounts to a special purpose entity that then sells them to a master trust. Our Transaction Services segment retains rights to service the managed accounts. Our securitizations are treated as sales for accounting purposes and, accordingly, the receivable is removed from our balance sheet. We retain an ownership interest in the receivables, which is commonly referred to as a seller's interest, and a residual interest in the trust, which is commonly referred to as an interest-only strip. The fair value of the interest-only strip is based on assumptions regarding future payments and credit losses and is subject to volatility that could materially affect our operating results. Both the amount and timing of estimated cash flows are dependent on the performance of the underlying credit card receivables, and actual cash flows may vary significantly from expectations. If payments from cardholders or defaults by cardholders exceed our estimates, we may be required to decrease the carrying value of the interest-only strips through a charge against earnings. Limited Brands and its retail affiliates and Redcats accounted for approximately 25.2% and 11.7%, respectively of the receivables in the trust portfolio as of December 31, 2005.

Marketing Services

Our clients are focused on targeting, acquiring and retaining loyal and profitable customers. We create and manage marketing programs that result in securing more frequent and sustained customer purchasing. We utilize the information gathered through our loyalty and database marketing programs to help our clients design and implement effective marketing programs. Our largest service provided by this segment is coalition loyalty, which is branded as the AIR MILES Reward Program and which represents the substantial majority of this segment's 2005 revenue. Our clients within this segment are financial services providers, supermarkets, petroleum retailers, specialty retailers and pharmaceutical companies. BMO Bank of Montreal, Canada Safeway, Shell Canada and Amex Bank of Canada were the four largest Marketing Services clients in 2005, and represented approximately 44.6% of our 2005 Marketing Services revenue. BMO Bank of Montreal represented approximately 24.6% of this segment's 2005 revenue.

Coalition Loyalty. We operate what we believe to be the largest coalition loyalty program in Canada. The AIR MILES Reward Program enables consumers to earn AIR MILES reward miles as they shop across a range of retailers and other sponsors participating in the AIR MILES Reward Program. The AIR MILES Reward Program has enabled sponsors to use this tool to increase their revenues by attracting new customers, retaining existing customers and increasing the amount spent by customers.

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We deal with three primary parties in connection with our AIR MILES Reward Program: sponsors, collectors and suppliers.

Sponsors

A sponsor enters into an agreement with us to secure exclusive rights for its particular region and product or service category, to reward customers for changing their shopping behavior and to increase sales from collectors. Collectors can collect AIR MILES reward miles at over 12,000 retail and service locations operated by more than 100 brand name sponsors in every province across Canada, including BMO Bank of Montreal, Canada Safeway, Amex Bank of Canada, Shell Canada, A&P Canada and Sobeys.

Collectors

Members of the AIR MILES Reward Program, known as collectors, accumulate AIR MILES reward miles based on their purchasing behavior at sponsor locations. The AIR MILES Reward Program offers a reward structure that provides a quick and easy way for collectors to earn a broad selection of travel, entertainment and other lifestyle rewards by shopping at participating sponsors. Our active participants represent over two-thirds of all Canadian households. We have issued over seventeen billion AIR MILES reward miles since the program's inception in 1992.

Suppliers

We enter into supply agreements with suppliers of rewards to the program such as airlines, movie theaters and manufacturers of consumer electronics. We make more than 800 different reward opportunities available through over 300 suppliers.

Marketing Services. Epsilon Data Management, Inc. and Epsilon Interactive, which were acquired by us during 2004 and 2005, respectively, are leaders in providing integrated direct marketing solutions that combine database marketing technology and analytics with a broad range of direct marketing services, including e-mail marketing campaigns. Epsilon leverages its deep technology, analytic and direct marketing capabilities to develop integrated marketing solutions for clients in a targeted group of industries including travel, financial services, pharmaceuticals, telecommunications, not-for-profit and insurance. Our integrated direct marketing services include the following:

Technology Services

We provide design and management of integrated marketing databases; customer and prospect data integration and hygiene; campaign management and marketing application integration; loyalty management; web design and development; and e-mail marketing.

Analytical Services

We provide behavior-based, demographic and attitudinal segmentation; acquisition, attrition, cross-sell and upsell, retention, loyalty and value predictive modeling; and program evaluation, testing and measurement.

Direct Marketing Services

We provide direct marketing program design, development and management; campaign design and execution; value proposition and business case development; concept development and creative media consulting; print, imaging and personalization services; data processing services; fulfillment services; and mailing services.

E-mail Communication Solutions

We provide strategic, focused e-mail communication solutions and marketing technologies. Our end-to-end suite of industry specific products and services includes scalable e-mail campaign technology, delivery optimization, marketing automation tools, turnkey integration solutions, strategic consulting and creative expertise to produce e-mail programs that generate measurable results throughout the customer lifecycle.

Safeguards to Our Business; Disaster and Contingency Planning

We have a number of safeguards to protect our company from the risks we face as a business. Given the significant amount of data that we manage, much of which is real-time data to support our clients' commerce initiatives, we have established redundant capabilities within our data centers. We operate multiple data processing centers. In the event of a disaster we can restore our data centers' systems at a third party-provided disaster recovery center for the majority of our clients' data, and recover internally for the remaining critical systems. Our approach to disaster recovery is consistent with best practices in our industry and our clients' needs.

Protection of Intellectual Property and Other Proprietary Rights

We rely on a combination of copyright, trade secret and trademark laws, confidentiality procedures, contractual provisions and other similar measures to protect our proprietary information and technology used in each segment of our business. We currently have four patent applications with the U.S Patent and Trademark Office and one international application that has entered the national phase in two countries. We generally enter into confidentiality or license agreements with our employees, consultants and corporate partners, and generally control access to and distribution of our technology, documentation and other proprietary information. Despite the efforts to protect our proprietary rights, unauthorized parties may attempt to copy or otherwise obtain the use of our products or technology that we consider proprietary and third parties may attempt to develop similar technology independently. We pursue registration and protection of our trademarks primarily in the United States and Canada, although we do have applications pending in Mexico, South America and Europe. Effective protection of intellectual property rights may be unavailable or limited in some countries. The laws of some countries do not protect our proprietary rights to the same extent as in the United States and Canada. We are the exclusive Canadian licensee of the AIR MILES family of trademarks pursuant to a license agreement with Air Miles International Trading B.V. We believe that the AIR MILES family of trademarks and our other trademarks are important for our branding and corporate identification and marketing of our services in each segment.

Competition

The markets for our products and services are highly competitive. We compete with data processing companies, credit card issuers and marketing services companies, as well as with the in-house staffs of our current and potential clients.

Transaction Services. We are a leading provider of transaction services. Our focus has been on industry segments characterized by companies with large customer bases, detail-rich data and high transaction volumes. Targeting these specific market sectors allows us to develop and deliver solutions that meet the needs of these sectors. This focus is consistent with our marketing strategy for all products and services. Additionally, we believe we effectively distinguish ourselves from other transaction processors by providing solutions that help our clients leverage investments they have made in payment systems by using these systems for electronic marketing programs. Competition in the area of utility services comes primarily from larger, more well-funded and well-established competitors and from companies developing in-house solutions and capabilities.

Credit Services. Our credit services business competes primarily with financial institutions whose marketing focus has been on developing credit card programs with large revolving balances. These competitors further drive their businesses by cross selling their other financial products to their cardholders. Our focus has been on targeting retailers that understand the competitive advantage of developing loyal customers. Typically these retailers have customers that make more frequent and smaller transactions. This results in the effective capture of detail-rich data within our database marketing services, allowing us to mine and analyze this data to develop successful customer relationship management strategies for our clients. As an issuer of private label credit cards, we compete with other payment methods, primarily general purpose credit cards like Visa and MasterCard, which we also issue, and American Express, as well as cash, checks and debit cards.

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Marketing Services. As a provider of marketing services, we generally compete with advertising and other promotional and loyalty programs, both traditional and on-line, for a portion of a client's total marketing budget. In addition, we compete against internally developed products and services created by our existing and potential clients. For each of our marketing services, we expect competition to intensify as more competitors enter our market. In addition, new competitors with our AIR MILES Reward Program may target our sponsors and collectors as well as draw rewards from our rewards suppliers. Our ability to generate significant revenue from clients and loyalty partners will depend on our ability to differentiate ourselves through the products and services we provide and the attractiveness of our loyalty and rewards programs to consumers. The continued attractiveness of our loyalty and rewards programs will depend in large part on our ability to remain affiliated with sponsors that are desirable to consumers and to offer rewards that are both attainable and attractive to consumers. Intensifying competition will make it more difficult for us to do this. For our database marketing services, our ability to continue to capture detailed transaction data on consumers is critical in providing effective customer relationship management strategies for our clients.

Regulation

Federal and state laws and regulations extensively regulate the operations of our credit card services bank subsidiary, World Financial Network National Bank, as well as our industrial bank, World Financial Capital Bank. Many of these laws and regulations are intended to maintain the safety and soundness of World Financial Network National Bank and World Financial Capital Bank, and they impose significant restraints on them to which other non-regulated companies are not subject. Because World Financial Network National Bank is deemed a credit card bank and World Financial Capital Bank is an industrial bank within the meaning of the Bank Holding Company Act, we are not subject to regulation as a bank holding company. If we were subject to regulation as a bank holding company, we would be constrained in our operations to a limited number of activities that are closely related to banking or financial services in nature. Nevertheless, as a national bank, World Financial Network National Bank is still subject to overlapping supervision by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation; and, as an industrial bank, World Financial Capital Bank is still subject to overlapping supervision by the Federal Deposit Insurance Corporation and the State of Utah.

World Financial Network National Bank and World Financial Capital Bank must maintain minimum amounts of regulatory capital. If World Financial Network National Bank or World Financial Capital Bank do not meet these capital requirements, their respective regulators have broad discretion to institute a number of corrective actions that could have a direct material effect on our financial statements. Under the Federal Deposit Insurance Corporation's Order approving World Financial Capital Bank's application for deposit insurance, World Financial Capital Bank must meet specific capital ratios and paid-in capital minimums, must maintain adequate allowances for loan losses, and must operate within its three-year business plan, among other restrictions. If World Financial Capital Bank fails to meet the terms of the Federal Deposit Insurance Corporation's Order, the Federal Deposit Insurance Corporation may withdraw insurance coverage from World Financial Capital Bank and the State of Utah may withdraw its approval of World Financial Capital Bank. Under capital adequacy guidelines and the regulating framework for prompt corrective action, World Financial Network National Bank must meet specific guidelines that involve measures and ratios of its assets, liabilities, regulatory capital, interest rate exposure and certain off-balance sheet items under regulatory accounting standards, among other factors. Under the National Bank Act, if the capital stock of World Financial Network National Bank is impaired by losses or otherwise, we, as the sole shareholder, may be assessed the deficiency. To the extent necessary, if a deficiency in capital still exists, the FDIC may be appointed as a receiver to wind up World Financial Network National Bank's affairs.

Before World Financial Network National Bank can pay dividends to us, it must obtain prior regulatory approval if all dividends declared in any calendar year would exceed its net profits for that year plus its retained net profits for the preceding two calendar years, less any transfers to surplus. In addition,

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World Financial Network National Bank may only pay dividends to the extent that retained net profits, including the portion transferred to surplus, exceed bad debts. Moreover, to pay any dividend, World Financial Network National Bank must maintain adequate capital above regulatory guidelines. Further, if a regulatory authority believes that World Financial Network National Bank is engaged in or is about to engage in an unsafe or unsound banking practice, which, depending on its financial condition, could include the payment of dividends, the authority may require, after notice and hearing, that World Financial Network National Bank cease and desist from the unsafe practice. Before World Financial Capital Bank can pay dividends to us, it must obtain prior written regulatory approval.

As part of an acquisition in 2003 by World Financial Network National Bank, which required approval by the Office of the Comptroller of the Currency, the Office of the Comptroller of the Currency required World Financial Network National Bank to enter into an operating agreement with it and a capital adequacy and liquidity maintenance agreement with us. The operating agreement requires World Financial Network National Bank to continue to operate in a manner consistent with its current practices, regulatory guidelines and applicable law, including those related to affiliate transactions, maintenance of capital and corporate governance. World Financial Network National Bank does not expect that the operating agreement will require any changes in World Financial Network National Bank's current operations. The capital adequacy and liquidity maintenance agreement memorializes our current obligations to World Financial Network National Bank.

We are limited under Sections 23A and 23B of the Federal Reserve Act in the extent to which we can borrow or otherwise obtain credit from or engage in other "covered transactions" with World Financial Network National Bank or World Financial Capital Bank, which may have the effect of limiting the extent to which World Financial Network National Bank or World Financial Capital Bank can finance or otherwise supply funds to us. "Covered transactions" include loans or extensions of credit, purchases of or investments in securities, purchases of assets, including assets subject to an agreement to repurchase, acceptance of securities as collateral for a loan or extension of credit, or the issuance of a guarantee, acceptance or letter of credit. Although the applicable rules do not serve as an outright bar on engaging in "covered transactions," they do require that we engage in covered transactions with World Financial Network National Bank or World Financial Capital Bank only on terms and under circumstances that are substantially the same, or at least as favorable to World Financial Network National Bank or World Financial Capital Bank, as those prevailing at the time for comparable transactions with nonaffiliated companies. Furthermore, with certain exceptions, each loan or extension of credit by World Financial Network National Bank or World Financial Capital Bank to us or our other affiliates must be secured by collateral with a market value ranging from 100% to 130% of the amount of the loan or extension of credit, depending on the type of collateral.

We are required to monitor and report unusual or suspicious account activity as well as transactions involving amounts in excess of prescribed limits under the Bank Secrecy Act, IRS rules and other regulations. Congress, the IRS and the bank regulators have focused their attention on banks' monitoring and reporting of suspicious activities. Additionally, Congress and the bank regulators have proposed, adopted or passed a number of new laws and regulations that may increase reporting obligations of banks.

We are also subject to numerous laws and regulations that are intended to protect consumers, including state law, the Truth in Lending Act, Equal Credit Opportunity Act and Fair Credit Reporting Act. These laws and regulations mandate various disclosure requirements and regulate the manner in which we may interact with consumers. These and other laws also limit finance charges or other fees or charges earned in our activities. We conduct our operations in a manner that we believe excludes us from regulation as a consumer reporting agency under the Fair Credit Reporting Act. If we were deemed a consumer reporting agency, however, we would be subject to a number of additional complex regulatory requirements and restrictions.

A number of privacy regulations have been implemented in the United States and Canada in recent years. These regulations place many new restrictions on our ability to collect and disseminate customer information.

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Under the Gramm Leach Bliley Act, we are required to maintain a comprehensive written information security program that includes administrative, technical and physical safeguards relating to customer information. We also were required to develop an initial privacy notice and we are required to provide annual privacy notices to customers that describe in general terms our information sharing practices. If we intend to share nonpublic personal information about customers with nonaffiliated third parties, we must provide our customers with a notice and a reasonable period of time for each customer to “opt out” of any such disclosure.

In addition to the federal privacy laws with which we must comply, states also have adopted statutes, regulations or other measures governing the collection and distribution of personal information about customers. In some cases these state measures are preempted by federal law, but if not, we make efforts to monitor and comply with individual state privacy laws in the conduct of our business.

We also have systems and processes to comply with the USA PATRIOT ACT of 2001, which is designed to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Canada has likewise enacted privacy legislation known as the Personal Information Protection and Electronic Documents Act. This act requires organizations to obtain a consumer’s consent to collect, use or disclose personal information. Under this act, which took effect on January 1, 2001, the nature of the required consent depends on the sensitivity of the personal information, and the act permits personal information to be used only for the purposes for which it was collected. Some provinces have enacted substantially similar privacy legislation. We believe we have taken appropriate steps with our AIR MILES Reward Program to comply with the law.

Employees

As of December 31, 2005 we had approximately 8,000 employees in the United States and Canada. We believe our relations with our employees are good. We have no collective bargaining agreements with our employees.

Available Information

We file or furnish annual, quarterly, current and special reports and proxy statements and other information with the SEC. You may read and copy any document we file or furnish at the SEC’s Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public at the SEC’s web site at www.sec.gov. Our web site is www.AllianceDataSystems.com. No information from this web site is incorporated by reference herein. You may also obtain copies of our annual, quarterly and current reports, proxy statements and certain other information filed or furnished with the SEC, as well as amendments thereto, free of charge from our web site. These documents are posted to our web site as soon as reasonably practicable after we have filed or furnished these documents with the SEC. We post our audit committee, compensation committee, nominating and corporate governance committee, and executive committee charters, our corporate governance guidelines, and our code of ethics, code of ethics for Senior Financial Executives and Chief Executive Officer, and code of ethics for Board Members on our web site. These documents are available free of charge to any stockholder upon request.

We submitted the certification of the Chief Executive Officer required by Section 303A.12(a) of the New York Stock Exchange Listed Company Manual, relating to our compliance with the NYSE’s corporate governance listing standards, to the NYSE on June 8, 2005 with no qualification. In addition, we included the certifications of our Chief Executive Officer and Chief Financial Officer required by Section 302 of the Sarbanes-Oxley Act of 2002 and related rules, relating to the quality of our public disclosure, in this Annual Report on Form 10-K as Exhibits 31.1 and 31.2.

Item 1A. Risk Factors

Risk Factors

Risks Related to General Business Operations

Our 10 largest clients represented 43.1% of our consolidated revenue in 2005, and the loss of any of these clients could cause a significant drop in our revenue.

We depend on a limited number of large clients for a significant portion of our consolidated revenue. Our 10 largest clients represented approximately 43.1% of our consolidated revenue during the year ended December 31, 2005, with Limited Brands and its retail affiliates representing approximately 17.7% of our 2005 consolidated revenue. Our contract with Limited Brands and its retail affiliates expires in 2012. A decrease in revenue from any of our significant clients for any reason, including a decrease in pricing or activity, or a decision to either utilize another service provider or to no longer outsource some or all of the services we provide, could have a material adverse effect on our consolidated revenue.

Transaction Services. Our 10 largest clients in this segment represented approximately 48.7% of our Transaction Services revenue in 2005. Limited Brands and its retail affiliates were the largest Transaction Services client in 2005, representing approximately 13.6% of this segment's 2005 revenue. Our contracts with Limited Brands and its retail affiliates expire in 2012.

Credit Services. Our two largest clients in this segment represented approximately 44.1% of our Credit Services revenue in 2005. Limited Brands and its retail affiliates represented approximately 30.5%, and Redcats represented approximately 13.6% of our Credit Services revenue in 2005. Our contracts with Limited Brands and its retail affiliates expire in 2012, and our contract with Redcats expires in 2013.

Marketing Services. Our 10 largest clients in this segment represented approximately 61.1% of our Marketing Services revenue in 2005. BMO Bank of Montreal, Canada Safeway, Shell Canada and Amex Bank of Canada were the four largest Marketing Services clients in 2005, representing approximately 44.6% of our 2005 Marketing Services revenue. BMO Bank of Montreal represented approximately 24.6% of this segment's 2005 revenue. Our contract with BMO Bank of Montreal expires in 2009.

Competition in our industries is intense and we expect it to intensify.

The markets for our products and services are highly competitive, and we expect competition to intensify in each of those markets. Many of our current competitors have longer operating histories, stronger brand names and greater financial, technical, marketing and other resources than we do. We cannot assure you that we will be able to compete successfully against our current and potential competitors.

The markets for the services that we offer may fail to expand or may contract and this could negatively impact our growth and profitability.

Our growth and continued profitability depend on acceptance of the services that we offer. If demand for transaction, credit or marketing services decreases, the price of our common stock could fall and you could lose value in your investment. We cannot guarantee that retailers will continue to use loyalty and database marketing strategies. Changes in technology may enable merchants and retail companies to directly process transactions in a cost-efficient manner without the use of our services. Additionally, downturns in the economy or the performance of retailers may result in a decrease in the demand for our marketing strategies. Further, if our customers make fewer sales of their products and services, we will have fewer transactions to process, resulting in lower revenue. Any decrease in the demand for our services for the reasons discussed above or any other reasons could have a material adverse effect on our growth and revenue.

We cannot assure you that we will effectively integrate acquisitions or realize their full benefits, and future acquisitions may result in dilutive equity issuances or increases in debt.

Historically, we have completed several acquisitions each year. We expect to continue to seek selective acquisitions as an element of our growth strategy. If we are unable to successfully integrate completed or any future acquisitions, we may incur substantial costs and delays or other operational, technical or financial problems, any of which could harm our business and impact the trading price of our common stock. In addition, the failure to successfully integrate any future acquisition may divert management's attention from our core operations or could harm our ability to timely meet the needs of our customers. To finance future acquisitions, we may need to raise funds either by issuing equity securities or incurring debt. If we issue additional equity securities, such sales could reduce the current value of our stock by diluting the ownership interest of our stockholders.

Failure to safeguard our databases and consumer privacy could affect our reputation among our clients and their customers, and may expose us to legal claims from consumers.

An important feature of our marketing and credit services is our ability to develop and maintain individual consumer profiles. As part of our AIR MILES Reward Program, database marketing program and private label credit card program, we maintain marketing databases containing information on consumers' account transactions. Although we have extensive security procedures, our databases may be subject to unauthorized access. If we experience a security breach, the integrity of our marketing databases could be affected. Security and privacy concerns may cause consumers to resist providing the personal data necessary to support our profiling capability. The use of our loyalty, database marketing or private label credit card programs could decline if any compromise of security occurred. Any public perception that we released consumer information without authorization could subject us to legal claims from consumers and adversely affect our client relationships.

Loss of data center capacity, interruption of telecommunication links, or inability to utilize proprietary software of third-party vendors could affect our ability to timely meet the needs of our clients and their customers.

Our ability to protect our data centers against damage from fire, power loss, telecommunications failure and other disasters is critical. In order to provide many of our services, we must be able to store, retrieve, process and manage large databases and periodically expand and upgrade our capabilities. Any damage to our data centers, any failure of our telecommunication links that interrupts our operations or any impairment of our ability to use software used by or licensed to us could adversely affect our ability to meet our clients' needs and their confidence in utilizing us for future services.

As a result of our significant Canadian operations, our reported financial information will be affected by fluctuations in the exchange rate between the U.S. and Canadian dollars.

A significant portion of our Marketing Services revenue is derived from our operations in Canada, which transacts business in Canadian dollars. Therefore, our reported financial information from quarter-to-quarter will be affected by changes in the exchange rate between the U.S. and Canadian dollars over the relevant periods. We do not hedge any of our net investment exposure in our Canadian subsidiary.

The hedging activity related to our securitization trusts subjects us to off-balance sheet counterparty risks relating to the creditworthiness of the commercial banks with whom we enter into hedging transactions.

In order to execute our hedging strategies, our securitization trusts have entered into interest rate derivative contracts with commercial banks. These banks are otherwise known as counterparties. It is our policy to enter into such contracts with counterparties that are deemed to be creditworthy. However, if macro- or micro-economic events were to negatively impact the respective banks, the banks might not be able to honor their obligations to the securitization trusts and we might suffer a loss related to our residual interest in the securitization trusts.

Our failure to protect our intellectual property rights may harm our competitive position, and litigation to protect our intellectual property rights or defend against third party allegations of infringement may be costly.

Third parties may infringe or misappropriate our trademarks or other intellectual property rights, which could have a material adverse effect on our business, financial condition or operating results. The actions we take to protect our trademarks and other proprietary rights may not be adequate. Litigation may be necessary to enforce our intellectual property rights, protect our trade secrets or determine the validity and scope of the proprietary rights of others. We cannot assure you that we will be able to prevent infringement of our intellectual property rights or misappropriation of our proprietary information. Any infringement or misappropriation could harm any competitive advantage we currently derive or may derive from our proprietary rights. Third parties may assert infringement claims against us. Any claims and any resulting litigation could subject us to significant liability for damages. An adverse determination in any litigation of this type could require us to design around a third party's patent or to license alternative technology from another party. In addition, litigation is time-consuming and expensive to defend and could result in the diversion of our time and resources. Any claims from third parties may also result in limitations on our ability to use the intellectual property subject to these claims.

If we are required to pay state taxes on transaction processing, it could negatively impact our profitability.

Transaction processing companies may be subject to state taxation of certain portions of their fees charged to merchants for their services. If we are required to pay such taxes and are unable to pass this tax expense through to our merchant clients, these taxes would negatively impact our profitability.

Risks Particular to Transaction Services

In 2005, our Transaction Services segment derived approximately 44.7% of its revenue from servicing cardholder accounts for the Credit Services segment. If the Credit Services segment suffered a significant client loss, our revenue and profitability attributable to the Transaction Services segment could be materially and adversely affected.

Our Transaction Services segment performs card processing and servicing activities for cardholder accounts generated by our Credit Services segment. During 2005, our Transaction Services segment derived \$313.0 million, or 44.7% of its revenues, from these services for our Credit Services segment. The financial performance of our Transaction Services segment, therefore, is linked to the activities of our Credit Services segment. If the Credit Services segment were to lose a significant client, our revenue and profitability attributable to the Transaction Services segment could be materially and adversely affected.

Risks Particular to Credit Services

If we are unable to securitize our credit card receivables due to changes in the market, the unavailability of credit enhancements, an early amortization event or for other reasons, we would not be able to fund new credit card receivables, which would have a negative impact on our operations and earnings.

Since January 1996, we have sold substantially all of the credit card receivables originated by our private label credit card bank, World Financial Network National Bank, to WFN Credit Company, LLC and WFN Funding Company II, LLC, which in turn sold them to World Financial Network Credit Card Master Trust, World Financial Network Credit Card Master Note Trust and World Financial Network Credit Card Master Trust III, which we refer to as the WFN Trusts, as part of our securitization program. This securitization program is the primary vehicle through which World Financial Network National Bank finances our private label credit card receivables. We have approximately \$450.0 million of asset-backed notes that will come due in 2006. If World Financial Network National Bank were not able to regularly securitize the receivables it originates, our ability to grow or even maintain our credit services business

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would be materially impaired. World Financial Network National Bank's ability to effect securitization transactions is impacted by the following factors, some of which are beyond our control:

- conditions in the securities markets in general and the asset-backed securitization market in particular;
- conformity in the quality of credit card receivables to rating agency requirements and changes in those requirements; and
- our ability to fund required overcollateralizations or credit enhancements, which we routinely utilize in order to achieve better credit ratings to lower our borrowing costs.

Once World Financial Network National Bank securitizes receivables, the agreement governing the transaction contains covenants that address the receivables' performance and the continued solvency of the retailer where the underlying sales were generated. In the event such a covenant or other similar covenant is breached, an early amortization event could be declared, in which case the trustee for the securitization trust would retain World Financial Network National Bank's interest in the related receivables, along with the excess interest income that would normally be paid to World Financial Network National Bank, until such time as the securitization investors are fully repaid. The occurrence of an early amortization event would significantly limit, or even negate, our ability to securitize additional receivables.

Increases in net charge-offs beyond our current estimates could have a negative impact on our operating income and profitability.

The primary risk associated with unsecured consumer lending is the risk of default or bankruptcy of the borrower, resulting in the borrower's balance being charged-off as uncollectible. We rely principally on the customer's creditworthiness for repayment of the loan and therefore have no other recourse for collection. We may not be able to successfully identify and evaluate the creditworthiness of cardholders to minimize delinquencies and losses. An increase in defaults or net charge-offs beyond historical levels will reduce the net spread available to us from the securitization master trust and could result in a reduction in finance charge income or a write-down of the interest-only strip. General economic factors, such as the rate of inflation, unemployment levels and interest rates, may result in greater delinquencies that lead to greater credit losses among consumers. In addition to being affected by general economic conditions and the success of our collection and recovery efforts, our delinquency and net credit card receivable charge-off rates are affected by the credit risk of our private label credit card receivables and the average age of our various private label credit card account portfolios. The average age of our private label credit card receivables affects the stability of delinquency and loss rates of the portfolio. An older private label credit card portfolio generally drives a more stable performance in the portfolio. At December 31, 2005, 61.9% of the total number of our securitized accounts with outstanding balances and 58.0% of the amount of our outstanding securitized receivables were for accounts with origination dates greater than 24 months old. For 2005, our managed receivables net charge-off ratio was 6.5% compared to 6.8% for 2004 and 7.4% for 2003. We cannot assure you that our pricing strategy can offset the negative impact on profitability caused by increases in delinquencies and losses. Any material increases in delinquencies and losses beyond our current estimates could have a material adverse impact on us and the value of our net retained interests in loans that we sell through securitizations.

Changes in the amount of payments and defaults by cardholders on credit card balances may cause a decrease in the estimated value of interest-only strips.

The estimated fair value of interest-only strips depends upon the anticipated cash flows of the related credit card receivables. A significant factor affecting the anticipated cash flows is the rate at which the underlying principal of the securitized credit card receivables is reduced. Other assumptions used in estimating the value of the interest-only strips include estimated future credit losses and a discount rate commensurate with the risks involved. The rate of cardholder payments or defaults on credit card balances may be affected by a variety of economic factors, including interest rates and the availability of alternative financing, most of which are not within our control. A decrease in interest rates could cause cardholder

payments to increase, thereby requiring a write down of the interest-only strips. If payments from cardholders or defaults by cardholders exceed our estimates, we may be required to decrease the estimated value of the interest-only strips through a charge against earnings.

Interest rate increases could significantly reduce the amount we realize from the spread between the yield on our assets and our cost of funding.

An increase in market interest rates could reduce the amount we realize from the spread between the yield on our assets and our cost of funding. A rise in market interest rates may indirectly impact the payment performance of consumers or the value of, or the amount we could realize from the sale of interest-only strips. At December 31, 2005, we had \$4.1 billion of debt, including \$3.3 billion of off-balance sheet debt from our securitization program.

- At December 31, 2005, 69.8% of our \$4.1 billion of debt was fixed or effectively fixed through swap agreements.
 - At December 31, 2005, 63.1% of our total debt, or 79.2% of our off-balance sheet debt, was locked at a current effective interest rate of 4.6% through interest rate swap agreements with notional amounts totaling \$2.6 billion. Of the remaining 20.8% of our off-balance sheet debt, we have variable rate private label credit cards that are equal to or greater than the variable rate debt.
 - At December 31, 2005, approximately 6.7% of our total debt, or 32.8% of our on-balance sheet debt, was subject to fixed rates with a weighted average interest rate of 4.2%.

Assuming we do not take any counteractive measures, a 1.0% increase in interest rates would result in an annual decrease to pretax income of approximately \$5.6 million related to our on-balance sheet debt. The foregoing sensitivity analysis is limited to the potential impact of an interest rate increase of 1.0% on cash flows and fair values, and does not address default or credit risk.

We expect growth in our credit services segment to result from new and acquired private label credit card programs whose credit card receivable performance could result in increased portfolio losses and negatively impact our net retained interests in loans securitized.

We expect an important source of growth in our private label credit card operations to come from the acquisition of existing private label credit card programs and initiating private label credit card programs with retailers who do not currently offer a private label credit card. Although we believe our pricing and models for determining credit risk are designed to evaluate the credit risk of existing programs and the credit risk we are willing to assume for acquired and start-up programs, we cannot assure you that the loss experience on acquired and start-up programs will be consistent with our more established programs. The failure to successfully underwrite these private label credit card programs may result in defaults greater than our expectations and could have a material adverse impact on us and the value of our net retained interests in loans securitized.

Current and proposed regulation and legislation relating to our credit services could limit our business activities, product offerings and fees charged.

Various Federal and state laws and regulations significantly limit the credit services activities in which we are permitted to engage. Such laws and regulations, among other things, limit the fees and other charges that we can impose on consumers, limit or prescribe certain other terms of our products and services, require specified disclosures to consumers, or require that we maintain certain licenses, qualifications and minimum capital levels. In some cases, the precise application of these statutes and regulations is not clear. In addition, numerous legislative and regulatory proposals are advanced each year which, if adopted, could have a material adverse effect on our profitability or further restrict the manner in which we conduct our activities. The failure to comply with, or adverse changes in, the laws or regulations to which our business is subject, or adverse changes in their interpretation, could have a material adverse

effect on our ability to collect our receivables and generate fees on the receivables, thereby adversely affecting our profitability.

If our bank subsidiaries fail to meet certain bank criteria, we may become subject to regulation under the Bank Holding Company Act, which would force us to cease all of our non-banking activities and thus cause a drastic reduction in our profits and revenue.

If either of our depository institution subsidiaries failed to meet the criteria for the exemption from the definition of “bank” in the Bank Holding Company Act under which it operates (which exemptions are described below), and if we did not divest such depository institution upon such an occurrence, we would become subject to regulation under the Bank Holding Company Act. This would require us to cease certain of our activities that are not permissible for companies that are subject to regulation under the Bank Holding Company Act.

One of our depository institution subsidiaries, World Financial Network National Bank, is a limited-purpose national credit card bank located in Ohio. World Financial Network National Bank is not a “bank” as defined under the Bank Holding Company Act because it is in compliance with the following requirements:

- it engages only in credit card operations;
- it does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;
- it does not accept any savings or time deposits of less than \$100,000, except for deposits pledged as collateral for its extensions of credit;
- it maintains only one office that accepts deposits; and
- it does not engage in the business of making commercial loans.

Our other depository institution subsidiary, World Financial Capital Bank, is a Utah industrial bank that is authorized to do business by the State of Utah and the Federal Deposit Insurance Corporation. World Financial Capital Bank is not a “bank” as defined under the Bank Holding Company Act because it is an industrial bank in compliance with the following requirements:

- it is an institution organized under the laws of a state which, on March 5, 1987, had in effect or had under consideration in such state’s legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act.
- it does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties.

While the consequences of being subject to regulation under the Bank Holding Company Act would be severe, we believe that the risk of becoming subject to such regulation is minimal as a result of the precautions we have taken in structuring our business.

If our industrial bank fails to meet the terms of the Federal Deposit Insurance Corporation or State of Utah Orders, we may be subject to termination of our industrial bank.

Our industrial bank, World Financial Capital Bank, is authorized to do business by the State of Utah and the Federal Deposit Insurance Corporation. World Financial Capital Bank is subject to capital ratios and paid-in capital minimums and must maintain adequate allowances for loan losses and operate within its three-year business plan. While the consequence of losing the World Financial Capital Bank authority to do business would be significant, we believe that the risk of such loss is minimal as a result of the precautions we have taken and the management team we have in place.

Risks Particular to Marketing Services

If actual redemptions by AIR MILES collectors are greater than expected, our profitability could be adversely affected.

A portion of our revenue is based on our estimate of the number of AIR MILES reward miles that will go unused by the collector base. The percentage of unredeemed reward miles is known as “breakage” in the loyalty industry. AIR MILES reward miles currently do not expire. We experience breakage when reward miles are not redeemed by collectors for a number of reasons, including:

- loss of interest in the program or sponsors;
- collectors moving out of the program area; and
- death of a collector.

If actual redemptions are greater than our estimates, our profitability could be adversely affected due to the cost of the excess redemptions.

We could face increased competition from other loyalty programs, including Aeroplan, Air Canada’s frequent flyer program.

As a result of increased competition in the loyalty market, including from Aeroplan, Air Canada’s frequent flyer program, we may experience greater competition in attracting and retaining sponsors in our AIR MILES Reward Program.

The loss of our most active AIR MILES collectors could negatively impact our growth and profitability.

Our most active AIR MILES reward miles collectors affect a disproportionately large percentage of our AIR MILES Reward Program revenue. We estimate that over half of the AIR MILES Reward Program revenues for 2006 will be associated with our AIR MILES collectors who participate most actively. The loss of a significant portion of these collectors, for any reason, could impact our ability to generate significant revenue from sponsors and loyalty partners. The continued attractiveness of our loyalty and rewards programs will depend in large part on our ability to remain affiliated with sponsors that are desirable to consumers and to offer rewards that are both attainable and attractive.

Airline or travel industry disruptions, such as an airline insolvency, could negatively affect the AIR MILES Reward Program, our revenues and profitability.

Air travel is one of the appeals of the AIR MILES Reward Program to collectors. As a result of airline insolvencies and restructurings, we may experience service disruptions that prevent us from fulfilling collectors’ flight redemption requests. If one of our existing airline suppliers sharply reduces its fleet capacity and route network, we may not be able to satisfy our collectors’ demands for airline tickets. Tickets from other airlines, if available, could be more expensive than a comparable ticket under our current supply agreements with existing suppliers, and the routes offered by the other airlines may be inadequate, inconvenient or undesirable to the redeeming collectors. As a result, we may experience higher air travel redemption costs and collector satisfaction with the AIR MILES Reward Program might be adversely affected.

As a result of airline or travel industry disruptions, or as might result from political instability, terrorist acts or war, some collectors could determine that air travel is too dangerous or, given new airport regulations, too burdensome. Consequently, collectors might forego redeeming reward miles for air travel and therefore might not participate in the AIR MILES Reward Program to the extent they previously did, which could adversely affect our revenue from the program. A reduction in collector use of the program could impact our ability to attract new sponsors and loyalty partners and to generate revenue from current sponsors and loyalty partners.

Legislation relating to consumer privacy may affect our ability to collect data that we use in providing our marketing services, which could negatively affect our ability to satisfy our clients' needs.

The enactment of legislation or industry regulations arising from public concern over consumer privacy issues could have a material adverse impact on our marketing services. Any such legislation or industry regulations could place restrictions upon the collection and use of information that is currently legally available, which could materially increase our cost of collecting some data. Legislation or industry regulation could also prohibit us from collecting or disseminating certain types of data, which could adversely affect our ability to meet our clients' requirements.

In the United States, the federal Gramm Leach Bliley Act makes it more difficult to collect and use information that has been legally available and may increase our costs of collecting some data. Regulations under this act give cardholders the ability to "opt out" of having information generated by their credit card purchases shared with other parties or the public. Our ability to gather and utilize this data will be adversely affected if a significant percentage of the consumers whose purchasing behavior we track elect to "opt out," thereby precluding us from using their data. Under the regulations, we generally are required to refrain from sharing data generated by our new cardholders until such cardholders are given the opportunity to "opt out."

In the United States, the federal Do-Not-Call Implementation Act makes it more difficult to telephonically communicate with customers. Regulations under this act give consumers the ability to "opt out," through a national do-not-call list, a state do-not-call list or an internal do-not-call list which is required by the regulation, of having telephone calls placed to them by telemarketers who do not have an existing business relationship with the consumer. This act could limit our ability to provide services and information to our clients. Failure to comply with the terms of this act could have a negative impact to our reputation and subject us to significant penalties.

In the United States, the federal Controlling the Assault of Non-Solicited Pornography and Marketing Act restricts our ability to send commercial electronic mail messages to customers. The act requires that a customer provide consent prior to a commercial electronic mail message being sent to the customer and further restricts the transmission information (header/subject line) and content of the electronic mail message. Under the regulation, we generally are prohibited from issuing electronic mail or obtaining a benefit from an electronic mail message until such time as the customer has affirmatively granted permission for us to do so. Failure to comply with the terms of this act could have a negative impact to our reputation and subject us to significant penalties.

In Canada, the Personal Information Protection and Electronic Documents Act requires organizations to obtain a consumer's consent to collect, use or disclose personal information. Under this act, which took effect on January 1, 2001, the nature of the required consent depends on the sensitivity of the personal information, and the act permits personal information to be used only for the purposes for which it was collected. We allow our customers to voluntarily "opt out" from receiving either one or both promotional and marketing mail or promotional and marketing electronic mail. Heightened consumer awareness of, and concern about, privacy may result in customers "opting out" at higher rates than they have historically. This would mean that a reduced number of customers would receive bonus mile offers and therefore would collect fewer AIR MILES reward miles.

Risks Related to Our Company

The affiliated entities of Welsh Carson currently own a significant amount of our common stock. These stockholders may have interests that conflict with yours and may be able to control the election of directors and the approval of significant corporate transactions, including a change in control.

As of February 28, 2006, the affiliated entities of Welsh Carson beneficially owned approximately 17.3% of our outstanding common stock. Welsh Carson is able to exercise significant influence over matters requiring stockholder approval, including the election of directors, changes to our charter

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documents and significant corporate transactions. Welsh Carson may have interests that conflict with our interests or those of other stockholders. Welsh Carson's continued concentrated ownership will make it difficult for another company to acquire us and for you to receive any related takeover premium for your shares unless Welsh Carson approves the acquisition.

Delaware law and our charter documents could prevent a change of control that might be beneficial to you.

Delaware law, as well as provisions of our certificate of incorporation and bylaws, could discourage unsolicited proposals to acquire us, even though such proposals may be beneficial to you. These provisions include:

- a board of directors classified into three classes of directors with the directors of each class having staggered, three-year terms;
- our board's authority to issue shares of preferred stock without further stockholder approval; and
- provisions of Delaware law that restrict many business combinations and provide that directors serving on staggered boards of directors, such as ours, may be removed only for cause.

These provisions of our certificate of incorporation, bylaws and Delaware law could discourage tender offers or other transactions that might otherwise result in our stockholders receiving a premium over the market price for our common stock.

Future sales of our common stock, or the perception that future sales could occur, may adversely affect our common stock price.

As of February 28, 2006, we had an aggregate of 98,951,592 shares of our common stock authorized but unissued and not reserved for specific purposes. In general, we may issue all of these shares without any action or approval by our stockholders. We have reserved 21,003,000 shares of our common stock for issuance under our employee stock purchase plan and our long term incentive plans, of which 7,965,192 shares are issuable upon vesting of restricted stock awards, restricted stock units, and upon exercise of options granted as of February 28, 2006, including options to purchase approximately 3,921,897 shares exercisable as of February 28, 2006 or that will become exercisable within 60 days after February 28, 2006. We have reserved for issuance 1,500,000 shares of our common stock, all of which remain issuable, under our 401(k) and Retirement Savings Plan. In addition, we may pursue acquisitions of competitors and related businesses and may issue shares of our common stock in connection with these acquisitions. Sales or issuances of a substantial number of shares of common stock, or the perception that such sales could occur, could adversely affect prevailing market prices of our common stock, and any sale or issuance of our common stock will dilute the percentage ownership held by our stockholders. Further, sales of a substantial number of shares of common stock by our largest stockholder, Welsh Carson, or the perception that such sales could occur, could also adversely affect prevailing market prices of our common stock.

Item 1B. Unresolved Staff Comments

None.

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Item 2. Properties

As of December 31, 2005, we leased over 35 general office properties throughout the United States and Canada, comprising over 2.1 million square feet. These facilities are used to carry out our operational, sales and administrative functions. Our principal facilities are as follows:

<u>Location</u>	<u>Segment</u>	<u>Approximate Square Footage</u>	<u>Lease Expiration Date</u>
Dallas, Texas	Corporate, Transaction Services	230,061	October 31, 2010
Dallas, Texas	Corporate	61,750	July 31, 2007
Dallas, Texas	Transaction Services	247,618	July 31, 2009
San Antonio, Texas	Transaction Services	67,540	October 31, 2007
Columbus, Ohio	Credit Services	103,161	January 31, 2008
Westerville, Ohio	Transaction Services	100,800	May 31, 2006
Toronto, Ontario, Canada	Marketing Services	143,068	September 16, 2007
Wakefield, Massachusetts	Marketing Services	96,726	April 30, 2013
Earth City, Missouri	Marketing Services	116,783	September 30, 2012

We believe our current and proposed facilities are suitable to our businesses and that we will be able to lease, purchase or newly construct additional facilities as needed.

Item 3. Legal Proceedings

From time to time, we are involved in various claims and lawsuits arising in the ordinary course of our business that we believe will not have a material adverse affect on our business or financial condition, including claims and lawsuits alleging breaches of contractual obligations.

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

There were no matters submitted to a vote of the security holders during the fourth quarter of 2005.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is listed on the New York Stock Exchange and trades under the symbol "ADS." The following table sets forth for the periods indicated the high and low composite per share closing sales prices as reported by the New York Stock Exchange.

	<u>High</u>	<u>Low</u>
Fiscal Year Ended December 31, 2004		
First quarter	\$ 33.55	\$ 26.92
Second quarter	42.25	33.07
Third quarter	42.00	35.73
Fourth quarter	48.52	40.64
Fiscal Year Ended December 31, 2005		
First quarter	\$ 46.66	\$ 37.79
Second quarter	42.79	35.32
Third quarter	43.65	38.98
Fourth quarter	39.25	32.79

Holders

As of February 28, 2006, the closing price of our common stock was \$43.26 per share, there were 80,478,288 shares of our common stock outstanding, and there were approximately 160 holders of record of our common stock.

Dividends

We have never declared or paid any dividends on our common stock, and we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance operations and the expansion of our business. Any future determination to pay cash dividends on our common stock will be at the discretion of our board of directors and will be dependent upon our financial condition, operating results, capital requirements and other factors that our board deems relevant. In addition, under the terms of our credit facilities, we cannot declare or pay dividends or return capital to our common stockholders, and we are restricted in the amount of any other distribution, payment or delivery of property or cash to our common stockholders.

Issuer Purchases of Equity Securities

On June 8, 2005, our Board of Directors authorized a stock repurchase program to acquire up to an aggregate of \$80.0 million of our outstanding common stock through June 2006. On October 27, 2005, our Board of Directors authorized a new stock repurchase program to acquire up to an additional \$220.0 million of our outstanding common stock through October 2006. At December 31, 2005, we had repurchased 3,942,100 shares of our common stock for approximately \$148.8 million under these programs. Additionally, the administrator of our 401(k) and Retirement Savings Plan purchased shares of our common stock for the benefit of the employees who participated in that portion of the plan during the fourth quarter of 2005. The following table presents information with respect to those purchases of our common stock made during the three months ended December 31, 2005:

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs</u> (In millions)
During 2005:				
October	529,768	\$ 36.97	517,900	\$ 215.6 ⁽¹⁾
November	717,238	36.30	706,500	190.0 ⁽¹⁾
December	1,068,834	36.40	1,065,300	151.2 ⁽¹⁾
Total	<u>2,315,840</u>	<u>\$ 36.50</u>	<u>2,289,700</u>	<u>\$ 151.2</u>

(1) On June 8, 2005, our Board of Directors authorized a stock repurchase program to acquire up to an aggregate of \$80.0 million of our outstanding common stock through June 2006. On October 27, 2005, our Board of Directors authorized a new stock repurchase program to acquire up to an additional \$220.0 million of our outstanding common stock through October 2006.

[Table of Contents](#)**Equity Compensation Plan Information**

The following table provides information as of December 31, 2005 with respect to shares of our common stock that may be issued under the 2003 Long Term Incentive Plan, the Amended and Restated Stock Option Plan, the 2005 Long Term Incentive Plan, the Executive Annual Incentive Plan or the Amended and Restated Employee Stock Purchase Plan:

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in the First Column)
Equity compensation plans approved by security holders	6,679,909	\$ 27.19	6,477,028 ⁽¹⁾
Equity compensation plans not approved by security holders	None	N/A	None
Total	6,679,909	\$ 27.19	6,477,028

(1) Includes 936,046 shares available for future issuance under the Amended and Restated Employee Stock Purchase Plan.

[Table of Contents](#)**Item 6. Selected Financial Data****SELECTED HISTORICAL CONSOLIDATED FINANCIAL AND OPERATING INFORMATION**

The following table sets forth our summary historical financial information for the periods ended and as of the dates indicated. You should read the following historical financial information along with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in this Form 10-K and the financial statements and related notes that are incorporated by reference in this Form 10-K. The fiscal year financial information included in the table below is derived from audited financial statements.

	Year Ended December 31,				
	2001	2002	2003	2004	2005
	(Amounts in thousands, except per share amounts)				
Income statement data					
Total revenue	\$ 769,867	\$ 865,297	\$ 1,046,544	\$ 1,257,438	\$ 1,552,437
Cost of operations	607,623	670,544	788,874	916,201	1,124,590
General and administrative ⁽¹⁾	41,301	53,784	52,320	77,740	91,532
Depreciation and other amortization	30,698	41,768	53,948	62,586	58,565
Amortization of purchased intangibles	43,506	24,707	20,613	28,812	41,142
Total operating expenses	723,128	790,803	915,755	1,085,339	1,315,829
Operating income	46,739	74,494	130,789	172,099	236,608
Other expenses	6,025	834	4,275	—	—
Fair value loss on interest rate derivative	15,131	12,017	2,851	808	—
Interest expense, net	26,245	19,924	14,681	6,972	14,482
(Loss) income from continuing operations before income taxes	(662)	41,719	108,982	164,319	222,126
Provision for income taxes	9,700	18,060	41,684	61,948	83,381
Net (loss) income	\$ (10,362)	\$ 23,659	\$ 67,298	\$ 102,371	\$ 138,745
Net (loss) income per share — basic	\$ (0.21)	\$ 0.32	\$ 0.86	\$ 1.27	\$ 1.69
Net (loss) income per share — diluted	\$ (0.21)	\$ 0.31	\$ 0.84	\$ 1.22	\$ 1.64
Weighted average shares used in computing per share amounts — basic	64,555	74,422	78,003	80,614	82,208
Weighted average shares used in computing per share amounts — diluted	64,555	76,696	80,313	84,040	84,637

(1) Included in general and administrative is stock compensation expense of \$1.8 million, \$2.9 million, \$5.9 million, \$15.8 million and \$14.1 million for the years ended December 31, 2001, 2002, 2003, 2004 and 2005, respectively.

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	Year Ended December 31,				
	2001	2002	2003	2004	2005
	(Amounts in thousands, except per share amounts)				
Adjusted EBITDA and Operating EBITDA(2)					
Adjusted EBITDA	\$ 122,729	\$ 143,917	\$ 211,239	\$ 279,264	\$ 350,458
Operating EBITDA	\$ 154,009	\$ 162,781	\$ 276,138	\$ 321,779	\$ 396,397
Other financial data					
Cash flows from operating activities	\$ 166,409	\$ 122,569	\$ 116,876	\$ 348,629	\$ 109,081
Cash flows from investing activities	\$ (190,982)	\$ (192,603)	\$ (247,729)	\$ (399,859)	\$ (330,951)
Cash flows from financing activities	\$ 30,711	\$ (15,670)	\$ 165,003	\$ 66,369	\$ 278,579
Segment operating data					
Statements generated	131,253	138,669	167,118	190,976	190,910
Credit sales	\$ 4,050,554	\$ 4,924,952	\$ 5,604,233	\$ 6,227,421	\$ 6,582,800
Average managed receivables	\$ 2,128,365	\$ 2,344,334	\$ 2,654,087	\$ 3,021,800	\$ 3,170,485
AIR MILES reward miles issued	2,153,550	2,348,133	2,571,501	2,834,125	3,246,553
AIR MILES reward miles redeemed	984,926	1,259,951	1,512,788	1,782,185	2,023,218

(2) See “Use of Non-GAAP Financial Measures” set forth in Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of our use of adjusted EBITDA and operating EBITDA and a reconciliation to net (loss) income, the most directly comparable GAAP financial measure.

	As of December 31,				
	2001	2002	2003	2004	2005
	(Amounts in thousands)				
Balance sheet data					
Cash and cash equivalents	\$ 117,535	\$ 30,439	\$ 67,745	\$ 84,409	\$ 143,213
Seller’s interest and credit card receivables, net	128,793	147,899	271,396	248,074	479,108
Redemption settlement assets, restricted	150,330	166,293	215,271	243,492	260,963
Intangible assets, net	74,964	75,399	143,733	233,779	265,000
Goodwill	404,797	429,720	484,415	709,146	858,470
Total assets	1,464,428	1,447,462	1,867,424	2,239,080	2,926,082
Deferred revenue	327,683	362,510	476,387	547,123	610,533
Certificates of deposit	120,800	96,200	200,400	94,700	379,100
Credit facilities, subordinated debt and other debt	189,625	196,711	189,751	342,823	457,844
Total liabilities	958,787	904,904	1,165,093	1,368,560	2,004,975
Total stockholders’ equity	505,641	542,558	702,331	870,520	921,107

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

Overview

We are a leading provider of transaction services, credit services and marketing services in North America. We partner with our clients to develop unique insight into consumer behavior. We use that insight to create and manage customized solutions that we believe change consumer behavior and enable our clients to build stronger, mutually-beneficial relationships with their customers. We focus on facilitating and managing interactions between our clients and their customers. We operate in three business segments: Transaction Services, Credit Services and Marketing Services.

Transaction Services. Transaction Services is our largest segment. The Transaction Services segment primarily generates revenue based on the number of statements generated, customer calls handled and transactions processed. Statements generated is the primary driver of revenue for this segment and represents the majority of revenue.

- **Statements Generated:** This driver represents the number of statements generated for our private label credit card and utility clients. The number of statements generated in any given period is a fairly reliable indicator of the number of active account holders during that period. In addition to receiving payment for each statement generated, we also are paid for other services such as remittance processing, customer care and various marketing services.

Transaction Services primarily is affected by increased outsourcing in our targeted industry verticals. Companies are increasingly outsourcing their non-core processes such as customer information systems, billing and customer care. We are impacted by this trend with our clients in utility services and issuer services.

Credit Services. The Credit Services segment primarily generates revenue from servicing fees from our securitization trusts, merchant discount fees, and securitization income. Private label credit sales and average managed receivables are the two primary drivers of revenue for this segment.

- **Private Label Credit Sales:** This driver represents the dollar value of private label credit card sales that occur at our clients' point of sale terminals or through catalogs or web sites. Generally, we are paid a percentage of these sales, referred to as merchant discount, from the retailers that utilize our private label credit card program. Private label credit sales typically lead to higher portfolio balances as cardholders finance their purchases through our credit card banks.
- **Average Managed Receivables:** This represents the average balance of outstanding receivables from our cardholders, excluding receivables for which we do not bear the risk of loss. Customers are assessed a finance charge based on their outstanding balance at the end of a billing cycle. There are many factors that drive the outstanding balances such as payment rates, charge-offs, recoveries and delinquencies. Management actively monitors all of these factors. Generally we securitize our receivables, which results in a sale for accounting purposes and effectively removes them from our balance sheet to one of the securitization trusts.

Credit Services is affected by industry trends similar to Transaction Services. The growing trend of outsourcing of private label credit card programs leads to increased accounts and balances to finance. We focus our sales efforts on prime borrowers and do not target sub-prime borrowers. Additionally, economic trends can impact this segment. Interest expense is a significant component of operating costs for the securitized trusts. Over the last three years we have experienced a historically low interest rate environment. We have refinanced our recent bond maturities with instruments that lock in our effective interest rate for up to five year terms and in some cases entered into declining swap rates. Interest rates in 2005 were similar to the rates in 2004. A low interest rate environment is usually indicative of a slower economic environment, which can negatively impact our net charge-offs, a significant cost of financing receivables. In the last five years, our net charge-offs decreased from a peak of 8.4% in 2001 to our current 2005 rate of 6.5%. During the fourth quarter of 2005, Congress enacted new bankruptcy legislation with a two-fold impact. First, an acceleration of bankruptcies occurred in October and November as the

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result of cardholders filing under the previous bankruptcy legislation, which was more lenient. Second, future filings under the new legislation will make it more difficult for cardholders to dispose of their obligations. Our expectation for 2006 is that we will experience similar or better levels of net charge-offs and cost of funds as we experienced during 2005.

Marketing Services. Marketing Services has historically been represented primarily by our AIR MILES Reward Program, which we believe to be the largest coalition loyalty program in Canada. We primarily collect fees from our clients based on the number of AIR MILES reward miles issued and in limited circumstances the number of AIR MILES reward miles redeemed. All of the fees collected for AIR MILES reward miles issued are deferred and recognized over time. AIR MILES reward miles issued and AIR MILES reward miles redeemed are the two primary drivers of revenue for this segment, and as a result they are both indicators of the success of the program. These two drivers are also important in the revenue recognition process.

- AIR MILES Reward Miles Issued: The number of AIR MILES reward miles issued depends upon the buying activity of the collectors at our participating sponsors. The fees collected from sponsors for the issuance of AIR MILES reward miles represents future revenue and earnings for us.
- AIR MILES Reward Miles Redeemed: A majority of the revenue we recognize in this segment is derived from the redemptions of AIR MILES reward miles by collectors. Redemptions also show that collectors are attaining the rewards that are offered through our programs.

Our AIR MILES Reward Program tends not to be significantly impacted by economic swings as the majority of the sponsors are in non-discretionary categories such as grocery, petroleum and financial institutions. Additionally, we target the sponsors' most loyal customers, who are unlikely to change their spending patterns. We are impacted by changes in the exchange rate between the U.S. dollar and the Canadian dollar. The Canadian dollar appreciated this year, which benefited our operating results. Our expectation is that the Canadian dollar/ U.S. dollar exchange rate will be more stable in 2006 than in 2005 and remain at its current relative levels. Beginning in late 2004, with the acquisition of Epsilon, we began an expansion of our marketing services in the U.S. We continued our U.S. expansion in 2005 with the acquisition of Bigfoot Interactive, now known as Epsilon Interactive. Epsilon Interactive gives us a significant presence in e-mail communication solutions.

Year in Review Highlights

Our 2005 results included significant new and renewed agreements with significant clients and continued selective execution of our acquisition strategy.

- In February 2005, we announced a multi-year renewal to continue providing private label credit card services to Pacific Sunwear of California, Inc., a leading specialty retailer of everyday casual apparel, accessories and footwear.
- In February 2005, we signed a long-term agreement to provide a fully integrated private label credit card and co-brand bankcard solution for Hanover Direct, a leading catalog and Web retailer of home furnishings and accessories and men's and women's apparel.
- In March 2005, we announced a long-term agreement to provide private label credit card services for Z Gallerie, a leading retailer specializing in high-quality, distinctive furnishings and decorative accessories for the home.
- In April 2005, we signed an agreement to provide project management and systems integration services to Cobb Energy, one of the largest co-op electric utilities in the United States.
- In April 2005, we signed an agreement with Blair Corporation to purchase Blair's private label credit card portfolio and a ten-year agreement with Blair to provide a fully integrated private label credit card program. Blair, through its Blair and Irvine Park brands, sells quality men's and women's business and casual fashion attire and home accessories. This transaction closed in the fourth quarter of 2005.

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- In April 2005, we signed a long-term agreement to provide private label credit card services for Crescent Jewelers, a top-ten jewelry retailer that sells quality fine jewelry, including unique and exclusive jewelry collections targeted to mid- and upper-end consumers.
- In April 2005, we signed a five-year agreement with Carter Lumber, one of the nation's top building materials retailers and an existing commercial card client, to provide an integrated consumer private label credit card program.
- In May 2005, we acquired Atrana Solutions Inc., a leading provider of point-of-sale technology solutions that gave us additional capabilities, product offerings and client relationships.
- In May 2005, we signed a five-year extension with Hilton HHonors Worldwide, one of our top-fifteen clients, to continue to provide integrated relationship management services, including database hosting and development, for the Hilton HHonors® Guest Rewards Program.
- In May 2005, we signed a multi-year renewal agreement to continue providing private label credit card services for leading specialty retailers The Dress Barn, Inc. and Maurices Incorporated.
- In June 2005, we completed the construction of a comprehensive database system for Pfizer Inc. to manage and host Pfizer's database solution geared toward enhancing Pfizer's overall consumer outreach efforts.
- In July 2005, we signed an agreement to provide an integrated private label and co-brand credit card program for Gander Mountain Company, one of the fastest-growing retailers in the outdoor lifestyle industry.
- In July 2005, we signed a long-term contract renewal with Pepco Energy Services, Inc. to continue hosting the customer information system and to provide traditional and electronic billing, payment processing and other services related to the support and maintenance of the customer information system.
- In July 2005, we signed a multi-year renewal and expanded agreement with Bank of America to complete the build of an enhanced consumer marketing database and to host and manage the system on behalf of Bank of America.
- In July 2005, we signed multi-year renewals with the operating subsidiaries of Sobeys Inc. in Atlantic Canada and the Province of Quebec to continue as participating regional grocery sponsors in the AIR MILES Reward Program.
- In July 2005, we signed an agreement with Gordmans, Inc., an existing private label credit card client, to also provide a comprehensive servicing solution for their gift card program.
- In August 2005, we signed an agreement with Hampton Roads Sanitation District to provide consulting services related to CIS selection, improvement of business processes and project management.
- In August 2005, we signed an agreement to provide customer care maintenance and support services for Greenville Utilities Commission, a provider of electric, gas, water and wastewater services in North Carolina.
- In September 2005, we acquired Bigfoot Interactive, now known as Epsilon Interactive, Inc., a leading full-service provider of strategic ROI-focused e-mail communications and marketing automation solutions.
- In September 2005, we signed a multi-year agreement with Orion Payment Systems, a leading reseller of innovative payment solutions, to provide a complete suite of point-of-sale based services.
- In September 2005, we entered into an agreement with CompUSA, Inc., one of the nation's leading retailers and resellers of technology products and services, to provide a full suite of loyalty marketing services for *The CompUSA Network™ For Business* loyalty program.

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- In October 2005, we signed a multi-year renewal with the Liquor Control Board of Ontario, a top-ten AIR MILES sponsor, to continue as a participating sponsor in the AIR MILES Reward Program.
- In October 2005, we signed a long-term contract renewal with Amex Bank of Canada, a top-five AIR MILES sponsor, to continue to offer Canadians its American Express AIR MILES Credit Cards.
- In October 2005, we signed long-term agreements with Spiegel Catalog and Newport News to provide co-brand credit card programs for both Spiegel and Newport News brands through 2013. The agreements expand the relationship with Spiegel and Newport News by adding a co-brand solution to the existing private label credit card programs we provide for each brand's catalog and online channels. Spiegel is a leading specialty retailer of women's fashions and home furnishings and Newport News markets women's apparel and accessories.
- In November 2005, we entered into a seven-year agreement with PNM Resources' retail energy provider in Texas, First Choice Power, to provide a full-service customer care solution for First Choice Power's 215,000-plus residential and business customers throughout Texas.
- In November 2005, we extended our agreements with Limited Brands, one of our top-ten clients, to continue providing credit and programs extending across the following brands: Victoria's Secret, The Limited, Express, Bath and Body Works and Henri Bendel.
- In December 2005, we signed a multi-year renewal with Canada Safeway Limited, a top-five AIR MILES sponsor, to continue as the Western Canadian regional grocery sponsor in the AIR MILES Reward Program.

Discussion of Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting policies that are described in the Notes to the Consolidated Financial Statements. The preparation of the consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We continually evaluate our judgments and estimates in determination of our financial condition and operating results. Estimates are based on information available as of the date of the financial statements and, accordingly, actual results could differ from these estimates, sometimes materially. Critical accounting policies and estimates are defined as those that are both most important to the portrayal of our financial condition and operating results and require management's most subjective judgments. The most critical accounting policies and estimates are described below.

Securitization of credit card receivables. We utilize a securitization program to finance substantially all of the credit card receivables that we underwrite. Our securitization trusts allow us to sell credit card receivables to the trusts on a daily basis. We use our off-balance sheet securitization program to lower our cost of funds and more efficiently use capital. In a securitization transaction, we sell credit card receivables originated by our Credit Services segment to a trust and retain servicing rights to those receivables, an equity interest in the trust, and an interest in the receivables. The securitization trusts are deemed to be qualifying special purpose entities under accounting principles generally accepted in the United States ("GAAP") and are appropriately not included in our Consolidated Financial Statements. Our interest in the trusts is represented on our consolidated balance sheets as seller's interest (our interest in the receivables) and due from securitizations (our retained interests and credit enhancement components).

In turn, the trusts issue bonds in the capital markets and notes in private transactions. The proceeds from the debt are used to fund the receivables, while cash collected from cardholders is used to finance new receivables and repay borrowings and related borrowing costs. The excess spread is remitted to us as securitization income.

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Our retained interest, often referred to as an interest-only strip, is recorded at fair value. Our interest-only strip has historically been valued between 1.75% and 2.50% of average securitized receivables. The fair value of our interest-only strip represents the present value of the anticipated cash flows we will receive over the estimated life of the receivables, or 7.5 months. This anticipated excess cash flow consists of the excess of finance charges and past-due fees net of the sum of the return paid to bond holders, estimated contractual servicing fees and credit losses. Because there is not a highly liquid market for these assets, we estimated the fair value of the interest-only strip primarily based upon discount, payment and default rates, which is the method we assume that another market participant would use to purchase the interest-only strip. The fair value of the interest-only strip, and the corresponding gain or loss, will be impacted by the estimated excess spread over the next two or three quarters. The excess spread is impacted primarily by finance and late fees collected, net charge-offs and interest rates.

Changes in the fair value of the interest-only strip are reflected in our consolidated financial statements as additional gains related to new receivables originated and securitized or other comprehensive income related to mark to market changes.

In recording and accounting for interest-only strips, we make assumptions about rates of payments and defaults that we believe reasonably reflect economic and other relevant conditions that affect fair value. Due to subsequent changes in economic and other relevant conditions, the actual rates of payments and defaults generally differ from our initial estimates, and these differences could sometimes be material. If actual payment and default rates are higher than previously assumed, the value of the interest-only strip could be impaired and the decline in the fair value recorded in earnings. Further sensitivity information is provided in Note 6 to the Consolidated Financial Statements.

We recognize the implicit forward contract to sell new receivables during a revolving period at its fair value at the time of sale. The implicit forward contract is entered into at the market rate and thus, its initial measure is zero at inception. In addition, we do not mark the forward contract to fair value in accounting periods following the securitization as we do not believe the fair value of the implicit forward contract in subsequent periods to be material.

AIR MILES Reward Program. Because management has determined that the earnings process is not complete at the time an AIR MILES reward mile is issued, the recognition of revenue on all fees received based on issuance is deferred. We allocate the proceeds from issuances of AIR MILES reward miles into two components based on the relative fair value of the related element:

- *Redemption element.* The redemption element is the larger of the two components. For this component, we recognize revenue at the time an AIR MILES reward mile is redeemed, or, for those AIR MILES reward miles that we estimate will go unredeemed by the collector base, known as “breakage,” over the estimated life of an AIR MILES reward mile. The total amount of deferred revenue related to the redemption element is shown on the balance sheet as “Deferred Revenue — Redemption.”
- *Service element.* For this component, which consists of marketing and administrative services provided to sponsors, we recognize revenue pro rata over the estimated life of an AIR MILES reward mile. The total amount of deferred revenue related to the service element is shown on the balance sheet as “Deferred Revenue — Service.”

Under certain of our contracts, a portion of the proceeds is paid to us at the issuance of AIR MILES reward miles and a portion is paid at the time of redemption. Under such contracts the proceeds received at issuance are initially deferred as service revenue and the revenue and earnings are recognized pro rata over the estimated life of an AIR MILES reward mile.

The amount of revenue recognized in a period is subject to the estimated life of an AIR MILES reward mile. Based on our historical analysis, we make a determination as to average life of an AIR MILES reward mile. The estimated life of an AIR MILES reward mile of 42 months and breakage of one-third has remained constant. Breakage and the life of an AIR MILES reward mile is based on management’s estimate after viewing and analyzing various historical trends including vintage analysis,

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current run rates and other pertinent analysis. During 2005, we engaged a nationally recognized accounting firm to perform an independent analysis of our breakage assumptions. Their conclusion supports management's breakage estimate of one-third. The estimated life of an AIR MILES reward mile and breakage is actively monitored by management and subject to external influences that may cause actual performance to differ from estimates.

We believe that the issuance and redemption of AIR MILES reward miles is influenced by the nature and volume of sponsors, the type of rewards offered, the overall health of the Canadian economy, the nature and extent of AIR MILES promotional activity in the marketplace and the extent of competing loyalty programs. These influences will primarily affect the average life of an AIR MILES reward mile. We do not believe that the estimated life will vary significantly over time, consistent with historical trends. The shortening of the life of an AIR MILES reward mile will accelerate the recognition of revenue and may affect the breakage rate. As of December 31, 2005, we had \$610.5 million in deferred revenue related to the AIR MILES Reward Program that will be recognized in the future. Further information is provided in Note 8 to the Consolidated Financial Statements.

Inter-Segment Sales

Our Transaction Services segment performs card processing and servicing activities related to our Credit Services segment. For this, our Transaction Services segment receives a fee equal to its direct costs before corporate overhead plus a margin. The margin is based on current estimated market rates for similar services. This fee represents an operating cost to the Credit Services segment and a corresponding revenue for our Transaction Services segment. Inter-segment sales are eliminated upon consolidation. Revenues earned by our Transaction Services segment from servicing our Credit Services segment, and consequently paid by our Credit Services segment to our Transaction Services segment, are set forth opposite "Other/eliminations" in the tables presented in the annual comparisons in our "Results of Operations."

Use of Non-GAAP Financial Measures

Adjusted EBITDA is a non-GAAP financial measure equal to net income (loss), the most directly comparable GAAP financial measure, plus stock compensation expense, provision for income taxes, interest expense, net, fair value loss on interest rate derivative, depreciation and other amortization and amortization of purchased intangibles. Operating EBITDA is a non-GAAP financial measure equal to adjusted EBITDA plus the change in deferred revenue plus the change in redemption settlement assets. We have presented operating EBITDA because we use the financial measure as part of our monitoring of compliance with the financial covenants in our credit facilities. For the twelve months ended December 31, 2005, senior debt-to-operating EBITDA was 1.1x compared to a maximum ratio of 2.5x permitted in the credit facilities and operating EBITDA to interest expense was 22.0x compared to a minimum ratio of 3.5x permitted in the credit facilities. As discussed in more detail in the liquidity section of the “Management’s Discussion and Analysis of Financial Condition and Results of Operations”, our credit facilities together with cash flow from operations are the two main sources of funding for our acquisition strategy and for our future working capital needs and capital expenditures. As of December 31, 2005, we had borrowings of \$441.0 million outstanding under these credit facilities and had approximately \$74.0 million in unused borrowing capacity. During January 2006, we increased our borrowing capacity by an incremental \$300.0 million through entering into an additional credit agreement. We were in compliance with our covenants at December 31, 2005, and we expect to be in compliance with these covenants during the year ending December 31, 2006.

We use adjusted EBITDA as an integral part of our internal reporting to measure the performance of our reportable segments and to evaluate the performance of our senior management. Adjusted EBITDA is considered an important indicator of the operational strength of our businesses. Adjusted EBITDA eliminates the uneven effect across all business segments of considerable amounts of non-cash depreciation of tangible assets and amortization of certain intangible assets that were recognized in business combinations. A limitation of this measure, however, is that it does not reflect the periodic costs of certain capitalized tangible and intangible assets used in generating revenues in our businesses. Management evaluates the costs of such tangible and intangible assets, the impact of related impairments, as well as asset sales through other financial measures, such as capital expenditures, investment spending and return on capital. Adjusted EBITDA also eliminates the non-cash effect of stock compensation expense. Stock compensation expense is not included in the measurement of segment adjusted EBITDA provided to the chief operating decision maker for purposes of assessing segment performance and decision making with respect to resource allocations. Therefore, we believe that adjusted EBITDA provides useful information to our investors regarding our performance and overall results of operations. Adjusted EBITDA and operating EBITDA are not intended to be performance measures that should be regarded as an alternative to, or more meaningful than, either operating income or net income as an indicator of operating performance or to cash flows from operating activities as a measure of liquidity. In addition, adjusted EBITDA and operating EBITDA are not intended to represent funds available for dividends, reinvestment or other discretionary uses, and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP. The adjusted EBITDA and operating EBITDA measures presented

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in this Annual Report on Form 10-K may not be comparable to similarly titled measures presented by other companies, and may not be identical to corresponding measures used in our various agreements.

	Year Ended December 31,				
	2001	2002	2003	2004	2005
			(Amounts in thousands)		
Net (loss) income	\$ (10,362)	\$ 23,659	\$ 67,298	\$ 102,371	\$ 138,745
Stock compensation expense	1,786	2,948	5,889	15,767	14,143
Provision for income taxes	9,700	18,060	41,684	61,948	83,381
Interest expense, net	26,245	19,924	14,681	6,972	14,482
Fair value loss on interest rate derivative	15,131	12,017	2,851	808	—
Other expenses ⁽¹⁾	6,025	834	4,275	—	—
Depreciation and other amortization	30,698	41,768	53,948	62,586	58,565
Amortization of purchased intangibles	43,506	24,707	20,613	28,812	41,142
Adjusted EBITDA	122,729	143,917	211,239	279,264	350,458
Change in deferred revenue	29,603	34,827	113,877	70,736	63,410
Change in redemption settlement assets	1,677	(15,963)	(48,978)	(28,221)	(17,471)
Operating EBITDA	\$ 154,009	\$ 162,781	\$ 276,138	\$ 321,779	\$ 396,397

Note: Change in deferred revenue and redemption settlement assets are affected by fluctuations in foreign exchange rates. Change in redemption settlement assets is also affected by transfers of cash.

(1) For the year ended December 31, 2001, other expenses primarily relate to the write off of equity investments. For the years ended December 2002 and 2003, other expenses are debt related.

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Results of Operations

Year ended December 31, 2004 compared to the year ended December 31, 2005

	Year Ended December 31,		Growth	
	2004	2005	\$	%
(In thousands, except percentages)				
Revenue:				
Transaction Services	\$ 681,736	\$ 699,884	\$ 18,148	2.7%
Credit Services	513,988	561,413	47,425	9.2
Marketing Services	375,630	604,145	228,515	60.8
Other/ Eliminations	(313,916)	(313,005)	911	(0.3)
Total	\$ 1,257,438	\$ 1,552,437	\$ 294,999	23.5%
Adjusted EBITDA:				
Transaction Services	\$ 97,465	\$ 90,074	\$ (7,391)	(7.6)%
Credit Services	125,718	162,481	36,763	29.2
Marketing Services	56,081	97,903	41,822	74.6
Total	\$ 279,264	\$ 350,458	\$ 71,194	25.5%
Stock compensation expense:				
Transaction Services	\$ 5,255	\$ 4,715	\$ (540)	(10.3)%
Credit Services	5,256	4,714	(542)	(10.3)
Marketing Services	5,256	4,714	(542)	(10.3)
Total	\$ 15,767	\$ 14,143	\$ (1,624)	(10.3)%
Depreciation and amortization:				
Transaction Services	\$ 61,786	\$ 56,583	\$ (5,203)	(8.4)%
Credit Services	7,938	6,647	(1,291)	(16.3)
Marketing Services	21,674	36,477	14,803	68.3
Total	\$ 91,398	\$ 99,707	\$ 8,309	9.1%
Operating income:				
Transaction Services	\$ 30,424	\$ 28,776	\$ (1,648)	(5.4)%
Credit Services	112,524	151,120	38,596	34.3
Marketing Services	29,151	56,712	27,561	94.5
Total	\$ 172,099	\$ 236,608	\$ 64,509	37.5%
Adjusted EBITDA margin⁽¹⁾:				
Transaction Services	14.3%	12.9%	(1.4)%	
Credit Services	24.5	28.9	4.4	
Marketing Services	14.9	16.2	1.3	
Total	22.2%	22.6%	0.4%	
Segment operating data:				
Statements generated	190,976	190,910	(66)	—
Credit Sales	\$ 6,227,421	\$ 6,582,800	\$ 355,379	5.7%
Average managed receivables ⁽²⁾	\$ 3,021,800	\$ 3,170,485	\$ 148,685	4.9%
AIR MILES reward miles issued	2,834,125	3,246,553	412,428	14.6%
AIR MILES reward miles redeemed	1,782,185	2,023,218	241,033	13.5%

(1) Adjusted EBITDA margin is adjusted EBITDA divided by revenue. Management uses adjusted EBITDA margin to analyze the operating performance of the segments and the impact revenue growth has on operating expenses.

(2) Effective September 30, 2005, we will report average managed receivables as it better reflects our future business strategy. The difference between the previously reported metric, average securitized portfolio, and the current one is private label credit card receivables which are not securitized will also be included. Historically, this difference has not been meaningful but will be in the future as some private label credit card portfolios are not anticipated to be securitized for a period of time.

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Revenue. Total revenue increased \$295.0 million, or 23.5%, to \$1,552.4 million for 2005 from \$1,257.4 million for 2004. The increase was due to a 2.7% increase in Transaction Services revenue, a 9.2% increase in Credit Services revenue and a 60.8% increase in Marketing Services revenue as follows:

- *Transaction Services.* Transaction Services revenue increased \$18.1 million, or 2.7%, primarily due to new customers in utility services such as Cobb Energy. In addition, merchant services and private label had small increases in revenue. Utility services statement growth should increase in 2006 as existing and recently signed new clients complete their conversion to our billing platforms. The slight decrease in the number of statements generated is primarily attributable to one private label client that experienced a significant reduction in private label credit sales, which resulted in a corresponding reduction in statements generated for private label clients and the loss of a client that ceased operations in the fourth quarter of 2004 due to bankruptcy. Private label statements should also increase in 2006 from new portfolios brought on in the fourth quarter of 2005 and start-up programs.
- *Credit Services.* Credit Services revenue increased \$47.4 million, or 9.2%, primarily due to a 14.3% increase in securitization income, offset in part by decreases in merchant discount and servicing fees. Securitization income increased \$53.9 million primarily as a result of an increase in the net yield from the securitization trusts in addition to a 4.9% increase in our average managed receivables. The net yield increased principally as a result of an approximate 100 basis point increase in the excess spread in addition to a 20 basis point decrease in cost of funds. Excess spread, which represents interest and late fees collected from cardholders, other trust-related fees, fair value changes related to the interest-only strips and charge-offs, increased due to lower charge-offs and higher collected fees from cardholders. The decrease in merchant discount is primarily the result of a change in mix of fees received from merchants compared to fees received from cardholders.
- *Marketing Services.* Marketing Services revenue increased \$228.5 million, or 60.8%, primarily due to an increase in database marketing fees attributable to the acquisition of Epsilon in the fourth quarter of 2004 and the subsequent acquisition of Epsilon Interactive in the fourth quarter of 2005, an increase in redemption revenue related to a 13.5% increase in the redemption of AIR MILES reward miles and an increase in the amortization of deferred services revenue. Changes in the exchange rate of the Canadian dollar accounted for approximately \$21.8 million of the \$228.5 million increase in our Marketing Services revenue, or 9.5% of the change. Deferred revenue is impacted by both the number of AIR MILES reward miles issued and redeemed, as well as foreign currency movements. Our deferred revenue balance increased 11.6% to \$610.5 million at December 31, 2005 from \$547.1 million at December 31, 2004 due to continued growth in the program, including a 14.6% increase in AIR MILES reward miles issued during the twelve months ended December 31, 2005 over the comparable period in 2004.

Operating Expenses. Total operating expenses, excluding depreciation, amortization and stock compensation expense increased \$223.8 million, or 22.9%, to \$1,202.0 million for 2005 from \$978.2 million for 2004. Total adjusted EBITDA margin increased to 22.6% for 2005 from 22.2% for 2004. The increase in adjusted EBITDA margin is due to increases in Marketing Services and Credit Services margins, partially offset by a decrease in Transaction Services.

- *Transaction Services.* Transaction Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$25.5 million, or 4.4%, to \$609.8 million for 2005 from \$584.3 million for 2004, and adjusted EBITDA margin decreased to 12.9% for 2005 from 14.3% for 2004. Operating expenses in the first half of 2005 included streamlining efforts in utility services. The decrease in adjusted EBITDA margin was primarily the result of higher expenses associated with corporate overhead, private label credit card clients and lower than expected volume growth.
- *Credit Services.* Credit Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$10.6 million, or 2.7%, to \$398.9 million for 2005 from

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\$388.3 million for 2004, and adjusted EBITDA margin increased to 28.9% for 2005 from 24.5% for 2004. The increased adjusted EBITDA margin is the result of favorable revenue trends from increases in both our average managed receivables and net yield.

- *Marketing Services.* Marketing Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$186.6 million, or 58.4%, to \$506.2 million for 2005 from \$319.6 million for 2004. The increase in operating expenses is primarily attributable to the acquisition of Epsilon in the fourth quarter of 2004 and the subsequent acquisition of Epsilon Interactive in the fourth quarter of 2005. Adjusted EBITDA margin increased to 16.2% for 2005 from 14.9% for 2004. The increase in adjusted EBITDA margin is the result of increased higher-margin revenue from both the AIR MILES reward program and database marketing fees from Epsilon and Epsilon Interactive, partially offset by additional corporate overhead expense.
- *Stock compensation expense.* Stock compensation expense decreased \$1.6 million, or 10.3%, to \$14.1 million for 2005 from \$15.8 million for 2004. The decrease is primarily related to a decline in the fair value of the restricted stock awards issued in 2005.
- *Depreciation and Amortization.* Depreciation and amortization increased \$8.3 million, or 9.1%, to \$99.7 million for 2005 from \$91.4 million for 2004. The increase is primarily due to an increase of \$12.3 million in amortization of purchased intangibles related to recent acquisitions and new depreciation on 2005 capital expenditures, offset by a decrease of \$4.0 million as a result of certain assets completing their depreciable lives in late 2004 and early 2005.

Operating Income. Operating income increased \$64.5 million, or 37.5%, to \$236.6 million for 2005 from \$172.1 million for 2004. Operating income increased primarily from revenue gains and an increase in adjusted EBITDA margins partially offset by an increase in depreciation and amortization and stock compensation expense.

Interest Expense, net. Interest expense, net, increased \$7.5 million, or 107.1%, to \$14.5 million for 2005 from \$7.0 million for 2004 due to higher average balances under our credit facilities and certificates of deposit.

Provision for Income Taxes. The provision for income taxes increased \$21.5 million to \$83.4 million in 2005 from \$61.9 million in 2004 primarily due to an increase in taxable income. The effective rate remained relatively flat, decreasing to 37.5% in 2005 from 37.7% in 2004.

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Year ended December 31, 2003 compared to the year ended December 31, 2004

	Year Ended December 31,		Growth	
	2003	2004	\$	%
(In thousands, except percentages)				
Revenue:				
Transaction Services	\$ 614,454	\$ 681,736	\$ 67,282	10.9%
Credit Services	433,701	513,988	80,287	18.5
Marketing Services	289,764	375,630	85,866	29.6
Other/ Eliminations	(291,375)	(313,916)	(22,541)	7.7
Total	\$ 1,046,544	\$ 1,257,438	\$ 210,894	20.2%
Adjusted EBITDA:				
Transaction Services	\$ 88,001	\$ 97,465	\$ 9,464	10.8%
Credit Services	76,957	125,718	48,761	63.4
Marketing Services	46,281	56,081	9,800	21.2
Total	\$ 211,239	\$ 279,264	\$ 68,025	32.2%
Stock compensation expense:				
Transaction Services	\$ 1,963	\$ 5,255	\$ 3,292	167.7%
Credit Services	1,963	5,256	3,293	167.8
Marketing Services	1,963	5,256	3,293	167.8
Total	\$ 5,889	\$ 15,767	\$ 9,878	167.7%
Depreciation and amortization:				
Transaction Services	\$ 51,508	\$ 61,786	\$ 10,278	20.0%
Credit Services	5,581	7,938	2,357	42.2
Marketing Services	17,472	21,674	4,202	24.0
Total	\$ 74,561	\$ 91,398	\$ 16,837	22.6%
Operating income:				
Transaction Services	\$ 34,530	\$ 30,424	\$ (4,106)	(11.9)%
Credit Services	69,413	112,524	43,111	62.1
Marketing Services	26,846	29,151	2,305	8.6
Total	\$ 130,789	\$ 172,099	\$ 41,310	31.6%
Adjusted EBITDA margin(1):				
Transaction Services	14.3%	14.3%	—%	
Credit Services	17.7	24.5	6.8	
Marketing Services	16.0	14.9	(1.1)	
Total	20.2%	22.2%	2.0%	
Segment operating data:				
Statements generated	167,118	190,976	23,858	14.3%
Credit Sales	\$ 5,604,233	\$ 6,227,421	\$ 623,188	11.1%
Average managed receivables(2)	\$ 2,654,087	\$ 3,021,800	\$ 367,713	13.9%
AIR MILES reward miles issued	2,571,501	2,834,125	262,624	10.2%
AIR MILES reward miles redeemed	1,512,788	1,782,185	269,397	17.8%

- (1) Adjusted EBITDA margin is adjusted EBITDA divided by revenue. Management uses adjusted EBITDA margin to analyze the operating performance of the segments and the impact revenue growth has on operating expenses.
- (2) Effective September 30, 2005, we will report average managed receivables as it better reflects our future business strategy. The difference between the previously reported metric, average securitized portfolio, and the current one is private label credit card receivables which are not securitized will also be included. Historically, this difference has not been meaningful but will be in the future as some private label credit card portfolios are not anticipated to be securitized for a period of time.

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Revenue. Total revenue increased \$210.9 million, or 20.2%, to \$1,257.4 million for 2004 from \$1,046.5 million for 2003. The increase was due to the following:

- *Transaction Services.* Transaction Services revenue increased \$67.3 million, or 10.9%, primarily due to an increase in the number of statements generated. Approximately one-half of the revenue increase is related to the increase in utility statements generated, which grew 27.9%. The growth in utility statements is primarily related to Conservation Billing Services Inc. (acquired in September 2003) and Orcom Solutions, Inc. (acquired in December 2003). Approximately one-third of the revenue increase is related to the increase in private label credit card statements generated, which grew 9.2%. The growth in private label credit card statements is primarily related to Stage Stores, Inc. (signed in September 2003) and Peebles Inc. (signed in January 2004) and core growth in existing clients. Additional growth in Transaction Services revenue came from an increase in merchant services revenue of 6.4% as our petroleum clients experienced higher transaction volume due to higher gas prices. Higher gas prices drive more frequent visits by consumers to our petroleum clients.
- *Credit Services.* Credit Services revenue increased \$80.3 million, or 18.5%, primarily due to an increase in securitization income. Approximately three-quarters of the increase in revenue is related to securitization income. Securitization income increased as a result of a 13.9% higher average managed receivables. The increase in average managed receivables is the result of new client signings and growth in our existing programs. The net yield on our retail portfolio for 2004 was approximately 60 basis points higher than in 2003. The increase in the net yield is largely related to lower net charge-offs of 20 basis points in addition to an increase in collected yield, partially offset by an increase in cost of funds. Additional revenue increases came from servicing fees and merchant fees. Servicing fees increased as a result of a 13.9% increase in average managed receivables. Merchant discount fees increased as a result of an 11.1% increase in credit sales.
- *Marketing Services.* Marketing Services revenue increased \$85.9 million, or 29.6%, primarily due to an increase in redemption, issuance and database marketing revenue. Approximately one-half of the increase in revenue is related to redemption revenue, which increased as a result of a 17.8% increase in the redemption of AIR MILES reward miles. Additionally, services revenue increased 16.3% as a result of a 10.2% increase in the number of AIR MILES reward miles issued and the corresponding recognition of deferred revenue balances. As a result of the increased issuance activity and the appreciation of the Canadian dollar as of December 31, 2004, our deferred revenue balance increased 14.8% to \$547.1 million at December 31, 2004 from \$476.4 million at December 31, 2003. The growth rate in the number of AIR MILES reward miles redeemed continues to outpace the growth rate in the number of AIR MILES reward miles issued, currently a positive indicator as to the success of the program. The increase in redemptions relates to the continued trend to offer more redemption options to our collectors, such as merchandise and certificates. Database marketing fees, including our historical database products in the United States and Canada, increased \$24.4 million primarily as a result of our acquisition of Epsilon during the fourth quarter of 2004.

Operating Expenses. Total operating expenses, excluding depreciation, amortization and stock compensation expense increased \$142.9 million, or 17.1%, to \$978.2 million for 2004 from \$835.3 million for 2003. Total adjusted EBITDA margin increased to 22.2% for 2004 from 20.2% for 2003. The increase in adjusted EBITDA margin is due to increases in Marketing Services and Credit Services margins.

- *Transaction Services.* Transaction Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$57.8 million, or 11.0%, to \$584.3 million for 2004 from \$526.5 million for 2003, and adjusted EBITDA margin remained constant at 14.3% for 2004 and 2003. The lack of growth in adjusted EBITDA margin was primarily driven by excess capacity in our utility services business. We are currently streamlining processes to eliminate the excess capacity. The benefit from these consolidation efforts should begin to occur later in 2005 and

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2006. Revenue gains and leverage in merchant services contributed positive adjusted EBITDA margin increases to offset the utility services decline.

- *Credit Services.* Credit Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$31.6 million, or 8.9%, to \$388.3 million for 2004 from \$356.7 million for 2003, and adjusted EBITDA margin increased to 24.5% for 2004 from 17.7% for 2003. The increase in adjusted EBITDA margin is the result of favorable revenue trends from increased receivable balances, higher collected yield, lower net charge-offs, partially offset by an increase in cost of funds.
- *Marketing Services.* Marketing Services operating expenses, excluding depreciation, amortization and stock compensation expense, increased \$76.1 million, or 31.3%, to \$319.6 million for 2004 from \$243.5 million for 2003, and adjusted EBITDA margin decreased to 14.9% for 2004 from 16.0% for 2003. The decrease in adjusted EBITDA margin is the result of a higher mix of lower margin redemption revenue during the year.
- *Stock compensation expense.* Stock compensation expense increased \$9.9 million, or 167.7%, to \$15.8 million for 2004 from \$5.9 million for 2003. The increase is primarily related to the issuance and vesting of 199,120 shares of performance based restricted stock issued in 2001. Vesting occurred because we exceeded specific performance targets based on the stock performance over the last three years, among other performance measures.
- *Depreciation and Amortization.* Depreciation and amortization increased \$16.8 million, or 22.6%, to \$91.4 million for 2004 from \$74.6 million for 2003. The increase is primarily due to an increase of \$8.2 million in amortization of purchased intangibles primarily related to the Orcom and Epsilon transactions. In addition, depreciation and amortization increased \$8.6 million as a result of increased capital expenditures.

Operating Income. Operating income increased \$41.3 million, or 31.6%, to \$172.1 million for 2004 from \$130.8 million for 2003. Operating income increased primarily from revenue gains, an increase in adjusted EBITDA margins offset by an increase in depreciation and amortization and stock compensation expense.

Interest Expense, net. Interest expense, net, decreased \$7.7 million, or 52.4%, to \$7.0 million for 2004 from \$14.7 million for 2003 due to lower average debt outstanding.

Fair Value Loss on Derivatives. During 2004, we incurred a \$0.8 million fair value loss on an interest rate swap compared to a \$2.9 million loss in 2003. Part of the fair value loss was associated with cash payments we made to counterparties of \$5.5 million and \$11.1 million in 2004 and 2003, respectively. In accordance with Statement of Financial Accounting Standard ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended, fair value changes in derivative instruments that do not meet the accounting criteria for hedge treatment are recorded as part of earnings. The related derivative was a \$200.0 million notional amount interest rate swap that swapped a LIBOR based variable interest rate for a fixed interest rate, and expired in May 2004.

Provision for Income Taxes. The provision for income taxes increased \$20.2 million to \$61.9 million in 2004 from \$41.7 million in 2003 primarily due to an increase in taxable income. The effective rate remained relatively flat, decreasing to 37.7% in 2004 from 38.3% in 2003.

Asset Quality

Our delinquency and net charge-off rates reflect, among other factors, the credit risk of our private label credit card receivables, the average age of our various private label credit card account portfolios, the success of our collection and recovery efforts, and general economic conditions. The average age of our private label credit card portfolio affects the stability of delinquency and loss rates of the portfolio. We continue to focus our resources on refining our credit underwriting standards for new accounts and on collections and post charge-off recovery efforts to minimize net losses.

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An older private label credit card portfolio generally drives a more stable performance in the portfolio. At December 31, 2005, 61.9% of securitized accounts with balances and 58.0% of securitized receivables were for accounts with origination dates greater than 24 months old. As of December 31, 2005, our allowance for doubtful accounts related to on-balance sheet private label credit card receivables was \$38.4 million compared to \$11.7 million as of December 31, 2004. The increase is primarily related to the acquisition of the Blair portfolio and secondarily on-balance sheet receivable growth and the related allowance for doubtful accounts.

Delinquencies. A credit card account is contractually delinquent if we do not receive the minimum payment by the specified due date on the cardholder's statement. It is our policy to continue to accrue interest and fee income on all credit card accounts, except in limited circumstances, until the account balance and all related interest and other fees are charged off or paid, beyond 90 days delinquent. When an account becomes delinquent, we print a message on the cardholder's billing statement requesting payment. After an account becomes 30 days past due, a proprietary collection scoring algorithm automatically scores the risk of the account rolling to a more delinquent status. The collection system then recommends a collection strategy for the past due account based on the collection score and account balance and dictates the contact schedule and collections priority for the account. Our proprietary system will zero out a customer's credit limit when charging privileges are removed from the account. If we are unable to make a collection after exhausting all in-house efforts, we engage collection agencies and outside attorneys to continue those efforts.

The following table presents the delinquency trends of our managed credit card portfolio:

	December 31, 2004	% of Total (Dollars in thousands)	December 31, 2005	% of Total
Receivables outstanding	\$ 3,352,870	100%	\$ 3,714,548	100%
Receivables balances contractually delinquent:				
31 to 60 days	52,481	1.6%	59,018	1.6%
61 to 90 days	32,872	1.0	35,342	1.0
91 or more days	69,359	2.1	69,343	1.9
Total	<u>\$ 154,712</u>	<u>4.6%</u>	<u>\$ 163,703</u>	<u>4.4%</u>

Net Charge-Offs. Net charge-offs comprise the principal amount of losses from cardholders unwilling or unable to pay their account balances, as well as bankrupt and deceased cardholders, less current period recoveries. The following table presents our net charge-offs for the periods indicated on a managed basis. Average managed receivables represents the average balance of the cardholder receivables, excluding those which we do not bear the risk of loss, at the beginning of each month in the year indicated.

	Year Ended December 31,		
	2003	2004	2005
	(Dollars in thousands)		
Average managed receivables	\$ 2,654,087	\$ 3,021,800	\$ 3,170,485
Net charge-offs	196,631	205,454	207,397
Net charge-offs as a percentage of average managed receivables	7.4%	6.8%	6.5%

We believe, consistent with our statistical models and other credit analyses, that our net charge-off ratio will continue to fluctuate.

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Age of Portfolio. The median age of the portfolio is 36 months. The following table sets forth, as of December 31, 2005, the number of securitized accounts with balances and the related balances outstanding, based upon the age of the securitized accounts:

<u>Age Since Origination</u>	<u>Number of Accounts</u>	<u>Percentage of Accounts</u>	<u>Balances Outstanding</u>	<u>Percentage of Balances Outstanding</u>
			(Dollars in thousands)	
0-12 Months	3,116	27.4%	\$ 844,662	24.2%
13-24 Months	1,656	14.6	482,638	13.8
25-36 Months	1,357	11.9	410,904	11.8
37-48 Months	1,046	9.2	334,244	9.6
49-60 Months	789	7.0	258,154	7.4
Over 60 Months	3,392	29.9	1,155,955	33.2
Total	<u>11,356</u>	<u>100.0%</u>	<u>\$ 3,486,557</u>	<u>100.0%</u>

Liquidity and Capital Resources

Operating Activities. We have historically generated cash flows from operations, although that amount may vary based on fluctuations in working capital and the timing of merchant settlement activity. Our operating cash flow is seasonal, with cash utilization peaking at the end of December due to increased activity in our Credit Services segment related to holiday retail sales.

	<u>Year Ended December 31,</u>		
	<u>2003</u>	<u>2004</u>	<u>2005</u>
		(Dollars in thousands)	
Cash provided by operating activities before changes in credit card portfolio activity and merchant settlement activity	\$ 189,606	\$ 259,572	\$ 293,863
Net change in credit card portfolio activity	(100,010)	71,121	(186,419)
Net change in merchant settlement activity	27,280	17,936	1,637
Cash provided by operating activities	<u>\$ 116,876</u>	<u>\$ 348,629</u>	<u>\$ 109,081</u>

Net change in credit card portfolio activity represents the difference in portfolios purchased from new clients and their subsequent sale to our securitization trusts. There is typically a several month lag between the purchase and sale of credit card portfolios. During late 2005, we purchased credit card portfolios from Blair that have not been securitized. We securitized no portfolios in 2005. Merchant settlement activity is driven by the number of days of float at the end of the period. For these purposes, "float" means the difference between the number of days we hold cash before remitting the cash to our merchants and the number of days the card associations hold cash before remitting the cash to us. Merchant settlement activity fluctuates significantly depending on the day in which the period ends.

We generated cash flow from operating activities before changes in credit card portfolio activity and merchant settlement activity of \$293.9 million for the year ended December 31, 2005 compared to \$259.6 million for the comparable period in 2004 or a 13.2% increase. The increase in operating cash flows before changes in credit card portfolio activity and merchant settlement activity is primarily related to our increased earnings. We utilize our cash flow from operations for ongoing business operations, acquisitions and capital expenditures.

Investing Activities. We use a significant portion of our cash flows from operations for acquisitions and capital expenditures. We utilized cash flow for investing activities of \$331.0 million for the year ended

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December 31, 2005 compared to \$399.9 million for the comparable period in 2004. Significant components of investing activities are as follows:

- *Acquisitions.* During the year ended December 31, 2005, we had payments for acquired businesses totaling \$140.9 million compared to \$329.5 million in 2004. In 2005, we acquired Atrana Solutions, Inc. in a cash for common stock transaction and Bigfoot Interactive, now known as Epsilon Interactive, Inc., in a cash for equity transaction compared to the acquisitions of Epsilon Data Management, Inc. and Capstone Consulting Partners, Inc. in 2004.
- *Securitized and Receivables Funding.* We generally fund all private label credit card receivables through a securitization program that provides us with both liquidity and lower borrowing costs. As of December 31, 2005, we had over \$3.4 billion of securitized credit card receivables. Securitizations require credit enhancements in the form of cash, spread accounts and additional receivables. The credit enhancement is funded through the use of certificates of deposit issued through our subsidiary, World Financial Network National Bank. Net securitization and credit card receivable activity utilized \$107.8 million for the year ended December 31, 2005 compared to \$8.3 million in 2004. We intend to utilize our securitization program for the foreseeable future.
- *Capital Expenditures.* Our capital expenditures for the year ended December 31, 2005 were \$65.9 million compared to \$48.3 million for the prior year. Capital expenditures for 2005 increased in support of systems development work for new clients and contracts added during the year along with information technology infrastructure enhancements. We anticipate that capital expenditures will continue to remain at approximately 5% of annual revenues for the foreseeable future.

Financing Activities. Our cash flows provided by financing activities were \$278.6 million in 2005 compared to \$66.4 million used in financing activities in 2004. Our financing activities for 2005 relate to borrowings and repayments of debt in the normal course of business, an increase in borrowings of certificates of deposit related to the higher level of credit card receivables held on our balance sheet, \$145.0 million from the repurchase of our common stock on the open market, and proceeds from the exercise of stock options.

Liquidity Sources. In addition to cash generated by operating activities, we have four main sources of liquidity: our securitization program; certificates of deposit issued by World Financial Network National Bank; our credit facilities; and issuances of equity securities. We believe that internally generated funds and existing sources of liquidity are sufficient to meet current and anticipated financing requirements during the next 12 months.

Securitization Program and Off-Balance Sheet Transactions. Since January 1996, we have sold, sometimes through WFN Credit Company, LLC and WFN Funding Company II, LLC, substantially all of the credit card receivables owned by our credit card bank, World Financial Network National Bank, to the WFN Trusts as part of our securitization program. This securitization program is the primary vehicle through which we finance our private label credit card receivables. The following table shows expected maturities for borrowing commitments of the WFN Trusts under our securitization program by year:

	2006	2007	2008	2009	2010 & Thereafter	Total
	(In thousands)					
Public notes	\$ 450,000	\$ 600,000	\$ 600,000	\$ 500,000	\$ 450,000	\$ 2,600,000
Private conduits ⁽¹⁾	982,857	—	—	—	—	982,857
Total	\$ 1,432,857	\$ 600,000	\$ 600,000	\$ 500,000	\$ 450,000	\$ 3,582,857

(1) Represents borrowing capacity, not outstanding borrowings.

As of December 31, 2005, the WFN Trusts had over \$3.4 billion of securitized credit card receivables. Securitizations require credit enhancements in the form of cash, spread deposits and additional

receivables. The credit enhancement is principally based on the outstanding balances of the series issued by the WFN Trusts and by the performance of the private label credit cards in the securitization trust. During the period from November to January, the WFN Trusts are required to maintain a credit enhancement level of between 6% and 10% of securitized credit card receivables. Certain of the WFN Trusts are required to maintain a level of between 4% and 9% for the remainder of the year. Accordingly, at December 31, 2005 the WFN Trusts typically have their highest balance of credit enhancement assets as a result of the increased balances during the holiday season. We intend to utilize our securitization program for the foreseeable future.

If World Financial Network National Bank were not able to regularly securitize the receivables it originates, our ability to grow or even maintain our credit services business would be materially impaired as we would be severely limited in our financing ability. World Financial Network National Bank's ability to effect securitization transactions is impacted by the following factors, some of which are beyond our control:

- conditions in the securities markets in general and the asset-backed securitization market in particular;
- conformity in the quality of credit card receivables to rating agency requirements and changes in those requirements; and
- our ability to fund required overcollateralizations or credit enhancements, which we routinely utilize in order to achieve better credit ratings to lower our borrowing costs.

We believe that the conditions to securitize private label credit card receivables are favorable for us. We plan to continue using our securitization program as our primary financing vehicle.

Once World Financial Network National Bank securitizes receivables, the agreement governing the transaction contains covenants that address the receivables' performance and the continued solvency of the retailer where the underlying sales were generated. In the event one of those or other similar covenants is breached, an early amortization event could be declared, in which case the trustee for the securitization trust would retain World Financial Network National Bank's interest in the related receivables, along with the excess interest income that would normally be paid to World Financial Network National Bank, until such time as the securitization investors are fully repaid. The occurrence of an early amortization event would significantly limit, or even negate, our ability to securitize additional receivables.

Certificates of Deposit. We utilize certificates of deposit to finance the operating activities and fund securitization enhancement requirements of our credit card bank subsidiaries, World Financial Network National Bank and World Financial Capital Bank. World Financial Network National Bank and World Financial Capital Bank issue certificates of deposit in denominations of \$100,000 in various maturities ranging between three months and two years and with effective annual fixed rates ranging from 3.9% to 5.0%. As of December 31, 2005, we had \$379.1 million of certificates of deposit outstanding. Certificate of deposit borrowings are subject to regulatory capital requirements.

Credit Facilities. On April 7, 2005, we entered into amendments to our three credit facilities. The amendment to the 3-year credit facility extended the maturity date from April 10, 2006 to April 3, 2008. The amendment to the 364-day credit facility extended the maturity date from April 7, 2005 to April 6, 2006. The amendment to the Canadian credit facility extended the maturity date from April 10, 2006 to April 3, 2008 and reduced the aggregate amount of the commitments permitted thereunder by \$15.0 million from \$50.0 million to \$35.0 million.

On October 28, 2005, we entered into amendments to our three credit facilities to increase the amount of revolving commitments under the facilities and amend certain covenants. The amendment to the 3-year credit facility increased the amount of revolving commitments thereunder from \$200.0 million to \$250.0 million. The amendment to the 364-day credit facility increased the amount of revolving commitments thereunder from \$205.0 million to \$230.0 million. We anticipate extending this facility prior to its expiration. After giving effect to the three amendments, the aggregate amount of revolving

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commitments under the three credit facilities is \$515.0 million. In addition, the amendments increased the aggregate amounts of commitments permitted under the three facilities from \$500.0 million to \$550.0 million. In addition, the amendments increased the amount of restricted payments permitted under the credit facilities.

On December 21, 2005, we entered into amendments to our three credit facilities to amend the definition of Senior Leverage Ratio under the applicable credit facility, the maximum Senior Leverage Ratio for the applicable credit facility and the maximum Total Capitalization Ratio for the applicable credit facility, and to revise the pricing grid set forth on the appendix to the applicable credit facility in connection with the foregoing. In addition, each amendment amended the applicable credit facility to allow us to incur certain indebtedness that is *pari passu* to or junior to the indebtedness incurred by us under such credit facility.

At December 31, 2005, we had borrowings of \$441.0 million outstanding under these credit facilities (with an average interest rate of 4.6%), we issued no letters of credit, and we had available unused borrowing capacity of approximately \$74.0 million. The credit facilities limit our aggregate outstanding letters of credit to \$50.0 million.

During January 2006, we entered into an additional credit agreement to increase our borrowing capacity by an incremental \$300.0 million. The principal amount of all outstanding loans under this credit agreement, together with any accrued but unpaid interest, are due and payable on June 30, 2006, unless otherwise paid earlier pursuant to the terms of the credit agreement. This credit agreement includes usual and customary negative covenants for credit agreements of this type. Payment of amounts due under this credit agreement are secured by guaranties, pledges of the ownership interests of certain of our subsidiaries and pledges of certain intercompany promissory notes. On January 5, 2006, we borrowed \$300.0 million under this credit agreement, which we are using for general corporate purposes, including other debt repayment, repurchases of our common stock in connection with our stock repurchase program, mergers and acquisitions, and working capital expenditures. We anticipate refinancing this facility into a new term agreement.

Advances under the credit facilities are in the form of either base rate loans or Eurodollar loans. The interest rate on base rate loans fluctuates based upon the higher of (1) the interest rate announced by the administrative agent as its "prime rate" and (2) the Federal funds rate plus 0.5%, in each case with no additional margin. The interest rate on Eurodollar loans fluctuates based upon the rate at which Eurodollar deposits in the London interbank market are quoted plus a margin of 0.5% to 1.0% based upon the ratio of total debt under the credit facilities to consolidated Operating EBITDA, as each term is defined in the credit facilities. The credit facilities are secured by pledges of stock of certain of our subsidiaries and pledges of certain intercompany promissory notes.

We utilize our credit facilities and excess cash flows from operations to support our acquisition strategy and to fund working capital and capital expenditures.

Issuances of Equity Securities. In April 2003, we completed a public offering of 10,350,000 shares of our common stock at \$19.65 per share. Limited Commerce Corp. sold 7,000,000 of those shares and the remaining 3,350,000 shares were sold by us. The net proceeds to us from the offering were \$61.9 million after deducting offering expenses and our pro-rata underwriting discounts and commissions. Concurrently with the closing of the public offering, we used \$52.7 million of the net proceeds to repay in full \$52.0 million of debt outstanding, plus accrued interest, under a 10% subordinated note that we issued in September 1998 to an affiliated entity of Welsh Carson.

In November 2003, we facilitated a secondary public offering of 8,663,382 shares of common stock at \$26.95 per share. 7,533,376 shares were sold by Limited Commerce Corp. and the remaining 1,130,006 shares were sold by Welsh Carson through two of its affiliated entities. We sold no stock and received none of the proceeds from the secondary offering. In connection with the secondary offering, we incurred approximately \$450,000 in registration costs, which were expensed in the fourth quarter. As a result of the secondary offering, Limited Commerce Corp. is no longer a stockholder.

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Repurchase of Equity Securities. During 2005, we repurchased approximately 3.9 million shares of our common stock for an aggregate amount of \$148.8 million. We have Board authorization to purchase an additional \$151.2 million of our common stock in 2006 and expect to finance the repurchase program with borrowing under our credit facilities.

Contractual Obligations. The following table highlights, as of December 31, 2005, our contractual obligations and commitments to make future payments by type and period:

	<u>2006</u>	<u>2007 & 2008</u>	<u>2009 & 2010</u>	<u>2011 & Thereafter</u>	<u>Total(1)</u>
	(Dollars in thousands)				
Certificates of deposit (2)	\$ 348,760	\$ 37,140	\$ —	\$ —	\$ 385,900
Credit facilities(2)	244,327	225,099	—	—	469,426
Operating leases	41,419	62,632	35,646	59,431	199,128
Capital leases	7,340	11,457	1,025	—	19,822
Software licenses	21,445	45,273	48,619	25,629	140,966
Purchase obligations(3)	61,943	77,339	17,211	—	156,493
	<u>\$ 725,234</u>	<u>\$ 458,940</u>	<u>\$ 102,501</u>	<u>\$ 85,060</u>	<u>\$ 1,371,735</u>

- (1) The table does not include an estimate for income taxes that we are required to pay, but are not required to include above.
- (2) The certificates of deposit and credit facilities represent our estimated debt service obligations, including both principle and interest. Interest was based on the interest rates in effect as of December 31, 2005, applied to the contractual repayment period.
- (3) Purchase obligations include purchase commitments under our AIR MILES Reward Program, minimum payments under support and maintenance contracts and agreements to purchase other goods and services.

We believe that we will have access to sufficient resources to meet these commitments.

Economic Fluctuations

Although we cannot precisely determine the impact of inflation on our operations, we do not believe that we have been significantly affected by inflation. For the most part, we have relied on operating efficiencies from scale and technology, as well as decreases in technology and communication costs, to offset increased costs of employee compensation and other operating expenses.

Portions of our business are seasonal. Our revenues and earnings are favorably affected by increased transaction volume and credit card balances during the holiday shopping period in the fourth quarter and, to a lesser extent, during the first quarter as credit card balances are paid down. Similarly, our petroleum related businesses are favorably affected by increased volume in the latter part of the second quarter and the first part of the third quarter as consumers make more frequent purchases of gasoline in connection with summer travel.

Regulatory Matters

World Financial Network National Bank is subject to various regulatory capital requirements administered by the Office of the Comptroller of the Currency, or OCC. World Financial Capital Bank is subject to regulatory capital requirements administered by both the Federal Deposit Insurance Corporation, or FDIC, and the State of Utah. Failure to meet minimum capital requirements can trigger certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a material adverse effect on our financial statements. Under the FDIC's order approving World Financial Capital Bank's application for deposit insurance, World Financial Capital Bank must meet specific capital ratios and paid-in capital minimums, must maintain adequate allowances for loan losses and must operate within its three-year business plan. If World Financial Capital Bank fails to meet the terms of the FDIC's

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order, the FDIC may withdraw insurance coverage from World Financial Capital Bank, and the State of Utah may withdraw its approval of World Financial Capital Bank. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, World Financial Network National Bank must meet specific capital guidelines that involve quantitative measures of its assets, liabilities and certain off-balance sheet items as calculated under regulatory accounting practices. The capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings and other factors. World Financial Network National Bank is limited in the amounts that it can dividend to us. World Financial Capital Bank is restricted from providing dividends to us at this time.

Quantitative measures established by regulations to ensure capital adequacy require World Financial Network National Bank to maintain minimum amounts and ratios of total and Tier 1 capital to risk weighted assets and of Tier 1 capital to average assets. Under the regulations, a “well capitalized” institution must have a Tier 1 capital ratio of at least 6%, a total capital ratio of at least 10% and a leverage ratio of at least 5% and not be subject to a capital directive order. An “adequately capitalized” institution must have a Tier 1 capital ratio of at least 4%, a total capital ratio of at least 8% and a leverage ratio of at least 4%, but 3% is allowed in some cases. Under these guidelines, World Financial Network National Bank is considered well capitalized. As of December 31, 2005, World Financial Network National Bank’s Tier 1 capital ratio was 33.1%, total capital ratio was 34.6% and leverage ratio was 54.0%, and World Financial Network National Bank was not subject to a capital directive order. On April 22, 2005, World Financial Capital Bank received non-disapproval notification for a modification of the original three-year business plan. The letter of non-disapproval was issued jointly by the State of Utah and the FDIC. World Financial Capital Bank, under the terms of the letter, must maintain Total Risk-Based Capital equal to or exceeding 10% of total risk-based assets and must maintain Tier 1 capital to total assets ratio of not less than 16%. Both capital ratios must be maintained at or above the indicated levels until the end of the bank’s de novo period on November 30, 2006.

As part of an acquisition in 2003 by World Financial Network National Bank, which required approval by the OCC, the OCC required World Financial Network National Bank to enter into an operating agreement with the OCC and a capital adequacy and liquidity maintenance agreement with us. The operating agreement requires World Financial Network National Bank to continue to operate in a manner consistent with its current practices, regulatory guidelines and applicable law, including those related to affiliate transactions, maintenance of capital and corporate governance. World Financial Network National Bank does not expect that the operating agreement will require any changes in World Financial Network National Bank’s current operations. The capital adequacy and liquidity maintenance agreement memorializes our current obligations to World Financial Network National Bank.

Recent Accounting Pronouncements

In December 2003, the American Institute of Certified Public Accountants issued Statement of Position (“SOP”) 03-3, “Accounting for Certain Loans or Debt Securities Acquired in a Transfer”. SOP 03-3 requires acquired loans, including debt securities, to be recorded at the amount of the purchaser’s initial investment and prohibits carrying over valuation allowances from the seller for those individually evaluated loans that have evidence of deterioration in credit quality since origination, and it is probable all contractual cash flows on the loan will be unable to be collected. SOP 03-3 also requires the excess of all undiscounted cash flows expected to be collected at acquisition over the purchaser’s initial investment to be recognized as interest income on a level-yield basis over the life of the loan. Subsequent increases in cash flows expected to be collected are recognized prospectively through an adjustment of the loan’s yield over its remaining life, while subsequent decreases are recognized as impairment. We adopted the provisions of SOP 03-03 effective January 1, 2005. The adoption of this standard did not have a material impact on our financial condition, statements of income, or liquidity.

In December 2004, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standard (“SFAS”) No. 123 (revised 2004), “Share-Based Payment”, which replaces SFAS No. 123 “Accounting for Stock-Based Compensation” and supersedes Accounting Principles Board (“APB”) Opinion No. 25. SFAS No. 123(R) requires all share-based payments to

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employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. In addition, SFAS No. 123(R) will cause unrecognized expense (based on the fair values determined for the pro forma footnote disclosure, adjusted for estimated forfeitures) related to options vesting after the date of initial adoption to be recognized as a charge to results of operations over the remaining vesting period. Under SFAS No. 123(R), we must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at the date of adoption. The transition alternatives include the modified prospective or the modified retrospective adoption methods. Under the modified retrospective method, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The modified prospective method requires that compensation expense be recorded for all unvested stock options and share awards at the beginning of the first quarter of adoption of SFAS No. 123(R), while the modified retrospective methods would record compensation expense for all unvested stock options and share awards beginning with the first period restated.

In March 2005, the SEC released SAB 107, "Share-Based Payment", which expresses views of the SEC Staff about the application of SFAS No. 123(R). SFAS No. 123(R) was to be effective for interim or annual reporting periods beginning on or after June 15, 2005, but in April 2005 the SEC issued a rule that SFAS No. 123(R) will be effective for annual reporting periods beginning on or after June 15, 2005. We expect to adopt the modified prospective method and expect it to have a material impact on our statements of income and earnings per share.

We will adopt SFAS No. 123(R) in the first quarter of 2006. In 2006, we will recognize approximately \$21.8 million in expense for stock options issued prior to January 1, 2006, which were previously not expensed under APB No. 25. In 2005, the amount included in our pro forma disclosure was approximately \$22.0 million for stock option expense. The total expense in 2006 and beyond will depend on several variables, including the number of share-based awards granted, the fair value of those awards, and the period over which the vesting of those awards is recognized; therefore, the actual expense may differ from this estimate.

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections — a replacement of APB Opinion No. 20 and FASB Statement No. 3". Opinion 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS No. 154 requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period specific effects or the cumulative effect of the change. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We do not expect the adoption of SFAS No. 154 to have an impact on our consolidated financial statements.

In November 2005, the FASB issued FASB Staff Position ("FSP") No. 115-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments". This FSP provides additional guidance on when an investment in a debt or equity security should be considered impaired and when that impairment should be considered other-than-temporary and recognized as a loss in earnings. Specifically, the guidance clarifies that an investor should recognize an impairment loss no later than when the impairment is deemed other-than-temporary, even if a decision to sell has not been made. The FSP also requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. FSP 115-1 nullifies certain provisions of Emerging Issues Task Force ("EITF") Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments," while retaining the disclosure requirements of EITF 03-1 which were adopted in 2003. FSP 115-1 is effective for reporting periods beginning after December 15, 2005. We do not expect FSP 115-1 will significantly impact our financial condition or statements of income upon its adoption on January 1, 2006.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market Risk

Market risk is the risk of loss from adverse changes in market prices and rates. Our primary market risks include off-balance sheet risk, interest rate risk, credit risk, foreign currency exchange rate risk and redemption reward risk.

Off-Balance Sheet Risk. We are subject to off-balance sheet risk in the normal course of business, including commitments to extend credit and through our securitization program. We sell substantially all of our credit card receivables to the WFN Trusts, qualifying special purpose entities. The trusts enter into interest rate swaps to reduce the interest rate sensitivity of the securitization transactions. The securitization program involves elements of credit, market, interest rate, legal and operational risks in excess of the amount recognized on the balance sheet through our retained interests in the securitization and the interest-only strips.

Interest Rate Risk. Interest rate risk affects us directly in our lending and borrowing activities. Our total interest incurred was approximately \$151.7 million for 2005, which includes both on-and off-balance sheet transactions. Of this total, \$14.5 million of the interest expense, net for 2005 was attributable to on-balance sheet indebtedness and the remainder to our securitized credit card receivables, which are financed off-balance sheet. To manage our risk from market interest rates, we actively monitor the interest rates and the interest sensitive components both on- and off-balance sheet to minimize the impact that changes in interest rates have on the fair value of assets, net income and cash flow. To achieve this objective, we manage our exposure to fluctuations in market interest rates by matching asset and liability repricings and through the use of fixed-rate debt instruments to the extent that reasonably favorable rates are obtainable with such arrangements. In addition, we enter into derivative financial instruments such as interest rate swaps and treasury locks to mitigate our interest rate risk on a related financial instrument or to lock the interest rate on a portion of our variable debt. We do not enter into derivative or interest rate transactions for trading or other speculative purposes. At December 31, 2005, we had \$4.1 billion of debt, including \$3.3 billion of off-balance sheet debt from our securitization program.

- At December 31, 2005, 69.8% of our \$4.1 billion of debt was fixed or effectively fixed through swap agreements.
- At December 31, 2005, 63.1% of our total debt, or 79.2% of our off-balance sheet debt, was locked at a current effective interest rate of 4.6% through interest rate swap agreements with notional amounts totaling \$2.6 billion. Of the remaining 20.8% of our off-balance sheet debt, we have variable rate private label credit cards that are equal to or greater than the variable rate debt.
- At December 31, 2005, approximately 6.7% of our total debt, or 32.8% of our on-balance sheet debt, was subject to fixed rates with a weighted average interest rate of 4.2%.

The approach we use to quantify interest rate risk is a sensitivity analysis which we believe best reflects the risk inherent in our business. This approach calculates the impact on pretax income from an instantaneous and sustained increase in interest rates of 1.0%. In 2005, a 1.0% increase in interest rates would have resulted in an annual decrease to pretax income of approximately \$5.6 million. Conversely, a corresponding decrease in interest rates would result in a comparable increase to pretax income. Our use of this methodology to quantify the market risk of financial instruments should not be construed as an endorsement of its accuracy or the accuracy of the related assumptions.

Credit Risk. We are exposed to credit risk relating to the credit card loans we make to our clients' customers. Our credit risk relates to the risk that consumers using the private label credit cards that we issue will not repay their revolving credit card loan balances. We have developed credit risk models designed to identify qualified consumers who fit our risk parameters. To minimize our risk of loan write-offs, we control approval rates of new accounts and related credit limits and follow strict collection practices. We monitor the buying limits, as well as set pricing regarding fees and interest rates charged.

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Foreign Currency Exchange Rate Risk. We are exposed to fluctuations in the exchange rate between the U.S. and the Canadian dollar through our significant Canadian operations. We do not hedge any of our net investment exposure in our Canadian subsidiary.

Redemption Reward Risk. Through our AIR MILES Reward Program, we are exposed to potentially increasing reward costs associated primarily with travel rewards. To minimize the risk of rising travel reward costs, we:

- have multi-year supply agreements with several Canadian, U.S. and international airlines;
- are seeking new supply agreements with additional airlines;
- periodically alter the total mix of rewards available to collectors with the introduction of new merchandise rewards, which are typically lower cost per AIR MILES reward mile than air travel;
- allow collectors to obtain certain travel rewards using a combination of reward miles and cash or cash alone in addition to using AIR MILES reward miles alone; and
- periodically adjust the number of AIR MILES reward miles required to be redeemed to obtain a reward.

Item 8. Financial Statements and Supplementary Data

Our consolidated financial statements begin on page F-1 of this Form 10-K.

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

None.

Item 9A. Controls and Procedures

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

As of December 31, 2005, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Securities Exchange Act of 1934. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of December 31, 2005, our disclosure controls and procedures are effective. Disclosure controls and procedures are controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and include controls and procedures designed to ensure that information we are required to disclose in such reports is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal controls over financial reporting are designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States.

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

Our evaluation of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of Atrana Solutions Inc., and Bigfoot Interactive, Inc., now known as Epsilon Interactive, entities we acquired during 2005, which are included in the 2005 consolidated financial statements and that constituted \$164.6 million of total assets of as December 31, 2005 and an immaterial amount of revenues and net income for the year then ended. We did not assess the effectiveness of internal control over financial reporting at Atrana or Epsilon Interactive because of the timing of the acquisitions, which were completed in May 2005 and September 2005, respectively.

Under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of internal control over financial reporting. In conducting this evaluation, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework*. Based on our evaluation and those criteria, our internal control over financial reporting was effective as of December 31, 2005.

During the fourth quarter of 2005, we completed the process of converting the Epsilon Data Management, Inc. legacy general ledger platform to the platform utilized by the majority of our business units. There have been no other changes in our internal control over financial reporting during the fourth quarter ended December 31, 2005 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2005, has been audited by Deloitte & Touche LLP, the independent registered public accounting firm who also audited our consolidated financial statements. Deloitte & Touche's attestation report on management's assessment of our internal control over financial reporting appears on page F-3 hereof.

Item 9B. Other Information

None.

PART III

Item 10. Directors and Executive Officers of the Registrant

Incorporated by reference to the Proxy Statement for the 2006 Annual Meeting of our stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

Item 11. Executive Compensation

Incorporated by reference to the Proxy Statement for the 2006 Annual Meeting of our stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

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

Incorporated by reference to the Proxy Statement for the 2006 Annual Meeting of our stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

Item 13. Certain Relationships and Related Transactions

Incorporated by reference to the Proxy Statement for the 2006 Annual Meeting of our stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

Item 14. Principal Accountant Fees and Services

Incorporated by reference to the Proxy Statement for the 2006 Annual Meeting of our stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2005.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are filed as part of this report:

(1) Financial Statements

(2) Financial Statement Schedule

(3) The following exhibits are filed as part of this Annual Report or, where indicated, were previously filed and are hereby incorporated by reference.

Exhibit No.	Description
2.1	Purchase and Sale Agreement, dated September 5, 2002, among ADS Alliance Data Systems, Inc., Loyalty Management Group Canada, Inc. and Westcoast Energy Inc. carrying on business as Duke Energy Gas Transmission (incorporated by reference to Exhibit No. 2.1 to our Current Report on Form 8-K filed with the SEC on September 10, 2002, File No. 001-15749).
2.2	Agreement and Plan of Merger, dated as of October 8, 2004, by and among Alliance Data Systems Corporation, ADS Alliance Data Systems, Inc., Everest Nivole, Inc., The Relizon e-CRM Company and Relizon Holdings LLC (incorporated by reference to Exhibit No. 2.1 to our Current Report on Form 8-K filed with the SEC on October 29, 2004, File No. 0001-15749).

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<u>Exhibit No.</u>	<u>Description</u>
2.3	First Amendment to Agreement and Plan of Merger, dated as of October 8, 2004, by and among Alliance Data Systems Corporation, ADS Alliance Data Systems, Inc., Everest Nivole, Inc., The Relizon e-CRM Company and Relizon Holdings, LLC (incorporated by reference to Exhibit No. 2.2 to our Current Report on Form 8-K filed with the SEC on October 29, 2004, File No. 0001-15749).
3.1	Second Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit No. 3.1 to our Registration Statement on Form S-1 filed with the SEC on March 3, 2000, File No. 333-94623).
3.2	Second Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit No. 3.2 to our Registration Statement on Form S-1 filed with the SEC on March 3, 2000, File No. 333-94623).
3.3	First Amendment to the Second Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit No. 3.3 to our Registration Statement on Form S-1 filed with the SEC on May 4, 2001, File No. 333-94623).
3.4	Second Amendment to the Second Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit No. 3.4 to our Annual Report on Form 10-K, filed with the SEC on April 1, 2002, File No. 001-15749).
4	Specimen Certificate for shares of Common Stock of the Registrant (incorporated by reference to Exhibit No. 4 to our Quarterly Report on Form 10-Q filed with the SEC on August 8, 2003, File No. 001-15749).
10.1	Build-to-Suit Net Lease between Opus South Corporation and ADS Alliance Data Systems, Inc., dated January 29, 1998, as amended (incorporated by reference to Exhibit No. 10.10 to our Annual Report on Form 10-K, filed with the SEC on April 1, 2002, File No. 001-15749).
10.2	Commercial Lease Agreement by and between Waterview Parkway L.P. and ADS Alliance Data Systems, Inc., dated July 16, 1997 (incorporated by reference to Exhibit No. 10.22 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.3	Lease between YCC Limited and London Life Insurance Company and Loyalty Management Group Canada Inc. dated May 28, 1997 and amended June 19, 1997 and January 15, 1998 (incorporated by reference to Exhibit No. 10.15 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.4	Amendments of April 14, 2000, January 17, 2001, and June 12, 2002 to lease between YCC Limited and London Life Insurance Company and Loyalty Management Group Canada Inc. dated May 28, 1997, as amended (incorporated by reference to Exhibit No. 10.12 to our Annual Report on Form 10-K filed with the SEC on March 12, 2003, File No. 001-15749).
*10.5	Amendment, dated September 27, 2002, to Lease between YCC Limited and London Life Insurance Company and Loyalty Management Group Canada, Inc., dated May 28, 1997, as amended.
*10.6	Amendment, dated February 18, 2005, to Lease between Cadillac Fairview Corporation Limited and Loyalty Management Group Canada, Inc., dated May 28, 1997, as amended.
10.7	Office Lease between Office City, Inc. and World Financial Network National Bank, dated December 24, 1986, and amended January 19, 1987, May 11, 1988, August 4, 1989 and August 18, 1999 (incorporated by reference to Exhibit No. 10.17 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.8	Lease Agreement by and between Continental Acquisitions, Inc. and World Financial Network National Bank, dated July 2, 1990, and amended September 11, 1990, November 16, 1990 and February 18, 1991 (incorporated by reference to Exhibit No. 10.18 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.9	Fourth Amendment to Lease Agreement by and between Partners at Brookside and ADS Alliance Data Systems, Inc., dated June 1, 2000 (incorporated by reference to Exhibit No. 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 14, 2003, File No. 001-15749).

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Exhibit No.	Description
*10.10	Fifth Amendment to Lease Agreement by and between Partners at Brookside and ADS Alliance Data Systems, Inc., dated June 30, 2001.
10.11	Indenture of Lease by and between OTR and ADS Alliance Data Systems, Inc., dated as of February 1, 2002, as amended (incorporated by reference to Exhibit No. 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 14, 2003, File No. 001-15749).
10.12	Lease Agreement by and between Petula Associates, Ltd. and Compass International Services, dated August 28, 1998, as amended (incorporated by reference to Exhibit No. 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on August 8, 2003, File No. 001-15749).
10.13	Lease Agreement by and between 601 Edgewater LLC and Epsilon Data Management, Inc., dated July 30, 2002 (incorporated by reference to Exhibit No. 10.17 to our Annual Report on Form 10-K filed with the SEC on March 4, 2005, File No. 001-15749).
10.14	Lease Agreement by and between Sterling Direct, Inc. and Sterling Properties, L.L.C., dated September 22, 1997, as subsequently assigned (incorporated by reference to Exhibit No. 10.18 to our Annual Report on Form 10-K filed with the SEC on March 4, 2005, File No. 001-15749).
*10.15	Sublease by and between SonicNet, Inc. and Bigfoot Interactive, Inc., dated as of March 2003.
*10.16	Lease Agreement by and between TM Park Avenue, LLC and Epsilon Interactive, LLC, dated February 10, 2006.
*10.17	Lease Agreement by and between KDC-Regent I Investments, LP and Epsilon Data Management, Inc., dated May 31, 2005.
*10.18	Offer to Lease by and between 592423 Ontario, Inc. and Loyalty Management Group Canada, Inc., dated November 3, 2005, to commence on September 17, 2007.
*10.19	Lease Agreement by and between Milford Partners, LLC and ADS Alliance Data Systems, Inc. dated as of July 15, 2004.
*10.20	Lease Agreement by and between 2855 E. Cottonwood Parkway, L.C. and ADS Alliance Data Systems, Inc., dated August 27, 2002.
*10.21	Lease of Office Space by and between Morguard Real Estate Investment Trust and Alliance Data L.P., dated December 19, 2005.
10.22	Lease Agreement by and between Morrison Taylor, Ltd. and ADS Alliance Data Systems, Inc. dated July 1, 1997, and amended June 18, 1998 (incorporated by reference to Exhibit No. 10.21 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000).
10.23	Capital Assurance and Liquidity Maintenance Agreement, dated August 28, 2003, by and between Alliance Data Systems Corporation and World Financial Network National Bank (incorporated by reference to Exhibit No. 10.3 to our Registration Statement on Form S-3 filed with the SEC on October 15, 2003, File No. 333-109713).
+10.24	Alliance Data Systems Corporation Executive Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.23 to our Annual Report on Form 10-K filed with the SEC on March 4, 2005, File No. 001-15749).
+10.25	Alliance Data Systems Corporation Executive Annual Incentive Plan (incorporated by reference to Exhibit B to our Definitive Proxy Statement filed with the SEC on April 29, 2005, File No. 001-15749).
+10.26	Alliance Data Systems Corporation 2004 Incentive Compensation Plan (incorporated by reference to Exhibit No. 10.2 to our Quarterly Report on Form 10-Q, filed with the SEC on May 7, 2004, File No. 001-15749).
+10.27	Alliance Data Systems Corporation 2005 Incentive Compensation Plan (incorporated by reference to Exhibit No. 10.1 to our Quarterly Report on Form 10-Q, filed with the SEC on May 6, 2005, File No. 001-15749).
*+10.28	Alliance Data Systems Corporation 2006 Incentive Compensation Plan.
+10.29	Amended and Restated Alliance Data Systems Corporation and its Subsidiaries Stock Option and Restricted Stock Plan (incorporated by reference to Exhibit No. 10.34 to our Registration Statement on Form S-1 filed with the SEC on May 4, 2001, File No. 333-94623).

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<u>Exhibit No.</u>	<u>Description</u>
+10.30	Form of Alliance Data Systems Corporation Incentive Stock Option Agreement (incorporated by reference to Exhibit No. 10.35 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623)
+10.31	Form of Alliance Data Systems Corporation Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit No. 10.36 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
+10.32	Alliance Data Systems Corporation Amended and Restated Employee Stock Purchase Plan (incorporated by reference to Exhibit C to our Definitive Proxy Statement filed with the SEC on April 29, 2005, File No. 001-15749).
+10.33	Alliance Data Systems Corporation 2003 Long-Term Incentive Plan (incorporated by reference to Exhibit No. 4.6 to our Registration Statement on Form S-8 filed with the SEC on June 18, 2003, File No. 333-106246).
+10.34	Alliance Data Systems Corporation 2005 Long-Term Incentive Plan (incorporated by reference to Exhibit A to our Definitive Proxy Statement filed with the SEC on April 29, 2005, File No. 001-15749).
+10.35	Form of Nonqualified Stock Option Agreement for awards under the Alliance Data Systems Corporation 2005 Long Term Incentive Plan (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on August 4, 2005, File No. 001-15749).
+10.36	Form of Restricted Stock Award Agreement for awards under the Alliance Data Systems Corporation 2005 Long Term Incentive Plan (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on August 4, 2005, File No. 001-15749).
+10.37	Form of Non-Employee Director Nonqualified Stock Option Agreement (incorporated by reference to Exhibit No. 10.1 to our Current Report on Form 8-K filed with the SEC on June 13, 2005, File No. 001-15749).
+10.38	Form of Non-Employee Director Share Award Letter (incorporated by reference to Exhibit No. 10.2 to our Current Report on Form 8-K filed with the SEC on June 13, 2005, File No. 001-15749).
+10.39	Form of Alliance Data Systems Associate Confidentiality Agreement (incorporated by reference to Exhibit No. 10.24 to our Annual Report on Form 10-K filed with the SEC on March 12, 2003, File No. 001-15749).
+10.40	Form of Alliance Data Systems Corporation Indemnification Agreement for Officers and Directors (incorporated by reference to Exhibit No. 10.1 to our Current Report on Form 8-K filed with the SEC on February 1, 2005, File No. 001-15749).
+10.41	Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit 99.1 to our Registration Statement on Form S-8 filed with the SEC on July 20, 2001, File No. 333-65556).
+10.42	Amendment, dated February 4, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.7 to our Quarterly Report on Form 10-Q filed with the SEC on May 14, 2003, File No. 001-15749).
+10.43	Amendment No. 2, dated April 7, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.8 to our Quarterly Report on Form 10-Q filed with the SEC on May 14, 2003, File No. 001-15749).
+10.44	Amendment No. 3, dated May 8, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.9 to our Quarterly Report on Form 10-Q filed with the SEC on May 14, 2003, File No. 001-15749).
+10.45	Amendment No. 4, dated June 9, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.32 to our Annual Report on Form 10-K filed with the SEC on March 5, 2004, File No. 001-15749).
+10.46	Amendment No. 5, dated September 29, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.33 to our Annual Report on Form 10-K filed with the SEC on March 5, 2004, File No. 001-15749).

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<u>Exhibit No.</u>	<u>Description</u>
+10.47	Amendment No. 6, dated December 12, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.34 to our Annual Report on Form 10-K filed with the SEC on March 5, 2004, File No. 001-15749).
+10.48	Amendment No. 7, dated December 12, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.35 to our Annual Report on Form 10-K filed with the SEC on March 5, 2004, File No. 001-15749).
+10.49	Amendment No. 8, dated December 12, 2003, to Alliance Data Systems 401(k) Retirement and Savings Plan (incorporated by reference to Exhibit No. 10.36 to our Annual Report on Form 10-K filed with the SEC on March 5, 2004, File No. 001-15749).
+10.50	Letter employment agreement with J. Michael Parks, dated February 19, 1997 (incorporated by reference to Exhibit 10.39 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
+10.51	Letter employment agreement with Ivan Szeftel, dated May 4, 1998 (incorporated by reference to Exhibit 10.40 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.52	Amended and Restated License to Use the Air Miles Trade Marks in Canada, dated as of July 24, 1998, by and between Air Miles International Holdings N.V. and Loyalty Management Group Canada Inc. (incorporated by reference to Exhibit No. 10.43 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333 - 94623) (assigned by Air Miles International Holdings N.V. to Air Miles International Trading B.V. by a novation agreement dated as of July 18, 2001).
10.53	Amended and Restated License to Use and Exploit the Air Miles Scheme in Canada, dated July 24, 1998, by and between Air Miles International Trading B.V. and Loyalty Management Group Canada Inc. (incorporated by reference to Exhibit No. 10.44 to our Registration Statement on Form S-1 filed with the SEC on January 13, 2000, File No. 333-94623).
10.54	Second Amended and Restated Pooling and Servicing Agreement, dated as of January 17, 1996 amended and restated as of September 17, 1999 and August 2001 by and among WFN Credit Company, LLC, World Financial Network National Bank, and BNY Midwest Trust Company (incorporated by reference to Exhibit No. 4.6 to the Registration Statement on Form S-3 of world financial network credit card master trust filed with the SEC on July 5, 2001, File No. 333-60418).
10.55	Second Amendment to the Second Amended and Restated Pooling and Servicing Agreement, dated as of May 19, 2004, among World Financial Network National Bank, WFN Credit Company, LLC and BNY Midwest Trust Company (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by WFN Credit Company, LLC, World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on August 4, 2004, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.56	Third Amendment to the Second Amended and Restated Pooling and Servicing Agreement, dated as of March 30, 2005, among World Financial Network National Bank, WFN Credit Company, LLC and BNY Midwest Trust Company (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on April 4, 2005, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.57	Omnibus Amendment, dated as of March 31, 2003, among WFN Credit Company, LLC, World Financial Network Credit Card Master Trust, World Financial Network National Bank and BNY Midwest Trust Company (incorporated by reference to Exhibit 4 to the Current Report on Form 8-K filed by WFN Credit Company, LLC and World Financial Network Credit Card Master Trust on April 22, 2003, File Nos. 333-60418 and 333-60418-01).
10.58	Transfer and Servicing Agreement, dated as of August 1, 2001, between WFN Credit Company, LLC, World Financial Network National Bank, and World Financial Network Credit Card Master Note Trust (incorporated by reference to Exhibit No. 4.3 to the Registration Statement on Form S-3 of World Financial Network Credit Card Master Trust filed with the SEC on July 5, 2001, File No. 333-60418).

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Exhibit No.	Description
10.59	First Amendment to the Transfer and Servicing Agreement, dated as of November 7, 2002, among WFN Credit Company, LLC, World Financial Network National Bank and World Financial Network Credit Card Master Note Trust (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K filed by WFN Credit Company, LLC and World Financial Network Credit Card Master Trust on November 20, 2002, File Nos. 333-60418 and 333-60418-01).
10.60	Third Amendment to the Transfer and Servicing Agreement, dated as of May 19, 2004, among WFN Credit Company, LLC, World Financial Network National Bank and World Financial Network Credit Card Master Note Trust (incorporated by reference to Exhibit 4.2 of the Current Report on Form 8-K filed by WFN Credit Company, LLC, World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on August 4, 2004, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.61	Fourth Amendment to the Transfer and Servicing Agreement, dated as of March 30, 2005, among WFN Credit Company, LLC, World Financial Network National Bank and World Financial Network Credit Card Master Note Trust (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K filed by World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on April 4, 2005, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.62	Receivables Purchase Agreement, dated as of August 1, 2001, between World Financial Network National Bank and WFN Credit Company, LLC (incorporated by reference to Exhibit 4.8 to the Registration Statement on Form S-3 of World Financial Network Credit Card Master Trust filed with the SEC on July 5, 2001, File No. 333-60418).
10.63	Master Indenture, dated as of August 1, 2001, between World Financial Network Credit Card Master Note Trust and BNY Midwest Trust Company, as supplemented by the Series 2001-A Indenture Supplement, the Series 2002-A Indenture Supplement, the Series 2002-VFN Supplement (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-3 filed with the SEC by WFN Credit Company, LLC and World Financial Network Credit Card Master Trust on July 5, 2001, File Nos. 333-60418 and 333-60418-01).
10.64	Series 2003-A Indenture Supplement, dated as of June 19, 2003 (incorporated by reference to Exhibit No. 4.1 to the Current Report on Form 8-K filed by World Financial Network Credit Card Master Trust filed with the SEC on August 28, 2003, File No. 333-60418-01).
10.65	Series 2004-A Indenture Supplement, dated as of May 19, 2004 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC by WFN Credit Company, LLC, World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on May 27, 2004, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.66	Series 2004-B Indenture Supplement, dated as of September 22, 2004 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC by WFN Credit Company, LLC, World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on September 28, 2004, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.67	Series 2004-C Indenture Supplement, dated as of September 22, 2004 (incorporated by reference to Exhibit 4.2 of the Current Report on Form 8-K filed with the SEC by WFN Credit Company, LLC, World Financial Network Credit Card Master Trust and World Financial Network Credit Card Master Note Trust on September 28, 2004, File Nos. 333-60418, 333-60418-01 and 333-113669).
10.68	Supplemental Indenture No. 1, dated as of August 13, 2003, between World Financial Network Credit Card Master Note Trust and BNY Midwest Trust Company (incorporated by reference to Exhibit 4.2 of the Current Report on Form 8-K filed with the SEC by WFN Credit Company, LLC and World Financial Network Credit Card Master Trust on August 28, 2003, File Nos. 333-60418 and 333-60418-01).

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Exhibit No.	Description
10.69	Issuance Supplement to Series 2003-A Indenture Supplement, dated as of August 14, 2003, between World Financial Network Credit Card Master Note Trust and BNY Midwest Trust Company (incorporated by reference to Exhibit No. 4.3 of the Current Report on Form 8-K filed with the SEC by World Financial Network Credit Card Master Trust on August 28, 2003, File No. 333-60418-01).
10.70	Credit Agreement (3-Year), dated as of April 10, 2003, by and among Alliance Data Systems Corporation, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit No. 10.2 to Amendment No. 1 to our Registration Statement on Form S-3 filed with the SEC on April 16, 2003, File No. 333-104314).
10.71	First Amendment to Credit Agreement (3-Year), dated as of October 21, 2004, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris Trust and Savings Bank, as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed with the SEC on November 5, 2004, File No. 001-15749).
10.72	Second Amendment to Credit Agreement (3-Year), dated as of April 7, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris Trust and Savings Bank, as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed with the SEC on April 13, 2005, File No. 001-15749).
10.73	Third Amendment to Credit Agreement (3-Year), dated as of October 28, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris N.A., as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed with the SEC on October 31, 2005, File No. 001-15749).
10.74	Fourth Amendment to Credit Agreement (3-Year), dated as of December 21, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris N.A., as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed with the SEC on December 27, 2005, File No. 001-15749).
10.75	Credit Agreement (364-Day), dated as of April 10, 2003, by and among Alliance Data Systems Corporation, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit No. 10.3 to Amendment No. 1 to our Registration Statement on Form S-3 filed with the SEC on April 16, 2003, File No. 333-104314).
10.76	First Amendment to Credit Agreement (364-Day) dated as of April 8, 2004, by and among Alliance Data Systems Corporation, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 7, 2004, File No. 001-15749).
10.77	Second Amendment to Credit Agreement (364-Day), dated as of October 21, 2004, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris Trust and Savings Bank, as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q filed with the SEC on November 5, 2004, File No. 001-15749).
10.78	Third Amendment to Credit Agreement (364-Day), dated as of April 7, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris Trust and Savings Bank, as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.2 to our Current Report on Form 8-K filed with the SEC on April 13, 2005, File No. 001-15749).

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<u>Exhibit No.</u>	<u>Description</u>
10.79	Fourth Amendment to Credit Agreement (364-Day), dated as of October 28, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris N.A., as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.2 to our Current Report on Form 8-K filed with the SEC on October 31, 2005, File No. 001-15749).
10.80	Fifth Amendment to Credit Agreement (364-Day), dated as of December 21, 2005, by and among Alliance Data Systems Corporation, the Guarantor party thereto, the Banks party thereto, and Harris N.A., as Administrative Agent and Letter of Credit Issuer (incorporated by reference to Exhibit 99.2 to our Current Report on Form 8-K filed with the SEC on December 27, 2005, File No. 001-15749).
10.81	Credit Agreement (Canadian), dated as of April 10, 2003, by and among Loyalty Management Group Canada Inc., the guarantors from time to time party thereto, the lenders from time to time party thereto, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit No. 10.4 to Amendment No. 1 to our Registration Statement on Form S-3 filed with the SEC on April 16, 2003, File No. 333-104314).
10.82	First Amendment to Credit Agreement (Canadian), dated as of October 21, 2004, by and among Loyalty Management Group Canada Inc., the Guarantors party thereto, the Banks party thereto, Bank of Montreal, as Letter of Credit Issuer, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit 10.5 to our Quarterly Report on Form 10-Q filed with the SEC on November 5, 2004, File No. 001-15749).
10.83	Second Amendment to Credit Agreement (Canadian), dated as of April 7, 2005, by and among Loyalty Management Group Canada Inc., the Guarantors party thereto, the Banks party thereto, Bank of Montreal, as Letter of Credit Issuer, and Harris Trust and Savings Bank, as Administrative Agent (incorporated by reference to Exhibit 99.3 to our Current Report on Form 8-K filed with the SEC on April 13, 2005, File No. 001-15749).
10.84	Third Amendment to Credit Agreement (Canadian), dated as of October 28, 2005, by and among Loyalty Management Group Canada Inc., the Guarantors party thereto, the Banks party thereto, Bank of Montreal, as Letter of Credit Issuer, and Harris N.A., as Administrative Agent (incorporated by reference to Exhibit 99.3 to our Current Report on Form 8-K filed with the SEC on October 31, 2005, File No. 001-15749).
10.85	Fourth Amendment to Credit Agreement (Canadian), dated as of December 21, 2005, by and among Loyalty Management Group Canada Inc., the Guarantors party thereto, the Banks party thereto, Bank of Montreal, as Letter of Credit Issuer, and Harris N.A., as Administrative Agent (incorporated by reference to Exhibit 99.3 to our Current Report on Form 8-K filed with the SEC on December 27, 2005, File No. 001-15749).
10.86	Credit Agreement, dated as of January 3, 2006, by and among Alliance Data Systems Corporation, ADS Alliance Data Systems, Inc., as Guarantor, the Banks party thereto, and Harris N.A., as Administrative Agent and Lead Arranger (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed with the SEC on January 9, 2006, File No. 001-15749).
+10.87	Form of Change in Control Agreement, dated as of September 25, 2003, by and between ADS Alliance Data Systems, Inc. and each of Daniel P. Finkelman, Edward J. Heffernan, John W. Scullion, Ivan M. Szeftel, Transient C. Taylor, Dwayne H. Tucker and Alan M. Utay (incorporated by reference to Exhibit No. 10.1 to our Registration Statement on Form S-3 filed with the SEC on October 15, 2003, File No. 333-109713).
+10.88	Change in Control Agreement, dated as of September 25, 2003, by and between ADS Alliance Data Systems, Inc. and J. Michael Parks (incorporated by reference to Exhibit No. 10.2 to our Registration Statement on Form S-3 filed with the SEC on October 15, 2003, File No. 333-109713).

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<u>Exhibit No.</u>	<u>Description</u>
10.89	Stockholders Agreement dated as of June 12, 2001, among Alliance Data Systems Corporation, Limited Commerce Corp., Welsh, Carson, Anderson, and Stowe VI, L.P., Welsh, Carson, Anderson & Stowe VII, L.P., Welsh, Carson, Anderson & Stowe VIII, L.P., WCAS Information Partners, L.P., WCAS Capital Partners II, L.P., and WCAS Capital Partners III, L.P. (incorporated by reference to Exhibit 10.14 to our Annual Report on Form 10-K, filed with the SEC on April 1, 2002, File No. 001-15749).
10.90	First Amendment, dated as of April 9, 2003, to Stockholders Agreement, dated as of June 12, 2001, among Alliance Data Systems Corporation, Limited Commerce Corp., Welsh, Carson, Anderson, and Stowe VI, L.P., Welsh, Carson, Anderson & Stowe VII, L.P., Welsh, Carson, Anderson & Stowe VIII, L.P., WCAS Information Partners, L.P., WCAS Capital Partners II, L.P., and WCAS Capital Partners III, L.P. (incorporated by reference to Exhibit No. 10.1 to Amendment No. 1 to our Registration Statement on Form S-3 filed with the SEC on April 16, 2003, File No. 333-104314).
*21	Subsidiaries of the Registrant.
*23.1	Consent of Deloitte & Touche LLP.
*31.1	Certification of Chief Executive Officer of Alliance Data Systems Corporation pursuant to Rule 13a-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
*31.2	Certification of Chief Financial Officer of Alliance Data Systems Corporation pursuant to Rule 13a-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
*32.1	Certification of Chief Executive Officer of Alliance Data Systems Corporation pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and Section 1350 of Chapter 63 of Title 18 of the United States Code.
*32.2	Certification of Chief Financial Officer of Alliance Data Systems Corporation pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and Section 1350 of Chapter 63 of Title 18 of the United States Code.

* Filed herewith.

+ Management contract, compensatory plan or arrangement.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders of
Alliance Data Systems Corporation

We have audited the accompanying consolidated balance sheets of Alliance Data Systems Corporation and subsidiaries (the “Company”) as of December 31, 2005 and 2004, and the related consolidated statements of income, stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2005. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Alliance Data Systems Corporation and subsidiaries as of December 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2005, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company’s internal control over financial reporting as of December 31, 2005, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 2, 2006 expressed an unqualified opinion on management’s assessment of the effectiveness of the Company’s internal control over financial reporting and an unqualified opinion on the effectiveness of the Company’s internal control over financial reporting. As described in our report dated March 2, 2006, management excluded from their assessment the internal control over financial reporting of Atrana Solutions, Inc. (“Atrana”) and Epsilon Interactive, Inc. (“Epsilon Interactive”), which were acquired in May and September, 2005, respectively; accordingly, our audit did not include the internal control over financial reporting at Atrana or Epsilon Interactive.

/s/ DELOITTE & TOUCHE LLP

Dallas, Texas
March 2, 2006

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders of
Alliance Data Systems Corporation

We have audited management’s assessment, included in the accompanying Management’s Report on Internal Control Over Financial Reporting, that Alliance Data Systems Corporation and subsidiaries (the “Company”) maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. As described in Management’s Report on Internal Control Over Financial Reporting, management excluded from their assessment the internal control over financial reporting at Atrana Solutions, Inc. (“Atrana”) and Epsilon Interactive, Inc. (“Epsilon Interactive”) which were acquired in May and September, 2005, respectively, and whose collective financial statements reflect total assets and revenues constituting six and one percent, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2005. Accordingly, our audit did not include the internal control over financial reporting at Atrana or Epsilon Interactive. The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management’s assessment and an opinion on the effectiveness of the Company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management’s assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

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

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management’s assessment that the Company maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the criteria

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established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2005 of the Company and our report dated March 2, 2006 expressed an unqualified opinion on those financial statements and financial statement schedule.

/s/ DELOITTE & TOUCHE LLP

Dallas, Texas
March 2, 2006

ALLIANCE DATA SYSTEMS CORPORATION
CONSOLIDATED STATEMENTS OF INCOME

	Year Ended December 31,		
	2003	2004	2005
	(In thousands, except per share amounts)		
Revenues			
Transaction	\$ 530,242	\$ 599,969	\$ 626,055
Redemption	180,782	226,726	275,840
Securitization income	294,816	355,912	405,868
Database marketing fees and marketing services	17,803	44,880	185,309
Other revenue	22,901	29,951	59,365
Total revenue	<u>1,046,544</u>	<u>1,257,438</u>	<u>1,552,437</u>
Operating expenses			
Cost of operations	788,874	916,201	1,124,590
General and administrative	52,320	77,740	91,532
Depreciation and other amortization	53,948	62,586	58,565
Amortization of purchased intangibles	20,613	28,812	41,142
Total operating expenses	<u>915,755</u>	<u>1,085,339</u>	<u>1,315,829</u>
Operating income	<u>130,789</u>	<u>172,099</u>	<u>236,608</u>
Other expenses	4,275	—	—
Fair value loss on interest rate derivative	2,851	808	—
Interest expense, net	14,681	6,972	14,482
Income before income taxes	108,982	164,319	222,126
Provision for income taxes	41,684	61,948	83,381
Net income	<u>\$ 67,298</u>	<u>\$ 102,371</u>	<u>\$ 138,745</u>
Net income per share:			
Basic	<u>\$ 0.86</u>	<u>\$ 1.27</u>	<u>\$ 1.69</u>
Diluted	<u>\$ 0.84</u>	<u>\$ 1.22</u>	<u>\$ 1.64</u>
Weighted average shares:			
Basic	<u>78,003</u>	<u>80,614</u>	<u>82,208</u>
Diluted	<u>80,313</u>	<u>84,040</u>	<u>84,637</u>

See accompanying notes to consolidated financial statements.

ALLIANCE DATA SYSTEMS CORPORATION
CONSOLIDATED BALANCE SHEETS

	December 31,	
	2004	2005
ASSETS		
Cash and cash equivalents	\$ 84,409	\$ 143,213
Due from card associations	10,995	58,416
Trade receivables, less allowance for doubtful accounts (\$1,458 and \$2,079 at December 31, 2004 and 2005, respectively)	158,236	203,883
Seller's interest and credit card receivables, less allowance for doubtful accounts (\$11,673 and \$38,415 at December 31, 2004 and 2005, respectively)	248,074	479,108
Deferred tax asset, net	49,606	70,221
Other current assets	66,026	87,612
Total current assets	617,346	1,042,453
Redemption settlement assets, restricted	243,492	260,963
Property and equipment, net	147,531	162,972
Due from securitizations	244,291	271,256
Intangible assets, net	233,779	265,000
Goodwill	709,146	858,470
Other non-current assets	43,495	64,968
Total assets	<u>\$ 2,239,080</u>	<u>\$ 2,926,082</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Accounts payable	\$ 56,214	\$ 67,384
Accrued expenses	141,534	198,707
Merchant settlement obligations	77,980	127,038
Certificates of deposit	94,700	342,600
Credit facilities and other debt, current	135,962	235,843
Other current liabilities	54,229	76,999
Total current liabilities	560,619	1,048,571
Deferred tax liability, net	49,283	62,847
Deferred revenue (Note 8)	547,123	610,533
Certificates of deposit	—	36,500
Long-term and other debt	206,861	222,001
Other liabilities	4,674	24,523
Total liabilities	1,368,560	2,004,975
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Common stock, \$0.01 par value; authorized, 200,000 shares; issued, 82,765 shares and 84,765 shares at December 31, 2004 and 2005, respectively	828	848
Unearned compensation	(7,739)	(14,504)
Additional paid-in capital	679,776	743,545
Treasury stock, at cost, 418 shares and 4,360 shares at December 31, 2004 and 2005, respectively)	(6,151)	(154,952)
Retained earnings	199,336	338,081
Accumulated other comprehensive income	4,470	8,089
Total stockholders' equity	870,520	921,107
Total liabilities and stockholders' equity	<u>\$ 2,239,080</u>	<u>\$ 2,926,082</u>

See accompanying notes to consolidated financial statements.

ALLIANCE DATA SYSTEMS CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Common Stock		Unearned Compensation	Additional Paid-In Capital	Treasury Stock	Retained Earnings (In thousands)	Accumulated Other Comprehensive Income (Loss)	Total Comprehensive Income	Total Stockholders' Equity
	Shares	Amount							
January 1, 2003	74,938	\$ 749	\$ —	\$ 522,209	\$ (6,151)	\$ 29,667	\$ (3,916)	\$ 67,298	\$ 542,558
Net income						67,298		67,298	67,298
Other comprehensive income, net of tax:									
Change in fair value of derivatives							(1,755)	(1,755)	(1,755)
Reclassifications into earnings							2,730	2,730	2,730
Net unrealized gain on securities available-for-sale							476	476	476
Foreign currency translation adjustments							1,632	1,632	1,632
Other comprehensive income							3,083		
Total comprehensive income								\$ 70,381	
Common stock issued in conjunction with public offering	3,350	33		61,877					61,910
Other common stock issued, including income tax benefits	1,755	18		27,464					27,482
December 31, 2003	80,043	800	—	611,550	(6,151)	96,965	(833)	102,371	702,331
Net income						102,371		102,371	102,371
Other comprehensive income, net of tax:									
Reclassifications into earnings							482	482	482
Net unrealized loss on securities available-for-sale							(144)	(144)	(144)
Foreign currency translation adjustments							4,965	4,965	4,965
Other comprehensive income							5,303		
Total comprehensive income								\$ 107,674	
Issuance of restricted stock	491	5	(7,739)	22,461					14,727
Other common stock issued, including income tax benefits	2,231	23		45,765					45,788
December 31, 2004	82,765	828	(7,739)	679,776	(6,151)	199,336	4,470	138,745	870,520
Net income						138,745		138,745	138,745
Other comprehensive income, net of tax:									
Net unrealized gain on securities available-for-sale							414	414	414
Foreign currency translation adjustments							3,205	3,205	3,205
Other comprehensive income							3,619		
Total comprehensive income								\$ 142,364	
Amortization of unearned compensation			6,546						6,546
Purchase of treasury shares					(148,801)				(148,801)
Issuance of restricted stock	471	5	(13,311)	20,903					7,597
Other common stock issued, including income tax benefits	1,529	15		42,866					42,881
December 31, 2005	84,765	\$ 848	\$ (14,504)	\$ 743,545	\$ (154,952)	\$ 338,081	\$ 8,089	\$ 142,364	\$ 921,107

See accompanying notes to consolidated financial statements.

ALLIANCE DATA SYSTEMS CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended December 31,		
	2003	2004	2005
	(In thousands)		
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 67,298	\$ 102,371	\$ 138,745
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	29,688	36,272	41,217
Amortization	44,873	55,126	58,490
Deferred income taxes	9,701	31,154	(13,475)
Provision for doubtful accounts	20,886	2,487	22,055
Non-cash stock compensation	5,889	15,767	14,143
Fair value gain on interest-only strip	(3,554)	(6,553)	(23,300)
Change in operating assets and liabilities, net of acquisitions:			
Change in trade accounts receivable	(22,880)	(602)	(37,592)
Change in merchant settlement activity	27,280	17,936	1,637
Change in other assets	4,116	(3,240)	(8,619)
Change in accounts payable and accrued expenses	(3,266)	(7,394)	42,757
Change in deferred revenue	32,836	30,827	43,288
Change in other liabilities	(186)	(17,831)	743
Purchase of credit card receivables	(302,332)	(34,417)	(186,419)
Proceeds from sale of credit card receivable portfolios to securitization trusts	202,322	105,538	—
Tax benefit of stock option exercises	2,065	11,209	13,648
Other	2,140	9,979	1,763
Net cash provided by operating activities	<u>116,876</u>	<u>348,629</u>	<u>109,081</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Increase in redemption settlement assets	(12,001)	(10,464)	(10,983)
Payments for acquired businesses, net of cash acquired	(51,656)	(329,493)	(140,901)
Payments to secure customer contracts	(30,541)	(4,362)	—
Net increase in seller's interest and credit card receivables	(74,402)	(48,441)	(106,785)
Change in due from securitizations	(35,428)	40,181	(1,005)
Capital expenditures	(46,955)	(48,329)	(65,900)
Other	3,254	1,049	(5,377)
Net cash used in investing activities	<u>(247,729)</u>	<u>(399,859)</u>	<u>(330,951)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Borrowings under debt agreements	641,124	770,388	1,272,260
Repayment of borrowings	(658,599)	(627,037)	(1,155,735)
Certificates of deposit issuances	212,200	90,600	379,100
Repayments of certificates of deposit	(108,000)	(196,300)	(94,700)
Payment of capital lease obligations	(3,160)	(5,810)	(6,409)
Proceeds from public stock offerings	61,910	—	—
Proceeds from issuance of common stock	19,528	34,528	29,106
Purchase of treasury shares	—	—	(145,043)
Net cash provided by financing activities	<u>165,003</u>	<u>66,369</u>	<u>278,579</u>
Effect of exchange rate changes on cash and cash equivalents	3,156	1,525	2,095
Change in cash and cash equivalents	37,306	16,664	58,804
Cash and cash equivalents at beginning of year	30,439	67,745	84,409
Cash and cash equivalents at end of year	<u>\$ 67,745</u>	<u>\$ 84,409</u>	<u>\$ 143,213</u>
SUPPLEMENTAL CASH FLOW INFORMATION:			
Interest paid	<u>\$ 19,868</u>	<u>\$ 9,274</u>	<u>\$ 16,423</u>
Income taxes paid, net of refunds	<u>\$ 19,319</u>	<u>\$ 21,094</u>	<u>\$ 58,237</u>

See accompanying notes to consolidated financial statements.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Description of the Business — Alliance Data Systems Corporation (“ADSC” or, including its wholly owned subsidiaries, the “Company”) is a leading provider of transaction services, credit services and marketing services in North America. The Company partners with its clients to develop unique insight into consumer behavior. The Company uses that insight to create and manage customized solutions that the Company believes change consumer behavior and enable its clients to build stronger, mutually-beneficial relationships with their customers. The Company focuses on facilitating and managing interactions between its clients and their customers through multiple distribution channels including in-store, catalog and on-line. Through the Credit Services and Marketing Services segments, the Company assists its clients in identifying and acquiring new customers and helps to increase the loyalty and profitability of its clients’ existing customers.

The Company operates in three reportable segments: Transaction Services, Credit Services and Marketing Services. Transaction Services encompasses card processing, billing and payment processing and customer care for specialty and petroleum retailers (issuer services), customer information system hosting, customer care and billing and payment processing for regulated and de-regulated utilities (utility services) and other processing-oriented businesses. Credit Services provides private label credit card receivables financing. Credit Services generally securitizes the credit card receivables that it underwrites from its private label credit card programs. Marketing Services provides loyalty programs, such as the AIR MILES® Reward Program, and integrated direct marketing solutions that combine database marketing technology and analytics with a broad range of direct marketing services, to include e-mail marketing campaigns.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation — The accompanying consolidated financial statements include the accounts of ADSC and its wholly owned subsidiaries. All significant intercompany transactions have been eliminated.

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

Due from Card Associations and Merchant Settlement Obligations — Due from card associations and merchant settlement obligations result from the Company’s merchant services and associated settlement activities. Due from card associations is generated from credit card transactions, such as MasterCard, Visa and American Express, at merchant locations. The Company records corresponding settlement obligations for amounts payable to merchants. These accounts are settled with the respective card association or merchant on different days.

Seller’s Interest and Credit Card Receivables — Credit card receivables are generally securitized immediately or shortly after origination. As part of its securitization agreements, the Company is required to retain an interest in the credit card receivables, which is referred to as seller’s interest. Seller’s interest is carried at fair value and credit card receivables are carried at lower of cost or market less an allowance for doubtful accounts. In its capacity as a servicer of the credit card receivables, the Company receives a servicing fee from the World Financial Network Credit Card Master Trust, World Financial Network Credit Card Master Note Trust and World Financial Network Credit Card Master Trust III (“WFN Trusts”). Management estimates the cost incurred in servicing the credit card receivables approximates the service fees received, and therefore has not recorded a servicing asset or liability as of December 31, 2004 and 2005.

Allowance for Doubtful Accounts — The Company specifically analyzes accounts receivable and historical bad debts, customer credit-worthiness, current economic trends, and changes in its customer

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

payment terms and collection trends when evaluating the adequacy of its allowance for doubtful accounts. Any change in the assumptions used in analyzing a specific account receivable may result in an additional allowance for doubtful accounts being recognized in the period in which the change occurs.

Redemption Settlement Assets, Restricted — These securities relate to the redemption fund for the AIR MILES Reward Program and are held in trust for the benefit of funding redemptions by collectors. These assets are restricted to funding rewards for the collectors by certain of our sponsor contracts. These securities are stated at fair value, with the unrealized gains and losses, net of tax, reported as a component of accumulated other comprehensive income. Debt securities that the Company does not have the positive intent and ability to hold to maturity are classified as securities available-for-sale.

Property and Equipment — Furniture, fixtures, computer equipment and software, and leasehold improvements are carried at cost, less accumulated depreciation and amortization. Depreciation and amortization, including capital leases are computed on a straight-line basis, using estimated lives ranging from three to 15 years. Leasehold improvements are amortized over the remaining lives of the respective leases or the remaining useful lives of the improvements, whichever is shorter. Software development (costs to create new platforms for certain of the Company's information systems) and conversion costs (systems, programming and other related costs to allow conversion of new client accounts to the Company's processing systems) are capitalized in accordance with Statement of Position ("SOP") 98-1 "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use" and are amortized on a straight-line basis over the length of the associated contract or benefit period, which generally ranges from three to five years.

Revenue Recognition

The Company's policy follows the guidance from SEC Staff Accounting Bulletin ("SAB") No. 104 "Revenue Recognition". SAB No. 104 provides guidance on the recognition, presentation, and disclosure of revenue in financial statements and updates existing SAB Topic 13 to be consistent with recently issued guidance, primarily Emerging Issues Task Force Issue ("EITF") No. 00-21, "Revenue Arrangements with Multiple Deliverables". The Company recognizes revenues when persuasive evidence of an arrangement exists, the services have been provided to the client, the sales price is fixed or determinable, and collectibility is reasonably assured.

Transaction — The Company earns transaction fees, which are principally based on the number of transactions processed or statements generated and are recognized as such services are performed. Included are reimbursements received for "out-of-pocket" expenses. In cases where the Company enters into license sales, revenue is recognized in accordance with SOP 97-2 "Software Revenue Recognition" and related literature.

Database marketing fees and marketing services — For maintenance and service programs, revenue is recognized as services are provided. Revenue associated with a new database build is deferred until client acceptance. Upon acceptance, it is then recognized over the term of the related agreement as the services are provided.

AIR MILES Reward Program — The Company allocates the proceeds received from sponsors for the issuance of AIR MILES reward miles based on relative fair values between the redemption element of the award ultimately provided to the collector (the "Redemption element") and the service element (the "Service element"). The Service element consists of direct marketing and support services provided to sponsors.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

The fair value of the Service element is based on the estimated fair value of providing the services on a third-party basis. The revenue related to the Service element of the AIR MILES reward miles is initially deferred and amortized over the period of time beginning with the issuance of the AIR MILES reward miles and ending upon their expected redemption (the estimated life of an AIR MILES reward mile, or 42 months). Revenue is recorded as part of transaction revenue.

The fair value of the Redemption element of the AIR MILES reward miles issued is determined based on separate pricing offered by the Company as well as other objective evidence. The revenue related to the Redemption element is deferred until the collector redeems the AIR MILES reward miles or over the estimated life of an AIR MILES reward mile in the case of AIR MILES reward miles that the Company estimates will go unused by the collector base (“breakage”). The Company currently estimates breakage to be one-third of AIR MILES reward miles issued. There have been no changes to management’s estimate of the life of a mile or breakage in the periods presented.

Securitization income — Securitization income represents gains and losses on securitization of credit card receivables and interest income on seller’s interest and credit card receivables held on the balance sheet less a provision for doubtful accounts of \$20.4 million, \$1.8 million and \$20.9 million for the years ended December 31, 2003, 2004, and 2005, respectively. For the years ended December 31, 2003, 2004 and 2005, the Company recognized \$4.0 million, \$2.0 million and zero, respectively, in gains, related to the securitization of new credit card receivables accounted for as sales. The Company records gains or losses on the securitization of credit card receivables on the date of sale based on cash received, the estimated fair value of assets sold and retained, and liabilities incurred in the sale. The anticipated excess cash flow essentially represents an interest-only (“I/ O”) strip, consisting of the excess of finance charges and certain other fees over the sum of the return paid to certificate holders and credit losses over the estimated outstanding period of the receivables. The amount initially allocated to the I/ O strip at the date of a securitization reflects the allocated original basis of the relative fair values of those interests. The amount recorded for the I/ O strip is reduced for distributions on the I/ O strip, which the Company receives from the related trust, and is adjusted for changes in the fair value of the I/ O strip, which are reflected in other comprehensive income. Because there is not a highly liquid market for these assets, management estimates the fair value of the I/ O strip primarily based upon discount, payment and default rates, which is the method we assume that another market participant would use to purchase the I/ O strip.

In recording and accounting for the I/ O strip, management makes assumptions about rates of payments and defaults, which reflect economic and other relevant conditions that affect fair value. Due to subsequent changes in economic and other relevant conditions, the actual rates of payments and defaults would generally differ from our initial estimates, and these differences could sometimes be material. If actual payment and default rates are higher than previously assumed, the value of the I/ O strip could be permanently impaired and the decline in the fair value would be recorded in earnings.

The Company recognizes the implicit forward contract to sell new receivables during a revolving period at its fair value at the time of sale. The implicit forward contract is entered into at the market rate and thus, its initial measure is zero at inception. In addition, the Company does not mark the forward contract to fair value in accounting periods following the securitization as it does not believe the fair value of the implicit forward contract in subsequent periods to be material.

Securitization Sales — The Company’s securitization of its credit card receivables involves the sale to a trust and is accomplished primarily through the public and private issuance of asset-backed securities by the special purpose entities. The Company removes credit card receivables from its Consolidated Balance Sheets for those asset securitizations that qualify as sales in accordance with Statement of Financial Accounting Standard (“SFAS”) No. 140 “Accounting for Transfers and Servicing of Financial Assets and

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

Extinguishment of Liabilities—a replacement of FASB Statement No. 125”. The Company has determined that the WFN Trusts are qualifying special purpose entities as defined by SFAS No. 140, and that all current securitizations qualify as sales.

Goodwill and Other Intangible Assets — Goodwill and indefinite lived intangible assets are not amortized, but are reviewed at least annually for impairment or more frequently if circumstances indicate that an impairment may have occurred, using the market comparable and discounted cash flow methods. Separable intangible assets that have finite useful lives are amortized over those useful lives.

Earnings Per Share — Basic earnings per share is based only on the weighted average number of common shares outstanding, excluding any dilutive effects of options or other dilutive securities. Diluted earnings per share is based on the weighted average number of common and potentially dilutive common shares (dilutive stock options, unvested restricted stock and other dilutive securities outstanding during the year).

The following table sets forth the computation of basic and diluted net income per share for the periods indicated:

	Year Ended December 31,		
	2003	2004	2005
	(In thousands, except per share amounts)		
Numerator			
Net income available to common stockholders	\$ 67,298	\$ 102,371	\$ 138,745
Denominator			
Weighted average shares, basic	78,003	80,614	82,208
Weighted average effect of dilutive securities:			
Net effect of dilutive stock options and unvested restricted stock	2,310	3,426	2,429
Denominator for diluted calculation	80,313	84,040	84,637
Basic			
Net income per share	\$ 0.86	\$ 1.27	\$ 1.69
Diluted			
Net income per share	\$ 0.84	\$ 1.22	\$ 1.64

Options to purchase 1.9 million, 0.3 million and 1.9 million of common stock, with exercise prices that were greater than the average market price of our common stock were outstanding at December 31, 2003, 2004, and 2005, respectively, but were not included in the computation of diluted earnings per share since inclusion of those options would have an anti-dilutive effect as the options’ exercise prices exceeded the average market price of our common stock.

Management Estimates — The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

Currency Translation — The assets and liabilities of the Company’s subsidiaries outside the U.S., primarily Canada, are translated into U.S. dollars at the rates of exchange in effect at the balance sheet dates. Income and expense items are translated at the average exchange rates prevailing during the period. Gains and losses resulting from currency transactions are recognized currently in income, and those resulting from translation of financial statements are included in accumulated other comprehensive income.

Advertising Costs — The Company participates in various advertising and marketing programs. The cost of advertising and marketing programs are expensed in the period incurred. The Company has recognized advertising expenses of \$30.0 million, \$30.2 million and \$39.7 million for the years ended 2003, 2004 and 2005.

Stock Compensation Expense — At December 31, 2005, the Company had two stock-based employee compensation plans related to stock options, restricted stock and restricted stock units, the 2003 long term incentive plan and the 2005 long term incentive plan. The Company accounts for those plans under the recognition and measurement principles of APB Opinion No. 25, “Accounting for Stock Issued to Employees”, and related Interpretations. No stock-based employee compensation cost is reflected in net income for stock options, as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant. The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123, “Accounting for Stock-Based Compensation”, to stock-based employee compensation.

In the first quarter of 2005, the Company changed the valuation model used for estimating the fair value of options granted from a Black-Scholes option pricing model to a Binomial lattice pricing model. This change was made in order to provide a better estimate of fair value. The Binomial model can incorporate a range of possible outcomes over an option’s term and can be adjusted for changes in certain assumptions over time. The Black-Scholes model assumptions are more constant over time, which is not always consistent with an employee’s exercise behavior. In accordance with APB Opinion No. 20, “Accounting Changes,” this change was made for options granted to employees beginning in the first quarter of 2005. Options to purchase a total of 2.1 million shares of common stock were granted during 2005 at a weighted average fair value of \$16.60 per share. The historical Black-Scholes model would have produced a pro forma stock compensation expense that was approximately 14% lower than that derived

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

from the Binomial model. As a result of this change, the after-tax increase in pro forma stock-based employee compensation expense for the year ended December 31, 2005 was approximately \$1.1 million.

	Year Ended December 31,		
	2003	2004	2005
	(In thousands, except per share amounts)		
Net income, as reported	\$ 67,298	\$ 102,371	\$ 138,745
Add: Stock-based employee compensation expense included in reported net income, net of related tax effects	3,725	10,249	8,839
Deduct: Total stock-based employee compensation expense determined under fair value based method for all stock option awards, net of related tax effects	(15,057)	(19,756)	(22,849)
	<u>\$ 55,966</u>	<u>\$ 92,864</u>	<u>\$ 124,735</u>
Net income per share:			
Basic-as reported	\$ 0.86	\$ 1.27	\$ 1.69
Basic-pro forma	\$ 0.72	\$ 1.15	\$ 1.52
Diluted-as reported	\$ 0.84	\$ 1.22	\$ 1.64
Diluted-pro forma	\$ 0.70	\$ 1.11	\$ 1.47

Income Taxes — Deferred income taxes are provided for differences arising in the timing of income and expenses for financial reporting and for income tax purposes using the asset/liability method of accounting. Under this method, deferred income taxes are recognized for the future tax consequences attributable to the differences between the financial statements' carrying amounts of existing assets and liabilities and their respective tax bases, using enacted tax rates.

Long-Lived Assets — Long-lived assets and other intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets or intangibles may not be recoverable. Recoverability is measured by a comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

Derivative Instruments — Historically, the Company used interest rate swaps to hedge its exposure to interest and foreign exchange rate changes. The Company accounts for its derivative instruments in accordance with SFAS No. 133 "Accounting for Derivative Instruments and Hedging Activities, as amended", which requires that all derivative instruments be reported on the balance sheet at fair value. If the derivative instrument is a hedge, depending on the nature of the hedge, changes in the fair value of the derivative instrument are either recognized in net income or in other comprehensive income until the hedged item is recognized in net income. For derivatives that do not qualify as hedges under SFAS No. 133, the change in fair value is recorded as part of earnings. It is the policy of the Company to execute such instruments with creditworthy banks and not to enter into derivative financial instruments for speculative purposes.

Recently Issued Accounting Standards — In December 2003, the American Institute of Certified Public Accountants issued Statement of Position (SOP) 03-3, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer". SOP 03-3 requires acquired loans, including debt securities, to be recorded at the amount of the purchaser's initial investment and prohibits carrying over valuation allowances from the seller for those individually evaluated loans that have evidence of deterioration in

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

credit quality since origination, and it is probable all contractual cash flows on the loan will be unable to be collected. SOP 03-3 also requires the excess of all undiscounted cash flows expected to be collected at acquisition over the purchaser's initial investment to be recognized as interest income on a level-yield basis over the life of the loan. Subsequent increases in cash flows expected to be collected are recognized prospectively through an adjustment of the loan's yield over its remaining life, while subsequent decreases are recognized as impairment. The Company adopted the provisions of SOP 03-03 effective January 1, 2005. The adoption of this standard did not have a material impact on financial condition, statements of income, or liquidity.

In December 2004, the Financial Accounting Standards Board ("FASB") issued SFAS No. 123 (revised 2004), "Share-Based Payment", which replaces SFAS No. 123 "Accounting for Stock-Based Compensation" and supersedes Accounting Principles Board ("APB") Opinion No. 25. SFAS No. 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. In addition, SFAS No. 123(R) will cause unrecognized expense (based on the fair values determined for the pro forma footnote disclosure, adjusted for estimated forfeitures) related to options vesting after the date of initial adoption to be recognized as a charge to results of operations over the remaining vesting period. Under SFAS No. 123(R), the Company must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at the date of adoption. The transition alternatives include the modified prospective or the modified retrospective adoption methods. Under the modified retrospective method, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The modified prospective method requires that compensation expense be recorded for all unvested stock options and share awards at the beginning of the first quarter of adoption of SFAS No. 123(R), while the modified retrospective methods would record compensation expense for all unvested stock options and share awards beginning with the first period restated.

In March 2005, the SEC released SAB 107, "Share-Based Payment", which expresses views of the SEC Staff about the application of SFAS No. 123(R). SFAS No. 123(R) was to be effective for interim or annual reporting periods beginning on or after June 15, 2005, but in April 2005 the SEC issued a rule that SFAS No. 123(R) will be effective for annual reporting periods beginning on or after June 15, 2005. The Company expects to adopt the modified prospective method and expects it to have a material impact on its statements of income and earnings per share.

The Company will adopt SFAS 123(R) in the first quarter of 2006. In 2006, the Company will recognize approximately \$21.8 million in expense for unvested stock options as of December 31, 2005, issued prior to January 1, 2006, which were previously not expensed under APB No. 25. In 2005, the amount included in the Company's pro forma disclosure was approximately \$22.0 million for stock option expense. The total expense in 2006 and beyond will depend on several variables, including the number of share-based awards granted, the fair value of those awards, and the period the vesting of those awards is recognized over; therefore the actual expense may be different from this estimate.

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections — a replacement of APB Opinion No. 20 and FASB Statement No. 3". Opinion 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS No. 154 requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period specific effects or the cumulative effect of the change. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES — (Continued)

after December 15, 2005. The Company does not expect the adoption of SFAS No. 154 to have an impact on the consolidated financial statements.

In November 2005, the FASB issued FASB Staff Position (“FSP”) No. 115-1, “The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments”. This FSP provides additional guidance on when an investment in a debt or equity security should be considered impaired and when that impairment should be considered other-than-temporary and recognized as a loss in earnings. Specifically, the guidance clarifies that an investor should recognize an impairment loss no later than when the impairment is deemed other-than-temporary, even if a decision to sell has not been made. The FSP also requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. FSP 115-1 nullifies certain provisions of (“EITF”) Issue No. 03-1, “The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments,” while retaining the disclosure requirements of EITF 03-1 which were adopted in 2003. FSP 115-1 is effective for reporting periods beginning after December 15, 2005. The Company does not expect FSP 115-1 will significantly impact its financial condition, statements of income, or liquidity upon adoption on January 1, 2006.

Reclassifications — For purposes of comparability, certain prior period amounts have been reclassified to conform with the current year presentation.

3. BUSINESS ACQUISITIONS

During the past three years the Company completed the following acquisitions:

<u>Business</u>	<u>Month Acquired</u>	<u>Consideration</u>	<u>Segment</u>
2005:			
Atrana Solutions, Inc.	May 2005	Cash for Common Stock	Transaction Services
Bigfoot Interactive, Inc.	September 2005	Cash for Equity	Marketing Services
2004:			
Epsilon Data Management, Inc.	October 2004	Cash for Common Stock	Marketing Services
Capstone Consulting Partners, Inc.	November 2004	Cash for Common Stock	Transaction Services
2003:			
ExoLink Corporation	January 2003	Cash for Assets	Transaction Services
Conservation Billing Services, Inc.	September 2003	Cash for Common Stock	Transaction Services
Orcom Solutions, Inc.	December 2003	Cash for Common Stock	Transaction Services

2005 Acquisitions:

In May 2005, the Company acquired the stock of Atrana Solutions Inc., a provider of point-of-sale technology services. Total consideration paid was approximately \$13.1 million, including \$1.5 million which was placed in escrow for a period of 12 to 18 months to satisfy potential indemnification claims. The results of operations for Atrana have been included since the date of acquisition and are reflected in our Transaction Services segment.

On September 30, 2005, the Company acquired Bigfoot Interactive Inc., (“Epsilon Interactive”), a leading full-service provider of strategic ROI-focused e-mail communications and marketing automation solutions. Total consideration paid was approximately \$133.5 million, including \$8.8 million which was

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

3. BUSINESS ACQUISITIONS — (Continued)

placed in escrow for a period of six to 18 months and additional closing costs. The purchase price allocation was as follows:

	As of September 30, 2005
	(In thousands)
Identifiable intangible assets	\$ 26,000
Capitalized software	3,600
Goodwill	101,913
Net assets	1,980
Purchase Price	\$ 133,493

The results of operations for Epsilon Interactive have been included since the date of acquisition and are reflected in our Marketing Services segment. Pro forma information has not been included as the impact is not material.

2004 Acquisitions:

In October, 2004, the Company completed the acquisition of Epsilon Data Management, Inc. (“Epsilon”). The results of operations have been included since the date of acquisition. Epsilon has provided customer management and loyalty solutions for over 35 years. Epsilon utilizes database technologies and analytics to evaluate value, growth and loyalty of its clients’ customers and assists clients in acquiring new customer relationships. As a result of this acquisition, the Company believes that it is in a position to continue to expand its North American presence in the loyalty market. The merger consideration consisted of approximately \$310.0 million in cash. The base purchase price of \$310.0 million was adjusted to \$314.5 million as a result of customary post-closing purchase price adjustments and closing costs. \$2.0 million of the purchase price was placed into escrow pending calculation of the final net working capital adjustment, and \$10.0 million of the purchase price was placed into escrow for a period of eighteen months to satisfy potential indemnification claims. Additional closing costs were also paid in 2004.

The following table summarized the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition:

	As of October 29, 2004
	(In thousands)
Current assets	\$ 31,450
Property, plant and equipment	11,341
Identifiable intangible assets	122,500
Goodwill	211,335
Other assets	12,000
Total assets acquired	388,626
Current liabilities	29,282
Deferred tax liability	39,405
Other long-term liabilities	4,089
Total liabilities assumed	72,776
Net assets acquired	\$ 315,850

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

3. BUSINESS ACQUISITIONS — (Continued)

The following unaudited pro forma results of operations of the Company are presented as if the Epsilon transaction was completed as of the beginning of the periods being presented. The following unaudited pro forma financial information is not necessarily indicative of what actual results of operations of the Company would have been assuming the transaction had been completed as of January 1, 2004 or of any client losses, voluntary or involuntary, or wins during the periods presented.

	<u>2004</u>
	<u>(In thousands)</u>
	<u>(Unaudited)</u>
Revenues	\$ 1,375,169
Net income	99,327
Basic net income per share	\$ 1.23
Diluted net income per share	\$ 1.18

In November 2004, the Company acquired Capstone Consulting Partners, Inc. (“Capstone”), a provider of management consulting and technical services to the energy industry. Total consideration paid in connection with the acquisition was approximately \$11.4 million. Pro forma information is not presented as the impact was not material. In connection with the acquisition, the Company is required to pay the seller additional consideration for exceeding certain revenue targets, as defined in the acquisition agreement. The contingent payment is limited to \$15.0 million. As of December 31, 2005, the Company had met the initial threshold and recorded a purchase price adjustment of \$15.0 million of which \$5.0 million is due in 2006 and \$10.0 million is due in 2007.

2003 Acquisitions:

In January 2003, the Company purchased substantially all of the assets of ExoLink Corporation, a provider of utility back office support services. In September 2003, the Company acquired Conservation Billing Services, a Florida-based submetering service provider. Through this acquisition, the Company now provides submetering services that include automated meter reading, billing and collecting for clients that manage commercial properties that house multiple tenants, such as malls and multi-family properties. In December 2003, we acquired Orcom Solutions, Inc., a leading provider of customer care and billing services to electric, gas, water and waste water utilities in North America, primarily in the mid-tier utility marketplace. Total consideration paid in connection with the 2003 acquisitions was approximately \$51.7 million.

Purchase Price Allocation:

The following table summarizes the purchase price for the acquisitions, and the allocation thereof:

	<u>2003</u>	<u>2004</u>	<u>2005</u>
		<u>(In thousands)</u>	
Identifiable intangible assets	\$ 28,896	\$ 126,380	\$ 36,226
Goodwill	22,765	218,622	110,589
Other net liabilities	(5)	(17,786)	(251)
Purchase price	<u>\$ 51,656</u>	<u>\$ 327,216</u>	<u>\$ 146,564</u>

The \$36.2 million of identifiable intangible assets acquired during 2005 is comprised of \$29.4 million of customer contracts, \$4.9 million of computer software, \$0.9 million of non-compete agreements, and \$1.0 million due to a favorable lease arrangement. The assets have estimated useful lives of 3-5 years, 3-5 years, 5 years and 44 months, respectively. An independent valuation was conducted to assign a fair

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

3. BUSINESS ACQUISITIONS — (Continued)

market value to the intangible assets identified as part of the Epsilon Interactive acquisition on September 30, 2005.

Of the \$126.4 million of acquired intangible assets at December 31, 2004, \$11.2 million was assigned to a tradename that is not subject to amortization. The remaining \$115.2 million of acquired identifiable intangible assets is comprised of computer software of \$12.4 million with an estimated life of 3 years and customer contracts of \$98.9 million and \$3.9 million with estimated lives of 7-10 years and approximately 2 years, respectively. An independent valuation was conducted in the fourth quarter of 2004 to assign a fair market value to the intangible assets identified as part of the Epsilon acquisition.

The \$110.6 million of goodwill acquired during 2005 was assigned to the Marketing Services and Transaction Services segments in the amounts of \$101.9 million and \$8.7 million, respectively. The \$218.6 million of goodwill acquired during 2004 was assigned to the Marketing Services and Transaction Services segments in the amounts of \$211.3 million and \$7.3 million, respectively. The goodwill associated with these acquisitions is not deductible for tax purposes.

The terms of certain of the Company's acquisition agreements provide for additional consideration to be paid if the acquired entity's results of operations exceed certain targeted levels, or if certain other conditions are met. Targeted levels are generally set substantially above the historical experience of the acquired entity at the time of acquisition. Such additional consideration is paid in cash.

4. REDEMPTION SETTLEMENT ASSETS

Redemption settlement assets consist of cash and cash equivalents and securities available-for-sale and are designated for settling redemptions by collectors of the AIR MILES Reward Program in Canada under certain contractual relationships with sponsors of the AIR MILES Reward Program. These assets are primarily denominated in Canadian dollars. Realized gains and losses from the sale of investment securities were not material. The principal components of redemption settlement assets, which are carried at fair value, are as follows:

	December 31, 2004				December 31, 2005			
	Cost	Unrealized		Fair value	Cost	Unrealized		Fair Value
		Gains	Losses			Gains	Losses	
	(In thousands)							
Cash and cash equivalents	\$ 56,333	\$ —	\$ —	\$ 56,333	\$ 56,651	\$ —	\$ —	\$ 56,651
Government bonds	40,132	710	—	40,842	47,746	—	32	47,714
Corporate bonds	145,745	572	—	146,317	157,336	—	738	156,598
Total	<u>\$ 242,210</u>	<u>\$ 1,282</u>	<u>\$ —</u>	<u>\$ 243,492</u>	<u>\$ 261,733</u>	<u>\$ —</u>	<u>\$ 770</u>	<u>\$ 260,963</u>

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

5. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	December 31,	
	2004	2005
	(In thousands)	
Software development and conversion costs	\$ 123,231	\$ 145,022
Computer equipment and purchased software	94,056	115,248
Furniture and fixtures	66,800	65,850
Leasehold improvements	53,683	58,222
Capital leases	16,125	21,874
Construction in progress	9,892	7,686
Total	363,787	413,902
Accumulated depreciation	(216,256)	(250,930)
Property and equipment, net	<u>\$ 147,531</u>	<u>\$ 162,972</u>

6. SECURITIZATION OF CREDIT CARD RECEIVABLES

The Company regularly securitizes its credit card receivables to the WFN Trusts. During the initial phase of a securitization reinvestment period, the Company generally retains principal collections in exchange for the transfer of additional credit card receivables into the securitized pool of assets. During the amortization or accumulation period of a securitization, the investors' share of principal collections (in certain cases, up to a maximum specified amount each month) is either distributed to the investors or held in an account until it accumulates to the total amount due, at which time it is paid to the investors in a lump sum. The Company's outstanding securitizations are scheduled to begin their amortization or accumulation periods at various times between 2006 and 2011.

The following table shows the maturities of borrowing commitments as of December 31, 2005 for the WFN Trusts by year:

	2006	2007	2008	2009	2010 & Thereafter	Total
	(In thousands)					
Public notes	\$ 450,000	\$ 600,000	\$ 600,000	\$ 500,000	\$ 450,000	\$ 2,600,000
Private conduits ⁽¹⁾	982,857	—	—	—	—	982,857
Total	<u>\$ 1,432,857</u>	<u>\$ 600,000</u>	<u>\$ 600,000</u>	<u>\$ 500,000</u>	<u>\$ 450,000</u>	<u>\$ 3,582,857</u>

(1) Represents borrowing capacity, not outstanding borrowings.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

6. SECURITIZATION OF CREDIT CARD RECEIVABLES — (Continued)

Seller's interest and credit card receivables, less allowance for doubtful accounts consists of:

	December 31,	
	2004	2005
	(In thousands)	
Seller's interest	\$ 195,804	\$ 203,614
Credit card receivables	54,797	310,698
Other receivables	9,146	3,211
Allowance	(11,673)	(38,415)
	<u>\$ 248,074</u>	<u>\$ 479,108</u>

Due from securitizations consists of:

	December 31,	
	2004	2005
	(In thousands)	
Spread deposits	\$ 118,205	\$ 117,844
I/ O strips	62,869	88,763
Residual interest in securitization trust	58,517	53,514
Excess funding deposits	4,700	11,135
	<u>\$ 244,291</u>	<u>\$ 271,256</u>

The Company is required to maintain minimum interests ranging from 4% to 10% of the securitized credit card receivables. This requirement is met through seller's interest and is supplemented through the excess funding deposits. Excess funding deposits represent cash amounts deposited with the trustee of the securitizations. Residual interest in securitization represents a subordinated interest in the cash flows of the WFN Trusts.

The spread deposits and I/ O strips are initially recorded at their allocated carrying amount based on relative fair value. Fair value is determined by computing the present value of the estimated cash flows, using the dates that such cash flows are expected to be released to the Company, at a discount rate considered to be commensurate with the risks associated with the cash flows. The amounts and timing of the cash flows are estimated after considering various economic factors including payment rates, delinquency, default and loss assumptions. I/ O strips, seller's interest and other interests retained are periodically evaluated for impairment based on the fair value of those assets.

Fair values of I/ O strips and other interests retained are based on a review of actual cash flows and on the factors that affect the amounts and timing of the cash flows from each of the underlying credit card receivable pools. Based on this analysis, assumptions are validated or revised as deemed necessary, the amounts and the timing of anticipated cash flows are estimated and fair value is determined. The Company has one collateral type, private label credit card receivables.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

6. SECURITIZATION OF CREDIT CARD RECEIVABLES — (Continued)

At December 31, 2005, key economic assumptions and the sensitivity of the current fair value of residual cash flows to immediate 10% and 20% adverse changes in the assumptions are as follows:

	<u>Assumptions</u>	<u>Impact on Fair Value of 10% Change</u>	<u>Impact on Fair Value of 20% Change</u>
		(In thousands)	
Fair value of I/ O strip	\$ 88,763		
Weighted average life	7.5 months		
Discount rate	11.0%	\$ (265)	\$ (530)
Expected yield, net of dilution	15.8%	(24,179)	(48,098)
Interest expense	5.1%	(539)	(1,077)
Net charge-offs rate	8.0%	(8,150)	(16,283)

These sensitivities are hypothetical and should be used with caution. As the figures indicate, changes in fair value based on a 10 percent variation in assumptions generally cannot be extrapolated because the relationship of the change in an assumption to the change in fair value may not be linear. Also, in this table the effect of a variation in a particular assumption on the fair value of the retained interest is calculated without changing any other assumption; in practice, changes in one factor may result in changes in another, which might magnify or counteract the sensitivities.

Spread deposits, carried at estimated fair value, represent deposits that are held by a trustee or agent and are used to absorb shortfalls in the available net cash flows related to securitized credit card receivables if those available net cash flows are insufficient to satisfy certain obligations of the WFN Trusts. The fair value of spread deposits is based on the weighted average life of the underlying securities and the discount rate. The discount rate is based on a risk adjusted rate paid on the series. The amount required to be deposited is approximately 3.8% of the investor's interest in the WFN Trusts. Spread deposits are generally released proportionately as investors are repaid, although some spread deposits are released only when investors have been paid in full. None of these spread deposits were required to be used to cover losses on securitized credit card receivables in the three-year period ended December 31, 2005.

The table below summarizes certain cash flows received from and paid to securitization trusts:

	<u>Year Ended December 31,</u>		
	<u>2003</u>	<u>2004</u>	<u>2005</u>
	(In millions)		
Proceeds from collections reinvested in previous credit card securitizations	\$ 5,801.0	\$ 7,060.4	\$ 7,192.8
Proceeds from new securitizations	600.0	1,400.0	—
Servicing fees received	50.5	59.3	59.4
Other cash flows received on retained interests	286.4	317.9	349.5

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

6. SECURITIZATION OF CREDIT CARD RECEIVABLES — (Continued)

The tables below present quantitative information about the components of total credit card receivables managed, delinquencies and net charge-offs:

	December 31,	
	2004	2005
	(In millions)	
Total principal of credit card receivables managed	\$ 3,352.9	\$ 3,714.5
Less credit card receivables securitized	3,377.3	3,486.6
Add credit card receivables securitized for which we do not bear the risk of loss	79.2	82.8
Credit card receivables	\$ 54.8	\$ 310.7
Principal amount of managed credit card receivables 90 days or more past due	\$ 69.4	\$ 69.3

	Year Ended December 31,		
	2003	2004	2005
	(In thousands)		
Net managed charge-offs	\$ 196,631	\$ 205,454	\$ 207,397

7. INTANGIBLE ASSETS AND GOODWILL

Intangible assets consist of the following:

	December 31, 2005			Amortization Life and Method
	Gross Assets	Accumulated Amortization (In thousands)	Net	
Customer contracts and lists	\$ 243,906	\$ (73,766)	\$ 170,140	2-20 years — straight line
Premium on purchased credit card portfolios	77,529	(14,700)	62,829	5-10 years — straight line
Collector database	60,186	(42,292)	17,894	15% — declining balance
Tradename	12,350	—	12,350	Indefinite life
Noncompete agreements	2,400	(1,545)	855	3-5 years — straight line
Favorable lease	1,000	(68)	932	4 years — straight line
Total intangible assets	<u>\$ 397,371</u>	<u>\$ (132,371)</u>	<u>\$ 265,000</u>	

	December 31, 2004			Amortization Life and Method
	Gross Assets	Accumulated Amortization (In thousands)	Net	
Customer contracts and lists	\$ 216,277	\$ (45,236)	\$ 171,041	2-20 years — straight line
Collector database	58,233	(37,831)	20,402	15% — declining balance
Premium on purchased credit card portfolios	43,137	(12,299)	30,838	5-10 years — straight line
Tradename	11,200	—	11,200	Indefinite life
Noncompete agreements	1,500	(1,202)	298	1-5 years — straight line
Total intangible assets	<u>\$ 330,347</u>	<u>\$ (96,568)</u>	<u>\$ 233,779</u>	

In November 2005, World Financial Capital Bank, one of the Company's wholly-owned subsidiaries, acquired the private label credit card portfolio for the Blair Corporation and acquired approximately 2.1 million accounts and \$156.5 million in outstanding balances associated with the accounts. Consideration for the purchase of credit card receivables was approximately \$165.9 million. Under the

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

7. INTANGIBLE ASSETS AND GOODWILL — (Continued)

terms of the agreement, World Financial Capital Bank will provide Blair with a full-service private label credit card program including account acquisition and activation, card authorization, card issuance, statement generation, marketing services, remittance processing, and customer service functions. The preliminary purchase price allocation resulted in identifiable intangible assets of approximately \$35.6 million. The Company expects to complete its final purchase price allocation in the first quarter of 2006.

As a result of the Epsilon Interactive and Atrana acquisitions in 2005, the Company acquired \$29.4 million of customer contracts, \$0.9 million of non-compete agreements, and \$1.0 million due to a favorable lease arrangement for Epsilon Interactive. In connection with the acquisitions of Epsilon and Capstone in 2004, the Company acquired approximately \$102.8 million in customer contracts and a tradename with a fair value of approximately \$11.2 million.

The estimated amortization expense related to intangible assets for the next five years is as follows:

	For Years Ending December 31, (In thousands)
2006	\$ 50,328
2007	44,825
2008	40,753
2009	29,260
2010	27,015

Goodwill

The changes in the carrying amount of goodwill for the years ended December 31, 2004 and 2005 respectively, are as follows:

	Transaction Services	Credit Services	Marketing Services	Total
	(In thousands)			
December 31, 2003	\$ 304,606	\$ —	\$ 179,809	\$ 484,415
Goodwill acquired during year	7,287	—	211,335	218,622
Goodwill disposed of during year	(380)	—	—	(380)
Effects of foreign currency translation	2,293	—	14,128	16,421
Recognition of deferred tax asset ⁽¹⁾	(13,371)	—	—	(13,371)
Other, primarily final purchase price adjustments	3,439	—	—	3,439
December 31, 2004	\$ 303,874	\$ —	\$ 405,272	\$ 709,146
Goodwill acquired during year	8,676	—	101,913	110,589
Effects of foreign currency translation	340	—	6,504	6,844
Other, primarily final purchase price adjustments	22,529	—	9,362	31,891
December 31, 2005	\$ 335,419	\$ —	\$ 523,051	\$ 858,470

(1) The Company determined the final value of certain deferred tax assets and liabilities related primarily to net operating losses acquired as part of the acquisition of Orcom Solutions, Inc. Such amounts have been reclassified from goodwill subsequent to the acquisition.

The Company completed annual impairment tests for goodwill on July 31, 2003, 2004 and 2005 and determined at each date that no impairment exists. No further testing of goodwill impairments will be

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

7. INTANGIBLE ASSETS AND GOODWILL — (Continued)

performed until July 31, 2006, unless circumstances exist that indicate that an impairment may have occurred.

8. DEFERRED REVENUE

A reconciliation of deferred revenue for the AIR MILES Reward Program is as follows:

	Deferred Revenue		
	<u>Service</u>	<u>Redemption</u>	<u>Total</u>
	(In thousands)		
December 31, 2003	\$ 132,741	\$ 343,646	\$ 476,387
Cash proceeds	86,998	159,724	246,722
Revenue recognized	(73,233)	(141,261)	(214,494)
Effects of foreign currency translation	11,520	26,988	38,508
December 31, 2004	158,026	389,097	547,123
Cash proceeds	107,568	190,758	298,326
Revenue recognized	(86,829)	(168,901)	(225,730)
Effects of foreign currency translation	6,134	14,680	20,814
December 31, 2005	<u>\$ 184,899</u>	<u>\$ 425,634</u>	<u>\$ 610,533</u>

9. DEBT

Debt consists of the following:

	December 31,	
	<u>2004</u>	<u>2005</u>
	(In thousands)	
Certificates of deposit	\$ 94,700	\$ 379,100
Credit facility	324,629	441,000
Other	18,194	16,844
	437,523	836,944
Less: current portion	(230,662)	(578,443)
Long term portion	<u>\$ 206,861</u>	<u>\$ 258,501</u>

Certificates of Deposit — Terms of the certificates of deposit range from three months to 24 months with annual interest rates ranging from 2.0% to 2.7% at December 31, 2004 and 3.9% to 5.0% at December 31, 2005. Interest is paid monthly and at maturity.

Credit Facilities — On April 7, 2005, the Company entered into amendments to its three credit facilities. The amendment to the 3-year credit facility extended the maturity date from April 10, 2006 to April 3, 2008. The amendment to the 364-day credit facility extended the maturity date from April 7, 2005 to April 6, 2006. The amendment to the Canadian credit facility extended the maturity date from April 10, 2006 to April 3, 2008 and reduced the aggregate amount of the commitments permitted thereunder by \$15.0 million from \$50.0 million to \$35.0 million.

On October 28, 2005, the Company entered into amendments to its three credit facilities to increase the amount of revolving commitments under the facilities and amend certain covenants. The amendment to the 3-year credit facility increased the amount of revolving commitments thereunder from

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

9. DEBT — (Continued)

\$200.0 million to \$250.0 million. The amendment to the 364-day credit facility increased the amount of revolving commitments thereunder from \$205.0 million to \$230.0 million. The Company anticipates extending this facility prior to its expiration. After giving effect to the three amendments, the aggregate amount of revolving commitments under the three credit facilities is \$515.0 million. In addition, the amendments increased the aggregate amounts of commitments permitted under the three facilities from \$500.0 million to \$550.0 million. In addition, the amendments increased the amount of restricted payments permitted under the credit facilities.

On December 21, 2005, the Company entered into amendments to its three credit facilities to amend the definition of Senior Leverage Ratio under the applicable credit facility, the maximum Senior Leverage Ratio for the applicable credit facility and the maximum Total Capitalization Ratio for the applicable credit facility, and to revise the pricing grid set forth on the appendix to the applicable credit facility in connection with the foregoing. In addition, each amendment amended the applicable credit facility to allow the Company to incur certain indebtedness that is *pari passu* to or junior to the indebtedness incurred by the Company under such credit facility.

At December 31, 2005, the Company had borrowings of \$441.0 million outstanding under these credit facilities (with an average interest rate of 4.6%), the Company issued no letters of credit, and had available unused borrowing capacity of approximately \$74.0 million. The credit facilities limit the Company's aggregate outstanding letters of credit to \$50.0 million.

During January 2006, the Company entered into an additional credit agreement to increase its borrowing capacity by an incremental \$300.0 million. The principal amount of all outstanding loans under this credit agreement, together with any accrued but unpaid interest, are due and payable on June 30, 2006, unless otherwise paid earlier pursuant to the terms of the credit agreement. This credit agreement includes usual and customary negative covenants for credit agreements of this type. Payment of amounts due under this credit agreement are secured by guaranties, pledges of the ownership interests of certain of the Company's subsidiaries and pledges of certain intercompany promissory notes. On January 5, 2006, the Company borrowed \$300.0 million under this credit agreement, which it is using for general corporate purposes, including other debt repayment, repurchases of its common stock in connection with its stock repurchase program, mergers and acquisitions, and working capital expenditures. The Company anticipates refinancing this facility into a new term agreement.

Advances under the credit facilities are in the form of either base rate loans or Eurodollar loans. The interest rate on base rate loans fluctuates based upon the higher of (1) the interest rate announced by the administrative agent as its "prime rate" and (2) the Federal funds rate plus 0.5%, in each case with no additional margin. The interest rate on Eurodollar loans fluctuates based upon the rate at which Eurodollar deposits in the London interbank market are quoted plus a margin of 0.5% to 1.0% based upon the ratio of total debt under the credit facilities to consolidated Operating EBITDA, as each term is defined in the credit facilities. The credit facilities are secured by pledges of stock of certain of the Company's subsidiaries and pledges of certain intercompany promissory notes.

The Company utilizes its credit facilities and excess cash flows from operations to support its acquisition strategy and to fund working capital and capital expenditures. The Company was in compliance with its covenants at December 31, 2005.

Other — The Company has other minor borrowings, primarily capital leases, with varying interest rates.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

9. DEBT — (Continued)

Maturities — Debt at December 31, 2005 matures as follows (in thousands):

2006	\$ 578,443
2007	42,332
2008	215,386
2009	622
2010	161
Thereafter	—
	<u>\$ 836,944</u>

10. INCOME TAXES

The Company files a consolidated federal income tax return.

	Year Ended December 31,		
	2003	2004 (In thousands)	2005
Components of income before income taxes:			
Domestic	\$ 74,905	\$ 117,040	\$ 157,027
Foreign	34,077	47,279	65,099
Total	<u>\$ 108,982</u>	<u>\$ 164,319</u>	<u>\$ 222,126</u>
Components of income tax expense are as follows:			
Current			
Federal	\$ 1,630	\$ 4,348	\$ 52,290
State	1,403	2,114	4,793
Foreign	28,950	24,332	39,773
Total current	<u>31,983</u>	<u>30,794</u>	<u>96,856</u>
Deferred			
Federal	26,335	36,091	5,092
State	1,426	630	(3,033)
Foreign	(18,060)	(5,567)	(15,534)
Total deferred	<u>9,701</u>	<u>31,154</u>	<u>(13,475)</u>
Total provision for income taxes	<u>\$ 41,684</u>	<u>\$ 61,948</u>	<u>\$ 83,381</u>

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

10. INCOME TAXES — (Continued)

A reconciliation of recorded federal provision for income taxes to the expected amount computed by applying the federal statutory rate of 35% for all periods to income before income taxes is as follows:

	Year Ended December 31,		
	2003	2004	2005
	(In thousands)		
Expected expense at statutory rate	\$ 38,144	\$ 57,511	\$ 77,744
Increase (decrease) in income taxes resulting from:			
State income taxes, net of federal benefit	905	1,387	1,861
State valuation allowance, net of federal benefit	—	—	(717)
Foreign earnings at other than United States rates	1,297	531	293
Non-deductible expenses	1,640	1,512	1,439
Canadian rate reduction (increase) impact	(2,679)	—	—
Other, net	2,377	1,007	2,761
Total	<u>\$ 41,684</u>	<u>\$ 61,948</u>	<u>\$ 83,381</u>

Deferred tax assets and liabilities consist of the following:

	December 31,	
	2004	2005
	(In thousands)	
Deferred tax assets		
Deferred revenue	\$ 92,304	\$ 105,304
Allowance for doubtful accounts	4,372	6,665
Net operating loss carryforwards & tax credits	46,747	34,579
Depreciation	69	2,476
Accrued expenses & other	12,467	18,336
Total deferred tax assets	155,959	167,360
Valuation Allowance	(29,298)	(15,931)
Deferred tax assets, net of valuation allowance	<u>126,661</u>	<u>151,429</u>
Deferred tax liabilities		
Deferred income	\$ 35,982	\$ 35,988
Servicing rights	22,004	31,167
Intangible assets	68,352	76,900
Total deferred tax liabilities	126,338	144,055
Net deferred tax asset	<u>\$ 323</u>	<u>\$ 7,374</u>
Amounts recognized in the consolidated balance sheet:		
Current assets	<u>\$ 49,606</u>	<u>\$ 70,221</u>
Non-current liabilities	<u>\$ 49,283</u>	<u>\$ 62,847</u>

At December 31, 2005, the Company has, for federal income tax purposes, approximately \$56.4 million of net operating loss carryovers (“NOLs”) and approximately \$3.7 million of tax credits (“credits”), which expire at various times through the year 2025. Pursuant to Section 382 of the Internal Revenue Code, the Company’s utilization of such NOLs and approximately \$2.0 million of tax credits are

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

10. INCOME TAXES — (Continued)

subject to an annual limitation. The Company also has state NOLs of approximately \$489.3 million available to offset future state taxable income. The state NOLs will expire at various times through the year 2025. The Company believes it is more likely than not that a portion of the federal and state NOLs and credits will expire before being utilized. Therefore, in accordance with FAS No. 109, "Accounting for Income Taxes", the Company has established a valuation allowance on the portion of NOLs and credits that will expire prior to utilization. The current year decrease in the valuation allowance is primarily due to expirations, integration of acquisitions and the subsequent utilization of those NOLs.

The Company has unremitted earnings of foreign subsidiaries of approximately \$26.0 million. A deferred tax liability has not been established on the unremitted earnings, as it is management's intention to permanently reinvest those earnings in foreign jurisdictions. If a portion were to be remitted, management believes income tax credits would substantially offset any resulting tax liability.

The Company's income taxes payable have been reduced by the tax benefits associated with dispositions of employee stock options. The Company receives an income tax benefit calculated as the difference between the fair market value of the stock issued at the time of exercise and the option price, tax effected. These benefits were credited directly to shareholders' equity and totaled \$2.1 million, \$11.2 million and \$13.6 million for calendar years 2003, 2004 and 2005, respectively.

The Canadian corporate income tax rate increased in 2003 for the 2004 tax year. The Company recorded \$2.7 million of income tax benefit in 2003, to increase the deferred tax assets in Canada related to the higher income tax rate.

As a matter of course, the Company is regularly examined by federal, state and foreign tax authorities. Although the results of these examinations are uncertain, based on currently available information, the Company believes that the ultimate outcome will not have a material adverse effect on the Company's financial statements.

11. STOCKHOLDERS' EQUITY

In April 2003, the Company completed a public offering of 10,350,000 shares of common stock at \$19.65 per share. Limited Commerce Corp. sold 7,000,000 of these shares and the remaining 3,350,000 shares were sold by the Company. The net proceeds to the Company from the offering were \$61.9 million after deducting offering expenses and its pro-rata underwriting discounts and commissions. Concurrently with the closing of the public offering, the Company used \$52.7 million of the net proceeds to repay in full \$52.0 million of debt outstanding, plus accrued interest, under a 10% subordinated note that the Company had issued in September 1998 to an affiliated entity of Welsh Carson Anderson & Stowe ("Welsh Carson").

In November 2003, the Company facilitated a secondary public offering of 8,663,382 shares of the Company's common stock at \$26.95 per share. 7,533,376 shares were sold by the Company's second largest stockholder, Limited Commerce Corp., a wholly-owned subsidiary of Limited Brands, which together with its retail affiliates is our largest customer, and the remaining 1,130,006 shares were sold by the Company's largest stockholder, Welsh Carson, through two of its affiliated entities. The Company sold no stock and received none of the proceeds from the secondary offering. In connection with the secondary offering, the Company incurred approximately \$450,000 in registration costs, which were expensed in the fourth quarter. As a result of the secondary offering, Limited Commerce Corp. is no longer a stockholder of the Company.

On June 8, 2005, the Company's Board of Directors authorized a repurchase program to acquire up to an aggregate of \$80.0 million of its outstanding common stock through June 2006. As of December 31, 2005, the Company has repurchased approximately 2,040,300 shares of its common stock for approximately \$80.0 million under this program.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

11. STOCKHOLDERS' EQUITY — (Continued)

On October 27, 2005, the Company's board of directors authorized a new stock repurchase program to acquire up to an additional \$220.0 million of its outstanding common stock through October 2006. As of December 31, 2005, the Company has repurchased approximately 1,901,800 shares of its common stock for approximately \$68.8 million under this program.

12. STOCK COMPENSATION PLANS

The Company has adopted equity compensation plans to advance the interests of the Company by rewarding certain employees for their contributions to the financial success of the Company and thereby motivating them to continue to make such contributions in the future.

On April 4, 2003, the Board of Directors of the Company adopted the 2003 long term incentive plan and the stockholders approved it at the Company's 2003 annual meeting of stockholders on June 10, 2003. This plan reserves 6,000,000 shares of common stock for grants of incentive stock options, nonqualified stock options, restricted stock awards and performance shares to officers, employees, non-employee directors and consultants performing services for the Company or its affiliates.

On June 7, 2005, at the annual meeting of stockholders, the stockholders approved and adopted the Company's 2005 long term incentive plan, effective July 1, 2005. This plan reserves 4,750,000 shares of common stock for grants of incentive stock options, nonqualified stock options, restricted stock awards, restricted stock units and performance shares to officers, employees, non-employee directors and consultants performing services for the Company or its affiliates.

Terms of all awards are determined by the Board of Directors or the compensation committee of the Board of Directors or its designee at the time of award. The following table summarizes the Company's restricted stock awards for the years ended December 31, 2003, 2004, and 2005, respectively.

	Performance Based	Time Based ⁽¹⁾	Total
Balance at January 1, 2003	—	—	—
Shares granted	116,875	7,637	124,512
Shares vested	(116,875)	(7,637)	(124,512)
Shares cancelled	—	—	—
Balance at December 31, 2003	—	—	—
Shares granted	125,778	195,347	321,125
Shares vested	(121,778)	(4,347)	(126,125)
Shares cancelled	(4,000)	—	(4,000)
Balance at December 31, 2004	—	191,000	191,000
Shares granted	153,086	388,794	541,880
Shares vested	(141,693)	(78,876)	(220,569)
Shares cancelled	(11,393)	(31,078)	(42,471)
Balance at December 31, 2005	—	469,840	469,840

(1) Amounts include 7,637, 4,347 and 4,489 shares of stock issued to the Board of Directors for 2003, 2004 and 2005, respectively. The shares vest immediately, but are subject to transfer restrictions until one year after the director's service on the Board terminates. Additionally, as of December 31, 2005, 28,662 shares awarded to certain Canadian employees had been granted, but not yet issued.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

12. STOCK COMPENSATION PLANS — (Continued)

The restrictions of performance based shares do not lapse unless specified performance measures tied to either cash earnings per share or total shareholder return are met. If these performance targets are met, the restrictions on these shares lapse at the end of a three-year period. However, the Company's Board of Directors may accelerate the lapsing of such restrictions if certain annual cash earnings per share performance targets are met.

Additionally the Company awarded shares of time-based restricted stock under the plans, with vesting periods of one to four years. For those time-based restricted shares awarded in 2005, the Company recorded \$13.3 million (the aggregate value of the common stock based on the market price at the date of the award) as unearned compensation in the stockholders' equity section of the accompanying balance sheet.

During 2003, 2004 and 2005, the Company recognized total stock compensation expense of \$5.9 million, \$15.8 million and \$14.1 million, respectively.

As of January 1, 2005, the fair value of each option award is estimated on the date of grant using a Binomial lattice model. Prior to January 1, 2005, the fair value of each option award was estimated on the grant date using a Black-Scholes valuation model. The following table indicates the assumptions used in estimating fair value for the years ended December 31, 2005, 2004 and 2003.

	Year Ended December 31,		
	2003	2004	2005
Expected dividend yield	—	—	—
Risk-free interest rate	3.2%	3.4%	3.9%
Expected life of options (years)	4.0	4.0	6.4
Assumed volatility	33.9%	38.0%	32.4%
Weighted average fair value	\$ 7.54	\$ 11.94	\$ 16.60

The following table summarizes stock option activity under the Company's equity compensation plans:

	Outstanding		Exercisable	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
		(In thousands, except per share amounts)		
Balance at January 1, 2003	7,021	\$ 13.48		
Granted	1,733	24.05		
Exercised	(1,393)	12.54		
Cancelled	(289)	14.65		
Balance at December 31, 2003	<u>7,072</u>	<u>\$ 16.20</u>	<u>4,109</u>	<u>\$ 16.20</u>
Granted	2,001	\$ 32.93		
Exercised	(2,131)	14.80		
Cancelled	(327)	23.00		
Balance at December 31, 2004	<u>6,615</u>	<u>\$ 21.33</u>	<u>3,261</u>	<u>\$ 14.08</u>
Granted	2,102	\$ 41.00		
Exercised	(1,506)	17.86		
Cancelled	(531)	32.80		
Balance at December 31, 2005	<u>6,680</u>	<u>\$ 27.19</u>	<u>3,319</u>	<u>\$ 18.01</u>

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

12. STOCK COMPENSATION PLANS — (Continued)

The following table summarizes information concerning currently outstanding and exercisable stock options at December 31, 2005:

Range of Exercise Prices	Outstanding			Exercisable	
	Options	Remaining Contractual Life (Years)	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
			(In thousands, except per share amounts)		
\$9.00 to \$12.00	1,073	3.9	\$ 10.84	1,073	\$ 10.84
\$12.01 to \$15.00	1,121	5.3	\$ 14.93	1,121	\$ 14.93
\$15.01 to \$22.00	82	6.8	\$ 18.80	62	\$ 18.67
\$22.01 to \$29.00	1,020	7.5	\$ 24.22	603	\$ 24.22
\$29.01 to \$39.00	1,390	8.3	\$ 32.04	364	\$ 31.79
\$39.01 to \$47.00	1,994	9.1	\$ 41.38	96	\$ 42.32
	<u>6,680</u>			<u>3,319</u>	

13. EMPLOYEE BENEFIT PLANS

On June 7, 2005, at the annual meeting of stockholders, the stockholders approved and adopted the Amended and Restated Employee Stock Purchase Plan (the "ESPP"), effective on July 1, 2005. No employee may purchase more than \$25,000 in stock under the ESPP in any calendar year, and no employee may purchase stock under the ESPP if such purchase would cause the employee to own more than 5% of the voting power or value of the Company's common stock. The ESPP provides for three month offering periods, commencing on the first trading day of each calendar quarter and ending on the last trading day of each calendar quarter. The purchase price of the common stock upon exercise shall be 85% of the fair market value of shares on the applicable purchase date as determined by averaging the high and low trading prices of the last trading day of each quarter. An employee may elect to pay the purchase price of such common stock through payroll deductions. The maximum number of shares that were reserved for issuance under the ESPP is 1,500,000 shares, and subject to adjustment as provided in the ESPP. Employees are required to hold any stock purchased through the ESPP for 180 days prior to any sale or withdrawal of shares. Approximately 563,953 shares of common stock have been purchased under the plan since its adoption, with approximately 150,378 shares purchased in 2005.

On June 7, 2005, the stockholders, at the annual meeting of stockholders, approved the Executive Annual Incentive Plan. Under the plan, the Company may grant to each eligible employee, including executive officers and other key employees, incentive awards to receive cash upon the achievement of pre-established performance goals. No participant may be granted performance awards in excess of \$5.0 million in any calendar year.

The Company maintains a 401(k) retirement savings plan, which covers all eligible U.S. employees. Participants can, in accordance with Internal Revenue Service ("IRS") guidelines, set aside both pre and post tax savings in this account. In addition to associate's savings, the Company contributes to plan participants' accounts. The Alliance 401(k) and Retirement Savings Plan was amended effective January 1, 2004 to better benefit the majority of Company associates. The plan is an IRS approved safe harbor plan design that eliminates the need for most discrimination testing. Eligible associates can participate in the plan immediately upon joining the Company and after six months of employment begin receiving Company matching contributions. On the first three percent of savings, the Company matches dollar-for-dollar. An additional fifty cents for each dollar an associate contributes is matched for savings between four percent and five percent of pay. All Company matching contributions are immediately vested. In addition to the Company match, the Company annually may make an additional contribution

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

13. EMPLOYEE BENEFIT PLANS — (Continued)

based on the profitability of the Company. This contribution, subject to Board of Directors approval, is based on a percentage of pay and is subject to a five year vesting schedule. The participants in the plan can direct their contributions and the Company's matching contribution to nine investment options, including the Company's common stock. Company contributions for associates age 65 or older vest immediately. Contributions for the years ended December 31, 2003, 2004 and 2005 were \$9.3 million, \$11.3 million and \$14.2 million, respectively.

The Company also provides a Deferred Profit Sharing Plan for its Canadian employees after one year of service. Company contributions range from one to four percent of earnings, based on years of service.

The Company also maintains an Executive Deferred Compensation Plan. The Executive Deferred Compensation Plan provides an opportunity for a select group of management and highly compensated employees to defer on a pre-tax basis a portion of their regular compensation and bonuses payable for services rendered and to receive certain employer contributions

14. COMMITMENTS AND CONTINGENCIES

AIR MILES Reward Program

The Company has entered into certain contractual arrangements that result in a fee being billed to sponsors upon redemption of AIR MILES reward miles. The Company has obtained revolving letters of credit and other assurances from certain of these sponsors for the Company's benefit that expire at various dates. These letters of credit total \$109.3 million at December 31, 2005, which exceeds the estimated amount of the obligation to provide travel and other rewards.

The Company currently has an obligation to fund redemption of AIR MILES reward miles as they are redeemed by collectors. The Company believes that the redemption settlement assets are sufficient to meet that obligation.

The Company has entered into certain long-term arrangements to purchase tickets from airlines and other suppliers in connection with redemptions under the AIR MILES Reward Program. These long-term arrangements allow the Company to make purchases at set prices. Under these agreements, the Company is required to pay annual minimums of approximately \$22.1 million.

Leases

The Company leases certain office facilities and equipment under noncancellable operating leases and is generally responsible for property taxes and insurance related to such facilities. Lease expense was \$48.2 million, \$43.7 million and \$45.9 million for the years ended December 31, 2003, 2004 and 2005 respectively.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

14. COMMITMENTS AND CONTINGENCIES — (Continued)

Future annual minimum rental payments required under noncancellable operating and capital leases, some of which contain renewal options, as of December 31, 2005 are:

<u>Year:</u>	<u>Operating Leases</u>	<u>Capital Leases</u>
	(In thousands)	
2006	\$ 41,419	\$ 7,340
2007	35,722	6,465
2008	26,910	4,992
2009	19,902	861
2010	15,744	164
Thereafter	59,431	—
Total	<u>\$ 199,128</u>	<u>19,822</u>
Less amount representing interest		(3,412)
Total present value of minimum lease payments		<u>\$ 16,410</u>

Regulatory Matters

WFNNB is subject to various regulatory capital requirements administered by the Office of the Comptroller of the Currency. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material effect on the Company's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, WFNNB must meet specific capital guidelines that involve quantitative measures of its assets, liabilities and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Before WFNNB can pay dividends to ADSC, it must obtain prior regulatory approval if all dividends declared in any calendar year would exceed its net profits for that year plus its retained net profits for the preceding two calendar years, less any transfers to surplus. In addition, WFNNB may only pay dividends to the extent that retained net profits, including the portion transferred to surplus, exceed bad debts. Moreover, to pay any dividend, WFNNB must maintain adequate capital above regulatory guidelines. Further, if a regulatory authority believes that WFNNB is engaged in or is about to engage in an unsafe or unsound banking practice, which, depending on its financial condition, could include the payment of dividends, the authority may require, after notice and hearing, that WFNNB cease and desist from the unsafe practice.

Quantitative measures established by regulation to ensure capital adequacy require WFNNB to maintain minimum amounts and ratios of total and Tier 1 capital (as defined in the regulations) to risk weighted assets (as defined) and of Tier 1 capital to average assets (as defined) ("total capital ratio", "Tier 1 capital ratio" and "leverage ratio", respectively). Under the regulations, a "well capitalized" institution must have a Tier 1 capital ratio of at least 6%, a total capital ratio of at least 10% and a leverage ratio of at least 5% and not be subject to a capital directive order. An "adequately capitalized" institution must have a Tier 1 capital ratio of at least 4%, a total capital ratio of at least 8% and a leverage ratio of at least 4%, but 3% is allowed in some cases. Under these guidelines, WFNNB is considered well capitalized. As of December 31, 2005, WFNNB's Tier 1 capital ratio was 33.1%, total capital ratio was 34.6% and leverage ratio was 54.0%, and WFNNB was not subject to a capital directive order.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

14. COMMITMENTS AND CONTINGENCIES — (Continued)

The Company's industrial bank, World Financial Capital Bank, is authorized to do business by the State of Utah and the Federal Deposit Insurance Corporation. World Financial Capital Bank is subject to capital ratios and paid-in capital minimums and must maintain adequate allowances for loan losses and operate within its three-year business plan. While the consequence of losing the World Financial Capital Bank authority to do business would be significant, the Company believes that the risk of such loss is minimal as a result of the precautions it has taken and the management team it has in place.

As part of an acquisition in 2003 by World Financial Network National Bank, which required approval by the OCC, the OCC required World Financial Network National Bank to enter into an operating agreement with the OCC and a capital adequacy and liquidity maintenance agreement with the Company. The operating agreement requires World Financial Network National Bank to continue to operate in a manner consistent with its current practices, regulatory guidelines and applicable law, including those related to affiliate transactions, maintenance of capital and corporate governance. World Financial Network National Bank does not expect that the operating agreement will require any changes in World Financial Network National Bank's current operations. The capital adequacy and liquidity maintenance agreement memorializes the Company's current obligations to World Financial Network National Bank.

If either of the Company's depository institution subsidiaries, World Financial Network National Bank or World Financial Capital Bank, failed to meet the criteria for the exemption from the definition of "bank" in the Bank Holding Company Act under which it operates, and if the Company did not divest such depository institution upon such an occurrence, the Company would become subject to regulation under the Bank Holding Company Act. This would require the Company to cease certain activities that are not permissible for companies that are subject to regulation under the Bank Holding Company Act.

Cardholders

The Company's Credit Services segment is active in originating private label credit cards in the United States. The Company reviews each potential customer's credit application and evaluates the applicant's financial history and ability and perceived willingness to repay. Credit card loans are made primarily on an unsecured basis. Cardholders reside throughout the United States and are not significantly concentrated in any one area.

Holders of credit cards issued by the Company have available lines of credit, which vary by cardholders that can be used for purchases of merchandise offered for sale by clients of the Company. These lines of credit represent elements of risk in excess of the amount recognized in the financial statements. The lines of credit are subject to change or cancellation by the Company. As of December 31, 2005, the Company had approximately 28.5 million cardholders, having unused lines of credit averaging \$813 per account.

Legal Proceedings

From time to time, the Company is involved in various claims and lawsuits arising in the ordinary course of business that it believes will not have a material adverse affect on its business or financial condition, including claims and lawsuits alleging breaches of contractual obligations.

15. FINANCIAL INSTRUMENTS

The Company is a party to financial instruments with off-balance sheet risk in the normal course of business to meet the financial needs of its customers and to reduce its own exposure to fluctuations in interest rates. These financial instruments include commitments to extend credit through charge cards.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

15. FINANCIAL INSTRUMENTS — (Continued)

Such instruments involve, to varying degrees, elements of credit and interest rate risk in excess of the amount recognized in the balance sheet. The contract or notional amounts of these instruments reflect the extent of the Company's involvement in particular classes of financial instruments.

Fair Value of Financial Instruments — The estimated fair values of the Company's financial instruments were as follows:

	December 31,			
	2004		2005	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In thousands)			
Financial assets				
Cash and cash equivalents	\$ 84,409	\$ 84,409	\$ 143,213	\$ 143,213
Due from card associations	10,995	10,995	58,416	58,416
Trade receivables, net	158,236	158,236	203,883	203,883
Seller's interest and credit card receivables, net	248,074	248,074	479,108	479,108
Redemption settlement assets, restricted	243,492	243,492	260,963	260,963
Due from securitizations	244,291	244,291	271,256	271,256
Financial liabilities				
Accounts payable	56,214	56,214	67,384	67,384
Merchant settlement obligations	77,980	77,980	127,038	127,038
Debt	437,523	437,523	836,944	836,944

The following methods and assumptions were used by the Company in estimating fair values of financial instruments as disclosed herein:

Cash and cash equivalents, due from card associations, trade receivables, net, accounts payable, and merchant settlement obligations — The carrying amount approximates fair value due to the short maturity.

Seller's interest and credit card receivables, net — The carrying amount of credit card receivables approximates fair value due to the short maturity, and the average interest rates approximate current market origination rates.

Redemption settlement assets — Fair value for securities are based on quoted market prices.

Due from securitizations — The spread deposits and I/ O strips are recorded at their fair value. The carrying amount of excess funding deposits approximates its fair value due to the relatively short maturity period and average interest rates, which approximate current market rates.

Debt — The fair value was estimated based on the current rates available to the Company for debt with similar remaining maturities.

16. DERIVATIVES

As of December 31, 2005, the Company had no outstanding derivatives. The Company recognized approximately \$1.1 million, \$0.1 million, and zero, before tax, in additional fair value losses related to derivative agreements for the years ended December 31, 2003, 2004 and 2005, respectively.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

17. PARENT-ONLY FINANCIAL STATEMENTS

ADSC provides guarantees under the credit facilities on behalf of certain of its subsidiaries. The stand alone parent-only financial statements are presented below.

Balance Sheets

	December 31,	
	2004	2005
	(In thousands)	
Assets:		
Cash and cash equivalents	\$ 551	\$ 5
Investment in subsidiaries	652,819	733,444
Intercompany receivables	692,088	874,157
Other assets	469	3,171
Total assets	<u>\$ 1,345,927</u>	<u>\$ 1,610,777</u>
Liabilities:		
Current debt	\$ 130,000	\$ 230,000
Long-term and subordinated debt	173,000	211,000
Other liabilities	172,407	248,670
Total liabilities	475,407	689,670
Stockholders' equity	870,520	921,107
Total liabilities and stockholders' equity	<u>\$ 1,345,927</u>	<u>\$ 1,610,777</u>

Statements of Income

	Year Ended December 31,		
	2003	2004	2005
	(In thousands)		
Interest from loans to subsidiaries	\$ 15,790	\$ 20,049	\$ 27,235
Dividends from subsidiaries	1,700	100,900	100,000
Total revenue	17,490	120,949	127,235
Interest expense, net	6,017	4,429	11,665
Other expenses	4,505	239	140
Total expenses	10,522	4,668	11,805
Income before income taxes and equity in undistributed net income of subsidiaries	6,968	116,281	115,430
Provision for income taxes	4,583	4,567	10,192
Income before equity in undistributed net income of subsidiaries	2,385	111,714	105,238
Equity in undistributed net income of subsidiaries	64,913	(9,343)	33,507
Net income	<u>\$ 67,298</u>	<u>\$ 102,371</u>	<u>\$ 138,745</u>

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

17. PARENT-ONLY FINANCIAL STATEMENTS — (Continued)**Statements of Cash Flows**

	Year Ended December 31,		
	2003	2004 (In thousands)	2005
Net cash provided by (used in) operating activities	\$ 110,922	\$ (8,926)	\$ 18,292
Investing activities:			
Net cash paid for corporate acquisitions	(59,987)	(314,453)	(140,901)
Loans to subsidiaries	(140,250)	—	—
Net cash used in investing activities	(200,237)	(314,453)	(140,901)
Financing activities:			
Credit facility and subordinated debt	543,000	765,000	1,264,000
Repayment of credit facility and subordinated debt	(536,000)	(577,000)	(1,126,000)
Purchase of treasury shares	—	—	(145,043)
Net proceeds from issuances of common stock	81,438	34,528	29,106
Dividends paid	1,376	100,900	100,000
Net cash provided by financing activities	89,814	323,428	122,063
Increase (decrease) in cash and cash equivalents	499	49	(546)
Cash and cash equivalents at beginning of year	3	502	551
Cash and cash equivalents at end of year	<u>\$ 502</u>	<u>\$ 551</u>	<u>\$ 5</u>

18. SEGMENT INFORMATION

Operating segments are defined by SFAS No. 131 “Disclosure About Segments of an Enterprise and Related Information” as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. The Company’s chief operating decision making group is the Executive Committee, which consists of the Chairman of the Board and Chief Executive Officer, Presidents of the divisions, and Executive Vice Presidents. The operating segments are reviewed separately because each operating segment represents a strategic business unit that generally offers different products and serves different markets.

The Company operates in three reportable segments: Transaction Services, Credit Services and Marketing Services.

- Transaction Services encompasses card processing, billing and payment processing and customer care for specialty and petroleum retailers (issuer services), customer information system hosting, customer care and billing and payment processing for regulated and de-regulated municipal utilities (utility services) and point-of-sale services (merchant services).
- Credit Services provides private label, commercial and co-brand credit card receivables financing. Credit Services generally securitizes the credit card receivables that it underwrites from its private label credit card programs.
- Marketing Services provides loyalty and database marketing programs such as the AIR MILES Reward Program and database marketing services.

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

18. SEGMENT INFORMATION — (Continued)

The Transaction Services segment performs card processing and servicing activities related to the Credit Services segment. For this, the Transaction Services segment receives a fee equal to its direct costs before corporate overhead plus a margin. The margin is based on estimated current market rates for similar services. This fee represents an operating cost to the Credit Services segment and a corresponding revenue for the Transaction Services segment. Inter-segment sales are eliminated upon consolidation. Revenues earned by the Transaction Services segment from servicing the Credit Services segment, and consequently paid by the Credit Services segment to the Transaction Services segment, are set forth opposite "Other and eliminations" in the tables below.

The accounting policies of the operating segments are generally the same as those described in the summary of significant accounting policies. Corporate overhead is allocated equally across the segments.

Interest expense, net and income taxes are not allocated to the segments in the computation of segment operating profit for internal evaluation purposes. Total assets are not allocated to the segments.

<u>Year Ended December 31, 2003</u>	<u>Transaction Services</u>	<u>Credit Services</u>	<u>Marketing Services</u>	<u>Other/ Elimination</u>	<u>Total</u>
			(In thousands)		
Revenues	\$ 614,454	\$ 433,701	\$ 289,764	\$ (291,375)	\$ 1,046,544
Adjusted EBITDA ⁽¹⁾	88,001	76,957	46,281	—	211,239
Depreciation and amortization	51,508	5,581	17,472	—	74,561
Stock compensation expense	1,963	1,963	1,963	—	5,889
Operating income	34,530	69,413	26,846	—	130,789
Other expenses	—	—	—	4,275	4,275
Fair value loss on interest rate derivative	—	(2,851)	—	—	(2,851)
Interest expense, net	—	—	—	14,681	14,681
Income before income taxes	\$ 34,530	\$ 66,562	\$ 26,846	\$ (18,956)	\$ 108,982
Capital expenditures	\$ 30,367	\$ 4,252	\$ 12,336	\$ —	\$ 46,955

<u>Year Ended December 31, 2004</u>	<u>Transaction Services</u>	<u>Credit Services</u>	<u>Marketing Services</u>	<u>Other/ Elimination</u>	<u>Total</u>
			(In thousands)		
Revenues	\$ 681,736	\$ 513,988	\$ 375,630	\$ (313,916)	\$ 1,257,438
Adjusted EBITDA ⁽¹⁾	97,465	125,718	56,081	—	279,264
Depreciation and amortization	61,786	7,938	21,674	—	91,398
Stock compensation expense	5,255	5,256	5,256	—	15,767
Operating income	30,424	112,524	29,151	—	172,099
Fair value loss on interest rate derivative	—	(808)	—	—	(808)
Interest expense, net	—	—	—	6,972	6,972
Income before income taxes	\$ 30,424	\$ 111,716	\$ 29,151	\$ (6,972)	\$ 164,319
Capital expenditures	\$ 29,691	\$ 1,375	\$ 17,263	\$ —	\$ 48,329

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

18. SEGMENT INFORMATION — (Continued)

<u>Year Ended December 31, 2005</u>	<u>Transaction Services</u>	<u>Credit Services</u>	<u>Marketing Services</u>	<u>Other/ Elimination</u>	<u>Total</u>
			(In thousands)		
Revenues	\$ 699,884	\$ 561,413	\$ 604,145	\$ (313,005)	\$ 1,552,437
Adjusted EBITDA ⁽¹⁾	90,074	162,481	97,903	—	350,458
Depreciation and amortization	56,583	6,647	36,477	—	99,707
Stock compensation expense	4,715	4,714	4,714	—	14,143
Operating income	28,776	151,120	56,712	—	236,608
Interest expense, net	—	—	—	14,482	14,482
Income before income taxes	\$ 28,776	\$ 151,120	\$ 56,712	\$ (14,482)	\$ 222,126
Capital expenditures	\$ 43,408	\$ 2,152	\$ 20,340	\$ —	\$ 65,900

(1) Adjusted EBITDA is a non-GAAP financial measure equal to net income, the most directly comparable GAAP financial measure, plus stock compensation expense, provision for income taxes, interest expense, net, fair value loss on interest rate derivative, other expenses, depreciation and amortization. The adjusted EBITDA is presented in accordance with SFAS No. 131 as it is the primary performance metric for which senior management is evaluated.

Information concerning principal geographic areas is as follows:

	<u>United States</u>	<u>Rest of World⁽¹⁾</u>	<u>Total</u>
		(In thousands)	
Revenues			
Year Ended December 31, 2003	\$ 762,004	\$ 284,540	\$ 1,046,544
Year Ended December 31, 2004	913,378	344,060	1,257,438
Year Ended December 31, 2005	1,135,968	416,469	1,552,437
Total assets			
December 31, 2004	\$ 1,623,430	\$ 615,650	\$ 2,239,080
December 31, 2005	2,244,288	681,794	2,926,082

(1) Primarily Canada.

19. RELATED PARTY TRANSACTIONS

One of the Company's stockholders, Welsh, Carson, Anderson & Stowe and related affiliates ("WCAS"), has provided significant financing to the Company. During 2003, the Company repaid \$52.0 million of 10% subordinated notes to WCAS.

20. SUBSEQUENT EVENTS

In February 2006, the Company reached an agreement to acquire DoubleClick E-mail Solutions, an operating unit of DoubleClick Inc. DoubleClick E-mail Solutions is a permission-based e-mail marketing service provider, with operations across North America, Europe and Asia/ Pacific. Total consideration for the transaction is expected to be approximately \$90 million. The acquisition is anticipated to close before the end of the first quarter 2006.

Additionally, the Company has acquired ICOM Information and Communication Inc. (ICOM) in February 2006, a provider of targeted list, marketing data and communication solutions for the direct

ALLIANCE DATA SYSTEMS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

20. SUBSEQUENT EVENTS — (Continued)

response, consumer packaged goods (CPG) and over-the-counter pharmaceutical industries in North America. Total consideration for the transaction was approximately \$30 million.

21. QUARTERLY RESULTS OF OPERATIONS (UNAUDITED)

Unaudited quarterly results of operations for the years ended December 31, 2004 and 2005 are presented below.

	Quarter Ended			
	March 31, 2004	June 30, 2004	September 30, 2004	December 31, 2004
	(In thousands, except per share amounts)			
Revenues	\$ 312,023	\$ 299,709	\$ 298,872	\$ 346,834
Operating expenses	256,874	253,469	256,114	318,882
Fair value loss on interest rate derivative	509	299	—	—
Interest expense, net	2,729	971	1,029	2,243
Income before income taxes	51,911	44,970	41,729	25,709
Provision for income taxes	19,570	16,954	15,732	9,692
Net income	<u>\$ 32,341</u>	<u>\$ 28,016</u>	<u>\$ 25,997</u>	<u>\$ 16,017</u>
Net income per share — basic	<u>\$ 0.40</u>	<u>\$ 0.35</u>	<u>\$ 0.32</u>	<u>\$ 0.20</u>
Net income per share — diluted	<u>\$ 0.39</u>	<u>\$ 0.33</u>	<u>\$ 0.31</u>	<u>\$ 0.19</u>

	Quarter Ended			
	March 31, 2005	June 30, 2005	September 30, 2005	December 31, 2005
	(In thousands, except per share amounts)			
Revenues	\$ 375,875	\$ 370,568	\$ 384,813	\$ 421,181
Operating expenses	313,626	313,221	325,008	363,974
Interest expense, net	2,761	2,353	2,422	6,946
Income before income taxes	59,488	54,994	57,383	50,261
Provision for income taxes	22,306	20,611	21,532	18,932
Net income	<u>\$ 37,182</u>	<u>\$ 34,383</u>	<u>\$ 35,851</u>	<u>\$ 31,329</u>
Net income per share — basic	<u>\$ 0.45</u>	<u>\$ 0.42</u>	<u>\$ 0.43</u>	<u>\$ 0.39</u>
Net income per share — diluted	<u>\$ 0.43</u>	<u>\$ 0.40</u>	<u>\$ 0.42</u>	<u>\$ 0.38</u>

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Alliance Data Systems Corporation has duly caused this annual report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

ALLIANCE DATA SYSTEMS CORPORATION

By: /s/ J. Michael Parks

J. Michael Parks
*Chairman of the Board, Chief Executive Officer
and Director*

DATE: MARCH 3, 2006

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons on behalf of Alliance Data Systems Corporation and in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ J. MICHAEL PARKS</u>	Chairman of the Board, Chief Executive Officer and Director	March 3, 2006
J. Michael Parks		
<u>/s/ EDWARD J. HEFFERNAN</u>	Executive Vice President and Chief Financial Officer	March 3, 2006
Edward J. Heffernan		
<u>/s/ MICHAEL D. KUBIC</u>	Senior Vice President, Corporate Controller, and Chief Accounting Officer	March 3, 2006
Michael D. Kubic		
<u>/s/ BRUCE K. ANDERSON</u>	Director	March 3, 2006
Bruce K. Anderson		
<u>/s/ ROGER H. BALLOU</u>	Director	March 3, 2006
Roger H. Ballou		
<u>/s/ LAWRENCE M. BENVENISTE, PH.D.</u>	Director	March 3, 2006
Lawrence M. Benveniste, Ph.D.		
<u>/s/ D. KEITH COBB</u>	Director	March 3, 2006
D. Keith Cobb		
<u>/s/ E. LINN DRAPER, JR., PH.D.</u>	Director	March 3, 2006
E. Linn Draper, Jr., Ph.D.		
<u>/s/ KENNETH R. JENSEN</u>	Director	March 3, 2006
Kenneth R. Jensen		
<u>/s/ ROBERT A. MINICUCCI</u>	Director	March 3, 2006
Robert A. Minicucci		

SCHEDULE II
ALLIANCE DATA SYSTEMS CORPORATION
CONSOLIDATED VALUATION AND QUALIFYING ACCOUNTS

<u>Description</u>	<u>Balance at Beginning of Period</u>	<u>Increases</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
			(In thousands)	
Allowance for Doubtful Accounts — Trade receivables:				
Year Ended December 31, 2003	\$ 2,255	\$ 2,138	\$ (3,077)	\$ 1,316
Year Ended December 31, 2004	1,316	1,166	(1,024)	1,458
Year Ended December 31, 2005	1,458	851	(230)	2,079
Allowance for Doubtful Accounts — Seller's interest and credit card receivables:				
Year Ended December 31, 2003	5,912	37,783	(26,544)	17,151
Year Ended December 31, 2004	17,151	12,765	(18,243)	11,673
Year Ended December 31, 2005	11,673	47,420	(20,678)	38,415

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 27th day of SEPTEMBER, 2002

BETWEEN:

YCC LIMITED AND
LONDON LIFE INSURANCE COMPANY
(the "Landlord")

OF THE FIRST PART

- and -

LOYALTY MANAGEMENT GROUP CANADA INC.
(the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated the 28th day of MAY, 1997, (the "LEASE"), the Landlord leased to the Tenant for and during a term of TEN (10) years commencing on the 1st DAY OF SEPTEMBER, 1997 and expiring on the 31st DAY OF AUGUST, 2007 certain premises, (the "PREMISES"), comprising a Rentable Area of approximately SEVENTY-THREE THOUSAND FIVE HUNDRED AND THIRTY-FOUR (73,534) square feet located on the 2nd AND 3rd floors shown outlined in red on the plan attached to the lease as Schedules "B-1" AND "B-2", located at 4110 YONGE STREET, (the "Building"), in the City of TORONTO, in the Province of ONTARIO.

B. By an agreement dated the 19th day of June, 1997 (the "First Amending Agreement"), made between the Landlord and the Tenant, the Lease was amended so that the term of the Lease (the "Term") would commence on the 17th day of September, 1997 and expire on the 16th day of September, 2007, and to further amend the lease in accordance with terms and conditions more particularly set out therein.

C. By an agreement dated the 15th day of January, 1998 (the "Second Lease Amending Agreement"), the Landlord leased to the Tenant additional premises on the 4th floor of the Building comprising: (i) a Rentable Area of approximately 18,000 square feet (the "First Additional Premises"); and (ii) a Rentable Area of approximately 19,147 square feet (the "Special Refusal Space"), and to further amend the Lease in accordance with terms and conditions more particularly set out therein.

D. By an agreement dated the 14th day of April, 2000, the tenant exercised its right of first refusal pursuant to Section 12.07 of the Lease and the Landlord leased to the tenant additional premises comprising a Rentable Area of approximately 15,168 square feet on the 5th floor of the Building (the "Second Additional Premises") and to further amend the Lease in accordance with terms and conditions more particularly set out therein.

E. By an agreement dated the 17th day of January, 2001, the Landlord and the Tenant agreed to add Eleven Thousand Two Hundred and Ninety-Two (11,292) square feet to the Premises on the 5th floor for a period from and including February 1, 2001 to and including September 16, 2007 and to further amend the Lease in accordance with the terms and conditions set out therein.

F. By a lease amending agreement dated June 12, 2002, the Landlord and Tenant agreed to add Schedule "F" to the Lease in order to accommodate the Tenant's diesel generator, upon terms and conditions more particularly set out therein.

G. The Landlord and the Tenant have agreed to amend the Lease in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each of the Parties to the other (the receipt and sufficiency whereof is hereby acknowledged), and other mutual covenants and agreements, the Parties do hereby agree as follows:

1. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

2. The Lease is amended as of the 1st day of January, 2002, (the "Effective Date"), as follows:

- a) Section 1.01 of the Lease (Grant and Premises) (as amended by the Lease Amending Agreement dated January 17, 2001) is further amended by deleting the words and figures "Eleven Thousand Two Hundred and Ninety-Two (11,292) square feet" and inserting in their place the words and figures "Eleven Thousand, One Hundred and Fifty-Two (11,152) square feet".
- b) Section 1.01 of the Lease (Grant and Premises) (as amended by the Lease Amending Agreement dated April 14, 2000) is further amended by deleting from subparagraph (d) of Clause 2 the words and figures "fifteen thousand, one hundred and sixty-eight (15,168)" and inserting in their place the words and figures "Fifteen Thousand, Seven Hundred and Fifty-Two (15,752)".
- c) Section 1.01 of the Lease (Grant and Premises) is amended by deleting the second paragraph and inserting in its place the following:

"From and after August 1, 1998, the Landlord shall lease to the Tenant: (i) additional office space ("First Additional Premises") containing approximately 18,000 square feet of Rentable Area on the 4th floor of the Building as shown outlined in red on the floor plan attached hereto as Schedule "B-3"; and (ii) the Special Refusal Premises (as defined in Section 12.07) comprising a Rentable Area of approximately Nineteen Thousand, Four Hundred and Seventeen (19,417) square feet for the balance of the Term such that the Term in respect of the First Additional Premises and Special Refusal Premises shall be co-terminus with the Term and the Premises shall from and after such date be deemed to include the First Additional Premises and the Special Refusal Premises."

- d) Section 2.02 (Net Rent) of the Lease (as amended by the Lease Amending Agreement dated January 17, 2001) is further amended by:
 - (i) in subparagraph (i):
 - (A) deleting in the second line the words and figures "31st day of January, 2002" and inserting in their place the words and figures "31st day of December 2001"; and
 - (B) adding to subparagraph (i) the following:

"for the period from and including January 1, 2002 to and including January 31, 2002, the sum of Two Hundred, Fifty-Six Thousand, Four Hundred Ninety-Six Dollars and Four Cents (\$256,496.04) per annum payable in equal monthly instalments of Twenty-One Thousand, Three Hundred Seventy-Four Dollars and Sixty-Seven Cents (\$21,374.67), based on an annual rate of Twenty-Three Dollars (\$23.00) per square foot of the Rentable Area of the Third Additional Premises.
 - (ii) deleting in subparagraph (ii) the words and figures "Two Hundred Ninety Thousand, Seven Hundred and Sixty-Nine Dollars (\$290,769.00)" and "Twenty-Four Thousand, Two Hundred Thirty Dollars and Seventy-Five Cents (\$24,230.75)" and inserting in their place the words and figure "Two Hundred Eighty-Seven Thousand, One Hundred and Sixty-Four Dollars (\$287,164.00)" and "Twenty-Three Thousand, Nine Hundred Thirty Dollars and Thirty-Three Cents (\$23,930.33)" respectively;
 - (iii) deleting in subparagraph (iii) the words and figures "Three Hundred Two Thousand Sixty-One Dollars (\$302,061.00) and "Twenty-Five Thousand, One Hundred Seventy-One Dollars and Seventy-Five Cents (\$25,171.75)" and inserting in their place the words and figure's "Two Hundred Ninety-Eight Thousand; Three Hundred and Sixteen Dollars (\$298,316.00)" and "Twenty-Four Thousand, Eight Hundred Fifty-Nine Dollars and Sixty-Seven Cents (\$24,859.67)" respectively; and
 - (iv) deleting in subparagraph (iv) the words and figures "Three Hundred Four Thousand, Eight Hundred and Eighty-Four Dollars (\$304,884.00)" and "Twenty-Five Thousand, Four Hundred and Seven Dollars (\$25,407.00)" and inserting in their place the words and figures "Three Hundred One Thousand, One Hundred and Four Dollars (\$301,104.00)" and "Twenty-Five Thousand, Ninety-Two Dollars (\$25,092.00) respectively.

(e) Section 2.02 (Net Rent) of the Lease (as amended by Paragraph 3(a)(ii) of the Lease Amending Agreement dated April 14, 2000) is further amended by:

(i) deleting in the second line the words and figures "September 16, 2007" and inserting in their place the words and figures "December 31, 2001";

(ii) adding subparagraph (iii) as follows:

"(iii) during the period from and including January 1, 2002 to and including September 16, 2007, the sum of Four Hundred Eight Thousand, Seven Hundred Sixty-Four Dollars and Forty Cents (\$408,764.40) per annum payable in equal consecutive monthly instalments of Thirty-Four Thousand, Sixty-Three Dollars and Seventy Cents (\$34,063.70) based on an Annual Rate of Twenty Five Dollars and Ninety-Five Cents (\$25.95)".

(f) Section 2.02 (Net Rent) of the Lease (as amended by the Lease Amending Agreement dated January 15, 1998 is further amended by adding thereto the following:

"Commencing August 1, 1998 and for the balance of the Term, the Tenant shall pay with respect to the First Additional Premises and the Special Refusal Space, Net Rent at the same rates per square foot as set out with respect to the initial Premises described in the first paragraph of Section 1.01 of this Lease."

3. The Parties confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

4. This Agreement shall enure to the benefit of and be binding upon the Parties hereto, the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written.

YCC LIMITED

(Landlord)

Per: /s/ Michelle Carrie

Authorized Signature

Per: [ILLEGIBLE]

Authorized Signature

I/We have authority to bind the corporation.

LONDON LIFE INSURANCE COMPANY

(Landlord)

Per: /s/ Steven Marino ASSET MANAGER

Authorized Signature

Per: /s/ Paul Collison ASSET MANAGER

Authorized Signature

I/We have authority to bind the corporation.

LOYALTY MANAGEMENT GROUP CANADA INC.

(Tenant)

ELIZABETH MORGAN
VICE PRESIDENT, FINANCE

Per: /s/ Elizabeth Morgan

Authorized Signature

GORD MACDONALD
VICE PRESIDENT
HUMAN RESOURCES

Per: /s/ Gord Macdonald

Authorized Signature

I/We have authority to bind the corporation.

- 3 -

SEVENTH LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 18th day of February, 2005.

BETWEEN:

THE CADILLAC FAIRVIEW CORPORATION LIMITED

(the "landlord")

OF THE FIRST PART

-and-

LOYALTY MANAGEMENT GROUP CANADA INC.

(the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated the 28th day of may, 1997, and made between YCC LIMITED and LONDON LIFE INSURANCE COMPANY, collectively as landlord and the Tenant (the "Lease"), the landlord leased to the Tenant for and during a term of ten (10) years, from and including the 1st day of September, 1997, to and including the 31st day of August, 2007 (the "Term"), subject to and upon the terms, covenants and conditions contained in the Lease, certain premises containing a Rentable Area for Seventy-three thousand, five hundred and thirty-four(73,534) square feet approximately located on the 2nd and 3rd floors(the "Original Premises") shown outlined on red on the plan attached to the Lease as Schedule "B-1" and "B-2", located at 4110 Yonge Street (the "Building"), in the City of Toronto, in the Province of Ontario.

B. By an agreement dated the 19th day of June, 1997 (the "First Amending Agreement") made between YCC LIMITED and LONDON LIFE INSURANCE COMPANY collectively as landlord and the Tenant, the Lease was amended so that the term of the Lease would commence on the 17th day of September, 1997 and expire on the 16th day of September, 2007, and to further amend the Lease in accordance with the terms and conditions more particularly set out therein.

C. By an agreement dated the 15th day of January, 1998 (the Second Lease Amending leased to the Tenant additional premises on the 4th floor of the Building comprising:(i) a Rentable Area of approximately eighteen thousand (18,000) square feet (the "First Additional Premises") and (ii) a Rentable Area of approximately nineteen thousand one hundred and forty seven (19,147) square feet (the "Special Refusal space") and to further amend the Lease in accordance with the terms and conditions more particularly set out therein.

D. By and agreement dated the 14th day of April, 2000(the Third Lease Amending Agreement), the Tenant exercised its right of first refusal pursuant to Section 1207 of the Lease and YCC LIMITED and LONDON LIFE INSURANCE COMPANY collectively as landlord leased to the Tenant additional premises comprising a Rentable Area of approximately fifteen thousand one hundred and sixty-eight (15,168) square feet on the 5th floor of the Building (the "Second Additional Premises") and to further amend the Lease in accordance with the terms and conditions more particularly set out therein.

E. By and agreement dated the 17th day of January, 2001(the Fourth Lease Amending Agreement), YCC LIMITED and LONDON LIFE INSURANCE COMPANY collectively as landlord leased to the Tenant additional premises comprising a Rentable Area of approximately eleven thousand two hundred and ninety two (11,292) square feet on the 5th floor of the Building (the "Third Additional Premises") for a period commencing from and including February 1, 2001 to and including September 16, 2007 and to further amend the Lease in accordance with the terms and conditions set out therein.

F. By and agreement dated the 12th day of June, 2002 (the "Fifth Lease Amending Agreement"), YCC LIMITED and LONDON LIFE INSURANCE COMPANY collectively as landlord and the Tenant agreed to add Schedule "F" to the Lease in order to accommodate the Tenant's diesel generator, in accordance with the terms and conditions more particularly set out therein;

G. By and agreement dated the 27th day of September, 2002(the "Sixth Lease Amending Agreement"), YCC LIMITED and LONDON LIFE INSURANCE COMPANY collectively as landlord and the Tenant agreed to further amend the Lease in accordance with the terms and conditions more particularly set out therein;

H. The Landlord is now The Cadillac Fairview Corporation Limited; and

I. The Landlord and the Tenant have agreed to add further additional space to the Premises effective July 1, 2005(the "Effective Date") and to amend the Lease as of the Effective Date to give effect to the foregoing in accordance with the terms and conditions herein after set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of two dollars (\$2.00) now paid by each of the parties to the other (the receipt and sufficiency whereof is hereby acknowledged), and other mutual covenants and agreements, the parties do hereby agree as follows:

1. The parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

2. Provided this Agreement has been executed by both the Landlord and the Tenant, the Tenant shall as of the 1st day of March, 2005 (the "Occupancy Date") be provided vacant possession of approximately five thousand, five hundred and eighty-six (5,586) square feet located on the 5th floor of the Building (the "Fourth Additional premises") as shown outlined in red on schedule "B-7" attached to this Agreement. From the Occupancy Date up to and including the day prior to the Effective Date, the Tenant shall not be required to pay Net Rent or Additional Rent in respect to the Four Additional Premises but shall during such early occupancy period observe and perform all other provisions contained in the Lease and shall, without limiting generality of the foregoing, place and maintain all policies of insurance in respect to the Fourth Additional Premises as required by the Lease.

3. The Tenant acknowledges and agrees that (i) it is accepting possession of the Fourth Additional Premises in an "as is" condition as of the Occupancy Date, (ii) the Landlord has no responsibility or liability for making any renovation, alteration or improvements in or to the Fourth Additional Premises, and (iii) all further renovations, alterations or improvements in or to the Fourth Additional Premises are the sole responsibility of the Tenant and shall be undertaken and completed at the Tenant's expense and strictly in accordance with the provisions of the Lease.

4. The Tenant will submit four sets of detailed working drawings to the Landlord for any work which the Tenant is required or proposes to do in the premises. All Tenant's work will be performed at the Tenant's expense in a good and workmanlike manner in accordance with the leasehold improvements manual by unionized contractors, sub-contractors and workers engaged by the Tenant but approved by the Landlord. The Tenant's working drawings, contractors, sub-contractors and workers will be subject to the Landlord's approval. The Landlord will not unreasonably deny or delay its approval.

5. The Lease is amended as of the Effective Date as follows:

(A) Section 1.01 (Grant and Premises) is hereby amended by adding the following:

In consideration of the performance by the Tenant of its obligations under this Lease, the Landlord leases additional premises (the "Fourth Additional Premises") to the Tenant on an "as is" basis for a term (the "Term of the Fourth Additional Premises") commencing on July 1, 2005 and ending at midnight on September 16, 2007. The Fourth Additional Premises are located on the 5th floor of the Building as shown outlined in red on the floor plan attached as Schedule "B-7" and has a Rentable Area of approximately five thousand, five hundred and eight-six (5,586) square feet."

(B) Section 1.02 (Term) is hereby amended by adding the following:

"The Term of this Lease with respect to the Fourth Additional Premises is two (2) years, two (2) months and sixteen (16) days from the 1st day of July, 2005 to the 16th day of September, 2007."

(C) Section 2.02 (Net Rent) Is hereby amended by adding the following:

The Tenant shall pay Net Rent with respect to the Fourth Additional Premises during the period from and including July 1, 2005 to and including September, 16, 2007, in the sum of eighty-nine thousand three hundred and seventy-six dollars (\$89,376.00) per annum payable in equal monthly installments of seven thousand four hundred and forty-eight dollars (\$7,448.00) each in advance on the first day of each calendar month during the aforesaid period based on an annual rate of sixteen dollars (\$ 16.00) per square foot of the Rentable Area of the Fourth Additional Premises.

As soon as reasonably possible after completion of construction of the Premises the Landlord shall measure the Net Rentable Area of the Premises and shall calculate the Rentable Area of the Premises and Rent shall be adjusted accordingly.

(D) Commencing July 1, 2005 the Tenant shall pay Additional Rent with respect to the fourth additional Premises in accordance with the terms of the Lease.

(E) Provided the Tenant is LOYALTY MANAGEMENT GROUP CANADA INC. and is not in default under the terms of the Lease, the Landlord will pay the Tenant a Leasehold Improvement allowance of ten dollars (\$10.00) per square foot of the Rentable Area of the Fourth Additional Premises (the "Allowance") to be applied towards the cost of construction of the Tenant's Leasehold Improvements. Ninety percent (90%) of the Allowance will be paid fifteen (15) days after the last to occur of:

- (a) occupancy of the Fourth Additional premises by the Tenant for business.
- (b) commencement of the Term.
- (c) execution of the Lease by all parties; and
- (d) receipt by the Landlord of a statutory declaration documenting (i) that payment has been made in full to all contractors, sub-contractors, suppliers and any other personnel retained to complete construction of the Tenant's Leasehold Improvements; (ii) the last date on which any work was done or materials were provided in connection with the construction of the Leasehold improvements; and (iii) that all assessments under the workers Compensation Act against the Tenant its contractors, subcontractors and other persons or business entities who performed work in the Building or the Fourth Additional Premises in connection with the Tenant's work have been in full.

The remaining ten percent (10%) of the Allowance will be paid forthwith after the expiry of the statutory lien period provided no liens have been registered in respect of the Tenant's Leasehold Improvements. To the extent that the Allowance exceeds the cost of construction such extra amount will be applied by the Landlord to the first rentals due under the Lease. The Tenant agrees to provide invoices documenting the cost of construction.

If the Lease is terminated by the Landlord in accordance with Article IX hereof or the Tenant becomes bankrupt or takes the benefit of any statute for bankrupt or insolvent debtors (including without limiting the generality of the foregoing the Companies Creditors. Arrangement Act, R.S.C 1985, c. C-36, as amended or replaced) then the Tenant will repay to the Landlord, as Additional Rent, the unamortized portion of the Allowance, calculated from the date of payment by the Landlord on the basis of an assumed rate of depreciation on a straight line basis to zero over the initial Term."

6. Except as otherwise provided herein all references in the lease to the "premises" shall be deemed to include the First Additional Premises, the Special Refusal Space, the Second Additional Premises, the Third Additional Premises and the Fourth Additional Premises.

7. Schedule "B-7" attached to this Agreement is deemed appended to the Lease.

8. The parties confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and

expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

9. This Agreement shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written.

THE CADILLAC FAIRVIEW CORPORATION LIMITED
(Landlord)

Per: /s/ [ILLEGIBLE]

Authorized Signature

Per: /s/ [ILLEGIBLE]

Authorized Signature

I/We have authority to bind the corporation.

LOYALTY MANAGEMENT GROUP CANADA INC.
(Tenant)

Per: /s/ Gord MacDonald

Authorized Signature

Per: /s/ Elizabeth Morgan

Authorized Signature

I/We have authority to bind the corporation.

SCHEDULE "B"

Tenant Data Sheet

Yonge Corporate Centre

PHASE 2

4110 Yonge Street, Toronto

5th FLOOR

[MAP OF FERGUSON ARCHITECTS]

The purpose of this plan is to identify the approximate location of the Premises
in the Building.

FIFTH AMENDMENT TO LEASE

Exhibit 10.10

THIS FIFTH AMENDMENT TO LEASE (hereinafter referred to as the "Fifth Amendment") is made effective as of this 30th day of June, 2001, by and between PARTNERS AT BROOKSEGE, an Ohio general partnership (hereinafter referred to as "Lessor"), and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation (hereinafter referred to as "Lessee").

RECITALS

A. Continental Acquisitions, Inc., as Lessor, and World Financial Network National Bank (U.S.) (hereinafter referred to as "Original Lessee"), as Lessee, entered into a Lease dated July 2, 1990 for certain space located at 220 West Schrock Road, Westerville, Ohio 43081, and being part of "Brooksedge Corporate Center".

B. The interest of Continental Acquisitions, Inc. as "Lessor" under the Lease was subsequently assigned on August 28, 1990 to Lessor.

C. The Lease was amended by that certain First Amendment of Lease between WFN and Lessor dated September 11, 1990, that certain Second Amendment of Lease between WFN and Lessor dated November 16, 1990, that certain Third Amendment of Lease between WFN and Lessor dated February 18, 1991, and that certain Fourth Amendment to Lease dated June 1, 2000.

D. The interest of WFN as "Lessee" under the Lease was subsequently assigned on February 1, 1998 to Lessee. The Lease as amended and assigned is hereinafter collectively referred to as the "Lease").

E. Lessor and Lessee desire to release Original Lessee from any liability or responsibility as the original lessee under the Lease.

PROVISIONS

1. INCORPORATION OF RECITALS. The Recitals portion of this Fifth Amendment is hereby incorporated by this reference to the same extent and as fully as though it were here rewritten in its entirety. All capitalized terms not otherwise defined herein shall have the same meaning set forth in the Lease.

2. RELEASE OF ORIGINAL LESSEE. Lessor hereby releases Original Lessee from any and all liability or responsibility in connection with the Lease, whether arising before, on, or after the date of this Fifth Amendment.

3. NO OTHER CHANGES; RATIFICATION OF LEASE. This Fifth Amendment shall only modify or amend the Lease to the extent provided herein and all other conditions, covenants and agreements in the Lease shall remain in full force and effect. Subject to the terms of this Fifth Amendment, Lessor and Lessee do hereby ratify and confirm in their entirety the conditions, covenants and agreements contained in the Lease. If there is a conflict between the provisions contained in this Fifth Amendment and the provisions of the Lease, this Fifth Amendment shall control.

4. MISCELLANEOUS. The governing law provisions set forth in the Lease shall also be applicable to this Fifth Amendment. The captions at the beginning of the several paragraphs of this Fifth Amendment are for the convenience of the reader and shall be ignored in construing this Fifth

Amendment. This Fifth Amendment may be executed in several counterparts and each of such counterparts shall be deemed to be an original hereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Fifth Amendment effective as of the date first set forth above.

Signed and acknowledged
in the presence of:

PARTNERS AT BROOKSEEDGE, an Ohio
general partnership ("Lessor")

/s/ Thomas R. Davis

Print Name: Thomas R. Davis

By: Continental Properties,
an Ohio general partnership
its managing general partner

/s/ Nannette C. Buel

Print Name: Nannette C. Buel

By: /s/ Franklin E. Kass

Franklin E. Kass, Managing
General Partner

ADS ALLIANCE DATA SYSTEMS, INC., a
Delaware corporation ("Lessee")

BY: /s/ Robert P. Armiak

Robert P. Armiak, Vice
President/Treasurer

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 30th day of June, 2001 by Franklin E. Kass, Managing General Partner of Continental Properties, an Ohio general partnership, as Managing General Partner of PARTNERS AT BROOKSEEDGE, an Ohio general partnership, on behalf of the partnership.

/s/ Margaret A. McCandless

Notary Public

STATE OF OHIO
COUNTY OF FRANKLIN

[SEAL]

MARGARET A. MCCANDLESS
Notary Public, State of Ohio
My Commission Expires 02-28-05

The foregoing instrument was acknowledged before me this 17th day of June, 2001 by Robert P. Armiak, Vice President/Treasurer of ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation, on behalf of the corporation.

/s/ Christy.A.Krinn

Notary Public

[SEAL]

CHRISTY.A.KRINN
Notary Public, State of Ohio
My Comm. Expires July 13, 2003

CONSENT OF ORIGINAL LESSEE

The undersigned, as the original "Lessee" under the Lease hereby approves the terms and conditions of the Fifth Amendment.

WORLD FINANCIAL NETWORK NATIONAL
BANK (U.S.), a national banking association

Dated: 6/21/01

By: /s/ Daniel T. Groomes

Name: DANIEL GROOMES
Title: PRESIDENT

TATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 21st day of June, 2001 by Daniel T. Groomes President of WORLD FINANCIAL NETWORK NATIONAL BANK (U.S.), a national banking association, on behalf of the national banking association.

/s/ Christy A. Krinn

Notary Public

[SEAL]

CHRISTY A. KRINN
Notary Public, State of Ohio
My Comm. Expires July 13, 2003

SUBLEASE

THIS SUBLEASE is made as of the ___ day of March, 2003, by and between SONICNET LLC, a Delaware limited liability company, hereinafter referred to as "Sublessor" and BIGFOOT INTERACTIVE, INC., a New York corporation, hereinafter referred to as "Sublessee" with reference to the following facts:

A. TM Park Avenue Associates, hereinafter referred to as "Landlord", and SonicNet, Inc., predecessor-in-interest to Sublessor, entered into a certain Lease dated December 1, 1998 (together with any and all amendments thereto, the "Lease"), with respect to the premises comprising the entire 18th floor of the building, containing approximately 14,875 rentable square feet, located at 315 Park Avenue South, New York, New York (the "Subleased Premises"), being more particularly described in the Lease, a copy of which is attached hereto and made a part hereof.

B. Sublessor wishes to sublease to Sublessee and Sublessee wishes to sublease from Sublessor the Subleased Premises.

Sublessor and Sublessee hereby agree to the following:

1. Sublessor hereby subleases to Sublessee the Subleased Premises upon and subject to the terms and conditions hereinafter set forth.

2. The term of the Sublease shall commence on the date (the "Commencement Date") which is the next business day after Sublessor shall have notified Sublessee that Landlord has given its consent to this Sublease and shall terminate on May 30, 2009 (the "Expiration Date"). Sublessee shall have no right to extend this Sublease beyond the Expiration Date.

3. (a) Sublessee shall pay to Sublessor a base monthly rent of Twenty Four Thousand Seven Hundred Ninety-one and 67/100 (\$24,791.67) Dollars, based on an

annual rate of Twenty and 00/100 (\$20.00) Dollars per rentable square foot. Commencing as of September 1, 2006, the base monthly rent shall be increased to Twenty Seven Thousand Two Hundred Seventy and 83/100 (\$27,270.83) Dollars, based on an annual rate of Twenty Two and 00/100 (\$22.00) Dollars per rentable square foot. Sublessee shall pay the sum of \$24,791.67 to Sublessor upon its execution of this Sublease, which sum shall be applied to the first month's rent payable by Sublessee hereunder.

(b) In addition to the base monthly rent, effective as of the Commencement Date, Sublessee shall pay to Sublessor, as additional rent, (i) the amount by which Sublessor's share of "Operating Expenses" (as defined in the Lease) payable under the Lease during 2004, 2005, 2006, 2007, 2008 or 2009 exceeds Sublessor's share of "Operating Expenses" payable under the Lease during calendar year 2003; and (ii) the amount by which Sublessor's share of "Taxes" (as defined in the Lease) payable under the Lease during 2004, 2005, 2006, 2007, 2008 or 2009 exceeds Sublessor's share of "Taxes" payable under the Lease during the 2003 "Tax Year" (as defined in the Lease). With respect to additional rent payable hereunder for 2009, Sublessee's obligations shall be limited to its proportionate share (i.e., 5 out of 12 months) of any increases; it being acknowledged that to the extent the amount of Operating Expenses and/or Taxes for 2009 is not available at the Expiration Date, this provision shall survive the expiration of this Sublease.

(c) Effective as of the Commencement Date, Sublessee shall pay to Sublessor the sum of \$3,738.05 per month as payment for electricity consumed in the Subleased Premises, which sum is the amount currently charged to Sublessor under the Lease. In the event that the amount charged Sublessor for electricity is increased under the Lease, Sublessee's rate shall be similarly increased.

(d) Sublessee shall pay any and all service charges required to be paid by tenant under the Lease and relating to the Subleased Premises from and after the Commencement Date. Except as otherwise set forth herein to the contrary, any and all

other costs incurred by Sublessee that would be payable by Sublessor as tenant under the Lease shall be borne by Sublessee from and after the Commencement Date.

(e) All rent and additional rent shall be payable on the first day of each month without any set-off or deduction whatsoever to Sublessor at the address set forth below, unless otherwise specified in a written notice to Sublessee as hereinafter provided. Rent for any other period of less than one month shall be apportioned based on the number of days in that month.

(f) Notwithstanding anything to the contrary contained in this paragraph, no base monthly rent shall be due for the period commencing on the Commencement Date and expiring on November 30, 2003 (the "Abatement Period"); provided, however, that Sublessee shall pay all additional rent for the Abatement Period as required hereunder. The entire base rent otherwise due and payable for the Abatement Period shall become immediately payable upon the occurrence of an event of default by Sublessee under this Sublease.

4. In addition to such remedies as may be provided in the Lease or this Sublease, Sublessor shall be entitled to a late charge of ten percent (10%) of the amount of the monthly rent if not received by the tenth day of the month, and a charge of five percent (5%) of the amount of any check given by Sublessee not paid when first presented by Sublessor. The parties agree that damages to Sublessor as a result of a late payment or an unpaid check by Sublessee are difficult to ascertain and that these charges represent a fair and reasonable estimate of said damages. Acceptance by Sublessor of a late charge shall not constitute a waiver by Sublessor of any default of Sublessee nor prevent Sublessor from exercising any right or remedy hereunder or otherwise available by law.

5. Sublessee shall deliver to Sublessor simultaneously with the execution of the Sublease an irrevocable letter of credit in a form and content satisfactory to Sublessor for the sum of \$81,812.49 as security for the faithful performance and observance by

Sublessee of the terms, provisions and conditions of this Sublease. Said irrevocable letter of credit shall provide that (i) funds secured by the letter of credit shall be available to Sublessor following presentation by Sublessor to the issuing bank with a copy to Sublessee of (a) a duly executed draft and (b) the original letter of credit, and (ii) that the letter of credit be transferable one or more times by Sublessor without the consent of Sublessee. In the event that an Event of Default occurs hereunder, Sublessor may draw upon said letter of credit only to the extent required for the payment of any rent or additional rent as to which Sublessee is in default and in such event, Sublessee shall, upon written demand by Sublessor, restore the security to its original amount. The letter of credit shall expire not earlier than 12 months after the date of delivery to Sublessor and shall provide that same shall be automatically renewed for successive 12-month periods through a date which is not earlier than 60 days after the Expiration Date of this Sublease, unless written notice of non-renewal has been given by the issuing bank to Sublessor by registered or certified mail, return receipt requested, not less than 30 days prior to the expiration of the current period. If the issuing bank does not renew the letter of credit, and if Sublessee does not deliver a substitute letter of credit at least 30 days prior to the expiration of the current period, then in addition to its rights granted hereunder, Sublessor shall have the right to draw on the existing letter of credit and the amounts so drawn shall be held by Sublessor as cash collateral, to be drawn upon by Sublessor to the same extent drawings under the letter of credit are permitted hereunder. In the event that the actual amount due from Sublessee as additional rent hereunder is not known to Sublessor as of the Expiration Date, Sublessee shall continue to maintain the letter of credit following the Expiration Date until said actual amount due has been determined by Sublessor and paid by Sublessee. Sublessee acknowledges and agrees that it shall pay upon Sublessor's demand, as Additional Rent, any and all costs and fees charged in connection with the Letter of Credit that arise due to Sublessor's transfer of its interest in the Lease or the Sublease.

6. (a) Sublessee shall use the Subleased Premises solely for office use and for no other purposes. Sublessee shall have access to the Subleased Premises 24 hours per day, 7 days per week.

(b) Sublessee agrees to comply with all rules and regulations that Landlord has made or may hereafter from time to time make for the Building. Sublessor shall not be liable in any way for damage caused by the non-observance by any of the other tenants of such similar covenants in their leases or of such rules and regulations.

7. (a) Except as otherwise provided herein, Sublessee shall not transfer, assign, sublet, enter into license agreements, mortgage or hypothecate this Sublease or the Sublessee's interest in and to the Subleased Premises without first procuring the prior written consent of Sublessor and Landlord. Sublessor agrees not to unreasonably withhold, condition or delay its consent to any proposed assignment or sublease. Any attempted transfer, assignment, subletting, license agreement, mortgage or hypothecation without Sublessor's and Landlord's prior written consent shall be void and confer no rights upon any third person. In the event of any sublease or assignment by Sublessee consented to by Sublessee and Landlord, Sublessee shall not be relieved from its covenants and obligations for the Sublease term. The acceptance of rent by Sublessor from any other person or entity shall not be deemed a waiver by Sublessor of any provision hereof. Sublessee agrees to reimburse Sublessor for any reasonable fees incurred in conjunction with the processing and documentation of any such requested transfer, assignment, subletting, licensing agreement, mortgage or hypothecation of this Sublease or Sublessee's interest in and to the Subleased Premises. In addition, should Sublessee receive any consideration in connection with such transfer, assignment, subletting, license agreement, change in ownership, mortgage or hypothecation or a rental that exceeds all rentals to be paid to Sublessor hereunder, attributable to the Subleased Premises or portion thereof so assigned or sublet, then and in such event fifty

(50) percent of any such consideration or excess shall be paid over to Sublessor by Sublessee.

(b) The transfer of any stock of or ownership interest in Sublessee shall not require the consent of Sublessor; provided, however that in the event of a transfer of fifty percent (50%) or more, in the aggregate, Sublessee shall provide Sublessor with at least 15 days' prior written notice of such transfer.

(c) The consent of Sublessor and Landlord to any transfer, assignment, sublease, license agreement, mortgage or hypothecation of this Sublease is not and shall not operate as a consent to any future or further transfer, assignment, sublease, license agreement, mortgage or hypothecation.

8. (a) Sublessee agrees to take the Subleased Premises in its "as is" broom-clean condition. Sublessee is fully familiar with the physical condition of the Subleased Premises and Sublessee's taking possession thereof shall constitute Sublessee's acknowledgment that the Subleased Premises, and every part thereof, are in good condition and without need of repair. Sublessor makes no representations or warranties to Sublessee with regard to any furniture, equipment or fixtures located at the Subleased Premises.

(b) Sublessee shall be responsible for all maintenance to the Subleased Premises in order to keep the Subleased Premises in good order and condition and as otherwise required by the Lease.

(c) All property of every kind placed or stored by Sublessee at the Subleased Premises shall be so placed or stored at the sole risk of Sublessee. Sublessor shall not be liable to Sublessee or any other person for any injury, loss, damage or inconvenience occasioned by any cause whatsoever to said property unless such injury, loss, damage or inconvenience is caused solely by the willful or negligent acts or omissions of Sublessor.

(d) Upon expiration or sooner termination of the Sublease, Sublessee shall quit and surrender the Subleased Premises in substantially the same condition as the Subleased Premises were in at the commencement of the term, reasonable wear and tear excepted, broom-clean, free of all personal effects and furniture, and as otherwise required by the terms of the Lease. Any improvements or fixtures installed by Sublessee which are affixed to the Subleased Premises by nails, screws or some other detachable means shall be removed upon the expiration or sooner termination of this Sublease. Sublessee shall repair all damage or defacement to the Subleased Premises and to the fixtures, appurtenances and equipment of Sublessor therein, caused by the Sublessee's removal of its furniture, fixtures, equipment, machinery and the like and the removal of any improvements or alterations.

9. (a) Sublessee shall not, without the prior written consent of Sublessor and Landlord, make any alterations, improvements or additions to or upon the Subleased Premises. Sublessor agrees not to unreasonably withhold, condition or delay its consent. Notwithstanding the foregoing, if Landlord's consent to any alterations, improvements or additions is not required under the Lease, Sublessor's consent shall not be required. Under all circumstances, any alterations, improvements or additions made by Sublessee shall be (i) constructed in accordance with all applicable laws and regulations, with a proper permit and in a workmanlike manner, (ii) in compliance with the applicable provisions of the Lease including, without limitation, the provisions of Section 5.01(e); and (iii) conditioned on written acknowledgement by Sublessee of its obligation to remove any such alterations, improvements and additions upon the expiration or sooner termination of the Term, unless otherwise agreed to in writing by the Landlord.

(b) Sublessee shall have the right to make the alterations set forth on Exhibit "A" ("Tenant Work"), provided that (i) Sublessee shall submit plans and specifications for the Tenant Work to Sublessor and Landlord for its review and approval, (ii) to the extent required under the Lease, Landlord's written consent to Tenant's Work

has been obtained and delivered to Sublessor, and (iii) Sublessee otherwise complies with the provisions of subparagraph (a) above.

(c) Sublessee agrees to immediately discharge (either by payment or by filing of the necessary bond in the full amount of the lien, or otherwise) any mechanics', materialmen's or other liens against the Subleased Premises and/or the interests of Sublessor or Landlord therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for Sublessee in, upon or about the Subleased Premises. Sublessee agrees to give Sublessor and Landlord prompt notice of the filing of any such liens.

10. (a) Sublessee shall procure and maintain, at its own cost and expense, such liability insurance as is required to be carried by Sublessor under the Lease, naming Sublessor, as well as Landlord, in the manner required therein, and such property insurance as is required to be carried by Sublessor under the Lease to the extent such property insurance pertains to the Subleased Premises. If the Lease requires Sublessor to insure leasehold improvements or alterations, then Sublessee shall insure such leasehold improvements which are located in the Subleased Premises, as well as alterations in the Subleased Premises made by Sublessee. Each party hereby waives claims against the other for property damage provided such waiver shall not invalidate the waiving party's property insurance; each party shall attempt to obtain from its insurance carrier a waiver of its right of subrogation. Sublessee hereby waives claims against Landlord and Sublessor for property damage to the Subleased Premises or its contents if and to the extent that Sublessor waives such claims against Landlord under the Lease.

(b) Sublessee will furnish proof of such insurance coverage to Sublessor on or prior to the Commencement Date. Such policies shall contain a waiver of the insurer's right of subrogation against the Sublessor and Landlord, and shall require the

insurer to give Sublessor thirty (30) days notice prior to the expiration or cancellation of insurance coverage.

(c) Sublessee will not do anything on the said Subleased Premises to make void or voidable any insurance upon the Subleased Premises or render necessary any increased or extra premium for the said insurance. If, as a result of improper maintenance, poor housekeeping, or any other conduct or other activities on the part of Sublessee, the insurance premiums are increased, Sublessee will pay the additional cost thereof, and in the event the conduct of Sublessee's business results in an increase in insurance premiums to be paid by Sublessor, Sublessee shall pay to Sublessor the amount of such increase.

11. In the event of a fire or other casualty affecting the Building or the Subleased Premises, or of a taking of all or a part of the Building or Premises under the power of eminent domain, Sublessor may exercise any right which may have the effect of terminating the Lease without first obtaining the prior written consent of Sublessee. In the event Sublessor is entitled, under the Lease, to a rent abatement as a result of a fire or other casualty or as a result of a taking under the power of eminent domain, then Sublessee shall be entitled to its proportionate share of such rent abatement. If the Lease imposes on Sublessor the obligation to repair or restore leasehold improvements or alterations, at Sublessor's option such obligation shall pass to Sublessee.

12. Sublessor represents that it is the successor in interest to SonicNet Inc. and that it has full power and authority to enter into this Sublease, subject to the consent of the Landlord, if required under the Lease. So long as Sublessee is not in default in the performance of its covenants and agreements in this Sublease, Sublessee's quiet and peaceable enjoyment of the Subleased Premises shall not be disturbed or interfered with by Sublessor, or by any person claiming by, through, or under Sublessor.

13. Sublessor shall cooperate with Sublessee to cause Landlord to provide services required by Sublessee in addition to those otherwise required to be provided by

Landlord under the Lease; provided, however, that nothing contained in this Agreement shall require Sublessor to commence legal action or arbitration proceedings against Landlord unless Sublessee agrees to assume and pay all expenses associated with such action or proceeding in which case Sublessor shall commence such action or proceeding under the direction and control of Sublessee with counsel selected by Sublessee, who shall be reasonably satisfactory to Sublessor. Sublessee shall pay Landlord's charge for such services promptly after having been billed therefor by Landlord or by Sublessor. If at any time a charge for such additional services is attributable to the use of such services both by Sublessor and by Sublessee, the cost thereof shall be equitably divided between Sublessor and Sublessee.

14. Upon expiration or sooner termination of this Sublease, if Sublessee shall hold over and remain on the Subleased Premises, such holding over shall not be deemed to be an extension of this Sublease, but shall, to the extent permitted under the Lease, be deemed to create a tenancy-at-sufferance, and in addition to any rights Sublessor may have under this Sublease or the Lease in the event of a default, Sublessee shall be obligated to pay to Sublessor an amount equal to two (2) times the base monthly rent and additional rent payable by Sublessor under the Lease on the date before such hold over for each day that Sublessee remains in occupancy of the Subleased Premises. Notwithstanding the above, Sublessee shall indemnify and hold Sublessor harmless from any liability, loss, costs and expenses, including, but not limited to, reasonable attorneys' fees, arising out of such holding over by Sublessee.

15. Sublessee agrees to indemnify and hold Sublessor harmless against all loss, damage, liability, or expense arising out of injury to third parties or their property (i) caused by any breach or default by Sublessee of any covenant or obligation it has hereunder (including but not limited to all covenants or obligations of the tenant under the lease assumed by Sublessee pursuant to the terms of this Sublease), or (ii) caused by or in connection with anything owned or controlled by Sublessee, or (iii) resulting from any

act, failure to act, or negligence of Sublessee or its employees, agents or invitees, or (iv) resulting from any nuisance suffered on the Subleased Premises, except for damage or injury to third parties or property resulting from the proven negligence or misconduct of Sublessor. Sublessee further agrees to indemnify Sublessor and hold Sublessor harmless from all losses, damages, liabilities and expenses which Sublessor may incur, or for which Sublessor may be liable to Landlord, arising from the acts or omissions of Sublessee which are or are alleged to be defaults under the Lease or are the subject matter of any indemnity or hold harmless of Sublessor to Landlord under the Lease.

16. Sublessee shall allow Sublessor or its agents during the term, at reasonable times, to enter and view the Subleased Premises, to make repairs and alterations if it should elect to do so and to show the Subleased Premises to others at reasonable times.

17. (a) Sublessee represents that it has read and is familiar with the Lease. It is specifically understood and agreed that this Sublease and each and every provision hereof is and shall remain subject to the Lease and each and every provision thereof, and that in the event that the Lease shall terminate for any reason whatsoever, then, in that event this Sublease shall simultaneously terminate and neither party hereto shall thereby acquire any right or cause of action against the other party by reason of such termination.

(b) Except as otherwise specifically provided in this Sublease, the terms, provisions, covenants, rules and regulations, rights, obligations, remedies and agreements of the Lease are incorporated herein by reference with the same force and effect as if they were fully set forth herein except that any reference in the Lease to "Landlord", "Tenant" and "Premises" shall mean Sublessor, Sublessee and Subleased Premises, respectively, as such terms are used in this Sublease, and shall, as between Sublessor and Sublessee, constitute the terms of this Sublease except to the extent they do not relate to the Subleased Premises or are inapplicable, inappropriate, inconsistent with or modified by the provisions of this Sublease, and except that the time limits

contained in the Lease for the giving of notices, making of demands, or performing of any act, condition or covenant on the part of Subtenant as tenant under the Lease or for the exercise by Sublandlord as landlord under the Lease of any right, remedy, option, are changed for the purposes of incorporation herein by shortening the same in each instance by two (2) business days so that in each instance Subtenant shall have two (2) business days less time to observe or perform under this Sublease than Sublandlord has as tenant under the Lease. Notwithstanding anything herein contained, the only services or rights to which Sublessee is entitled hereunder are those to which Sublessor is entitled under the Lease. In all instances where consent of the "Landlord" is required by the Lease, for purposes of this Sublease consent of both Sublessor and Landlord shall be required, and in such instances, if Landlord's consent is obtained, Sublessor shall not unreasonably withhold, condition or delay its consent.

(c) Except to the extent that this Sublease provides for a conflicting or alternative term, covenant, condition or obligation, Sublessee covenants and agrees to comply with all of the terms, covenants, conditions and obligations of the Lease to be kept and performed on the part of the tenant thereunder insofar as they relate to the Subleased Premises. Sublessee shall not commit or permit to be committed any act or omission or allow any condition to exist which shall violate any term or condition of the Lease. Sublessee shall neither do nor permit anything to be done which would cause the Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in the landlord under the Lease, and Sublessee shall indemnify and hold Sublessor harmless from and against all claims, liabilities and damages of any kind whatsoever by reason of any breach or default on the part of Sublessee.

(d) To the extent that the Lease requires or obligates Landlord to maintain, repair, restore, or otherwise expend any monies for preserving and maintaining all or any portion of the Subleased Premises or to furnish any services to the Subleased

Premises, such obligation shall not pass to Sublessor by reason of this Sublease and shall remain with the Landlord.

(e) Sublessor hereby represents and warrants to Sublessee that it is not in default of any rental obligation under the Lease; and that to the best of its knowledge, (i) it is not in default under any other provision under the Lease, (ii) Landlord is not in default under any provision of the Lease and (iii) the Lease is in full force and effect in accordance with its terms.

(f) Sublessor agrees, upon receipt from Sublessee of written notice of any default, obligation or duty of Landlord under the Lease, to promptly notify Landlord of Sublessee's notice and to use its prompt and reasonable efforts to cause Landlord to rectify or fulfill any default, obligation or duty as listed in Sublessee's notice; provided, however that nothing contained in this Agreement shall require Sublessor to commence legal action or arbitration proceedings against Landlord unless Sublessee agrees to assume and pay all expenses associated with such action or proceeding in which case Sublessor shall commence such action or proceeding under the direction and control of Sublessee with counsel selected by Sublessee, who shall be reasonably satisfactory to Sublessor.

(g) As between the parties hereto only, in the event of a conflict between the terms of the Lease and the terms of this Sublease, the terms of this Sublease shall control only to the extent they are inconsistent with the terms of the Lease and their respective counterpart provisions in the Lease shall be excluded only to such extent. Notwithstanding anything herein contained, as between Sublessor and Sublessee, and for purposes of this Sublease, the following provisions of the Lease are hereby deleted: Sections 1.02, 1.03, 1.08, 1.09, 1.10, Article 2, Section 6.02, Article 7, Sections 11.01, 18.02, 21.04, 21.06, Article 22, Article 23, Sections 27.06, 27.12, 27.25, 27.26 and 27.27. Sublessor agrees to indemnify and hold Sublessee harmless against any liability, obligation, cost or expense asserted by Landlord against Sublessee arising

out of an obligation under the Lease that was not assumed or required to be performed by Sublessee hereunder.

18. Sublessee shall be in default hereunder upon the happening of any of the following events ("Events of Default"):

- (i) if Sublessee shall fail to make payment of rent or any installment thereof or any other sum required to be paid by Sublessee under this Sublease and such failure shall continue for ten (10) days after written notice to Sublessee; or
- (ii) if the leasehold interest of Sublessee shall be taken on execution or by other process of law which would permit a third party to have possession of the Subleased Premises; or
- (iii) if Sublessee shall be judicially declared bankrupt or insolvent according to law; or
- (iv) if any assignment shall be made of the property of Sublessee for the benefit of creditors; or
- (v) if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Sublessee's property by a court of competent jurisdiction; or
- (vi) if a petition shall be filed for the reorganization of Sublessee under any provisions of the Bankruptcy Code now or hereafter enacted and such proceeding is not dismissed within sixty (60) days after it is begun; or
- (vii) if Sublessee shall file a petition for such reorganization, or for arrangements under any provisions of the Bankruptcy Code now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payments of debts; or

- (viii) if the Subleased Premises shall be abandoned, deserted or vacated; or
- (ix) if Sublessee shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Sublessee, and such default shall continue for thirty (30) days after notice thereof in writing to Sublessee.

19. (a) Upon the occurrence of any one or more Events of Default, Sublessor may exercise any remedy against Sublessee which Landlord may exercise for default by Sublessor under the Lease.

(b) Sublessee shall pay and discharge all costs of Sublessor, including reasonable attorneys' fees, expenses and court costs, that shall arise from enforcing any of the terms, covenants and agreements contained in this Sublease.

20. Sublessee covenants with Sublessor that the failure of Sublessor to insist in any one or more instances upon the strict and literal performance of any of the covenants, terms or conditions of this Sublease, or to exercise any option of Sublessor herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant, term, condition or option, but the same shall continue and remain in full force and effect. The receipt by Sublessor of rent with knowledge of the breach of any covenant, term, condition or provision hereunder shall not be deemed to be a waiver of such breach, and no waiver by Sublessor of any such covenant, term, condition or provision, or of the breach thereof, shall be deemed to have been made by Sublessor unless expressly agreed to in writing by Sublessor. No acceptance of partial payment of rent or any other payments required hereunder shall be deemed to be in full satisfaction of the amount due unless agreed to in writing by Sublessor.

21. The parties agree that this Sublease shall not become effective for any purpose unless and until it and the Tenant Work have been consented to in writing by Landlord and by any other entities whose consent is required under the Lease ("Third

Parties"). Sublessor shall reasonably promptly after receipt of fully executed copies of this Sublease submit the same to Landlord and any Third Parties for its/their consent; provided, however, that Sublessor shall not be required to make any payments or commence any action or proceeding in order to obtain any such consent and shall not in any event be liable to Sublessee for any failure to obtain same. Sublessor shall use its best efforts to facilitate the obtaining of Landlord's consent to this Sublease and the Tenant Work as soon as possible. Sublessee shall fully cooperate with Sublessor and Landlord and any Third Parties in order to obtain the necessary consent(s) including, but not limited to, promptly supplying such information and/or documentation as Landlord and/or any Third Parties may request in connection therewith. If the consent of Landlord and that of any Third Parties is not obtained within forty-five (45) days after full execution and delivery of this Sublease (or if Sublessor exercises its option to extend the period within which such consent(s) must be obtained as noted below, within seventy-five (75) day after full execution and delivery of this Sublease) then either party may, upon written notice to the other, cancel this Sublease, provided the party wishing to cancel has fully complied with its agreements and obligations under this Section. Upon such cancellation Sublessor shall, so long as Sublessee has not occupied the Subleased Premises for any purposes, refund to Sublessee any item of rent or additional rent paid by Sublessee, and Sublessor and Sublessee shall be entirely relieved of any further obligations under this Sublease other than the terms and provisions of Paragraph 15 of this Sublease which shall survive such cancellation. Notwithstanding anything to the contrary herein contained, Sublessor shall have the unilateral right, at its option, to extend for an additional thirty (30) days the period for obtaining the necessary consent(s).

22. The respective successors and assigns of Sublessor and Sublessee, subject to the foregoing provisions as to transfers, assignments, insolvency or by operation of law or legal process, shall bear the burdens and enjoy the benefits of all of the covenants, terms, conditions, privileges and agreements contained in or acquired by

the provisions of this Sublease, the same as if such successors and assigns had been specifically mentioned in each and every case where Sublessor or Sublessee is mentioned.

23. All notices provided for hereunder shall be in writing and sent by express courier service or by registered or certified mail, return receipt requested, to the Sublessor courier service or by registered or certified mail, return receipt requested, to the Sublessor, c/o Viacom Realty Corporation, 1515 Broadway, New York, New York, 10036-5794, Attention: Mr. David H. Williamson, with a copy thereof similarly sent to Viacom Inc., 1515 Broadway, New York, New York, 10036-5794, Attention: General Counsel, and to the Sublessee at the Subleased Premises, Attention: Chief Executive Officer. Either party may at any time change the address for such notices by mailing to the other party as aforesaid a notice setting forth the changed address.

24. Sublessor and Sublessee each represent to the other that there was no real estate broker involved with respect to this transaction other than Insignia/ESG, Inc. ("IESG") and Williams Real Estate Co., Inc. ("Williams"). Sublessor and Sublessee hereby indemnify and hold each other harmless from and against any and all claims by any other broker or agent claiming by, through or under the indemnifying party with respect to this Sublease. Sublessor shall be responsible for payment of any commissions due IESG pursuant to a separate agreement between Sublessor and IESG, and IESG shall be responsible for payment of any commissions due Williams pursuant to a separate agreement between IESG and Williams.

25. Time shall be of the essence for the performance of each and every term, condition and covenant of this Sublease on the part of Sublessee or Sublessor to be performed.

26. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE SUBLEASED PREMISES ARE LOCATED EXCLUDING (TO THE

GREATEST EXTENT PERMITTED BY LAW) ANY RULE OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN SUCH STATE.

27. If any term or other provision of this Sublease is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Sublease shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Sublease so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

28. Each party represents and warrants to the other party that this Sublease has been duly authorized and the party signing on its behalf is so authorized to execute this Sublease.

29. This Sublease, together with any exhibits and schedules hereto, constitute the entire agreement of the parties hereto with respect to the subject matter thereof and supersede all prior agreements and undertakings, both written and oral, between the parties hereto with respect to the subject matter thereof. This Sublease may not be modified or amended except by a written agreement signed by the parties hereto. Any party to this Sublease may (a) waive any inaccuracies in the representations and warranties of another party contained herein or in any document delivered by another party pursuant hereto or (b) waive compliance with any of the agreements or conditions of another party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or

condition, of this Sublease. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

30. This Sublease may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

31. The parties hereto understand and agree that no contract or agreement providing for the transactions contemplated hereby shall be deemed to exist unless and until a definitive agreement has been executed and delivered. Each party hereto also agrees that unless and until a definitive agreement has been executed and delivered, neither party hereto will have any legal obligations of any kind whatsoever with respect to the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year first above written.

SUBLESSOR:
SONICNET LLC

BY: -----
Name: -----
Title: -----

SUBLESSEE:
BIGFOOT INTERACTIVE, INC.

BY: -----
Name: -----
Title: -----

EXHIBIT "A"

TENANT WORK

1. Creation of new entrance and reception.
2. Demolition of internal drywall partitions.
3. Paint and carpet of entire space.
4. Electrical modifications, as required.
5. Modifications to HVAC distribution system, as required.

AGREEMENT OF LEASE dated as of February 10, 2006 between TM PARK AVENUE LLC, a New York Limited Liability Company having an office at 315 Park Avenue South, New York, New York 10010 (hereinafter called "Landlord") and Epsilon Interactive, LLC a Limited Liability Company organized under the laws of Delaware, having offices at 315 Park Avenue South, 18th Floor, New York, NY 10010 (hereinafter called "Tenant").

W I T N E S S E T T H:

ARTICLE 1

Premises, Term and Rent; Condition of Premises; Landlord's Work; Etc.

Section 1.01. Landlord leases to Tenant, and Tenant hires from Landlord, subject to any ground leases and/or underlying leases and/or mortgages as hereinafter provided in Section 24.01, and upon and subject to the covenants, agreements, terms, provisions and conditions of this lease, for the term hereinafter stated, that portion of the building (hereinafter called the "Building") known as 315 Park Avenue South, New York, New York, consisting of the easterly portion of the nineteenth floor as set forth and designated as "Epsilon Space" on the diagram marked Exhibit A, attached hereto which diagram is an integral part of this lease (except for common areas, including, without limitation, areas devoted to elevator shafts and conduits for mechanical systems, which common areas Tenant shall have non-exclusive right to use with other Building occupants). Such leased Premises, together with all fixtures, equipment, installations and appurtenances which at the commencement of or during the term of this lease are thereto attached (except items not deemed to be included therein and removable by Tenant as provided in Article 4 of this lease) are hereinafter called the "Premises". The plot of land on which the Building is erected is hereinafter called the "Land". This agreement is called the "Lease".

Section 1.02. This lease shall commence on February 15th, 2006 (The "Commencement Date") unless the Commencement Date is delayed as set forth herein and shall expire, unless same shall sooner cease or be terminated as hereinafter provided or pursuant to law, on August 31, 2008 (such term being hereinafter referred to as the "Term"). The actual Commencement Date shall be five (5) days after the Landlord provides written notice to the Tenant that it has substantially completed the Landlord's Work set forth in Section 27.22 and described in Exhibit B to this lease. Substantially completed shall mean the Landlord has completed its work according to the agreed upon specifications and according to any applicable codes.

Section 1.03. The rent reserved under this lease for the term shall be a fixed annual rent (hereinafter called the "Fixed Rent") as follows:

(a) At the annual rate of \$420,000 per annum for the period from and including February 15th, 2006 to and including August 31, 2008 and at such rate to be paid in

equal monthly installments of \$35,000 each, in advance, on the first day of each and every calendar month during the entirety of such period (plus such Additional Rent and other charges as shall become due and payable hereunder). The rent for the period February 15, 2006 through March 31, 2006 which is equal to \$52,500 shall be paid to Landlord upon execution of this lease. Should the Commencement Date be a date later than the February 15, 2006 then the cost paid under the preceding sentence shall be credited in part or whole, as the case may be, to the following month's rent payment, which shall be adjusted according to the actual Commencement Date.

Section 1.04. Tenant agrees promptly to pay the Fixed Rent, Additional Rent and other charges herein reserved as and when the same shall become due and payable, without demand therefor, and without any set-off or deduction whatsoever except as expressly provided in the Lease and to keep, observe and perform, and to permit no violation of, each and every of the covenants, agreements, terms, provisions and conditions herein contained on the part and on behalf of Tenant to be kept, observed and performed. Any rental payment that is due under this Lease shall, if not received by Landlord by the tenth day of the month bear five (5%) percent surcharge for the late payment.

Section 1.05. Additional Rent shall mean all charges owed pursuant to Sections 16.02, 16.04, 19.01, 21.04, 23.02, 23.03 and 23.04 and such other Sections of similar purport.

Section 1.06. If, by reason of any of the provisions of this lease, the term hereof expires on any date other than the last day of a calendar month (except if the term terminates by reason of Tenant's default hereunder), the Fixed Rent and Additional Rent for such calendar month shall be equitably prorated. If the Commencement day of the Lease is any day other than the first of a calendar month, the Fixed and Additional Rent for that first month shall be equitably prorated.

Section 1.07. For all purposes hereof, it is agreed between the Landlord and the Tenant that the Premises consists of 12,000 square feet.

Section 1.08. Tenant agrees to accept possession of the Premises in its "as is" physical condition and state of repair, upon substantial completion of the Landlord's Work as set forth in Section 27.22 and described in Exhibit B.

ARTICLE 2

Rent after lease expiration; Security Deposit

Section 2.01. If Tenant holds over beyond the Term, Tenant shall pay Landlord as use and occupancy, during the period that Tenant holds over an amount equal the sum

of one hundred fifty (150%) percent of the Fixed and one hundred (100%) percent of the Additional Rent.

Section 2.02. (a) Tenant shall deposit with Landlord upon the execution of this Lease \$35,000 as security for its obligations under this lease.

ARTICLE 3

Use of Premises

Section 3.01. The Premises shall be used and occupied for executive and general offices, by and for Tenant, or affiliate of Tenant and by and for permitted assignees, subtenants and licensees and uses ancillary thereto in connection with Tenants' business and for no other purpose. Tenant agrees that it shall not use the Premises or any part thereof, or suffer or permit the Premises or any part thereof to be used, for any purposes other than as set forth in the first sentence of this Section 3.01.

Section 3.02. Tenant agrees that it shall not use or suffer or permit the use of the Premises or any part thereof in any way which would violate any of the covenants, agreements, terms, provisions and conditions of this lease or for any unlawful purposes or in any unlawful manner and Tenant shall not suffer or permit the Premises or any part thereof to be used in any manner or anything to be done therein or anything to be brought into or kept therein which, in the reasonable judgment of Landlord, would in any way impair or unreasonably interfere with any of the Building systems or the proper and economic heating, cleaning, air conditioning or other similar servicing of the Building or the Premises (to the extent that same or any of same are to be furnished to the Premises), or impair or unreasonably interfere with the use of any of the other areas of the Building by, or occasion discomfort, inconvenience or annoyance to, any of the other tenants or occupants of the Building.

Section 3.03. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, and if the failure to secure such license or permit might or would, in any way, affect Landlord, then Tenant at Tenant's sole cost and expense, shall duly procure the same and make the same available to inspection by Landlord. Tenant, at Tenant's sole cost and expense, shall at all times, comply with the requirements of each such license or permit. Notwithstanding anything in this lease to the contrary, Tenant shall not have any obligation to secure, or pay for, any license or permit for work which Landlord is responsible to perform in or about the Premises or the Building.

Section 3.04 Landlord represents that the Certificate of Occupancy allows for use of the Premises as general offices.

ARTICLE 4

Appurtenances, Etc., Not to be Removed

Section 4.01. All fixtures, equipment, installations and appurtenances attached to or built into the Premises (hereinafter severally and collectively called, in this Section 4.01, "Appurtenances" other than trade fixtures and equipment) at the commencement of or during the term, whether or not furnished or installed at the expense of Tenant or by Tenant, shall be and remain part of the Premises and be deemed the property of Landlord and shall not be removed by Tenant, except as otherwise expressly provided in this lease. Without limiting the generality of the next preceding sentence, all electric, plumbing, heating, sprinkler, dumbwaiter and elevator systems, fixtures and outlets, venetian blinds, partitions, railings, gates, doors, stairs, paneling, cupboards (whether or not recessed in paneling), molding, shelving, radiator enclosures, cork, rubber, tile and composition floors, and ventilating, silencing, air conditioning and cooling equipment shall be deemed to be Appurtenances, whether or not attached to or built into the Premises. Anything hereinbefore in this Article 4 contained to the contrary notwithstanding, any Appurtenances furnished and installed in any part of the Premises (whether or not attached thereto or built therein) at the sole cost and expense of Tenant may be removed from the Building by Tenant prior to the expiration of the term hereof. Tenant shall repair and restore, in a good and workmanlike manner, substantially to its condition prior to the furnishing or installation of any such Appurtenances any damages to the Premises or the Building caused by such removal. If any Appurtenance which as aforesaid may be removed from the Building by Tenant is not removed by Tenant from the Building within the time above specified therefor, deemed that the same has been abandoned by Tenant to Landlord. Tenant shall not be responsible to remove any Appurtenances which it has notified the Landlord in writing prior to vacating the Premises that it is abandoning.

Section 4.02. All the perimeter walls of the Premises, any balconies, terraces or roofs adjacent to the Premises, and any space in and/or adjacent to the Premises presently used for shafts, stairways, stacks, pipes, vertical conveyors, mail chutes, pneumatic tubes, conduits, ducts, electric or other utilities, rooms containing elevator or air conditioning machinery and equipment, sinks, or other Building facilities, and the use thereof, as well as reasonable access thereto through the Premises for the purpose of such use and the operation, improvement, replacement, addition, repair, maintenance and/or decoration thereof, are expressly reserved to Landlord; provided, however, that Tenant may decorate the interior sides of the perimeter walls of the Premises.

ARTICLE 5

Various Covenants

Section 5.01. Tenant represents, warrants and covenants that Tenant will:

(a) Subject to the provisions of Articles 6, 7 and 8 of this lease, take good care of the Premises, and, at Tenant's sole cost and expense, (i) make all interior non-structural repairs (other than repairs occasioned by acts of Landlord, its agents, servants or employees, tenants or other occupants of the building) thereto as may be required to keep the Premises in good order and condition, and (ii) pay to Landlord the expense of making good any injury, damage or breakage to the Premises done by or on behalf of Tenant at the expiration of the Lease except if required by municipal law or regulation to be repaired at an earlier date.

(b) Faithfully observe and comply with the rules and regulations annexed hereto and such additional reasonable rules and regulations of general applicability to the Building as Landlord hereafter at any time or from time to time may make and may communicate in writing to Tenant, provided, however, that (i) in the case of any conflict between the provisions of this lease and any such rule or regulation, the provisions of this lease shall control, (ii) nothing contained in this lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or the terms, covenants or conditions in any other lease as against any other tenant.

(c) Permit Landlord and any mortgagee of the Building and/or the Land or of the interest of Landlord therein and any lessor under any ground or underlying lease, and their representatives, to enter the Premises at all reasonable hours, using best efforts to give Tenant 24-hours' notice, for the purposes of inspection, or of making necessary or required repairs, replacements or improvements in or to the Building or equipment, or of making repairs in or to the Premises, or of complying with all laws, orders and requirements of governmental or other authority or of exercising any right reserved to Landlord by this lease (including the right during the progress of such repairs, replacements or improvements or while performing work and furnishing materials in connection with compliance with any such laws, orders or requirements, to keep and store within the Premises all necessary materials, tools and equipment to the extent necessary and that no responsible alternate space is available to Landlord. Performance of such work shall be done in a manner which attempts to minimize disruption to Tenant's business in and access to the Premises).

(d) Make no claim against Landlord or any lessor under any ground or underlying lease for any loss of or damage to any property of Tenant or others by theft or any injury or damage to Tenant or other persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Building or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature, or any such damage caused by other tenants or persons in the Building or caused by construction of any private work unless caused by or due to the willful acts or omissions or the negligence of Landlord, its agents, servants, or employees or contractors. No property other than such as might normally be brought upon or kept in the Premises as an incident to the reasonable use of the Premises for the purposes specified in this lease shall be brought upon or kept in the Premises.

(e) Make no alterations, decorations, installations, repairs, additions, improvements or replacements (hereinafter collectively called "Tenant Changes") in, to or about the Premises except as provided in this clause (e):

(i) No Tenant's Changes costing more than \$50,000.00 shall be made without Landlord's prior consent, and then only by contractors or mechanics approved by Landlord, such consent and approval to changes and contractors not to be unreasonably conditioned withheld or delayed. All contractors or mechanics, no matter the amount of the contract, shall provide the Landlord, prior to commencing work, with a copy of their worker's compensation certificate and their liability insurance policy naming the Landlord as an insured.

(ii) Tenant's Changes shall be done at Tenant's sole cost and expense and at such times, and in such manner so as to not unreasonably discomfort, inconvenience or annoy Landlord or any other tenant of the Building (it being acknowledged that the performance of Tenant's Changes may involve some such discomfort, inconvenience or annoyance);

(iii) Prior to the commencement of any Tenant's Change expected to cost more than \$50,000.00, Tenant shall notify Landlord that it intends to undertake Tenant's Changes and shall generally describe to Landlord the nature of any such proposed Tenant's Changes, including Tenant's reasonably estimated cost therefor; within 10 days after any such notice, Landlord shall advise Tenant whether or not it shall require the submission of plans and specifications therefor, for Landlord's approval; if Landlord advises Tenant within such time that it shall not require such submission or if Landlord fails to advise Tenant within such time whether or not it shall require such submission, such submission shall not be required; if Landlord advises Tenant within such time that such submission shall be required, then prior to the commencement of such proposed Tenant's Changes, Tenant shall submit to Landlord, for Landlord's approval, plans

and specifications (to be prepared by and at the sole cost and expense of Tenant) of such proposed Tenant's Changes in detail reasonably satisfactory to Landlord; and in any case in which Landlord requires the submission of any such plans and specifications, (A) the proposed Tenant's Changes provided for in such plans and specifications shall not be undertaken until Landlord has approved same, and such proposed Tenant's Changes shall not be continued pursuant to amendments or additions to such plans and specifications until Landlord has approved such amendments or additions, and (B) Landlord's approval shall be deemed given if Landlord has not given Tenant notice of objection to such plans and specifications, or to such amendments or additions, as the case may be, within fifteen (15) days after same, respectively, have been submitted to Landlord, such notice of objection to specify in reasonable detail the nature thereof;

(iv) In no event shall any material or equipment (except for communication, word processing and computer equipment or any other equipment used in Tenant's normal operations) be incorporated in or to the Premises in connection with any such Tenant's Changes which is subject to any lien, security agreement, charge, mortgage or other encumbrance of any kind whatsoever or is subject to any conditional sale or other similar or dissimilar title retention agreement;

(v) Any mechanic's lien filed against the Premises or the Building for work done for, or claimed to have been done for, or materials furnished to, or claimed to have been furnished to, Tenant shall be discharged by Tenant within 30 days after Tenant receives notice of the same, at Tenant's expense, by filing the bond required by law or otherwise; and

(vi) All Tenant's Changes shall at all times comply with (A) laws, rules, orders and regulations of governmental authorities having jurisdiction thereof, (B) reasonable rules and regulations of Landlord, and (C) to the extent required by Section 5.01(e), plans and specifications as aforesaid, or amendments or additions thereto as aforesaid, approved or deemed approved by Landlord.

(f) Not violate, or permit the violation of, any condition imposed by the standard fire insurance policy issued for office buildings in the County or the City of New York and not to do anything or permit anything to be done, or keep anything or permit anything to be kept, in the Premises, which would increase the fire or other casualty insurance rate on the Building or the property therein, or which would result in insurance companies of good standing refusing to insure the Building or any such property in amounts and against risks as reasonably determined by Landlord. If by reason of failure of Tenant to comply with the provisions of this paragraph including but not limited to, the use to which Tenant puts the Premises, the fire insurance rate shall at the beginning of this lease or any time thereafter be higher than it otherwise would be, then Tenant shall reimburse Landlord, as Additional Rent hereunder, for that part of all fire insurance premiums thereafter paid by Landlord which shall have been charged solely because of such failure or use by Tenant, and shall make such reimbursement upon the first day of the month following such outlay by Landlord. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" rate for the Building or the Premises issued by an organization

making fire insurance rates for the Premises, shall be conclusive evidence of charges in the fire insurance rate then applicable to the Premises.

(g) Permit Landlord, at reasonable times and upon one day's prior notice, to show the Premises to any lessor under any ground or underlying lease, or any lessee or mortgagee, or any prospective purchaser, lessee, mortgagee, or assignee of any mortgage of the Building and/or the land upon which the Building is situate or of Landlord's interest therein, and their representatives, and during the period of nine months next preceding the date of expiration of the term thereof with respect to any part of the Premises similarly show any part of the Premises, at reasonable times, to any person contemplating the leasing of all or a portion of the same. Landlord will use best efforts not to disrupt the business activities of the Tenant during such showings.

(h) At the end of the term, quit and surrender to Landlord the Premises broom-clean and in good order and condition, reasonable wear and tear, obsolescence and damage by the elements excepted, and Tenant shall remove all of its personal property, except as may be otherwise provided in Article 4 hereof. Any personal property which shall remain in the Premises after the expiration or termination of the term of this lease shall be deemed to have been abandoned, and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit; provided, however, that, notwithstanding the foregoing, Tenant will, upon request of Landlord made not later than 30 days prior to the expiration or not later than the day before any termination of the term hereof, promptly remove from the Building any such personal property at Tenant's own cost and expense.

(i) At any time and from time to time, but not more than twice per year, upon not less than fifteen (15) days' prior notice by Landlord to Tenant, execute, acknowledge and deliver to Landlord, or to anyone Landlord shall designate, a statement of Tenant (or if Tenant is a corporation, an appropriate officer of Tenant) in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect and modified and stating the modifications), specifying the dates to which the Fixed Rent, Additional Rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate Landlord is in default in performance of any provision of this lease and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement so delivered may be relied upon by any lessor under any ground or underlying lease, or any lessee or mortgagee, or any prospective purchaser, lessee, mortgagee, or assignee of any mortgage, of the Building and/or the Land or Landlord's interest therein.

(j) Not move any safe, heavy machinery, heavy equipment, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which shall not be unreasonably withheld or delayed. If such safe, machinery, equipment, freight of bulky matter or fixtures require special handling, Tenant agrees to employ only persons holding a Master Rigger's License to do said work, and that all work in connection therewith shall comply with the applicable

laws, orders and regulations of all governmental authorities having or asserting jurisdiction over the Premises or the Building. Notwithstanding the consent of Landlord and subject to the terms of Sections 8.03 and 8.04. Tenant shall indemnify Landlord for, and hold Landlord harmless and free from, damages sustained by persons or property and for any damages or monies paid out by Landlord in settlement of any claims or judgments, as well as for all reasonable costs and expenses and reasonable attorneys' fees incurred in connection with Tenant's moving such heavy equipment, and occasioned by the acts of Tenant, its agents, servants, employees, contractors, visitors or invitees and all costs reasonably incurred in repairing any such damage to the Building or appurtenances.

(k) Unless attributable to the negligence or misconduct of Landlord, its officers, directors, agents and employees. Indemnify, and save harmless, Landlord and any mortgagee and any lessor under any ground or underlying lease, and their respective officers, directors, agents and employees, from and against any and all liability (statutory or otherwise), claims, actions, suits, demands, damages, judgments, costs, interest and expenses of any kind or nature of anyone whomsoever (including, but not limited to, reasonable counsel fees and disbursements incurred in the defense of any action or proceeding), to which they may be subject or which they may suffer by reason of, or by reason of any claim for, any injury to, or death of, any person or persons or damage to property (including any loss of use thereof) arising from or in connection with the use of the Premises or from any work, installation or thing whatsoever done, by Tenant, its employees, contractors, agents, visitors, invitees, subtenants or licensees in the Premises during the term of this lease or arising from any condition of the Premises due to or resulting from any default by Tenant in the performance of Tenant's obligations under this lease or from any act, omission, or negligence of Tenant or any of Tenant's officers, directors, agents, contractors, employees, subtenants, licensees or invitees.

(l) Not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned, in violation of Section 202 of the Labor Law.

ARTICLE 6

Changes or Alterations by Landlord; Condition of Premises

Section 6.01. Landlord reserves the right to make such changes, alterations, additions, improvements, repairs or replacements in or to the Building and the fixtures and equipment thereof, as well as in or to the street entrances, halls, passages, elevators, escalators, stairways and other parts thereof, all as Landlord may reasonably deem necessary or desirable providing there shall be no substantial diminution of building services to the Premises or of ingress or egress to and from the Premises. Landlord reserves the right to erect, maintain and use pipes, ducts and conduits in and through the Premises, all as Landlord may reasonably deem necessary or desirable. Any such changes or the like referred to in the two immediately preceding sentences shall not unreasonably interfere with Tenant's use or occupancy of the Premises, or materially reduce the usable area of the Premises, (beyond 1% of the Premises) any damage to the Premises resulting in the course of any such work shall be corrected promptly at the sole cost and expense of Landlord to the extent such correction is not inconsistent with the change or the like, and, with respect to the

installation of pipes, ducts and conduits, same shall be concealed behind, beneath or within partitioning, columns, ceilings or floors, to the maximum extent possible, or completely furred at points immediately adjacent to any such partitioning, columns or ceilings, and same shall not materially reduce the usable area of the Premises. (beyond one (1%) percent of the Premises) Nothing contained in this Article 6 shall relieve Tenant of any duty, obligation or liability of Tenant under this Lease with respect to making any repair, replacement or improvement or complying with any law, order or requirement of any governmental or other authority.

Section 6.02 The Landlord will deliver the Premises to the Tenant vacant and free of tenancies on the Commencement Date. If Landlord fails to deliver Premises to Tenant by April 1, 2006, Tenant shall have the right to terminate this lease by written notice which shall be given no later than April 10, 2006 and upon receipt of such notice, Landlord shall refund to Tenant all sums paid to Landlord under this lease.

Section 6.03. Landlord reserves the right to name the Building and to change the name or address of the Building at any time and from time to time..

ARTICLE 7

[Intentionally Omitted]

ARTICLE 8

Damage by Fire, Etc.

Section 8.01. If any part of the Premises shall be damaged by fire or other casualty, Tenant shall give prompt notice thereof to Landlord and Landlord shall proceed with reasonable diligence, and in a manner consistent with the provisions of any ground or underlying lease and any mortgage affecting the same or the Land and/or the Building or Landlord's interest therein, to repair such damage, and if any part of the Premises shall be rendered untenable by reason of such damage, during the period that the Premises shall be rendered untenable by reason of such damage, the Fixed Rent and Additional Rent payable hereunder shall be abated proportionately for the period from the date of such damage to the date when the Premises or the damaged portion thereof shall have been made tenantable and Tenant has been given notice at least ten (10) days prior or to such earlier date upon which the full term of this lease shall expire or terminate, unless such fire or other casualty resulted from the negligence of Tenant or the employees, licensees or invitees of Tenant. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or the repair thereof, unless such inconvenience, annoyance or injury is occasioned by the acts or

omissions of Landlord, its agents, servants, employees, contractors, visitors or invitees. Tenant understands that Landlord will not carry insurance of any kind on Tenant's Property, which term, as used herein, means, Tenant's goods, furniture or furnishings or any fixtures, equipment, improvements, installations or appurtenances removable by Tenant as provided in this lease, and that Landlord shall not be obligated to repair any damage thereto or replace the same. In the event that Tenant cannot move back into at least eighty (80%) percent of its space within 60 days, which period may be extended for another 60 days as required by municipal agencies, Tenant may terminate this lease unless Landlord has provided other space in the Building for Tenant to occupy comparable in building size and quality. Landlord shall within ten (10) days of casualty notify Tenant of estimated time to restore Premises, if it will take more than ninety (90) days to restore or if damage occurs in the last year of the Lease term, Tenant may terminate Lease.

Section 8.02. Anything contained in Section 8.01 to the contrary notwithstanding, if substantial alteration or reconstruction of the Building (i.e. any alteration or reconstruction costing ten (10%) percent of the then value of the Building) shall, in the reasonable opinion of Landlord, be required as a result of damage by fire or other casualty, then this lease and the term and estate hereby granted may be terminated by Landlord by its giving to Tenant, within 30 days after the date of such damage, notice specifying a date, not less than 90 days after the giving of such notice, for such termination. In the event of the giving of such notice of termination, this lease and the term and estate hereby granted shall expire as of the date specified therefor in such notice with the same effect as if such date were the date hereinbefore specified for the expiration of the full term of this lease, and the Fixed Rent and Additional Rent payable hereunder shall be apportioned as of such date of termination, subject to abatement, if any, as and to the extent provided in Section 8.01 hereof. At such time of termination Landlord will return any portion of Tenant's Security Deposit minus reasonable reserves for Additional Rent that has not been previously applied to Tenant's obligations under the Lease.

Section 8.03. Each party agrees to endeavor to have included in each of its fire insurance policies (insuring the Building and Landlord's property therein, in the case of Landlord, and insuring Tenant's property in the Premises, in the case of Tenant, against loss, damage or destruction by fire or other casualty therein covered) a waiver of the insurer's right of subrogation against the other party, or, if such waiver should be unobtainable or unenforceable, (a) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (b) if, any other form of permission shall not be, or shall cease to be, obtainable (i) without additional charge or (ii) at all, the insured party shall so notify the other party promptly after learning thereof. In the first such case, if the other party shall so elect and shall pay the insurer's additional charge therefor, such waiver, agreement or permission shall be included in the policy.

Section 8.04. Each party hereby releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property occurring during the term of this lease to the extent to which it is insured for such loss, damage or destruction under a policy or policies containing a waiver of subrogation or permission to release liability, as provided in Section 8.03

hereof. If, notwithstanding the recovery of insurance proceeds by either party for such loss, damage or destruction of its property, the other party is liable to the first party with respect thereto or is obligated under this lease to make replacement, repair or restoration or payment, then (provided the first party's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the first party's insurance against such loss, damage or destruction shall be offset against the second party's liability to the first party thereof, or shall be made available to the second party to pay for replacement, repair or restoration, as the case may be. Nothing contained in this Section 8.04 shall relieve either party of any duty imposed elsewhere in this lease to repair, restore or rebuild or to nullify any abatement of rent provided for elsewhere in this lease.

Section 8.05. This lease shall be considered an express agreement governing any case of damage to or destruction of the Building or any part thereof by fire or other casualty, and Section 227 of the Real Property Law of the State of New York providing for such a contingency in the absence of express agreement, and any other law of like import now or hereafter in force, shall have no application in such case.

ARTICLE 9

Condemnation

Section 9.01 In the event that the whole of the Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use, this lease and the term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title. In the event that only a non-material part of the Premises (i.e. less than 15%) shall be so condemned or taken, then, effective as of the date of vesting of title, the Fixed Rent and Additional Rent hereunder shall be abated in an amount thereof apportioned according to the area of the Premises so condemned or taken. In the event that only a part of the Premises shall be so condemned or taken, then, Landlord may, at Landlord's option, terminate this lease and the term and estate hereby granted as of the date of such vesting of title by notifying Tenant of such termination within 90 days following the date on which Landlord shall have received notice of vesting of title. In the event that any portion of the Premises shall be so condemned or taken, then, Tenant, at Tenant's sole option, may terminate this lease and the term and estate hereunder granted as of the date of such vesting of title by notifying Landlord of such termination within 90 days following the date on which Tenant shall have received notice of vesting of title. If Tenant do not elect to terminate this lease, as aforesaid, this lease shall be and remain unaffected by such condemnation or taking, except that the Fixed Rent and Additional Rent payable hereunder shall be abated to the extent, if any, hereinbefore provided in this Article 9. In the event that only a part of the Premises shall be so condemned or taken and this lease and portion of the Premises are not terminated as hereinbefore provided, Landlord will, with reasonable diligence and at its expense, restore the remaining portion of the Premises as nearly as practicable to the same condition as it was in prior to such condemnation or taking, however, Landlord shall not be obligated to repair any damage to Tenant's Property or replace the same.

Section 9.02. In the event of a termination of this lease pursuant to Section 9.01, this lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the date hereinbefore set for the expiration of the full term of this lease, and the Fixed Rent and Additional Rent payable hereunder shall be apportioned as of such date. At such time of termination Landlord will return any portion of Tenant's Security Deposit minus reasonable reserves for Additional Rent that has not been previously applied to Tenant's obligations under the Lease.

Section 9.03. In the event of any condemnation or taking hereinbefore mentioned of all or a part of the Building, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this lease in Tenant, and Tenant assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, Tenant not being entitled to receive any part of such award. The foregoing shall not prohibit Tenant's independent claim for the value of Tenant's trade fixtures and moving expenses and any other claim permitted under law.

Section 9.04 It is expressly understood and agreed that the provisions of this Article 9 shall not be applicable to any condemnation or taking for governmental occupancy for a limited period.

ARTICLE 10

Compliance with Laws

Section 10.01. Tenant, at Tenant's sole cost and expense, shall comply with all laws and ordinances, and all rules, orders and regulations of all governmental authorities and of all insurance bodies, at any time duly issued or in force, applicable to the Premises or any part thereof or to Tenant's use thereof, except that Tenant shall not hereby be under any obligation to comply with any law, ordinance, rule, order or regulation requiring any structural alteration of or in connection with the Premises (including without limitation, any alteration of or to the electricity, plumbing, HVAC and sprinkler systems), unless such alteration is required by reason of a condition which has been created by, or at the instance of Tenant, or is attributable to any use to which Tenant puts the Premises, if same is not permitted by the terms of this lease, or is required by reason of a breach of any of Tenant's covenants and agreements hereunder. Where any structural alteration of or in connection with the Premises is required by any such law, ordinance, rule, order or regulation, and, by reason of the express exception herein above contained, Tenant is not under any obligation to make such alteration, then Landlord shall make such alteration and pay the cost thereof, unless the reasonable estimated cost of such alteration is greater than \$200,000.00 or more in which case Landlord shall have the option of either making such alteration at its own expense or terminating this lease and the term and estate hereby granted by giving to Tenant not less than 120 days' prior notice

of such termination, provided, however, that if within 15 days after the giving by Landlord of its notice of termination as aforesaid, Tenant shall give notice to Landlord stating that Tenant elects to make such alteration at the sole cost and expense of Tenant, then such notice of termination shall be ineffective provided that Tenant, at Tenant's sole cost and expense, shall concurrently with the giving of such notice to Landlord execute and deliver to Landlord Tenant's written undertaking, with a surety and in form and substance reasonably satisfactory to Landlord, obligating Tenant to promptly and duly make such alteration in a manner reasonably satisfactory to Landlord and to save Landlord harmless from any and all costs, expenses, penalties and/or liabilities (including, but not limited to, accountants' and attorneys' fees) in connection therewith or by reason thereof; and Tenant covenants and agrees that, after so electing to make any such alteration, Tenant will, at Tenant's sole cost and expense, and in compliance with all the covenants, agreements, terms, provisions and conditions of this lease, including but not limited to, Section 5.01(b) hereof, make such alteration and Tenant, at Tenant's sole cost and expense, will promptly and duly perform all the conditions of such undertaking which shall be deemed to constitute provisions of this lease to be kept or performed on the part of Tenant with the same force and effect as if same had been set forth herein.

Section 10.02. In the event that a notice of termination shall be given by Landlord under the provisions of this Article 10 and such notice shall not become ineffective as hereinbefore provided, this lease and the term and estate hereby granted shall expire as of the date specified therefore in such notice with the same effect as if that were the date hereinbefore set for the expiration of the full term of this lease, and the Fixed Rent and Additional Rent payable hereunder shall be apportioned as of such date of termination. In addition, Landlord will return any portion of Tenant's Security Deposit minus reasonable reserves for Additional Rent that has been previously applied to Tenant's obligations under the Lease.

ARTICLE 11

Notices

Section 11.01. (A) Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications given or required to be given under this Lease ("Notice(s)") shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (against a signed receipt) or if deposited in a securely fastened, postage prepaid envelope in a depository that is regularly maintained by the U.S. Postal Service, sent by registered or certified mail (return receipt requested) and in either case addressed:

if to Tenant, Attn: Chief Financial Officer (a) at Tenant's address set forth in this Lease, or (b) at any place where Tenant or any agent or employee of Tenant may be found if given subsequent to Tenant's vacating, deserting, abandoning or surrendering such address, with a copy to Att: Legal Counsel, Epsilon 2410 Gateway Drive, Irving, Texas 75063 or if to Landlord, at Landlord's address set forth in this Lease, Attn: Joseph Mizrachi, with a copy to Raphael and Marks, Attn: Stephen M. Raphael, at 315 Park Avenue South, 19th Floor, New York, NY 10010.

(c) any Mortgagee who may have requested the same, by Notice given in accordance with the provisions of this Article 11, at the address designated by such Mortgagee or to such other address(es) as either Landlord or Tenant may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this Article 27.

(B) Notices shall be deemed to have been rendered or given (a) on the date delivered, if delivered by hand, or (b) three (3) Business Days after mailing, if mailed as provided in Section 11.01(A). Notice given by counsel for either party on behalf of such party or by the Manager or Managing Agent on behalf of Landlord shall be deemed valid notices if addressed and sent in accordance with the provisions of this Article. However, all default notices shall be sent by either the Landlord or its attorney.

Section 11.02 Notwithstanding the provisions of Section 11.01, Notices requesting services for Overtime Periods pursuant to Section 16.04 may be given by delivery to the Building superintendent or any other person in the Building designated by Landlord to receive such Notices, and bills may be rendered by delivering them to the Premises without the necessity of a receipt.

ARTICLE 12

Damage to and Defects in Building Equipment and Systems

Section 12.01. Tenant shall give Landlord prompt notice of any damage to, or defective condition in, any part or appurtenance of the Building's plumbing, electrical, heating, air conditioning or other equipment or systems serving, located in, or passing through the Premises of which Tenant is aware. If such damage or defective condition was caused by, or resulted from the improper use by, Tenant or by the employees, agents, licensees or invitees of Tenant, all costs and expenses associated with the repair shall be paid by Tenant. Tenant shall not be entitled to claim any damages arising from any such damage or defective condition unless the same shall have been caused by the intentional act or omission or the negligence of Landlord or its servants, contractors, visitors, employees, agents, licensees or invitees in the operation or maintenance of the Premises or the Building or the same shall not have been repaired by Landlord with reasonable diligence after notice thereof from Tenant to Landlord; nor shall Tenant be entitled to a claim of eviction, real or constructive by reason of any such damage or defective condition.

ARTICLE 13

Defaults

Section 13.01. The following are Acts of Default under this lease :

(a) Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition under any bankruptcy or insolvency law shall be filed against Tenant and such involuntary petition is not dismissed within 60 days after the filing thereof,

(b) if a petition is filed by or against Tenant under the reorganization provisions of the United States Bankruptcy Code (the "Bankruptcy Code") or under the provisions of any law of like import, unless such petition under said reorganization provisions be one filed against Tenant which is dismissed within 120 days after its filing,

(c) if Tenant shall file a petition under the arrangement provisions of the Bankruptcy Code or under the provisions of any law of like import,

(d) if a permanent receiver, trustee or liquidator shall be appointed for Tenant or of or for the property of Tenant, and such receiver, trustee or liquidator shall not have been discharged within 160 days from the date of his appointment,

(e) if Tenant shall default in payment of any Fixed Rent or Additional Rent or any other charge payable hereunder by Tenant to Landlord on any date upon which the same becomes due, and such default shall continue for ten (10) days after the notice of such default.

(f) if Tenant shall default in the due keeping, observing or performance of any covenant, agreement, term, provision or condition of Article 3 or Article 26 hereof on the part of Tenant to be kept, observed or performed and such default shall continue and shall not be remedied by Tenant within ten (10) business days after Landlord shall have given to Tenant a notice specifying the same.

(g) if Tenant shall default in the keeping, observing or performance of any covenant, agreement, term, provision or condition of this lease on the part of Tenant to be kept, observed or performed (other than a default of the character referred to in clauses (e) or (f) of this Section 1301), and if such default shall continue and shall not be remedied by Tenant within twenty (20) days after Landlord shall have given to Tenant a notice specifying the same, or, in the case of such a default which for causes beyond Tenant's control cannot with due diligence be cured within said period of 20 days, if Tenant (i) shall not, promptly upon the giving of

such notice, notify Landlord of Tenant's intention to take all steps necessary to remedy such default with due diligence, and (ii) shall not duly institute and thereafter diligently prosecute to completion all steps necessary to remedy the same.

(h) if any event shall occur or any contingency shall arise (except as expressly permitted by this lease) whereby this lease or the estate hereby granted or the unexpired balance of the term hereof would, by operation of law or otherwise, devolve upon or pass to any firm, association, corporation, person or entity other than Tenant (except as expressly permitted by this lease).

In the event that any of The Acts of Default in Sections 13.01(a)-(h) occur, Tenant shall be in default of this lease. Landlord may give to Tenant a notice of intention to end the term of this lease at the expiration of 10 days from the date of the giving of such notice, and, in the event such notice is given, this lease and the term and estate hereby granted shall expire and terminate upon the expiration of said 10 days with the same effect as if that day were the date hereinbefore set for the expiration of the full term of this lease, but Tenant shall remain liable for damages as provided in this lease or pursuant to law ("Default Termination"). If the term "Tenant", as used in this lease, refers to more than one person, then as used in clauses (a), (b), (c) and (d) of this Section 13.01, said term shall be deemed to include all of such persons or any one of them; and, if this lease shall have been assigned, the term "Tenant", as used in said clauses, shall be deemed to include the assignee and the assignor or either of them under any such assignment unless Landlord shall, in connection with such assignment, release the assignor from any further liability under this lease, in which event the term "Tenant", as used in said clauses, shall not include the assignor so released.

Section 13.02. If Tenant shall default in the payment of any Fixed Rent or Additional Rent or any other charge payable hereunder by Tenant to Landlord on any date upon which the same becomes due and after all applicable grace periods, or if this lease shall terminate as in Article 13 provided, Landlord or Landlord's agents and servants may immediately or at any time thereafter reenter into or upon the Premises, or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises again as and of its first estate and interest therein. The words "reenter", "reentry" and "reentering" as used in this lease are not restricted to their technical legal meanings.

Section 13.03. In the event of any termination of this lease under the provisions of Article 13 or in the event that Landlord shall reenter the Premises under the provisions of this Article 13 or in the event of the termination of this lease (or of reentry) by or under any summary dispossession or other proceeding or action undertaken by Landlord for the enforcement of its aforesaid right of reentry or any provision of law (any such termination of this lease being hereinafter called a "Default Termination"), Tenant shall thereupon pay to Landlord the Fixed Rent, Additional Rent and any other charge payable hereunder by Tenant to Landlord up to the time of

such Default Termination or of such recovery of possession of the Premises by Landlord, as the case may be, and shall additionally also pay to Landlord damages as provided in Article 14 or pursuant to law. Also, in the event of a Default Termination, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance rent, security or otherwise, but only to the extent such monies shall be credited by Landlord first against any Fixed Rent, Additional Rent or any other charge due from Tenant at the time of such Default Termination and then against any damages payable by Tenant under Article 14 or pursuant to law, with the balance, if any, being paid to the Tenant.

Section 13.04. The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be inclusive of any other remedies or means of redress to which Landlord may lawfully be entitled at any time, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not herein provided for.

ARTICLE 14

Damages

Section 14.01. In the event of a Default Termination of this lease, Tenant shall immediately pay to Landlord as damages:

(a) sums equal to the aggregate of the Fixed Rent and any Additional Rent hereunder which would have been payable by Tenant had this lease not terminated by such Default Termination, payable upon the due date therefor specified herein following such Default Termination and until the date hereinbefore set for the expiration of the full term hereby granted. If Landlord shall relet all or any part of the Premises for all or any part of said period, which Landlord is not obligated to do, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the reasonable expenses incurred or paid by Landlord in terminating this lease and or reentering the Premises and of securing possession thereof, as well as the reasonable expenses of reletting, including altering and preparing the Premises for new tenants, brokers' commissions and all other reasonable expenses chargeable against the Premises and the rental therefrom for the stated term of this Lease in connection with such reletting, it being understood that any such reletting may be for a period equal to or shorter or longer than said period; provided, further that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, (ii) in no event shall Tenant be entitled, in any suit for the collection of damages pursuant to this clause (a), to a credit in respect of any net rents from a reletting except to the extent that such net rents are actually received by Landlord, and (iii) if the Premises or any part thereof should be relet in combination with other space, then appropriate apportionment on a square foot rentable area basis shall be made of the rent received from such reletting and of the reasonable expenses of reletting.

Section 14.02. Nothing herein contained shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant.

ARTICLE 15

Waivers

Section 15.01. Tenant, for Tenant, and to the extent Tenant is able on behalf of any and all firms, corporations, associations, persons or entities claiming through or under Tenant, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this lease for the full term hereby demised after Tenant is dispossessed or ejected therefrom by process of law or under the terms of this lease or after the expiration or termination of this lease as herein provided or pursuant to law. If Landlord commences any summary proceeding, Tenant agrees that Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding unless the same may not be brought in a separate action by Tenant.

Section 15.02. Except in the case of any action, proceeding or counterclaim brought by either of the parties against the other for personal injury or property damage, the respective parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and any emergency or any other statutory remedy.

ARTICLE 16

Utilities and Building Services

Section 16.01. Landlord will provide at Landlord's cost at least two passenger elevators and one freight elevator from the Building lobby to the Premises during Business Hours, and at least one elevator from the Building lobby to the Premises at all times set forth in the first sentence of Section 16.07. Heat, for the warming of the Premises and the public portions of the Building, will be supplied by Landlord during Business Hours in accordance with REBNY standards. "Business Hours", as used in this lease, means between 8:00 A.M. until 5:30 P.M. on days other than Saturdays, Sundays and holidays. "Holidays" as used in this lease means all

days observed by the State or federal government as legal holidays (New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas). Business days shall mean all days other than Saturdays, Sundays and Holidays. Upon the request of Tenant, Landlord will advise Tenant of the projected schedule of Legal Holidays, as defined herein, to be observed in the Building, for such period of time following Tenant's requests as such observances are firm.

Section 16.02. Landlord shall, pursuant to standard office building cleaning contracts in force from time to time, cause the Premises to be kept clean and cause refuse and rubbish to be removed from the Premises at Tenant's cost and expense. If Landlord shall change the cleaning service to a new company, it shall use due diligence when contracting with such company and shall require the new company to provide background screening for cleaning personnel.

Section 16.03. Landlord shall provide at Landlord's cost air conditioning to the Premises from May 15th of each year through and including September 30th of each year during Business Hours (the "Cooling Season"). Landlord shall maintain all air conditioning equipment and systems. Landlord shall have the air conditioning equipment and systems in good working order at Landlord's expense, within Premises "on" and operational during Business Hours, as that term is defined in Section 16.01 of this lease.

Section 16.04. Landlord will, when and to the extent reasonably requested by Tenant, furnish additional elevator, heating and air conditioning additional, upon such terms and conditions as shall be reasonably determined by Landlord; and Tenant shall pay to Landlord promptly on demand as Additional Rent Landlord's charges for such additional services. Without limiting the generality of the preceding sentence, Tenant shall pay to Landlord Landlord's actual cost for (i) all cleaning of the Building or any part thereof required because of the carelessness or indifference of Tenant, (ii) the removal of any of Tenant's refuse and rubbish from the Building.

Section 16.05. At any time or times all or any of the elevators in the Building may, at the option of Landlord, be manual and/or automatic elevators, and Landlord shall be under no obligation to furnish an elevator operator for any automatic elevator. If Landlord shall at any time or times furnish any elevator operator for any automatic elevator, Landlord may discontinue furnishing such elevator operator without any diminution, reduction or abatement of rent. If Landlord switches from automatic to manual elevators, Landlord shall provide, at no cost to Tenant, at least one elevator operator for each manual elevator during Business Hours as defined in Section 16.01 of this lease.

Section 16.06. Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to stop or interrupt any heating, elevator, escalator, lighting, ventilating, air conditioning, gas, steam, power, electricity, water, cleaning or other service and to stop or interrupt the use of any Building facilities at such times as may be reasonably necessary and for as long as may reasonably be required by reason of accidents, strikes,

or the making of repairs, alterations or improvements, or inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, or by reason of any other similar cause beyond the reasonable control of Landlord. Landlord agrees to use reasonable diligence to restore any stopped or interrupted services or Building facilities.

Section 16.07. Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week.

ARTICLE 17

Lease Contains All Agreements; Etc.

Section 17.01. This lease contains all of the covenants, agreements, terms, provisions and conditions relating to the leasing of the Premises hereunder, and neither Landlord nor Tenant, in executing and delivering this lease is relying upon, any warranties, representations, promises or statements, except to the extent that the same may expressly be set forth in this lease.

Section 17.02. The failure of Landlord or Tenant to insist in any instance upon the strict performance of any provision of this lease or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such provision or election, but the same shall continue and remain in full force and effect. No waiver or modification by Landlord or Tenant of any provision of this lease or other right or benefit shall be deemed to have been made unless expressed in writing and signed by Landlord or Tenant, as the case may be. No surrender of the Premises or of any part thereof or of any remainder of the term of this lease shall be valid unless accepted by Landlord in writing. Any breach by Tenant of any provision of this lease shall not be deemed to be waived by (a) the receipt and retention by Landlord of Fixed Rent or Additional Rent from anyone other than Tenant or (b) the acceptance of such other person as a tenant or (c) a release of Tenant from the further performance by Tenant of the provisions of this lease or (d) the receipt and retention by Landlord of Fixed Rent or Additional Rent with knowledge of the breach of any provision of this lease. No payment by Tenant or receipt or retention by Landlord of a lesser amount than any Fixed Rent or Additional Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment of such rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this lease provided. No agreement hereafter made between Landlord and Tenant shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this lease, in whole or in part, unless such agreement is in writing, refers expressly to this lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge or termination or effectuation of the abandonment is sought.

ARTICLE 18

Parties Bound

Section 18.01. The covenants, agreements, terms, provisions and conditions of this lease shall bind and benefit the respective successors, assigns and legal representatives of the parties hereto with the same effect as if mentioned in each instance where a party hereto is named or referred to, except that no violation of the provisions of Article 22 hereof shall operate to vest any rights in any successor, assignee or legal representative of Tenant and that the provisions of this Article 18 shall not be construed as modifying the conditions of limitation contained in Article 12 hereof. It is understood and agreed, however, that the covenants and obligations on the part of Landlord under this lease shall not be binding upon Landlord herein named accruing with respect to any period subsequent to the transfer of its interest in the Building provided however, that in the event of such a transfer said covenants and obligations shall thereafter be binding upon each transferee of such interest of Landlord herein named, but only with respect to the period ending with a subsequent transfer of such interest, and that a lease of the entire interest shall be deemed a transfer within the meaning of this Article 18.

ARTICLE 19

Curing Tenant's Defaults -- Additional Rent

Section 19.01. If Tenant shall be in default beyond an applicable grace period in the keeping, observance or performance of any provision or obligation of this lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice. Bills for any expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including, but not limited to, reasonable attorneys' fees, involved in collecting or endeavoring to collect the Fixed Rent or Additional Rent or other charge or any part thereof or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this lease, or pursuant to law, including (without being limited to) any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossess proceeding), as well as reasonable bills for any property, material, labor or services provided, furnished or rendered, or caused to be provided, furnished or rendered, by Landlord to Tenant including (without being limited to) electric lamps and other equipment, construction work done for the account of Tenant, water and other services, as well as for any charges for any additional elevator, heating, air conditioning or cleaning services incurred under Article 16 hereof and any charges for other similar or dissimilar services incurred under this

lease, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills within thirty (30) days after receipt, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this lease. Tenant shall not be obligated to pay any legal fees or expenses of any kind incurred by Landlord in connection with Landlord's assertion against Tenant of claims that have no merit and are unsuccessfully asserted. Tenant also shall not be obligated to pay any expenses of any kind for services which Landlord is obligated to provide to Tenant pursuant to the terms of this lease or applicable law, unless this lease expressly obligates Tenant to pay such expenses pursuant to a provision of this lease other than this Section 19.01. If any Fixed Rent, Additional Rent or any other costs, expenses or disbursements payable under this lease including all money owed under Section 1.04 by Tenant to Landlord are not paid within thirty (30) days after their respective due dates, the same shall bear interest, from the respective due dates, at the rate of three (3%) percent per month or the maximum rate permitted by law, whichever is less, until paid and the amount of such interest shall be Additional Rent. If Tenant prevails in a legal action against Landlord, then pursuant this Lease Landlord shall reimburse Tenant for all reasonable legal costs.

Section 19.02. In the event that Tenant is in default in payment of Fixed Rent or Additional Rent or any other charge, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

ARTICLE 20

Inability to Perform

Section 20.01. This lease and the obligations of Tenant to pay rent hereunder and perform all of the other covenants, agreements, terms, provisions and conditions hereunder on the part of Tenant to be performed shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this lease or because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in making any repairs, replacements, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from doing so by reason of strikes or labor troubles or any other cause beyond Landlord's control, including, but not limited to, governmental preemption in connection with a national emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of supply and demand which have been or are affected by war, hostilities or other similar emergency, except as otherwise expressly provided in the Lease.

ARTICLE 21

Water and Electricity

Section 21.01. Landlord shall in no way be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur by reason of any failure, inadequacy or defect in the character, quantity or supply of electricity or water furnished to the Premises, except if any such failure, inadequacy or defect is the result of any negligent or willful act or omission of Landlord or its agents, employees, servants, licensees, or contractors.

Section 21.02. Landlord shall furnish hot and cold water for (a) normal office use and in connection with the performance by Tenant of any Tenant's Changes in accordance with clause (e) of Section 5.01, (b) Landlord's air conditioning equipment during Business Hours, and (c) drinking, lavatory, kitchen and toilet facilities, in or near the Premises and Tenant's Separate Air Conditioning Unit. When water is furnished by Landlord for any other purpose, Tenant shall pay a reasonable amount for the same and for any required pumping and heating thereof as well as any taxes, sewer rents or other charges which may be imposed on any governmental authority or agency thereof based on the quantity of water so used by Tenant.

Section 21.03. Subject to the provisions of Section 21.05, electricity shall be furnished to Tenant through the electrical lines and service presently servicing the Building, and Tenant shall purchase same from Landlord, on the basis provided in Section 21.04.

Section 21.04 Tenant shall pay Landlord a fixed monthly consumption charge, commencing, at such time as rent commences pursuant to Section 1.10 of this Lease, for all electricity consumed in the Premises. Such charge shall initially be \$3,000.00 per month (based on a \$3.00 per square foot charge) (the "Base Electrical Charge") and shall be increased from time to time on the basis of either an increase in the total usage of electricity by Tenant or an increase in the rates, charges and fees paid by Landlord for electrical service, above Landlord's electrical rates charged to Landlord in 2005. Such increase will only occur after Landlord has conducted a survey of Tenant's electrical usage and given Tenant the opportunity to survey his own usage. In each case the Survey shall be done by people qualified in the field; if the parties' respective surveyors cannot agree then both surveyors will select a third surveyor whose opinion shall be dispositive.

Section 21.05. Landlord shall not be liable to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements. Tenant agrees that its use of electric current shall never exceed the capacity of existing feeders to the Building or the risers or existing wiring installation in the Building. Tenant agrees not to connect any additional electrical equipment to the Building electric distribution system, other than lamps, typewriters, photocopiers, telephones, telexes, telecopier equipment, desk-top non-mainframe computers, kitchen electrical

appliances, word processors, printers, postage machines and all equipment ancillary thereto and other small office machines which consume comparable amounts of electricity, without Landlord's prior written consent which consent shall not be withheld or delayed unreasonably. Any riser or risers to supply Tenant's electrical requirements, upon written request of Tenant, will be installed by Landlord at the sole reasonable cost and expense of Tenant if, in Landlord's reasonable judgment, the same are necessary and will not cause permanent damage or injury to the Building or the Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants. Landlord reserves the right to terminate the furnishing of electricity on the basis provided in this Article 21 at any time, upon 90 days' notice to Tenant, in which event Tenant shall make application directly to the public utility for its own completely separate supply of electric current and Landlord shall permit its wires, feeders, conduits and risers, to the extent available and safely capable, to be used for such purpose. Any meters, risers, feeders or other equipment or connections necessary to enable Tenant to obtain electric current directly from such utility shall be installed at Landlord's sole cost and expense; provided, however, and anything hereinbefore contained to the contrary notwithstanding, Landlord shall not terminate the furnishing of electricity as aforesaid following the expiration of such 90 day period, and thereafter, for so long as Tenant does not have its own separable electric service, so long as Tenant is diligently pursuing the aforesaid application and the installation of its separate electric service. Rigid conduit only will be allowed. This lease shall otherwise remain in full force and effect at the time Landlord terminates the furnishing of electricity as aforesaid. Commencing when Tenant receives such direct service and as long as Tenant shall continue to receive such service, Landlord shall no longer be entitled to charge or receive the fixed monthly consumption charge referred to in Section 21.04 and any payment made by Tenant for periods after Tenants' receipt of direct service shall be promptly refunded.

ARTICLE 22

Assignment, Subletting, Etc.

Section 22.01. Tenant other than pursuant to the provisions of this lease, shall not, whether voluntarily, involuntarily, by operation of law or otherwise (a) assign or otherwise transfer this lease or the term and estate hereby granted, (b) sublet the Premises or any part thereof, or allow the same to be used, occupied or utilized by any one other than Tenant, or (c) mortgage, pledge, encumber or otherwise hypothecate this lease or the Premises or any part thereof in any manner whatsoever, without in each instance obtaining the prior consent of Landlord which consent as to (a) and (b) above which may be withheld conditioned or delayed. The consent by Landlord to an assignment, subletting or use or occupancy by others shall not in any way be considered to relieve Tenant from obtaining the express consent of Landlord to any other or further assignment, or subletting or use or occupancy by others not expressly permitted by this Article.

Section 22.02. If this lease be assigned in violation of the provisions of the lease or, in the event the assignor is released from all liability pursuant to the lease, Landlord may collect rent due to the Landlord from the assignee. If the Premises or any part hereof are sublet or used or occupied by anybody other than Tenant, whether or not in violation of this lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected to the Fixed Rent and Additional Rent herein reserved and the charges herein provided for, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 22.01, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance by Tenant of Tenant's obligations under this lease. References in this lease to use or occupancy by other than Tenant shall not be construed as limited to subtenants and those claiming under or through subtenants but as including also licensees and other claiming under or through Tenant, immediately or remotely.

Section 22.03. The use of any portion of the Tenant's facilities by a subsidiary of the Tenant or an entity controlled by the Tenant shall not be regarded as a subletting under this lease.

Section 22.04. The placement of or any person or entity name whether on the doors of the Premises, on the Building directory, or otherwise, shall not operate to vest any right or interest in this lease or in the Premises or be deemed to be the written consent of Landlord mentioned in this Article 22.

Section 22.05. Anything contained in this Lease to the contrary notwithstanding, if Tenant as a debtor in possession under the Bankruptcy Code or Tenant's trustee under the Bankruptcy Code contemplates an assignment of this lease pursuant to the Bankruptcy Code to any person, firm or corporation which shall have made a bona fide offer to accept such an assignment on terms and conditions which are acceptable to such debtor in possession or trustee, then notice of such proposed assignment shall be given to Landlord at least 15 days prior to the date that an application to a court of competent jurisdiction for approval of and authority to enter into such proposed assignment is contemplated. Such notice shall set forth the name and address of the proposed assignee, all of the terms and conditions of the proposed assignment, including any consideration therefor, and the nature of the adequate assurance to be provided Landlord to assure the future performance under this lease of such proposed assignee. Landlord may thereupon elect, by notice to Tenant given at any time prior to the later of the date upon which the aforesaid application for approval and authority is contemplated or the effective date of the proposed assignment, to accept, for itself or on behalf of a nominee, an assignment of this lease upon the same terms and conditions as are contemplated by the aforesaid offer (less any brokerage commissions which would be payable in connection with such proposed assignment). If Landlord does not so elect to accept such an assignment, then (a) upon the effective date of the proposed assignment, the proposed assignee shall be deemed to have assumed all of the obligations of Tenant arising hereunder from and after such effective date, without further action on the part of such proposed assignee (but such proposed assignee shall nevertheless at Landlord's request, execute and deliver, at

its own cost and expense, to Landlord such an instrument confirming such assumption as Landlord may reasonably require), and (b) any consideration payable or otherwise to be delivered in connection with such proposed assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property or Tenant of Tenant's bankruptcy estate.

ARTICLE 23

Escalation

Section 23.01. As used in this Article 23, the words and terms which follow mean and include the following:

(a) "Tax Year" shall mean each fiscal year, (July 1 through the succeeding June 30) subsequent to the fiscal year 2005/2006 in which occurs any part of the term of this lease.

(b) Base Year shall mean the fiscal year 2005/2006

(c) "Tenant's Proportionate Share" shall mean three (3%) percent.

(d) "Taxes" shall mean the aggregate amount of real estate taxes and any general or special assessments (exclusive of penalties and interest thereon) imposed upon the Real Property (including, without limitation, (i) assessments made upon or with respect to any "air" and "development" rights now or hereafter appurtenant to or affecting the Real Property, (ii) any fee, tax or charge imposed by any Government Authority for any vaults, vault safe or other space within or outside the boundaries of the Real Property, and (iii) any assessments levied after the date of this Lease for public benefits to the Real Property or the Building); provided that if, because of any change in the taxation of real estate, any other tax or assessment, however denominated (including, without limitation, any franchise, income, profit, sales, use, occupancy, gross receipts or rental tax) is imposed upon Landlord or the owner of the Real Property of the Building, or the occupancy, rents or income therefrom, in substitution for any of the foregoing Taxes or for an increase in any of the foregoing Taxes, such other tax or assessment shall be deemed part of Taxes computed as if Landlord's sole asset were the Real Property. Anything contained herein to the contrary notwithstanding, Taxes shall not be deemed to include (a) any taxes on Landlord's income, (b) franchise taxes, (c) estate or inheritance taxes, or (d) any similar taxes imposed on Landlord, unless such taxes are levied, assessed or imposed as a substitute for the whole or any part of, or as a substitute for an increase, the taxes, assessments, levies, fees, charges and impositions that now constitute Taxes.

(e) "Real Estate Tax Base" shall mean Real Estate Taxes for the City of New York for the fiscal year June 1, 2005 - June 30, 2006.

(f) Operating Year shall mean each calendar year, subsequent to calendar year 2006, in which occurs any part of the term of the Lease.

(g) (A) "Operating Expenses" shall mean the aggregate of those costs and expenses (and taxes thereon, if any) paid or incurred by Landlord or on behalf of Landlord with respect to the operation, cleaning, repair, safety, replacement, management, security and maintenance of the Real Property, Building Systems, sidewalks, curbs, plaza, and other areas adjacent to Building, and with respect to the services provided to tenants, including, without limitation: (i) salaries, wages and bonuses paid to, and the cost of any hospitalization, medical, surgical, union and general welfare benefits (including group life insurance), any pension, retirement or life insurance plans and other benefits or similar expenses relating to employees of Landlord below the level of building manager engaged at the building in the operation, cleaning, repair, safety, replacement, management, security or maintenance of the Real Property and the Building Systems or in providing services to tenants; (ii) social security, unemployment and other payroll taxes, the cost of providing disability and worker's compensation coverage imposed by any Requirement, union contract or otherwise with respect to said employees; (iii) the cost of gas, oil, steam, water, sewer rental, HVAC and other utilities furnished to the Building and utility taxes; (iv) the expenses incurred for casualty, rent, liability, fidelity, plate glass and other insurance; (v) expenditures, whether by purchase or lease, for capital improvements and capital equipment that under generally applied real estate practice are expensed or regarded as deferred expenses and capital expenditures, whether by purchase or lease, that are made by reason of Requirements or for emergency or labor-saving devices or security or property protection systems or in lieu of a repair, in each case such capital expenditures to be included in Operating Expenses for the Operating Year in which such costs are incurred and every subsequent Operating Year, on a straight - -line basis, to the extent that such items are amortized over its longest useful life under GAAP with interest calculated at an annual rate equal to three (3%) percent over the Base Rate in effect at the time of Landlord's having made said expenditure; (vii) the cost or rental of all supplies, tools, materials and equipment used exclusively at the Building; (viii) the cost of uniforms, work clothes and dry cleaning; (ix) the cost of window cleaning, janitorial, concierge, guard, watchman or other security personnel, service or system, if any; (x) management fees not in excess of those customarily charged by management companies operating similar space; (xi) charges of independent contractors performing work included within this definition of Operating Expenses; (xii) telephone and stationary costs at the Building; (xiii) legal, accounting and other professional fees and disbursements incurred in connection with the operation and management of the Real Property; (xiv) association fees and dues; (xv) the cost of decorations; (xvi) depreciation of hand tools and other movable equipment used in the operation, cleaning. Repair, safety, security or maintenance of the Building; (xvii) 15% - of all electrical costs incurred in the operation of the Real Property.

Provided, however, that operating expenses shall not include the foregoing costs and expenses which shall be excluded or have been deducted from them, as the case may be:

- (1) salaries benefits, wages, bonuses and other compensation to person at or above the grade building manager;
- (2) amounts received by Landlord through proceeds of insurance to the extent they are compensation of sums previously included in Operating Expenses;
- (3) cost of repairs or replacement incurred by reason of fire or other casualty or condemnation to the extent Landlord is compensated therefor; which may include application of any proceeds to reduction of any mortgage debts;
- (4) costs incurred in performing work or furnishing services or utilities for any tenant, whether at such tenant's or Landlord's expense,
- (5) Taxes;
- (6) refinancing costs, mortgage interest, amortization payments, reserves and other charges due under any mortgage;
- (7) leasing commissions, rental concessions, Tenant build-outs, Landlord's work and lease buy-outs;
- (8) any expense for which Landlord is entitled to be reimbursed by any tenant as an additional charge in excess of Fixed Rent and Escalation Rent;
- (9) depreciation;
- (10) overhead and profit increment paid to affiliates of Landlord for services to the extent that such costs exceed the costs of such services were they rendered by an affiliate;
- (11) rental under any ground or underlying lease;
- (12) professional fees not attributable to the operation or management of the Real Property and professional fees attributable to disputes with, or preparation of leases for, tenants and prospective tenants;
- (13) advertising and promotional expenses with respect to the Property; and
- (14) 85% of all electrical costs incurred in the operation of the Real Property.
- (15) costs incurred in connection with a transfer or disposition of the Real Property or Building

If the Landlord purchases any item of capital equipment or makes any capital expenditure that is intended to have the effect of reducing the expenses that would otherwise be included in Operating Expenses, then the costs of such capital equipment or capital expenditure shall be included in Operating Expenses for the Operating Year in which the costs are incurred and every subsequent Operating Year on a straight-line basis, to the extent that such items are amortized over an appropriate period, with interest calculated, at an annual rate of three (3%) percent over the Base Rate in effect at the time of Landlord's having made said expenditure. If Landlord leases any item of capital equipment that results in savings or reductions in expenses that would otherwise be included in Operating Expenses, then the rentals and other costs paid with respect to such leasing shall be included in Operating Expenses for the Operating Years in which such rentals and costs are incurred.

If Landlord is not furnishing any particular work or service (the cost of which if performed

by Landlord would constitute an Operating Expense) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord for all or any portion of an Operating Year, Operating Expenses for such Operating Year shall be deemed to be increased by an amount equal to the additional Operating Expenses which reasonably would have been incurred during such Operating Year by Landlord if it had, at its own expense, furnished such work or service to such tenant, less if Tenant shall be the tenant to whom Landlord is not furnishing any such work or service, the actual reduction, if any, in the amount payable to the contractor or supplier providing such work or service to the Building by reason of the non-provision thereof to Tenant.

(A) Tenant shall pay as Escalation Rent for each Operating Year an amount ("Tenant's Operating Payment") equal to Tenant's Share of the amount by which Operating Expenses for such Operating Year are greater than the Base Operating Factor.

(B) Landlord shall furnish to Tenant, with respect to each Operating Year, a Landlord's Operating Statement setting forth Landlord's estimate of Tenant's Operating Payment for such Operating Year ("Tenant's Protected Operating Share"). Tenant shall pay to Landlord on the first day of each month during such Operating Year, as Escalation Rent, an amount equal to one-twelfth of Tenant's Projected Operating Share for such Operating Year. If, however, Landlord furnishes any such Landlord's Operating Statement for an Operating Year subsequent to the commencement of such Operating Year, then (a) until the first day of the month following the month in which such Landlord's Operating Statement is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under Section 3.3 in respect of the last month of the preceding Operating Year; (b) after such Landlord's Operating Statement is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Projected Operating Share previously made for such Operating Year were greater or less than the installments of Tenant's Projected Operating Share to be made for such Operating Year in accordance with such estimate, and (i) if there is a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand thereof, or (ii) if there was an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rental or, if at the end of the Term there shall not be any further installments of Rental remaining against which Landlord can credit any such overpayment due Tenant, Landlord shall deliver to Tenant Landlord's check in the amount of the refund due Tenant within thirty (30) days after Tenant shall first be entitled to a credit for the overpayment of Operating Expenses; and (c) on the first day of the month following the month in which such Landlord's Operating Statement is furnished to Tenant, and monthly thereafter throughout the remainder of such Operating Year, Tenant shall pay to Landlord an amount equal to one-twelfth of Tenant's Projected Operating Share shown in such Landlord's Operating Statement with a new estimate of Tenant's Projected Operating Share for such shall be adjusted and paid or credited, as the case may be, substantially, in the same manner as provided in the preceding sentence.

(C) After the end of each Operating Year, Landlord shall furnish to Tenant a Landlord's Operating Statement for such Operating Year. Each such year-end Landlord's Operating Statement shall be accompanied by a computation of Operating Expenses for the Building prepared by the Manager or a certified public accountant designated by Landlord from which Landlord shall make the computation of Additional Rent due in respect of Operating Expenses hereunder. In making computations of Operating Expenses, the certified public accountant or the Manager may rely on Landlord's reasonable estimates and allocations whenever said estimates and allocations are needed for this Article 3. If the Landlord's Operating Statement shows that the sums paid by Tenant under Section 3.3(B) exceeded Tenant's Operating Payments required to be paid by Tenant for such Operating Year, Landlord shall credit the amount of such excess against subsequent payments of Rental or, if at the end of the Term there shall not be any further installments of Rental remaining against which Landlord can credit such overpayments due Tenant, Landlord shall deliver to Tenant Landlord's check in the amount of the refund due Tenant within thirty (30) days after Tenant shall be entitled to a credit for the overpayment of Operating Year shows that the sums so paid by Tenant were less than Tenant's Operating Payment due for such Operating Year, Tenant shall pay the amount of such deficiency within thirty (30) days after demand therefor.

(h) The term "Escalation Statement" shall mean a statement setting forth the amount payable by Tenant for a specified Tax Year of Operating Year (as the case may be) pursuant to this Article 36.

Section 23.02. If the Real Estate Taxes for any Tax Year shall be greater than the Real Estate Tax Base, Tenant shall pay Landlord, as Additional Rent for the Premises for such Tax Year, an amount (herein called the "Tax Payment") equal to Tenant's Proportionate Share of the amount by which Real Estate Taxes for such Tax Year are greater than the Real Estate Tax Base.

Section 23.03. Landlord shall furnish Tenant, at the commencement of each Tax Year and Operation Year, as the case may be, a written statement of the actual tax payment, pursuant to Section 23.02 hereof, and the Annual Escalation Statement, pursuant to Section 23.01(g) hereof. Tenant shall pay to Landlord on the first day of each month during such Tax Year and such Operation Year an amount equal to one-twelfth of the Tax Payment for such Tax Year and one-twelfth of the Annual Operation Escalation for such Operation Year. If, however, Landlord shall furnish any such statement for an Operation Year or a Tax Year subsequent to the commencement thereof, then (a) until the first day of the month following the month in which such statement is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section in respect of the last month of the preceding Operation Year or Tax Year; (b) promptly after such statement is furnished to Tenant, Landlord shall give notice to Tenant stating whether the installments of the Tax Payment or the Annual Escalation previously made for such Tax Year or Operating Year, as the case may be, were greater or less than the respective installments thereof to be made for such Operating Year or Tax Year in accordance with such statement, and (i) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (ii) if there shall have been an

overpayment, Landlord shall refund to Tenant the amount thereof within thirty (30) days of Landlord's furnishing to Tenant such statement; and (c) on the first day of the month following the month in which such statement is furnished to Tenant, and monthly thereafter throughout the remainder of such Operation Year or Tax Year, as the case may be, Tenant shall pay to Landlord an amount equal to one-twelfth of the Tax Payment or one-twelfth of the Annual Operation Escalation, as the case may be, shown on such statement. Landlord shall furnish to Tenant within 30 days of the commencement of each Operative Year and each Tax Year a copy of the bill or bills for Real Estate Taxes applicable to the Tax Year as to which each such Statement relates.

Section 23.04. Payments shall be made pursuant to this Article 23 notwithstanding the fact that an Escalation Statement is furnished to Tenant after the expiration of the term of this lease, provided the Escalation Statement is furnished within one year thereafter.

Section 23.06 In case the Real Estate Taxes for any Tax Year or part thereof shall be reduced after Tenant shall have paid Tenant's Proportionate Share of any increase thereof in respect of such Tax Year, Landlord shall credit or refund to Tenant Tenant's Proportionate Share of the refund of such taxes received by or credited to Landlord (after deduction of reasonable expenses, including reasonable counsel fees, incurred by Landlord in connection with reducing the assessed valuation and/or in obtaining such refund of taxes). Only Landlord and not Tenant shall have the right to initiate, contest or resolve proceedings involving the assessed valuation or refund of taxes.

Section 23.07. In no event shall the Fixed Rent under this Lease (exclusive of the Additional Rent under this Article) be reduced by virtue of this Article.

ARTICLE 24

Subordination

Section 24.01. This lease is and shall be subject and subordinate in all respects to all underlying leases now or hereafter covering the real property or any portion thereof of which the Premises form a part and to all mortgages and trust indentures which may now or hereafter be placed on or affect such leases and/or the real property of which the Premises form a part, or any part or parts of such real property, and/or Landlord's interest therein, and to each advance made and/or hereafter to be made under any such mortgages, or indentures, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions of and for such ground leases and/or underlying leases and/or mortgages or indentures. This Section 24.01 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall execute, at its sole cost and expense, and deliver promptly any estoppel certificate or other document that Landlord and/or any mortgagee and/or lessor under any ground or underlying lease and/or their respective successors in interest may reasonably request. Tenant agrees that, in the event any proceedings are brought for the foreclosure of any mortgage or indenture referred to herein, to attorn to the purchaser upon any such foreclosure sale and to recognize such purchaser as the landlord under this lease. In the event of the

enforcement by any mortgagee of the Building of remedies provided for by law or by such mortgage, any person succeeding to the interest of the Landlord as the result of such enforcement shall not be bound by any payment of Fixed Rent or Additional Rent for more than one month in advance not received by it.

ARTICLE 25

Quiet Enjoyment

Section 25.01. Landlord covenants that if and so long as Tenant keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part and on behalf of Tenant to be kept and performed, Tenant shall quietly enjoy the Premises without hindrance or molestation by Landlord or by any other person claiming the same, subject to the covenants, agreements, terms, provisions and conditions of this lease and to the mortgages to which this lease is subject and subordinate, as hereinbefore set forth.

ARTICLE 26

Insurance

Section 26.01. Tenant covenants to provide prior to entry upon the Premises and to keep in force and effect during the demised term: (1) comprehensive general liability insurance relating to the Premises and its appurtenances on an occurrence basis against claims for bodily injury or death on account of accident upon the Premises with minimum limits of liability in amount of \$1,000,000.00 per occurrence; and \$2,000,000.00 in the aggregate and (2) workmen's compensation insurance to cover all persons engaged in Tenant's Changes. Tenant agrees to deliver to Landlord, for all current insurance policies a Certificate of Insurance in compliance with its obligations hereunder.

Section 26.02. All of the aforesaid insurance shall be issued in the name of Tenant and shall name Landlord (and any designee(s) of Landlord, with an insurable interest in the Building) as an additional insured and shall be written by responsible insurance companies licensed to do business in New York State; all such insurance may be carried under a blanket policy covering the Premises and any other of Tenant's locations and shall, by virtue of an automatic endorsement, require: (1) such insurance may not be canceled or amended with respect to Landlord (or its designee(s) except upon 30 days written notice by registered mail to Landlord (and such designee(s) by the insurance company; and (2) Tenant shall be solely responsible for payment of premiums and that Landlord (or its designee(s)) shall not be required to pay any premiums for such insurance. The minimum limits of the comprehensive general liability policy of insurance shall in no way limit or diminish Tenant's liability under other provisions of this Lease.

Section 26.03. The minimum limits of the comprehensive general liability policy of insurance shall be subject to increase at any time, and from time to time, after the commencement of the third (3rd) year of the term hereof if Landlord in the exercise of its reasonable judgment shall deem the same necessary for adequate protection and has been requested by the then existing mortgagee. Within 30 days after demand therefor by Landlord, Tenant shall furnish Landlord with evidence that such demand has been complied with.

ARTICLE 27

Miscellaneous

Section 27.01. If at any time or times during the Term of this Lease, the Rental reserved in this Lease is not fully collectible by reason of any Requirement, Tenant shall enter into such agreements and take such other steps (without additional expense to Tenant) as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents that may from time to time during the continuance of such legal rent restriction be legally permissible (and not in excess of the amounts reserved under this Lease). Upon the termination of such legal rent restriction (a) the Rental shall become and thereafter be payable hereunder in accordance with the amounts reserved in this Lease for the remainder of the Term, and (b) Tenant shall pay to Landlord, if legally permissible, an amount equal to (i) the items of Rental that would have been paid pursuant to this Lease but for such legal rent restriction less (ii) the rents paid by tenant to Landlord during the period or periods such legal rent restriction was in effect. This provision shall survive the expiration or earlier termination of this Lease to the maximum enforceable extent.

Section 27.02. If, in connection with Landlord's obtaining financing for the Building, a banking, insurance or other recognized institutional lender shall request reasonable modifications in this lease as a condition to such financing, Tenant will not unreasonably withhold, delay, condition or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder reduce Tenant's rights or remedies or materially adversely affect the leasehold interest hereby created.

Section 27.03. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot which such floor was designed to carry and any permitted load must be placed by Tenant, at Tenant's sole cost and expense, so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's sole cost and expense, in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. If the Premises be or becomes infested with vermin as a result of any misuse or neglect of the Premises by Tenant, its agents, employees, visitors or licensees, Tenant shall at Tenant's expense cause the same to be exterminated from time to time to the reasonable satisfaction of Landlord and shall employ such exterminators and such exterminating company or companies as shall be approved by Landlord.

Section 27.04. Tenant shall not be entitled to exercise any option granted to it by this lease, if any, at any time when Tenant is in default in the performance or observance of any of the covenants, agreements, terms, provisions or conditions on its part to be performed or observed under this lease and Landlord has previously given Tenant notice of such default.

Section 27.05. If Landlord has comparable space available in the Building at a comparable rent, Tenant shall not occupy any space in the Building (by assignment, sublease or otherwise) other than the Premises hereby demised, except with the prior written consent of Landlord in each instance.

Section 27.06. Landlord and Tenant represent that it has not dealt with any person, firm or corporation in connection with this transaction other than Trammell Crow Realty whose commission Landlord agrees to pay, and the Landlord agrees to indemnify, defend and hold the Tenant harmless from any damage or claim suffered by that other party as a result of any breach of this representation.

Section 27.07. The term "Landlord" as used in this lease means only the owner, or the mortgagee in possession, for the time being of the Land and Building (or the owner of a lease of the Building or the Land and Building), so that in the event of any sale or sales of the Land and Building, or in the event of a lease of the Building, or of the Land and Building, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder, except for any and all liabilities and obligation incurred by Landlord prior to such sale or lease, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the Building, or of the Land and Building, that the purchaser or the lessee of the Building has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder. Such purchaser or lessee shall be required by Landlord to give notice to Tenant of its assumption. No general or limited partner or shareholder of Landlord (including any general or limited partner or shareholder, any assignee or successor of Landlord) or other holder of any equity interest in Landlord shall be personally liable for the performance of Landlord's obligations under this lease. The liability of Landlord (including any assignee or successor of Landlord) for Landlord's obligations under this lease shall be limited to Landlord's interest in the land and Building and Tenant shall not look to any of Landlord's other assets in seeking either to enforce Landlord's obligations under this lease or to satisfy a judgment for Landlord's failure to perform such obligations.

Section 27.08. The submission by Landlord of the lease in draft form shall be deemed submitted solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations on either party unless and until both Landlord and Tenant shall have executed the lease and duplicate originals thereof shall have been delivered to the respective parties.

Section 27.09. The acknowledgments of the execution of this lease by Landlord and Tenant are solely for the purpose of manifesting the respective authorizations for execution. Neither Landlord nor Tenant shall record this lease or any memorandum thereof without the consent of the party not proposing such recording, and the violation of the provision shall be deemed a substantial default hereunder.

Section 27.10. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. If any words or phrases in this Lease are stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Lease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Lease and no implication or inference shall be drawn from the fact that such words or phrases were stricken out or otherwise eliminated.

Section 27.11. Landlord shall make available to Tenant on the directory in the lobby of the Building five (5) listings, which listings may include subtenants or others occupying the Premises in accordance with the terms hereof. The initial listing shall be without charge to Tenant. From time to time, Landlord shall revise the directory to reflect such changes in the listings therein as Tenant may request, and Tenant within thirty (30) days after demand by Landlord shall pay to Landlord, as Additional Rent, Landlord's cost in making each revision that Tenant requests. Tenant may install a sign on the entry door to the Premises.

Section 27.12. If any of the provisions 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 provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and shall remain valid and enforceable, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 27.13. Tenant hereby represents to Landlord that it is not entitled, directly or indirectly, to diplomatic or sovereign immunity and Tenant agrees that in all disputes arising directly or indirectly out of this Lease Tenant shall be subject to service of process at its offices located within the building and the exclusive jurisdiction for such actions shall be either in the United States Court for the Southern District of New York or the New York State Supreme Court for the County of New York. The provisions of this Section 27.13 shall survive the expiration of this Lease.

Section 27.14. This Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Lease . This Lease may not be changed, abandoned or discharged, in whole or in part, nor may any of its provisions be waived except by a written agreement that (a) expressly refers to this Lease, (b) is executed by the party against whom enforcement of the change, abandonment, discharge or waiver is sought and (c) is permissible under the Mortgage(s).

Section 27.15. Any apportionment or prorations of Rental to be made under this Lease shall be computed on the basis of a three hundred sixty (360) day year, with twelve (12) months of thirty (30) days each.

Section 27.16 The laws of the State of New York applicable to contracts made and to be performed wholly within the State of New York shall govern and control the validity, interpretation, performance and enforcement of this Lease, without reference to New York State's choice of law rules.

Section 27.17. Each person executing this Lease on behalf of Tenant hereby covenants, represents and warrants that Tenant is a duly incorporated or duly qualified (if foreign) limited liability company and is authorized to do business in the State of New York (a copy of evidence thereof to be supplied to Landlord upon request); and that each person executing this Lease on behalf of Tenant is an officer of Tenant and that he or she is duly authorized to execute, acknowledge and deliver this Lease to Landlord (a copy of a resolution to that effect to be supplied to Landlord upon request).

Section 27.18. The captions and article headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 27.19 The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and, except as otherwise provided in this Lease, their assigns.

Section 27.20. For the purposes of this Lease and all agreements supplemental to this Lease, unless the context otherwise requires:

(a) The words "herein", "hereof", "hereunder" and "hereby" and words of similar import shall be construed to refer to this Lease as a whole and not to any particular Article or Section unless expressly so stated.

(b) Tenant's obligations hereunder shall be construed in every instance as conditions as well as covenants, each separate and independent of any other terms of this Lease.

(c) Reference to Landlord as having "no liability" or being "without liability" shall mean that Tenant shall not be entitled to terminate this Lease, or to claim actual or constructive eviction, partial or total, or to receive any abatement or diminution of rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other right or liability whatsoever against Landlord under or with respect to this Lease or with respect to Tenant's use or occupancy of the Premises, except as

otherwise expressly provided in this Lease and provided that Tenant does not waive any rights under law that are not expressly waived in this Lease.

(d) Reference to "termination of this Lease" or "expiration of this Lease" and words of like import includes expiration or sooner termination of this Lease and the Term and the estate hereby granted or cancellation of this Lease pursuant to any of the provisions of this Lease or to law. Upon the termination of this Lease, the Term and estate granted by this Lease shall end at noon on the date of termination as if such date were the Expiration Date, and neither party shall have any further obligation or liability to the other after such termination except (i) as shall be expressly provided for in this Lease, and (ii) for such obligations as by their nature under the circumstances can only be, or by the provisions of this Lease, may be, performed after such termination, and, in any event, unless expressly otherwise provided in this Lease, any liability for a payment (which shall be apportioned as of such termination) which shall have accrued to or with respect to any period ending at the time of termination shall survive the termination of this Lease.

(e) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender.

Section 27.21 By written notice sent to the Landlord prior to June 1, 2007, Tenant may cancel this Lease as of August 31, 2007 in which event when the Lease expires and terminates shall become August 31, 2007 and the Use and Occupancy charges set forth in Paragraph 2.01 shall take effect as of September 1, 2007.

Section 27.22 Landlord shall, as it sole responsibility for construction work, create demising walls with fire emergency doors at the places located on Exhibit A and marked as "A" and "B". The area shown on Exhibit A as cross hatched shall be a common area for both portions of the 19th floor.

Section 27.23. This Lease is subject to Landlord's obtaining the approval of the mortgagee, the Bank of America within twenty-one (21) days after its execution.

Section 27.24. Provided, Landlord's maintenance personnel coordinate all access with the Tenant's designated personnel. The Landlord shall have the right of access to the telephone control room and electricity panels contained in the Tenant's premises for routine maintenance and emergencies. Landlord will make all best efforts to give Tenant, if practical, twenty-four (24) hours notice of its need to access the telephone room and electrical panel box. Landlord acknowledges and agrees that due to Tenant's security policies, that all Landlord and Landlord maintenance personnel may be required to sign-in at the Tenant's reception, show identification and be escorted at all times while in Tenant's premises.

Section 27.25 Tenant will from time to time as requested by Landlord provide Landlord with an Estoppel Certificate within five (5) business days of receipt of such request. Failure to provide an Estoppel Certificate in a timely manner shall be an Act of Default.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed the lease as of the year and date first above written.

LANDLORD:

TM PARK AVENUE LLC

By:

TENANT:

EPSILON INTERACTIVE LLC

By:

Al DiGuido, its President and Managing Member

TABLE OF EXHIBITS

Exhibit A Diagram of Demised Premises Showing its Division

Exhibit B Landlord's Work Letter

EXHIBIT B

LANDLORD'S WORK

Landlord will construct two (2) demising walls at the places set forth on Exhibit A as "A" and "B". The demising walls will contain doors which may be locked by the Tenant and opened from the Landlord's side only in the event of a fire or similar emergency. In other respects the Premises are delivered as is and the Landlord has no other work obligations under this Lease.

State of New York)
County of New York) ss.:

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

State of New York)
County of New York) ss.:

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

- -----
Notary Public

RULES AND REGULATIONS

1. The sidewalks, driveways, entrances, passages, courts, lobbies, esplanade areas, plazas, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the Premises and Tenant shall not permit any of its employees, agents or invitees to congregate in any of said areas. No doormat of any kind whatsoever shall be placed or left in any public hall or outside any entry door of the Premises.

2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung, in, or used in connection with any window or door of the Premises, without the prior consent of Landlord which will not be withheld, delayed or conditioned unreasonably. Landlord consents to all curtains, blinds, shades and screens presently in the Premises. Such curtains, blinds, shades or screens must be of a quality, type, design and color, and attached in the manner, reasonably approved by the Landlord.

3. No sign, insignia, advertisement, lettering, notice or other object shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside (and which is visible from outside) other than from the elevators the Premises of the Building without the prior consent of Landlord which will not be withheld, delayed or conditioned unreasonably.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels, or other articles be placed on the window sills or on the peripheral air conditioning enclosures.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building nor placed in the public halls, corridors or vestibules.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other substances shall be thrown or deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the Tenant, who, or whose servants, employees, agents, visitors or licensees shall have, caused the same. Any cuspidors or containers or receptacles used as such in the Premises shall be emptied, cared for and cleaned by and at the expense of Tenant.

7. Except as otherwise expressly provided in the lease to which these rules and regulations are annexed, no tenant shall in any way deface, any part of the Premises or the Building.

8. No vehicles, animals, fish except fish tanks, reptiles, insects or birds of any kind shall be brought into or kept in or about the Premises.

9. No noise, including, but not limited to, music or the playing of musical instruments, recordings, radio or television which, in the reasonable judgment of Landlord, might disturb other tenants of the Building, shall be made or permitted by any tenant. Nothing shall be done or permitted in the Building by any tenant which would impair or interfere with the use or enjoyment by any other tenant of any other space in the Building.

10. No tenant, nor any tenant's servants, employees, agents, visitors or licensees, shall at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance other than those normally used in the ordinary course of Tenant's business.

11. Additional locks or bolts of any kind which shall not be operable by the master key for the Building shall not be placed upon any of the doors or windows by any tenant, nor shall any changes be made in locks or the mechanism thereof which shall make such locks inoperable by such master key. Each tenant shall, upon the termination of its tenancy, turn over to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such tenant, and in the event of the loss of any keys furnished by Landlord, such tenant shall pay to Landlord the cost thereof.

12. All removals, or the carrying in or out of any safes, freight, furniture, packages, boxes, crates or any other objects or matter of any description must take place during such hours and in such elevators as Landlord or its agent may reasonably determine from time to time. Landlord reasonably reserves the right to inspect all objects and matter to be brought into the Building and to exclude from the Building all objects and matter which violate any of these Rules and Regulations or the lease of which these Rules and Regulations are a part. Landlord may require any person leaving the Building with any package or other objects or matter to submit a pass, listing such package or object or matter, from the tenant from whose Premises the package or object or matter is being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the Premises of such tenant. Landlord shall in no way be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the Premises or the Building under the provisions of this Rule 12 or of Rule 16 hereof.

13. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a public stenographer or public typist, or for the manufacture or sale of liquor, narcotics, dope, tobacco in any form, or as a barber, beauty or manicure shop, or as a school, or as a hiring or employment agency. Tenant shall not use the Premises or any part thereof, or permit the Premises or any part thereof to be used for manufacturing, or for the sale at retail or auction of merchandise, goods or property of any kind.

14. No tenant shall obtain, purchase or accept for use in the Premises coffee cart, towel, barbering, bootblackening, cleaning, floor polishing or other similar services from any persons not authorized by Landlord in writing to furnish such services. Such services shall be furnished only at such hours, in such places within the Premises, and under such regulations, as may be reasonably fixed by Landlord.

15. Landlord shall have the right to prohibit any advertising or identifying sign by any tenant which, in Landlord's reasonable judgment, tends to impair the reputation of the Building or its desirability as a building for offices, and upon notice from Landlord, such tenant shall refrain from and discontinue such advertising or identifying sign.

16. All persons entering and/or leaving the Building during hours other than Business Hours may be required to sign a register.

17. Tenant, before closing and leaving the Premises at any time, shall see that all operable windows are closed and all lights are turned out. All entrance doors in the Premises shall be left locked by tenant when the Premises are not in use.

18. Unless Landlord shall furnish electric energy hereunder as a service included in the rent, Tenant shall, at Tenant's expense, provide artificial light and electric energy for the employees of Landlord and/or Landlord's contractors while doing janitor service or other cleaning in the Premises and while making repairs or alterations in the Premises.

19. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

20. The requirements of tenants will be attended to only upon application 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.

21. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.

22. There shall not be used in any space, or in the public halls of the Building, either by any tenant or by any others, in the moving or delivery or receipt of safes, freight, furniture, packages, boxes, crates, paper, office material, or any other matter or thing, any hand trucks except those equipped with rubber tires, side guards and such other safeguards as Landlord shall require.

23. Tenant shall not cause or permit any odors of cooking or other processes or any unusual or objectionable odors to emanate from the Premises which would annoy other tenants or create a public or private nuisance. No cooking shall be done in the Premises except as is expressly permitted in the foregoing lease.

24. Landlord reserves the right to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in its reasonable judgment, it deems it necessary or desirable for the reputation, safety, care or appearance of the Building, or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or others in the Building. No rescission, alteration or waiver of any rule or regulation in favor of one tenant shall operate as a rescission, alteration or waiver in favor of any other tenant.

LEASE AGREEMENT

Between

**KDC-REGENT I INVESTMENTS, LP
(Landlord)**

and

**EPSILON DATA MANAGEMENT, INC.
(Tenant)**

Dated May 31, 2005

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this **Lease**) is dated as of May 31, 2005, (the **Effective Date**), between KDC-REGENT I INVESTMENTS, LP, a Texas limited partnership (**Landlord**), and EPSILON DATA MANAGEMENT, INC., a Delaware corporation (**Tenant**).

RECITALS

- A. Landlord desires to design, construct, and lease to Tenant a shell building (the **Building**) and other improvements (the Building and other improvements specified in the **Outline Specifications** attached hereto as **Exhibit A** are sometimes referred to collectively as the **Landlord Improvements**) on the real property owned by Landlord and described on **Exhibit B** (the **Land**), in accordance with the terms and subject to the conditions of this Lease.
- B. Tenant desires to have constructed and to lease from Landlord the Landlord Improvements in accordance with the terms and subject to the conditions of this Lease.
- C. Tenant desires to construct for its use additional interior improvements in the Building in accordance with the terms and subject to the conditions of this Lease.

AGREEMENTS

Landlord and Tenant (sometimes referred to jointly as the **parties** or individually as a **party**) agree as follows:

Section 1. Premises.

Landlord shall design, construct, and lease to Tenant, and Tenant shall lease from Landlord, the Land and the Landlord Improvements. The Land, the Building, the Landlord Improvements, and the Tenant Improvements (defined below) are referred to as the **Premises**. Landlord shall construct as part of the Landlord Improvements parking spaces equal to a ratio of not less than 4.5 spaces per 1,000 square feet of the Building (338 parking spaces for the initial Landlord Improvements).

Section 2. Construction of the Landlord Improvements and the Tenant Improvements.

- (a) Landlord shall furnish, at Landlord's sole cost and expense, all of the materials, labor, and equipment necessary for the design and construction of the Landlord Improvements in accordance with the Outline Specifications. Landlord shall construct the Landlord Improvements in a good and workmanlike manner, and in accordance with all applicable statutes and building codes, governmental rules, regulations, and orders, and restrictive covenants applicable to the Premises (**Legal Requirements**).
- (b) Tenant shall retain space planners, architects, and engineers reasonably approved by Landlord to design all interior improvements (including, without limitation, space planning, preparation of the Final Tenant Improvements Plans and Specifications in the manner set forth below, special lighting, interior demising walls, floor and wall coverings, furniture systems, security systems, telephone and data cabling, excess HVAC for computer rooms, equipment, etc.)

desired by Tenant (the **Tenant Improvements**). On or before 90 days after execution of this Lease, Tenant shall cause proposed Tenant Improvements Design Development Plans for the Tenant Improvements to be prepared and delivered to Landlord. Within 10 days after receipt of the proposed Tenant Improvements Design Development Plans, Landlord shall approve or reject the proposed Tenant Improvements Design Development Plans. If Landlord rejects the proposed plans, Landlord must specify in sufficient detail the reason(s) for its rejection. Tenant shall revise the proposed Tenant Improvements Design Development Plans based on Landlord's comments and resubmit the plans for Landlord's approval. Upon Landlord's approval, the proposed Tenant Improvements Design Development Plans will constitute the **Tenant Improvements Design Development Plans**. Within 90 days after Landlord's approval of the Tenant Improvements Design Development Plans, Tenant shall cause proposed Final Tenant Improvements Plans and Specifications to be prepared in accordance with the Tenant Improvements Design Development Plans. Within 10 days after receipt of the proposed Final Tenant Improvements Plans and Specifications, Landlord shall approve or reject the proposed Final Tenant Improvements Plans and Specifications. If Landlord rejects the proposed Final Tenant Improvements Plans and Specifications, Landlord must specify in sufficient detail the reason(s) for Landlord's rejection. Tenant shall revise the proposed Final Tenant Improvements Plans and Specifications and resubmit the plans for Landlord's approval. If Landlord has not notified Tenant of Landlord's disapproval within the 10-day period, Landlord will be deemed to have approved the proposed Final Tenant Improvements Plans and Specifications. Upon Landlord's actual or deemed approval, the proposed Final Tenant Improvements Plans and Specifications will constitute the **Final Tenant Improvements Plans and Specifications**. The Final Tenant Improvements Plans and Specifications will be designated as **Exhibit C** to this Lease, but need not be attached to this Lease. Landlord's approvals under this Section 2(b) may not be unreasonably withheld, conditioned, or delayed, except that any portions of the Tenant Improvements that require structural attachment(s) to the Building or attachment(s) to any Building MEP system are subject to approval by Landlord in its sole discretion.

- (c) Landlord appoints Murray W. Newton, Don Mills, and James Williams as its representatives to work with Tenant in the preparation and approval of Final Tenant Improvements Plans and Specifications. Tenant appoints Kris Hopson, Dick Corrigan and Jeff Debruin as its representatives to review the Tenant Improvements Design Development Plans, the proposed Final Tenant Improvements Plans and Specifications, and the Final Tenant Improvements Plans and Specifications so as not to delay unreasonably the completion of the Tenant Improvements. Both Landlord and Tenant may replace its representative(s) with other representative(s) at their discretion; and Landlord and Tenant shall advise the other party of such substitution.
- (d) Landlord shall provide Tenant with allowances as specified in **Exhibit D** attached hereto (the **Tenant Allowances**).

- (e) Landlord shall commence construction of the Building and other Landlord Improvements as soon as practicable after the date of this Lease but no later than thirty (30) days after the Effective Date. The commencement of site grading or site excavation will constitute the commencement of construction for purposes of the foregoing requirement. Landlord shall diligently proceed with the construction of the Building and other Landlord Improvements and shall use commercially reasonable efforts to (i) complete the Building and other Landlord Improvements in substantial accordance with the Outline Specifications (except for such seasonal landscaping items set forth in the Outline Specifications which are to be completed at a later date) (**Substantial Completion**) and (ii) deliver possession of same to the Tenant by November 14, 2005. Notwithstanding anything in this Lease to the contrary, a certificate from Landlord's architect that the Building and other Landlord Improvements have been completed in substantial accordance with the Outline Specifications shall confirm that Substantial Completion of the Building and other Landlord Improvements has occurred, absent manifest error.
- (f) Landlord shall coordinate with Tenant so that Tenant and its contractor for the Tenant Improvements can accompany Landlord and its architect when they inspect the Building in connection with the architect's issuance of the certificate of Substantial Completion under Section 2(e). Landlord shall complete all punch list items for the Landlord Improvements within two weeks after Tenant delivers the punch list to Landlord; but if Tenant prevents Landlord from completing any punch list item within such period of time, Landlord's time for completing the item will be extended one day for each day of Tenant Delay (defined below).
- (g) Except as hereinafter provided, if delays in the commencement or completion of the construction of the Building or other Landlord Improvements occur by reason of acts, omissions, failure to timely act or respond, or interference with construction of the Building or the other Landlord Improvements on the part of Tenant or those acting for or under the direction of Tenant (including, without limitation, its agents, employees, contractors, consultants, and subcontractors, all such delays being referred to as **Tenant Delays**) or for any other reasons beyond the reasonable control of Landlord (which Tenant Delays and other delays are collectively referred to as **Excused Delays**), the dates established above for the commencement of construction, Substantial Completion and delivery of possession will be postponed by the aggregate duration of the Excused Delays; provided, however that Excused Delays, other than days of Tenant Delay, shall not postpone the April 4, 2006 date set forth in Section 4(e)(iii) beyond October 5, 2006. Non-availability or shortages of labor or materials, local strikes, lockouts, and inclement weather will constitute Excused Delays. Any inclement weather that prevents Landlord's general contractor from working on a normal work day (Monday through Saturday) will constitute an Excused Delay to the extent that the days lost due to inclement weather exceeds three work days per calendar month, on a month by month basis.
- (h) Upon request by Tenant after the Building is dried in, Landlord, in its sole discretion, may allow Tenant and Tenant's employees and contractors to enter the Building for the purpose of installing the Tenant Improvements in accordance with the Final Tenant Improvement Plans and Specifications and all Legal Requirements. Tenant shall ensure that its employees and contractors do not

interfere with Landlord's completion of the construction of the Landlord Improvements. Tenant shall indemnify, defend, and hold Landlord harmless from and against any damage or delay caused by Tenant's early entry. Entry by Tenant's employees and contractors for this limited purpose will not constitute Tenant's acceptance of the Landlord Improvements or give rise to any obligation to pay Base Rent.

- (i) Landlord shall incorporate only new materials and equipment into the construction of the Landlord Improvements. Landlord warrants the Landlord Improvements including, without limitation, the foundations, slab, structural frame, roof deck, and exterior walls of the Building against defective design, workmanship, and materials, latent or otherwise, for a period of one year from the date of Substantial Completion (the **Warranty Period**). Landlord shall repair or replace at its sole cost and expense any defective item of Landlord Improvements occasioned by defective design, workmanship, or materials that Tenant discovers during the Warranty Period. Upon the expiration of the Warranty Period, Landlord shall cause the material and labor warranties for the general contractor, the roof on the Building, the window glazing and the mechanical, including HVAC, electric and plumbing systems to be assigned to Tenant with no reduction in the unelapsed warranty periods or other benefits thereunder; in addition, Landlord shall deliver to Tenant all other continuing assignable guaranties and warranties received by Landlord in connection with the construction of the Landlord Improvements and shall assign to Tenant Landlord's interest in those guaranties and warranties by means of a duly executed and acknowledged assignment in form and substance reasonably satisfactory to Landlord and Tenant. Notwithstanding the foregoing, Landlord has no obligation to assign any warranty or guaranty to Tenant if Landlord is obligated to maintain an item covered by the warranty or guaranty pursuant to Section 8 of this Lease. From and after the expiration of the Warranty Period, Landlord shall cooperate with Tenant in Tenant's enforcement, at Tenant's sole cost and expense, of any express warranties or guaranties of workmanship or materials for the Landlord Improvements given by subcontractors, architects, draftsmen, or materialmen that guarantee or warrant against defective design, workmanship, or materials for a period of time in excess of the Warranty Period. The obligations Landlord undertakes under the terms of this subsection are in addition to the maintenance and repair obligations that Landlord undertakes under other terms of this Lease.
- (j) Landlord shall complete construction and equipping of the Landlord Improvements free of mechanic's liens or other liens, and shall defend, indemnify and hold Tenant harmless from and against all claims, actions, losses, costs, damages, expenses, liabilities and obligations, including, without limitation, reasonable legal fees, resulting from (A) the assertion or filing of any claim for amounts alleged to be due to the claimant for labor, services, materials, supplies, machinery, fixtures or equipment furnished in connection with the construction of the Landlord Improvements, (B) the foreclosure of any mechanic's or materialmen's lien that allegedly secures the amounts allegedly owed to the claimant, or (C) any other legal proceedings initiated in connection with that claim.

- (k) Landlord shall afford Tenant and its contractors reasonable access to the Landlord Improvements during construction for the purposes of inspecting the Landlord Improvements.
- (l) Throughout the period between the date on which Landlord commences construction of the Landlord Improvements and the date of Substantial Completion, Landlord shall maintain in force with respect to the Landlord Improvements a policy of multiple peril (all-risk) builder's risk insurance on a completed value basis in an amount equal to the full replacement cost of the Landlord Improvements. That policy must name Tenant as an additional insured, as its interests may appear, and must provide that coverage will continue for Tenant's benefit notwithstanding any act or omission on Landlord's part. The certificate of insurance evidencing that policy must provide that no cancellation, surrender or material change will become effective unless Tenant receives written notice at least 30 days in advance of the time at which that cancellation, surrender or material change becomes effective.
- (m) Tenant shall furnish, at Tenant's sole cost and expense (but subject to payment by Landlord of the Tenant Allowances), all of the materials, labor, and equipment necessary for the design and construction of the Tenant Improvements in accordance with the Final Tenant Improvements Plans and Specifications. Tenant shall construct the Tenant Improvements with all due diligence in a good and workmanlike manner and in accordance with all applicable Legal Requirements and the Final Tenant Improvements Plans and Specifications. Tenant shall incorporate only new materials and equipment into the construction of the Tenant Improvements. Unless otherwise approved in writing by Landlord, such approval not to be unreasonably withheld, Tenant may only use the general contractors and major subcontractors identified as specified in Exhibit J in constructing the Tenant Improvements.
- (n) Tenant shall diligently complete construction and equipping of the Tenant Improvements free of mechanic's liens or other liens, and shall defend, indemnify and hold Landlord harmless from and against all claims, actions, losses, costs, damages, expenses, liabilities and obligations, including, without limitation, reasonable legal fees, resulting from (A) the assertion or filing of any claim for amounts alleged to be due to the claimant for labor, services, materials, supplies, machinery, fixtures or equipment furnished in connection with the construction of the Tenant Improvements, (B) the foreclosure of any mechanic's or materialmen's lien that allegedly secures the amounts allegedly owed to the claimant, or (C) any other legal proceedings initiated in connection with that claim.
- (o) Tenant shall afford Landlord and its contractors reasonable access to the Tenant Improvements during construction for the purposes of inspecting the Tenant Improvements.
- (p) Tenant shall promptly provide Landlord with as-built drawings of the Tenant Improvements upon completion of construction thereof. Landlord shall provide Tenant with as-built drawings of the Building and other Landlord Improvements as well as all instructions and operator's manuals pertaining to any equipment

installed by Landlord within the Building within ninety (90) days after the date of Substantial Completion.

- (q) Prior to the Commencement Date, Landlord shall provide Tenant a certificate from Landlord's architect showing the rentable area of the Building (**Building Square Footage**) measured in accordance with the method of measuring rentable area in a single tenant building as specified in the Standard Method for Measuring Floor Area in Office Buildings published by the Building Owners and Managers Association International (**BOMA**) in ANSI Z65.1-1996.

Section 3. Initial Term.

- (a) Subject to Section 3(c), the term of this Lease (the **Initial Term**) is the period that commences on the latter of (i) May 14, 2006, or (ii) six months after the date of Substantial Completion and tender of possession of the Landlord Improvements to Tenant (the **Commencement Date**) and that expires at 11:59 p.m. (Dallas, Texas local time) on either the day prior to the 12th anniversary of the Commencement Date, if the Commencement Date occurs on the first day of a calendar month, or on the day prior to the 12th anniversary of the first day of the first full calendar month following the calendar month in which the Commencement Date occurs, if the Commencement Date does not occur on the first day of a calendar month, whichever is applicable (the **Expiration Date**). The term **Lease Year** means each 12 calendar month period beginning on the Commencement Date. The first Lease Year includes any partial calendar month if the Commencement Date is not the first day of a calendar month.
- (b) Tenant has the right to renew the term of this Lease, as set forth in Section 5 below, and the Initial Term and any Renewal Term with respect to which Tenant exercises that option in accordance with Section 5 are collectively called the **Term** in this Lease.
- (c) If the date of Substantial Completion and tender of possession of the Landlord Improvements to Tenant does not occur by December 6, 2005, solely by reason of Tenant Delays or by reason of casualty damage covered by Section 18, then the Commencement Date will remain June 5, 2006, and Tenant shall commence paying Base Rent on June 5, 2006.
- (d) Within 15 days after Substantial Completion occurs, the parties will execute an **Acknowledgment Letter** in substantially in the form of **Exhibit E**.

Section 4. Base Rent and Additional Rent.

- (a) Assuming the Building Square Footage is at least 75,000 rentable square feet and subject to adjustment as provided in Sections 4(b) and 39 and in **Exhibit D**, Tenant shall pay to Landlord base annual rent (**Base Rent**) for the Premises beginning on the Commencement Date as follows:

Lease Years	Annual Base Rent	Monthly Base Rent
1-4	\$ 992,250	\$ 82,687.50
5-8	\$ 1,053,000	\$ 87,750.00
9-12	\$ 1,117,500	\$ 93,125.00

- (b) If the certificate of Landlord's architect provided under Section 2(q) shows that the Building Square Footage is less than 75,000 rentable square feet, then the Annual Base Rent and Monthly Base Rent numbers specified above, will be decreased by multiplying them by a number whose numerator is the Building Square Footage and whose denominator is 75,000. The full amount of the Tenant Allowances shall be paid to Tenant and will not be reduced even if the Building Square Footage is determined to be less than 75,000 rentable square feet. Any adjustment of the Base Rent under this Section 4(b) will be specified in the Acknowledgement Letter.
- (c) If the Commencement Date occurs on a day other than the first day of a calendar month, then the Base Rent for the month in which the Commencement Date occurs will be equal to the monthly installment amount specified above multiplied by a fraction, the numerator of which is the number of days in the period starting on the Commencement Date and ending on the last day of that month, and the denominator of which is the total number of days in that month.
- (d) If a termination of this Lease occurs prior to the Expiration Date for reasons other than Tenant's default and if the effective date of termination is other than the last day of a calendar month, the parties will prorate the Base Rent payable with respect to the calendar month in which the effective date of termination occurs based on the number of days in that month, and Landlord shall promptly refund to Tenant, without demand, setoff or deduction, any previously paid Base Rent attributable to any period of time following the termination date.
- (e) Subject to Section 3(c), if the date of Substantial Completion and the tender of possession of the Landlord Improvements does not occur by the following dates (each of which is subject to extension by one day for each day of Excused Delay [except that the April 4, 2006 date set forth in Section 4(e)(iii) shall not be extended beyond October 5, 2006 unless the additional delay is caused by Tenant Delay]):
- (i) December 6, 2005, then Tenant will receive one day of free Base Rent and payment by Landlord for, or reimbursement of, all charges for the per diem cost of all utilities, Impositions and other operating costs for the Premises for each day of delay through February 3, 2006;

- (ii) February 4, 2006, then Tenant will receive three days of free Base Rent and payment by Landlord for, or reimbursement of, all charges for the per diem cost of all utilities, Impositions and other operating costs for the Premises for each additional day of delay thereafter; and
- (iii) April 4, 2006, then Tenant may, at its option, by giving notice to Landlord at any time thereafter until Landlord achieves substantial completion of the Landlord Improvements, either:
 - (A) terminate this Lease effective as of the date Tenant gives such notice;
 - (B) elect to take over completion of the Landlord Improvements, in which event Tenant shall be entitled to a credit against Base Rent for all reasonable costs incurred by Tenant in completing the Landlord Improvements; or
 - (C) require Landlord to complete the Landlord Improvements and continue to allow free Base Rent and expense payment (or reimbursement) to accrue as provided in Section 4(e)(ii).
- (f) As used herein, **Impositions** shall mean all the real estate taxes and installments of special assessments levied against the Premises and attributable to any period of time following the Commencement Date.
- (g) Landlord shall file a request with all taxing authorities that issue tax bills or tax statements for Impositions on the Premises to deliver the tax bills or tax statements directly to Tenant. Tenant shall promptly deliver to Landlord copies of all tax bills and tax statements Tenant receives directly from the taxing authorities and Tenant shall pay all such tax bills or tax statements prior to delinquency. At least 30 days prior to the date each such tax bill or tax statement would become delinquent, Tenant shall deliver to Landlord a copy of a paid receipt that the taxing authority issues or a Certificate of No Tax Due issued by a reputable title insurance company, at Tenant's expense, demonstrating the payment of that Imposition. If Tenant does not timely provide proof of the payment of any Imposition as required in the prior sentence, Landlord may pay the Imposition and bill Tenant therefor. Tenant will be responsible for any interest or penalties that accrue with respect to all Impositions not timely paid by Tenant under this Section 4(g).
- (h) The foregoing will not require Tenant to pay any municipal, state or federal income or excess profits taxes assessed against Landlord, or any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Landlord, or corporation franchise taxes imposed upon the corporate owner of the fee of the Premises. Moreover, with respect to Impositions that may lawfully be paid in installments over a period of years, with or without interest, the foregoing will not require Tenant to pay any portion of those installments or interest that become due to the taxing authority after the Expiration Date, as extended. With respect to the Impositions levied in respect of any period of time within which either the Commencement Date or the Expiration Date occurs, Tenant must only pay a proportionate part of those Impositions, which part will

bear the same ratio to the total amount of those Impositions as the number of days in the period between the Commencement Date and the end of that period of time or in the period between the beginning of that period of time and the Expiration Date, whichever is applicable, bears to the total number of days in that period of time.

- (i) Tenant may contest in good faith and at its expense the amount or validity of any Imposition that it is obligated to pay in accordance with the foregoing and, if successful in that regard, is entitled to recover from Landlord any refund paid to Landlord as a result of that successful contest. Landlord shall join in any contest undertaken by Tenant in accordance with the foregoing at Tenant's expense if the provisions of any law, rule or regulation at the time in effect require that the proceedings be brought by or in the name of Landlord. Notwithstanding anything in this Lease to the contrary, during any tax contest, Tenant agrees to comply with any jurisdictional requirements relating to payment before contest necessary to prevent a tax foreclosure.
- (j) Tenant will pay Base Rent and additional rent to Landlord at the address set forth in Section 35(j) or at such other address as Landlord may from time to time designate. Following Substantial Completion, Tenant's obligation to pay Base Rent and other amounts under this Lease is independent of the performance by Landlord of its obligations under this Lease; provided, nothing in this sentence affects Tenant's rights to set off under Section 25.

Section 5. Renewal of the Term.

- (a) Except as otherwise provided in Section 12, Tenant may renew the Term for two successive renewal terms (**Renewal Terms**) of 60 months each so long as this Lease is in full force and effect and Tenant is not in default beyond all applicable grace, notice and cure periods in respect of the performance of any obligation it undertakes under the terms of this Lease both at the time that Tenant exercises each renewal option and at the time the Renewal Terms commence. Tenant will exercise each renewal option, if at all, by delivering written notice (the **Option Notice**) to Landlord not less than two hundred seventy (270) days prior to the Expiration Date. The provisions of this Lease will govern the relationship between the parties during each Renewal Term, except that the Base Rent for each Renewal Term will be determined as provided below.
- (b) The annual Base Rent payable during each Renewal Term will be equal to 95% of the product of the Fair Market Rent (as defined below and as determined in accordance with the procedures described in this Section 5(b)) as of the date Tenant exercises its option to renew the Term for the ensuing Renewal Term times the Building Square Footage (or, if Tenant has exercised its Expansion Option under Section 12, times the sum of the Building Square Footage plus the number of rentable square feet in the Expansion). Initially Landlord will determine the Fair Market Rent by using its good faith judgment. Landlord will use its best efforts to provide written notice of its determination in that regard within 15 days after the date Tenant sends the Option Notice, but in no event later than 30 days after that date. Tenant will have a period (the **Tenant Review Period**) of 30 days following the date of its receipt of Landlord's notice of the rent it proposes as the Fair Market Rent within which to accept Landlord's proposal or

to provide Landlord Tenant's objections to Landlord's proposal. If Tenant objects to Landlord's initial proposal or fails to affirmatively accept that proposal in writing, the parties will use their best efforts to reach agreement with respect to the Fair Market Rent, but, if the parties fail to agree within 15 days after the expiration of the Tenant Review Period, determination of the Fair Market Rent will be made in accordance with the terms of Subsections 5(b)(i) through 5(b)(v) below. If Landlord fails to provide Tenant written notice of its initial proposal with respect to the Fair Market Rent within the 30-day period set forth above, Tenant may commence negotiations by providing the initial notice, in which event Landlord will have a period (the **Landlord Review Period**) of 30 days following the date of its receipt of Tenant's notice of the rent it proposes as the Fair Market Rent within which to accept Tenant's proposal or to provide Tenant Landlord's objections to Tenant's proposal. If Landlord objects to Tenant's initial proposal or fails to affirmatively accept that proposal in writing, the parties will use their best efforts to reach agreement with respect to the Fair Market Rent, but, if the parties fail to agree within 15 days after the expiration of the Landlord Review Period, determination of the Fair Market Rent will be made in accordance with the terms of Subsections 5(b)(i) through 5(b)(v) below. If determination of the Fair Market Rent in accordance with the following procedures becomes necessary, each party will place in a separate sealed envelope its final proposal as to the Fair Market Rent that will apply during the ensuing Renewal Term.

- (i) The parties will meet within five business days after the expiration of the Tenant Review Period or the Landlord Review Period, whichever is applicable, exchange the sealed envelopes and open those envelopes in the presence of each other. If the parties do not agree upon the Fair Market Rent within 30 days following the date on which the exchange and opening of the envelopes occur, Tenant may rescind its exercise of the option to renew the Term by the delivery of written notice to Landlord prior to the expiration of that 30-day period. If the parties do not agree upon the Fair Market Rent within that 30-day period and if Tenant fails to rescind its exercise of the option to renew the Term in accordance with the foregoing terms of this subsection (i), then the parties will jointly appoint a single arbitrator within the period that expires 40 days following the date on which the exchange and opening of the envelopes occur. The arbitrator must be a real estate broker who, as his or her primary livelihood, has been active in the leasing of commercial properties in Dallas County, Texas, during the 10-year period preceding the date of his or her appointment. Neither Tenant nor Landlord may select as an arbitrator any broker or firm to whom it has paid commissions or fees in the three year period prior to the proposed engagement. Prior to the arbitrator's appointment, neither party will reveal to prospective arbitrators under consideration by the parties its opinion regarding the Fair Market Rent. The sole issue submitted to the arbitrator for determination will be which party's final proposal regarding the Fair Market Rent is closest to the actual Fair Market Rent, as independently determined by the arbitrator.
- (ii) Within 30 days after the date of his or her appointment, the arbitrator will give the parties written notice of its determination as to which of the parties' final proposals regarding the Fair Market Rent will apply during the ensuing Renewal Term.

- (iii) The decision of the arbitrator is final and binding on the parties.
 - (iv) If the parties fail to agree upon the appointment of an arbitrator within the time specified above, that appointment will be made by the Dallas Office of the American Arbitration Association.
 - (v) The parties will share the cost of the arbitration equally.
- (c) Fair Market Rent means the annual rental rate per square foot that comparable buildings located in the same market area as the Building and that are comparable in size, design, and quality to the Building would accept in comparable transactions involving a tenant whose creditworthiness is comparable to that of Tenant and whose other obligations under the lease would be comparable to those undertaken by Tenant in this Lease. In any evaluation of comparable transactions, the arbitrator will consider the annual rental rates per square foot, the use to which the tenant puts the leased premises, the extent of the tenant's liability for the performance of the covenants set forth in the lease, abatement provisions reflecting free rent or no rent during the period of construction or subsequent to the commencement date as to the building in question, brokerage commissions, if any, that would be payable by the landlord, length of the lease term, size and location of premises being leased, building standard work letter or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for those comparable transactions. The intent is that Tenant will obtain the same rent and other economic benefits that a landlord would otherwise give in a comparable transaction and that Landlord will make and receive the same economic payments and concessions that other landlords would otherwise make and receive in comparable transactions.

Section 6. Use.

Tenant may use the Premises for any lawful use. It is intended that Tenant will initially use the Premises for general offices, telecommunications, computer and data support functions, or other purposes consistent with the character of the Building and for lawful purposes related to Tenant's business and in compliance with all Legal Requirements (**Intended Use**).

Section 7. Alterations.

- (a) During the Term, Tenant shall not make structural exterior alterations to the Premises (including, without limitation, alterations to the MEP systems serving the Building (**Structural Alterations**)) without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant must provide Landlord with a complete set of plans for any proposed Structural Alterations. Tenant shall construct all Structural Alterations in substantial accordance with the approved plans. Notwithstanding the preceding, Tenant will have the right, without Landlord's consent, to make non-structural alterations (**Non-Structural Alterations**) to the interior of the Premises. In making any Structural Alterations,

Tenant shall notify Landlord at least 30 days prior to commencement of construction; and in making any Structural or Non-Structural Alterations, Tenant shall comply with all Legal Requirements and perform same in a good and workmanlike manner. Tenant shall promptly deliver to Landlord complete and accurate as-built plans for any Structural Alterations. In the event that Tenant's Non-Structural Alterations consists of moving interior partitions, Tenant shall so notify Landlord; upon Landlord's written request, Tenant shall provide as-built plans for the relocation of such interior partitions.

- (b) Tenant's trade fixtures, furnishings and equipment in the Premises will remain Tenant's property for all purposes and Tenant may remove them at its option and expense at any time on or before the Expiration Date. Upon the expiration of the Term or any earlier termination of this Lease, Tenant shall surrender the Premises in good condition and repair, except for ordinary wear and tear, casualty damage, and damage that Landlord has the obligation to repair under the terms of this Lease. The foregoing covenant does not obligate Tenant to remove Structural or Non-Structural Alterations or other leasehold improvements made with respect to the Premises. All Tenant Improvements and other property of Tenant not timely removed from the Premises shall become part of the Premises and will remain with the Premises upon the expiration of the Term or any earlier termination of this Lease.
- (c) Tenant shall defend, indemnify and save harmless Landlord against any and all mechanic's and other liens filed arising out of any work performed, materials furnished or obligations incurred in connection with Structural or Non-Structural Alterations. If Tenant does not procure the satisfaction or discharge of all liens for which Tenant is responsible hereunder as and when required by this Lease, by bonding, payment or otherwise Landlord may, upon 30 days' prior written notice to Tenant, pay the amount of any lien or discharge the same by deposit or, alternatively, by bond or in any manner according to law, together with reasonable expenses incurred by Landlord, including all reasonable legal fees and such expenses shall be payable by Tenant as additional rent hereunder within 30 days after demand.

Section 8. Maintenance of Premises.

- (a) During the Term, Landlord shall maintain only the following in good condition at its expense: the structure of the Building, including, without limitation the roof, roof membrane, foundation, floor slab, and load-bearing and exterior walls (the **Structural Components**). If, in order for a Structural Component of the Building to remain in good condition, replacement of that component becomes necessary, Landlord's obligation with respect to that Structural Component includes the obligation to replace it.
- (b) Landlord shall accomplish all maintenance for which it is responsible as soon as practicable following receipt of notice from Tenant. If a hazardous or emergency situation exists, however, Landlord shall have the maintenance performed as soon as possible.
- (c) Except as otherwise provided in this Lease, Tenant shall during the Term maintain in good condition and repair at all times at its expense the Premises and

the systems serving the Premises. Moreover, during the entire Term, Tenant must keep the parking areas clean and in good condition and repair, water the landscape plantings situated on the Land at suitable intervals, and maintain in force service contracts providing for the routine repair and maintenance of the HVAC and other Building systems serving the Premises (each, a **Maintenance Contract**). Promptly after receipt thereof, Tenant shall furnish to Landlord a copy of each Maintenance Contract (and each renewal thereof) and a copy of each service report received by Tenant under any Maintenance Contract. Tenant's obligations include necessary replacements of the landscaping, parking areas, driveways, sidewalks, stairs, elevators, loading dock, dock door, and leveler, and related facilities, and the HVAC and other systems serving the Premises and all Tenant Improvements.

- (i) With respect to any proposed replacement of any portion of the HVAC system (**HVAC Replacement**) during the last two (2) years of the Initial Term or any Renewal Term of this Lease:
 - (A) Tenant must give Landlord written notice of the need for the HVAC Replacement at least 30 days prior to commencing the HVAC Replacement, which notice must include:
 - (I) a detailed estimate from the service provider under the Maintenance Contract for the HVAC system of the cost to repair the HVAC system (or the applicable part thereof) without replacing it; and
 - (II) bids for the cost of the HVAC Replacement from at least three (3) reputable HVAC providers approved by Landlord; and
 - (B) Landlord must give its prior written consent to the HVAC Replacement and the HVAC provider who will install the HVAC Replacement, which consent may not be unreasonably withheld, conditioned, or delayed.

If Landlord does not consent to the HVAC Replacement within ten (10) days after receipt of Tenant's notice, and Tenant nevertheless proceeds with such HVAC Replacement, then Tenant may elect to submit to binding arbitration as provided in Section 41 below the question whether Tenant's decision to proceed with the HVAC Replacement rather than repairing the applicable portion(s) of the HVAC system (**HVAC Replacement Decision**) was reasonable.

- (ii) If Landlord consents to an HVAC Replacement (or if Landlord does not consent to the HVAC Replacement, Tenant elects to proceed with the HVAC Replacement and to submit its HVAC Replacement Decision for arbitration under Section 41, and the arbitrator decides in favor of Tenant) during the last two (2) years of the Initial Term or any Renewal Term and Tenant does not exercise its option for an available Renewal Term under Section 5, then, within 30 days after the expiration of the Term, Landlord shall reimburse Tenant an amount determined by multiplying the

out-of-pocket cost incurred by Tenant for the HVAC Replacement by a fraction whose denominator is the useful life (**Useful Life**) of the HVAC Replacement, as determined in accordance with generally accepted accounting principles (stated in years), and whose numerator is the Useful Life minus the number of full or partial years remaining in the Initial Term or Renewal Term, as applicable, at the time such HVAC Replacement occurs (plus simple interest on the portion of the HVAC Replacement for which Landlord is responsible at the rate of eight percent (8%) per annum from the date that the HVAC Replacement expense was incurred), subject to the following conditions:

- (A) Tenant must have obtained and continued in effect at all times during the Term a Maintenance Contract for the HVAC;
- (B) Tenant must not be in default under this Lease beyond any applicable notice and cure period at the time of reimbursement;
- (C) Tenant must provide Landlord with copies of paid receipts evidencing the payment of the costs for the HVAC Replacement; and
- (D) Landlord may set off against its reimbursement amount any outstanding amounts owed by Tenant to Landlord under this Lease.

E.G., if we assume that Tenant makes an HVAC Replacement at any time during the last year of the Initial Term, Tenant is entitled to reimbursement under this Subsection 8(c)(ii), the Useful Life is determined to be nine years, and the cost of the HVAC Replacement is \$500,000, then Landlord's reimbursement to Tenant will be \$444,444 [$\$500,000 \times \frac{8}{9}$], plus simple interest at the rate of eight percent (8%) per annum on the portion of the HVAC Replacement for which Landlord is responsible from the date that the HVAC Replacement expense was incurred.

- (iii) If Landlord consents to an HVAC Replacement at any time during the last two (2) years of the Initial Term or any Renewal Term (or if Landlord does not consent to the HVAC Replacement, Tenant elects to proceed with the HVAC Replacement and to submit its HVAC Replacement Decision for arbitration under Section 41, and the arbitrator decides in favor of Tenant) and Tenant thereafter exercises its Option for an available Renewal Term or Renewal Terms, then at the expiration of the last of such exercised Renewal Terms, Landlord shall reimburse Tenant an amount determined by multiplying the out-of-pocket cost incurred by Tenant for the HVAC Replacement by a fraction whose denominator is the Useful Life of the HVAC Replacement and whose numerator is the Useful Life minus the number of full or partial years which have elapsed since the time the HVAC Replacement occurred plus interest at the rate of eight percent (8%) per annum on the portion of the HVAC Replacement for which Landlord is responsible from the date that the HVAC Replacement expense was incurred.

- (d) At Tenant's request, during the first Lease Year of the Term, Landlord agrees, at no out of pocket cost to Landlord, to assist Tenant in obtaining and coordinate maintenance providers for the Premises.
- (e) Landlord or Tenant, after providing the other party 30 days' written notice, may perform any obligation the other party (the **Non-Performing Party**) is required to perform pursuant to this Section 8 but has failed to perform on behalf of such Non-Performing Party, and the Non-Performing Party shall pay to the party performing such obligation (the **Performing Party**) within 30 days after the date of the Non-Performing Party's receipt of the Performing Party's invoice the full amount of the reasonable costs and expenses the Performing Party incurs to perform such obligations, together with the amount of any reasonable legal fees the Performing Party incurs in instituting, prosecuting or defending any action or proceeding by reason of any default in respect of any such obligation, except that the Performing Party shall have no right to perform such obligation if such obligation requires more than 30 days to perform and the Non-Performing Party has commenced performance of the obligation within the 30-day period and is diligently pursuing performance of that obligation. The foregoing in no way eliminates Landlord's obligation to promptly perform repairs involving hazardous or emergency situations, as further set forth in Section 8(b) above, and Tenant's corresponding right of self-help if Landlord fails to do so as more specifically provided in Section 25(a) below.

Section 9. Utilities.

Tenant shall contract for and pay for all utilities and other services furnished to the Premises commencing on the date Landlord substantially completes construction of the Landlord Improvements.

Section 10. Satellite Dish.

Tenant has the right to use portions of the roof area of the Building, or such other locations on the Land, as Tenant may reasonably select and Landlord approves (provided Landlord's approval shall not be unreasonably withheld, conditioned, or delayed) and as Legal Requirements permit, for the installation, operation, maintenance, security, repair, and replacement of antennae and satellite dishes serving the Premises and related cable connections (the **Telecommunications Equipment**), as well as for access to risers. Tenant's use of the Premises in respect to the Telecommunications Equipment is subject to such reasonable rules as Landlord may from time to time designate and to the following additional conditions: (i) Tenant is solely responsible for the installation, maintenance, repair, operation, and replacement of the Telecommunications Equipment, (ii) Tenant must install screening around the Telecommunications Equipment to the extent required by Legal Requirements, and (iii) any roof penetrations necessary to install the Telecommunications Equipment shall be made so as not to invalidate or void the roof warranty including using designated contractors, if required as a condition of such compliance with the roof warranty. On or before the Expiration Date or within 30 days after the earlier termination of this Lease, Tenant shall remove the Telecommunications Equipment and repair any damage to the Premises that the removal causes. Tenant shall pay Landlord within 30 days after Landlord's demand the cost of repairing any damage to the Premises arising from the removal and restoration.

Section 11. Signs and Flagpoles.

Tenant has the exclusive right to place exterior signs and flagpoles on the Premises subject only to any restrictions applicable by virtue of Legal Requirements, other than temporary for sale or for rent signs installed by Landlord. Tenant shall maintain its signs in good condition and shall remove them and repair any damage to the Premises the removal causes on or before the Expiration Date or within 30 days after any earlier termination of this Lease.

Section 12. Expansion Option.

- (a) Subject to Section 12(b), if (i) Tenant is not in default beyond all applicable grace, notice and cure periods in respect of the performance of its obligations arising under the terms of this Lease, (ii) this Lease is in full force and effect in accordance with its terms, (iii) the Initial Term has not been terminated, (iv) the total stockholder equity of Guarantor (as defined in Section 38) is not less than \$500 Million, and (v) its ratio of current assets to current liabilities is not less than 1.0 (taking into account available proceeds under any credit facility in place at the time in question), then Tenant has the option (the **Expansion Option**) to lease an addition to the Building (the **Expansion**) that Landlord will erect in order to enlarge the floor area of the Building. For purposes of calculating the Guarantor's total stockholder equity and current ratio, its most recent published annual report or 10Q on file with the Securities and Exchange Commission shall be used.
- (b) If Tenant exercises the Expansion Option during the first Lease Year, the Expansion must be for at least 20,000 rentable square feet, the Annual Base Rent for the Expansion will be the same as the Annual Base Rent (on a per square foot basis) for the initial Premises, the term for the Expansion shall end conterminously with the term of the lease for the Initial Premises and all other terms of this Lease will remain the same.
- (c) If Tenant exercises the Expansion Option after the first Lease Year, the initial Term for the initial Premises will automatically be extended so that the initial Term with respect to the initial Premises and the Expansion are coterminous and last for 12 years from the Expansion Commencement Date (as defined below). Other than the Base Rent, the terms of this Lease with respect to the initial Premises during the balance of the 12-year term will remain as stated in this Lease. The Base Rent payable by Tenant with respect to the initial Premises will remain in effect until the Expiration Date for the Expansion, with the Annual Base Rent increasing by 6.12% on the first day of the 13th Lease Year (based in the initial Term) and on the first day of each succeeding fourth Lease Year (i.e., 16th, 20th, etc.).
- (d) If Tenant exercises the Expansion Option for an Expansion which would exceed 25,000 rentable square feet, then:
 - (i) Landlord is not required to construct any Expansion if (x) the size of the Expansion would cause the expanded Premises not to comply with all applicable laws, ordinances, and codes, including, without limitation, parking code requirements, or (y) the expanded Premises is not, in

Landlord's sole opinion, marketable to a replacement tenant or tenants. If this Subsection 12(d)(i) is applicable, then Landlord shall promptly so notify Tenant. Notwithstanding the foregoing, if Landlord notifies Tenant that Subsection 12(d)(i)(y) is applicable, then Tenant may notify Landlord within 10 business days after receipt of Landlord's notice that Tenant elects to reduce the size of the Expansion to 25,000 rentable square feet or less and Landlord will proceed with the construction of the Expansion under this Section 12.

- (ii) If Subsection 12 (d)(i) is not applicable, then Landlord shall notify Tenant of the parking ratio which it will provide for such Expansion and the overall parking ratio for the Building, as expanded; and Tenant may elect to reduce the size of such Expansion after review of such parking ratios.
- (e) If Tenant exercises the Expansion Option by giving written notice of exercise to Landlord, then, subject to Subsection 12(d)(i):
 - (i) The parties will promptly enter in good faith into an agreement whereby (x) Landlord agrees to construct the Expansion within 12 months or less after the execution of such agreement, (y) the parties agree to increase the Base Rent for the Expansion in the manner as set forth in this Section 12, payable during the period from the date Landlord substantially completes construction of the Expansion (the **Expansion Commencement Date**) and that ends at 11:59 p.m. (Dallas, Texas local time) on either the day prior to the 12th anniversary of the Expansion Commencement Date, if the Expansion Commencement Date occurs on the first day of a calendar month, or on the day prior to the 12th anniversary of the first day of the first full month following the calendar month in which the Expansion Commencement Date occurs, if the Expansion Commencement Date does not occur on the first day of a month, whichever is applicable (the **Expansion Term**).
 - (ii) Landlord shall construct the Expansion on the same terms as for the construction of the Landlord Improvements (except for Base Rent as specified in this Section 12), granting Tenant the same Tenant Allowances included in this transaction (on a per rentable square foot basis), except as otherwise specified in **Exhibit D**.
 - (iii) If Tenant exercises the Expansion after the first Lease Year, the Base Rent for the Expansion will be the amount determined by multiplying the Expansion Construction Costs by the sum of (A) the interest rate on 10-year U.S. Treasury Bills as of the Expansion Commencement Date plus (B) 400 basis points. Within 30 days following Landlord's substantial completion of the construction of the Expansion, Landlord shall furnish to Tenant a detailed itemization of the costs by major construction trade (the **Expansion Construction Costs**) that Landlord incurred in connection with the design and construction of the Expansion and copies of invoices, statements, contracts, subcontracts, and other information that Tenant may reasonably request in order to confirm the accuracy of Landlord's itemization.

- (iv) Landlord shall construct the Expansion in accordance with the Outline Specifications and as specified in Section 2 for the initial Building. Landlord shall solicit bids from at least three contractors appearing on a list of contractors jointly developed and mutually approved by the parties. Landlord shall award the contract for the construction of the Expansion to the lowest qualified bidder, subject to Tenant's approval, which will not be unreasonably withheld, conditioned, or delayed. Within sixty (60) days after Tenant exercises the Expansion Option, Landlord shall provide Tenant with an estimate of the Expansion Construction Costs and a proposed construction schedule. If Tenant determines in its sole discretion that the cost to construct the Expansion is too high, or that the construction schedule is unacceptable, Tenant may elect to nullify its election to exercise the Expansion at any time prior to Tenant's written approval of the construction budget for the Expansion. If, within sixty (60) days after the estimate of Expansion Construction Costs and the construction schedule has been received by Tenant, Tenant fails either to approve the estimate of the Expansion Construction Costs and the construction schedule or to commence discussions with the Landlord to value engineer the estimate of Expansion Construction Costs and/or to refine the construction schedule, then Tenant shall be deemed to have nullified its election to exercise the Expansion Option.
- (v) On or about the date that Landlord substantially completes the construction of the Expansion, Landlord will cause its architect to determine the rentable square footage of the Expansion (in accordance with BOMA ANSI Z65.1-1996, for a single tenant building), and the parties will promptly execute and deliver an amendment to this Lease that confirms the addition of the Expansion to the Premises, the Expansion Commencement Date, and the Base Rent that will be payable through the Expiration Date with respect to the Expansion and the initial Premises.
- (vi) As a condition precedent to Landlord's obligation to construct the Expansion, Guarantor shall confirm in writing to Landlord that its Lease Guaranty, attached hereto as **Exhibit I**, applies to Tenant's lease obligations for the Expansion Premises pursuant to the Expansion Agreement (as such terms are hereinafter defined).
- (vii) Landlord shall cause the Expansion to be constructed and substantially completed and the Expansion premises (the **Expansion Premises**) to be delivered to Tenant in broom clean condition in accordance with all applicable laws on or before three hundred sixty five (365) days from the execution and delivery of the agreement described in Section 12(d) (the **Expansion Agreement**). If substantial completion and tender of possession of the Expansion Premises to Tenant does not occur by the following dates, each of which is subject to extension by one day for each day of Excused Delays, but not more than one hundred eighty (180) days in the aggregate for all Excused Delays, other than days of Tenant Delay which shall not be so limited):
 - (A) 365 days from the execution of the Expansion Amendment, then commencing on the Expansion Commencement Date Tenant will

receive one day of free Base Rent (for the Expansion Premises only) for each day of delay through the 425th day after the execution of the Expansion Amendment.

- (B) the 426th day after the execution of the Expansion Amendment, then commencing on the Expansion Commencement Date Tenant will receive three days of free Base Rent (for the Expansion Premises only) for each day of delay thereafter; and
 - (C) the 445th day after the execution of the Expansion Amendment, then Tenant may, at its option by giving notice to Landlord at any time thereafter until Landlord substantially completes the Expansion Premises, elect to take over completion of the Expansion in which event Tenant shall be entitled to a credit against Base Rent for all reasonable costs incurred by Tenant in completing the Expansion.
- (f) In lieu of exercising the Expansion Option, Tenant may, at its sole cost and expense, elect to construct an Expansion. If Tenant elects to construct an Expansion, then:
- (i) The design and construction plans for the Expansion shall be subject to Landlord's approval, not to be unreasonably withheld.
 - (ii) Tenant shall cause the Expansion to be constructed in a good and workmanlike manner and in accordance with all applicable laws and the approved plans. Subsections 2(n),(o) and (p) of this Lease shall apply to the construction of the Expansion by Tenant or its contractor(s).
 - (iii) On or about the date that Tenant substantially completes the construction of the Expansion, Landlord will cause its architect to determine the rentable square footage of the expansion (in accordance with BOMA ANSI 265.1-1996 for a single tenant building).
 - (iv) The term of the Lease shall not be extended.
 - (v) Base Rent shall not be increased.
 - (vi) Tenant shall modify its property insurance to include builder's risk insurance as reasonably required by Landlord.
- (g) Upon completion and acceptance by Tenant of same, the Expansion Premises shall be deemed to be part of the Building and the Premises, and shall be owned by the Landlord.

Section 13. Landlord's Right of Access.

- (a) Landlord and its authorized representatives have the right to enter the Premises during Tenant's regular business hours for the purpose of (i) determining whether the Premises are in good condition and whether Tenant is complying with its obligations arising under the terms of this Lease, and (ii) performing any

maintenance or repairs for which Landlord is responsible under the terms of this Lease. Landlord has the right to enter the Premises at all times without notice in the event of an emergency or for the purpose of making emergency repairs; under other circumstances, Landlord must give Tenant written notice of Landlord's intended entry at least 48 hours in advance of that entry.

- (b) Landlord shall conduct its activities in the Premises in a manner that will cause a minimum of interference with Tenant's business operations.

Section 14. Tenant's Indemnity.

EXCEPT AS PROVIDED IN SECTION 17, TENANT SHALL INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM AND AGAINST ALL CLAIMS, ACTIONS, DEMANDS, JUDGMENTS, DAMAGES, LIABILITIES AND EXPENSES, INCLUDING REASONABLE LEGAL FEES, THAT MAY BE ASSERTED AGAINST LANDLORD OR THAT LANDLORD MAY SUSTAIN BY VIRTUE OF THE OCCURRENCE OF THE DEATH OF OR BODILY INJURY TO ANY PERSON OR THE LOSS OF, DAMAGE TO, OR DESTRUCTION OF, ANY PROPERTY ARISING FROM TENANT'S USE OF THE PREMISES OR FROM THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF TENANT, OR ANY OF ITS REPRESENTATIVES, AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES, INCLUDING, WITHOUT LIMITATION, ANY TENANT DELAYS OR ANY FAILURE BY TENANT TO PERFORM ITS MAINTENANCE OBLIGATIONS UNDER SECTION 8(c) OR ANY DAMAGE TO ANY STRUCTURAL COMPONENTS CAUSED BY TENANT, ITS CONTRACTORS, AGENTS, EMPLOYEES OR REPRESENTATIVES THAT INCREASE THE LANDLORD'S COST OF PERFORMING ITS OBLIGATIONS UNDER SECTION 8(a), EXCEPT TO THE EXTENT THE CLAIMS, ACTIONS, DEMANDS, JUDGMENTS, DAMAGES, LIABILITIES OR EXPENSES ARISE FROM THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF LANDLORD OR ANY OF ITS REPRESENTATIVES, AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES. TENANT'S OBLIGATIONS UNDER THIS SECTION 14 APPLY REGARDLESS WHETHER LANDLORD WAS CONCURRENTLY NEGLIGENT (WHETHER ACTIVE OR PASSIVE), IT BEING AGREED BY THE PARTIES THAT IN THE EVEN OF CONCURRENT NEGLIGENCE TENANT'S RESPECTIVE LIABILITY WILL BE DETERMINED IN ACCORDANCE WITH PRINCIPLES OF COMPARATIVE NEGLIGENCE.

Section 15. Landlord's Indemnity.

EXCEPT AS PROVIDED IN SECTION 17, LANDLORD SHALL INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM AND AGAINST ALL CLAIMS, ACTIONS, DEMANDS, JUDGMENTS, DAMAGES, LIABILITIES AND EXPENSES, INCLUDING REASONABLE LEGAL FEES, THAT MAY BE ASSERTED AGAINST TENANT OR THAT TENANT MAY SUSTAIN BY VIRTUE OF THE OCCURRENCE OF THE DEATH OF OR BODILY INJURY TO ANY PERSON OR THE LOSS OF, DAMAGE TO, OR DESTRUCTION OF ANY PROPERTY ARISING IN CONNECTION WITH ANY LATENT OR PATENT DEFECT IN THE CONDITION OF THE PREMISES EXISTING AS OF THE COMMENCEMENT DATE, OR ARISING FROM THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF LANDLORD, OR ANY OF ITS REPRESENTATIVES, AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES, EXCEPT TO THE EXTENT ANY SUCH CLAIMS, ACTIONS, DEMANDS, JUDGMENTS, DAMAGES, LIABILITIES OR EXPENSES ARISE FROM THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF TENANT OR ANY OF ITS REPRESENTATIVES, AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES. LANDLORD'S OBLIGATIONS UNDER THIS SECTION 15 APPLY REGARDLESS WHETHER TENANT WAS CONCURRENTLY NEGLIGENT (WHETHER ACTIVE OR PASSIVE), IT BEING AGREED BY THE PARTIES THAT IN THE EVEN OF CONCURRENT NEGLIGENCE LANDLORD'S RESPECTIVE LIABILITY WILL BE DETERMINED IN ACCORDANCE WITH PRINCIPLES OF COMPARATIVE NEGLIGENCE.

Section 16. Insurance.

- (a) Commencing on the date (the **Insurance Commencement Date**) which is the latter of (i) Substantial Completion and (ii) delivery of the Landlord Improvements to Tenant, and continuing for the balance of the Term, Tenant shall provide and maintain a "special form" insurance policy (including fire and standard extended coverage perils, leakage from fire protective devices and other water damage) covering loss or damage to the Landlord Improvements and the Tenant Improvements (including, without limitation, the Expansion Premises and any alterations made to the Premises from time to time) on a full replacement cost basis, excluding excavations, footings and foundations and providing for a deductible of no greater than \$100,000.00; provided, while Tenant is constructing the Tenant Improvements, the policy must include builder's risk coverage on a completed value basis. In the event of a casualty, Tenant shall pay to Landlord the lesser of the amount of the deductible or the full amount of the loss in the case of a loss in an amount less than the deductible, which payment shall be treated in the same manner as insurance proceeds. Tenant shall provide and maintain throughout the Term, at its expense, such property insurance covering Tenant's machinery, equipment, furniture, fixtures, personal property (including also property under the care, custody, or control of Tenant) and business interests which may be located in, upon or about the Premises in such amounts as Tenant may from time to time deem prudent. Tenant shall cause all such property policies to permit Tenant's waiver of claims against Landlord under Section 17 for matters covered thereby. Tenant shall cause Landlord and its lender holding a first lien against the Premises (if Landlord has notified Tenant of the name and address of its lender) to be named as additional insureds, as their interests may appear, and shall cause the coverage to continue for Landlord's benefit notwithstanding any act or omission on Tenant's part.
- (b) Commencing on the Insurance Commencement Date and continuing for the balance of the term, Tenant shall provide and maintain the following insurance, in the amounts specified below:
 - (i) bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$5,000,000.00; such insurance will be on a commercial general liability form including, without limitation, personal injury and assumed contractual liability for the performance by Tenant of the indemnity agreements set forth in Section 14; Tenant shall cause Landlord and its lender to be named as an additional insureds under such liability insurance and shall cause such coverage to include cross liability and severability of interests clauses and, unless otherwise approved in writing by Landlord, to have a deductible of \$25,000.00 or less and no retention or self-insurance provision;
 - (ii) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of Texas and employers' liability insurance in the limit of \$100,000/500,000/100,000 (provided that Tenant may self-insure this obligation pursuant to a program of self-insurance); and

- (iii) if Tenant operates owned, hired or nonowned vehicles on the Premises, comprehensive automobile liability will be carried at a limit of liability not less than \$1,000,000.00 combined bodily injury and property damage.
- (c) All insurance required to be maintained by Tenant pursuant to this Section 16 must be maintained with insurers licensed to do business in the State of Texas and having a Best's Key Rating of at least A-:IX. Tenant shall provide to Landlord, on or before the Insurance Commencement Date and at least 10 days before the expiration date of expiring policies, such copies of either current policies or certificates as many be reasonably required to establish that the insurance coverage required by this Section 16 is in effect from time to time and that the insurer(s) have agreed to give the other party at least 30 days notice prior to any cancellation of, or material modification to, the required coverage. Landlord and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery. Tenant shall cause all commercial general liability and property policies maintained by Tenant to be written as primary policies, not contributing with and not supplemental to any coverage that Landlord may carry.
- (d) Tenant may provide the insurance required by virtue of the terms of this Lease by means of a combination of primary and excess or umbrella coverage and by means of a policy or policies of blanket insurance so long as (i) the amount of the total insurance allocated to the Premises under the terms of the blanket policy or policies furnishes protection equivalent to that of separate policies in the amounts required by the terms of this Lease, and (ii) the blanket policy or policies comply in all other respects with the other requirements of this Lease.
- (e) If Tenant fails to obtain the insurance coverage, as set forth in this Section 16 and does not cure its failure within 10 days after written notice from Landlord, Landlord may, at its option, obtain such insurance for Tenant, and Tenant shall pay, as additional rent, the reasonable cost thereof.

Section 17. Waiver of Subrogation.

Any provision of this Lease to the contrary notwithstanding, Landlord and Tenant waive and release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise from any and all liability for any loss or damage to the property of the releasing party to the extent that the releasing party's loss or damage is coverable under commercially available all risk property insurance policies, **EVEN IF THE LOSS OR DAMAGE OR LEGAL LIABILITY IS CAUSED BY OR RESULTS FROM THE FAULT OR NEGLIGENCE OF THE OTHER PARTY OR ANYONE FOR WHOM THE OTHER PARTY MAY BE RESPONSIBLE AND EVEN IF THE RELEASING PARTY IS SELF-INSURED OR THE AMOUNT OF THE RELEASING PARTY'S INSURANCE IS INADEQUATE TO COVER THE LOSS OR DAMAGE OR LEGAL LIABILITY.** It is the intention of the parties that Landlord and Tenant will each look solely to their respective insurance carriers for recovery against any such loss or damage or legal liability, without its insurance carriers having any rights or subrogation against the other party.

Section 18. Casualty.

- (a) If damage caused by a fire or other casualty renders the Building fully or partially untenantable, neither the Base Rent nor any other amounts payable under this Lease will abate for the period during which the Building is wholly or partially untenantable. Tenant shall cause its insurance carriers to pay to Landlord all insurance proceeds for the Landlord Improvements and the Tenant Improvements.
- (b) If a fire or other casualty renders the Premises untenantable, in whole or in part, and the estimated time for the restoration of the Landlord Improvements and the Tenant Improvements exceeds the period that will expire on the date that is 270 days after the date of the occurrence of the fire or casualty, Tenant may terminate this Lease by the delivery of written notice to Landlord within 15 days following the date on which Landlord notifies Tenant of the estimated time for the restoration of the Landlord Improvements and the Tenant Improvements. Landlord must provide that estimate within 60 days following the date of the casualty. If a termination of this Lease does not occur in accordance with the foregoing provisions of this Section 18(b), but Landlord fails to complete the restoration of the Landlord Improvements and the Tenant Improvements by the date that is 60 days after the date of the expiration of the period within which Landlord estimated the restoration would be completed, Tenant may, notwithstanding anything in this Lease to the contrary, terminate this Lease by the delivery of written notice to Landlord at any time following the expiration of that 60-day period, but prior to the date on which Landlord completes the restoration of the Landlord Improvements and the Tenant Improvements. If a termination of this Lease occurs in accordance with the terms of this Section 18, then Tenant shall cause its insurance carriers to pay to Landlord all proceeds payable in respect of the insurance that Tenant maintains in accordance with the terms of Section 16(a) allocable to the Landlord Improvements and the Tenant Improvements to the extent not previously disbursed to Landlord in connection with the restoration of the Landlord Improvements and the Tenant Improvements. Excusable Delays shall not extend any of the time periods set forth in this Section 18(b) for more than one hundred eighty (180) days in the aggregate.
- (c) If fire or other casualty damages the Premises and a termination of this Lease does not occur, so long as Tenant is not in default beyond all applicable grace, notice and cure periods under the terms of this Lease, Landlord shall restore the Landlord Improvements and the Tenant Improvements to substantially the condition that existed prior to the occurrence of the fire or other casualty; provided, however, that with respect to the Tenant Improvements, Landlord shall only be obligated to restore the Tenant Improvements to the condition reflected in the most recent as-built plans for the Tenant Improvements in Landlord's possession, unless the casualty occurs prior to completion of the Tenant Improvements, in which event, Landlord shall restore the Tenant Improvements in substantial accordance with the Final Tenant Improvements Plans and Specifications. Landlord and Tenant shall each pursue such restoration with diligence and continuity upon and subject to receipt of the insurance proceeds with the understanding that Tenant shall cause its insurance carriers to pay to Landlord disbursements of the proceeds payable in respect of the insurance Tenant maintains in accordance with the terms of Section 16(a) above as

restoration progresses in order to reimburse Landlord for the costs Landlord reasonably incurs in connection with the restoration of the Landlord Improvements and the Tenant Improvements. In completing the restoration, Landlord and Tenant shall each comply with all applicable Legal Requirements. In performing their respective restoration obligations, Landlord and Tenant must each restore their respective portions of the Premises so that they comply with Legal Requirements applicable at the time of the restoration and not just the Legal Requirements that were applicable at the time of original construction of the Premises. If the aggregate amount of those insurance proceeds allocable to the Landlord Improvements and the Tenant Improvements exceeds the aggregate amount of the costs Landlord reasonably incurs in connection with the restoration of the Landlord Improvements and the Tenant Improvements, Tenant is entitled to the excess. Tenant is responsible for any excess costs incurred by Landlord in restoring the Landlord Improvements and the Tenant Improvements.

Section 19. Condemnation.

- (a) If any part of the Premises is taken for public use by condemnation, eminent domain or other similar action and the taking materially and adversely affects Tenant's operations in the Building, Tenant may immediately terminate this Lease by delivering notice to Landlord.
- (b) If any part of the Premises is taken and Tenant does not terminate this Lease, Base Rent and additional rent required by virtue of Section 4(g) will abate for the balance of the Term in proportion to the diminished utility of the Premises in the conduct of Tenant's business taken, and Landlord shall restore the remainder of the Premises at its expense as necessary to render them suitable for Tenant's use, so long as Tenant is not in default under the terms of this Lease beyond all applicable grace, notice and cure periods.
- (c) All condemnation awards made with respect to Landlord's reversionary and leasehold interests in the Premises will be the exclusive property of Landlord, but Tenant reserves the right to bring an action in its own name for its loss of business and moving expenses, as well as any other damages that Tenant may recover as a result of the condemnation action, provided such action does not reduce the amount of the award otherwise recoverable from the condemning authority by Landlord.

Section 20. Compliance with Environmental Laws.

- (a) Landlord warrants and represents to Tenant that, to Landlord's knowledge, the Land and the Landlord Improvements are, and covenants that upon the Commencement Date will be, in full compliance with all applicable environmental laws, rules, requirements, orders, directives, ordinances and regulations of the United States of America or any state, city or municipal government or other lawful authority having jurisdiction over the Premises (collectively **Environmental Laws**). If there is an Environmental Report, Landlord shall deliver a copy thereof to Tenant. Except as set forth in Section 20(c), Landlord shall take at its expense all action necessary, including all remediation and clean up work, to ensure that the Premises comply at all times with all Environmental Laws and that the Premises are safe for use and occupancy at all times.

- (b) Except as set forth in Section 20(c), Landlord shall defend, indemnify and save Tenant and its directors, officers, agents, employees and contractors harmless from and against all claims, obligations, demands, actions, proceedings, judgments, losses, damages, liabilities, fines, penalties and expenses (including, without limitation, sums paid on settlement of claims, reasonable legal fees, and reasonable consultant and expert fees and expenses) that any one or more of them may sustain in connection with any failure of the Landlord Improvements to comply with Environmental Laws or in connection with any environmental condition affecting the Premises not caused by Tenant's use and occupancy of the Premises or the construction and maintenance of the Tenant Improvements.
- (c) Except as provided in Sections 20(a) and 20(b) above, Tenant shall timely comply at its cost and expense with all rules, requirements, orders, directives, ordinances and regulations applicable to Tenant's use and occupancy of the Premises or the construction and maintenance of the Tenant Improvements, including, without limitation, the Environmental Laws, and shall defend, indemnify and hold Landlord and its partners and their respective members, directors, officers, agents, employees, and contractors harmless from and against all claims, obligations, demands, actions, proceedings, judgments, losses, damages, liabilities, fines, penalties and expenses (including, without limitation, sums paid on settlement of claims, reasonable legal fees, and reasonable consultant and expert fees and expenses) that any one or more of them may sustain by virtue of any environmental condition that Tenant's use and occupancy of the Premises or the construction and maintenance of the Tenant Improvements causes and the continued existence of which violates the Environmental Laws.
- (d) Notwithstanding the foregoing apparently to the contrary, if any environmental condition encompassed within this Section 20 and not attributable to Tenant's use and occupancy of the Premises or the construction and maintenance of the Tenant Improvements is not susceptible to being corrected within 180 days after the date of its discovery or if Landlord fails within 180 days after the date of its discovery to correct a condition that is susceptible to being corrected within that period of time, Tenant may terminate this Lease by the delivery of written notice to Landlord at least 30 days in advance of the effective date of termination specified in that notice. Further, if the correction of any environmental condition not attributable to Tenant's use and occupancy of the Premises or the construction and maintenance of the Tenant Improvements partially or totally impairs Tenant's use of the Premises, Tenant's obligation to pay Base Rent will abate during the period the corrective activity takes place in proportion to the diminished utility of the Premises in the conduct of Tenant's business.
- (e) The indemnities of Landlord and Tenant contained in this Section 20 will not extend to loss of business, lost rentals, diminution in property value, or incidental, indirect or consequential damages.
- (f) The provisions of this Section 20 survive the expiration of the Term or the earlier termination of this Lease.
- (g) Tenant shall not cause or permit any Hazardous Substances, as defined below to be brought upon, kept or used in or about the Premises or the Building, without

the prior written consent of Landlord, which consent is in Landlord's sole discretion; but Landlord's consent is not required for the use at the Building of cleaning supplies, toner for photocopying machines, and other similar materials, in containers and quantities reasonably necessary for and consistent with normal ordinary use by Tenant at the Building.

- (h) Hazardous Substance(s) shall mean any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present Environmental Laws or that have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

Section 21. Compliance with Public Accommodation Laws.

- (a) Landlord warrants that, when constructed, the Landlord Improvements will comply with all applicable laws, regulations, and building codes governing nondiscrimination in commercial facilities (**Public Accommodation Laws**), including, without limitation, the requirements of the Americans with Disabilities Act (42 U.S.C. § 12101) and all rules and regulations made on the basis of authority granted in that Act, and covenants that the portions of the Landlord Improvements Landlord is required to maintain under Section 8(a) will remain in compliance with all Public Accommodation Laws throughout the Term.
- (b) Tenant warrants that, when constructed, the Tenant Improvements will comply with all Public Accommodation Laws, and covenants that the Tenant Improvements and all portions of the Landlord Improvements Tenant is required to maintain under Section 8(c) will remain in compliance with all Public Accommodation Laws throughout the Term.
- (c) Landlord shall promptly complete any and all alterations, modifications or the Landlord Improvements, including, without limitation, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structure and changes or rearrangements in wall configuration or full-height partitions, that are or become necessary with respect to the Landlord Improvements in order to comply with all Public Accommodation Laws. Tenant shall promptly complete any and all alterations, modifications or the Tenant Improvements, including, without limitation, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structure and changes or rearrangements in wall configuration or full-height partitions, that are or become necessary in order to comply with all Public Accommodation Laws with respect (i) to the Tenant Improvements for any reason or (ii) to the Premises solely because of Tenant's particular use of the Premises.
- (d) Landlord shall use commercially reasonable efforts to accomplish any and all alterations, modifications or improvements undertaken in accordance with this Section 21 in a manner that will not substantially interfere with Tenant's use or possession of the Premises.

Section 22. Landlord's Warranties.

Landlord represents and warrants that:

- (a) Landlord does not have knowledge of any pending condemnation or similar proceeding affecting any part of the Premises.
- (b) Landlord does not have knowledge of any legal actions, suits, or other legal or administrative proceedings that are now pending or threatened against either Landlord or the Premises.
- (c) Landlord has neither granted any leases or occupancy licenses nor created any tenancies affecting the Premises and there are no parties in possession of any portion of the Premises as trespassers or otherwise.
- (d) The Premises have legal access to Regent Boulevard, subject to applicable laws and ordinances; the Premises shall have not less than two curb cuts onto Regent Boulevard.
- (e) Landlord does not have knowledge of any pending or threatened governmental or private proceedings that would impair or result in the termination of access from the Premises to abutting public highways, streets, and roads.
- (f) There is presently in existence or available water, electrical, sanitary sewer and gas utility service for the Premises.
- (g) Landlord does not have knowledge, except as disclosed in the Environmental Report, that: (A) there are any environmental hazards or defects affecting the Land, (B) there are any polychlorinated biphenyls (**PCBs**) or substances containing PCBs on the Land; (C) the Land is now or has been the site of any place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal or release of hazardous or toxic substances, material or wastes on-site, whether above or below ground; and (D) there are any above-ground or underground storage tanks located on the Land.
- (h) Except as reflected in the Environmental Report, Landlord knows of no releases of, or the presence of, any hazardous or toxic material, substance or waste on or about the Land.
- (i) Landlord has full right and lawful authority to enter into and perform the Landlord's obligations under this Lease for the full term hereof and has good and indefeasible title to Land in fee simple, free and clear of all contracts, leases, tenancies, agreements, easements, restrictions upon use or occupancy or other restrictions, violations, mortgages and other liens, encumbrances or exceptions to title of any nature whatsoever affecting the Land, except for the matters specifically set forth on **Exhibit K** hereto;
- (j) the Land is zoned in conformity with applicable laws in a manner permitting the use of the facilities constructed thereon for the Intended Use; and

- (k) this Lease is not and shall not be subject or subordinate to any mortgage not listed on **Exhibit K** hereto except for such subordination as may be accomplished in accordance with the provisions of **Section 22** of this Lease captioned "Subordination, Attornment and Non-Disturbance."

For purposes of this Section 22, the phrase "Landlord's knowledge" and similar phrases mean the current, actual knowledge of the individuals listed on **Exhibit F** attached to this Lease.

Section 23. Tenant's Default.

The occurrence of any one or more of the following events (**Event(s) of Default**) will constitute a default and breach of this Lease by Tenant:

- (a) Tenant's failure to pay any Base Rent or additional rent (including, without limitation, the Impositions) when due and the continuance of that failure for more than 10 days after the date on which Landlord gives Tenant written notice of the delinquency;
- (b) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Lease that Tenant must observe or perform, other than the payment of Base Rent or additional rent (excluding Tenant's obligation to maintain the insurance required pursuant to Section 16), where the failure continues for a period of 30 days after Tenant's receipt of written notice from Landlord; but if the nature of the obligation that Tenant has failed to perform is such that more than 30 days are reasonably required for its rectification, then an Event of Default will not occur so long as Tenant commences the rectification within the initial 30-day period and diligently and continuously prosecutes the rectification to completion; or
- (c) the making by Tenant of any general assignment or general arrangement for the benefit of its creditors; the filing by or against Tenant of a petition seeking relief under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, Tenant causes the petition to be dismissed within 60 days after the date of its filing); the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 60 days after the date of the appointment; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease unless Tenant causes the seizure to be discharged within 60 days after the date of the initiation of the seizure.

Section 24. Landlord's Remedies.

At any time after the occurrence of an Event of Default, with or without additional notice or demand, Landlord may do one of the following:

- (a) terminate Tenant's right to possession of the Premises and repossess the Premises by any lawful means without terminating this Lease. In that event, Landlord shall, to the extent required by applicable laws, use reasonably prompt efforts to re-let the Premises for the account of Tenant for such rent and upon

such terms as may be satisfactory to Landlord in its sole discretion. For the purposes of that re-letting, Landlord may repair, remodel, or alter the Premises. If Landlord fails to re-let the Premises, then Tenant shall pay to Landlord the Base Rent and additional rent reserved in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease. If Landlord re-lets the Premises but fails to realize a sufficient sum from the re-letting to pay the full amount of Base Rent and additional rent reserved in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease, then Tenant shall pay to Landlord the amount of any deficiency within 30 days of Tenant's receipt of Landlord's demand;

- (b) terminate this Lease and repossess the Premises by any lawful means. In that event, Landlord may recover from Tenant as damages (i) all Base Rent and additional rent (plus the cost necessary to satisfy Tenant's obligation to maintain and insure the Premises, as set forth under Sections 8 and 16, respectively, of this Lease) that became due prior to the termination and that remains unpaid, (ii) the discounted present value (determined based on then commercially reasonable rates) of the amount, if any, by which (I) the Base Rent reserved under the terms of this Lease for the balance of the Term that remained as of the effective date of the termination exceeds (II) the fair market rent (but not less than the amount for which the Premises has been relet) for the Premises for the balance of the Term after deduction of all anticipated reasonable expenses of re-letting for that period, and (iii) all reasonable costs and expenses Landlord reasonably incurs in connection with the enforcement of Tenant's obligation to pay those damages, including, without limitation, reasonable legal fees. If the amount described in clause (II) above exceeds the amount described in clause (I) above, then Landlord has no obligation to pay Tenant any part of the excess or to credit any part of the excess against any other sums or damages for which Tenant may be liable to Landlord at the time of the termination; or
- (c) pursue any other remedy available to Landlord under the laws of the State in which the Premises are located; provided, however, that Landlord waives any existing or hereinafter enacted statutory lien in Tenant's personal property (which does not include the Tenant Improvements) located at or about the Premises.

Section 25. Landlord's Default and Tenant's Remedies.

- (a) If Landlord defaults in the performance of any of Landlord's obligations set forth in this Lease, and if (i) Landlord's default creates or increases the risk of imminent danger of bodily injury to or death of persons or damage to or destruction of property, including, without limitation, the Building or Tenant's property, and either Landlord does not commence the rectification of its default promptly upon Tenant's delivery of oral or written notice of the default to Landlord or Landlord fails to pursue the rectification of its default with diligence and continuity or (ii) Landlord's default does not create or increase the risk of imminent danger of bodily injury to or death of persons or damage to or destruction of property, including, without limitation, the Building or Tenant's property and Landlord fails to rectify its default within 30 days after Tenant's delivery of written notice of the default to Landlord or within such longer period of time following the delivery of that notice as may be reasonably required to accomplish the rectification of the default through the exercise of prompt, diligent

and continuous efforts, then Tenant may perform the obligation on behalf of Landlord. Landlord shall pay to Tenant within 30 days after the date of Landlord's receipt of Tenant's invoice the full amount of the reasonable cost and expense Tenant incurs in performing the obligation on behalf of Landlord, together with the amount of any reasonable legal fees Tenant incurs in instituting, prosecuting or defending any action or proceeding by reason of any default in respect of any obligation Landlord has undertaken under the terms of this Lease.

- (b) If Landlord does not pay any amounts owing to Tenant under Section 8(e) or Section 25(a), then Tenant may set off the amount due, including, without limitation, reasonable legal fees and court costs included in the judgment, against the next installments of Base Rent coming due under this Lease; provided, however, that until Tenant obtains a final, non-appealable judgment against Landlord in a court of competent jurisdiction, the maximum amount that Tenant may set off from Base Rent is Two Hundred Thousand Dollars (\$200,000.00) during any successive twelve (12) month period; provided, further, that the foregoing \$200,000 limit does not apply to set offs for failure(s) by Landlord to fund the Tenant Allowances under **Exhibit D**.

Section 26. Late Charges; Interest on Late Payments.

If Tenant becomes delinquent with respect to the payment of any Base Rent or any additional rent becoming due under the terms of this Lease and the default continues for more than five days after the due date, then Tenant shall pay to Landlord with the late payment a late fee equal to 4% of the amount of the payment; provided, however that such late fee shall not be due the first time such delinquency occurs during any successive twelve (12) month period. Any past due installment of Base Rent or additional rent under this Lease will bear interest from the date due until the date paid at the rate of 10% per annum. Any amount with respect to which Landlord becomes delinquent in making payment to Tenant as required by this Lease will bear interest from the date due until the date paid at the rate of 10% per annum.

Section 27. Quiet Enjoyment.

Landlord warrants that, so long as Tenant pays all Base Rent and additional rent that becomes due under the terms of this Lease and is not otherwise in default in respect of the performance of any obligation it undertakes under the terms of this Lease, in either case, within all applicable grace, notice and cure periods, Tenant may peaceably and quietly enjoy the Premises at all times during the Term without disturbance by anyone.

Section 28. Subordination, Attornment & Non-Disturbance.

At Landlord's request, and subject to the immediately succeeding sentence, Tenant shall subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust hereinafter executed in favor of any bank, insurance company or other lending institution against the Premises. As a condition to any subordination that Landlord requests, the mortgage holder must execute an agreement in substantially the form attached to this Lease as **Exhibit G**. Simultaneously with the execution of this Lease by Landlord, Landlord shall deliver to Tenant a Subordination, Non-Disturbance and Attornment Agreement (**SNDA**) executed by the holder of any mortgage listed on **Exhibit K** in recordable form and approved by Tenant.

Section 29. Landlord's Sale of Premises.

Landlord's sale of the Premises and the purchaser's express written assumption of the obligations Landlord undertakes under the terms of this Lease will relieve Landlord from liability arising under the terms of this Lease by reason of any act, occurrence or omission occurring after the consummation of the sale. The parties do not intend the foregoing to relieve Landlord from those obligations that the terms of this Lease require Landlord to perform prior to the sale. Except in connection with financing its acquisition of the Land and the construction of the Landlord Improvements, Landlord may not assign or transfer its interest in the Premises or this Lease prior to the substantial completion of the Landlord Improvements.

Section 30. Broker's Commissions.

Each party represents to the other that the only broker used in connection with this Lease is Trammell Crow Company, whose commission Landlord shall pay, pursuant to a separate written agreement. Each party shall defend and indemnify the other from and against any claims, demands and actions brought by any broker or other finder to recover a brokerage commission or any other damages on the basis of alleged dealings with the indemnifying party contrary to the foregoing representation.

Section 31. Estoppel Certificate.

Within 30 days after Tenant's receipt of Landlord's written request, Tenant shall execute and deliver to Landlord a statement in substantially the form of the attached **Exhibit H** that (i) certifies that this Lease is unmodified and in full force and effect (or, if modified, states the nature of the modification and certifies that this Lease as so modified is in full force and effect) and the date to which Base Rent is paid in advance, if any, and (ii) acknowledges that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord or specifies such defaults if Tenant claims any.

Section 32. Holding Over.

If Tenant remains in possession of the Premises after the Expiration Date, that occupancy will be a tenancy from month-to-month, at a Base Rent for the first three (3) months after the Expiration Date equal to 110% of the Base Rent payable during the month in which the Expiration Date occurs, and thereafter at a Base Rent equal to 150% of the Base Rent payable during the month in which the Expiration Date occurs, and subject to all of the other terms and conditions of this Lease.

Section 33. Assignment and Subletting.

So long as the Premises are used for the Intended Use, Tenant may transfer or assign its interest in this Lease and may sublet all or a portion of the Premises without first obtaining Landlord's written consent. If Tenant desires to assign this Lease or sublet all or a portion of the Premises to an entity or person, other than a Related Entity (hereinafter defined), which intends to use the Premises for other than the Intended Use, then Tenant must obtain Landlord's written consent prior to such assignment or sublease. Landlord may not unreasonably withhold, condition, or delay its consent. Tenant may, upon notice to Landlord, sublet all or any part of the Premises without first obtaining Landlord's written consent to an entity that controls, is controlled by, or is

under common control with, Tenant, to the surviving corporation in a merger, consolidation, or other reorganization involving Tenant, or to the purchaser of all or substantially all of Tenant's assets (each, a **Related Entity**), without first obtaining Landlord's written consent. No subletting, assignment of rights, or delegation of duties that Tenant may make will relieve Tenant from liability for the performance of the obligations Tenant undertakes under the terms of this Lease, unless Landlord, in its sole discretion, grants such relief. Landlord has no recapture rights in connection with any assignment or sublease.

Section 34. Right of First Offer.

If, during the Lease Term, Landlord, in its sole discretion, elects to offer to sell the Premises to any third party, then provided the Lease is in full force and effect and there is no uncured Event of Default under the Lease, Tenant will have a right of first offer (the **Right of First Offer**) to purchase the Premises prior to Landlord selling the Premises to any third party. Prior to Landlord selling the Premises to third parties, Landlord will first offer to sell the Premises to Tenant by giving a written notice (the **Offer**) to Tenant containing all of the material terms and conditions upon which Landlord would be willing to sell the Premises, including, without limitation, the purchase price and proposed closing date. Tenant will have 10 days from receipt of the Offer to accept the Offer in writing. The failure of Tenant to accept the Offer within such 10 day period will constitute a rejection of the Offer. If Tenant accepts the Offer, Landlord and Tenant shall promptly enter into a purchase and sale agreement incorporating, among others, the terms set forth in the Offer. If Tenant rejects (or is deemed to have rejected) the Offer, Landlord will be free to sell the Premises to a third party upon the same basic terms and conditions as were stated in the Offer and the Right of First Offer granted herein will automatically terminate and be of no further force or effect. However, if (a) Landlord fails to enter into a purchase and sale agreement for the Premises within 180 days after the Offer is rejected or deemed rejected, (b) Landlord fails to sell the Premises within 300 days after the Offer is rejected or deemed rejected, or (c) Landlord desires to enter into a purchase and sale agreement on economic terms equal to or less than 95% of that contained in the Offer, Tenant's Right of First Offer will be reinstated and apply anew.

Section 35. Miscellaneous.

- (a) This Lease inures to the benefit of and binds each of the parties and their respective successors and assigns.
- (b) All section headings and captions used in this Lease are purely for convenience and do not affect the interpretation of this Lease.
- (c) All Exhibits referenced in this Lease are incorporated in and made a part of this Lease, even if they are not physically attached to this Lease.
- (d) This Lease will be governed by and interpreted in accordance with the laws of the State where the Premises are located, and the parties submit to the jurisdiction of any appropriate state court within that State for adjudication of disputes arising from this Lease.

- (e) Except as otherwise provided, the parties may amend this Lease only by means of written agreements signed on behalf of Tenant and Landlord by their respective authorized signatories.
- (f) This Lease supersedes all prior understandings, representations, negotiations, and correspondence between the parties and constitutes the entire agreement between them with respect to the matters described in this instrument. No course of dealing, course of performance, or usage of trade will modify or affect this Lease.
- (g) The invalidity, illegality, or unenforceability of any provision of this Lease will not affect or impair the validity, legality, and enforceability of the remaining provisions.
- (h) The failure of either party at any time to require performance by the other of any provision of this Lease will not affect that party's right to enforce that provision, nor will the waiver by either party of any breach of any provision of this Lease constitute a waiver of any further breach of the same provision or any other provision.
- (i) The parties may execute this Lease in any number of counterparts and all those counterparts taken together will constitute a single agreement. Facsimile signatures provided by any party to this Lease will be treated as original signatures of the party providing the facsimile signature.
- (j) All notices, approvals, requests, consents, and other communications given, required or permitted in accordance with the terms of this Lease must be in writing and must be hand-delivered or sent by facsimile transmission, Federal Express overnight service or United States certified or registered mail. The parties will consider notices given or delivered when received, except that if either party intentionally acts to refuse delivery of a notice sent by any nationally recognized overnight courier service or United States certified or registered mail, then the effective date shall be the date of delivery to the nationally recognized overnight courier service or the U.S. mail on a business day during normal business hours. The parties will address notices as follows:

If to Landlord:

KDC-Regent I Investments, LP
c/o Koll Development Company
8411 Preston Road, Suite 700
Dallas, Texas 75225
Attention: Tobin C. Grove
President

with a copy to:

Munsch Hardt Kopf & Harr, P.C.
4000 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201-2790
Attention: Carl Klinke

If to Tenant:

Epsilon Data Management, Inc.
601 Edgewater Drive
Wakefield, MA 01880
Attention: Sherry M. Jacques
VP, Legal Counsel

with a copy prior to the Commencement Date to:

Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Attention: Stewart Wayne

A party may change the address to which it wishes notices to be sent by delivering notice of the change of address to the other party in accordance with the terms of this Section 35(j).

- (k) Except as provided below, Tenant may not seek to satisfy any judgment that Tenant obtains against Landlord by reason of the negligence of Landlord or any of its shareholders, directors, officers, agents, employees, or contractors or Landlord's failure to perform any of the obligations it has undertaken under the terms of this Lease from any source other than Landlord's interest in the Premises including all insurance and condemnation proceeds and the revenue generated by the operation of the Premises and no asset of any shareholder, director, officer, employee, or agent of Landlord or any of the successors or assigns of any of the foregoing will be subject to attachment or execution to satisfy the judgment. Notwithstanding any provision of this Lease apparently to the contrary, Tenant may also satisfy any final, non-appealable judgment against Landlord related to this Lease by setting off the amount of the judgment against Base Rent the amount of the judgment.
- (l) If Landlord or Tenant is a corporation, partnership, or limited liability company, each individual executing this Lease on behalf of that party represents and warrants that that party is a duly formed and existing entity qualified to do business in Texas, that that party has full right and authority to execute and deliver this Lease, that each person signing on behalf of that party is authorized to do so, and that all necessary corporate or partnership action has been taken.
- (m) Whenever necessary or appropriate, the neuter gender as used herein shall be deemed to include the masculine and feminine; the masculine to include the

feminine and neuter; the feminine to include the masculine and neuter; the singular to include the plural; and the plural to include the singular.

- (n) This Lease may be executed in one or more counterparts, each of which shall constitute an original, but all of which, taken together, shall be considered one and the same agreement.
- (o) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ANY OF ITS RESPECTIVE RIGHTS UNDER THIS LEASE OR IN ANY WAY RELATING TO THE PREMISES. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS LEASE. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS LEASE.**

Section 36. Time of Essence.

Time is of the essence with respect to this Lease. If the final day of any period of time described in this Lease is a Saturday, Sunday or a legal holiday under the laws of the United States or the State where the Premises are located, that period is extended to the next day that is not a Saturday, Sunday or legal holiday.

Section 37. Validity of Agreement.

This Lease will not be valid or bind Landlord or Tenant unless an authorized signatory of Landlord or Tenant has signed it on behalf of the respective party.

Section 38. Guaranty.

Upon execution of this Lease, Tenant shall cause Alliance Data Systems Corporation, a Delaware corporation (**Guarantor**), to execute and deliver to Landlord a **Guaranty** in the form attached to this Lease as **Exhibit I**.

Section 39. Incentives.

Tenant **expects** to receive certain economic incentives (**Incentives**) from the City of Irving, Texas, in connection with the construction of the Improvements and the location of Tenant's business within the City of Irving, Texas. Landlord shall cooperate to the extent Tenant reasonably requests and at no costs to Landlord in order to satisfy any condition established in connection with Tenant's receipt of the benefit of the Incentives, including, without limitation, supplying any necessary information, executing required forms, and other similar actions. The parties intend that Tenant and not Landlord will receive any economic benefit derived from participation in such programs.

Section 40. Arbitration.

If Tenant elects to submit an HVAC Replacement Decision to arbitration under this Section 41, then Tenant must notify Landlord of Tenant's election within 30 days after Tenant installs the HVAC Replacement. All arbitrations shall occur at a location in

Dallas, Texas, chosen by the arbitrator and shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association (or the successor organization, or if no such organization exists, then from an organization composed of persons of similar professional qualifications) in effect at the time. When Tenant gives notice to Landlord, Tenant shall give simultaneous notice to the director of the Dallas, Texas regional office of the American Arbitration Association (or the successor organization, or if no such successor organization exists, then to an organization composed of persons of similar professional qualifications), requesting such organization to select, as soon as possible but in any event within the next 30 days, one arbitrator with recognized expertise in the subject matter of the arbitration (i.e., a mechanical engineer with at least 5 years of experience dealing with HVAC systems in buildings similar to the Building). The arbitrator shall conduct such hearings and investigations as the arbitrator shall deem appropriate and shall, within 30 days after having been appointed, decide whether Tenant's decision to install the HVAC Replacement rather than to repair the applicable portions of the HVAC system was reasonable based on the cost of the HVAC Replacement compared to the cost of the repairs. If the arbitrator determines that the HVAC Replacement Decision was reasonable, then Landlord shall be obligated to pay Tenant's share of the HVAC Replacement costs as provided in Section 8(c) above. Each party shall pay its own counsel fees and expenses, if any, in connection with the arbitration under this Section 41, and the parties shall share equally all other expenses and fees of any such arbitration. The determination rendered in accordance with the provisions of this Section 41 shall be final and binding. The arbitrator shall not have the power to add to, modify, or change any of the provisions of this Lease. Landlord and Tenant may at any time by mutual written agreement discontinue arbitration proceedings and themselves agree upon the matter submitted to arbitration.

[Signature pages follow.]

The parties have signed this Lease on the date first above written.

Landlord

KDC-REGENT I INVESTMENTS, LP,
a Texas limited partnership

By: KDC-Regent I Investments GP, LLC,
a Texas limited liability company,
its General Partner

By: Koll Development Company I, LP,
a Delaware limited partnership,
Its Sole Member

By: SWV, LLC,
a Delaware limited liability company,
Its General Partner

By: _____
Tobin C. Grove, President

Tenant

EPSILON DATA MANAGEMENT, INC.,
a Delaware corporation

By: _____

Name: Michael Iaccarino

Title: President & Chief Executive Officer

EXHIBIT A
OUTLINE SPECIFICATIONS

Exhibit A Page 1 of 1

EXHIBIT B

THE LAND

Lot 1, Block A, of KDC-Epsilon Addition, Lot 1 and Lot 2, Block A, an Addition to the City of Irving, Dallas County, Texas, according to the Preliminary/Final Plat thereof recorded in Volume 2005099, Page 00144, of the Plat Records of Dallas, County, Texas.

Exhibit B Page 1 of 1

EXHIBIT C

FINAL TENANT IMPROVEMENTS PLANS AND SPECIFICATIONS

[To be approved by Landlord and Tenant under Section 2(b). The Final Tenant Improvements Plans and Specifications will become part of this Lease upon approval by Landlord and Tenant but they will not be physically attached to this Lease.]

Exhibit C Page 1 of 1

EXHIBIT D

TENANT ALLOWANCES

1. Initial Premises.

(a) Landlord shall provide the following Tenant Allowances to Tenant for the initial Premises:

(i)	Tenant Finish Allowance:	(\$ 1,875,000)
(ii)	Space Planning:	(\$ 262,500)
(iii)	Moving Expenses	(\$ 150,000)
(iv)	Phone/Data Cabling	(\$ 375,000)
(v)	Security System	(\$ 99,750)
(vi)	Tenant CM Fees	(\$ 150,000)
(vii)	Signage	(\$ 10,000)
(viii)	Flagpoles	(\$ 10,000)
	TOTAL	(\$ 2,932,250)

- (b) Tenant, in its sole discretion, may reallocate the Tenant Allowances among the line items specified above, but the aggregate total of the Tenant Allowances may not exceed \$2,932,250 (as adjusted under Section 4(b)).
- (c) Tenant shall submit draws against the Tenant Allowances to Landlord no later than the fifth day of each calendar month for expenses incurred by Tenant during the prior calendar month. Each draw must include copies of receipts, invoices, and other backup materials reasonably satisfactory to Landlord to confirm the expenses for which Tenant is requesting payment. Landlord may inspect, audit, and copy Tenant's books and records related to the Tenant Allowances at Tenant's home office any time during Tenant's normal business hours upon at least 48 hours prior written notice. Tenant shall retain its books and records related to the Tenant Allowances at its home office for at least two (2) years after final completion of the Tenant Improvements.
- (d) For the portions of each draw representing payments for Tenant Improvements:
- (i) The draw must include conditional partial lien releases in a form reasonably approved by Landlord from Tenant's contractor and subcontractors for the payments being requested by the contractor and each subcontractor in the current draw and unconditional partial lien releases in a form reasonably approved by Landlord from Tenant's contractor and subcontractors for the amounts paid by Landlord under the prior draw.
 - (ii) Landlord may retain 10% of the amount of each draw representing payments for Tenant Improvements until 30 days after final completion of the Tenant Improvements. Tenant must provide Landlord conditional final lien releases in a form reasonably approved by Landlord from Tenant's contractor and subcontractors in order to receive the retainage held by Landlord in connection with the Tenant Improvements.

- (e) Landlord shall fund the amount of each draw reasonably approved by Landlord within twenty (20) days after receipt by Landlord of the Invoices and other backup materials reasonably requested by Landlord; but Landlord may disapprove and withhold funding of any draw requested by Tenant if:
- (i) the draw or any applicable backup information is not complete to Landlord's reasonable satisfaction;
 - (ii) any mechanics' or materialmen's lien or other lien has been filed against the Land or the Building by any of Tenant's contractors, subcontractors, laborers, suppliers, or others, or Landlord has received any notice from any of them indicating an intent to file any such lien, and Tenant has not bonded around the lien or otherwise posted security with Landlord reasonably satisfactory to Landlord related thereto; or
 - (iii) An Event of Default has occurred under the Lease and is continuing, either at the time of submission or funding of the draw.
- (f) If Tenant elects not to use all of the Tenant Allowances, Tenant may elect to receive a reduction in the annual Base Rent based on the aggregate amount of any unused Tenant Allowances by giving written notice specifying its election to Landlord no later than forty five (45) days after final completion of the Tenant Improvements. The reduction will be in an amount equal to Eight Thousand Two and 50/100 Dollars (\$8,002.50) for each \$100,000 of unused Tenant Allowances (or pro rata portion thereof on a proportionate basis). If there are unused Tenant Allowances and Tenant timely notifies Landlord that Tenant elects to receive a reduction in the annual Base Rent, then Landlord shall promptly prepare, execute, and deliver to Tenant an appropriate amendment to the Lease specifying the annual Base Rent adjustment determined by Landlord under this Paragraph 1(f). Tenant shall promptly execute the amendment and return it to Landlord. If Tenant does not use all of the Tenant Allowances within forty five (45) days after the Commencement Date, then any unused balance of the Tenant Allowances shall be applied against Base Rent or additional rent.

2. Expansion Option.

If Tenant exercises the Expansion Option under Section 12 of the Lease, Landlord will provide Tenant with the following Tenant Allowances (on a PSF basis):

(i)	Tenant Finish Allowance	\$25.00	PSF
(ii)	Space Planning	\$ 3.50	PSF
(iii)	Phone / Data Cabling	\$ 5.00	PSF
(iv)	Tenant CM Fees	\$ 2.00	PSF
Total		\$35.50	PSF

3. Changes to Outline Specifications.

The parties acknowledge that the Outline Specifications were revised at the request of Tenant in accordance with a Letter Agreement dated May 4, 2005 (a copy of which is attached as **Schedule 1** to this **Exhibit D**) and that the increased cost to Landlord of Tenant's changes is \$122,100. If Tenant does not pay the sum of \$122,100 to Landlord within 90 days after the Effective Date, then Landlord will be entitled to a credit against the aggregate amount of the Tenant Allowances in the amount of \$122,100.

**SCHEDULE 1
TO
EXHIBIT D**

Exhibit D Page 4 of 4

EXHIBIT E
FORM OF TENANT ACKNOWLEDGMENT LETTER

KDC-Regent I Investments, LP
c/o Koll Development Company
8411 Preston Road, Suite 700
Dallas, Texas 75225
Attn: Tobin C. Grove, President

Re: Acknowledgment Letter with respect to that certain Lease Agreement (the **Lease**) dated May 31, 2005, by and between KDC-Regent I Investments, LP (**Landlord**) and Epsilon Data Management, Inc. (**Tenant**)

Gentlemen:

This letter constitutes the Acknowledgement Letter required under Section 3(e) of the Lease. All capitalized terms used but not otherwise defined in this Acknowledgment Letter have the meanings assigned to them in the Lease.

Tenant accepts the condition of the Premises in accordance with the Lease, and Tenant hereby certifies to Landlord and Landlord's assignee, as follows:

1. The Commencement Date is _____, 2006.
2. The Expiration Date is _____, 2018.
3. The annual Base Rent is (check appropriate blank and add appropriate information if blank (b) is selected):
 - a. _____ unchanged from the annual Base Rent specified in Section 4(a) of the Lease; or
 - b. _____ changed from the annual Base Rent specified in Section 4(a) of the Lease, resulting in the following Base Rent:

Lease Years	Annual Base Rent	Monthly Base Rent
1-4	\$ _____ (\$ _____ PSF)	\$ _____
	\$ _____	
5-8	(\$ _____ PSF)	\$ _____
	\$ _____	
9-12	(\$ _____ PSF)	\$ _____

4. The Lease is unmodified and in full force and effect and there are no outstanding notices of default to Tenant's obligations or Landlord's obligations under the Lease. To the best knowledge of Tenant, there is no default under the Lease and no event has occurred, which with the giving of notice or the passage of time, or both, will become such a default.
5. Tenant has not assigned, pledged, hypothecated or otherwise transferred the Lease.

6. As of the date hereof, Tenant currently has no claim against Landlord for any right of offset, deferment, abatement, or default or right of counterclaim or defense to the payment of Base Rent or any other monies due under the Lease.

7. There are currently no disputes under or in connection with the Lease between Landlord and Tenant.

EXECUTED as of the date first above written.

EPSILON DATA MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

AGREED AND ACCEPTED this
_____ day _____ of, 2006:

KDC-REGENT I INVESTMENTS, LP,
a Texas limited partnership

By: KDC-Regent I Investments GP, LLC,
a Texas limited liability company,
its General Partner

By: Koll Development Company I, LP,
a Delaware limited partnership,
Its Sole Member

By: SWV, LLC,
a Delaware limited liability company,
Its General Partner

By: _____
Tobin C. Grove, President

EXHIBIT F
KNOWLEDGE INDIVIDUALS

The following knowledge individuals are acting solely in their capacity as officers, agents, or employees of Landlord or an affiliate of Landlord, are in no manner expressly or impliedly making any representations or warranties in their individual capacities, and have no personal liability in connection with this Lease:

M. Scott Ozymy, SVP – Koll Development Company
Murray Newton, EVP – Koll Development Company
James Williams, VP – Koll Development Company

EXHIBIT G
FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Exhibit G Page 1 of 1

EXHIBIT H
FORM OF ESTOPPEL CERTIFICATE

_____, 20_____

Re: Lease Agreement dated May 31, 2005, between KDC-Regent I Investments, LP, a Texas limited partnership (**Landlord**), and Epsilon Data Management, Inc., a Delaware corporation (**Tenant**), (as amended, the **Lease**), _____Regent Center, Irving, Texas (the **Building**)

Dear _____ :

Tenant understands that _____(**Purchaser**) is purchasing the Building from Landlord and Purchaser and Landlord are relying on this Estoppel Certificate. Defined terms in the Lease have the same meanings in this Estoppel Certificate.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Tenant ratifies the Lease and certifies to Purchaser and Landlord that:

1. Tenant is occupying and conducting business in the Premises.
2. As of the date hereof, the Base Rent under the Lease is \$_____ per month payable in advance on the first day of each calendar month. Base Rent is paid through _____1, 20____.
3. The Lease is in full force and effect and Tenant has not assigned or subleased its interest in the Lease except as specified on **Schedule A** attached to this Estoppel Certificate.
4. A true and correct copy of the Lease and all amendments thereto is attached as **Schedule B** to this Estoppel Certificate.
5. The Lease is the entire agreement between Landlord and Tenant concerning the Premises.
6. The Term expires on _____,20____.
7. To Tenant's actual knowledge, Landlord satisfied all of its obligations regarding the installation of Landlord Improvements, except as follows:

8. Tenant constructed all Tenant Improvements as required under the Lease.

9. To Tenant's actual knowledge, no default by Landlord has occurred under the Lease and is continuing except as specified on Schedule A.
10. Tenant is not entitled to any accrued abatements, setoffs, or deductions from Base Rent or additional rent under the Lease except as expressly set forth therein or as specified in Schedule A.
11. No Base Rent has been paid more than one month in advance.
12. There is no Security Deposit under the Lease.

EPSILON DATA MANAGEMENT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

JOINDER BY GUARANTOR

Guarantor joins in the execution of this Estoppel Certificate for the purpose of consenting to the execution hereof by Tenant and to confirm that its Guaranty of the Lease remains in full force and effect.

ALLIANCE DATA SYSTEMS CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

**SCHEDULE A
TO
EXHIBIT H**

- 1 List any assignments or subleases or state NONE:
- 2 List any defaults by Landlord that have occurred and are continuing or state NONE:
- 3 List any accrued abatements, setoffs, or deductions from Base Rent or additional rent to which Tenant is entitled at this time (other than those expressly set forth in the Lease) or state NONE:

Schedule A to Exhibit H

**SCHEDULE B
TO
EXHIBIT H
COVER PAGE FOR COPY OF THE LEASE AND ALL AMENDMENTS**

Schedule B to Exhibit H

EXHIBIT I
LEASE GUARANTY

This Lease Guaranty (this **Guaranty**) is executed by Alliance Data Systems Corporation, a Delaware corporation (**Guarantor**), as of May ____, 2005.

RECITALS

- A. A Lease Agreement (the **Lease**), dated as of even date herewith is to be executed by KDC-Regent I Investments, LP, a Texas limited partnership (**Landlord**), as Landlord, and Epsilon Data Management, Inc., a Delaware corporation (**Tenant**), as Tenant, covering Premises consisting of approximately 75,000 square feet of shell building in Regent Center, an office project located in Irving, Dallas County, Texas, more particularly described in the Lease. Defined terms in the Lease have the same meanings in this Guaranty.
- B. As a condition to Landlord's execution of the Lease, Landlord required Guarantor to guarantee the full performance of all of the liabilities, obligations, and duties of Tenant under the Lease. Tenant is a subsidiary of Guarantor, and Tenant's entering into the Lease will benefit Guarantor.
- C. Guarantor agreed to sign this Guaranty to induce Landlord to enter into the Lease with Tenant.

NOW, THEREFORE, in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Guarantor agrees that:

1. Guarantor unconditionally assumes and agrees to perform all liabilities, obligations, and duties of Tenant under the Lease. Guarantor guarantees to Landlord and Landlord's successors and assigns the full, prompt, and complete performance of all of the terms, covenants, conditions, and provisions of the Lease to be kept and performed by Tenant or Tenant's successors or assigns, including, without limitation, the payment of all Base Rent, additional rent, and other charges to accrue under the Lease, all obligations of Tenant related to the construction of Tenant Improvements and the maintenance of the Premises, and all damages that may arise as a consequence of nonperformance under the Lease (collectively, the **Obligations**).
2. The liability of Guarantor under this Guaranty is unconditional and primary. In relation to any right of action that accrues against Tenant under the Lease, Landlord may, at its option, proceed from time to time solely against Guarantor and any other person or entity without regard to Tenant's ability to perform and without first commencing any action, exhausting any remedy, obtaining any judgment, or proceeding in any way against Tenant or any other person or entity. Landlord may bring suit against Guarantor to enforce any liability, duty, or obligation under this Guaranty without joinder of Tenant or any other person or entity.

3. This Guaranty continues until Tenant and Tenant's successors, representatives or assigns have fully discharged all Obligations under the Lease. This Guaranty is not diminished by payments of Base Rent or performance of the Obligations by Guarantor. This Guaranty terminates only when all Obligations under the Lease are fully discharged, whether before or after the expiration or earlier termination of the Lease.
4. Until all the Obligations under the Lease to be performed and observed by Tenant or Tenant's successors or assigns are fully performed, Guarantor:
 - (a) has no right of subrogation or any other right to enforce any remedy against Tenant or Tenant's successors or assigns by reason of any payment or performance by Guarantor under this Guaranty; and
 - (b) subordinates any liability or indebtedness of Tenant or Tenant's successors or assigns now or hereafter held by Guarantor to all Obligations of Tenant or Tenant's successors or assigns to Landlord under the Lease.
5. Guarantor waives the benefits of any right of discharge under Chapter 34 of the Texas Business and Commerce Code and any rights of sureties and guarantors thereunder. This Guaranty is not released, diminished, impaired, reduced, or affected by any limitation of liability or recourse under the Lease or by the occurrence of any one or more of the following events:
 - (a) the taking or accepting of any security or other guaranty for the Lease;
 - (b) any assignment by Tenant of its interest in the Lease or any sublease by Tenant of all or any part of the Premises.
 - (c) any release, surrender, exchange, subordination, or loss of any security at any time existing or purported or believed to exist in connection with the Lease;
 - (d) the insolvency, bankruptcy, disability, dissolution, termination, receivership, reorganization, or lack of corporate, partnership, or other power of Tenant, Guarantor, or any party at any time liable for the payment or performance of the Lease, whether now existing or hereafter occurring;
 - (e) expansion of the Premises, renewal, extension, modification, or rearrangement of the payment or performance of the Lease, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Landlord to Tenant or Guarantor;
 - (f) any neglect, delay, omission, failure, or refusal of Landlord to take or prosecute any action for the collection or enforcement of the Lease or to foreclose or take or prosecute any action to foreclose upon any security therefor or to take or prosecute any action in connection with the Lease;

- (g) any failure of Landlord to notify Guarantor of any expansion of the Premises, renewal, extension, rearrangement, modification, or assignment of the Lease or any part thereof, or of the release of or change in any security, or of any other action taken or refrained from being taken by Landlord against Tenant, or of any new agreement between Landlord and Tenant, it being understood that Landlord is not required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Lease;
 - (h) the unenforceability of all or any part of the Lease against Tenant, or any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or guarantor, it being agreed that Guarantor remains liable under this Guaranty whether Tenant or any other person is found not liable on the Lease or the Obligations for any reason; or
 - (i) any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws or if for any other reason Landlord is required to refund any payment or to pay the amount thereof to someone else.
6. If any suit or action is brought in connection with the enforcement of this Guaranty or if it is collected by legal proceedings or through any probate or bankruptcy court, Guarantor shall pay reasonable legal fees and all other expenses and court costs incurred by Landlord in connection therewith.
7. This Guaranty is binding upon the successors and assigns of Guarantor and inures to the benefit of the successors and assigns of Landlord, including, without limitation, all lenders holding a lien against the Premises.
8. The obligations of Guarantor, Tenant, and any other guarantor or surety of the Lease are joint and several. Guarantor agrees that Landlord, in its discretion, may:
- (a) bring suit against Guarantor, Tenant, and any other guarantor or surety of the Lease jointly and severally or against any one or more of them;
 - (b) compromise or settle with any one or more of Tenant and the guarantors or sureties of the Lease for any consideration Landlord deems proper;
 - (c) release one or more of the guarantors or sureties of the Lease or Tenant from liability thereunder; and
 - (d) otherwise deal with Guarantor, Tenant, and any other guarantor or surety of the Lease, or any one or more of them, in any manner whatsoever, and no such action impairs the rights of Landlord to collect under this Guaranty.
9. This Guaranty and all rights, obligations, and liabilities arising hereunder are to be construed according to the laws of the State of Texas. This Guaranty is performable in Dallas County, Texas, Guarantor consents to jurisdiction in any state or federal court in Dallas County, Texas, and waives the right to be sued elsewhere.

EXHIBIT J

APPROVED GENERAL CONTRACTORS AND MAJOR SUBCONTRACTOR

General Contractors

James R. Thompson
Mapp Construction
Scott & Reid
Cadence McShane
Constructors
Turner
Pacific

Major Subcontractors

Tenant must submit the names of all Major Subcontractors to Landlord for its reasonable approval prior to the time Tenant's approved General Contractor sends out its bid requests. The term **Major Subcontractors** includes drywall, paint, carpet, HVAC, plumbing, electrical fire protection, fire alarm, energy management, commissioning, security, and cabling and all other trades whose subcontract amount is anticipated to exceed \$100,000.

EXHIBIT K

TITLE EXCEPTIONS

1. Easement granted by Regent Center, Ltd., to Texas Power & Light Company, filed 10/15/1986, recorded in Volume 86201, Page 3613, Deed Records of Dallas County, Texas.
2. Limited or lack of access to road or highway abutting subject property as set forth in instrument filed 03/04/1974, recorded in Volume 75045, Page 62, Deed Records of Dallas County, Texas.
3. Easements and other matters on the Preliminary/Final Plat of KDC-Epsilon Addition, Lot 1 and Lot 2, Block A, an Addition to the City of Irving, Dallas County, Texas, recorded in Volume 2005099, Page 00144, of the Plat Records of Dallas, County, Texas.
4. Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents executed by Landlord, as Grantor, in favor of Mark M. Sloan, Trustee, for the benefit of Compass Bank, as Beneficiary, and related loan documents.

Landlord represents and warrants with respect to the above described title exceptions that (i) nothing contained in any of said exceptions prohibits or restricts Landlord from performing any or all of its obligations under this Lease during the full term thereof, and (ii) other than as specified in the SNDA, none of said exceptions adversely affects or interferes with Tenant's enjoyment of the Premises.

OFFER TO LEASE

Loyalty Management Group Canada Inc., (the "Tenant") hereby offers to lease from **592423 Ontario Inc.** ("Landlord") upon the following terms and conditions:

1. Leased Premises:

The offer is to lease premises having a rentable area ("Rentable Area") of approximately One Hundred and Seventy six Thousand, Nine Hundred and Eighty (176,980) square feet, in the location as shown hatched in black on the floor plan attached hereto as Schedule "A-1", (the "Leased Premises"), being all of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th floors (each containing 17,698 sq.ft. of Rentable Area) of the building located municipally at 438 University Avenue, Toronto, Ontario (the "Building").

The Rentable Area of the Leased Premises has been measured and certified by Landlord's consultant (which certification has been provided to Tenant) in accordance with the standard method for measuring floor areas in office buildings, known as B.O.M.A. Standard ANSI Z65.1 – 1996 floor measurement standards, and the parties acknowledge that such measurement is correct.

2. Additional Premises:

(a) Landlord hereby represents and warrants to Tenant that its existing lease (the "Current Lease") with the existing tenant of the 12th floor of the Building (the "CT") expires on October 31, 2007 and contains options to extend the term of the Current Lease for two (2) further separate and consecutive periods of five (5) years each upon written notice delivered to Landlord on or before April 30, 2007 in the case of the first extension and April 30, 2012 in the case of the second extension.

(b) Subject to subclause (d) below, at some time between October 1, 2011 and March 1, 2013 (the "A. P. Commencement Date"), Landlord shall lease to Tenant and Tenant shall lease from Landlord additional office space in the Building (the "Additional Premises"). The Additional Premises shall consist of the entire 12th floor of the Building in the event the CT fails to exercise its first option to extend the term of the Current Lease or the 12th floor of the Building is as of October 1, 2009, vacant and available for lease but otherwise shall consist of one full floor of the 14th, 15th, 16th, 17th and 18th floors of the Building. Landlord acknowledges and agrees that it is Tenant's preference that the Additional Premises comprise the entire 12th floor of the Building and Landlord shall use reasonable commercial efforts to accommodate such preference.

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(c) Subject to subclause (d) below, the lease of the Additional Premises shall commence on the A. P. Commencement Date and shall be coterminous with the Term (including any extension(s) or renewal(s) thereof, if exercised) and shall otherwise be under the same terms and conditions as this Offer to Lease, which shall apply mutatis mutandis, subject to the following provisions:

(i) Landlord shall on or before October 1, 2009 provide written notice to Tenant of the exact location of the Additional Premises and the A. P. Commencement Date. Landlord will complete the Landlord's Work to the Additional Premises and deliver vacant possession of same to Tenant no later than three (3) months prior to the A. P. Commencement Date and Tenant shall thereafter to and including the day immediately preceding the A. P. Commencement Date be permitted on a gross rent free basis to complete its Tenant's Work to the Additional Premises.

(ii) As provided for in this Offer to Lease Landlord shall provide to Tenant a leasehold improvement allowance for the Additional Premises. The value of the leasehold improvement allowance shall be prorated over the remaining Term after the A. P. Commencement Date and shall be equal to \$0.291667 multiplied by the remaining months of the Term after the A. P. Commencement Date multiplied by the Rentable Area of the Additional Premises.

(d) Notwithstanding anything contained in this Section 2 of this Offer to Lease, in the event that Tenant has on or before October 1, 2009 leased or committed to lease pursuant to Section 27 of this Offer to Lease or otherwise, additional premises in the Building (other than the Leased Premises) consisting of at least 17,698 square feet of Rentable Area, then the provisions of this Section 2 of this Offer to Lease thereafter shall be null and void and of no further force and effect.

3. Term:

The term of the lease shall be for ten (10) years and fourteen (14) days, commencing September 17, 2007, or such date as may be extended pursuant to

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paragraph ~~-35-~~ of this Offer to Lease, (the "Commencement Date"), and expiring on the last day of September 2017 (the "Term").

Tenant shall have the right to occupy and commence operation in the Leased Premises prior to the Commencement Date, provided that both Tenant's Work and Landlord's Work have been completed. Should Tenant occupy the Leased Premises prior to the Commencement Date, Tenant shall be governed by the terms and conditions of this offer with Landlord, save for the payment of any Net Rent, and the realty tax component of Additional Rent. For clarity purposes, the Tenant shall be responsible for the payment of operating costs and Tenant hydro for the portion of the Leased Premises that it occupies and operates its business in prior to the Commencement Date. Should the Tenant request the Landlord to complete the Landlord's Work prior to December 31, 2006 (on space that is located on the 4th to 7th floors only), the Tenant shall be responsible for the payment of Additional Rent for any period that it occupies and operates its business in prior to December 31, 2006. Prior to occupancy, the Tenant shall provide evidence of insurance coverage satisfactory to the Landlord, acting reasonably.

4. Landlord's Work:

Landlord shall be responsible for the cost and installation of the work outlined on the schedule attached hereto as Schedule "B" (the "Landlord's Work"). Landlord covenants and agrees to use its reasonable commercial efforts to complete its Landlord's Work prior to the Access Date (as defined in paragraph ~~-5-~~ herein), subject to force majeure outlined in paragraph ~~-35-~~ herein.

Notwithstanding anything contained herein, Tenant may request Landlord to complete Landlord's Work to any one or more of the following floors (on a full floor basis only), being the 4th, 5th, 6th, and/or 7th floors in the Building, upon two (2) months written notice provided by Tenant to Landlord.

5. Fixturing Period:

Landlord shall complete Landlord's Work to such an extent that will permit Tenant to commence and complete Tenant's Work without interference by Landlord's workmen or work on the 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th floors on or before December 31, 2006 and on the 3rd floor on or before June 1, 2007 (the

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"Access Dates"), to permit Tenant to carry out the construction of its Tenant's Work, and for the installation of Tenant's trade fixtures and equipment.

6. Net Rent:

Tenant shall pay to Landlord net rent (the "Net Rent") throughout the Term calculated as follows:
From Commencement Date to last day of Term,

Years	1 (plus 14 days) to 5	\$16.00 per rentable sq.ft. per annum; and
Years	6 to 10	\$16.50 per rentable sq.ft. per annum

The Net Rent shall be paid by way of equal monthly instalments of one-twelfth (1/12) the Net Rent, in advance, on the first day of each month of the Term. The first instalment of Net Rent shall be paid on the Commencement Date in respect of the first 14 days of the Term and each subsequent instalment shall be paid on the first day of each month of the Term.

7. Additional Rents:

Tenant shall be responsible for the payment of all realty taxes, operating costs, utility charges directly applicable to the Leased Premises on a proportionate share or direct charge basis, as described and provided for in the Landlord's standard form of lease as amended pursuant to Section -41- herein ("Lease Form") with Landlord (the "Additional Rent"). Tenant's annual amount of Additional Rent shall be estimated by Landlord acting reasonably and shall be paid in advance in equal monthly instalments of one-twelfth (1/12) the Additional Rent, plus GST, commencing on the Commencement Date (in accordance with paragraph 6 herein).

The Additional Rent for the calendar year 2005 is estimated to be \$17.10 per rentable sq.ft. and composed of the following estimates:

Real Estate Taxes:	\$8.38 per rentable sq.ft. per annum*
Operating Costs:	\$7.72 per rentable sq.ft. per annum**
Tenant Utilities:	\$1.00 per rentable sq.ft. per annum*
Total:	<u>\$17.10 per rentable sq.ft. per annum</u>

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* No management or administration fee shall be eligible

** This estimate includes a management and administration fee which is not to exceed 15% of Operating Costs

The Tenant and Landlord acknowledge that the above amount for Additional Rent is an estimate only and is subject to adjustment based on actual costs. It is further acknowledged that the estimate is based on current Building Operating Hours and will increase as a result of the increased Building Operating Hours outlined in Section -12- herein.

Landlord agrees to provide Tenant with an audited accounting of the actual Operating Costs payable by Tenant for the relevant calendar year of the Term within one hundred and twenty (120) days of the end of each calendar year during the Term and the parties agree to make all adjustments to the said Operating Costs payments forthwith. Tenant shall have the right exercisable by the delivery of written notice to Landlord within eighteen (18) months following receipt by it of the relevant audited accounting of such Operating Costs for the relevant calendar year of the Term, upon reasonable prior notice to have access to Landlord's books and records respecting such Operating Costs of the Building for the relevant calendar year of the Term for the purposes of verifying same, provided that such verification is completed by a chartered accounting firm that is not compensated on a contingency basis. Such verification shall be done at the sole cost and expense of Tenant unless the results of such verification indicate that the Operating Costs for the relevant calendar year have been overstated by 4% or more, in which event Landlord shall reimburse Tenant for its costs of such verification within fifteen (15) days of receipt of an invoice therefor, failing which, Tenant shall be entitled to deduct same from the rent. Tenant shall reimburse Landlord for its reasonable bona fide out-of-pocket costs incurred in respect of any such verification by Tenant, unless the results of such verification indicate that the Operating Costs for the relevant calendar year of the Term have been overstated by 4% or more, in which event Landlord shall be responsible for all such out-of-pocket costs. For greater certainty should Tenant fail to provide Landlord with written notice of the exercise of its rights hereunder within eighteen (18) months of receipt by it of the relevant audited accounting of such Operating Costs for the relevant calendar year of the Term, Tenant's right to conduct such verification for such relevant calendar year of the Term shall become null and void.

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8. Other Charges:

Tenant shall be responsible for its telecommunication charges and any other special services provided to the Leased Premises, at its request. In addition, Tenant shall maintain insurance for the Leased Premises in accordance with the Lease Form.

9. Net Lease:

Tenant and Landlord agree that rent payable under paragraph -6- (Net Rent) shall be net in all respects to Landlord (except as provided for herein), and that Tenant shall pay legislated taxes, such as the goods and services tax (G.S.T.), cost of utilities consumed in the Leased Premises, real estate tax and operating costs for the Leased Premises, but specifically excluding:

- a.) income taxes, capital taxes, or corporate taxes, and all other charges and imposts personal to Landlord;
- b.) rent payable under any ground lease or other superior lease;
- c.) all amounts which otherwise will be included in the Building's operating costs and are charged by Landlord, acting reasonably, to other tenants, or third parties;
- d.) the cost of arranging financing and any and all interest on debt and the capital retirement of debt of Landlord;
- e.) any cost or penalty incurred as a result of Landlord's default respecting its obligations as per the mortgage or other obligations affecting the Building or the lands;
- f.) the cost of commissions, advertising, legal expenses, inducements, allowances and improvements in connection with the leasing of the Building;
- g.) capital expenditures that are incurred for (i) the replacing, upgrading, improving, or repairing the structure of the Building limited to, the roof (excluding the roof membrane and roof covering), load bearing walls, floor slabs and masonry walls, the columns, the ceilings, the foundation, the exterior walls of the Building, and the Building's below grade parking structure; or (ii) completing upgrades to the Building which are intended or designed to alter the character of the Building;
- h.) cost of enforcing leases or obligations of tenants;

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- i.) bad debts and any costs incurred in the collection of such bad debts, including legal costs associated with the same;
- j.) any amount payable due to Landlord's non compliance with any law, bylaw, regulation, or act;
- k.) costs of repairing damage or destruction arising from an insured peril or cause, or a peril or cause required to be insured against by Landlord;
- l.) costs which are otherwise Landlord responsibilities under its lease with Tenant;
- m.) a management and, or administrative fee totalling in excess of 15% of Operating Costs, excluding taxes; and
- n.) costs incurred in connection with any pollution, or contamination not caused by Tenant, including clean up and remediation.

10. Landlord Obligation to Maintain, Repair & Operate:

Notwithstanding the foregoing, Landlord shall throughout the Term and any extension(s) thereof operate, secure, maintain, repair and replace the Building, including without limitation, its common areas and facilities and all base building mechanical, electrical and plumbing systems, and equipment in accordance with all applicable governmental laws, by-laws and regulations and in a first class manner as would a prudent owner of a similar building, of similar age, use and class in the area in which the Building is located, subject to the Landlord's right to charge back certain of such charges in the Operating Costs.

11. Condition of Leased Premises:

Except for the Landlord's Work, as described herein, Tenant shall accept the Leased Premises on an "as is" basis, and with the understanding that any leasehold improvements currently in place shall remain for the use of Tenant, for the duration of the Term, and any renewal, or extension thereof.

12. Building HVAC Hours:

Landlord and Tenant acknowledge that the Building operating hours shall be Monday through Friday from 8:00 a.m. to 11:59 p.m., Saturday from 8:00 a.m. to 6:00 p.m., and Sunday from 11:00 am to 1:00 p.m., (the "Building Operating Hours"). Heating, ventilation and air conditioning ("HVAC") shall be provided during the Building Operating Hours. In addition, Landlord will make available HVAC services outside of Building Operating Hours to Tenant, which cost to Tenant shall be equal to the Landlord's costs to provide such after-hour HVAC, with no profit.

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13. Building Access:

Landlord shall allow Tenant, its agents, clerks, servants, employees and other persons transacting business with it to have access to the Leased Premises by the main entrance or entrances of the Building and Leased Premises and to use stairways and passages therefrom, and parking areas at all times, 365 days a year, on a 24 hour basis, subject to the rules and regulations provided in the Lease Form, and subject to emergencies.

14. Leasehold Improvement Allowance:

- a) It is understood and agreed that Landlord shall pay to Tenant a leasehold improvement allowance being the sum of thirty-five dollars (\$35.00) per sq.ft. multiplied by the Rentable Area of the Leased Premises, together with GST thereon, (the "Leasehold Improvement Allowance"). Tenant shall use the Leasehold Improvement Allowance to pay the cost of Tenant's work in the Leased Premises for its use and operation.
- b) Notwithstanding the provisions of the foregoing, Landlord shall, on no more than three (3) occasions, allow Tenant to draw portions of the Leasehold Improvement Allowance, which shall be payable within thirty (30) days following the date of the Tenant's written request for such draw, subject to construction lien holdback, which shall be no more than 10% in the aggregate of the said Leasehold Improvement Allowance.
- c) Payment of each progress draw shall be subject to the following:
 - i) delivery of invoices for costs incurred to date of such advance;
 - ii) Tenant satisfying Landlord that the value of the construction materials and labour is commensurate with the amounts invoiced;
 - iii) statement of Tenant's contractor certifying that the level of work has been completed in respect to the current progress draw for the same has been made to Landlord; and
 - iv) a draw request from Tenant to Landlord, including therewith Tenant's G.S.T registration number.

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- d) In addition to the foregoing provisions the final advance of the Leasehold Improvement Allowance for the Leased Premises shall be payable upon the following conditions:
- i) the delivery to Landlord of proof of payment of worker's compensation assessment for all Tenant's contractors and subcontractors
 - ii) the completion of Tenant's leasehold improvements and trade fixtures, and
 - iii) the delivery to Landlord of a statutory declaration stating that there are no construction liens registered or outstanding affecting the Leased Premises in respect to Tenant's leasehold improvements, or trade fixtures, and that all accounts for work, services or materials have been paid in full with respect to Tenant's leasehold improvements and trade fixtures.
- e) If Landlord fails to pay any instalment(s) of the Leasehold Improvement Allowance to Tenant when otherwise due to Tenant, then Tenant may set-off any such unpaid instalment(s) together with interest thereon at a rate of six (6) percent per annum from the Net Rent and Additional Rent next coming due until set-off in full.

15. Tenant's Work:

Tenant shall be responsible for all work to prepare the Leased Premises for its occupancy not provided under Landlord's Work including, but not limited to, the installation and cost of all its internal partitions, fixtures, electrical wiring, telecommunication cabling and plumbing costs, together with the cost of any modifications to the ceiling, light or heating ventilation and air-conditioning systems in the Leased Premises, as required by Tenant's occupancy, excluding any Landlord's Work provided for herein (the "Tenant's Work").

Tenant shall also be responsible for the cost of installing any special equipment required by its occupancy. Tenant's Work shall be completed in a good and workmanlike manner and subject to the prior written approval of Tenant's plans by Landlord, acting reasonably, as detailed and provided for in paragraph -16- contained herein.

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Tenant shall bear (i) the out-of-pocket costs of all Landlord's plan reviews and approvals in respect of the mechanical and electrical components of Tenant's Work in an amount not to exceed \$9,000.00 (plus GST), and (ii) the reasonable out-of-pocket costs incurred by Landlord in retaining its base building or designated engineer(s) or consultant(s) to review and approve the plans for any other component(s) of Tenant's Work (save for the mechanical and electrical components as aforesaid), unless Tenant engages the services of any such base building or designated engineer(s) or consultant(s) with respect to any such component(s) of Tenant's Work in which event Tenant shall not be responsible for any costs incurred by Landlord in respect thereof. Tenant shall not be responsible for any charges for electrical use or other security, management, supervision, or elevator use, or other special Landlord costs, during the construction of Tenant's Work or Landlord's Work, prior to the Commencement Date. Landlord shall co-ordinate with Tenant the use of one (1) service elevator for Tenant's use during its Fixturing Period.

16. Working Drawings:

Tenant shall submit to Landlord working drawings of its proposed improvements to the Leased Premises, such drawings must be approved by Landlord prior to the commencement of any such work, provided that such work shall be done by qualified and licensed contractors or subcontractors of whom Landlord shall have approved in writing, such approvals not to be unreasonably withheld or delayed. It shall be deemed that Landlord has given consent to Tenant's drawings and licensed contractors or subcontractors, if consent or other written notice is not provided to Tenant within ten (10) business days from Landlord's receipt of Tenant's drawings or list of contractors.

Landlord shall provide Tenant with a copy of any and all design, mechanical and electrical drawings, for existing improvements in the Leased Premises, that are within Landlord's possession and control, upon acceptance of this Offer to Lease.

17. Permit and Approvals:

It is Tenant's responsibility to secure all the necessary building permits and approvals required by the City of Toronto for all its Tenant's Work. Such permits must be secured and copies provided to Landlord before any work shall commence in the Leased Premises. Landlord shall promptly provide any consent or approvals required of it in this regard.

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18. Use:

From and after the Commencement Date, the Leased Premises shall be used and occupied for the purpose of general business offices, a customer care centre / call centre, licensed travel agent, and cafeteria preparing and serving food for its employees and invitees only (and not general sale to the public), and any other use permitted by the applicable by-laws covering the Leased Premises. The Tenant shall use commercially reasonable efforts to ensure that odours do not emanate from the Leased Premises. Notwithstanding the above, only the general business offices shall be entitled to use the Leased Premises above the tenth (10th) floor of the Building and it is further acknowledged that no form of call centre shall be permitted above the 10th floor of the Building.

19. Right to Assign or Sublet:

Tenant shall have the right to assign or sublet the whole or any portion of the Leased Premises, subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant's lease with Landlord will not contain any of the following:

- a.) terms which allow Landlord to terminate its lease with Tenant in lieu of consenting to any assignment or sublease or parting with possession by Tenant;
- b.) terms which deem the entering into of any security agreement by Tenant with lender to be an assignment or sublease or parting of possession that requires the consent of Landlord or causes a default under the Tenant's lease with Landlord;
- c.) terms which allow Landlord the right to set the amount of rent paid by any subtenant, licensee, or occupant of the Leased Premises; and
- d.) change of control provisions.

Tenant shall have the right to assign or sublet the whole or a portion of the Leased Premises to an affiliated company and the right to transfer the lease to the purchaser of all or substantially all of its business, without the consent of Landlord, provided prior written notice is first given to the Landlord, provided Tenant is not released from its lease with Landlord and is not in default. The Lease Form will stipulate that a merger or amalgamation of Tenant with another corporation will not be an assignment or sublease or parting of possession that requires the consent of Landlord.

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20. Roof Mounted Communication Equipment:

For the Term, and any renewal(s) or extension(s) thereof, Tenant shall have the right, exercisable at its option, risk and expense to install and maintain communication equipment on the roof of the Building, for its own use. The Landlord will provide, at no cost or expense to Tenant, a mutually agreeable location for the installation. There shall be no ongoing charge for the space required for such communication equipment. Landlord shall approve the size and method of installation of the communication equipment, such approval not to be unreasonably withheld or delayed. Such work to install and maintain any roof mounted communication equipment shall be in accordance with the terms of Tenant's lease with Landlord. Upon expiration of the Term or any extension, the Tenant, at its sole cost and expense, shall be obliged to remove said equipment and repairing damage caused by said removal. Tenant shall co-operate with Landlord, and shall remove and/or relocate such equipment, if required to do so, for the purpose of repairs and maintenance of the Building.

21. Roof Mounted Emergency Power Generator Equipment:

For the Term, and any renewal(s) or extension(s) thereof, Tenant shall have the right, exercisable at its option, to install and maintain on the roof of the Building, at its cost and expense, an emergency generator (generator will be self-contained, and include sound mitigation and an oil tank), a fuel tank in the lowest parking level of the Building, and fuel lines to supply such emergency generator, all to serve Tenant's electrical requirements. The Landlord will provide, at no cost or expense to Tenant, mutually agreeable locations for the installation of Tenant's emergency generator, and associated fuel tank. There shall be no ongoing charge for the space required for Tenant's own generator, fuel tank, or for Tenant's access to conduit or riser space required to connect to such generator. Such work to install and maintain a generator shall be in accordance with the terms of Tenant's lease with Landlord. Upon expiration of the Term or any extension, the Tenant, at its sole cost and expense, shall be obliged to remove said equipment and repairing damage caused by said removal.

22. Internal Cooling Unit(s):

For the Term, and any renewal(s) or extension(s) thereof, Tenant shall have the right, exercisable at its option, to install and maintain a supplemental condenser

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water system in the Leased Premises, with heat rejection in the loading dock or on the roof of the Building. It is expected that Tenant will require roughly fifty (50) tons of cooling to service Tenant's equipment rooms, 24/7 cooling zones, and to supplement the base building system in the Leased Premises, where Tenant's cooling loads are intensive. Landlord shall permit Tenant to access Building's municipal water to service the Tenant's air-conditioning system. Landlord will provide, at no cost or expense to Tenant, mutually agreeable locations for the installation of such heat rejection equipment, and distribution pumps, and access to conduit or riser space required to connect to such cooling units, such installation to be at the sole cost and expense of Tenant. There shall be no ongoing charge for the space required for such heat rejection equipment, and distribution pumps, and any conduit or riser space required for such installation. Upon expiration of the Term or any extension, the Tenant, at its sole cost and expense, shall be obliged to remove said equipment and repairing damage caused by said removal. Tenant shall install at Tenant's sole cost and expense check meters for all utility consumption for the above-mentioned internal cooling units.

23. Signage:

- a) For the Term, and any renewal(s) or extension(s) thereof, Tenant shall have the exclusive signage rights to the facia at the top of the Building, to install signage displaying a logo and, or a name on the Building. Tenant shall pay for the cost to install, maintain, and insure such signage, and for the cost to remove such signage at the expiry or termination of its lease with Landlord. There shall be no ongoing charge for such signage rights. Landlord will work with Tenant to assist Tenant to obtain any and all required permits for such signage. The exact size, and location(s) of Tenant's signage shall be in accordance with Tenant's specifications, subject to all governing authorities, and to Landlord's written approval, such approval not to be unreasonably withheld or delayed.
- b) For the Term, and any renewal(s) or extension(s) thereof, Tenant shall be permitted to install non-exclusive (save that no other office-only tenant shall have any signage rights at these locations) signage displaying a logo and, or a name, on the grade, and, or second floor facia, on the eastern and northern elevations of the Building. Tenant shall pay for the cost to install, maintain, and insure such signage, and for the cost to remove such signage at the expiry or termination of its lease with Landlord. There shall be no

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ongoing charge for such signage rights. Landlord will work with Tenant to assist Tenant to obtain any and all required permits for such signage. The exact size, and location of Tenant's grade level signage shall be in accordance with Tenant's specifications, subject to all governing authorities, and to Landlord's written approval, such approval not to be unreasonably withheld or delayed.

- c) For the Term, and any renewal(s) or extension(s) thereof, Tenant shall have exclusive rights for the three (3) signage boxes (display areas) located in the Building's northern elevator lobby. Tenant shall be permitted to display corporate, and, or sponsor information, signage, logos and, or names in these display areas. There shall be no ongoing charge for such signage rights, or use of these display areas.
- d) Landlord shall not nor shall it permit any tenant or occupant of the Building (other than Tenant) to name the Building other than its municipal address.

24. Leasehold Improvements:

The leasehold improvements, fixtures, furnishings and equipment installed or placed in or on the Leased Premises by or on behalf of Tenant, howsoever affixed (other than the Building and its systems, and equipment, affixed thereto and forming part thereof), will be the personal property of Tenant, during the Term and any renewal(s) or extension(s) thereof, after which time same shall become the property of Landlord.

25. Restoration:

Subject to Sections **-20-**, **-21-** and **-22-**, Tenant shall not be responsible for the restoration of the Leased Premises or the removal of any leasehold improvements, Tenant cabling or wiring, in the Leased Premises, at the expiry or earlier termination of Tenant's lease.

26. Option to Extend:

If Tenant is not then in default (after notice of default has been provided and time to remedy such default has passed) at the notice date or the renewal date of any covenants, conditions and agreements herein reserved and contained and on the part of Tenant to be paid and performed, Landlord will, upon Tenant's request in

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writing, given at least fifteen (15) months and not more than twenty (20) months prior to the expiration of the lease Term, grant to Tenant or its permitted assigns or transferees two (2) successive options to extend its lease (on the same terms and conditions as Tenant's lease with Landlord), each for a further five (5) years, save and except that there shall be no further rights to extend and save and except that the net rent during any extension period shall be mutually agreed upon between the parties at least four (4) months prior to the expiry of the Term, and shall be based on the then current fair market rent for the Leased Premises, taking into account that Tenant is receiving no tenant inducements, no Landlord's Work, and taking into consideration the age of the leasehold improvements in the Leased Premises and premises similar to the Leased Premises which are comparable in size, location, type, and condition, for tenant's leasing similar premises of a similar size and for a similar term. In the event the Tenant does not exercise its Option to Extend, the Landlord shall have the right, during the last fifteen (15) months of the Term, to show the Leased Premises to prospective third party tenants upon reasonable notice to the Tenant during business hours and with a representative of the Tenant in attendance.

In the event that a new net rent is not agreed upon at least four (4) months prior to the expiry of the Term, the net rent for an extension period shall be settled by a single arbitrator pursuant to the Arbitration Act, S.O. 1991 c.17 as amended or replaced, and shall be equal to the then current market rent for the Leased Premises, taking into account that Tenant is receiving no tenant inducements, no Landlord's Work, and taking into consideration the age of the leasehold improvements in the Leased Premises and premises similar to the Leased Premises which are comparable in size, location, type, and condition, for tenant's leasing similar premises of a similar size and for a similar term. The expense of arbitration shall be borne equally by Landlord and Tenant, except that each party shall be responsible for its respective solicitor's and experts' fees and witnesses. It is understood and agreed that the arbitrator shall be qualified by education, experience, and training to make a decision on the matter being arbitrated.

27. Right of First Refusal:

In addition to the Tenant's rights under Section -2- herein during the period commencing upon acceptance of this Offer to Lease and throughout the Term and any renewal(s) or extension(s) thereof (save and except with respect to the 12th

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floor of the Building for which the period shall commence on the date the Additional Premises have been determined pursuant to Section 2.(b) hereof and only if the Additional Premises as so determined do not consist of the 12th floor of the Building and shall continue throughout the balance of the Term and any renewal(s) or extension(s) thereof), and subject to any rights in existence as of August 29, 2005 in favour of tenants of the Building as of August 29, 2005 and the respective successors and assigns of such tenants (which existing rights in favour of such tenants have been disclosed to Tenant), Tenant shall, provided it is not in default, have an ongoing right of first refusal to lease all or any part of any office space that is located on the 12th through 18th floors in the Building to a maximum of 35,396 square feet of Rentable Area (the "Right of First Refusal").

During the period commencing upon acceptance of this Offer to Lease and during the Term of Tenant's lease with Landlord, or any renewal(s) or extensions thereof (save and except with respect to the 12th floor of the Building for which the period shall commence on the date the Additional Premises have been determined pursuant to Section 2.(b) hereof and only if the Additional Premises as so determined do not consist of the 12th floor of the Building and shall continue throughout the balance of the Term and any renewal(s) or extension(s) thereof), if Landlord receives an acceptable written bona fide offer from an arm's length third party to lease all or any part of any office space that is located on the 12th through 18th floors in the Building, then Landlord will notify Tenant in writing of the terms of such acceptable written offer to lease (the "Acceptable Offer to Lease"). Tenant shall have five (5) business days from receipt of such notice to unconditionally exercise its Right of First Refusal, in writing, delivered to Landlord, to lease that portion of the Building covered by the Acceptable Offer to Lease on the same terms and conditions as provided for in such offer, less any commissions. It is understood and agreed that the term of any space leased under this Right of First Refusal will be coterminous with the Term for the Leased Premises, and any renewal(s) or extension(s) thereof.

28. Parking:

Landlord shall make available to Tenant, upon 30 days written notice, underground unreserved parking spaces located in the parking garage of the Building throughout the Term, and any renewal(s), or extension(s) thereof, as is proportionate to the proportionate share of the Leased Premises in the Building,

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(ie. Rentable Area of the Leased Premises as it exists from time to time divided by the Rentable Area of the Building (322,358 square feet), which as of the Commencement Date will be 98 unreserved parking spaces), at a charge of \$185.00 per month per space, plus applicable taxes (increased each year by the percentage increase in the Consumers Price Index, All Items for Toronto, as published by Statistics Canada). Such rental shall be payable by Tenant to Landlord on the first day of each month of the Term. Partial months' rent owing shall be calculated and paid on a pro rated basis. All such underground unreserved parking spaces shall be made available to Tenant on a 24 hour, 7 day a week basis.

29. Window Blinds:

Tenant shall have the right to replace Building standard window blinds in the Leased Premises with a new style of window covering. Tenant shall provide details of such window treatment to Landlord for its review and approval, such approval not to be unreasonably withheld or delayed.

30. Sale and Demolition:

Landlord shall not have the right of early termination in the event of any sale, redevelopment, renovation or demolition of the Building.

31. No Requirement to Occupy:

During the Term, Tenant shall be permitted to vacate all or a portion of the Leased Premises. Should Tenant vacate the Leased Premises, it shall maintain all its financial obligations, as if it were in occupancy. Tenant shall have the right to resume occupancy of the Leased Premises at anytime without notice to Landlord.

32. Building Systems:

Landlord represents and warrants that the schedule attached hereto as Schedule "C", Building Systems Review, accurately represents the Building's systems and improvements, as of August 28, 2005, and Tenant can rely on such information.

33. Non Disturbance:

Within six (6) months after execution hereof, Landlord shall obtain a non-disturbance agreement in writing from any existing mortgagee, trustee or bondholders, land lessor or other person who has an interest in the Building or

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lands on which it is situated. Such non-disturbance agreement shall provide that, provided Tenant is not then in default of a material covenant, Tenant shall be entitled to remain undisturbed in the possession of the Leased Premises, subject to the terms and conditions of the Lease Form.

In addition, Tenant shall not postpone or subordinate its lease with Landlord to any mortgagee, trustee or bondholders, land lessor or other person acquiring an interest in the Building unless a non-disturbance provision is provided.

34. Defaults:

Tenant shall not be in default for non-payment of rent unless five (5) business days have elapsed from Landlord giving written notice to Tenant for such non-payment. Tenant shall not be in default of any covenant in its lease with Landlord, except for payment of rent, if it has commenced and diligently proceeds to remedy such default within ten (10) business days of notice thereof from the Landlord.

35. Force Majeure:

If either, the completion of Landlord's Work is delayed beyond the Access Date, or the completion of Tenant's Work is delayed beyond the Commencement Date, for reason of strike, lockout, labour troubles, inability to procure materials, failure of power, restrictive governmental laws, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts under the terms of this Offer to Lease, then the Commencement Date shall be delayed by until such time as the Tenant's Work is substantially completed, and all other applicable dates in Tenant's lease with the Landlord shall be adjusted accordingly.

36. Deposit:

The Tenant delivers herewith a cheque in the amount equal to the first months Net Rent, Additional Rent and GST due under this Offer to Lease and the lease to be held by Avison Young Commercial Real Estate (Ontario) Inc., in trust, in an interest bearing trust account with all interest accruing to benefit of Tenant as a deposit for application on account of the first months Net Rent, Additional Rent and GST due under this Offer to Lease and the lease. The said deposit shall be refunded forthwith to the Tenant with accrued interest but without deduction or abatement if this Offer to Lease is not accepted or the conditions set out herein are not fulfilled.

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37. Letter of Credit:

The Tenant agrees to take out and maintain within five (5) business days of unconditional acceptance of this Offer until the later of thirty (30) days following occupancy of the Leased Premises by the Tenant, or thirty (30) days after the Commencement Date, an irrevocable Letter of Credit from a Schedule A Bank in the amount of two million dollars (\$2,000,000.00 CAD). This Letter of Credit shall be in the Landlord's name, who upon any non-payment of Net Rent and/or Additional Rent by the Tenant shall have the unfettered right to draw down the amount of such non-payment under the Letter of Credit, without prejudice to any other rights the Landlord may have under the Lease.

38. Financial Information:

Tenant acknowledges and agrees that commencing in the fiscal year 2006 it will provide, at Landlord's request from time to time, a copy of Tenant's most recent annual financial statements (such financial statements of Tenant to be substantially in the form reviewed by Landlord in respect of Tenant's year end December 2004) together with a letter from Tenant's parent's Senior Vice-President, Controller certifying that such financial statements are those used in the preparation of the consolidated financial statements of Tenant's parent company, Alliance Data Systems Corporation.

39. Landlord's Conditions:

The agreement arising from the acceptance of this Offer to Lease is conditional for ten (10) business days from date of such acceptance, for Landlord to obtain approval of the terms and conditions of this Offer to Lease from Landlord's executive committee and for Landlord to complete agreements to relevant third party tenants in the Building on terms satisfactory to Landlord, in its sole discretion.

Landlord will acknowledge the satisfaction or waiver of the aforesaid condition on or before the due date provided above, in writing to Tenant. Failure to advise Tenant by 5:00 p.m. (Eastern Standard Time Zone) on the due date will render this Offer to Lease null and void and of no further force and effect. It is further understood and agreed that the conditions contained herein are for the sole benefit of Landlord and may only be waived by it.

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40. Tenant's Conditions:

The agreement arising from the acceptance of this Offer to Lease is conditional upon the following conditions:

- a) within ten (10) business days from the date of such acceptance, Tenant having approved the tenant improvement manual governing the Building's rules and regulations for the coordination and construction of Tenant's Work in the Building and the Leased Premises which has been provided by the Landlord; and
- b) within ten (10) business days from date of such acceptance, that Tenant obtain approval to the terms and conditions of this Offer to Lease from Tenant's executive committee.

Tenant will acknowledge the satisfaction or waiver of the aforesaid conditions on or before the due date provided above, in writing to Landlord. Failure to advise Landlord by 5:00 p.m. (Eastern Standard Time Zone) on the due date will render this Offer to Lease null and void and of no further force and effect. It is further understood and agreed that the conditions contained herein are for the sole benefit of Tenant and may only be waived by it.

41. Lease Document:

Should this Offer to Lease be accepted, Landlord agrees to provide Tenant with the Building's standard form of office lease within five (5) business days after all conditions contained herein have been waived or satisfied. This lease shall be completed in accordance with the terms and provisions contained in this Offer to Lease, and amended or requested by Tenant, acting reasonably. Tenant and Landlord covenant and agree to negotiate in good faith and diligently pursue finalization and execution of the lease within fifteen (15) business days from the date of receipt of the lease, as provided for above. If Landlord and Tenant are unable to or should fail to negotiate and execute a lease prior to the Commencement Date, this Offer to Lease shall, until the execution of a lease, constitute the lease of the Leased Premises.

42. Environmental:

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Landlord covenants that as of the date hereof, and during the Term including all renewals or extensions thereof, the Landlord shall not permit within the Leased Premises, Building and all appurtenances thereto, any and all materials proscribed or banned pursuant to environmental statutes, laws, orders, and regulations of competent jurisdiction, and that should it be shown that the Building or Leased Premises (other than by virtue of Tenant's acts) contain any such material(s) beyond acceptable governmental levels, Landlord shall forthwith remove same, or deal with same in accordance with all applicable laws, in good and proper manner, in accordance with all proper procedures, and certify via independent environmental engineers as to completion of same, all such work to be carried out by Landlord at its sole cost, without reimbursement by Tenant. Except as specifically disclosed herein, Landlord warrants that to the best of its knowledge and belief the Building or Leased Premises contains no such material beyond acceptable governmental levels. This covenant and all obligations in connection therewith shall be ongoing and shall bind Landlord's administrators, successors and assigns.

43. Notices:

This Offer to Lease and all notices or other documents required or which may be given under this Offer to Lease shall be in writing, duly signed by the party giving such notice and transmitted by prepaid registered or certified mail, or telefax or delivered, addressed as follows:

Landlord: **592423 Ontario Inc.**
C/o Lustig & Doo Group of Companies
161 Eglinton Avenue East,
Toronto, ON M4P 1J5

Attention:

Tel: (416) 593-6811
Fax: (416) 506-1306

With a copy to:

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Avison Young Commercial Real Estate (Ontario) Inc.
30 Eglinton Avenue West
Suite 740
Mississauga, Ontario
L5R 3E7

Attention: Mr. Martin Dockrill

Tel: (905) 712-2100
Fax: (905) 712-2937

Tenant:

Loyalty Management Group Canada Inc.
4110 Yonge Street
Suite 200
Toronto, Ontario
M2P 2B7

Attention: Mr. Michael Kline
Senior Vice President, Legal Services and Secretary

Tel: (416) 416-228-6500
Fax: (416) 416-733-2876

With a copy to:

Avison Young Commercial Real Estate (Ontario) Inc.
150 York Street
Suite 900
Ontario, Ontario
M5H 3S5

Attention: Mr. Tim Hooton, and Mr. David Warren

Tel: (416) 955-0000
Fax: (416) 955-0724

Any notice or document so given shall be deemed to have been given at the time of personal delivery. If transmitted by telefax, any notice or document shall be deemed to have been received on the business day received if prior to 5:00 p.m. otherwise on the next business day. Any party may from time to time by notice given as provided above, change its address for the purpose of this paragraph.

*Loyalty Management Group Canada Inc. – Offer to Lease
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44. Waiver:

The parties to this agreement acknowledge that Avison Young Commercial Real Estate (Ontario) Inc. has recommended that they obtain advice from their legal counsel prior to signing this document. The parties further acknowledge that the information provided by Avison Young Commercial Real Estate (Ontario) Inc. is not to be construed as expert legal or tax advice and the parties are cautioned not to rely on any such information without seeking specific legal or tax advice with respect to their unique circumstances.

45. Confidentiality:

The parties hereto, without prior consent from the other, will not disclose to any persons, with the exception of their respective retained advisors, either the fact that discussions are taking place concerning a possible lease transaction, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.

46. General:

- a.) Time shall be of the essence of this Offer to Lease and each and every party thereof.
- b.) The agreement arising from acceptance of this Offer to Lease shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada.
- c.) The agreement resulting from acceptance of this Offer to Lease shall not be assigned by Tenant without the written consent of the Landlord, such consent not to unreasonably withheld or delayed. If the Landlord assigns this Offer to Lease it shall obtain, as a condition thereof, the written agreement of the assignee in favour of Tenant whereby the assignee covenants and agrees to perform all of the Landlord's obligations under this Offer to Lease as if an original signatory hereto.
- d.) The parties hereto acknowledge and agree that Avison Young Commercial Real Estate (Ontario) Inc. has entered into an agency agreement with Tenant, by way of a letter dated January 13, 2005, and represents the interests of Tenant and Landlord, with their consent, as a dual agent for this transaction, as provided for in schedule -"D"-, attached hereto.
- e.) For the purpose of this Offer to Lease "business days" shall mean any days except Saturdays, Sundays and statutory holidays.

*Loyalty Management Group Canada Inc. – Offer to Lease
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f.) Both parties acknowledge that there are no representations, covenants, agreements warranties, or conditions in any way relating to the subject matter of this Offer to Lease, whether express or implied otherwise, except as set forth in this Offer to Lease and the Schedules **-A1-**, **-A2-**, **-B-**, **-C-**, and **-D-** attached hereto.

47. Acceptance:

Landlord may accept this Offer to Lease by signing where indicated below, or by telefaxing acceptance of this Offer to Lease to Avison Young Commercial Real Estate (Ontario) Inc. (Toronto Office) (Telefax No. (416) 955-0724). This Offer to Lease shall be open for acceptance until 5:00 p.m. Toronto time on the 4th day of November, 2005 after which time, if not accepted, this Offer to Lease shall be null and void and the deposit and accrued interest shall be returned forthwith to Tenant without deduction or abatement.

Dated at Toronto, this _____ day of _____, 2005

TENANT: **Loyalty Management Group Canada Inc.**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

We hereby accept this Offer to Lease and agree to be bound by the terms and conditions contained herein.

DATED at _____, this _____ day of _____, 2005

LANDLORD: **592423 Ontario Inc.**

Per: _____
Authorized Signatory

*Loyalty Management Group Canada Inc. – Offer to Lease
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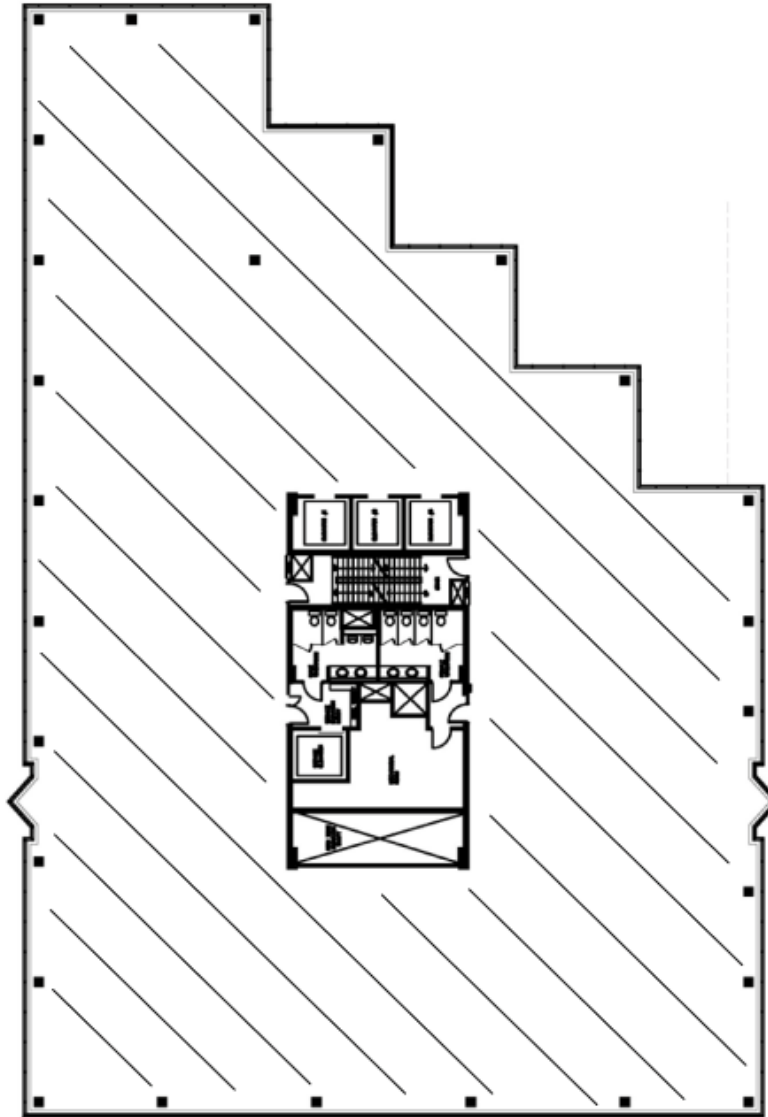
Per: _____ *Authorized Signatory*

*Loyalty Management Group Canada Inc. — Offer to Lease
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Schedule "A-1"

Typical floor plan for floors 2 to 11 at 438 University Avenue, Toronto, Ontario

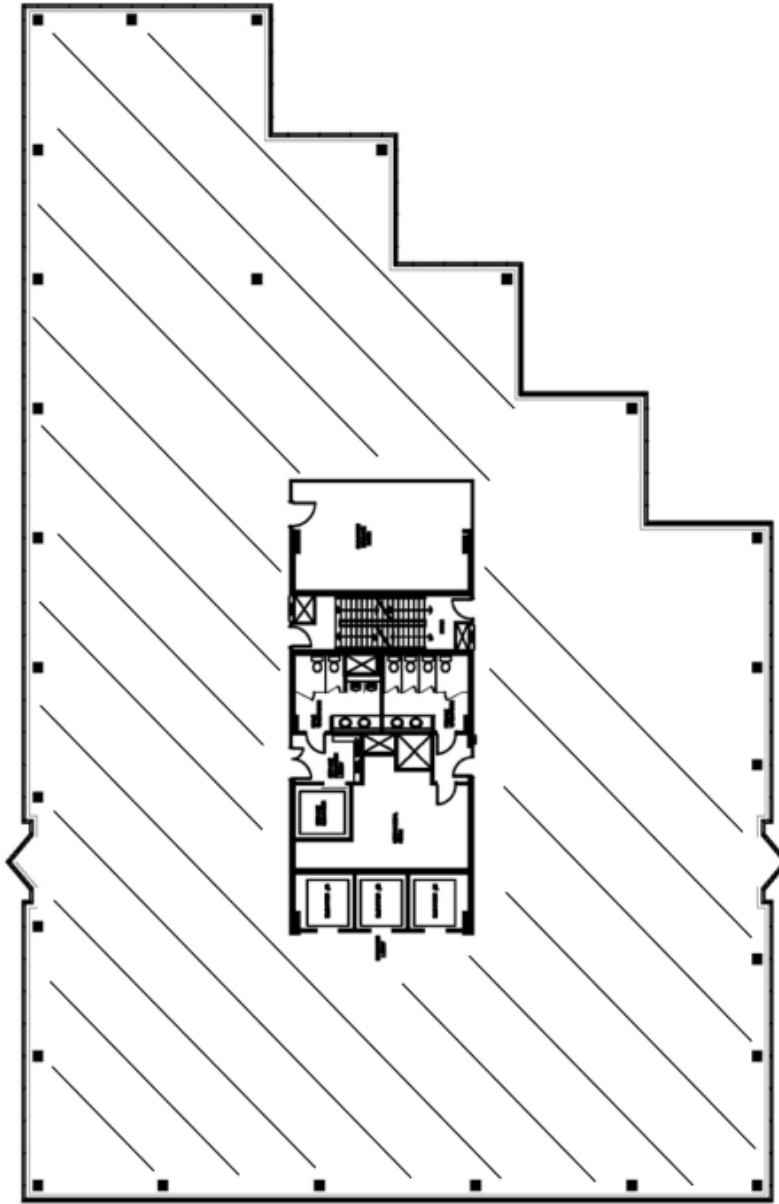
Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario



Schedule "A-2"

Floor plan for 12th floor, 438 University Avenue, Toronto, Ontario

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario



Schedule "B"
Landlord's Work

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

Landlord shall deliver the Leased Premises in base building condition for office space, at its sole cost and expense, (the "Landlord's Work") which work shall include the following:

- 1) Removal and disposal of all furniture, equipment, and non load bearing partitioning, in the Leased Premises including all common corridors, but excluding common corridors situated on the 2nd, 7th, and 11th floors in the Leased Premises.
 - 2) Notwithstanding the above, Tenant may require the non base building washrooms located on the south end of the 8th, 9th, 10th and 11th floors of the Leased Premises to be maintained, (the "Washrooms"). Landlord will provide Tenant with written notice of the date in which a decision is required on whether the Washrooms are to be removed. Upon receipt of Landlord's notice, Tenant shall have ten (10) business days in which to respond, requesting that the Washrooms be maintained. Should Landlord fail to receive written notice confirming that the Washrooms be maintained, Landlord shall remove these improvements from the Leased Premises, as provided for in paragraph 1 hereinabove.
 - 3) Remove and dispose of any and all existing floor coverings in the Leased Premises, and elevator corridors (excluding granite in the elevator corridors), and repair any damaged floor surface, to provide a smooth, level concrete floor in a state ready to receive Tenant's floor coverings.
 - 4) Remove any and all wall coverings from all base building walls, columns, and any remaining common corridors in the Leased Premises excluding granite in the elevator corridors. All base building walls and columns to be dry walled and sanded.
 - 5) Landlord to provide new ceiling tiles for a total of three (3) floors having an acoustic rating of no less than .90 NRC. These tiles are to be stacked on palettes on the floors to be installed. Notwithstanding anything contained hereinabove, all lay-in acoustical ceiling tiles shall be of a consistent style, colour, and technical specification over each floor.
 - 6) Provide Building standard fluorescent lighting fixtures to provide no less than 500-lux of light at desk height.
-

Schedule "B"
Landlord's Work

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

- 7) Remove and replace any damaged or inoperable suspended fluorescent light fixtures, including any damaged, or inoperable ballasts, or fluorescent light bulbs.
- 8) Replace any damaged, stained, or discoloured light lenses with the same style and technical specifications.
- 9) Replace, or repair to new or like new quality, any damaged suspended T-Bar ceiling systems in the Leased Premises.
- 10) Building standard sprinkler and life safety systems suitable to provide coverage in accordance with all applicable laws, codes, and by-laws, in existing condition.

Any additions to or modifications to the sprinkler system necessitated by Tenant's layout shall be at Tenant's expense.

Notwithstanding anything contained herein, Landlord shall maintain all fire hose cabinets in the Leased Premises that have been added to meet existing tenant's layout distribution requirements.

- 11) Provide existing Building standard vertical window blinds to all exterior windows in the Leased Premises. Replace any damaged, stained, discoloured, or inoperable window blinds, with new Building standard office window blinds.
- 12) Provide existing Building standard heating ventilation, and air conditioning (HVAC) systems to the Leased Premises, with VAV control devices at a ratio of 1 unit for every 900 rentable sq. ft. per floor on the interior and every 300 rentable sq.ft. on the perimeter and one for every corner (15'x15').

Notwithstanding anything contained herein, Landlord shall not remove the supplemental cooling system located and serving on the 4th floor of the Leased Premises and leave all associated equipment for its operation.

- 13) Repair or replace any damaged, or inoperable perimeter convactor units, located in the Leased Premises. Landlord to clean all perimeter convactor units, at the appropriate time during Tenant's Work.
-

Schedule "B"
Landlord's Work

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

- 14) Provide a card access security system allowing card access to main exterior entrances to the Building, and all passenger elevators serving the Leased Premises.
 - 15) Prior to turnover to Tenant, Landlord to clean all surfaces in the Leased Premises of dust and debris.
 - 16) It is understood and agreed that Landlord shall complete all Landlord's Work outlined herein in a good and workman like manner, and shall comply with all municipal and provincial by-laws having jurisdiction over the provision of such work in the Leased Premises. Landlord acknowledges that the base building standards set out in this schedule are relied upon by Tenant, and as such constitutes an integral basis for Tenant entering into this Offer to Lease. Accordingly, Landlord represents and warrants that the base building will meet such standards, and such representation and warranty will survive this Offer to Lease and the resulting lease agreement.
-

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

<u>GENERAL</u>			<u>Loyalty Requirement</u>	<u>438 University</u>
Design Conditions	Outside	Summer	87°F DB	Yes
		Winter	74°F WB -10°F	Yes Yes
	Inside	Summer	15 mph wind 75°F DB	Yes
		Winter	50 % RH 72°F DB 30 % RH	Yes Yes Yes
	Noise	General Office	NC 35	Yes, as experienced
		Corridors	NC 40	Yes, as experienced
		Storage Rooms	NC 40	Yes, as experienced
		Exterior	NC 45	Yes, as experienced
	Outside Air Ventilation		20 cfm/person	26,000 cfm available to Loyalty
Controls	Central Energy Management System (CEMS):		Yes	Yes
	DDC control of mechanical equipment rooms:		Yes	Yes
	DDC control of VAV boxes and heating valves on floors:		Yes	Yes
Fire Protection systems:			Yes	Yes
Design to NFPA 13:			Yes	Yes
IAO Standards:			No	No
FM Standards:			No	No
Fire hose cabinets:			Yes	Yes, 100 ft hose length
Capped Connections for Future			2 @ 4"	Yes
Building Envelope	Glass height (m.):		Specify	Reviewed as acceptable
	Glazing shading factor:		Specify	Reviewed as acceptable
	Glazing U factor:		Specify	Reviewed as acceptable
	Interior Shading:		Yes	
	Wall U factor:		£ 0.05	Reviewed as acceptable
Hours of Operation	Base		7am-7pm M-F	Yes, cost, to be reflected in Additional Rent
	Call centre		8am-12am M-F 9am-6pm Sat.	Yes, VFD required on ventilation unit, at Tenant's cost
	Supplementary Systems		24/7	Yes, but may need to be supplemented, at Tenant's cost
	Security		24/7	Yes

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

<u>Amenities</u>	<u>Loyalty Requirement</u>	<u>438 University</u>
Handsfree egress from washrooms	Yes	No, not a necessity
Barrier Free Fixtures:	Yes	Yes
Washroom floor drains:	Yes	Yes
Water closets (American Standard or equal):	Wall hung	Yes
Flush Valves (Sloan or equal):	Standard (typ.)	Yes
Urinals (American Standard or equal):	Wall	Yes
Flush Valves(Sloan or equal):	Electronic	Yes
Lavatories (American Standard or equal):	China	Yes
Faucet (Sloan or equal):	Electronic	Yes
Soap dispensers:	Individual	Yes, hands free
Janitor's sink/closet:	Yes	No, not a necessity
Domestic hot water supply:	£ 10 seconds	No, mixed temp water
Future Tenant requirements		
Capped connections for sanitary drain and vent for future:	per floor 2@4" drain 2@2" vent	No, available in the core. at Tenant's cost
Capped connection for domestic cold water for future:	per floor 2@1"	Yes
Capped connection for washroom exhaust:	per floor 2x150 cfm	Yes, part of central system
Connection for general exhaust	per floor 3 600 cfm	

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

Air handling type	<u>Loyalty Requirement</u>	<u>438 University</u>
Compartmentalized Systems	Yes	Yes
	Fan HP	20
Volume Control (type)	VSD	VIV acceptable
Control zone, perimeter	30 ft. bays	20ft bay, better
Control zone, corners	Yes	Yes
Control zone, interior (max.)	900 sq.ft.	Yes
Air Distribution:		
Interior:	Light Troffers	Yes
Perimeter:	Linear Slot Light	No, not a necessity
Return Air:	Fixtures	Yes
Heating System		
Control Zones	Match airside	Yes
Cooling System :		
Diversity factor on lights/equipment/people	Specify	90%
Chilled water	Yes	Yes
Type of refrigerant	Specify	R-11, will need to be changed
Minimum efficiency kW/ton	£ 0.60	.64 kW/ton, acceptable
Cooling Tower Type	Specify	BAC Induced Draft
Winter free cooling	Yes	Yes
Supplementary Condenser Water System – Existing or Space Available	Yes	Yes, previous tenant have small system in place
Humidification	Specify	Electronic Bottle, acceptable
Harmonics		
Landlord's equipment are to meet IEEE 519 (variable speed drives etc.)	IEEE 519	No, not a necessity
Life Safety		
Fire Alarm to meet Code requirements.	Yes	Yes
Lighting for emergency egress	Yes	Yes
Wiring/Cabling		
Perimeter chase integrated with perimeter heating	Yes	No, not a necessity
Core drill through slab from floor below	Yes	Yes
Raised Floor/ Floor duct	Yes	No, not a necessity

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

General Office Design Criteria (approx. 140,000 sq. ft.)	Loyalty requirement	438 University
People (sq.ft./ person):	150	Yes
Minimum lighting loads (watts/sq.ft.):	1.7	1.25
Provision for office equipment (watts/sq.ft.):	2.0	2.75
Provision for supplementary cooling (watts/sq.ft.):	2.0	No
Fire Protection		
Sprinkler Hazard	Light	Per Code, acceptable
Sprinkler Head Spacing	15' x 15'	Per Code, acceptable
Electrical/communication rooms	Wet w/screens	Per Code, acceptable
Electrical		
Illumination Level – General	500 lux	Yes
Illumination Level — VDT Environment	400 lux	No, not a necessity
Deep cell Parabolic louvers required (100mm)	Yes	Can not accommodate
T-Bar Ceiling	Yes	Yes
Size of T-Bar grid system	Specify	500mm x 1500mm
Light fixtures to utilized for air handling	Yes	Yes
Low Voltage Lighting Control required	Yes	Yes
Low Voltage Lighting Control zones	1 per 3000 sq. ft.	Zone to be specified by tenant
Type of lighting connections (hard wired /quick connect)	Specify	Quick Connect
Lighting Voltage(s)	Specify	347V
Secondary Voltages	600 and 120/208	Yes
Electrical Room on Each Floor	Yes - quantity	1
Number of Electrical Risers	Specify	1
Voice and Data		
Cable tray ring main	Yes	No, not a necessity
Risers between floors	4 @ 4"	1 spare
Number of Communications Risers	Specify	12

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

Call Center Criteria (approx. 25,000 sq.ft current) (approx. 15,000 sq.ft. future additional)	Loyalty requirement	438 University
People (sq.ft./ person):	100	Will accommodate
Minimum lighting loads (watts/sq.ft.):	1.7	1.25
Provision for office equipment (watts/sq.ft.):	1.5	2.75
Provision for supplementary cooling (watts/sq.ft.):	2.0	No
Fire Protection		
Sprinkler Hazard	Light	Per Code, acceptable
Sprinkler Head Spacing	15' x 15'	Per Code, acceptable
Electrical/communication rooms	Wet w/screens	Per Code, acceptable
Electrical		
Illumination Level – General	500 lux	Yes
Illumination Level — VDT Environment	400 lux	No, not a necessity
Deep cell Parabolic louvers required (100mm)	Yes	Can not accommodate
T-Bar Ceiling	Yes	Yes
Size of T-Bar grid system	Specify	500mm x 1500mm
Light fixtures to utilized for air handling	Yes	Yes
Low Voltage Lighting Control required	Yes	Yes
Low Voltage Lighting Control zones	1 per 3000 sq. ft.	Zone to be specified by tenant
Type of lighting connections (hard wired /quick connect)	Specify	Quick Connect
Lighting Voltage(s)	Specify	347V
Secondary Voltages	600 and 120/208	Yes
Special Grounding Req'd	No	
Electrical Room on Each Floor	Yes - quantity	Yes
Voice and Data		
Cable tray ring main	Yes	No, no a necessity
Risers between floors	4 @ 4"	1 spare
Number of Communications Risers	Specify	Not provided

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

Emergency Power	<u>Loyalty Requirement</u>	<u>438 University</u>
Space only for:		
Dedicated Diesel for critical areas and equipment	1 @ 300 kW	Yes, on roof only, structural implications, at Tenant's cost
Fuel Tanks	1 @ 1000 usgal	Yes, in parking area, at Tenant's cost
UPS (1 module redundant)	1 at 125 KVA	Will accommodate, at Tenant's cost
Batteries	20 minutes	Will accommodate, at Tenant's cost
High Voltage Switchgear and transformers for call centre only.	Yes	Will accommodate, at Tenant's cost
Low Voltage Switchgear dedicated for call centre	Yes	Will accommodate, at Tenant's cost
Supplementary condenser water system for server room (PBX) and critical staff	Yes	Will accommodate, at Tenant's cost
Call center equipment including printing machines	Yes	Will accommodate, at Tenant's cost
Other Systems on Base Building Emergency Power		
Ground water sump pumps:	If Required	No
BMS (UPS power):	Yes	Yes
Domestic Water Booster Pumps:	Yes	Yes
Electric Tracing:	if applicable	Yes
Site Issues		
Lightning Protection Required	Yes	Yes
Under ground duct banks for Bell (# of separate building entrances)	Yes	1
Under ground duct banks for Hydro (# of separate building entrances)	Yes	1
Redundant risers (2 sets of 4 x 4 inch conduits) to different carriers	Yes	No, not a necessity
Redundant/dedicated high voltage feeders to different transformer sub-stations	Yes	No, not a necessity
Ensure Electro Magnetic Fields (EMF) are below 20 milligauss – measured	Yes	Yes
Elevators available for emergency usage during outage	Yes	Yes

Schedule "C"
Buildings Systems

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

<u>Security</u>	<u>Loyalty Requirement</u>	<u>438 University</u>
Vendor	Specify	ADT
Swipe or proximity	Yes	Yes
Extent		
Main lobbies	Yes	Yes
Elevators	Yes	Yes
Individual floors	Yes	Will accommodate, at Tenant's cost

Schedule "D"
Dual Agency Agreement

Attached to and forming part of the Offer to Lease between Loyalty Management Group Canada Inc. (the "Tenant") and 592423 Ontario Inc. (the "Landlord") for Leased Premises located at municipally at 438 University Avenue, Toronto Ontario

Tenant: Loyalty Management Group Canada Inc.
Landlord: 592423 Ontario Inc.
Listing Broker: Avison Young Commercial Real Estate (Ontario) Inc., listing broker for 438 University Avenue, Toronto Ontario, (the "Building")

Listing Broker has entered into an agency agreement with Tenant by way of a letter dated January 13th, 2005, and represents the interests of Landlord and Tenant, with their consent, as a dual agent in respect to Tenant's lease of premises at the Building. Listing Broker must be impartial and equally protect the interests of Landlord and Tenant in this transaction. Listing Broker has a duty of full disclosure to both Landlord and Tenant, including a requirement to disclose all factual information about the Building. However, Listing Broker shall not disclose:

1. That Landlord may or will accept less than the listed price, unless otherwise instructed in writing by Landlord;
2. That Tenant may or will pay more than the offered price, unless otherwise instructed in writing by Tenant;
3. The motivation of or personal information about Landlord or Tenant, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
4. The price Tenant should offer or the price Landlord should accept; and
5. Listing Broker shall not disclose to Tenant the terms of any other offer for premises in the Building.

However, it is understood that factual market information about comparable properties and information known to Listing Broker concerning potential uses for the property will be disclosed to both Landlord and Tenant to assist them to come to their own conclusions.

Dated at Toronto, this 12th day of September, 2005

TENANT: **Loyalty Management Group Canada Inc.**
Per: _____
Authorized Signatory

Dated at _____, this ____ day of _____, 2005

LANDLORD: **592423 Ontario Inc.**
Per: _____
Authorized Signatory

Dated at _____, this ____ day of _____, 2005

LISTING BROKER: **Avison Young Commercial Real Estate (Ontario) Inc.**
Per: _____
Authorized Signatory

LEASE

RIDGEWOOD CORPORATE CENTER

by and between

MILFORD PARTNERS, LLC,

a Delaware limited liability company

as Landlord,

and

ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation

as Tenant

1345888-8

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- B. Workletter
- C. Rules and Regulations
- D. Intentionally omitted
- E. Janitorial Specifications
- F. Proposed ADS Expansion Space

LEASE

THIS LEASE ("Lease") is made as of the _____ day of _____, _____, between MILFORD PARTNERS, LLC, a Delaware limited liability company ("**Landlord**"), and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation ("**Tenant**"), for space in the building commonly known as Ridgewood Corporate Center, 1000 Summit Drive, Milford, Ohio (such building, together with the land upon which it is situated and common areas, including sidewalks, parking areas and landscaped areas, being herein referred to as the "**Building**"). The following schedule (the "**Schedule**") sets forth certain basic terms of this Lease:

SCHEDULE

1. Premises — Suite Number: 200, located on the first floor of the Building, as shown in the attached Exhibit A.
 2. Commencement Date: Earlier (i) Tenant's occupancy of the Premises or (ii) December 13, 2004 (See Section 26.H)
 3. Expiration Date: March 31, 2015
 4. Rentable Square Feet of the Premises: 32,507
 5. Rentable Square Feet of the Building: 196,055
 6. Base Rent:

Period	Annually	Monthly
Commencement Date through March 31, 2005	0	0
4/1/05 — 3/31/07	\$290,937.65	\$24,244.80
4/1/07 — 3/31/08	299,714.54	24,976.21
4/1/08 — 3/31/09	308,816.50	25,734.71
4/1/09 — 3/31/10	318,243.53	26,520.29
4/1/10 — 3/31/11	327,670.56	27,305.88
4/1/11 — 3/31/12	337,422.66	28,118.56
4/1/12 — 3/31/13	347,499.83	28,958.32
4/1/13 — 3/31/14	357,902.07	29,825.17
4/1/14 — 3/31/15	368,629.38	30,719.12
 7. Tenant's Proportionate Share: 16.581%
 8. CPI Factor: Intentionally Omitted
-

9. Base Year: Intentionally Omitted
10. Security Deposit: None
11. Broker(s): Cincinnati Capital Properties and PRG Realty Partners
12. Guarantor(s): None
- Exhibits:
- A. Floor Plan
 - B. Workletter
 - C. Rules and Regulations
 - D. Intentionally omitted
 - E. Janitorial Specification
 - F. Proposed ADS Expansion Space

1. **DEMISE AND TERM.** A. Landlord leases to Tenant and Tenant leases from Landlord the premises (the "**Premises**") described in Item 1 of the Schedule and shown on the plan attached hereto as Exhibit A, subject to the covenants and conditions set forth in this Lease, for a term (the "**Term**") commencing on the date (the "**Commencement Date**") described in Item 2 of the Schedule and expiring on the date (the "**Expiration Date**") described in Item 3 of the Schedule, unless terminated earlier as otherwise provided in this Lease.

B. Option to Extend Term. Tenant, by written notice to Landlord given no later than six (6) full calendar months prior to the Expiration Date of this Lease (as the same may be extended), shall have the option to extend this Lease for two (2) additional consecutive five (5) year periods (each an "**Option Period**" and collectively the "**Option Periods**") commencing on the expiration of the Term of this Lease, pursuant to all of the terms, covenants, and conditions of this Lease and at the Fair Market Rent (as defined below) provided that at the time the notice hereinabove referred to is given and at the time any Option Period commences, and at all times in between, Tenant is not in default beyond any applicable cure period hereunder. "**Fair Market Rent**" as used herein, shall mean, as of any date, the then prevailing annual rental rate being charged in comparable buildings in the Milford, Ohio submarket and surrounding areas, comparable to the space in the building of which the Premises form a part for which such determination is being made after taking into consideration the following (to the extent that same are applicable under the circumstances in question):

1. Location, quality and age of the building;
2. Use and size of the space in question;
3. Location and/or floor level within the building;
4. Definitions of "net rentable area" and "net useable area";
5. Extent of leasehold improvement allowance (specifically not taking into consideration existing leasehold improvements but contemplating an allowance for painting and carpeting of the Premises using Building standard materials);
6. Rent and other monetary abatements (including, with respect to base rental, operating expenses, ad valorem/real estate taxes and parking charges);
7. Inclusion of parking charges in rental;
8. Lease takeover/assumptions;
9. Moving allowances;
10. Relocation allowances;
11. Refurbishment and repainting allowances;

12. Any other concessions or inducements;
13. Extent of services provided or to be provided by the landlord;
14. Distinction between "gross" and "net" lease;
15. Base year or dollar amount for operating expenses escalation purposes (both operating costs and ad valorem/real estate taxes);
16. Any other adjustments (including by way of indices) to base rental;
17. Credit standing and financial stature of tenant;
18. Term or length of lease;
19. Any other matter or condition deemed relevant by the parties.

Landlord shall deliver written notice to Tenant of Landlord's proposed Fair Market Rent not less than two hundred seventy (270) days and not more than three hundred thirty (330) days in advance of the time that Tenant is required to exercise any election to extend the Term of this Lease ("**Landlord's FMR Notice**"). Within thirty (30) days of Tenant's receipt of Landlord's FMR Notice, Tenant shall notify Landlord that it either (a) accepts the Fair Market Rent set forth in Landlord's FMR Notice; or (b) rejects the Fair Market Rent set forth in Landlord's FMR Notice. If Tenant elects to accept the Fair Market Rent set forth in Landlord's FMR Notice, this Lease shall be amended to reflect the Landlord's proposed Fair Market Rent for the Option Period and the extended Expiration Date. If Tenant fails to respond to Landlord's FMR Notice, Tenant shall be deemed to have rejected Landlord's proposed Fair Market Rent, as set forth in Landlord's FMR Notice.

If Tenant rejects the Fair Market Rent set forth in Landlord's FMR Notice or if Tenant fails to respond to Landlord's FMR Notice, the parties, acting in good faith, shall have a period of thirty (30) days in which to agree upon the Fair Market Rent for the Option Period, said 30 day period to commence at the expiration of the thirty (30) day period permitted to Tenant to accept or reject the Fair Market Rent specified in Landlord's FMR Notice. If the parties are unable to agree upon the Fair Market Rent within said thirty (30) day period, Tenant's right to extend the Lease shall be deemed of no force and effect and this Lease shall be deemed to have expired on the Expiration Date, or, if this Lease has previously been extended, upon such extended Expiration Date.

2. RENT.

A. **Definitions.** For purposes of this Lease, the following terms shall have the following meanings:

- (i) "**Base Year**": Intentionally Omitted
- (ii) "**CPI Factor**": Intentionally Omitted

(iii) **“Consumer Price Index”**: Intentionally Omitted

(iv) **“Expenses”** shall mean all expenses, costs and disbursements (other than Taxes) paid or incurred by Landlord in connection with the ownership, management, maintenance, operation, replacement and repair of the Building, including exterior common areas, including (without limitation) the cost of electricity, steam, water, gas, fuel, heating, lighting, air conditioning, window cleaning, common area janitorial service, snow removal, maintenance, replacements and repairs of the Building’s heating, ventilation and air conditioning systems, parking area restriping and repairing, maintenance of detention and retention areas, maintain the building directory and other signage, insurance, including (without limitation) fire, extended coverage, liability, workmen’s compensation, rent loss, elevator or any other insurance carried by Landlord and applicable to the Building, cost and expense of any cafeteria operations, fitness centers, management fees, painting, uniforms, supplies, sundries, reserves, sales or use taxes on supplies or services, cost of wages and salaries of all persons engaged in the operation, administration, maintenance and repair of the Building, and fringe benefits, including (without limitation) social security taxes, unemployment insurance taxes, cost for providing coverage for disability benefits, cost of any pension, hospitalization, welfare or retirement plans, or any other similar or like expenses incurred under the provisions of any collective bargaining agreement, or any other cost or expense which Landlord pays or incurs to provide benefits for employees so engaged in the operation, administration, maintenance and repair of the Building, the charges of any independent contractor who, under contract with Landlord or its representative, does any of the work of operating, maintaining or repairing of the Building, and legal and accounting expenses. Expenses shall not include: (a) costs of tenant alterations; (b) interest and principal payments on mortgages (except interest on the cost of any capital improvements for which amortization may be included in the definition of Expenses) or any rental payments on any ground leases; (c) leasing commissions; (d) any cost or expenditure for which Landlord is reimbursed, whether by insurance proceeds or otherwise, except through Adjustment Rent (hereinafter defined); (e) legal expenses of negotiating leases (f) janitorial expense for individual tenant’s premises (where such services have been contracted for separately by the tenant in question); or (g) additional insurance premiums caused by any other tenants’ extra hazardous use of its premises or the Building. Expenses shall be at competitive rates and amounts for the operation of a first class building of similar size and quality in the greater Cincinnati metropolitan area. Landlord shall be deemed to have complied

with the foregoing so long as it has competitively bid contracts for Expenses, it being understood that Landlord shall have the right, in its sole discretion, to choose contractors for common area services using reasonable judgment, based on price, qualifications and reliability. Expenses shall be determined on a cash or accrual basis, as Landlord may elect, based on generally accepted accounting principles, consistently applied.

Notwithstanding anything contained herein to the contrary, (l) Tenant acknowledges that: (i) Landlord currently operates the heating, ventilating and air conditioning ("**HVAC**") system at the Building twenty four (24) hours per day and includes the cost of such 24 hour operation in Expenses; (ii) Landlord is currently investigating the modification of its HVAC system into a so-called "zoned" system, which will permit Landlord to charge back to the tenants of the Building, on an individual usage basis, for operation of the HVAC system beyond Building standard hours (which are 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 12:00 p.m. Saturdays, for purposes of HVAC operation); and (2) Tenant agrees that (i) until such time, if any, as the HVAC system has been modified as contemplated in this paragraph, the costs of 24 hour operation shall be included in Expenses; and (ii) at such time as the HVAC system has been modified as contemplated herein, Tenant shall reimburse Landlord for the cost of after hours HVAC as Rent hereunder, and within ten (10) days after demand therefor, for all overtime usage (being all usage beyond the standard operating hours for the building from time to time, but not less than the hours specified in 2A. (iv)). Such reimbursement shall be at Landlord's actual cost without any markup on per hour basis.

- (v) "**Rent**" shall mean Base Rent, Adjustment Rent, and any other sums or charges due by Tenant hereunder.
- (vi) "**Taxes**" shall mean all taxes, assessments and fees levied upon the Building, the property of Landlord located therein or the rents collected therefrom, by any governmental entity based upon the ownership, leasing, renting or operation of the Building, including all costs and expenses of protesting any such taxes, assessments or fees. Taxes shall not include any net income, capital stock, succession, transfer, franchise, gift, estate or inheritance taxes; provided, however, if at any time during the Term, a tax or excise on income is levied or assessed by any governmental entity, in lieu of or as a substitute for, in whole or in part, real estate taxes or other ad valorem taxes, such tax shall constitute and be included in Taxes. For the purpose of determining Taxes for any given year, the amount to be included for such year shall, at Landlord's option,

be either Taxes which are assessed or become a lien during such year or Taxes which are due for payment or paid during such year.

Taxes billed to Tenant shall reflect a proportionate share of the benefit of any tax abatement or reduction agreements with county or state authorities, if and to the extent received by Landlord. Landlord makes no representations or warranties with respect to the continued existence of such abatement/reduction agreements.

- (vii) **“Tenant’s Proportionate Share”** shall mean the percentage set forth in Item 7 of the Schedule which has been determined by dividing the Rentable Square Feet of the Premises by the Rentable Square Feet of the Building.
- (viii) **“Prime Rate”** shall mean the highest of the Prime Rates as reported in the Money Rate Section of The Wall Street Journal. If The Wall Street Journal no longer publishes the Prime Rate as an index, Landlord may substitute a comparable index including the Prime Rate or reference rate of a reputable financial institution.

B. **Components of Rent.** Tenant agrees to pay the following amounts to Landlord at the office of the Building or at such other place as Landlord designates:

- (i) Base rent (**“Base Rent”**) to be paid in monthly installments in the amount set forth in Item 6 of the Schedule in advance on or before the first day of each month of the Term, without demand, except that Tenant shall pay the first month’s Base Rent upon execution of this Lease.
- (ii) Adjustment rent (**“Adjustment Rent”**) in an amount equal to Tenant’s Proportionate Share of Expenses and Taxes. Prior to each calendar year, or as soon as reasonably possible, Landlord shall estimate and notify Tenant of the amount of Adjustment Rent due for such year, and Tenant shall pay Landlord one-twelfth of such estimate on the first day of each month during such year. Such estimate may be revised by Landlord whenever it obtains information relevant to making such estimate more accurate. After the end of each calendar year, Landlord shall deliver to Tenant a report setting forth the actual Expenses and Taxes for such calendar year and a statement of the amount of Adjustment Rent that Tenant has paid and is payable for such year. Within thirty (30) days after receipt of such report or reports, Tenant shall pay to Landlord the amount of Adjustment Rent due for such calendar year minus any payments of Adjustment Rent made by Tenant for such year, it being acknowledged by Tenant that in the event Landlord separately reports actual Expenses and actual Taxes for a calendar year, Landlord may reasonably allocate Adjustment Rent

paid by Tenant for such calendar year between Expenses and Taxes for such calendar year. If Tenant's estimated payments of Adjustment Rent exceed the amount due Landlord for such calendar year, Landlord shall apply such excess as a credit against Tenant's other obligations under this Lease or refund such excess to Tenant if the Term has already expired within thirty (30) days of the expiration of the Term (retaining so much of such excess as may be reasonably required to cover the estimated obligations of Tenant past the expiration of the Term), provided Tenant is not then in default hereunder. Any sum due from Landlord to Tenant under the provisions of the preceding sentence shall bear interest from the date due until the date paid at the annual rate of five percentage points (5%) above the Prime Rate then in effect, but in no event higher than the maximum rate permitted by law.

(iii) Index rent ("**Index Rent**"): Intentionally Omitted

C. Payment of Rent. The following provisions shall govern the payment of Rent: (i) if this Lease commences or ends on a day other than the first day or last day of a calendar year, respectively, the Rent for the year in which this Lease so begins or ends shall be prorated and the monthly installments shall be adjusted accordingly; (ii) all Rent shall be paid to Landlord without offset or deduction, and the covenant to pay Rent shall be independent of every other covenant in this Lease; (iii) if during all or any portion of any year the Building is not fully rented and occupied (fully rented and occupied shall mean that ninety-five percent (95%) of the Rentable Square Feet of the Building is occupied by tenants under lease), Landlord may elect to make an appropriate adjustment of variable Expenses for such year to determine the Expenses that would have been paid or incurred by Landlord had the Building been fully rented and occupied for the entire year and the amount so determined shall be deemed to have been the Expenses for such year; (iv) any sum due from Tenant to Landlord which is not paid when due shall bear interest from the date due until the date paid at the annual rate of five percentage (5%) points above the Prime Rate then in effect, but in no event higher than the maximum rate permitted by law (the "**Default Rate**"); and, in addition, Tenant shall pay Landlord a late charge for any Rent payment which is paid more than five (5) days after its due date equal to five percent (5%) of such payment; (v) if changes are made to this Lease or the Building changing the number of square feet contained in the Premises or in the Building, Landlord shall make an appropriate adjustment to Tenant's Proportionate Share; (vi) Tenant, or an independent certified accounting firm retained by Tenant on an hourly fee basis (and not on a contingency fee basis), shall have the right to inspect Landlord's accounting records relative to Expenses and Taxes during normal business hours at any time within thirty (30) days following the furnishing to Tenant of the annual statement of Adjustment Rent; and, unless Tenant shall take written exception to any item in any such statement within such thirty (30) day period, such statement shall be considered as final and accepted by Tenant; (vii) in the event of the termination of this Lease prior to the determination of any Adjustment Rent, Tenant's agreement to pay any such sums and Landlord's obligation to refund any such sums (provided Tenant is not in default hereunder) shall survive the termination or expiration of this Lease; (viii) no adjustment

to the Rent by virtue of the operation of the rent adjustment provisions in this Lease shall result in the payment by Tenant in any year of less than the Base Rent shown on the Schedule; (ix) Landlord may at any time change the fiscal year of the Building; (x) each amount owed to Landlord under this Lease for which the date of payment is not expressly fixed shall be due on the same date as the Rent listed on the statement showing such amount is due; and (xi) if Landlord fails to give Tenant an estimate of Adjustment Rent prior to the beginning of any calendar year, Tenant shall continue to pay Adjustment Rent at the rate for the previous calendar year until Landlord delivers such estimate, at which time Tenant shall pay retroactively the increased amount for all previous months of such calendar year.

3. USE. Tenant will use the Premises solely for office and storage purposes consistent with a first class office and research park and no other purposes. Tenant will not use the Premises for retail or manufacturing purposes and will not cause or permit any waste or damage to the Premises, the Building or the land upon which the Building is located and will not occupy or use the Premises for any business or purpose which is unlawful, hazardous, unsanitary, noxious or offensive or which unreasonably interferes with the business operations of other tenants in the Building. If the nature of Tenant's use or occupancy of the Premises causes any increase in Landlord's insurance premiums over and above those chargeable for use of the Premises for office and storage of items which are not extra-hazardous and which do not contain hazardous substances then Tenant will pay the resulting increase within 10 days after its receipt of a statement from Landlord setting forth the amount thereof.

4. HAZARDOUS SUBSTANCES. Landlord represents to Tenant that, to Landlord's knowledge, as of the Commencement Date, there are no Hazardous Substances in the Premises or Building in violation of any applicable laws. Tenant acknowledges that the term "to Landlord's knowledge" means that Landlord's knowledge is limited to that certain Phase I Environmental Report dated June 14, 1999, prepared by Eckland Consultants, Inc., and that Landlord has performed no further investigation. In no event shall Tenant be held liable or responsible for any pre-existing Hazardous Substances in the Premises or from Hazardous Substances placed in the Premises during Tenant's occupancy by Landlord or Landlord's agents, contractors or invitees, or any other tenant of the Building. Tenant will not itself, nor permit others to, use, store, generate, treat or dispose of any Hazardous Substance (as hereinafter defined) on or about the Premises, except for immaterial amounts that are exempt from or do not give rise to any violation of applicable law and then only to the extent handled, stored, used, and disposed of in accordance with all Environmental Laws (hereinafter defined). Tenant agrees to indemnify, defend and hold Landlord harmless from any liability or expense (including, without limitation, the fees of Landlord's attorneys and consultants and the cost of any required remediation or clean-up) incurred by or claimed against Landlord as a result of Tenant's breach of the covenant contained in this paragraph. The foregoing covenant will survive the expiration or termination of this Lease. The term "Hazardous Substance" means any "hazardous substance", "toxic substance" (as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act), "hazardous waste" (as that term is defined in the Resource Conservation Recovery Act), and as the foregoing terms may be defined in any other applicable state or federal laws, rules, regulations, orders, or ordinances ("Environmental Laws"), polychlorinated biphenyls, asbestos, radioactive material or any other pollutant, contaminant or hazardous, dangerous or toxic material or substance which is regulated by any

federal, state or local law, regulation, ordinance or requirement. Landlord agrees to indemnify, defend and hold harmless Tenant from and against any liability or expenses, including, without limitation, reasonable attorneys' fees and costs of litigation incurred by Tenant in connection with the use by Landlord of any portion of the Building for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Substance, but excluding instances where Tenant, or anyone having access to the Building by through or under Tenant has utilized the Premises or Building in violation of this Section 4. Notwithstanding the foregoing, Landlord's indemnification is limited to actual out of pocket costs incurred by Tenant and excludes any consequential or other damages.

5. **CONDITION OF PREMISES.**

A. **Condition at Turnover.** Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in good order and satisfactory condition when Tenant took possession. No agreement of Landlord to alter, remodel, decorate, clean or improve the Premises or the Building (or to provide Tenant with any credit or allowance for the same), and no representation regarding the condition of the Premises or the Building, have been made by or on behalf of Landlord or relied upon by Tenant, except as stated in the Workletter attached hereto as Exhibit B, if any. With the exception of the Workletter, Tenant agrees to accept the Premises in its as is, where located condition, all work to be performed at the Premises, if any to be performed by Tenant at Tenant's sole cost and expense and hereinafter referred to as "Tenant's Work". Notwithstanding the foregoing, all Building systems shall be in working order at the time of delivery of possession and all windows in the Premises shall have Building standard window treatments. If any Landlord Work is indicated in Exhibit B, Landlord shall obtain customary one year warranties on new construction. Warranties received in connection with Landlord's work shall inure to the benefit of Tenant.

B. **Substantial Completion Date.** Subject to the provisions of Section 26.J. and Exhibit B hereof, Landlord agrees that it will substantially complete Landlord's Work as defined in Exhibit B hereof on or before the date which is ninety (90) days from the date of mutual execution and delivery of this Lease ("**Substantial Completion Date**"). "Substantially Complete" and "Substantial Completion" have the meaning set forth in Exhibit B. The Substantial Completion Date shall be deemed automatically extended by a period equivalent to any additional time required therefor caused by Tenant's (i) changes in the Workletter, (ii) failure to specify finishes within the time set forth in Exhibit B, or (iii) interference with Landlord's timely performance of Landlord's Work. The foregoing are hereinafter referred to as "**Tenant Delays**". In the case of a Change Order (as defined in Exhibit B), the parties shall evidence any delay in the Substantial Completion Date at the time of entering into the signed Change Orders described in this Section 5, which Change Orders shall contain the new estimated Substantial Completion Date. With respect to Tenant's failure to timely select finishes, the extension of the Substantial Completion Date shall be automatic and proportionate, based upon the number of days in excess of three (3) business days from request for either approval or selection of finish items until Landlord's receipt of written confirmation of the same. Any claim of interference with the performance of Landlord's Work shall be made in writing. Landlord's Work shall comply with applicable codes

including, without limitation, the Americans with Disabilities Act, to the extent the same relate hereto.

C. **Delay in Substantial Completion.** Subject to the provisions of this Section 5.C. and Exhibit B, Landlord agrees, if a delay occurs in completion of Landlord's Work beyond the Substantial Completion Date, which delay is not the result of force majeure (as described in Section 26.J. hereof), or Tenant Delays (except for any delays in installation of the fiber optics line described in Exhibit B, which Tenant acknowledges is not entirely within Landlord's control), then Tenant shall be entitled to a rent abatement of Fifteen Thousand Dollars (\$15,000.00) per month for each month beyond December 13, 2004 that Landlord fails to deliver possession of the Premises to Tenant with Landlord's Work Substantially Complete, not to exceed Sixty Thousand Dollars (\$60,000.00) in the aggregate. Said sum shall be prorated for any partial month.

D. **Revisions to Landlord's Work.** Landlord shall not be required to make any changes, additions or alterations to Landlord's Work (as the same is reflected in Exhibit B hereof) until Landlord and Tenant have entered into an appropriate Change Order evidencing Tenant's agreement to pay all excess costs (over and above Landlord's original costs) resulting from such Change Order.

E. **Landlord's Contribution.** So long as Tenant is not in default of this Lease after the notice, and beyond any applicable cure period, set forth in Section 17 hereof, Landlord shall pay to Tenant, as "Landlord's Contribution" the sum of \$5.00 per rentable square foot of floor area of the Premises, to be used for Tenant's relocation costs, which amount shall be paid within thirty (30) days of the last to occur of all of the following:

- (i) Tenant shall have furnished detailed evidence of such relocation costs (consisting of an invoice from its moving company.); and
- (ii) If such costs involve lienable work items, Tenant shall have furnished evidence satisfactory to Landlord that the work in question has been completed and paid for in full and that all liens that have been or may be filed have been released and satisfied; and
- (iii) Tenant shall have taken possession of and be conducting business from the Premises.

F. **Increase in Landlord's Contribution.** Tenant may request by written notice to Landlord, an increase in Landlord's Contribution by an amount equal to Five and No/100 Dollars (\$5.00) per rentable square foot of the Premises (the "Additional Contribution"). If Tenant elects to increase Landlord's Contribution by the Additional Contribution, then (a) the Additional Contribution (principle and interest) shall be amortized over a five (5) year period at an interest rate equal to Landlord's borrowing cost together with any associated expenses and the Monthly Base Rent payable hereunder shall be increased by the amount of principle and interest resulting therefrom; (b) the

Additional Contribution shall be considered part of Landlord's Contribution for all purposes hereunder; and (c) the parties shall amend this Lease within fifteen (15) days of Tenant's election to evidence the increase in Base Rent.

6. UTILITIES. Tenant, at Tenant's sole cost and expense, will pay all costs associated with the provision of all utility services to the Premises, including, without limitation, telephone, gas, electricity, water and sewer service. To the extent possible, all utility services will be separately metered by Tenant, at Tenant's sole cost and expense, to the Premises and placed in Tenant's name. If it is not possible to place a utility service on a separate meter in Tenant's name, then all costs associated with the provision of such utility service to the Premises will, at Landlord's option, either: (a) be billed directly by Landlord to Tenant and paid by Tenant within 10 days after its receipt of such billing; or (b) included as part of Expenses and paid by Tenant in accordance with the provisions of Section 2 above. Landlord will not be liable to Tenant, nor will Tenant be relieved of any obligation hereunder if any utility service to the Premises is interrupted for any reason, provided, however, if power, water or HVAC services to the Premises are interrupted as a result of Landlord's act or negligence and Tenant is unable to operate its business from the Premises for a period of two (2) consecutive business days, then Base Rent and Adjustment Rent shall be abated until such services are restored.

Except to the extent of the requirement to provide access to a fiber optics line as required by Exhibit B, Landlord shall have no obligation or duty to provide Tenant with any telecommunications devices or other forms of data delivery services. Tenant covenants and agrees to make all arrangements and to enter into such contracts or other agreements as may be necessary, from time-to-time, for Tenant's telecommunications and data delivery services in the Premises. Tenant shall pay all charges, including but not limited to the cost of installation of necessary wiring, conduits and equipment for all such telecommunication and data delivery systems. In the event Tenant shall desire to use any portion of the Building not within the Premises for any equipment that will provide, improve, add or in any way serve the telecommunication or data delivery services of, for or to Tenant, Tenant shall obtain the prior written approval of the Landlord. Tenant shall provide to Landlord such plans and specifications therefor as may be requested by Landlord in the exercise of the reasonable business judgment of Landlord. In addition to the foregoing, Landlord shall have the right to require that, in connection with the installation, maintenance, repair, replacement and any other use of the foregoing, Tenant provide to Landlord such waivers and indemnities (as they relate to said equipment, the security therefor, the non-exclusive nature of any grant by Landlord for the use of any portion of the Building for such purposes, and any damages or injury that may be sustained by Tenant or its business or operations from such installation, maintenance, repair, replacement or use) as may be requested by Landlord in the exercise of its reasonable business judgment.

7. MAINTENANCE AND REPAIR.

A. **Tenant Obligations.** With the exception of the obligations of the Landlord set forth in Section 7.B, Tenant will at its sole expense maintain the Premises in a first-class condition and repair. Tenant's maintenance obligation will extend to and include, without limitation, the repair and replacement, if necessary, of all trade fixtures, trade equipment and subsequent to completion of Landlord's Work (being those items defined in Exhibit A and B), any HVAC units, generators, mechanical and other systems

located within the Premises installed in connection with the operation of Tenant's business. Any repairs or replacements made to the Premises by Tenant pursuant to this Section 7 will be made in a workmanlike manner with materials at least equal in quality and grade to those originally contained within the Premises. Landlord will provide for janitorial and trash removal services for Tenant for the Premises as contemplated in Exhibit E hereof and Tenant shall promptly pay all costs associated with such services, as Rent hereunder, in the same manner as Tenant pays Operating Expenses.

B. Landlord Obligations. Landlord will maintain the roof, windows and exterior walls of the Building and all common areas, including but not limited to, parking areas, door hardware, interior Building hallways and exterior sidewalks and walkways, central Building utility systems (to the extent not the obligation of a public utility company) and other central Building systems, including, without limitation all fire extinguishers, pull downs, smoke detectors, card readers and security cameras, any supplemental HVAC units added by Landlord pursuant to this Section 7.B. and common area lighting serving the Building, in a first-class condition and order of repair. Landlord's obligations with respect to the Premises shall include the following:

a) Landlord shall maintain the electrical system within the Premises (consisting of wiring, and outlets), but excluding any portion of such system located in the cubicles shown on Exhibit A, which shall be Tenant's responsibility;

b) heating, ventilating and air conditioning ("HVAC") systems within the Premises, as necessary to maintain a temperature within the Premises of 72 degrees in the office area and 68 degrees in the computer room (with thermostat to be controlled by Tenant), it being agreed by Tenant that Tenant shall reimburse Landlord for all after-hours usage as Rent hereunder. Landlord agrees that Landlord will install supplemental HVAC units as necessary to maintain such temperature;

c) monthly pest control;

d) Landlord shall cause the common areas of the Building (including, without limitation, the private drive to the Building) to be plowed and salted as often as reasonably necessary to keep the same reasonably free of snow and ice; and

e) Landlord agrees to have the backup generator at the Building serviced and maintained in accordance with generally accepted practice, but at least once per calendar year.

Notwithstanding the foregoing, Tenant (and not Landlord) will be responsible for the payment of all costs associated with Landlord's maintenance of the same if the need therefore arises due to the fault or negligence of Tenant or its agents, employees, licensees or invitees. Landlord shall have no obligation to maintain, repair or replace Tenant's trade fixtures, trade equipment, or any other item installed in connection with its operations from the Premises, (e.g., HVAC units, generators, etc.). All costs incurred by Landlord in connection with the maintenance and repair of the foregoing items will be considered Expenses and Tenant will pay its Proportionate Share thereof pursuant to Section 2 above. Except as otherwise expressly

provided in Sections 5 and 7 of this Lease, Landlord will not at any time be required to make any improvements, repairs, replacements or alterations to the Premises.

8. RULES AND REGULATIONS. Tenant shall observe and comply, and shall cause its subtenants, assignees, invitees, employees, contractors and agents to observe and comply, with the Rules and Regulations listed on Exhibit C attached hereto and with such reasonable modifications and additions thereto as Landlord may make from time to time. Landlord shall not be liable for failure of any person to obey the Rules and Regulations. Landlord shall not be obligated to enforce the Rules and Regulations against any person, and the failure of Landlord to enforce any such Rules and Regulations shall not constitute a waiver thereof or relieve Tenant from compliance therewith, provided, however, that Landlord shall not discriminate against Tenant in the enforcement of such Rules and Regulations. Tenant shall have access to the Building 24 hours a day, seven (7) days per week, subject to regulation of freight and passenger elevator service, reasonable security precautions, and Landlord's rights to regulate activities in the common area of the Building.

9. CERTAIN RIGHTS RESERVED TO LANDLORD. Landlord reserves the following rights, each of which Landlord may exercise without notice to Tenant and without liability to Tenant, and the exercise of any such rights shall not be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Premises and shall not give rise to any claim for set-off or abatement of rent or any other claim: (a) to change the name or street address of the Building or the suite number of the Premises; (b) to install, affix and maintain any and all signs on the exterior or interior of the Building; (c) to make repairs, decorations, alterations, additions or improvements, whether structural or otherwise, in and about the Building, and for such purposes to enter upon the Premises, temporarily close doors, corridors and other areas of the Building and interrupt or temporarily suspend services or use of common areas, and Tenant agrees to pay Landlord for overtime and similar expenses incurred if such work is done other than during ordinary business hours at Tenant's request; (d) to retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises; (e) to grant to any person or to reserve unto itself the exclusive right to conduct any business or render any service in the Building; (f) to show or inspect the Premises at reasonable times and, if vacated or abandoned, to prepare the Premises for reoccupancy; (g) to install, use and maintain in and through the Premises pipes, conduits, wires and ducts serving the Building, provided that such installation, use and maintenance does not unreasonably interfere with Tenant's use of the Premises; (h) to take any other action which Landlord deems reasonable in connection with the operation, maintenance, marketing or preservation of the Building; and (i) to approve the weight, size and location of safes or other heavy equipment or articles, which articles may be moved in, about or out of the Building or Premises only at such times and in such manner as Landlord shall direct, at Tenant's sole risk and responsibility. Any entry by Landlord under the provisions of subsections (c)(d) and (f) hereof shall be upon prior oral notice and subject to Tenant's reasonable security requirements, except in emergency situations.

10. ALTERATIONS.

A. **Requirements.** Tenant shall not make any replacement, alteration, improvement or addition to or removal from the Premises (collectively an "**alteration**") without the prior written consent of Landlord, which consent shall not be unreasonably

withheld. In the event Tenant proposes to make any alteration, Tenant shall, prior to commencing such alteration, submit to Landlord for prior written approval: (i) detailed plans and specifications; (ii) the names, addresses and copies of contracts for all contractors; (iii) all necessary permits evidencing compliance with all applicable governmental rules, regulations and requirements; (iv) certificates of insurance in form and amounts required by Landlord, naming Landlord, its managing agent and any other parties designated by Landlord as additional insureds; and (v) all other documents and information as Landlord may reasonably request in connection with such alteration. Tenant agrees to pay Landlord's reasonable charges for review of all such items and supervision of the alteration. Neither approval of the plans and specifications nor supervision of the alteration by Landlord shall constitute a representation or warranty by Landlord as to the accuracy, adequacy, sufficiency or propriety of such plans and specifications or the quality of workmanship or the compliance of such alteration with applicable law. Tenant shall pay the entire cost of the alteration and, if requested by Landlord, shall deposit with Landlord, prior to the commencement of the alteration, security for the payment and completion of the alteration in form and amount required by Landlord. Each alteration shall be performed in a good and workmanlike manner, in accordance with the plans and specifications approved by Landlord, and shall meet or exceed the reasonable standards for construction and quality of materials established by Landlord for the Building. In addition, each alteration shall be performed in compliance with all applicable governmental and insurance company laws, regulations and requirements. Each alteration shall be performed by Landlord or under Landlord's supervision, and in harmony with Landlord's employees, contractors and other tenants. Each alteration, whether temporary or permanent in character, which is in the nature of a leasehold improvement, made by Landlord or Tenant in or upon the Premises (excepting only Tenant's furniture, equipment and trade fixtures which for purposes here shall be deemed to include any generators, supplemental HVAC units and security systems, so long as Tenant repairs all damage caused by the removal of the foregoing item) shall become Landlord's property and shall remain upon the Premises at the expiration or termination of this Lease without compensation to Tenant.

B. **Liens.** Upon completion of any alteration, Tenant shall promptly furnish Landlord with sworn owner's and contractors' statements and full and final waivers of lien covering all labor and materials included in such alteration. Tenant shall not permit any mechanic's lien to be filed against the Building, or any part thereof, arising out of any alteration performed, or alleged to have been performed, by or at the direction of Tenant or its contractors, subcontractors or agents. If any such lien is filed, Tenant shall within ten (10) days thereafter have such lien released of record or deliver to Landlord a bond in form, amount, and issued by a surety satisfactory to Landlord, or such other security as Landlord or its mortgagee may reasonably require, indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and attorneys' fees.

11. **INSURANCE.** In consideration of the leasing of the Premises at the rent stated herein, Landlord and Tenant agree to provide insurance and allocate the risks of loss as follows:

A. **Tenant's Insurance.** Tenant, at its sole cost and expense but for the mutual benefit of Landlord (when used in this Section 11.A. the term "**Landlord**" shall include Landlord's partners, beneficiaries, officers, agents, servants and employees and the term "**Tenant**" shall include Tenant's partners, beneficiaries, officers, agents, servants and employees), agrees to purchase and keep in force and effect during the term hereof, insurance which is available at commercially reasonable rates and otherwise carried by tenants in the area, under policies issued by insurers of recognized responsibility licensed to do business in the State of Ohio with a Best's rating of A-IX or better on all alterations, additions, and improvements owned by Tenant, and on all personal property located in the Premises, protecting Landlord and Tenant from damage or other loss caused by fire or other casualty, including but not limited to vandalism and malicious mischief, perils covered by extended coverage, theft, sprinkler leakage, water damage (however caused), explosion, malfunction or failure of heating and cooling or other apparatus, and other similar risks in amounts not less than the full insurable replacement value of such property. Such property insurance shall contain a replacement cost endorsement. Such insurance shall also contain a clause pursuant to which the insurance carriers waive all rights of subrogation against the Landlord with respect to losses payable under such policies, and shall be written on a "per occurrence" basis, as opposed to "claims made" basis.

Tenant also agrees to maintain commercial general liability insurance covering Tenant as the insured party, and naming Landlord as an additional insured, against claims for bodily injury and death and property damage occurring in or about the Premises, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate.

Tenant shall, prior to commencement of the term, furnish to Landlord certificates evidencing such coverage, which certificates shall state that such insurance coverage may not be reduced or canceled without at least thirty (30) days prior written notice to Landlord and Tenant. In the event Tenant shall fail to procure such insurance, Landlord may at its option after giving Tenant no less than ten (10) days prior written notice of its election to do so procure the same for the account of Tenant and the cost thereof shall be paid to Landlord as Rent upon receipt by Tenant of bills therefor.

B. **Landlord's Insurance.** Landlord agrees to purchase and keep in force and effect commercial general liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) and insurance on the Building improvements with a replacement cost endorsement (not including, however, any tenant improvements, alterations or additions) against fire or other casualty, including but not limited to vandalism and malicious mischief, perils covered by extended coverage, theft, sprinkler leakage, water damage (however caused), explosion, malfunction or failure of heating and cooling or other apparatus, and other similar risks in a commercially reasonable amount. Landlord's property insurance shall contain a replacement cost endorsement.

C. **Risk of Loss.** By this Section 11, Landlord and Tenant intend that the risk of loss or damage as described above be borne by responsible insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and to seek recovery only from, their respective insurance carriers in the event of a loss of a type described above to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible amount shall be treated as though it were recoverable under such policies it being agreed, however, that reasonable deductibles under Landlord's insurance may be included in Expenses. Landlord and Tenant agree that applicable portions of all monies collected from such insurance shall be used toward the full compliance with the obligations of Landlord and Tenant under this Lease in connection with damage resulting from fire or other casualty.

D. All insurance required to be carried by the parties shall be written on a "per occurrence" (as opposed to a "claims made" basis).

12. TENANT'S AND LANDLORD'S RESPONSIBILITIES.

A. **Tenant's Responsibilities.** To the extent permitted by law, Tenant shall assume the risk of responsibility for, have the obligation to insure against, and indemnify Landlord and hold it harmless from, any and all liability for any loss of or damage or injury to any person (including death resulting therefrom) or property occurring in or on the Premises, regardless of cause, except for any loss or damage caused by the gross negligence or willful misconduct of Landlord, and its employees and agents, and Tenant hereby releases Landlord from any and all liability for same. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, incurred in connection therewith.

B. **Landlord's Responsibilities.** To the extent permitted by law, Landlord shall assume the risk of responsibility for, have the obligation to insure against, and indemnify Tenant and hold it harmless from, any and all liability for any loss of or damage or injury to any person (including death resulting therefrom) or property occurring in, on or about the Building excluding the Premises, regardless of cause, except for any loss or damage caused by the gross negligence or willful misconduct of Tenant, and its employees and agents, and Landlord hereby releases Tenant from any and all liability for same. Landlord's obligation to indemnify Tenant hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, incurred in connection therewith.

13. FIRE OR OTHER CASUALTY.

A. **Destruction of the Building.** If the Building should be substantially destroyed or materially damaged (as determined by Landlord or any then current mortgagee of Landlord) by fire or other casualty, Landlord may, at its option, terminate this Lease by giving written notice thereof to Tenant within thirty (30) days of such casualty. In such event, the rent shall be apportioned to and shall cease as of the date of

such casualty. In the event Landlord does not exercise this option, then the Premises shall be reconstructed and restored, at Landlord's expense, to substantially the same condition as they were prior to the casualty.

B. Destruction of the Premises. If the Premises are damaged, in whole or in part, by fire or other casualty, but the Building is not substantially destroyed or materially damaged as provided above, then the parties hereto shall have the following options:

- (i) If, in Landlord's reasonable judgment, the Premises cannot be reconstructed or restored within two hundred seventy (270) days of such casualty to substantially the same condition as they were in prior to such casualty, Landlord may terminate this Lease by written notice given to Tenant within thirty (30) days of the casualty. If, in Landlord's reasonable judgment, the Premises cannot be reconstructed or restored within two hundred seventy (270) days of such casualty to substantially the same condition as they were in prior to such casualty, but nonetheless Landlord does not so elect to terminate this Lease, then Landlord shall notify Tenant, within sixty (60) days of the casualty, of the amount of time necessary, as reasonably estimated by Landlord, to reconstruct or restore the Premises. After receipt of such notice from Landlord, Tenant may elect to terminate this Lease. This election shall be made by Tenant by giving written notice to Landlord within thirty (30) days after the date that Tenant receives Landlord's notice. If neither party terminates this Lease pursuant to the foregoing, Landlord shall proceed to reconstruct and restore the Premises to substantially the same condition as they were in prior to the casualty. In such event this Lease shall continue in full force and effect to the balance of the term, upon the same terms, conditions and covenants as are contained herein; provided, however, that the Rent shall be abated in the proportion which the approximate area of the damaged portion bears to the total area in the Premises, from the date of the casualty until substantial completion of the reconstruction of the Premises.

Notwithstanding the above, if the casualty occurs during the last twelve (12) months of the term of this Lease, either party hereto shall have the right to terminate this Lease as of the date of the casualty, which right shall be exercised by written notice to be given by either party to the other party within thirty (30) days therefrom. If this right is exercised, Rent shall be apportioned to and shall cease as of the date of the casualty. After a casualty occurs during the last twelve (12) months of the term of the Lease, Tenant may not exercise any renewal options without first obtaining Landlord's written consent.

Additionally, notwithstanding anything contained herein to the contrary, Landlord shall have no duty to repair or restore the Premises or Building if the damage is due to an uninsurable casualty, or if insurance proceeds are insufficient to pay for such repair or restoration, or if the holder of any mortgage, deed of trust or similar instrument applies proceeds of insurance to reduce its loan balance and the remaining proceeds, if any, available to Landlord are not sufficient to pay for such repair or restoration.

- (ii) If, in Landlord's reasonable judgment, the Premises are able to be restored within two hundred seventy (270) days of such casualty to substantially the same condition as they were prior to such casualty, Landlord shall so notify Tenant within sixty (60) days of the casualty, and Landlord shall then proceed to reconstruct and restore the damaged portion of the Premises, at Landlord's expense, to substantially the same condition as it was prior to the casualty, Rent shall be abated in the proportion which the approximate area of the damaged portion bears to the total area in the Premises from the date of the casualty until substantial completion of the reconstruction repairs, and this Lease shall continue in full force and effect for the balance of the term, upon the same terms, conditions and covenants as are contained herein.
- (iii) In the event Landlord undertakes reconstruction or restoration of the Premises pursuant to subparagraph (i) or (ii) above, Landlord shall use reasonable diligence in completing such reconstruction repairs, but in the event Landlord fails to Substantially Complete the same within two hundred seventy (270) days from the date of the casualty (except however, if under subparagraph (i) above Landlord notified Tenant that it would take longer than two hundred seventy (270) days to reconstruct or restore the Premises, but Tenant nonetheless elected not to terminate the Lease but require Landlord to reconstruct or restore the Premises, then the foregoing two hundred seventy (270) day period shall be extended to the time period set forth in Landlord's notice plus sixty (60) days), Tenant may, at its option, terminate this Lease upon giving Landlord written notice to that effect, whereupon both parties shall be released from all further obligations and liability hereunder.

14. **CONDEMNATION.** If the Premises or the Building is rendered permanently untenable by reason of a condemnation (or by a deed given in lieu thereof), then either party may terminate this Lease by giving written notice of termination to the other party within thirty (30) days after such condemnation, in which event this Lease shall terminate effective as of the date of such condemnation. If this Lease so terminates, Rent shall be paid through and apportioned as of the date of such condemnation. If such condemnation does not render the Premises or the Building untenable, this Lease shall continue in effect and, subject to the rights of any mortgagee of Landlord, Landlord shall promptly restore the portion not condemned

to the extent reasonably possible to the condition existing prior to the condemnation. In such event, however, Landlord shall not be required to expend an amount in excess of the proceeds received by Landlord from the condemning authority. Landlord reserves all rights to compensation for any condemnation. Tenant hereby assigns to Landlord any right Tenant may have to such compensation, and Tenant shall make no claim against Landlord or the condemning authority for compensation for termination of Tenant's leasehold interest under this Lease or interference with Tenant's business.

15. ASSIGNMENT AND SUBLETTING.

A. **Landlord's Consent.** Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed (subject to Landlord's rights contained in Section 15.C below): (i) assign, sublease, convey, mortgage, pledge or hypothecate or otherwise transfer this Lease or any interest hereunder, or sublease the Premises, or any part thereof, whether voluntarily or by operation of law; or (ii) permit the use of the Premises by any person other than Tenant and its employees. Any such transfer, sublease or use described in the preceding sentence (a "**Transfer**") occurring without the prior written consent of Landlord shall be void and of no effect. Landlord's consent to any Transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future Transfer. Landlord's consent to any Transfer or acceptance of rent from any party other than Tenant shall not release Tenant from any covenant or obligation under this Lease. Landlord may require as a condition to its consent to any assignment of this Lease that the assignee execute an instrument in which such assignee assumes the obligations of Tenant hereunder. For the purposes of this paragraph, the transfer (whether direct or indirect) of all or a majority of the capital stock in a corporate Tenant (other than the shares of the capital stock of a corporate Tenant whose stock is publicly traded), the sale of all or substantially all of the assets of Tenant, or the merger, consolidation or reorganization of such Tenant and the transfer of all or any general partnership interest in any partnership comprising Tenant shall not be considered a Transfer, provided: (i) Tenant is not in default of this lease beyond any applicable cure period; and (ii) Tenant delivers written notice to Landlord of said transfer within thirty (30) days of the effective date thereof, and if applicable, a copy of the transfer document evidencing the assumption by such transferee of Tenant's obligations hereunder.

Notwithstanding anything to the contrary herein contained, Landlord agrees that Tenant may assign this Lease, or sublet the Premises, to any subsidiary or affiliated corporation (or other affiliated entity) of Tenant without obtaining the prior written consent of Landlord (and without permitting Landlord the right to terminate this Lease), provided that the following conditions are met:

- (a) That such assignment or subletting shall in no manner relieve Tenant of any of the obligations undertaken by it under this Lease;
- (b) That such permitted assignee or subtenant of Tenant to which this Lease may be assigned or the Premises sublet agrees by a written instrument reasonably satisfactory to Landlord to be bound by all the conditions, obligations and agreements contained in this Lease including, without limitation, the permitted use;

- (c) That a fully executed copy of such assignment or sublease be delivered to Landlord within thirty (30) days of the effective date of such assignment or sublease; and
- (d) That any assignee or subtenant in possession of the Premises shall during such possession for the term of the Lease or any extension thereof, remain the wholly-owned subsidiary or affiliated corporation of Tenant.

The term affiliate, as used herein, shall mean any corporation (or other affiliated entity) directly or indirectly through one (1) or more intermediaries controlling, controlled by or under common control with Tenant. The term control, as used herein, shall mean the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of the controlled corporation (or other affiliated entity).

B. **Excess Rent.** If Tenant transfers its interest under this Lease, Tenant shall pay to Landlord fifty percent (50%) of all rent and other consideration received by Tenant in excess of the Rent paid by Tenant hereunder for the portion of the Premises so transferred. Such rent shall be paid as and when received by Tenant. In addition, Tenant shall pay to Landlord any reasonable attorneys' or other fees and expenses incurred by Landlord in connection with any proposed Transfer, whether or not Landlord's consent to such Transfer is required hereunder.

16. SURRENDER. Upon termination of the Term or Tenant's right to possession of the Premises, Tenant shall return the Premises to Landlord in good order and condition, ordinary wear and damage by fire or other casualty excepted. If Landlord requires Tenant to remove any alterations pursuant to Section 10, then such removal shall be done in a good and workmanlike manner, and upon such removal Tenant shall restore the Premises to its condition prior to the installation of such alterations. If Tenant does not remove such alterations after request to do so by Landlord, Landlord may remove the same and restore the Premises, and Tenant shall pay the reasonable cost of such removal and restoration to Landlord upon demand. Tenant shall also remove its furniture, equipment, trade fixtures and all other items of personal property from the Premises prior to expiration of the Term or termination of Tenant's right to possession of the Premises. If Tenant does not remove such items, Tenant shall be conclusively presumed to have conveyed the same to Landlord without further payment or credit by Landlord to Tenant, or at Landlord's sole option such items shall be deemed abandoned, in which event Landlord may cause such items to be removed and disposed of at Tenant's expense, which shall be 105% of Landlord's actual cost of removal, without notice to Tenant and without obligation to compensate Tenant.

17. DEFAULTS AND REMEDIES.

A. **Default.** The occurrence of any of the following shall constitute a default (a "**Default**") by Tenant under this Lease: (i) Tenant fails to pay any Rent when due and such failure is not cured within five (5) days after notice from Landlord (which notice

may be in the form of a Landlord statutory five (5) day notice); (ii) Tenant fails to perform any other provision of this Lease and such failure is not cured within thirty (30) days (or immediately if the failure involves a hazardous condition) after notice from Landlord; (iii) the leasehold interest of Tenant is levied upon or attached under process of law; (iv) Tenant abandons the Premises (abandonment, for purposes hereof, shall not be deemed to include a mere vacation of the Premises); or (v) any voluntary or involuntary proceedings are filed by or against Tenant or any guarantor of this Lease under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within thirty (30) days after filing.

B. Right of Re-Entry. Upon the occurrence of a Default, Landlord may elect to terminate this Lease or, without terminating this Lease, terminate Tenant's right to possession of the Premises. Upon any such termination, Tenant shall immediately surrender and vacate the Premises and deliver possession thereof to Landlord.

C. Termination of Right to Possession. Upon terminating Tenant's right to possession of the Premises without terminating this Lease, Landlord may relet the Premises or any part thereof. In such case, Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord shall reasonably deem appropriate; provided, however, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. Tenant shall reimburse Landlord for the costs and expenses of reletting the Premises including, but not limited to, all brokerage, advertising, legal, alteration, redecorating, repairs and other expenses incurred to secure a new tenant for the Premises. In addition, if the consideration collected by Landlord upon any such reletting, after payment of the expenses of reletting the Premises which have not been reimbursed by Tenant, is insufficient to pay monthly the full amount of the Rent, Tenant shall pay to Landlord the amount of each monthly deficiency as it becomes due. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant.

D. Termination of Lease. Upon terminating this Lease, Landlord may recover from Tenant and Tenant shall pay to Landlord, on demand, as and for liquidated and final damages, an accelerated lump sum amount equal to the amount by which the Rent owing from the date of such termination through the Expiration Date plus Landlord's aggregate expenses of reletting the Premises, exceeds the fair rental value of the Premises for the same period (after deducting from such fair rental value the time needed to relet the Premises and the amount of concessions given to a new tenant) both discounted to present value at the rate of five percent (5%) per annum.

E. Other Remedies. Landlord may, but shall not be obligated to, perform any obligation of Tenant under this Lease, and, if Landlord so elects, all costs and expenses paid by Landlord in performing such obligation, together with interest at the Default Rate, shall be reimbursed by Tenant to Landlord on demand. Any and all remedies set forth in this Lease: (i) shall be in addition to any and all other remedies Landlord may have at law or in equity; (ii) shall be cumulative; and (iii) may be pursued

successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future.

F. **Bankruptcy.** If Tenant becomes bankrupt, the bankruptcy trustee shall not have the right to assume or assign this Lease unless the trustee complies with all requirements of the United States Bankruptcy Code, and Landlord expressly reserves all of its rights, claims and remedies thereunder.

G. **Waiver of Trial by Jury.** Landlord and Tenant waive trial by jury in the event of any action, proceeding or counterclaim brought by either Landlord or Tenant against the other in connection with this Lease.

H. **Venue.** If either Landlord or Tenant desires to bring an action against the other in connection with this Lease, such action shall be brought in the federal courts located in Cincinnati, Ohio, or state courts located in Clermont County, Ohio. Landlord and Tenant consent to the jurisdiction of such courts and waive any right to have such action transferred from such courts on the grounds of improper venue or inconvenient forum.

18. **HOLDING OVER.** If Tenant retains possession of the Premises after the expiration or termination of the Term or Tenant's right to possession of the Premises, Tenant shall pay Rent during such holding over at 150% the rate in effect immediately preceding such holding over computed on a monthly basis for each month or partial month that Tenant remains in possession. Tenant shall also pay, indemnify and defend Landlord from and against all claims and damages, consequential as well as direct, sustained by reason of Tenant's holding over. In addition, at any time while Tenant remains in possession, Landlord may elect instead, by express written notice to Tenant and not otherwise, to have such retention of possession constitute a renewal of this Lease for one (1) year for the fair market rental value of the Premises as reasonably determined by Landlord but in no event less than the Rent payable immediately prior to such holding over. The provisions of this Section do not waive Landlord's right of re-entry or right to regain possession by actions at law or in equity or any other rights hereunder, and any receipt of payment by Landlord shall not be deemed a consent by Landlord to Tenant's remaining in possession or be construed as creating or renewing any lease or right of tenancy between Landlord and Tenant.

19. **SECURITY DEPOSIT.** Intentionally omitted.

20. **SUBSTITUTION OF OTHER PREMISES.** Landlord shall have the right, upon one hundred eighty (180) days prior notice (which notice shall not be delivered prior to the Commencement Date), to relocate the Tenant into alternate build to suit premises (with the same amenities within the Premises as are shown on Exhibit A) to be constructed and located within the Ridgewood Corporate Center site ("New Premises"), provided that the New Premises shall be reasonably usable for Tenant's business hereunder, and, if Tenant is already in occupancy of the Premises, then in addition Landlord shall pay all reasonable expenses incurred by Tenant in connection with such relocation, including but not limited to costs of moving, door lettering, telephone relocation, reasonable quantities of new stationery and for improving the New

Premises so that they are substantially similar to the Premises. Landlord and Tenant shall execute an amendment to this Lease confirming the change within thirty (30) days after either party shall request same.

21. **ESTOPPEL CERTIFICATE.** Tenant agrees that, from time to time upon not less than twenty (20) days' prior written request by Landlord, Tenant shall execute and deliver to Landlord a written certificate certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in possession of the Premises, if that is the case; (iv) that Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in detail; (v) that Tenant has no off-sets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any off-sets or defenses, a full and complete explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof or the Workletter, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto or, if Tenant believes Tenant has claims, the nature thereof in detail; and (vii) such reasonable additional matters as may be requested by Landlord, it being agreed that such certificate may be relied upon by any prospective purchaser, mortgagee, or other person having or acquiring an interest in the Building. If Tenant fails to execute and deliver any such certificate within ten days after request, Tenant shall be deemed to have irrevocably appointed Landlord and Landlord's beneficiaries as Tenant's attorneys-in-fact to execute and deliver such certificate in Tenant's name.

22. **SUBORDINATION.** This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Building, now or hereafter existing, and all amendments, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Building and/or the leasehold estate under any such lease, unless such ground lease or ground lessor, or mortgage or mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage. If any such mortgage or trust deed is foreclosed, or if any such lease is terminated, upon request of the mortgagee, holder or lessor, as the case may be, Tenant will attorn to the purchaser at the foreclosure sale or to the lessor under such lease, as the case may be. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that Tenant agrees upon request by any such mortgagee, holder, lessor or purchaser at foreclosure, to execute and deliver such subordination and/or attornment instruments as may be required by such person to confirm such subordination and/or attornment, or any other documents required to evidence superiority of the ground lease or mortgage, should ground lessor or mortgage elect such superiority, so long as such documents are upon terms and conditions customarily required by institutional first mortgagees. If Tenant fails to execute and deliver any such instrument or document within twenty (20) days after request, Tenant shall be deemed to be in default of this Lease. Landlord agrees to use reasonable efforts to obtain a subordination, nondisturbance and attornment agreement from the existing mortgagee of the Building, and any future mortgagees of the Building.

23. **QUIET ENJOYMENT.** As long as no Default exists, Tenant shall peacefully and quietly have and enjoy the Premises for the Term, free from interference by Landlord, subject, however, to the provisions of this Lease. The loss or reduction of Tenant's light, air or view will not be deemed a disturbance of Tenant's occupancy of the Premises nor will it affect Tenant's obligations under this Lease or create any liability of Landlord to Tenant.

24. **BROKER.** Tenant represents to Landlord that Tenant has dealt only with the broker(s) set forth in Item 11 of the Schedule (collectively, the "**Broker**") in connection with this Lease and that, insofar as Tenant knows, no other broker negotiated this Lease or is entitled to any commission in connection herewith. Tenant agrees to indemnify, defend and hold Landlord and Landlord's beneficiaries and agents harmless from and against any claims for a fee or commission made by any broker, other than the Broker, claiming to have acted by or on behalf of Tenant in connection with this Lease. Landlord agrees to pay the Broker a commission in accordance with a separate agreement between Landlord and the Broker.

25. **NOTICES.** All notices and demands to be given by one party to the other party under this Lease shall be given in writing, mailed or delivered to Landlord or Tenant, as the case may be, at the following address:

If to Landlord: Milford Partners, LLC
 c/o Griffin Capital
 2321 Rosecrans Avenue, Suite 3290
 El Segundo, CA 90245

With a copy to: Wildman, Harrold, Allen & Dixon
 225 West Wacker Drive
 Chicago, Illinois 60606-1229
 Attn: Mary Higgins

If to Tenant: ADS Alliance Data Systems, Inc.
 Lease Department
 17655 Waterview Parkway
 Dallas, Texas 75252

With a copy to: Vice President — Facilities
 17655 Waterview Parkway
 Dallas, Texas 75252

or at such other address as either party may hereafter designate. Notices shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service. Notices shall be considered to have been given upon actual receipt (it being agreed that attempted delivery to the last known Notice address of any party shall constitute receipt if any party has failed to furnish proper forwarding addresses to the other).

26. MISCELLANEOUS.

A. **Successors and Assigns.** Subject to Section 15 of this Lease, each provision of this Lease shall extend to, bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns, and all references herein to Landlord and Tenant shall be deemed to include all such parties.

B. **Entire Agreement.** This Lease, and the riders and exhibits, if any, attached hereto which are hereby made a part of this Lease, represent the complete agreement between Landlord and Tenant, and Landlord has made no representations or warranties except as expressly set forth in this Lease. No modification or amendment of or waiver under this Lease shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

C. **Time of Essence.** Time is of the essence of this Lease and each and all of its provisions.

D. **Execution and Delivery.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of space or an option for lease, and it is not effective until execution and delivery by both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord shall constitute an irrevocable offer by Tenant to lease the Premises on the terms and conditions set forth herein, which offer may not be revoked for fifteen (15) days after such delivery.

E. **Severability.** The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provisions.

F. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Ohio.

G. **Attorneys' Fees.** If suits shall be brought for recovery of possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of either party to be kept or performed, and a breach shall be established, the losing party shall pay to the prevailing party all expenses incurred therefor, including reasonable attorneys' fees.

H. **Delay in Possession.** In no event shall Landlord be liable to Tenant if Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date for causes outside Landlord's reasonable control. If Landlord is unable to deliver possession of the Premises to Tenant by the Commencement Date, the Commencement Date shall be deferred until Landlord can deliver possession to Tenant. The parties acknowledge that Tenant's operations will require that the fiber optic line described in Exhibit B be installed not later than the Commencement Date. Landlord agrees to request the installation of such service promptly after the date of mutual execution and delivery of this Lease. If the fiber optic line has not been installed at the Building on or before the Commencement Date, Tenant shall not be obligated to accept possession of the Premises, and in such event, the Commencement Date and Expiration

Date shall be proportionately extended for the period of delay in bringing the fiber optic service to the Building. No Base Rent or Rent shall be payable during the period equal to such delay so long as Tenant does not take possession of the Premises. In addition, if installation of the fiber optic line to the Building is delayed beyond April 1, 2005, then Tenant may terminate this Lease. Such right to terminate shall be exercised, if at all, by Tenant's delivery of written notice specifying such election on or before April 15, 2005 and shall be effective upon Landlord's receipt of such notice. Tenant's failure to timely exercise such right shall be deemed an automatic waiver of this right to terminate, time being of the essence with respect to the same.

I. **Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease.

J. **Force Majeure.** Neither party shall be in default hereunder if such party is prevented from performing any of its obligations hereunder due to any accident, breakage, strike, shortage of materials, acts of God or other causes beyond the non-performing party's reasonable control, provided, however, that in no event shall the foregoing apply to the payment of Base Rent, Expenses or Taxes, or any other monetary payment due from the party to the other hereunder.

K. **Captions.** The headings and titles in this Lease are for convenience only and shall have no effect upon the construction or interpretation of this Lease.

L. **No Waiver.** No receipt of money by Landlord from Tenant after termination of this Lease or after the service of any notice or after the commencing of any suit or after final judgment for possession of the Premises shall renew, reinstate, continue or extend the Term or affect any such notice or suit. No waiver of any default of Tenant shall be implied from any omission by Landlord to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.

M. **Limitation of Liability.** Any liability of Landlord under this Lease shall be limited solely to its interest in the Building, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

N. **Parking.** Landlord represents that a parking ratio of 5 spaces for each 1,000 square foot of gross leaseable office area of the Building currently exists at the Property and that such ratio shall be maintained throughout the Term of this Lease.

O. **Storage Space.** Landlord, at no additional cost to Tenant other than as expressly set forth herein, shall provide to Tenant a fenced storage area of seven hundred fifty (750) square feet for Tenant's use in the warehouse portion of the Building, within a reasonably accessible distance from the Premises. Landlord shall not charge Tenant rent for the storage area, but the storage area shall be considered part of the Premises for all other purposes of this Lease.

P. Signage.

(1) Subject to Landlord's approval as to the size, design, method of installation and location of the same, Tenant shall be entitled to install the following signage at Tenant's sole cost and expense: (i) Tenant may install a panel on the multiple tenant monument identification signage located at the entrance on Summit Drive (consistent with the size allowed by Landlord for similarly sized tenants) provided that with respect to such multiple tenant sign, Tenant shall be solely responsible for the cost of installation and maintenance of such panel together with a prorata share of any operating expenses for such sign; and (ii) Tenant may install a sign at the entry door to the Premises.

(2) Landlord shall provide the following signage to Tenant at Landlord's sole cost and expense; (i) building standard signage on the wall next to the glass of the front entrance to the Premises; and (ii) a sign on any central building directory of tenants of the Building.

Q. Miami Hall Access. Landlord agrees that if the theatre room at the Building known as Miami Hall is no longer leased to EDS, the same shall become part of the common areas of the Building, Tenant shall have the right to use the same in common with other tenants and upon the same terms and conditions offered to other tenants of the Building, so long as Tenant reserves the same upon not less than seven (7) days prior notice. The foregoing rights are subject to the rights of American Nursing Center, its successors and assigns ("ANC"). Tenant acknowledges that ANC has the right to the exclusive use of Miami Hall for two (2) days per calendar quarter.

R. Existing EDS Space. Landlord acknowledges that Tenant is currently interested in leasing or subleasing those portions of the Building commonly known as space 8 on the second (2nd) floor of the Building, consisting of approximately 12,890 rentable square feet and space 14(a), consisting of approximately 4,096 rentable square feet, said areas being currently leased by the tenant known as EDS located within the Building, hereinafter referred to as the "Proposed ADS Expansion Space" as identified in Exhibit F attached hereto. Landlord agrees to use commercially reasonable efforts, if it receives a notice from EDS of an intent to sublet all or any portion of Proposed ADS Expansion Space to advise Tenant of the terms and conditions of the proposed subletting and to request that EDS lease any portion of the Proposed ADS Expansion Space involved in such subletting to Tenant in lieu of the subletting proposed by EDS. Tenant acknowledges that Landlord does not have the right to terminate all or any part of the lease for the EDS premises in connection with a requested or subletting, and that its sole right in connection with a proposed EDS sublease is to withhold consent, in its sole and absolute discretion, to such subletting. Landlord shall not be required to withhold such consent or approval, if, in the reasonable judgment of Landlord's counsel, such withholding could result in legal liability to Landlord. Tenant further acknowledges that certain assignment/subletting rights under the EDS lease do not require Landlord's

consent and in the event of an exercise of such rights by EDS, the provisions of this Section R shall not apply.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease in manner sufficient to bind them as of the day and year first above written.

LANDLORD

MILFORD PARTNERS, LLC

By: MILFORD ACQUISITIONS, LLC

By: [ILLEGIBLE]

Name: [ILLEGIBLE]

Its: [ILLEGIBLE]

TENANT

ADS ALLIANCE DATA SYSTEMS, INC.

By: /s/ Alan M. Utay

Name: Alan M. Utay

Its: Executive Vice President

General Counsel and

Chief Administrative Officer

LEASE AGREEMENT BETWEEN

2855 E. COTTONWOOD PARKWAY, L.C., as

Landlord

and

ADS ALLIANCE DATA SYSTEMS, INC., as

Tenant

DATED _____

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EXHIBITS

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Exhibit H:	Estoppel Certificate, Subordination, Non-Disturbance and Attornment Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into as of the ___ day of ___, 2002, between 2855 E. COTTONWOOD PARKWAY, L.C. as Landlord, and ADS ALLIANCE DATA SYSTEMS, INC., as Tenant.

PART I
SUMMARY OF BASIC LEASE INFORMATION

Each reference in this Summary of Basic Lease Information to the Lease Provisions contained in PART II shall be construed to incorporate all the terms provided in said Lease Provisions, and reference in the Lease Provisions to the Summary contained in this PART I shall be construed to incorporate the provisions of this Summary. In the event of any conflict between the provisions of this Summary and the provisions in the balance of the Lease, the latter shall control. The basic terms of this Lease are as follows:

A. PREMISES (Lease Provisions, Paragraph 2):

1. Premises Location: Suite 100, consisting of approximately 3,445 square feet of Rentable Area (2,995 usable square feet), located on the 1st floor of the Building (as outlined on the floor plan attached to this Lease as Exhibit B), the street address of which is 2855 E. Cottonwood Parkway, as constructed on the Land which is further described on Exhibit E hereto.

2. Number of Approximate Square Feet of Rentable Area in the Building measured consistently throughout the Building: Approximately One Hundred Four Thousand Nine Hundred Seventy-Four (104,974) square feet.

A. LEASE TERM (Lease Provisions, Paragraph 3):

1. Duration: Seven (7) years.

2. Lease Commencement Date (Lease Provisions, Paragraph 6.3): The earliest to occur of the following events: (a) the date of Substantial Completion (as defined in the Work Letter Agreement) of the Tenant Improvements, or (b) the date on which Landlord would have substantially completed the Tenant Improvements and tendered possession of the Premises to Tenant but for certain delays attributable to Tenant as provided in Paragraph 6.3, or (c) the date on which Tenant takes possession of the Premises. The Lease Commencement Date is scheduled to be September 15, 2002.

3. Lease Expiration Date (Lease Provisions, Paragraph 3): The last day of the calendar month, which includes the day immediately prior to the fifth (5th) anniversary of the Lease Commencement Date, unless further extended or earlier terminated as provided in this Lease.

A. BASE RENT (Lease Provisions, Paragraph 5):

<u>Lease Year</u>	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>
Year 1 9/15/02 — 1/15/03	\$0.00	\$0.00
Year 1 1/16/03 — 9/30/03	\$5,454.58	\$65,455.00
Year 2 10/1/03 — 9/30/04	\$5,598.13	\$67,177.50

Lease Year	Monthly Base Rent	Annual Base Rent
Year 3 10/1/04 — 9/30/05	\$5,741.67	\$68,900.00
Year 4 10/1/05 — 9/30/06	\$5,885.21	\$70,622.50
Year 5 10/1/06 — 9/30/07	\$6,028.75	\$72,345.00
Year 6 10/1/07 — 9/30/08	\$6,172.29	\$74,067.50
Year 7 10/1/08 — 9/30/09	\$6,315.83	\$75,790.00

A. **ADDITIONAL RENT (Lease Provisions, Paragraph 5.3):**

1. Base Year (Lease Provisions, Paragraph 5.3.1): The Fiscal Year commencing January 1 through December 31, 2002.
2. Tenant's Share (Lease Provisions, Paragraph 5.3.1): Tenant's Share for Tenant's payment of Operating Expenses means Three and 28/100 percent (3.28%).

A. **SECURITY DEPOSIT (Glossary of Defined Terms):**

Means FIVE THOUSAND FOUR HUNDRED FIFTY-FOUR AND 58/100 Dollars (\$5,454.58).

A. **PARKING CHARGE (Lease Provisions, Paragraph 5.5):**

Tenant shall throughout the Term, lease from Landlord up to a total of twelve (12) automobile parking spaces, of which total Tenant may elect to lease up to three (3) assigned and covered automobile parking spaces at an initial cost of Thirty-five and 00/100 Dollars (\$35.00) per month per space. The remainder of the automobile parking spaces leased by Tenant which Tenant does not elect to have assigned and covered shall be unassigned parking spaces at a cost of Zero Dollars (\$0.00) per month per space for the initial Term of the Lease.

A. **ADDRESSES FOR NOTICES (Lease Provisions, Paragraph 27.7):**

1. Tenant's Address:
 - (a) Before Lease Commencement Date:

ADS Alliance Data Systems, Inc.
17655 Waterview Parkway
Dallas, TX 75252
Attention: John Clyne
 - (b) After Lease Commencement Date:

ADS Alliance Data Systems, Inc.
2855 E. Cottonwood Parkway, Suite 100
Salt Lake City, Utah 84121

2. Landlord's Address:

2855 E. Cottonwood Parkway, L.C.
c/o John L. West
2855 E. Cottonwood Parkway, Suite 560
Salt Lake City, Utah 84121

3. Address of Landlord's Lender or Mortgagee:

Teachers Insurance and Annuity
Association of America
730 Third Avenue
New York, NY 10017

A. **TENANT IMPROVEMENTS AND SPACE PLAN (Work Letter Agreement):**

Landlord shall construct and install the Tenant Improvements, as shown on the approved Space Plan attached as Exhibit "B", at Landlord's cost for Tenant's occupancy on a turn-key basis in accordance with the Lease and the Work Letter Agreement.

PART II
LEASE PROVISIONS

1. **DEFINITIONS.** The definitions of certain of the capitalized terms used in this Lease are set forth in the Glossary of Defined Terms attached as Exhibit A.

2. **PREMISES.** Subject to the provisions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises described in the Summary of Basic Lease Information, Section "A", as outlined on the approved Space Plan attached hereto as Exhibit B (the "**Premises**"). In connection with such demise and subject to paragraph 21 herein, Landlord hereby grants to Tenant the nonexclusive right to use during the Term, all Common Areas designed for the use of all tenants in the Building, in common with all tenants in the Building and their invitees, for the purposes for which the Common Areas are designed and in accordance with all Legal Requirements. Landlord, however, has the sole discretion to determine the manner in which the Common Areas are maintained and operated, and the use of the Common Areas shall be subject to the Building Rules and Regulations. Tenant acknowledges that Landlord has made no representation or warranty regarding the Building or Premises except as specifically stated in this Lease. By occupying the Premises, Tenant accepts the Premises as being suitable for Tenant's intended use of the Premises. Landlord represents that, to the best of its knowledge, upon occupancy, the Building will be in compliance with the Americans with Disabilities Act of 1990. Landlord further represents that, to the best of its knowledge, the Building is in compliance with all Legal Requirements.

3. **TERM.** The provisions of this Lease shall be effective only as of the date this Lease is executed by both Landlord and Tenant. The duration of the term of this Lease shall be for the period stated in the Summary of Basic Lease Information, Section "B," commencing on the Commencement Date set forth in paragraph 6.3 below, and expiring at 5:00 p.m. on the day stated in Section "B" of the Summary of Basic Lease Information, unless earlier terminated as provided herein (the "**Term**").

3.1 **Tenant's Right to Terminate Lease.** Tenant shall have the right to terminate this Lease as of the end of the sixtieth (60th) calendar month after the Lease Commencement Date (the "Early Termination Date") in the manner provided in this paragraph 3.1 below if, and only if, Tenant fulfills all of the following conditions:

(a) Tenant sends or delivers to Landlord a written notice signed by Tenant exercising this right to terminate as of the Early Termination Date, and Landlord receives the notice, no earlier than forty-eight (48) months after the Lease Commencement Date and no later than fifty-two (52) months after the Lease Commencement Date.

(b) No later than fifty-two (52) months after the Lease Commencement Date, and in addition to all Rent and Additional Rent payable hereunder, Tenant pays to Landlord, and Landlord receives from Tenant, the additional sum of \$37,033.74, in the form of a cashier's check.

(c) Tenant vacates the entire Premises no earlier than fifty-four (54) months after the Lease Commencement Date and no later than sixty (60) months after the Lease Commencement Date.

(d) Regardless of the date Tenant vacates the Premises, Tenant is not in default of any provision of this Lease including, without limitation, the payment of all Rent and Additional Rent, when Tenant vacates the Premises and through and including the Early Termination Date.

Upon the occurrence of the Commencement Date, the parties will execute and deliver a certificate in the form of Exhibit G attached hereto acknowledging the rights of Tenant described in this Section 3.1 above. Time is of the essence in the fulfillment of the foregoing conditions. If Tenant fails to fulfill any of the foregoing conditions, Tenant's right to terminate shall automatically and irrevocably cease. Except as set forth in this Section or as otherwise expressly provided in this Lease, Tenant shall have no right to terminate the Lease before the Lease Expiration Date.

4. **USE.** Tenant shall occupy and use the Premises solely for lawful, general business office purposes in compliance with the Building Rules and Regulations from time to time in effect. Tenant shall, and Tenant agrees to use commercially reasonable efforts to cause its agents, servants, employees, invitees and licensees to observe and comply fully and faithfully with the Building Rules and Regulations attached hereto as Exhibit C, and incorporated herein by this reference, or such reasonable modifications, rules and regulations which may be hereafter adopted by Landlord for the care, protection, cleanliness and operation of the Premises and Complex. Tenant shall also comply with all Legal Requirements and other restrictions on use of the Premises as provided in this Lease, including, without limitation, paragraph 12 hereof. The Landlord represents that the Premises are properly zoned for the permitted uses set forth herein.

5. **RENT.**

5.1 **Base Rent.** In consideration of Landlord's leasing the Premises to Tenant, Tenant shall pay to Landlord the base rent ("Base Rent") at the time(s) and in the manner stated in paragraph 5.6 below, as stated in Section "C" of the Summary of Basic Lease Information.

5.2 **No Other Adjustment of Base Rent.** The Rentable Area of the Premises is subject to a joint verification, at the election of either party, by Tenant and Landlord's property manager within fifteen (15) calendar days of the date of approval by both Tenant and Landlord of the Space Plan. In the event it is determined at the time of such verification that the Rentable Area of the Premises is different from that stated in the Summary of Basic Lease Information, Section "A", all Rent that is based on that incorrect amount shall be modified in accordance with that determination. If that determination is made, it shall be confirmed in writing by Landlord to Tenant and shall be conclusive and binding upon the parties. If neither party elects to have the joint verification within the specified time, the stipulation of Rentable Area set forth in paragraph 2 above and in the Summary of Basic Lease Information, shall be conclusive and binding on the parties. Notwithstanding the foregoing,

the Base Rent set forth in paragraph 5.1 above and in the Summary of Basic Lease Information is a negotiated amount and there shall be no adjustment to the Base Rent or Additional Rent without the prior written consent of Landlord. Tenant shall have no right to withhold, deduct or offset any amount of the monthly Base Rent, Additional Rent or any other sum due hereunder even if the actual rentable square footage or Rentable Area of the Premises is less than set forth in paragraph 2 hereof.

5.3 **Additional Rent.** In addition to paying the Base Rent specified in paragraph 5.1 above, Tenant shall pay as additional rent the Tenant's Share (as defined in subparagraph 5.3.1(b) below) of the Operating Expenses (as defined in subparagraph 5.4 below) for each Fiscal Year, or portion thereof, that are in excess of the amount of Operating Expenses applicable to the Base Year (as defined in subparagraph 5.3.1(a) below). Said additional rent, together with other amounts of any kind (other than Base Rent) payable by Tenant to Landlord under the terms of this Lease, shall be collectively referred to in this Lease as "Additional Rent." Operating Expenses which are normally and reasonably allocable to more than one Fiscal Year shall be prorated and allocated over such period(s). All amounts due under this paragraph 5.3 as Additional Rent are payable for the same periods and in the same manner, time and place as the Base Rent as provided in paragraph 5.6 below. Without limitation on any other obligation of Tenant that may survive the expiration of the Lease Term, Tenant's obligations to pay the Additional Rent provided for in this paragraph 5.3 shall survive the expiration of the Term.

5.3.1 **Additional Rent Definitions.** The following definitions apply to this paragraph 5.4:

(a) **Base Year.** "Base Year" means the Fiscal Year commencing January 1 through December 31 of the year stated in Section "D" of the Summary of Basic Lease Information.

(b) **Tenant's Share.** "Tenant's Share" for Tenant's payment of Operating Expenses means the percentage stated in Section "D" of the Summary of Basic Lease Information. If the Premises or the Building is expanded or reduced with the written consent of Landlord, the Tenant's Share shall be adjusted by written notice from Landlord to Tenant.

5.3.2 **Calculation and Payment of Additional Rent.** Tenant's Share of Operating Expenses for any Fiscal Year, or portion thereof, shall be calculated and paid as follows:

(a) **Calculation of Excess.** If Tenant's Share of Operating Expenses for any Fiscal Year, commencing with the Fiscal Year immediately following the Base Year, exceeds Tenant's Share of the amount of Operating Expenses applicable to the Base Year, Tenant shall pay as Additional Rent to Landlord an amount equal to that excess (the "Excess") in the manner stated in subparagraphs 5.3.2(b) and (c) below.

(b) **Statement of Estimated Operating Expenses and Payment by Tenant.** On or before the last day of the Fiscal Year in

which the Lease Commencement Date occurs and for each Fiscal Year thereafter, Landlord shall endeavor to deliver to Tenant an estimate statement (the "Estimate Statement") of Additional Rent to be due by Tenant for the forthcoming Fiscal Year. The Estimate Statement will be based on good faith estimates, reasonably determined, and will set forth in reasonable detail the calculation of estimated expenses and Additional Rent. Thereafter, unless Landlord delivers to Tenant a revision of the Estimate Statement, Tenant shall pay to Landlord monthly, coincident with Tenant's payment of Base Rent, an amount equal to the estimated Additional Rent set forth on the Estimate Statement for such Fiscal Year divided by twelve (12) months. On no more than two occasions during any Fiscal Year, Landlord may estimate and re-estimate the Additional Rent to be due by Tenant for that Fiscal Year and deliver a copy of the revised Estimate Statement to Tenant. The revised Estimate Statement will be based on good faith estimates, reasonably determined, and will set forth in reasonable detail the calculation of estimated expenses and Additional Rent. Thereafter, the monthly installments of Additional Rent payable by Tenant shall be appropriately adjusted in accordance with the revised Estimate Statement so that, by the end of any Fiscal Year, Tenant shall have paid all of the Additional Rent as estimated by Landlord on the revised Estimate Statement. Landlord's failure to furnish the Estimate Statement for any Fiscal Year in a timely manner shall not preclude Landlord from enforcing its rights to collect any Additional Rent.

(c) Statement of Actual Operating Expenses and Payment by Tenant. Landlord shall endeavor to give to Tenant as soon as available following the end of each Fiscal Year, but in no event later than November 1, a statement (the "Statement of Actual Operating Expenses") stating the Operating Expenses incurred or accrued for that preceding Fiscal Year and indicating the amount, if any, of any Excess due to Landlord or overpayment by Tenant. Landlord's Statement of Actual Operating Expenses will show in reasonable detail the amount and computation of Operating Expenses for the applicable Fiscal Year, a statement as to any Operating Expense which is not final and the amount of Tenant's obligations hereunder and application of Tenant's estimated payments. Except for Operating Expense items identified by Landlord as not being final or adjustments to Operating Expense items not reasonably foreseeable by Landlord, no adjustment will be made by Landlord to the Statement of Actual Operating Expenses for any Fiscal Year subsequent to November 1 following the end of the Fiscal Year to which the Statement of Actual Operating Expenses relates. On receipt of the Statement of Actual Operating Expenses for each Fiscal Year for which an Excess exists, Tenant shall pay, with its next installment of Base Rent due, the full amount of the Excess, less the estimated amounts (if any) paid during the Fiscal Year pursuant to an Estimate Statement (as defined in subparagraph 5.3.2(b) above). In the event there is an overpayment of Additional Rent set forth on a Statement of Actual Operating Expenses for any Fiscal Year, the amount of overpayment shall be credited against payments of Additional Rent as they become due. If it is determined that there is an overpayment of Additional Rent by Tenant for any fiscal year after the expiration of the term of this

Lease, such overpayment shall be promptly refunded to Tenant. Landlord's failure to furnish the Statement of Actual Operating Expenses for any Fiscal Year in a timely manner shall not prejudice Landlord from enforcing its rights hereunder. Even if the Term is expired and Tenant has vacated the Premises, if an Excess exists when final determination is made of Tenant's Share of the Operating Expenses for the Fiscal Year in which the Lease terminates, Tenant shall promptly pay to Landlord the amount calculated under this subparagraph (c). Provisions of this subparagraph (c) shall survive the expiration or earlier termination of the Term.

5.4 **Operating Expenses**. shall mean all costs and expenses which Landlord pays or accrues by virtue of the ownership, use, management, leasing, maintenance, service, operation, insurance or condition of the Land and all improvements thereon, including, without limitation, the Building and Parking Facility, during a particular Fiscal Year or portion thereof as determined by Landlord or its accountant in accordance with generally accepted accounting principles which shall be consistently applied, subject to the exclusions contained in Section 5.4.2(a) below.

5.4.1 **Examples**. "Operating Expenses" shall include, but shall not be limited to, the following to the extent they relate to the Complex or are chargeable to the Complex in connection with the operation and maintenance of the Cottonwood Corporate Center generally:

(a) all Impositions and other governmental charges;

(b) all insurance premiums charged for policies obtained by Landlord for the Land, Building and Parking Facility, which may include without limitation, at Landlord's election, (i) fire and extended coverage insurance, including earthquake, windstorm, hail, explosion, riot, strike, civil commotion, aircraft, vehicle and smoke insurance, (ii) public liability and property damage insurance, (iii) elevator insurance, (iv) workers' compensation insurance for the employees covered by clause (h), (v) boiler, machinery, sprinkler, water damage, and legal liability insurance, (vi) rental loss insurance, and (vii) such other insurance as Landlord considers reasonably necessary in the operation of the Complex;

(c) all deductible amounts incurred in any Fiscal Year relating to an insurable loss;

(d) all maintenance, repair, replacement, restoration and painting costs, including, without limitation, the cost of operating, managing, maintaining and repairing the following systems: utility, mechanical, sanitary, drainage, escalator and elevator;

(e) all janitorial, snow removal, custodial, cleaning, washing, landscaping, landscape maintenance, access systems, trash removal and pest control costs;

(f) all security costs;

- (g) all electrical, energy monitoring, water, water treatment, gas, sewer, telephone and other utility and utility-related charges;
- (h) all wages, salaries, salary burdens, employee benefits, payroll taxes, Social Security and insurance for all persons engaged by Landlord or an Affiliate of Landlord in connection with the Complex;
- (i) all costs of leasing or purchasing supplies, tools, equipment and materials;
- (j) all fees and assessments of the Cottonwood Corporate Center park applicable to the Complex;
- (k) the cost of licenses, certificates, permits and inspections;
- (l) the cost of contesting the validity or applicability of any governmental enactments that may affect the Operating Expenses;
- (m) the cost of Parking Facility maintenance, repair and restoration, including, without limitation, resurfacing, repainting, restriping and cleaning;
- (n) all fees and other charges paid under all maintenance and service agreements, including but not limited to window cleaning, elevator and HVAC maintenance;
- (o) All reasonable and customary fees, charges, management fees (or amounts in lieu of such fees), consulting fees, legal fees and accounting fees of all persons engaged by Landlord (exclusive of legal fees with respect to disputes with individual tenants, negotiations of tenant leases, or with respect to ownership rather than operation of the Complex), together with all other associated costs or other charges reasonably incurred by Landlord in connection with the management office and the operation, management, maintenance and repair of the Complex;
- (p) all costs of monitoring services, including, without limitation, any monitoring or control devices used by Landlord in regulating the Parking Facility;
- (q) amortization of the cost of acquiring, financing and installing capital items which are intended to reduce (or avoid increases in) operating expenses or which are required by a governmental authority subsequent to the Commencement Date of this Lease. Such costs shall be amortized over the reasonable life of the items in accordance with generally accepted accounting principles and consistently applied, but not beyond the reasonable life of the Building; and
- (r) any other costs or expenses reasonably incurred by Landlord under this Lease which are not otherwise reimbursed directly by Tenants.

5.4.2 Adjustments. Operating Expenses shall be adjusted as follows:

(a) Exclusions. "Operating Expenses" shall not include (i) expenditures classified as capital expenditures for federal income tax purposes except as set forth in clause 5.4.1(r), (ii) costs for which Landlord is entitled to specific reimbursement by Tenant, by any other tenant of the Building or by any other third party, (iii) allowances or other amounts specified in the Work Letter for expenses incurred by Landlord for improvements to the Premises, (iv) leasing commissions, and all noncash expenses (including depreciation), except for the amortized costs specified in clause 5.4.1(r), (v) land or ground rent, if applicable, and (vi) debt service on any indebtedness secured by the Complex (except debt service on indebtedness to purchase or pay for items specified as permissible "Operating Expenses"), (vii) the excess cost of any work or service performed for or facilities furnished to any tenant of the Building to a substantially greater extent or in a manner materially more favorable to such tenant than that performed for or furnished to Tenant hereunder; (viii) sums which constitute insured repairs or other work necessitated by fire or other casualty; (ix) sums incurred for the alteration or renovation of vacant or vacated space in the Building; (x) expenditures paid to a related corporation, entity or persons which are in excess of the amount which would be paid in the absence of such relationship; (xi) expenditures resulting from the relocation or moving of tenants in the Building to another location within the Building; (xii) depreciation costs; and (xiii) any income, franchise or corporate tax, any leasehold taxes on other tenants' personal property, sales, capital levy, capital stock, excess profits, transfer, revenue, or any other tax, assessment or charge upon or measured by rent payable to Landlord. Operating Expenses shall not exceed the reasonable, customary and ordinary cost for such items. There shall be no duplication of costs or reimbursements.

(b) Gross-Up Adjustments. If the occupancy of the Building during any part of any Fiscal Year (including the Base Year) is less than ninety-five percent (95%), Landlord shall make an appropriate adjustment of the Operating Expenses for that Fiscal Year, as reasonably determined by Landlord using sound accounting and management principles, to determine the amount of Operating Expenses that would have been incurred had the Building been ninety-five percent (95%) occupied. This amount shall be considered to have been the amount of Operating Expenses for that Fiscal Year.

5.4.3 Landlord's Books and Records. If Tenant disputes the amount of the Additional Rent due hereunder, Tenant may designate, within sixty (60) days after receipt of the Statement of Actual Operating Expenses, an independent certified public accountant or qualified third-party management company to inspect Landlord's records. Tenant is not entitled to request that inspection, however, if Tenant is then in default under this Lease. The accountant must be a member of a nationally recognized accounting firm and must not charge a fee based on the amount of Additional Rent that the accountant is able to save Tenant by the inspection. Any inspection must be conducted in Landlord's offices at

a reasonable time or times. If, after such an inspection, Tenant still disputes the Additional Rent, Landlord and Tenant shall each designate an independent certified public accountant, which shall in turn jointly select a third independent certified public accountant (the "Third CPA"). A certification of the proper amount shall be made, at Tenant's sole expense, by the Third CPA. That certification shall be final and conclusive. If as a result of such audit and certification, it is determined that Tenant was overcharged by more than six percent (6%) during any period covered by such audit and certification, then Landlord will pay the costs and expenses of such audit.

5.5 Parking Charge. Tenant shall throughout the Term, lease from Landlord the number of unassigned and assigned automobile parking spaces, at such prices per month, as stated in Section "F" of the Summary of Basic Lease Information. Such monthly parking charges shall be considered Additional Rent and shall be due and payable without notice or demand, on or before the first day of each calendar month. Landlord shall have the right from time to time during the Term and during each Extension Renewal Term (if applicable), to increase the monthly parking charges for assigned parking spaces to the then prevailing market rate. From time to time after seven (7) years from the Commencement Date, the Landlord shall also have the right to increase the monthly parking charges for unassigned parking spaces to the prevailing market rate. Landlord shall also have the right to establish such reasonable rules and regulations as may be deemed desirable, at Landlord's reasonable discretion, for the proper and efficient operation and maintenance of said Parking Facility. Such rules and regulations may include, without limitation, (i) restrictions in the hours during which the Parking Facility shall be open for use, (ii) subject to the provisions of this paragraph 5.5 above, the establishment of charges for parking therein, and (iii) the use of parking gates, cards, permits and other control devices to regulate the use of the parking areas. The rights of Tenant and its employees, customers, service suppliers and invitees to use the Parking Facility shall, to the extent such rules and regulations are not inconsistent with the other terms of this Lease, at all times be subject to (a) Landlord's right to establish reasonable rules and regulations applicable to such use and to exclude any person therefrom who is not authorized to use the same or who violates such rules and regulations; (b) the rights of Landlord and other tenants in the Building to use the same in common with Tenant; (c) other than with respect to Tenant's assigned parking spaces, the availability of parking spaces in said Parking Facility; and (d) Landlord's right to change the configuration of the parking areas and any unassigned parking spaces as shall be determined at Landlord's reasonable discretion. Tenant agrees to limit its use of the Parking Facility to the number and type of parking spaces specified in this paragraph above. Notwithstanding the foregoing, nothing contained herein shall be deemed to impose liability upon Landlord for personal injury or theft, for damage to any motor vehicle, or for loss of property from within any motor vehicle, which is suffered by Tenant or any of its employees, customers, service suppliers or other invitees in connection with their use of the Parking Facility. Tenant understands and agrees that, while the Parking Facility will be open to Tenant on a 24-hour basis, other than spaces that are leased to Tenant and other tenants, all parking spaces in the parking area may be leased to members of the general public between the hours of 6:30 p.m. through 7:00 a.m.

Monday through Saturday morning, after 1:30 p.m. on Saturday, and all day on Sunday.

5.6 Payment of Rent. Except as otherwise expressly provided in this Lease, all Base Rent and Additional Rent shall be due in advance monthly installments on the first day of each calendar month during the Term. Rent shall be paid to Landlord at its address recited in Section 27.7, or to such other person or at such other address in the United States as Landlord may from time to time designate in writing. Rent shall be paid without notice, demand, abatement, deduction or offset in legal tender of the United States of America. The Base Rent for the first full calendar month of the Term shall be paid upon execution by Tenant of this Lease. In addition, if the Term commences or ends on other than the first or the last day of a calendar month, the Base Rent for the partial month shall be prorated on the basis of the number of days during the applicable month and paid on or before the Lease Commencement Date. If the Term commences or ends on other than the first or the last day of a Fiscal Year, the Additional Rent for the partial Fiscal Year calculated as provided in paragraph 5.3 above shall be prorated on the basis of the number of days during the applicable Fiscal Year. All payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect. The Rent to be paid by Tenant or any Transferee hereunder shall not be based, in whole or in part, on the income or profits derived from the lease, use or occupancy of the Premises. In the event Landlord's Mortgagee succeeds to the Landlord's interests under this Lease and determines that all or any portion of the Rent payable hereunder is or may be deemed to be unrelated business income within the meaning of the United States Internal Revenue Code or regulations issued thereunder, Landlord's Mortgagee may elect unilaterally to amend the calculation of Rent such that none of the Rent payable under this Lease will constitute unrelated business income; provided, however, that any such amendment shall not increase Tenant's payment obligations or other liabilities, or reduce the obligations of Landlord, under this Lease.

5.7 Delinquent Payments and Handling Charge. All Base Rent and Additional Rent hereunder shall bear interest from the date due until the date paid at the rate of interest specified in Section 27.13. In addition, if any Base Rent, Additional Rent or other payments required of Tenant hereunder are not received by Landlord when due on more than one (1) occasion in any Lease Year, Tenant shall pay to Landlord a late charge of three percent (3%) of the delinquent payment to reimburse Landlord for its costs and inconvenience incurred as a consequence of Tenant's delinquency (other than interest, attorneys' fees and costs). The parties agree that this late charge represents a reasonable estimate of the expenses that Landlord will incur because of any late payment (other than interest, attorneys' fees and costs). Landlord's acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Lease. Tenant shall pay the late charge as Additional Rent with the next installment of Additional Rent. In no event, however, shall the charges permitted under this Section 5.7 or elsewhere in this Lease, to the extent the same are considered to be interest under applicable law, exceed the maximum rate

of interest allowable under applicable law. If any two noncash payments made by Tenant are not paid by the bank or other institution on which they are drawn, Landlord shall have the right, exercised by notice to Tenant, to require that Tenant make all future payments by certified funds or cashier's check.

5.8 Security Deposit. On or before the date of this Lease, Tenant shall deposit with Landlord the Security Deposit, stated in Section "E" of the Basic Lease Information, as security for the faithful performance by Tenant under this Lease. The Security Deposit shall be returned (without interest) to Tenant after the expiration of the Term, or sooner termination of this Lease and delivery of possession of the Premises to Landlord in accordance with Section 26 if, at such time, Tenant is not in default under this Lease. If Landlord's interest in this Lease is conveyed, transferred or assigned, Landlord shall transfer or credit the Security Deposit to Landlord's successor in interest, and Landlord shall be released from any liability for the return of the Security Deposit. Landlord may intermingle the Security Deposit with Landlord's own funds, and shall not be deemed to be a trustee of the Security Deposit. If, during the Term, Tenant fails to timely pay or perform any obligation under this Lease, Landlord may, prior to, concurrently with or subsequent to exercising any other right or remedy, use, apply or retain all or any part of the Security Deposit for the payment of any monetary obligation due under this Lease, or to compensate Landlord for any other expense, loss or damage which Landlord may incur by reason of Tenant's failure, including any damage or deficiency in the reletting of the Premises. If, during the Term, all or any portion of the Security Deposit is so used, applied or retained, Tenant shall promptly deposit with Landlord cash in an amount sufficient to restore the Security Deposit to the original amount. Landlord may withhold the Security Deposit after the expiration of the Term or sooner termination of this Lease until Tenant has paid in full Tenant's Operating Expenses for the Fiscal Year in which such expiration or sooner termination occurs and all other amounts payable under this Lease. The Security Deposit is not a limitation on Landlord's damages or other rights under this Lease, a payment of liquidated damages or prepaid Rent, and shall not be applied by Tenant to the Rent for the last (or any) month of the Term, or to any other amount due under this Lease. If this Lease is terminated due to any default of Tenant, any portion of the Security Deposit remaining at the time of such termination shall immediately inure to the benefit of Landlord as partial compensation for the costs and expenses incurred by Landlord in connection with this Lease, and shall be in addition to any other damages to which Landlord is otherwise entitled.

5.9 Holding Over. Any holding over by Tenant in the possession of the Premises, or any portion thereof, after the expiration of the Term, with or without the consent of Landlord, shall require Tenant to pay one hundred fifty percent (150%) of the Base Rent and Additional Rent herein specified for the last month of the Term (prorated on a monthly basis), unless Landlord shall specify a lesser amount for Rent in its sole discretion. If Tenant holds over with Landlord's consent, such occupancy shall be deemed a month-to-month tenancy and such tenancy shall otherwise be on the terms and conditions herein specified in this Lease as far as applicable. Notwithstanding the foregoing provisions or the acceptance by Landlord of any payment by Tenant, any holding over without Landlord's consent shall constitute a default by Tenant and shall entitle Landlord to pursue all remedies provided in this Lease, or

otherwise, and Tenant shall be liable for any and all direct or consequential damages or losses of Landlord resulting from Tenant's holding over without Landlord's consent.

6. CONSTRUCTION OF IMPROVEMENTS.

6.1 General. Subject to events of Force Majeure, Landlord and Tenant agree that Landlord shall, at Landlord's cost, construct, install, furnish, perform and supply the Tenant Improvements in accordance with the parties' respective payment and other obligations as specified in the Work Letter Agreement ("Work Letter Agreement") attached hereto as Exhibit D and incorporated herein by this reference. The Tenant Improvements shall meet or exceed the Building Standard Tenant Improvements as specified in the Work Letter Agreement

6.2 Access by Tenant Prior to Commencement of Term. Provided that Tenant obtains and delivers to Landlord the certificates or policies of insurance called for in Section 17.1, Landlord, in its sole discretion, may permit Tenant and its employees, agents, contractors and suppliers to enter the Premises before the Lease Commencement Date (and such entry alone shall not constitute Tenant's taking possession of the Premises for the purpose of Section 6.3(c) below), to perform certain work on the Premises on behalf of Tenant not contrary to the provisions of the Work Letter Agreement. Tenant and each other person or firm who or which enters the Premises before the Commencement Date shall conduct itself so as to not interfere with Landlord or other occupants of the Building. Landlord may withdraw any permission granted under this Section 6.2 upon twenty-four (24) hours' notice to Tenant if Landlord, in its sole discretion, determines that any such interference has been or may be caused. Any prior entry shall be under all of the terms of this Lease (other than the obligation to pay Base Rent and Additional Rent) and at Tenant's sole risk. Tenant hereby releases and agrees to indemnify Landlord and Landlord's contractors, agents, employees and representatives from and against any and all personal injury, death or property damage (including damage to any personal property which Tenant may bring into, or any work which Tenant may perform in, the Premises) which may occur in or about the Complex in connection with or as the result of said entry by Tenant or its employees, agents, contractors and suppliers.

6.3 Commencement Date; Adjustments to Commencement Date. For purposes of this Lease, the "**Commencement Date**" shall mean the earliest to occur of the following events (the "Lease Commencement Events"): (a) the date of Substantial Completion of the Tenant Improvements, or (b) the date on which Landlord would have substantially completed the Tenant Improvements and tendered possession of the Premises to Tenant but for (i) the delay or failure of Tenant to furnish information, approvals or other matters required in the Work Letter Agreement, (ii) Tenant's request for changes in the Space Plan (as defined in the Work Letter Agreement) after execution of this Lease, or (iii) any other action or inaction of Tenant, or any person or firm employed or retained by Tenant, or (c) the date on which Tenant takes possession of the Premises. Subject to events of Force Majeure and the provisions of this paragraph 6.3, the Commencement Date is scheduled to be as stated in Section "B" of the Summary of Basic Lease Information. Upon the occurrence of the Commencement Date, the

parties will execute and deliver a certificate in the form of Exhibit G attached hereto stating and acknowledging the Commencement Date. If by the scheduled Commencement Date specified in this paragraph there is not Substantial Completion of the Tenant Improvements for any reason, and such failure to substantially complete renders the Premises untenable for their intended purpose, all as reasonably determined by Landlord, or Landlord is unable to tender possession of the Premises to Tenant, then the Landlord may elect (in addition to all other remedies available to Landlord) to postpone the Commencement Date until the earliest to occur of the Lease Commencement Events. Such postponement shall extend the scheduled expiration of the Term for a number of days equal to the postponement. Whether or not Landlord makes such an election and notwithstanding any provision in this Lease or any exhibit to the contrary, the potential postponement of the payment of Base Rent and Additional Rent shall be Tenant's sole and exclusive remedy for Landlord's delay in completing the Tenant Improvements, or tendering possession of the Premises to Tenant. The Landlord shall not be subject to any liability, including, without limitation, lost profits or incidental or consequential damages for any delay or inability to deliver possession of the Premises to the Tenant. Such a delay or failure shall not affect the validity of this Lease or the obligations of the Tenant hereunder, other than the postponement of the Term.

7. SERVICES TO BE FURNISHED BY LANDLORD.

7.1 **General.** Subject to applicable Legal Requirements, governmental standards for energy conservation, and Tenant's performance of its obligations hereunder, Landlord shall use its best commercially reasonable efforts to furnish the following services:

(a) Subject to the charges provided in Section 7.4 below, HVAC to the Premises during Building Operating Hours, at such temperatures and in such amounts as are reasonably suitable and standard [thus excluding air conditioning or heating for electronic data processing or other specialized equipment or specialized (nonstandard) Tenant requirements];

(b) hot and cold water at those points of supply common to all floors for lavatory and drinking purposes only;

(c) janitorial service five (5) days per week;

(d) periodic window washing in and about the Building and the Premises, anticipated to be accomplished approximately every 3 or 4 months for outside windows and every 2 or 3 months for inside windows;

(e) elevator service, if necessary, to provide access to and egress from the Premises twenty-four hours per day, seven days per week;

(f) electric current sufficient for lighting the Premises and electric current twenty-four hours per day, seven days per week for normal office machines and other machines of low electrical consumption of not more than six (6) watts per square foot of Rentable Area of the Premises available for Tenant's use;

(g) replacement of fluorescent lamps in Building Standard light fixtures installed by Landlord and of incandescent bulbs or fluorescent lamps in all public rest rooms, stairwells and other Common Areas in the Building; and

(h) facilities for Tenant's loading, unloading, delivery and pick-up activities.

If any of the services described above or elsewhere in this Lease are interrupted, Landlord shall promptly restore the same; provided, however, if as a result of any interruption of services the Premises will be uninhabitable or unusable by Tenant for five (5) consecutive business days, then Base Rent and Additional Rent shall be abated to the extent to which such condition interferes with Tenant's use of the Premises commencing on the first day of such condition and continuing until such condition is corrected. However, neither the interruption nor cessation of such services, nor the failure of Landlord to restore same, shall render Landlord liable for damages to person or property, or be construed as an eviction of Tenant, or relieve Tenant from fulfilling any of its other obligations hereunder.

If not previously installed, Landlord may cause an electric and/or water meter(s) to be installed in the Premises of the Tenant in order to measure the amount of electricity and/or water consumed for any such use, and the cost of such meter(s) shall be paid promptly by Tenant.

Certain security measures (both by electronic equipment and personnel) may be provided by Landlord in connection with the Building. However, Tenant hereby acknowledges that any such security is intended to be solely for the benefit of the Landlord and protecting its property, and while certain incidental benefits may accrue to the Tenant therefrom, any such security is not for the purpose of protecting either the property of Tenant or the safety of its employees, agents or invitees. By providing any such security, Landlord assumes no obligation to Tenant and shall have no liability arising therefrom.

7.2 Keys and/or Access Cards. Landlord shall furnish Tenant, at Landlord's expense, with up to twelve (12) keys and access cards, and at Tenant's expense with such additional keys and access cards as Tenant may request, to unlock or allow access to the Building and each corridor door entering the Premises. Tenant shall not install, or permit to be installed, any additional lock on any door into or in the Premises or make, or permit to be made, any duplicates of keys or access cards to the Premises without Landlord's prior consent. Landlord shall be entitled at all times to possession of a duplicate of all keys and access cards to all doors to or inside of the Premises. All keys and access cards referred to in this Section 7.2 shall remain the property of the Landlord. Upon the expiration or termination of the Term, Tenant shall surrender all such keys and access cards to Landlord and shall deliver to Landlord the combination to all locks on all safes, cabinets and vaults which will remain in the Premises. Landlord shall be entitled to install, operate and maintain a card reader and after-hours access card system, security systems and other control devices in or about the Premises and the Complex which regulate entry into the Building (or portions thereof) and

monitor, by closed circuit television or otherwise, all persons leaving or entering the Complex, the Building and the Premises.

7.3 Tenant Identity, Signs and Other Matters. Landlord shall at Landlord's cost provide and install, in Building Standard graphics, letters or numerals identifying Tenant's name and suite number adjacent to Tenant's entry door at one location per floor of the Building occupied by Tenant. Tenant's name, as set forth on the first page of this Lease, or as otherwise provided by Tenant in writing upon execution of this Lease, shall also be placed in the Building Directory located on the main level of the Building. Any subsequent modification to the listing of Tenant's name in the Building Directory shall be at Tenant's cost. Unless required by law, without Landlord's prior written consent, no other signs, numerals, letters, graphics, symbols or marks identifying Tenant shall be placed on the exterior, or in the interior if they are visible from the exterior, of the Premises.

Unless required by law, Tenant shall not place or suffer to be placed on any exterior door, wall or window of the Premises, on any part of the inside of the Premises which is visible from outside of the Premises, or elsewhere on the Complex, any sign, decoration, notice, logo, picture, lettering, attachment, advertising matter or other thing of any kind, without first obtaining Landlord's prior written approval, which Landlord may, in its discretion, grant or withhold. Landlord may, at Tenant's cost, and without notice or liability to Tenant, enter the Premises and remove any item erected in violation of this Section. Landlord may establish rules and regulations governing the size, type and design of all such items and Tenant shall abide by such rules and regulations.

7.4 Charges. Tenant shall pay to Landlord monthly as billed, as Additional Rent, such charges as may be separately metered or as Landlord may compute for (a) any utility services utilized by Tenant for computers, data processing equipment or other electrical equipment in excess of that agreed to be furnished by Landlord pursuant to Section 7.1, (b) lighting installed in the Premises in excess of Building Standard lighting, (c) HVAC and other services in excess of that stated in Section 7.1(a) or provided at times other than Building Operating Hours, and (d) janitorial services required with respect to Above Standard Tenant Improvements within the Premises. If Tenant wishes to use HVAC or electrical services to the Premises during hours other than Building Operating Hours, Landlord shall supply such HVAC, electrical and utility services at an hourly cost to Tenant of **\$18.50** per suite, as adjusted from time to time by Landlord consistent with prevailing market charges for such use. Landlord may utilize a lighting and utility occupancy sensor in order to automatically determine and control use of HVAC, electrical and other utility services. Landlord may elect to estimate the charges to be paid by Tenant under this Section 7.4 and bill such charges to Tenant monthly in advance, in which event Tenant shall promptly pay the estimated charges. When the actual charges are determined by Landlord, an appropriate cash adjustment shall be made between Landlord and Tenant to account for any underpayment or overpayment by Tenant.

7.5 Operating Hours. Subject to Building Rules and Regulations and such security standards as Landlord may from time to time adopt, the Building shall be open to the public during the Building Operating

Hours and the Premises shall be open to Tenant during hours other than Building Operating Hours.

8. REPAIR AND MAINTENANCE.

8.1 **By Landlord.** Landlord shall provide the services to the Premises set forth in paragraph 7.1 above and shall maintain the Building (excepting the Premises and portions of the Building leased by persons not affiliated with Landlord) in a good, clean and operable condition, making such repairs and replacements as may be required to provide such services to the premises and to maintain the Building in such condition. This Section 8.1 shall not apply to damage resulting from a Taking (as to which Section 14 shall apply), or damage resulting from a casualty (as to which Section 15.1 shall apply), or to damage caused by the negligence or willful misconduct of Tenant or its agents, contractors, invitees and licensees for which Tenant is otherwise responsible under this Lease. Tenant hereby waives and releases any right it may have to make repairs to the Premises or Building at Landlord's expense under any law, statute, ordinance, rules and regulations now or hereafter in effect in any jurisdiction in which the Building is located.

8.2 **By Tenant.** Tenant, at Tenant's sole cost, shall maintain the nonstructural components of the Premises and every part of the Premises (including, without limitation, all floors, walls and ceilings and their coverings, doors and locks, furnishings, trade fixtures, signage, leasehold improvements, equipment and other personal property from time to time situated in or on the Premises) in good order, condition and repair, and in a clean, safe, operable, neat and sanitary condition. Tenant will not commit or allow to remain any waste or damage to any portion of the Premises. Tenant shall repair or replace, subject to Landlord's direction and supervision, any damage to the Complex caused by Tenant or Tenant's agents, contractors or invitees. If Tenant fails to make such repairs or replacements, Landlord may make the same at Tenant's cost. Such cost shall be payable to Landlord by Tenant on demand as Additional Rent. All contractors, workmen, artisans and other persons which or whom Tenant proposes to retain to perform work in the Premises (or the Complex) pursuant to this Section 8.2 or Section 11 shall be approved by Landlord, in Landlord's reasonable discretion, prior to the commencement of any such work.

9. **TAXES ON TENANT'S PROPERTY.** Tenant shall be liable for and shall pay, before they become delinquent, all taxes and assessments levied against any personal property placed by Tenant in the Premises, including any additional Impositions which may be assessed, levied, charged or imposed against Landlord or the Building by reason of non-Building Standard Items in the Premises. Tenant may withhold payments of any taxes and assessments described in this Section 9 so long as Tenant contests its obligation to pay in accordance with applicable law and the nonpayment thereof does not pose a threat of loss or seizure of the Building or any interest of Landlord therein.

10. TRANSFER BY TENANT.

10.1 **General.** Except as specifically provided in this Section 10.1 below, Tenant shall not 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, or permit the Premises to be occupied by anyone other than Tenant or sublet the Premises or any portion thereof without Landlord's prior written consent in Landlord's discretion (such consent not to be unreasonably withheld, conditioned or delayed), being obtained in each instance, subject to the terms and conditions contained in this paragraph. Notwithstanding the foregoing, but without waiving any other requirement for a Transfer as contained in this Section 10, Tenant shall have the right, without the prior consent of Landlord, to assign the Lease or sublet the whole or any part of the Premises to a corporation or entity (a "Related Entity") which: (i) is Tenant's parent organization, or (ii) is a wholly-owned subsidiary of Tenant or Tenant's parent organization, or (iii) is an organization of which Tenant or Tenant's parent owns in excess of fifty percent (50%) of the outstanding capital stock or has in excess of fifty percent (50%) ownership or control interest, or (iv) is the result of a consolidation, merger or reorganization with Tenant and/or Tenant's parent organization, or (v) is the Transferee of substantially all of Tenant's assets. Except as provided above, any attempted Transfer without Landlord's consent shall be void. If Tenant desires to effect a Transfer, it shall deliver to Landlord written notice thereof in advance of the date on which Tenant proposes to make the Transfer, together with all of the terms of the proposed Transfer and the identity of the proposed Transferee. Upon request by Landlord, such notice shall contain financial information concerning the proposed Transferee and other reasonable information regarding the transaction which Landlord may specify. Landlord shall have thirty (30) days following receipt of the notice and information within which to notify Tenant in writing whether Landlord elects (a) to refuse to consent to the Transfer and to continue this Lease in full force, or (b) to consent to the proposed Transfer. If Landlord fails to notify Tenant of its election within said thirty (30) day period, Landlord shall be deemed to have elected option (a). The consent by Landlord to a particular Transfer shall not be deemed a consent to any other Transfer. If a Transfer occurs without the prior written consent of Landlord as provided herein, Landlord may nevertheless collect rent from the Transferee and apply the net amount collected to the Rent payable hereunder, but such collection and application shall not constitute a waiver of the provisions hereof or a release of Tenant from the further performance of its obligations hereunder.

10.2 **Conditions.** The following conditions shall automatically apply to each Transfer, without the necessity of same being stated or referred to in Landlord's written consent:

(a) Tenant shall execute, have acknowledged and deliver to Landlord, and cause the Transferee to execute, have acknowledged and deliver to Landlord, an instrument in form and substance acceptable to Landlord in which (i) the Transferee adopts this Lease and agrees to perform, jointly and severally with Tenant, all of the obligations of Tenant hereunder, as to the space Transferred to it, including, without limitation, the prohibition against rent based on the income or profits derived from the Premises (any purported lease to the contrary being null and void), (ii) the Transferee grants Landlord an express first and prior security interest in its personal property brought into the transferred space to secure its obligations to Landlord hereunder, (iii) Tenant subordinates to Landlord's statutory lien and security interest any liens, security interests or other rights which Tenant may claim with respect to any property

of the Transferee, (iv) Tenant agrees with Landlord that, if the rent or other consideration due by the Transferee exceeds the Rent for the transferred space, then Tenant shall pay Landlord as Additional Rent hereunder ninety percent (90%) of all such excess Rent and other consideration, net of reasonable leasing commissions and tenant improvement costs directly required in connection with such Transfer actually paid by Tenant, promptly upon Tenant's receipt thereof, (v) Tenant and the Transferee agree to provide to Landlord, at their expense, direct access from a public corridor in the Building to the transferred space, (vi) the Transferee agrees to use and occupy the Transferred space solely for the purpose specified in Section 4 and otherwise in accordance with this Lease, and (vii) Tenant acknowledges that, notwithstanding the Transfer, Tenant remains primarily liable for the performance of all the obligations of Tenant hereunder (including, without limitation, the obligation to pay all Rent), and Landlord shall be permitted to enforce this Lease against Tenant or the Transferee, or all of them, without prior demand upon or proceeding in any way against any other persons; and

(b) Tenant shall deliver to Landlord a counterpart of all instruments relative to the Transfer executed by all parties to such transaction (except Landlord).

(c) If Landlord to consents to a proposed Transfer, Tenant shall pay to Landlord, Landlord's reasonable costs, including, without limitation, reasonable attorneys' fees, incurred in connection with such proposal.

10.3 Liens. Without in any way limiting the generality of the foregoing, Tenant shall not grant, place or suffer, or permit to be granted, placed or suffered, against the Complex or any portion thereof, any lien, security interest, pledge, conditional sale contract, claim, charge or encumbrance (whether constitutional, statutory, contractual or otherwise) and, if any of the aforesaid does arise or is asserted, Tenant will, upon thirty (30) days notice of the filing of any such lien and at Tenant's expense, cause the same to be released of record by payment of money or posting of a proper bond.

10.4 Assignments in Bankruptcy. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the Estate of Tenant within the meaning of the Bankruptcy Code.

11. ALTERATIONS. Tenant shall not make (or permit to be made) any alteration to the Premises (including, without limitation, the attachment of any fixture or equipment) unless such alteration (a) equals or exceeds the Building Standard and utilizes only new and first-grade materials, (b) is in conformity with all Legal Requirements, and is made after obtaining any required permits and licenses, (c) is made with the prior written consent of Landlord not to be unreasonably withheld, conditioned or delayed, (d) is made pursuant to plans and specifications approved in writing in advance by Landlord, (e) is made after

Tenant has provided to Landlord such reasonable indemnification and/or bonds requested by Landlord, including, without limitation, a performance and completion bond in such form and amount as may be satisfactory to Landlord to protect against claims and liens for labor performed and materials furnished, and to insure the completion of any alteration, (f) is carried out by persons approved in writing by Landlord who, if required by Landlord, deliver to Landlord before commencement of their work proof of such insurance coverage as Landlord may require, with Landlord named as an additional insured, and (g) is done only at such time and in such manner as to not disturb the Landlord or other tenants in the Building. All such alterations, improvements and additions (including all articles attached to the floor, wall or ceiling of the Premises) shall become the property of Landlord and shall, at Landlord's election, be (i) surrendered with the Premises as part thereof at the termination or expiration of the Term, without any payment, reimbursement or compensation therefor, or (ii) removed by Tenant, at Tenant's expense, with all damage caused by such removal repaired by Tenant. Tenant may remove Tenant's trade fixtures, office supplies, movable office furniture and equipment not attached to the Building, provided such removal is made prior to the expiration of the Term, no uncured Event of Default has occurred and Tenant promptly repairs all damage caused by such removal. Tenant shall indemnify, defend and hold harmless Landlord from and against all liens, claims, damages, losses, liabilities and expenses, including attorneys' fees, which may arise out of, or be connected in any way with, any such change, addition or improvement. Within twenty (20) days following the imposition of any lien resulting from any such change, addition or improvement, Tenant shall cause such lien to be released of record by payment of money or posting of a proper bond.

12. **PROHIBITED USES.**

12.1 **General.** Tenant will not (a) use, occupy or permit the use or occupancy of the Complex or Premises for any purpose or in any manner which is violative of any Legal Requirement, or contrary to Building Rules and Regulations, or dangerous to life or property, or a public or private nuisance, or disrupt, obstruct or unreasonably annoy the owners or any other tenant of the Building or adjacent buildings, (b) keep or permit to be kept any substance in, or conduct or permit to be conducted any operation from, the Premises which emits offensive odors or conditions into other portions of the Building, or makes undue noise or creates undue vibrations, (c) commit or permit to remain any waste to the Complex or Premises, (d) install or permit to remain any improvements to the Complex or Premises, window coverings or other items (other than window coverings which have first been approved by Landlord) which are visible from the outside of the Premises, or exceed the structural loads of floors or walls of the Building, or adversely affect the mechanical, plumbing or electrical systems of the Building, or affect the structural integrity of the Building in any way, (e) permit the occupancy of the Premises at any time during the Term to exceed one person (including visitors) per two hundred (200) square feet Rentable Area of space in the Premises, (f) violate any recorded covenants, conditions or restrictions that affect the Complex or Building, or (g) commit or permit to be committed any action or circumstance in or about the Complex or Building which would justify any insurance carrier in cancelling or increasing the premium on the fire and extended coverage insurance policy maintained by Landlord on the Complex or Building or contents, and if any increase results from any act of Tenant, then Tenant shall pay such increase promptly upon demand therefor by Landlord. Landlord

represents that any certificate of occupancy issued with respect to the premises shall allow use for general business office purposes.

12.2 Hazardous Materials. Without limiting the foregoing, Tenant shall not cause or permit any Hazardous Material (defined below) to be brought upon, kept or used in or about the Premises or Complex by Tenant, its agents, employees, contractors or invitees, in violation of law, without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant may use and store types and quantities of materials and substances which may be or contain hazardous substances, provided that the same are of the type and in the quantities customarily found or used in offices for use of similar businesses, including without limitation packaging materials, commercial cleaning fluids, paint and photocopier fluids. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Materials on the Premises or Complex caused or permitted by Tenant results in illegal contamination of the Premises or Complex, or if illegal contamination of the Premises or Complex by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises or Complex, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or Complex, damages arising from any adverse impact on marketing of space in the Building, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such illegal contamination. This indemnification of Landlord includes, without limitation, the obligation to reimburse Landlord for costs incurred in connection with any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision. Without limiting the foregoing, if the presence of any Hazardous Material in, on or about the Premises or Complex caused by or permitted by Tenant results in any illegal contamination of the Premises or Complex, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises or Complex to the condition existing prior to the introduction of any Hazardous Material; provided, however, that Landlord's approval of such action shall first be obtained. "Hazardous Material" shall mean, in the broadest sense, any petroleum-based products, pesticides, paints, insolvents, polychlorinated, biphenyl, lead, cyanide, DDT, acids, ammonium compounds and other chemical products and any substance or material defined or designated as a hazardous or toxic, or other similar term, by any federal, state or local environmental statute, regulation or ordinance affecting the Premises or Complex presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises to the extent caused by, or resulting from the acts of, Tenant or Tenant's employees, directors, partners, shareholders, contractors, agents, invitees or representatives occurring while Tenant is in possession, or elsewhere if caused by Tenant or

persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the lease term.

12.3 Overstandard Tenant Use. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, other than standard equipment or lighting, or machines other than normal fractional horsepower office machines, in the Premises that may affect the temperature otherwise maintained by the air conditioning system or increase the water normally furnished to the Premises by Landlord.

13. ACCESS BY LANDLORD. Upon reasonable prior notice (except in case of emergency or to perform janitorial services), Landlord, its employees, contractors, agents and representatives, shall have the right (and Landlord, for itself and such persons and firms, hereby reserves the right) to enter the Premises at reasonable hours (except in case of emergency or to perform janitorial service) (a) to inspect, clean, maintain, repair, replace or alter the Premises or the Building, (b) to show the Premises to prospective purchasers (or, during the last twelve (12) months of the Term, to prospective tenants), (c) to determine whether Tenant is performing its obligations hereunder, or (d) for any other purpose deemed reasonable by Landlord. In an emergency, Landlord (and such persons and firms) may use any means to open any door into or in the Premises without any liability therefor. Landlord shall use reasonable efforts to minimize interference with Tenant's use of the Premises. Entry into the Premises by Landlord or any other person or firm named in the first sentence of this Section 13 for any purpose permitted herein shall not constitute a trespass or an eviction (constructive or otherwise), or entitle Tenant to any abatement or reduction of Rent, or constitute grounds for any claim (and Tenant hereby waives any claim) against Landlord for damages for any injury to or interference with Tenant's business, for loss of occupancy or quiet enjoyment, or for consequential damages.

14. CONDEMNATION. If all of the Complex is Taken, or if so much of the Complex is Taken that, in Landlord's opinion, the remainder cannot be restored to an economically viable, quality office building, or if the awards payable to Landlord as a result of any Taking are, in Landlord's opinion, inadequate to restore the remainder to an economically viable, quality office building, Landlord may, at its election, exercisable by the giving of written notice to Tenant within sixty (60) days after the date of the Taking, terminate this Lease as of the date of the Taking or the date Tenant is deprived of possession of the Premises (whichever is later) and Rent shall be apportioned as of the date of such termination. Tenant may, at its election, exercisable by giving sixty (60) days' written notice to Landlord, terminate this Lease in the event a substantial (greater than 50%) portion of the Premises is taken rendering the Premises inadequate for its continued use and occupancy by Tenant. If this Lease is not terminated as a result of a Taking, Landlord shall restore the Premises remaining after the Taking to a Building Standard condition. During the period of restoration, Base Rent shall be abated to the extent the Premises are rendered untenable and, after the period of restoration, Base Rent and Tenant's Share shall be reduced in the proportion that the area of the Premises Taken or otherwise rendered untenable bears to the area of the Premises just prior to the Taking. All awards, proceeds, compensation or other payments from or with respect to any Taking of the Complex or any portion thereof shall belong to Landlord, and Tenant hereby assigns to Landlord all of its right, title, interest and claim to same. Whether or not this Lease is terminated as a consequence of a Taking, all damages or compensation awarded for a partial or total Taking, including any award for

severance damage and any sums compensating for diminution in the value of or deprivation of the leasehold estate under this Lease, shall be the sole and exclusive property of Landlord. Tenant may assert a claim for and recover from the condemning authority, but not from Landlord, such compensation as may be awarded on account of Tenant's loss of business, loss of goodwill, moving and relocation expenses, and depreciation to and loss of Tenant's moveable personal property. Tenant shall have no claim against Landlord for the occurrence of any Taking, or for the termination of this Lease or a reduction in the Premises as a result of any Taking.

15. **CASUALTY.**

15.1 **General.** Tenant shall give prompt written notice to Landlord of any casualty to the Complex of which Tenant is aware and any casualty to the Premises. If (a) the Complex or the Premises are totally destroyed, or (b) if the Complex or the Premises are partially destroyed but in Landlord's opinion they cannot be restored to an economically viable, quality office building, or (c) if the insurance proceeds payable to Landlord as a result of any casualty are, in Landlord's opinion, inadequate to restore the portion remaining to an economically viable, quality office building, or (d) if the damage or destruction occurs within twelve (12) months of the expiration of the Term, or (e) Landlord's Mortgagee requires insurance proceeds be applied to pay or reduce indebtedness rather than repair the Premises, Landlord may, at its election exercisable by the giving of written notice to Tenant within sixty (60) days after the casualty, terminate this Lease as of the date of the casualty or the date Tenant is deprived of possession of the Premises (whichever is later). If this Lease is not terminated by Landlord as a result of a casualty, Landlord shall (subject to Section 15.2) restore the Premises to a Building Standard condition. If restoration of the Premises to a Building Standard Condition is not completed, or estimated by Landlord or its agents to not be completed, within a period of one hundred twenty (120) days, Tenant may elect to terminate this Lease by providing written notice to Landlord within thirty (30) days after expiration of the one hundred twenty (120) day period, or, as applicable, within thirty (30) days after receipt by Tenant of a written estimate from Landlord of a time in excess of one hundred twenty (120) days to complete the restoration. If Tenant does not elect to terminate within this 30-day period, Tenant shall be deemed to have waived the option to terminate. During the period of restoration, Base Rent and Additional Rent shall be abated to the extent the Premises are rendered untenantable and, after the period of restoration, Base Rent and Tenant's Share shall be reduced in the proportion that the area of the Premises remaining tenantable after the casualty bears to the area of the Premises just prior to the casualty. Except for abatement of Base Rent and Additional Rent, if any, Tenant shall have no claim against Landlord for any loss suffered by reason of any such damage, destruction, repair or restoration. Landlord shall not be required to repair any damage or to make any restoration or replacement of any furnishings, trade fixtures, leasehold improvements, equipment, merchandise and other personal property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. If Landlord is required by this Lease or any Landlord Mortgagee to repair, or if Landlord undertakes to repair, Landlord shall use commercially reasonable efforts to have such repairs made promptly and in a manner which will not unreasonably interfere with Tenant's occupancy.

15.2 **Acts of Tenant.** Notwithstanding any provisions of this Lease to the contrary, if the Premises or the Complex are damaged or destroyed as a result of a casualty arising from the acts or omissions of Tenant, or any of Tenant's officers, directors, shareholders, partners, employees, contractors, agents, invitees or representatives, (a) Tenant's obligation to pay Rent and to perform its other obligations under this Lease shall not be abated, reduced or altered in any manner, (b) Landlord shall not be obligated to repair or restore the Premises or the Complex, and (c) subject to Section 17.2, Tenant shall be obligated, at Tenant's cost, to repair and restore the Premises or the Complex to the condition they were in just prior to the damage or destruction under the direction and supervision of, and to the satisfaction of, Landlord and any Landlord's Mortgagee.

15.3 **Last Year of Term.** If the Building or the Premises or any portion thereof is destroyed by fire or other causes at any time during the last twelve (12) months of the Term, then either Tenant or Landlord shall have the right, at the option of either party, to terminate this Lease by giving written notice to the other within sixty (60) days after the date of such destruction.

16. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN**T.

16.1 **General.** This Lease, Tenant's leasehold estate created hereby, and all of Tenant's rights, titles and interests hereunder and in and to the Premises are hereby made subject and subordinate to any Mortgage presently existing or hereafter placed upon all or any portion of the Complex, and to any and all renewals, extensions, modifications, consolidations and replacements of any Mortgage and all advances made or hereafter to be made on the security of any Mortgage. Notwithstanding the foregoing, Landlord and Landlord's Mortgagee may, at any time upon the giving of written notice to Tenant and without any compensation or consideration being payable to Tenant, make this Lease, and the aforesaid leasehold estate and rights, titles and interests, superior to any Mortgage. In order to confirm the subordination (or, at the election of Landlord or Landlord's Mortgagee, the superiority of this Lease), upon the written request by Landlord or by Landlord's Mortgagee to Tenant, and within ten (10) days of the date of such request, and without any compensation or consideration being payable to Tenant, Tenant shall execute, have acknowledged and deliver a recordable instrument substantially in the form of Exhibit H hereto (which shall include non-disturbance provisions substantially as set forth therein confirming that this Lease, Tenant's leasehold estate in the Premises and all of Tenant's rights, titles and interests hereunder are subject and subordinate (or, at the election of Landlord or Landlord's Mortgagee, superior) to the Mortgage benefiting Landlord's Mortgagee. Without limiting the foregoing, upon request by Landlord's Mortgagee, the Landlord and Tenant shall execute such documents as Landlord's Mortgagee deems necessary to effect an amendment of this Lease. Tenant's failure to execute and deliver such instrument(s) as required in this Section 16 shall constitute a default under this Lease.

16.2 **Attornment.** Upon the written request of any person or party succeeding to the interest of Landlord under this Lease, Tenant shall automatically become the tenant of and attorn to such successor in interest without any change in any of the terms of this Lease. No

successor in interest shall be (a) bound by any payment of Rent for more than one month in advance, except payments of security for the performance by Tenant of Tenant's obligations under this Lease, or (b) subject to any offset, defense or damages arising out of a default or any obligations of any preceding Landlord. Neither Landlord's Mortgagee nor its successor in interest shall be bound by any amendment of this Lease entered into after Tenant has been given written notice of the name and address of Landlord's Mortgagee and without the written consent of Landlord's Mortgagee or such successor in interest, not to be unreasonably withheld or delayed. Any transferee or successor-in-interest shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to the successor or transferee. Tenant agrees to give written notice of any default by Landlord to the holder of any Mortgage. Tenant further agrees that, before it exercises any rights or remedies under the Lease, other than Rent abatement as expressly provided herein, the holder of any Mortgage or other successor-in-interest shall have the right, but not the obligation, to cure the default within the same time, if any, given to Landlord to cure the default, plus an additional thirty (30) days. The subordination, attornment and mortgagee protection clauses of this Section 16 shall be self-operative and no further instruments of subordination, attornment or mortgagee protection need be required by any Landlord's Mortgagee or successor in interest thereto. Nevertheless, upon the written request therefor and without any compensation or consideration being payable to Tenant, Tenant agrees to execute, have acknowledged and deliver such instruments substantially in the form of Exhibit H hereto to confirm the same. Tenant shall from time to time, if so requested by Landlord and if doing so will not materially and adversely affect Tenant's economic interests under this Lease, join with Landlord in amending this Lease so as to meet the needs or requirements of any lender that is considering making or that has made a loan secured by all or any portion of the Complex.

17. **INSURANCE.**

17.1 **General.** Tenant shall obtain and maintain throughout the Term the following policies of insurance:

(a) commercial general liability insurance with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence, including, without limitation, contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in Section 18;

(b) hazard insurance with special causes of loss, including theft coverage, insuring against fire, extended coverage risks, vandalism and malicious mischief, and including boiler and sprinkler leakage coverage, in an amount equal to the full replacement cost (without deduction for depreciation) of all furnishings, trade fixtures, leasehold improvements, equipment, merchandise and other personal property from time to time situated in or on the Premises;

- (c) workers' compensation insurance satisfying Tenant's obligations under the workers' compensation laws of the State of Utah; and
- (d) such other policy or policies of insurance as Landlord may reasonably require or as Landlord is then generally requiring from other tenants in the Building.

Such minimum limits shall in no event limit the liability of Tenant under this Lease. Such liability insurance shall name Landlord, and all mortgagees and lessors of Landlord of which Tenant has been notified, as an additional insureds; such property insurance shall name Landlord as a loss payee as Landlord's interests may appear; and both such liability and property insurance shall be with companies acceptable to Landlord, having a rating of not less than A:XII in the most recent issue of Best's Key Rating Guide, Property-Casualty. All liability policies maintained by Tenant shall contain a provision that Landlord and any other additional insured, although named as an insured, shall nevertheless be entitled to recover under such policies for any loss sustained by Landlord and Landlord's agents and employees as a result of the acts or omissions of Tenant. Tenant shall furnish Landlord with certificates of coverage. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Landlord may carry, and shall only be subject to such deductibles as may be approved in writing in advance by Landlord. Tenant shall, at least fifteen (15) days prior to the expiration of such policies, furnish Landlord with renewals of, or binders for, such policies. Landlord and Tenant waive all rights to recover against each other, against any other tenant or occupant of the Complex, and against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of each other, or of any other tenant or occupant of the Building, for any loss or damage arising from any cause covered by any insurance carried by the waiving party, to the extent that such loss or damage is actually covered. Tenant shall cause all other occupants of the Premises claiming by, through or under Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver contained in this Section and to obtain such waiver of subrogation rights endorsements. Any Landlord's Mortgagee may, at Landlord's option, be afforded coverage under any policy required to be secured by Tenant under this Lease by use of a mortgagee's endorsement to the policy concerned.

17.2 Waiver of Subrogation. Landlord and Tenant hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party or against any of the other party's officers, directors, shareholders, partners or employees for any loss or damage that may occur to the Complex, the Premises, Tenant's improvements or any of the contents of any of the foregoing by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the parties hereto or their officers, directors, shareholders, partners or employees), that could have been insured against under the terms of (a) in the case of Landlord, the standard fire

and extended coverage insurance policies available in the state where the Complex is located at the time of the casualty, and (b) in the case of Tenant, the fire and extended coverage insurance policies required to be obtained and maintained under Section 17.1; provided, however, that the waiver set forth in this Section 17.2 shall not apply to any deductibles on insurance policies carried by Landlord or to any coinsurance penalty which Landlord might sustain. Landlord and Tenant shall cause an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation.

17.3 **Landlord's Insurance.** Landlord shall obtain and maintain throughout the Term the following policies of insurance:

(a) All-risk property damage insurance on the Building, Building Improvements and personal property owned by Landlord in the amount of the full replacement values thereof, as the values may exist from time to time; and

(b) General liability insurance covering Landlord's operations and the Building with combined single limits of not less than \$1,000,000 per occurrence for bodily injury and property damage; and

(c) All policies shall be issued by reasonable insurance companies authorized to do business in the state in which the Premises are located.

18. **INDEMNITY.** Subject to paragraph 17.2, and except to the extent caused by the gross negligence or willful misconduct of Landlord, its employees, agents, representatives or contractors, Tenant agrees to indemnify, defend and hold Landlord and its officers, directors, partners and employees harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorneys' fees and court costs, for injury to or death of any person or for damages to any property or for violation of law arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Premises and Complex by Tenant or Tenant's agents, employees or contractors, or the clients and other invitees of Tenant, (ii) any breach or default in the performance of any obligation of Tenant under this Lease, and (iii) any negligent or otherwise tortious act or failure to act by Tenant or Tenant's agents, employees or contractors on or about the Premises or Complex.

Subject to paragraph 17.2 above and paragraph 19 below, and except to the extent caused by the gross negligence or willful misconduct of Tenant, its employees, representatives or contractors, Landlord agrees to indemnify, defend and hold Tenant and its officers, directors, partners and employees harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorneys' fees and court costs for injury to or death of any person or for damages to any property which arises solely from the fraud, gross negligence, or willful misconduct of Landlord in connection with the use of the Premises and Complex by Landlord or Landlord's agents, employees or contractors and the performance of its obligations hereunder.

19. **THIRD PARTIES; ACTS OF FORCE MAJEURE; EXCULPATION.** Except to the extent caused by the gross negligence or willful misconduct of Landlord, its employees, representatives or contractors, Landlord shall have no liability to

Tenant, or to Tenant's officers, directors, shareholders, partners, employees, agents, contractors or invitees, for bodily injury, death, property damage, business interruption, loss of profits, loss of trade secrets or other direct or consequential damages occasioned by (a) the acts or omissions of any other tenant or such other tenant's officers, directors, shareholders, partners, employees, agents, contractors or other invitees within the Complex, (b) Force Majeure (as defined below), (c) vandalism, theft, burglary and other criminal acts (other than those committed by Landlord and its employees), (d) water leakage, or (e) the repair, replacement, maintenance, damage, destruction or relocation of the Premises. Except to the extent an injury, loss, damage or destruction was proximately caused by Landlord's fraud, willful act or violation of law, Tenant waives all claims against Landlord arising out of injury to or death of any person or loss of, injury or damage to, or destruction of any property of Tenant. Unless otherwise specifically provided in this Lease, the remedies of Tenant for breach of this Lease by Landlord shall be limited to abatement of Rent and/or termination of this Lease in the manner set forth herein. Whenever the period of time is herein prescribed for action to be taken by Landlord or Tenant, Landlord or Tenant shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to Force Majeure, which term shall include strikes, riots, acts of God, shortages of labor or materials, war, acts or threats of terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of Landlord or Tenant. Notwithstanding the foregoing, Force Majeure shall not excuse or delay Tenant's obligation to pay Rent or Additional Rent.

20. **SECURITY INTEREST.** As security for Tenant's payment of Rent and performance of all of its other obligations under this Lease, Tenant hereby grants to Landlord a security interest in all property of Tenant now or hereafter placed in the Premises. Landlord, as secured party, shall be entitled to all of the rights, remedies and recourses afforded to a secured party under the Utah Uniform Commercial Code, which rights, remedies and recourses shall be cumulative of all other rights, remedies, recourses, liens and security interests afforded Landlord by law, equity or this Lease. Contemporaneously with the execution of this Lease, Tenant shall execute and deliver, as debtor, promptly upon request and without any compensation or consideration being payable to Tenant, such additional financing statement or statements as Landlord may request. However, Landlord may at any time file a copy of this Lease as a financing statement.

21. **CONTROL OF COMMON AREAS.** Landlord shall have the exclusive control over the Common Areas. Landlord may, from time to time, create different Common Areas, close or otherwise modify the Common Areas, and reasonably modify the Building Rules and Regulations with respect thereto; provided, however, that the use by Tenant of the Building and Premises shall not be materially adversely impacted.

22. **RIGHT TO RELOCATE.** Landlord retains the right and power, to be exercised reasonably and at Landlord's expense, upon sixty (60) days written notice, to relocate Tenant within the Cottonwood Corporate Center to space which is comparable in size to the Premises and is adequate for and suited to Tenant's use, and all terms of this Lease shall apply to the new space with equal force. Instances when the exercise of Landlord's right and power to relocate Tenant shall be deemed reasonable include, but shall not be limited to, instances where Landlord desires to consolidate the rentable area in the Building to provide Landlord's services more efficiently, or to provide contiguous

vacant space for a prospective tenant. Except as set forth above, Landlord shall not be liable to Tenant for any claims arising in connection with a relocation permitted under this Section 22. The parties shall execute an amendment to this Lease stating the relocation of the Premises.

23. **QUIET ENJOYMENT.** Provided Tenant has performed all its obligations under this Lease, Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term subject to the provisions of this Lease. Landlord shall warrant and forever defend Tenant's right to occupancy of the Premises against the claims of any and all persons whatsoever lawfully claiming the same or any part thereof, by, through or under Landlord, but not otherwise, subject to the provisions of this Lease.

24. **DEFAULT BY TENANT.**

24.1 **Events of Default.** Each of the following occurrences shall constitute an Event of Default (herein so called):

(a) the failure of Tenant to pay Base Rent or Additional Rent as and when due hereunder and the continuance of such failure for a period of five (5) days after written notice from Landlord to Tenant specifying the failure; provided, however, after Landlord has given Tenant written notice pursuant to this clause 24.1(a) on two separate occasions, Landlord shall not be required to give Tenant any further notice under this clause 24.1(a); provided, however, that the obligation of Tenant to pay a late charge or interest pursuant to this Lease shall commence as of the due date of the Rent or other monetary obligation and not on the expiration of any grace period;

(b) the failure of Tenant to perform, comply with or observe any other material agreement, obligation or undertaking of Tenant, or any other term, condition or provision in this Lease, and the continuance of such failure for a period of thirty (30) days after written notice from Landlord to Tenant specifying the failure, or, if reasonably required, such longer period (not to exceed 120 days) so long as Tenant timely and diligently commences and continues to completion the required cure;

(c) the involuntary transfer by Tenant of Tenant's interest in this Lease or other than specifically permitted pursuant to Section 10 hereof, the voluntary attempt to or actual transfer of its interest in this Lease, without Landlord's prior written consent;

(d) the failure of Tenant to discharge any lien placed as a result of Tenant's action or inaction upon the Premises or Building as set forth hereunder;

(e) the occurrence of a Net Tenant Delay, as defined in the Work Letter Agreement, of thirty (30) calendar days or more;

(f) the filing of a petition by or against Tenant (the term "Tenant" also meaning, for the purpose of this clause 24.1(d), any guarantor of the named Tenant's obligations hereunder) (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under the Bankruptcy Code or any similar debtor relief law, (iii) for

the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease, or (iv) to reorganize or modify Tenant's capital structure; and

(g) the admission by Tenant in writing that it cannot meet its obligations as they become due or the making by Tenant of an assignment for the benefit of its creditors.

24.2 Remedies of Landlord. Upon any Event of Default, Landlord may, at Landlord's option in its sole discretion, and in addition to all other rights, remedies and recourses afforded Landlord hereunder or by law or equity, do any one or more of the following:

(a) terminate this Lease by the giving of written notice to Tenant; reenter the Premises, with or without process of law; eject all parties in possession thereof; repossess and enjoy the Premises and all Tenant Improvements; and recover from Tenant all of the following: (i) all Rent and other amounts accrued hereunder to the date of termination, (ii) all amounts due under Section 24.3, and (iii) liquidated damages in an amount equal to (A) the total Rent that Tenant would have been required to pay for the remainder of the Term discounted to present value at the prime lending rate (or equivalent rate, however denominated) in effect on the date of termination at the largest national bank in the state where the Complex is located, minus (B) the then-present fair rental value of the Premises for such period, similarly discounted, plus any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which would be likely to result therefrom, including, without limitation, attorneys' fees, brokers' commissions or finder's fees;

(b) terminate Tenant's right to possession of the Premises without terminating this Lease by the giving of written notice to Tenant, in which event Tenant shall pay to Landlord (i) all Rent and other amounts accrued hereunder to the date of termination of possession, (ii) all amounts due from time to time under Section 24.3, and (iii) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period. Reentry by Landlord in the Premises will not affect the obligations of Tenant hereunder for the unexpired Term. Landlord may bring action against Tenant to collect amounts due by Tenant on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term. If Landlord elects to proceed under this Section 24.2(b), it may at any time elect to terminate this Lease pursuant to Section 24.2(a);

(c) alter any and all locks and other security devices at the Premises without being obligated to deliver new keys to the Premises, unless Tenant has cured all Events of Default before Landlord has terminated this Lease under Section 24.2(a) or has entered into a lease to relet all or a portion of the Premises;

(d) if an Event of Default specified in Section 24.1(c) occurs, Landlord may remove and store any property that remains

on the Premises and, if Tenant does not claim such property within thirty (30) days after Landlord has delivered to Tenant notice of such storage, Landlord may appropriate, sell, destroy or otherwise dispose of the property in question without notice to Tenant or any other person, and without any obligation to account for such property; and/or

(e) no taking possession of the Premises by Landlord shall be construed as Landlord's acceptance of a surrender of the Premises by Tenant or an election of Landlord to terminate this Lease unless written notice of such intention is given to Tenant. Notwithstanding any leasing or subletting without termination of the Lease, Landlord may at any time thereafter elect to terminate the Lease for Tenant's previous breach.

24.3 **Payment by Tenant.** Upon any Event of Default, Tenant shall also pay to Landlord all costs and expenses reasonably incurred by Landlord, including court costs and reasonable attorneys' fees, in (a) retaking or otherwise obtaining possession of the Premises, (b) removing and storing Tenant's property, (c) constructing the Tenant Improvements as defined in the Work Letter Agreement, (d) repairing, restoring, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants, not to exceed Building Standard Tenant Improvements, (e) reletting all or any part of the Premises, (f) paying or performing the underlying obligation which Tenant failed to pay or perform, and (g) enforcing any of Landlord's rights, remedies or recourses arising as a consequence of the Event of Default.

24.4 **Reletting.** Upon termination of this Lease or upon termination of Tenant's right to possession of the Premises, Landlord shall use commercially reasonable efforts to relet the Premises on such terms and conditions as Landlord in its sole discretion may determine (including a term different than the Term, rental concessions, and alterations to and improvements of the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due with respect to such reletting. If Landlord relets the Premises, rent Landlord receives from such reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than Rent (if any); second, all costs, including for maintenance and alterations, reasonably incurred by Landlord in reletting; and third, Rent due and unpaid. In no event shall Tenant be entitled to the excess of any rent obtained by reletting over the Rent herein reserved.

24.5 **Landlord's Right to Pay or Perform.** Upon an Event of Default, Landlord may, but without obligation to do so and without thereby waiving or curing such Event of Default, pay or perform the underlying obligation for the account of Tenant, and enter the Premises and expend the Security Deposit and any other sums for such purpose.

24.6 **No Waiver; No Implied Surrender.** Provisions of this Lease may only be waived by the party entitled to the benefit of the provision evidencing the waiver in writing. Thus, neither the acceptance of Rent by Landlord following an Event of Default (whether known to Landlord or

not), nor any other custom or practice followed in connection with this Lease, shall constitute a waiver by Landlord of such Event of Default or any other Event of Default. Further, the failure by Landlord to complain of any action or inaction by Tenant, or to assert that any action or inaction by Tenant constitutes (or would constitute, with the giving of notice and the passage of time) an Event of Default, regardless of how long such failure continues, shall not extinguish, waive or in any way diminish the rights, remedies and recourses of Landlord with respect to such action or inaction. No waiver by Landlord of any provision of this Lease or of any breach by Tenant of any obligation of Tenant hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Tenant of the same or any other provision hereof. Landlord's consent to any act by Tenant requiring Landlord's consent shall not be deemed to render unnecessary the obtaining of Landlord's consent to any subsequent act of Tenant. No act or omission by Landlord (other than Landlord's execution of a document acknowledging such surrender) or Landlord's agents, including the delivery of the keys to the Premises, shall constitute an acceptance of a surrender of the Premises.

25. **DEFAULTS BY LANDLORD.** Landlord shall not be in default under this Lease, and Tenant shall not be entitled to exercise any right, remedy or recourse against Landlord or otherwise as a consequence of any alleged default by Landlord under this Lease, unless Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after Tenant gives Landlord and (provided that Tenant shall have been given the name and address of Landlord's Mortgagee) Landlord's Mortgagee written notice thereof specifying, with reasonable particularity, the nature of Landlord's failure. If, however, the failure cannot reasonably be cured within the thirty (30) day period, Landlord shall not be in default hereunder if Landlord or Landlord's Mortgagee commences to cure the failure within the thirty (30) days and thereafter pursues the curing of same diligently to completion. If Tenant recovers a money judgment against Landlord for Landlord's default of its obligations hereunder or otherwise, the judgment shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be satisfied only out of the interest of Landlord in the Complex as the same may then be encumbered, and Landlord shall not otherwise be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Complex. The foregoing shall not limit any right that Tenant might have to obtain specific performance of Landlord's obligations hereunder.

26. **RIGHT OF REENTRY.** Upon the expiration or termination of the Term for whatever cause, or upon the exercise by Landlord of its right to reenter the Premises without terminating this Lease, Tenant shall immediately, quietly and peaceably surrender to Landlord possession of the Premises and all Tenant Improvements in "broom clean" and good order, condition and repair, except only for ordinary wear and tear, damage by casualty not covered by Section 15.2 and repairs to be made by Landlord pursuant to Section 15.1. If Tenant is in default under this Lease, Landlord shall have a lien on such personal property, trade fixtures and other property as set forth in Section 38-3-1, *et seq.*, of the Utah Code Ann. (or any replacement provision). Landlord may require Tenant to remove any personal property, trade fixtures, other property, alterations, additions and improvements made to the Premises by Tenant or by Landlord for Tenant, and to restore the Premises to their condition on the date of this Lease. All personal property, trade fixtures and other property of Tenant not removed from the Premises on the abandonment of the

Premises or on the expiration of the Term or sooner termination of this Lease for any cause shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to, and without any obligation to account to, Tenant or any other person. While Tenant remains in possession of the Premises after such expiration, termination or exercise by Landlord of its reentry right, Tenant shall be deemed to be occupying the Premises as a tenant-at-sufferance, subject to all of the obligations of Tenant under this Lease, except that the Rent shall be one hundred fifty percent (150%) of the Rent in effect immediately before such expiration, termination or exercise by Landlord. No such holding over shall extend the Term. If Tenant fails to surrender possession of the Premises in the condition herein required, Landlord may, at Tenant's expense, restore the Premises to such condition.

27. **MISCELLANEOUS.**

27.1 **Independent Obligations; No Offset.** The obligations of Tenant to pay Rent and to perform the other undertakings of Tenant hereunder constitute independent unconditional obligations to be performed at the times specified hereunder, regardless of any breach or default by Landlord hereunder. Tenant shall have no right, and Tenant hereby waives and relinquishes all rights which Tenant might otherwise have, to claim any nature of lien against the Complex or to withhold, deduct from or offset against any Rent or other sums to be paid to Landlord by Tenant.

27.2 **Time of Essence.** Time is of the essence with respect to each date or time specified in this Lease by which an event is to occur.

27.3 **Applicable Law.** This Lease shall be governed by, and construed in accordance with, the laws of the State of Utah. All monetary and other obligations of Landlord and Tenant are performable in the county where the Complex is located.

27.4 **Assignment by Landlord.** Landlord shall have the right to assign without notice or consent, in whole or in part, any or all of its rights, titles or interests in and to the Complex or this Lease and, upon any such assignment, Landlord shall be relieved of all unaccrued liabilities and obligations hereunder to the extent of the interest so assigned arising after the date of such transfer.

27.5 **Estoppel Certificates; Financial Statements.** From time to time at the request of Landlord or Landlord's Mortgagee, Tenant will within seven (7) calendar days, and without compensation or consideration execute, have acknowledged and deliver a certificate substantially in the form of Exhibit H hereto, setting forth the following: (a) a ratification of this Lease; (b) the Commencement Date, expiration date and other Lease information; (c) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writing as shall be stated); (d) that all conditions under this Lease to be performed by Landlord have been satisfied or, in the alternative, those claimed by Tenant to be unsatisfied; (e) that no defenses or offsets exist against the enforcement of this Lease by Landlord or, in the alternative, those claimed by Tenant to exist; (f) whether within the knowledge of Tenant there are any existing breaches or defaults by Landlord hereunder and, if so, stating the defaults with

reasonable particularity; (g) the amount of advance Rent, if any (or none if such is the case), paid by Tenant; (h) the date to which Rent has been paid; (i) the amount of the Security Deposit; and (j) such other information as Landlord or Landlord's Mortgagee may reasonably request. Landlord's Mortgagee and purchasers shall be entitled to rely on any estoppel certificate executed by Tenant. Tenant shall, within twenty (20) calendar days after Landlord's request, furnish to Landlord current financial statements for Tenant, prepared in accordance with generally accepted accounting principles consistently applied and certified by Tenant to be true and correct.

27.6 **Signs, Building Name and Building Address.** Landlord may, from time to time at its discretion, place any and all signs anywhere in the Complex, and may change the name and street address of the Complex. Tenant shall not, without Landlord's prior written consent, use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant from the Premises.

27.7 **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall either be sent by overnight courier or mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth in Section "G" of the Basic Lease Information, or delivered in person to the intended addressee. Notice sent by overnight courier shall become effective one (1) business day after being sent. Notice mailed in the aforesaid manner shall become effective five (5) business days after deposit. Notice given in any other manner shall be effective only upon receipt by the intended addressee. Each party shall have the continuing right to change its address for notice hereunder by the giving of fifteen (15) days' prior written notice to the other party in accordance with this Section 27.7.

27.8 **Entire Agreement, Amendment and Binding Effect.** This Lease, including all exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant relating to the subject matter hereof, and all prior agreements relative hereto which are not contained herein are terminated. This Lease may be amended only by a written document duly executed by Landlord and Tenant (and, if a Mortgage is then in effect, by the Landlord's Mortgagee entitled to the benefits thereof), and any alleged amendment which is not so documented shall not be effective as to any party. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and permitted assigns; provided, however, that this Section 27.8 shall not negate, diminish or alter the restrictions on Transfers applicable to Tenant set forth elsewhere in this Lease.

27.9 **Severability.** This Lease is intended to be performed in accordance with and only to the extent permitted by all Legal Requirements. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Lease and the application of such provision to other persons or circumstances shall not

be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

27.10 **Number and Gender, Captions and References.** As the context of this Lease may require, pronouns shall include natural persons and legal entities of every kind and character, the singular number shall include the plural, and the neuter shall include the masculine and the feminine gender. Section headings in this Lease are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any section hereof. Whenever the terms "hereof," "hereby," "herein," "hereunder" or words of similar import are used in this Lease, they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Section" shall be construed as referring to the indicated section of this Lease.

27.11 **Attorneys' Fees.** In the event either party commences a legal proceeding to enforce any of the terms of this Lease, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, to be fixed by the court in the same action. "Legal proceedings" includes appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court ("Bankruptcy Court"), whether or not they are adversary proceedings or contested matters. The "prevailing party" (i) as used in the context of proceedings in the Bankruptcy Court means the prevailing party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt party which are reasonably necessary to protect its rights under this Lease, and (ii) as used in the context of proceedings in any court other than the Bankruptcy Court means the party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the party sought.

27.12 **Brokers.** Excepting only brokers and agents of Cottonwood Realty Services, representing Landlord, no independent or other broker or agent has been used by either Landlord or Tenant in connection with the leasing transaction contemplated hereby. Tenant and Landlord hereby warrant and represent unto the other that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease, other than as provided in this paragraph 27.12 above and that which is due pursuant to a separate written agreement between the Landlord and Landlord's agents and subagents. Each party shall defend, indemnify and hold the other harmless from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization of such party, or any Affiliate of such party, in connection with this Lease. The parties hereto acknowledge that Gregory M. Gunn, the project listing agent, has a financial interest in this and other buildings within the Cottonwood Corporate Center.

27.13 **Interest on Tenant's Obligations.** Any amount of Rent or Additional Rent due from Tenant to Landlord which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate allowed by law from the date such payment is due until paid, but the payment of such interest shall not excuse or cure the default in payment.

27.14 **Authority.** Each person executing this Lease on behalf of a party warrants and represents that (a) such party is a duly organized and existing legal entity, in good standing in the State of Utah, (b) such party has full right and authority to execute, deliver and perform this Lease, (c) this Lease is binding upon and enforceable against such party in accordance with its terms, (d) the person executing and delivering this Lease on behalf of such party was duly authorized to do so, and (e) upon request of the other party, such person will deliver to the other party satisfactory evidence of his or her authority to execute this Lease on behalf of such party.

27.15 **Recording.** Neither this Lease (including any Exhibit hereto) nor any memorandum hereof shall be recorded without the prior written consent of Landlord.

27.16 **Exhibits.** All Exhibits and written addenda hereto are incorporated herein for any and all purposes.

27.17 **Multiple Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

27.18 **Survival of Indemnities.** The indemnity obligations contained in this Lease shall survive the expiration or earlier termination of this Lease to and until the last to occur of (a) the last day permitted by law for the bringing of any claim or action with respect to which indemnification may be claimed, or (b) the date on which any claim or action for which indemnification may be claimed under such provision is fully and finally resolved and any compromise thereof or judgment or award thereon is paid in full. Payment shall not be a condition precedent to recovery upon any indemnification provision contained herein.

27.19 **Non-Merger.** There shall be no merger of this Lease with any ground leasehold interest or the fee estate in the Complex or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or any interest in this Lease as well as any ground leasehold interest or fee estate in the Complex or any interest in such fee estate.

27.20 **Miscellaneous.** No amendment to this Lease shall be binding on Landlord or Tenant unless reduced to writing and signed by both parties. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition. Venue on any action arising out of this Lease shall be proper only in the District Court of Salt Lake County, State of Utah. Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease or the use and occupancy of the Premises. The submission of this Lease to Tenant is not an offer to lease the Premises or an agreement by Landlord to reserve the Premises for Tenant. Landlord shall not be bound to Tenant until Tenant has duly executed and delivered duplicate original copies of this Lease to Landlord and Landlord has duly executed and delivered one of those duplicate original copies to Tenant.

EXECUTED as of the date and year above first written.

TENANT ACKNOWLEDGES THAT LANDLORD HAS MADE NO WARRANTIES TO TENANT, EXCEPT AS HEREIN EXPRESSLY SET FORTH, AND LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE.

TENANT: ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

LANDLORD: 2855 E. COTTONWOOD PARKWAY, L.C., a Utah limited liability company, by its following Managing Member,

COTTONWOOD CORPORATE CENTER, L.C., a Utah limited liability company

By: _____
JOHN L. WEST, Manager

EXHIBIT A

GLOSSARY OF DEFINED TERMS

- a. **"Addendum"** shall mean all the addenda, exhibits and attachments, if any, attached to the Lease or to any Exhibit to the Lease. All addenda are by definition incorporated into the Lease. Unless otherwise specifically provided, terms and phrases in any Addendum shall have the meaning of such terms and phrases as provided in the Lease and this Glossary of Defined Terms.
- b. **"Affiliate"** shall mean a person or party who or which controls, is controlled by or is under common control with, another person or party.
- c. **"Building"** shall mean that certain office building and garage structure constructed on the Land, the street address of which is 2855 E. Cottonwood Parkway, Salt Lake County, Utah. The term "Building" shall include, without limitation, all fixtures and appurtenances in and to the aforesaid structure, including specifically but without limitation all above-grade walkways and all electrical, mechanical, plumbing, security, elevator, boiler, HVAC, telephone, water, gas, storm sewer, sanitary sewer and all other utility systems and connections, all life support systems, sprinklers, smoke detection and other fire protection systems, and all equipment, machinery, shafts, flues, piping, wiring, ducts, duct work, panels, instrumentation and other appurtenances relating thereto.
- d. **"Building Operating Hours"** shall mean 7:30 a.m. to 6:00 p.m. Monday through Friday, and Saturday 8:00 a.m. to 1:00 p.m., exclusive of Sundays and Holidays.
- e. **"Building Rules and Regulations"** shall mean the rules and regulations governing the Complex promulgated by Landlord from time to time. The current Building Rules and Regulations maintained by Landlord are attached as Exhibit C hereto.
- f. **"Building Standard"**, when applied to an item, shall mean such item as has been designated by Landlord (orally or in writing) as generally applicable throughout the leased portions of the Building, as more fully set forth on Exhibit D2 hereto.
- g. **"Commencement Date"** shall mean the date of the commencement of the Term as determined pursuant to Section 6.3.
- h. **"Common Areas"** shall mean all areas and facilities within the Complex which have been constructed and are being maintained by Landlord for the common, general, nonexclusive use of all tenants in the Building, as revised from time to time in Landlord's discretion, and shall include rest rooms, lobbies, corridors, service areas, elevators, stairs and stairwells, the Parking Facility, driveways, loading areas, ramps, walkways and landscaped areas.
- i. **"Complex"** shall mean the Land and all improvements thereon, including the Building, the Parking Facility, and all Common Areas.
- j. **"Fiscal Year"** shall mean each fiscal year (or portion thereof) as designated by Landlord, in which any portion of the Term falls, through

and including the Fiscal Year in which the Term expires. The Fiscal Year currently commences on January 1; however, Landlord may change the Fiscal Year at any time or times.

- k. **"Holidays"** shall mean (a) New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, (b) other days on which national or state banks located in the state where the Complex is located must or may close for ordinary operations, and (c) other days which are commonly observed as Holidays by the majority of tenants of the Building. If the Holiday occurs on a Saturday or Sunday, the Friday preceding or the Monday following may, at Landlord's discretion, be observed as a Holiday.
- l. **"HVAC"** shall mean the heating, ventilation and air conditioning systems in the Building.
- m. **"Impositions"** shall mean (a) all real estate, personal property, rental, water, sewer, transit, use, occupancy and other taxes, assessments, charges, excises and levies (including any interest, costs or penalties with respect thereto), general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which are assessed, levied, charged or imposed upon or with respect to the Complex, or any portion thereof, or the sidewalks, streets or alleyways adjacent thereto, or the ownership, use, occupancy or enjoyment thereof (including but not limited to mortgage taxes and other taxes and assessments passed on to Landlord by Landlord's Mortgagee), and (b) all charges for any easement, license, permit or agreement maintained for the benefit of the Complex. "Impositions" shall not include income taxes, estate and inheritance taxes, excess profit taxes, franchise taxes, corporation taxes, taxes imposed on or measured by the income of Landlord from the operation of the Complex, taxes imposed on account of the transfer of ownership of the Complex or the Land and personal property taxes of Tenant or other tenants in the Complex. If any or all of the Impositions shall be discontinued and, in substitution therefor, taxes, assessments, charges, excises or impositions shall be assessed, levied, charged or imposed wholly or partially on the Rents received or payable hereunder (a **"Substitute Imposition"**), then the Substitute Imposition shall be deemed to be included within the term "Impositions."
- n. **"Land"** shall mean the real property on which the Building is constructed and which is further described in Exhibit E hereto.
- o. **"Landlord's Consent or Landlord's Approval"** as used in this Agreement, shall mean the prior written consent or written approval of Landlord to the particular item or request. Unless otherwise provided in this Lease, the Landlord's consent or approval shall be determined in Landlord's reasonable discretion and shall not be unreasonably withheld.
- p. **"Landlord's Mortgagee"** shall mean the mortgagee of any mortgage, the beneficiary of any deed of trust, the pledgee of any pledge, the secured party of any security interest, the assignee of any assignment and the transferee of any other instrument of transfer (including the ground lessor of any ground lease on the Land) now or hereafter in existence on all or any portion of the Complex, and their successors, assigns and purchasers. **"Mortgage"** shall mean any such mortgage, deed of trust, pledge, security agreement, assignment or transfer instrument, including

all renewals, extensions and rearrangements thereof and of all debts secured thereby.

- q. **“Landlord’s Work”** shall mean all improvements, components, assemblies, installations, finish, labor, materials and services that Landlord is required to furnish, install, perform, provide or apply to the Premises as specified in the Work Letter Agreement.
- r. **“Legal Requirements”** shall mean any and all (a) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates or ordinances of any governmental authority in any way applicable to Tenant, Landlord or the Complex, including but not limited to the Building Rules and Regulations, zoning, environmental and utility conservation matters, (b) requirements imposed on Landlord by any Landlord’s Mortgagee, (c) insurance requirements, and (d) other documents, instruments or agreements relating to the Complex or to which the Complex may be bound or encumbered.
- s. **“Parking Facility”** shall mean (a) any parking garage and any other parking lot or facility adjacent to or in the Complex servicing the Building, and (b) any parking area, open or covered, leased by Landlord to service the Building.
- t. **“Permitted Use”** means lawful, general business office purposes only, and no other purpose, in compliance with the Building Rules and Regulations from time to time in effect and all other Legal Requirements.
- u. **“Premises”** shall mean the area leased by Tenant pursuant to this Lease as outlined on the floor plan drawing attached as Exhibit B hereto and all other space added to the Premises pursuant to the terms of this Lease. The Premises includes the space between the interior surface of the walls and the top surface of the floor slab of the outlined area and the finished surface of the ceiling immediately above.
- v. **“Rent”** shall mean Base Rent, Additional Rent, the parking charge called for in Section 5.4 and all other amounts provided for under this Lease to be paid by Tenant, whether as Additional Rent, if any, or otherwise. **“Base Rent”** shall mean the base rent specified in Section 5.1 as adjusted in accordance with Section 5.2. **“Base Rent Adjustment”** shall mean the increase in the annual Base Rent as set forth in Section 5.2. **“Additional Rent”** shall mean the additional rent specified in Section 5.3.
- w. **“Rentable Area”** shall mean the Rentable Area of the Premises and the Rentable Area of the Building as stated in Section “A” of the Summary of Basic Lease Information.
- x. **“Security Deposit”** means the amount stated in Section “E” of the Summary of Basic Lease Information.
- y. **“Substantial Completion”** shall mean the completion of construction upon the Premises of the Tenant Improvements pursuant to the approved Working Drawings, with the exception of any punch list items and any tenant fixtures, work-stations, built-in furniture or equipment to be installed by Tenant or under the supervision of Tenant and the issuance

of a certificate of occupancy or other instrument allowing lawful occupancy of the Premises.

- z. **"Taking"** or **"Taken"** shall mean the actual or constructive condemnation, or the actual or constructive acquisition by or under threat of condemnation, eminent domain or similar proceeding, by or at the direction of any governmental authority or agency.
- aa. **"Tenant Improvements"** shall mean the Tenant Improvements as specified in the Work Letter Agreement.
- bb. **"Tenant's Share"** shall mean the percentage of Operating Expenses to be paid by Tenant in accordance with the provisions of the Lease. "Tenant's Share" may be adjusted by Landlord upon notice to Tenant from time to time to reflect adjustments to the then-current Rentable Area of the Building or the Premises. Landlord and Tenant stipulate that "Tenant's Share" shall initially mean the percentage stated in Section "D" of the Summary of Basic Lease Information.
- cc. **"Transfer"** shall mean (a) an assignment (direct or indirect, absolute or conditional, by operation of law or otherwise) by Tenant of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby, (b) a sublease of all or any portion of the Premises, or (c) the grant or conveyance by Tenant of any concession or license within the Premises. If Tenant is a corporation, then any transfer of this Lease by merger, consolidation or dissolution, or by any change in ownership or power to vote a majority of the voting stock (being the shares of stock regularly entitled to vote for the election of directors) in Tenant outstanding at the time of execution of this Lease shall constitute a Transfer. If Tenant is a partnership having one or more corporations as general partners, the preceding sentence shall apply to each corporation as if the corporation alone had been the Tenant hereunder. If Tenant is a general or limited partnership, joint venture or other form of association, the Transfer of a majority of the ownership interests therein shall constitute a Transfer. **"Transferee"** shall mean the assignee, sublessee, pledgee, concessionaire, licensee or other transferee of all or any portion of Tenant's interest in this Lease, the leasehold estate created hereby or the Premises.
- dd. **"Work Letter Agreement"** shall mean the agreement attached as Exhibit D hereto between Landlord and Tenant for the construction of improvements in the Premises.

EXHIBIT B
PREMISES / APPROVED SPACE PLAN

Attach floor plan of the Premises.

B-1

EXHIBIT C

RULES AND REGULATIONS

Tenant shall comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules and Regulations by Tenant, any other tenant, or any visitor, licensee, agent, or other person or entity.

1. Security; Admission to Building. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Building, any persons occupying, using or entering the Building, or any equipment, finishings or contents of the Building, and each tenant shall comply with such systems and procedures. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In the event of an invasion, mob, riot, public excitement or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing of the doors of the Building or any other reasonable method, for the safety of the tenants and protection of the Building and property in the Building.

2. Conduct and Exclusion or Expulsion. Tenant's employees, visitors, and licensees shall not loiter in or interfere with the use of the Parking Facility or the Complex's driveway or parking areas, nor consume alcohol in the Common Areas of the Complex or the Parking Facility. The sidewalks, halls, passages, exits, entrances, elevators, escalators, and stairways of the Building will not be obstructed by any tenants or used by any of them for any purpose other than for ingress to and egress from their respective premises. The halls, passages, exits, entrances, elevators, escalators, and stairways are not for the general public, and Landlord may control and prevent access to them by all persons whose presence, in the reasonable judgment of Landlord, would be prejudicial to the safety, character, reputation and interests of the Building and its tenants. In determining whether access will be denied, Landlord may consider attire worn by a person and its appropriateness for an office building, whether shoes are being worn, use of profanity, either verbally or on clothing, actions of a person (including without limitation spitting, verbal abusiveness, and the like), and such other matters as Landlord may reasonably consider appropriate.

3. Signs, Notices and Decorations. No sign, placard, picture, decoration, name, advertisement or notice (collectively "Material") visible from the exterior of any tenant's premises shall be inscribed, painted, affixed or otherwise displayed by any tenant on any part of the Building without the prior written consent of Landlord. All approved signs or lettering will be printed, painted, affixed or inscribed at the expense of the tenant desiring such by a person approved by Landlord. Material visible from outside the Building will not be permitted. Landlord may remove such Material without any liability, and may charge the expense incurred by such removal to the tenant in question. Directories will be placed by Landlord, at no additional expense to Tenant, in the lobby of the Building.

4. Curtains and Decorations. No awnings, curtains, draperies, blinds, shutters, shades, screens, or other coverings, hangings or decorations will be attached to, hung or placed in, or used in connection with any window of the Building or the Premises without Landlord's prior written consent.

5. Non-obstruction of Light. The sashes, sash doors, skylights, windows, heating, ventilating, and air conditioning vents and doors that reflect or admit light and air into the halls, passageways, tenant premises, or other public places in the Building shall not be covered or obstructed by any tenant, nor will any bottles, parcels or other articles or decorations be placed on any window sills.

6. Showcases. No showcases or other articles will be put in front of or affixed to any part of the exterior of the Building, nor placed in the public halls, corridors or vestibules without the prior written consent of Landlord.

7. Cooking; Use of Premises for Improper Purposes. No tenant will permit its Premises to be used for lodging or sleeping. No cooking will be done or permitted by any tenant on its Premises, except in areas of the Premises which are specially constructed for cooking as specifically provided in working drawings approved by Landlord, so long as such use is in accordance with all applicable federal, state, and city laws, codes, ordinances, rules and regulations. Notwithstanding the foregoing, microwave ovens and other Underwriters' Laboratory (UL)-approved equipment may be used in the Premises for heating food and brewing coffee, tea, and similar beverages for employees and visitors. The Premises shall not be used for the storage of merchandise or for any improper, reasonably objectionable, or immoral purpose.

8. Janitorial Service. No tenant will employ any person or persons other than the cleaning service of Landlord for the purpose of cleaning the premises, unless otherwise agreed by Landlord in writing. If any tenant's actions result in any increased expense for any required cleaning, Landlord may assess such tenant for such expenses. Janitorial service will not be furnished on nights to offices which are occupied after business hours on those nights unless, by prior written agreement of Landlord, service is extended to a later hour for specifically designated offices.

9. Use of Restrooms. The toilets, urinals, wash bowls and other plumbing fixtures will not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other foreign substances will be thrown in them. All damages resulting from any misuse of the fixtures will be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, have caused the damage.

10. Defacement of Premises or Building. No tenant will deface any part of the Premises or the Building. Without the prior written consent of Landlord, no tenant will lay linoleum or other similar floor covering so that it comes in direct contact with the floor of such tenant's premises. If linoleum or other similar floor covering is to be used, an interlining of builder's deadening felt will be first affixed to the floor by a paste or other material soluble in water. The use of cement or other similar adhesive material is expressly prohibited. Except as permitted by Landlord by prior written consent, Tenant shall not mark on, paint signs on, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions or floors of the Premises or of the Building, and any defacement, damage or injury directly or indirectly caused by Tenant shall be paid for by Tenant. Pictures or diplomas shall be hung on tacks or small nails; Tenant shall not use adhesive hooks for such purposes.

11. Carpet. In those portions of the Premises where carpet has been provided directly or indirectly by Landlord, Tenant will at its own expense install and maintain pads to protect the carpet under all furniture having casters other than carpet casters.

12. Locks; Keys. No tenant will alter, change, replace or rekey any lock or install a new lock or a knocker on any door of the Premises. Landlord, its agent or employee will retain a master key to all door locks on the Premises. Any new door locks required by a tenant or any change in keying of existing locks will be installed or changed by Landlord following such tenant's written request to Landlord and will be at such tenant's expense. All new locks and rekeyed locks will remain operable by Landlord's master key. Landlord will furnish to each tenant, free of charge, the number of keys and Building access cards stated in Section 7.2 of the Lease. Landlord will have the right to collect a reasonable charge for additional keys and cards requested by any tenant. Each tenant, upon termination of its tenancy, will deliver to Landlord all keys and access cards for the Premises and Building which have been furnished to such tenant. Tenant shall keep the doors of the Premises closed and securely locked when Tenant is not at the Premises.

11. Furniture, Freight and Equipment. No furniture, freight, large packages, or equipment may be brought into the Building or carried up or down in the elevators, except between those hours and in that specific elevator designated by Landlord or otherwise upon consent of the Landlord, without prior notice to and consent of Landlord. Landlord may at any time restrict the elevators and areas of the Building into which deliveries or messengers may enter. The elevator designated for freight by Landlord will be available for use by all tenants in the Building during the hours and pursuant to such procedures as Landlord may determine from time to time. The persons employed to move Tenant's equipment, material, furniture or other property in or out of the Building must be acceptable to Landlord; such persons must be a locally recognized professional mover whose primary business is the performing of relocation services, and must be bonded and fully insured. A certificate or other verification of such insurance must be received and approved by Landlord prior to the start of any moving operations. Insurance must be sufficient, in Landlord's sole opinion, to cover all personal liability, theft or damage to the Building, including without limitation floor coverings, doors, walls, elevators, stairs, foliage and landscaping. All moving operations will be conducted at such times and in such a manner as Landlord may direct, and all moving will take place during nonbusiness hours unless Landlord otherwise agrees in writing. The moving tenant shall be responsible for the provision of Building security during all moving operations, and shall be liable for all losses and damages sustained by any party as a result of the failure to supply adequate security. Landlord may prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects will, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to distribute the weight properly. Landlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Building by moving or maintaining such property will be repaired at the expense of the moving tenant. Landlord may inspect all such property to be brought into the Building and to exclude from the Building all such property which violates any of these rules and regulations or the lease of which these rules and regulations are a part. Furniture and other items as reasonably determined by Landlord delivered to or taken from the Premises will be delivered or removed through the entrance and route designated by Landlord.

12. Inflammable or Combustible Fluids or Materials; Noninterference of Others. No tenant will use or keep in the Premises or the Building any kerosene, gasoline, inflammable, combustible or explosive fluid or material, or chemical substance other than limited quantities of them reasonably necessary for the operation or maintenance of office equipment or limited quantities of cleaning fluids and solvents required in the normal operation of the Premises. Without Landlord's prior written approval, no tenant will use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall not waste electricity, water, or air conditioning and shall cooperate fully with Landlord to insure the most effective operation of the Building's heating and air conditioning system. No tenant will keep any firearms within the Premises. No tenant will use or keep, or permit to be used or kept, any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in any manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, nor interfere in any material way with other tenants or those having business in the Building.

13. Address of Building. Landlord may, upon sixty (60) days prior written notice, and without liability to any tenant, change the name and street address of the Building.

14. Use of Building Name or Likeness. Landlord will have the right to prohibit any advertising by Tenant mentioning the Building which, in Landlord's reasonable opinion, tends to impair the reputation of the Building or its desirability as a Building for offices and, upon written notice from Landlord, Tenant will discontinue such advertising.

15. Animals, Birds and Vehicles. Tenant will not bring any animals or birds into the Premises or Building, and will not permit bicycles or other vehicles inside or on the sidewalks outside the Building, except in areas designated from time to time by Landlord for such purposes or except as required by law.

16. Off-Hour Access. All persons entering or leaving the Building at any time other than the Building's business hours shall comply with such off-hour regulations as Landlord may establish and modify from time to time. Landlord may limit or restrict access to the Building during such periods and shall not be liable for any error with regard to the admission or exclusion of any person.

17. Disposal of Trash. Each tenant will store all its trash and garbage within its premises. No material will be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal will be made only through entryways and elevators provided for such purposes and at such times as Landlord may designate. No furniture, appliances, equipment or flammable products of any type may be disposed of in the Building trash receptacles.

18. Disturbance of Tenants. Canvassing, peddling, soliciting and distribution of handbills or any other written materials in the Building or Parking Facility are prohibited, and each tenant will cooperate to prevent same.

19. Doors to Public Corridors. Each tenant shall keep the doors of the Premises closed and locked, and shall shut off all water faucets, water

apparatus, and utilities before tenant or tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall be liable for all injuries sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors, all tenants will keep the doors to the Building corridors closed at all times except for ingress and egress.

20. Concessions. Tenant shall not grant any concessions, licenses or permission for the sale or taking of orders for food or services or merchandise in the Premises, install or permit the installation or use of any machine or equipment for dispensing food or beverage in the Building, nor permit the preparation, serving, distribution or delivery of food or beverages in the Premises, without the prior written approval of Landlord and only in compliance with arrangements prescribed by Landlord; provided, however, Tenant shall be allowed reasonable equipment for dispensing coffee/beverage services, candy/snacks and a microwave oven. Only persons approved by Landlord shall be permitted to serve, distribute or deliver food and beverage within the Building or to use the public areas of the Building for that purpose.

21. Telecommunication and Other Wires. Tenant may not introduce telecommunication wires or other wires into the Premises without first obtaining Landlord's approval of the method and location of such introduction.

22. Rules Changes; Waivers. Landlord reserves the right at any time to reasonably change or rescind any one or more of these Rules and Regulations or to make any additional reasonable Rules and Regulations that, in Landlord's judgment, may be necessary or helpful for the management, safety or cleanliness of the Premises or Building; the preservation of good order; or the convenience of occupants and tenants of the Building generally. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant. No waiver by Landlord shall be construed as a waiver of those Rules and Regulations in favor of any other tenant, and no waiver shall prevent Landlord from enforcing those Rules and Regulations against a tenant or any other tenant in the future. Tenant shall be considered to have read these Rules and Regulations and to have agreed to abide by them as a condition of Tenant's occupancy of the Premises.

EXHIBIT D

WORK LETTER AGREEMENT

This Work Letter Agreement is attached to and made a part of the Lease. All terms used in this Work Letter Agreement which have been defined in the Lease have the same meaning as set forth in the Lease. This Work Letter Agreement shall set forth the terms and conditions relating to the construction of Tenant Improvements in the Premises.

I. Landlord and Tenant Construction Obligations

A. Space Plan Preparation. Landlord and Tenant hereby acknowledge that they have mutually approved a detailed space plan ("Space Plan") containing all information of this Work Letter Agreement for all tenant improvements ("Tenant Improvements") in the Premises.

B. Preparation of Working Drawings. Upon final approval of the Space Plan and estimated Tenant Improvement costs, Landlord shall direct the architect or space planner engaged by Landlord to prepare the plans and specifications for the Tenant Improvements (the "Space Planner") to prepare working drawings ("Working Drawings") based on the approved Space Plan. When prepared, the Working Drawings consistent with the Space Plan shall be delivered by the Space Planner to the Tenant for approval. If the Tenant fails to deliver the Working Drawings, together with its written approval thereof, to the Landlord within ten (10) calendar days after delivery of the Working Drawings by the Space Planner to Tenant, then each day of delay in delivery of the approved Working Drawings shall constitute one day of Tenant Delay.

C. Installation of Tenant Improvements. Upon approval of the Working Drawings, whether by written approval of Tenant or failure to deliver such written approval within the time set forth above, Landlord or Landlord's designee shall install the Tenant Improvements in the Premises in accordance with the Lease Agreement and this Work Letter Agreement and the Working Drawings based upon the approved Space Plan. In the event that Tenant requests any Tenant Improvements in the Working Drawings which are in excess of, or inconsistent with, the approved Space Plan or the Building Standard Improvements as set forth in Exhibit D-2 attached hereto and incorporated herein by this reference (the "Above Standard Tenant Improvements"), the excess of time required to complete the Premises for occupancy without Above Standard Tenant Improvements over the time which would have been required to complete the Premises for occupancy without Above Standard Tenant Improvements shall constitute Tenant Delay. At the commencement of any Tenant Delay, Landlord shall provide written notice to Tenant of the estimated period of Tenant Delay and any associated costs resulting from any Above Standard Tenant Improvements. Other than any Above Standard Tenant Improvements of which Tenant has received written notice from Landlord, the Tenant Improvements shall be installed and constructed at Landlord's cost for Tenant's occupancy on a turn-key basis in accordance with the Lease and this Work Letter Agreement ("Landlord's Work"). Landlord's Work will be performed in a good workmanlike manner, will be adequate to deliver possession of the Premises substantially completed for Tenant's use and occupancy without additional cost to Tenant except as provided in this Work Letter Agreement. Landlord's Work will include, without limitation, installation of electricity, water, sanitary sewer, life-safety and fire-

safety systems, heating, ventilation and air conditioning and other utility or building service systems and connections into the Premises and all meters, panels, conduits, outlets, wiring, piping, duct work or other means of distribution of such services within the Premises in sufficient capacity to substantially meet Tenant's requirements in the Lease; and compliance with all Legal Requirements applicable to the construction and completion of the Premises. Landlord will promptly notify Tenant of any delay in the onstruction and completion of the Premises ("Landlord Delay"). No claims relating to delays will be made for any delay occurring prior to Tenant's execution of the Lease. Changes in Landlord's Work will be authorized only by mutual written agreement between the parties setting forth any additional cost and expense and additional time required to complete the Premises as a result thereof. If any change in the Space Plan or Working Drawings may cause a delay in completion of the Premises, Landlord will notify Tenant and such change shall be performed only if the parties agree in writing to extend the date for completion of the Premises by the number of days of such anticipated delay and extend the date set forth for Rent commencement as a result thereof.

D. Change Orders. In the event that Tenant desires to change the Tenant Improvements as provided in the approved Working Drawings, Tenant shall deliver notice of the same to Landlord, setting forth in detail the changes Tenant desires to make (the "Tenant Changes"). Landlord may disapprove of said Tenant Changes in the event that Landlord, in its sole discretion, determines that the changes would constitute design problems for the Premises or Building. In the event that Landlord approves of the proposed Tenant Changes, Landlord shall provide Tenant with an itemized list setting forth the costs and the period of Tenant Delay necessitated by the Tenant Changes. Thereafter, the Tenant shall, within five (5) calendar days of receipt of Landlord's approval, deliver written notice to Landlord stating whether or not Tenant elects to cause Landlord to make such Tenant Changes. Tenant shall bear the full costs for any and all such changes in the Tenant Improvements and any delays associated with such changes shall constitute Tenant Delay.

E. Net Tenant Delay. Net Tenant Delay shall mean the total number of days of Tenant Delay minus the total number of days of Landlord Delay. If the Premises are not ready for occupancy on or before the scheduled date specified in paragraph 6 of this Lease, and there exists Net Tenant Delay, then, notwithstanding anything to the contrary set forth in the Lease or this Work Letter Agreement, and regardless of the actual date of the Substantial Completion of the Premises, the Lease Commencement Date of the Lease shall be deemed to be the date the Lease Commencement Date would have occurred without the Net Tenant Delay. In such event, Tenant shall pay to Landlord a sum equal to one day's Rent (including Base Rent and all other charges provided for in the Lease) multiplied by the Net Tenant Delay. Said sum shall be paid by Tenant within seven (7) calendar days of receipt of invoice.

F. Warranties and Guaranties. Landlord hereby assigns to Tenant all warranties and guaranties by the Space Planner relating to the Working Drawings and by the contractor who constructs the Tenant Improvements relating to the Tenant Improvements and, in consideration therefor, Tenant hereby waives and releases Landlord from all loss, damages, delays and claims relating to, or arising out of (i) the design, code compliance, quality, omissions or errors and other like matters contained in the Working Drawings, and (ii) the construction of the Tenant Improvements, including, without limitation, lost profits and all incidental or consequential damages.

II. Tenant Space Plan Must Contain, as a Minimum, the Following Information:

A. Floor plan showing:

1. Partitions: indicate location and type of all partitions.
2. Doors: indicate location, swing and type of all doors. Also indicate hardware.
3. Standard Electrical Items: indicate the location of all building standard electrical items listed herein (wall-mounted 110 volt duplex outlets, single-pole light switches and building standard light fixtures).
4. Standard Telephone Outlets: indicate the location of all building standard telephone wall outlets, as listed herein.
5. "Above Standard" Electrical Items: indicate the location and type of all "above standard" electrical items, including lighting.
6. Special Electrical Equipment and Requirements: indicate the location and type of equipment that will have special requirements and indicate the location and type of special electrical equipment to be purchased.
7. Telephone and Data Equipment Location: indicate location of telephone equipment room, if any.
8. Glass Items: indicate location, dimensions and type of glass partitions, windows and doors. Include details if not building standard.
9. Heavy Items: indicate location, dimensions, weight per square foot and description of any heavy equipment or filing system exceeding fifty (50) pounds per square foot live load.
10. Special HVAC Requirements: Indicate location and specific requirements for any special and/or concentrated heating and/or air conditioning requirements beyond that provided by the building HVAC system and/or distribution network.
11. Floor Covering: indicate location, type and color of all floor covering.
12. Wall Covering: indicate location, type and color of all wall coverings.
13. Paint: indicate location, type and color of paint finishes.
14. Millwork: indicate location, type and basic dimensions of all cabinets, shelving and other millwork items.
15. Plumbing: indicate location and type of all plumbing items.
16. Appliances: indicate location, type, dimensions and special requirements of all appliances.
17. Critical Dimensions: indicate all critical dimensions necessary for construction.
18. Fire Sprinkler Requirements: indicate location and type of all fire sprinkling and/or special fire suppression requirements.
19. Ceiling System and Finishes: indicate location, type and color of all ceiling finishes and/or systems.
20. Security Requirements: indicate the location, type and special requirements for any security system and/or requirements.
21. Furniture System Requirements: indicate all interfacing requirements with furniture systems (i.e., electrical, telephone, data, anchoring, etc.).

III. Other Provisions.

A. Substantial Completion. For purposes of this Lease, "Substantial Completion" of the Premises shall occur upon the completion of construction of the Tenant Improvements in the Premises

pursuant to the approved Working Drawings, with the exception of any punch list items and any tenant fixtures, work-stations, built-in furniture, or equipment to be installed by Tenant under the supervision of Landlord.

B. Time of the Essence. Unless otherwise indicated, all references herein to "number of days" shall mean and refer to calendar days. In all instances where Tenant is required to approve or deliver an item, if no written notice of approval is given or the item is not delivered within the stated time period, at Landlord's sole option, at the end of such period the item shall automatically be deemed approved or delivered by Tenant and the next succeeding time period shall commence.

C. Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease or this Work Letter Agreement, if an event of default has occurred as set forth in the Lease or in this Work Letter Agreement at any time on or before the Substantial Completion of the Premises, then, (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the Premises caused by such work stoppage), (ii) all other obligations of Landlord under the terms of this Work Letter Agreement shall be forgiven until such time as such default is cured pursuant to the terms of the Lease, and (iii) Landlord shall have the right to recover from Tenant the costs incurred for the Tenant Improvements.

D. Construction of Certain Improvements. The construction of certain Tenant Improvement items specified below shall be completed in accordance with the following provisions:

- | | |
|---|--|
| 1. "Above Standard" Electrical Items: | Tenant shall advise Landlord of locations and types of all "above standard" electrical items, including lighting. |
| 2. Special Electrical Equipment and Requirements: | Tenant shall advise Landlord of locations and types of all special electrical equipment. |
| 3. Appliances: | Tenant shall advise Landlord of locations, types, dimensions and special requirements of all appliances. |
| 4. Telephone and Data Equipment Location: | Tenant shall advise Landlord of location of telephone equipment room, if any. |
| 5. Heavy Items: | Tenant shall advise Landlord of location, dimensions, weight per square foot and description of heavy equipment or filing systems exceeding 50 pounds/SF live load. |
| 6. Millwork: | Tenant shall advise Landlord of location, type and basic dimensions of all cabinets, shelving and other millwork items. Standard Plastic Laminate Specifications: Countertops: Wilsonart #1573-60. Cabinets: Pionite #AT301-S. |
| 7. Plumbing: | Tenant shall advise Landlord of location and type of all plumbing fixtures. Standard Sink Specification: Kohler, stainless #K-3287-H with stainless faucet #K-15176. |
| 8. Special HVAC: | Tenant shall advise Landlord of special HVAC requirements. |
| 9. Critical Dimensions: | Tenant shall advise Landlord of all critical dimensions necessary for construction. |
| 10. Security Requirements: | Tenant shall advise Landlord of the location, type and any special requirements. |

11. Furniture Systems:

Tenant shall advise Landlord of all interfacing requirements between furniture and systems for electrical, telephones, data, anchoring, etc.

EXHIBIT D1
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D1 - 1

EXHIBIT D2

BUILDING STANDARD TENANT IMPROVEMENTS

IV. The "Building Standard Tenant Improvements" (herein so called) are the following:

- A. Flooring: Grade and quality of carpeting to be selected by Landlord, with color to be selected by Tenant from those offered by Landlord.
Standard Specification: Shaw Troubador 36, Shaw Shoal Creek II 36, or Shaw Resolution 29.
Standard Specification for VCT flooring: Armstrong Premium Excelon, Style: Canvas
- B. Base: Carpet base to match carpeting selected by Tenant.
Grade and quality of rubber base, when applicable, to be selected by Landlord.
Standard Specification: Johnsonite, 4" rubber base.
- C. Partitions: Demising Walls: 3-5/8" metal studs on 24" centers, blanket sound insulation, 5/8" gypsum board on one side. Studs and one layer of gypsum board extend to bottom of steel deck on floor above.
Interior Walls: 3-5/8" metal studs on 24" centers, 5/8" gypsum board on each side. Walls to be ceiling height and braced as per code requirements.
All walls to be finished with tape, texture and paint.
Standard Paint Specification: Kwal-Howells 2800 Series, Eggshell finish or Kwal-Howells 2300 Series, Semi-Gloss.
- D. Doors/Side Lights: 3'-0" x 8'-0" solid core interior doors, 3'-0" x 8'-10" exterior solid core flush wood doors with select white birch rotary cut veneer. Stain to be selected from finish standards. Door frames are hollow metal. Glass manufactured as per code requirements, with hollow metal frames. Standard hardware is Schlage, 626 series in brushed chrome.
- E. Ceiling: Armstrong RH90 Fireguard Tegular Lay-In, 24" x 24" for use with 15/16" exposed tee grid.
- F. Electrical Outlets: Standard 110v duplex wall outlets.
- G. Light Switches: Single pole switches.
- H. Lighting Occupancy Sensor: Automatic lighting control device-Uneco conserver series.
- I. Light Fixtures: 2' x 4', (3) lamp, 18-cell parabolic, recessed ceiling fixture. Grade and quality of fixture selected by Landlord.
- J. Fire Sprinkler Requirements: Design build per Landlord, except special requirements, of which the Tenant shall advise the Landlord.
- K. Window Coverings: Mechoshade vertical roller shades.

EXHIBIT E

LEGAL DESCRIPTION OF LAND

Beginning at a point which is North 0°08'51" East along the Quarter Section line 908.56 feet, and North 89°04'36" East 740.83 feet, and North 55°02'48" East 206.85 feet from the West Quarter Corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 34°55'16" West 67.93 feet to a point on the South Right-of-Way line of I-215 and a point on a 2076.90 foot radius curve to the left the chord of which bears North 62°36'26" East; thence Northeasterly along said South line and curve through a central angle of 5°57'01" a distance of 215.69 feet; thence North 67°29'16" East along said South line 183.64 feet; thence South 31°38'10" East 111.32 feet; thence South 70°30'09" East 57.70 feet; thence South 34°39'50" East 284.29 feet; thence South 11°06'23" East 28.44 feet; thence South 42°36'15" East 63.15 feet; thence South 64°43'27" East 71.26 feet; thence South 32°54'51" West 100.16 feet to a point on a 210.00 foot radius curve to the left the chord of which bears South 88°59'48" West; thence Westerly along said curve through a central angle of 67°50'08" a distance of 248.63 feet; thence South 55°04'44" West 161.13 feet to a point of a 835.00 foot radius curve to the right the chord of which bears South 55°10'54" West; thence Southwesterly along said curve through a central angle of 0°12'21" a distance of 3.00 feet; thence North 34°55'16" West 499.58 feet to the point of beginning. Contains 234,930 square feet or 5.3932 acres.

EXHIBIT F

LEASE EXTENSION ADDENDUM

THIS LEASE EXTENSION ADDENDUM ("Addendum") is entered into as of ____, 2002, between Landlord and Tenant (as those terms are defined in that certain Lease Agreement between Landlord and Tenant, dated ____, 20__ (the "Lease"). Subject to the provisions of the Lease, Landlord hereby grants to Tenant the option ("Extension Option") to extend the term of the Lease for two (2) successive extension terms of five (5) years each in accordance with the provisions set forth in this Addendum (an "Extension Renewal Term"). If the Term of the Lease is so extended, such extension shall be on the same terms and conditions as are applicable during the initial Term as set forth in the Lease, except that the Base Rent during the Extension Renewal Term shall be at the "Prevailing Rental Rate" which shall mean the rental rate determined for the most comparable office space located in the Complex as of the date of the Extension Notice (defined below) and taking into account all relevant factors including, without limitation, any applicable tenant improvement allowance, Base Year and expense then in effect, but in no event less than the Rent under the Lease as of the date of the Extension Notice.

1. Exercise. If Tenant desires to exercise an Extension Option, it shall send notice thereof (an "Extension Notice") to Landlord no more than three hundred (300) nor less than two hundred seventy (270) calendar days prior to the expiration of the Term or Extension Renewal Term of the Lease then in effect. Landlord and Tenant shall endeavor in good faith to determine the Prevailing Rental Rate within thirty (30) calendar days after Landlord's receipt of Tenant's Extension Notice. If they cannot agree within thirty (30) calendar days, each shall appoint an appraiser who shall arrive at an estimate of the Prevailing Rental Rate within thirty (30) calendar days. If such estimates are within five percent (5%) of each other, the average of the two shall be the new Base Rent for the Extension Renewal Term. If the estimates are more than five percent (5%) apart, each appraiser shall select a third appraiser within five (5) calendar days or, if they fail to do so, Landlord shall select a third appraiser. The third appraiser shall prepare an estimate of the Prevailing Rental Rate as provided above within thirty (30) calendar days and the two closest of the three estimates shall be averaged to determine the new Base Rent for the new Extension Renewal Term. No later than one hundred fifty (150) calendar days prior to the expiration of the Term then in effect, Landlord and Tenant shall execute an amendment to the Lease (an "Extension Amendment") stating the new Base Rent and expiration date of the Lease Term. If such an Extension Amendment is not fully executed for any reason as provided above, the Term shall not be extended and all Extension Option(s) hereunder shall terminate. Notwithstanding the foregoing, Tenant shall not be entitled to extend this Lease if an uncured Event of Default has occurred under any term or provision contained in the Lease or a condition exists which with the passage of time or the giving of notice, or both, would constitute an Event of Default pursuant to the Lease as of the date of exercise of this Extension Option. The rights contained in this Addendum shall be personal to the originally named Tenant and may be exercised only by the originally named Tenant and any Related Entity (and not any other assignee, sublessee or other Transferee of Tenant's interest in this Lease) and only if the originally named Tenant or Related Entity occupies the entire Premises as of the date it exercises the Extension Option in accordance with the terms of this Addendum. If Tenant properly exercises the Extension Option and is not in default under this Lease at the end of the initial Term of the Lease, the Term, as it applies to the entire Premises then leased by Tenant, shall be extended for the Extension Renewal Term and the Base Year shall be included among the factors considered in determining the Prevailing Rental Rate.

2. Other Provisions. If Tenant fails to deliver a timely Extension Notice, Tenant shall be considered to have elected not to exercise the Extension Option. Any termination of the Lease during the initial or applicable Term or Extension Renewal Term shall terminate all renewal or lease extension rights hereunder. The extension rights of Tenant hereunder shall not be severable from the Lease, nor may such rights be assigned or otherwise conveyed in connection with any permitted assignment of the Lease. During any Extension Renewal Term (a) no rent abatement or other concession, if any, applicable to the initial Term or preceding Extension Renewal Term shall apply to the Extension Renewal Term, and (b) all leasehold improvements within the Premises shall be provided in their then-existing condition (on an "as-is" basis) at the time the Extension Renewal Term commences.

DATED this _____ day of _____, 20_____.

LANDLORD:

2855 E. COTTONWOOD PARKWAY, L.C., a Utah limited liability company,
by its following Managing Member,

COTTONWOOD CORPORATE CENTER, L.C., a Utah limited liability
company

By: _____
JOHN L. WEST, Manager

TENANT:

ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation

By: _____
Title: _____

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EXHIBIT G

ACKNOWLEDGMENT OF LEASE COMMENCEMENT DATE

STATEMENT OF CONFIRMATION AND
ACKNOWLEDGMENT OF LEASE COMMENCEMENT DATE

In accordance with that certain Lease Agreement between 2855 E. COTTONWOOD PARKWAY, L.C., as Landlord and the undersigned, as Tenant (the "Lease"), the Tenant hereby confirms the following:

1. Construction of the Tenant Improvements is Substantially Complete, and the Term shall commence as of _____, for a term of _____ years, _____ months, and _____ days, ending on ____, subject to the early termination provisions contained in paragraph 3.1 of the Lease.

2. In accordance with the Lease, Base Rent shall begin to accrue on _____, in the amount of _____ DOLLARS (\$_____).

LANDLORD:

2855 E. COTTONWOOD PARKWAY, L.C., a Utah limited liability company,
by its following Managing Member,

COTTONWOOD CORPORATE CENTER, L.C., a Utah limited
liability company

By: _____
JOHN L. WEST, Manager

TENANT:

ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation

By: _____
Title: _____

EXHIBIT H

STATEMENT OF TENANT IN RE: LEASE
[Tenant letterhead]

Teachers Insurance and Annuity
Association of America
730 Third Avenue
New York, NY 10017

**RE: TIAA APPLICATION #UT00063
TIAA MTGE. #000445900
Cottonwood Corporate Center, Building 11
2855 East Cottonwood Parkway
Salt Lake City, UT 84121
Suite No. 100**

Ladies and Gentlemen:

It is our understanding that you have committed to place a mortgage upon the subject premises and as a condition precedent thereof have required this certification of the undersigned.

The undersigned, as Lessee, under that certain Lease dated _____, 20____, made with 2855 E. COTTONWOOD PARKWAY, L.C., as Lessor, hereby ratifies said Lease and certifies that:

1. The "Commencement Date" of said Lease is _____, 20____; and
2. the undersigned is presently solvent and free from reorganization and/or bankruptcy and is in occupancy, open, and conducting business with the public in the premises; and
3. the operation and use of the premises do not involve the generation, treatment, storage, disposal or release of a hazardous substance or a solid waste into the environment other than to the extent necessary to conduct its ordinary course of business in the premises and in accordance with all applicable environmental laws, and that the premises are being operated in accordance with all applicable environmental laws, zoning ordinances and building codes; and
4. the current base rental payable pursuant to the terms of said Lease is \$ _____ per annum; and further, additional rental pursuant to said Lease is payable as follows: _____ &n bsp; ; and
5. said Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (except by agreements(s) dated _____), and neither party thereto is in default thereunder; and
6. the Lease described above represents the entire agreement between the parties as to the leasing of the premises; and
7. the term of said Lease expires on _____; and
8. all conditions under said Lease to be performed by the Lessor have been satisfied, including, without limitation, all co-tenancy requirements thereunder, if any; and
9. all required contributions by Lessor to Lessee on account of Lessee's improvements have been received; and
10. on this date there are no existing defenses or offsets, claims or counterclaims which the undersigned has against the enforcement of said Lease by the Lessor; and

11. no rental has been paid in advance and no security (except the security deposit in the amount of \$ _____) has been deposited with Lessor; and
12. Lessee's floor area is _____ square feet (rentable); and
13. The most recent payment of current base rental was for the payment due on _____, and all base rental and additional rental payable pursuant to the terms of the Lease have been paid up to said date; and
14. the undersigned acknowledges notice that Lessor's interest under the Lease and the rent and all other sums due thereunder will be assigned to you as part of the security for a mortgage loan by you to Lessor. In the event that Teachers Insurance and Annuity Association of America, as lender, notifies the undersigned of a default under the mortgage and demands that the undersigned pay its rent and all other sums due under the Lease to lender, Lessee agrees that it shall pay its rent and all such other sums to lender.

Very truly yours,

ADS ALLIANCE DATA SYSTEMS, INC.

By: _____

Its: _____

Date: _____

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made by and between TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation with offices at 730 third Avenue, New York, New York 10017 ("Lender"), and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation, with its principal place of business at 17655 Waterview Parkway, Dallas, Texas 75252 ("Tenant").

RECITALS

A. Lender has made or is about to make a loan (together with all advances and increases, the "Loan") to 2855 E. COTTONWOOD PARKWAY, L.C., a limited liability company ("Borrower").

B. Borrower, as Landlord, and Tenant have entered into a lease dated _____, 20____, as amended by amendments dated _____, 20____ (the "Lease") which leased to Tenant Suite No. ____ (the "Leased Space") located in the Property (defined below).

C. The Loan is or will be secured by the Trust Deed, Assignment of Leases and Rents, Fixture Filing Statement and Security Agreement recorded or to be recorded in the official records of the County of Salt Lake, State or Commonwealth of Utah (together with all advances, increases, amendments or consolidations, the "Mortgage") and the Assignment of Leases and Rents recorded or to be recorded in such official records (together with all amendments or consolidations, the "Assignment"), assigning to Lender the Lease and all rent, additional rent and other sums payable by Tenant under the Lease (the "Rent").

D. The Mortgage encumbers the real property, improvements and fixtures located at 2855 East Cottonwood Parkway in the County of Salt Lake, State or Commonwealth of Utah, and described on Exhibit "A" (the "Property").

IN CONSIDERATION of the mutual agreements contained in this Agreement, Lender and Tenant agree as follows:

1. The Lease and all of Tenant's rights under the Lease are and will remain subject and subordinate to the lien of the Mortgage and all of Lender's rights under the Mortgage and Tenant will not subordinate the Lease to any other lien against the Property without Lender's prior consent.

2. This Agreement constitutes notice to Tenant of the Mortgage and the Assignment and, upon receipt of notice from Lender, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease.

3. Tenant does not have and will not acquire any right or option to purchase any portion of or interest in the Property.

4. Tenant and Lender agree that if Lender exercises its remedies under the Mortgage or the Assignment and if Tenant is not then in default under this Agreement and if Tenant is not then in default beyond any applicable grace and cure periods under the Lease:

(a) Lender will not name Tenant as a party to any judicial or non-judicial foreclosure or other proceeding to enforce the Mortgage unless joinder is required under applicable law but in such case Lender will not seek affirmative relief against Tenant, the Lease will not be terminated and Tenant's possession of the Leased Space will not be disturbed;

(b) If Lender or any other entity (a "Successor Landlord") acquires the Property through foreclosure, by other proceeding to enforce the Mortgage or by deed-in-lieu of foreclosure (a "Foreclosure"), Tenant's possession of the Leased Space will not be disturbed and the Lease will continue in full force and effect between Successor Landlord and Tenant; and

(c) If, notwithstanding the foregoing, the Lease is terminated as a result of a Foreclosure, a lease between Successor Landlord and Tenant will be deemed created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease. Successor Landlord and Tenant will execute a replacement lease at the request of either.

5. Upon Foreclosure, Tenant will recognize and attorn to Successor Landlord as the landlord under the Lease for the balance of the term. Tenant's attornment will be self-operative with no further instrument required to effectuate the attornment except that at Successor Landlord's request, Tenant will execute instruments reasonably satisfactory to Successor Landlord confirming the attornment.

6. Successor Landlord will not be:

- (a) liable for any act or omission of any prior landlord under the Lease occurring before the date of the Foreclosure except for repair and maintenance obligations of a continuing nature imposed on the landlord under the Lease;
- (b) required to credit Tenant with any Rent paid more than one month in advance or for any security deposit unless such Rent or security deposit has been received by Successor Landlord;
- (c) bound by any amendment, renewal or extension of the Lease that is inconsistent with the terms of this Agreement or is not in writing and signed both by Tenant and landlord;
- (d) bound by any reduction of the Rent unless the reduction is in connection with an extension or renewal of the Lease at prevailing market terms or was made with Lender's prior consent;
- (e) bound by any reduction of the term¹ of the Lease or any termination, cancellation or surrender of the Lease unless the reduction, termination, cancellation or surrender occurred during the last 6 months of the term or was made with Lender's prior consent;
- (f) bound by any amendment, renewal or extension of the Lease entered into without Lender's prior consent if the Leased Space represents 50% or more of the net rentable area of the building in which the Leased Space is located;
- (g) [Intentionally deleted];
- (h) subject to any credits, offsets, claims, counterclaims or defenses that Tenant may have that arose prior to the date of the Foreclosure or liable for any damages Tenant may suffer as a result of any misrepresentation, breach of warranty or any act of or failure to act by any party other than Successor Landlord;
- (i) bound by any obligation to make improvements to the Property, including the Leased Space, to make any payment or give any credit or allowance to Tenant provided for in the Lease or to pay any leasing commissions arising out of the Lease, except that Successor Landlord will be:
 - (i) bound by any such obligations provided for in the Lender-approved form lease;
 - (ii) bound by any such obligations if the overall economic terms of the Lease (including the economic terms of any renewal options) represented market terms for similar space in properties comparable to the Property when the Lease was executed; and
 - (iii) bound to comply with the casualty and condemnation restoration provisions included in the Lease provided that Successor Landlord receives the insurance or condemnation proceeds;

or;

(j) liable for obligations under the Lease with respect to any off-site property or facilities for the use of Tenant (such as off-site leased space or parking) unless Successor Landlord acquires in the Foreclosure the right, title or interest to the off-site property.

7. Lender will have the right, but not the obligation, to cure any default by Borrower, as landlord, under the Lease. Tenant will notify Lender of any default that would entitle Tenant to terminate the Lease or abate the Rent and any notice of termination or abatement will not be effective unless Tenant has so notified Lender of the default and Lender has had a 30-day cure period (or such longer period as may be necessary if the default is not susceptible to cure within 30 days) commencing on the latest to occur of the date on which (i) the cure period under the Lease expires; (ii) Lender receives the notice required by this paragraph; and (iii) Successor Landlord obtains possession of the Property if the default is not susceptible to cure without possession.

¹ For purposes of this subparagraph "the term of the Lease" includes any renewal term after the right to renew has been exercised.

EXHIBIT "A"

The following described real property is located in Salt Lake County, Utah:

PARCEL 1 ("COTTONWOOD CORPORATE CENTER PARCEL 11"):

Beginning at a point which is North 0°08'51" East along the Quarter Section line 908.56 feet, and North 89°04'36" East 740.83 feet, and North 55°02'48" East 206.85 feet from the West Quarter Corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 34°55'16" West 67.93 feet to a point on the South Right-of-Way line of I-215 and a point on a 2076.90 foot radius curve to the left the chord of which bears North 62°36'26" East; thence Northeasterly along said South line and curve through a central angle of 5°57'01" a distance of 215.69 feet; thence North 67°29'16" East along said South line 183.64 feet; thence South 31°38'10" East 111.32 feet; thence South 70°30'09" East 57.70 feet; thence South 34°39'50" East 284.29 feet; thence South 11°06'23" East 28.44 feet; thence South 42°36'15" East 63.15 feet; thence South 64°43'27" East 71.26 feet; thence South 32°54'51" West 100.16 feet to a point on a 210.00 foot radius curve to the left the chord of which bears South 88°59'48" West; thence Westerly along said curve through a central angle of 67°50'08" a distance of 248.63 feet; thence South 55°04'44" West 161.13 feet to a point of a 835.00 foot radius curve to the right the chord of which bears South 55°10'54" West; thence Southwesterly along said curve through a central angle of 0°12'21" a distance of 3.00 feet; thence North 34°55'16" West 499.58 feet to the point of beginning. Contains 234,930 square feet or 5.3932 acres.

PARCEL 2 ("COMMON ROADWAY"):

A perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress, appurtenant to PARCEL 1, as established by a Declaration of Easements, Covenants and Restrictions recorded January 17, 1996, as Entry No. 6259074, in Book 7311, at page 821 of the official records of the Salt Lake County Recorder, as amended by a First Amendment to Declaration of Easements, Covenants and Restrictions, recorded July 3, 1996, as Entry No. 6398547, in Book 7437, at page 265 of the official records of the Salt Lake County Recorder, over the following described property:

BEGINNING at a point which is North 0°08'51" East along the Section line 447.50 feet and South 89°49'13" East 50.00 feet from the West Quarter Corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°08'51" East 71.00 feet; thence South 89°49'13" East 669.22 feet; thence North 0°10'47" East 12.00 feet to a point of a 787.50 foot radius curve to the left, the chord of which bears North 72°37'45" East; thence Easterly along the arc of said curve and through a central angle of 35°06'03" a distance of 482.44 feet to a point of tangency; thence North 55°04'44" East 161.13 feet to a point of a 257.50 foot radius curve to the right, the chord of which bears South 81°12'57" East; thence Easterly along the arc of said curve and through a central angle of 87°24'39" a distance of 392.84 feet to a point of tangency; thence South 37°30'37" East 388.28 feet to a point of a 282.50 foot radius curve to the left, the chord of which bears South 57°30'40" East; thence Southeasterly along the arc of said curve and through a central angle of 40°00'07" a distance of 197.23 feet to a point of tangency; thence South 77°30'44" East 203.08 feet; thence South 35°38'28" East 52.78 feet to the West right-of-way line of 3000 East Street; thence South 12°27'22" West along said West line 71.77 feet; thence North 77°30'44" West 147.86 feet to a point of a 693.16 foot radius curve to the right, the chord of which bears North 71°09'19" West; thence Northwesterly along the arc of curve and through a central angle of 13°28'28" a distance of 163.01 feet to a point of a compound curve to the right, the radius point of which is North 22°43'23" East 377.50 feet; thence Northwesterly along the arc of said curve and through a central angle of 29°46' a distance of 196.12 feet to a point of tangency; thence North 37°30'37" West 388.28 feet to a point of a 162.50 foot radius curve to the left, the chord of which bears North 81°12'57" West; thence Westerly along the arc of said curve and through a central angle of 87°24'39" a distance of 247.91 feet to a point of tangency; thence South 55°04'44" West 161.13 feet to a point of a 882.50 foot radius curve to the right, the chord of which bears South 72°37'45" West; thence Westerly along the arc of said curve and through a central angle of 35°06'03" a distance of 540.64 feet to a point of tangency; thence North 89°49'13" West 441.91 feet; thence North 0°10'47" East 12.00 feet; thence North 89°49'13" West 227.27 feet to the point of BEGINNING.

MORGUARD REAL ESTATE INVESTMENT TRUST

Landlord

- and -

**ALLIANCE DATA L.P.
by its general partner ENLOGIX INC.**

Tenant

- and -

ALLIANCE DATA SYSTEMS CORP.

Indemnifier

**LEASE OF OFFICE SPACE
MULTI-TENANT OFFICE PROJECT**

LEASED PREMISES:

**200 Yorkland Boulevard
Suites 1000 and 1100
Toronto, Ontario
M2J 5C1**

MORGUARD February 2005 - Net Office, Multi-Tenant (General Application)

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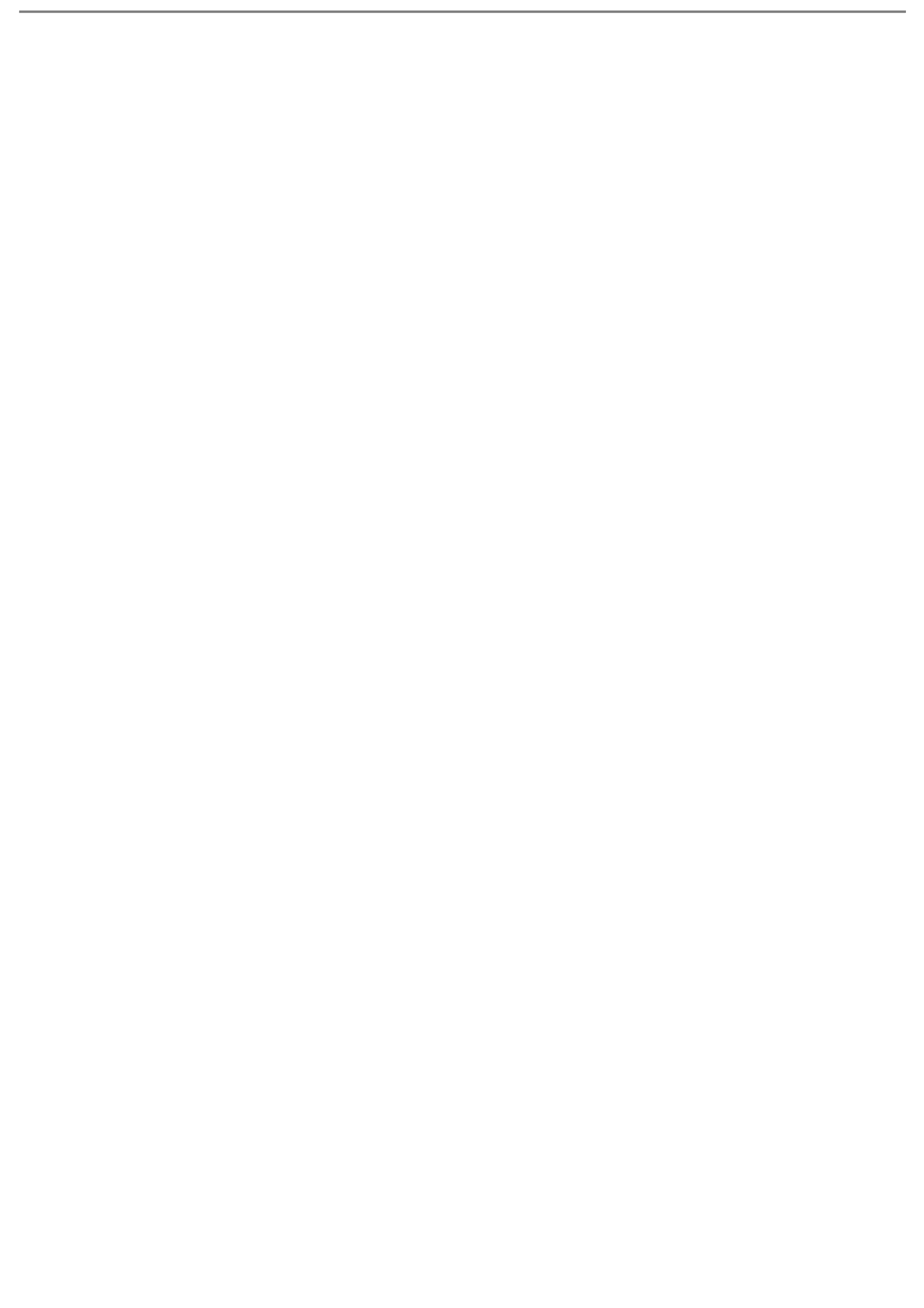
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PAGE 1 OF TERM SHEET — FORMING PART OF LEASE OF OFFICE SPACE — MULTI-TENANT

1. (a) LANDLORD: MORGUARD REAL ESTATE INVESTMENT TRUST

ADDRESS: 55 City Centre Drive
Suite 800
Mississauga, ON L5B 1M3

c/o Morguard Investments Limited

TELEPHONE: 905.281.3800
FAX NUMBER: 905.281.4826

Attention: Vice-President, Property Management, Office/Industrial, Eastern Canada

(b) LANDLORD'S HEAD OFFICE:

c/o Morguard Investments Limited
800 – 55 City Centre Drive
Mississauga, ON L5B 1M3

TELEPHONE: 905.281.3800
FAX NUMBER: 905.281.1800

Attention: President

(c) Landlord's "Environmental Contact": Operations Manager

(d) The Landlord covenants, warrants and represents to the Tenant that Morguard Realty Holdings Inc. holds registered title to the Project as nominee of the Landlord.

2. TENANT (legal name): ALLIANCE DATA L.P. by its general partner, ENLOGIX INC.

ADDRESS:
200 Yorkland Boulevard
Suite 1000 and 1100
Toronto, ON M2J 5C1

TELEPHONE: 416-496-5299

Attention: Peter Hazelwood

TENANT'S HEAD OFFICE:

Same as above.

3. PROJECT NAME: 200 Yorkland Boulevard

MUNICIPAL ADDRESS OF PROJECT: 200 Yorkland Boulevard, Toronto, Ontario

4. LEASED PREMISES:

Attached as Schedule A to this Lease is a plan of the Project showing the Leased Premises by hatching. The Leased Premises are comprised of the 10th and 11th floors of the Building and are designated as unit(s) 1000 and 1100.

5. RENTABLE AREA OF LEASED PREMISES:

The Rentable Area of the Leased Premises has been calculated by the Landlord's architect or surveyor in accordance with the BOMA ANSI standards ANSI Z65.1-1980, reaffirmed 1989 (the "BOMA Standard"), and is deemed, for the purposes of this Lease, to be 27,599 square feet for the Term and any extension and renewal periods.

6. (a) SECURITY DEPOSIT: \$NIL

(b) OTHER DEPOSIT: \$NIL

<u>Initials</u>	
<u>Landlord</u>	<u>Tenant</u>

PAGE 2 OF TERM SHEET — FORMING PART OF LEASE OF OFFICE SPACE — MULTI-TENANT

7. TERM: 7 years, 0 months, 0 days.

(a) FIRST DAY OF TERM: January 1, 2006

(b) LAST DAY OF TERM: December 31, 2012

8. BASIC RENT:

From: January 1, 2006 to December 31, 2008 \$331,188.00 per annum \$27,599.00 per mo. calculated at a rate of \$12.00 per square foot per annum of the Rentable Area of the Leased Premises

From: January 1, 2009 to December 31, 2010 \$344,987.52 per annum \$28,748.96 per mo. calculated at a rate of \$12.50 per square foot per annum of the Rentable Area of the Leased Premises.

From: January 1, 2011 to December 31, 2012 \$386,386.00 per annum \$32,198.83 per mo. calculated at a rate of \$14.00 per square foot per annum of the Rentable Area of the Leased Premises.

9. USE OF LEASED PREMISES:

The Leased Premises may be used and occupied for the purpose of general business offices including, without limitation, for the business of providing processing, transaction and marketing services, and as a call centre, and any other use permitted by the applicable by-laws covering the Leased Premises, and first approved by the Landlord and for no other purpose. The Leased Premises shall not be used for any use prohibited by Article 5.00 or Section 9.05. The Tenant's use in the Leased Premises as a call centre shall be limited to the extent that the number of employees shall be the lesser of 100 employees per floor and that number of employees per floor as determined by any governmental building or fire regulations.

10. ENVIRONMENTAL ISSUES:

LEASE SECTION 9.05:	Applies <input checked="" type="checkbox"/>	Does not apply <input type="checkbox"/>
RIDER 1 (SECTION 9.05):	Applies <input type="checkbox"/>	Does not apply <input checked="" type="checkbox"/>

11. INDEMNIFIER: ALLIANCE DATA SYSTEMS CORP.

TELEPHONE: (972) 348-4442

ADDRESS:
17655 Waterview Parkway
Dallas, Texas 75252

Attention: General Counsel

Additional Covenants, Agreements and Conditions (if any) listed here are more particularly set out in Schedule E.

1. AREA MEASUREMENT
2. LEASEHOLD IMPROVEMENT ALLOWANCE
3. TENANT'S WORK
4. WORKING DRAWINGS
5. PERMITS AND APPROVALS
6. RIGHT TO ASSIGN OR SUBLET
7. ROOF MOUNTED COMMUNICATION EQUIPMENT
8. SIGNAGE
9. RESTORATION

<u>Initials</u>	
<u>Landlord</u>	<u>Tenant</u>

PAGE 3 OF TERM SHEET — FORMING PART OF LEASE OF OFFICE SPACE — MULTI-TENANT

10. OPTION TO EXTEND
11. OPTION TO EXPAND
12. PARKING
13. SALE AND DEMOLITION
14. NO REQUIREMENT TO OCCUPY
15. NON-DISTURBANCE AGREEMENT
16. ENVIRONMENTAL
17. CASH INDUCEMENT
18. ACTING REASONABLY
19. 2005 OPERATING COST ESTIMATE
20. GERMANE POLLUTANTS

<u>Initials</u>	
<u>Landlord</u>	<u>Tenant</u>

LEASE OF OFFICE SPACE
MULTI-TENANT OFFICE BUILDING

THIS LEASE is made as of the 19th day of December, 2005.

BETWEEN:

MORGUARD REAL ESTATE INVESTMENT TRUST

(the "Landlord")

AND:

ALLIANCE DATA L.P.

a limited partnership organized under the laws of the Province of Alberta, by its general partner ENLOGIX INC., a company incorporated under the laws of Canada

(the "Tenant")

AND:

ALLIANCE DATA SYSTEMS CORP.

a company incorporated under the laws of the State of Delaware, one of the United States of America

(the "Indemnifier")

IN CONSIDERATION of the mutual covenants contained herein, the parties hereby agree as follows:

ARTICLE 1.00 — DEFINITIONS

1.01 Definitions — In this Lease the terms defined in Schedule B shall have the meanings designated therein respectively.

ARTICLE 2.00 — GRANT OF LEASE AND GENERAL COVENANTS

2.01 Grant — The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the Leased Premises, to have and to hold during the Term, subject to the terms and conditions of this Lease.

2.02 Landlord's General Covenants — The Landlord covenants with the Tenant:

- (a) subject to the provisions of this Lease, for quiet enjoyment of the Leased Premises so long as the Tenant shall observe and perform all of the covenants and obligations of the Tenant herein; and
- (b) to observe and perform all the covenants and obligations of the Landlord herein.

2.03 Tenant's General Covenants — The Tenant covenants with the Landlord:

- (a) to pay Rent without any deduction, abatement or set-off whatsoever except as is otherwise provided for in this Lease; and
- (b) to observe and perform all the covenants and obligations of the Tenant herein.

MORGUARD February 2005 - Net Office, Multi-Tenant (General Application)

Page 3

ARTICLE 3.00 — TERM AND POSSESSION

3.01 Term — The Term of this Lease shall begin on the Commencement Date and end on the date set out in Item 7(b) of the Term Sheet unless terminated earlier as provided in this Lease.

3.02 Acceptance of Leased Premises — Taking possession of all or any portion of the Leased Premises by the Tenant shall be conclusive evidence as against the Tenant that the Leased Premises or such portion thereof and the Common Elements are in satisfactory condition on the date of taking possession, subject only to latent defects and to deficiencies (if any) listed in writing in a notice delivered by the Tenant to the Landlord not more than 10 days after the date of taking possession and further subject to completion by the Landlord of the Landlord's Work set out in this Lease and the Landlord's maintenance, repair and replacement obligations specifically set out in this Lease.

ARTICLE 4.00 — RENT

4.01 Rent — The Tenant shall pay to the Landlord as Rent for the Leased Premises the aggregate of:

- (a) Basic Rent in respect of each year of the Term, payable in advance and without notice or demand in monthly instalments as set out in Item 8 of the Term Sheet commencing on the Commencement Date and on the first day of each calendar month thereafter during the Term;
- (b) the Tenant's Proportionate Share of Operating Costs and the Tenant's Proportionate Share of Taxes, during the Term, in each case payable in monthly instalments at the times and in the manner provided in Section 4.06; and
- (c) all amounts (other than payments under Subsections 4.01 (a) and (b)) payable by the Tenant to the Landlord under this Lease, at the times and in the manner provided in this Lease or, if not so provided, as reasonably required by the Landlord.

4.02 Intent — It is the stated purpose and intent of the Landlord and the Tenant that this Lease and the Rent shall be fully net to the Landlord, except as is otherwise provided for in this Lease.

4.03 Payment of Rent — General — All amounts payable by the Tenant to the Landlord pursuant to this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent in the manner herein provided and the Landlord shall have all rights against the Tenant for default in any such payment as in the case of arrears of Rent. Rent shall be paid to the Landlord in lawful money of Canada, without deduction, abatement or set-off except as is otherwise provided for in this Lease, at the local address of the Landlord set out in Item 1 of the Term Sheet or to such other Person or such other address as the Landlord may from time to time designate in writing. The Tenant's obligation to pay Rent and the Landlord's obligation to refund any overpayments of Rent shall survive the expiration or earlier termination of this Lease. Any Rent or other sum received or accepted by the Landlord and paid by anyone other than the Tenant, on behalf of the Tenant, shall not release or in any way affect the covenants of the Tenant set out in this Lease and shall not be deemed to constitute or evidence the Landlord's consent to a Transfer under Article 12.00. Any Rent or other sum received by the Landlord from or for the account of the Tenant while the Tenant is in default under this Lease may be applied at the Landlord's option to the satisfaction in whole or in part of any of the obligations of the Tenant then due under this Lease in such manner as the Landlord sees fit regardless of any designation or instruction of the Tenant to the contrary.

4.04 Partial Month — If the Commencement Date is a day other than the first day of a calendar month, or if the Term ends on any day other than the last day of a calendar month, Rent for the fractions of a month at the beginning and at the end of the Term shall be adjusted *pro rata* on a *per diem* basis.

4.05 Payment of Tenant's Occupancy Costs

(1) Estimate and Payment

- (a) The Landlord shall deliver to the Tenant a written estimate or a written revised estimate of: (i) the Tenant's Proportionate Share of Operating Costs for each Fiscal Year; and (ii) the Tenant's Proportionate Share of Taxes for each Fiscal Year. The Tenant shall pay to the Landlord the amount so estimated in equal monthly instalments (except as otherwise required in this Section 4.06 with respect to Taxes) in advance over that Fiscal Year simultaneously with the Tenant's payments on account of Basic Rent. If the Landlord does not deliver to the Tenant such an estimate, the Tenant shall continue to pay the Tenant's Proportionate Share of Operating Costs and the Tenant's Proportionate Share of Taxes

based on the last such estimate delivered by the Landlord until a further estimate is delivered by the Landlord and the next payment on account of the Tenant's Operating Costs or Taxes shall be adjusted to take into account any over or under payment in the preceding instalments paid in the Fiscal Year to which the estimate or revised estimate relates. Notwithstanding the foregoing, as soon as bills for all or any portion of amounts included in Operating Costs and Taxes as so estimated are received, the Landlord may bill the Tenant for the Tenant's Proportionate Share thereof and the Tenant shall pay the Landlord such amounts so billed (less all amounts previously paid on account by the Tenant on the basis of the Landlord's estimate as aforesaid) as Rent within 5 days following demand therefor.

- (b) Within 120 days after the date in each calendar year when the final instalment of Property Taxes is due in respect of commercial properties generally in the municipality in which the Project is located (the "Final Payment Date"), the Landlord shall deliver a statement (the "Tax Statement") to the Tenant that: (i) specifies the Tenant's Proportionate Share of Taxes for the Property Tax Year; and (ii) sets out the total (the "Prepayment Total") of amounts payable under this Subsection 4.06(1)(b) that have been paid by the Tenant between the Final Payment Date in the previous Property Tax Year and the Final Payment Date of the current Property Tax Year. If requested by the Tenant, the Landlord will provide the Tenant with access to its tax assessments and tax bills for the purposes of determining the amount of Taxes for the relevant Property Tax Year. If the Prepayment Total, less any amounts that were previously credited to the Tenant, and any amounts paid for arrears in respect of previous Property Tax Years, (the "Net Prepayment Total") is less than the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Tenant shall pay the deficiency with the next monthly payment of Basic Rent. If the Net Prepayment Total exceeds the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Landlord shall, unless the Tenant is then in default under this Lease, notice of which has been delivered to the Tenant, credit the excess to the Tenant on account of the next succeeding payments of the Tenant's Occupancy Costs. The Landlord may estimate Taxes for the Property Tax Year following the then current Property Tax Year and the Tenant shall continue after the Final Payment Date to make monthly payments in advance, in amounts determined by the Landlord, for periods determined by the Landlord. The monthly payments paid by the Tenant after the Final Payment Date shall be credited against the Tenant's Proportionate Share of Taxes for the subsequent Property Tax Year.
- (c) Any portion of the Tenant's Proportionate Share of Taxes accrued with respect to the Term or any part thereof paid by the Landlord prior to the Commencement Date shall be reimbursed by the Tenant to the Landlord on the Commencement Date or on demand thereafter. Subject to Sections 8.03 and 8.05, the Tenant shall pay the Tenant's Proportionate Share of any Taxes or the Landlord's reasonable estimate thereof monthly in advance in the same manner as for payment of the Tenant's Proportionate Share of Operating Costs.

Notwithstanding the foregoing, the Landlord shall always have the right:

- (i) to revise the amount of instalments on account of Taxes payable by the Tenant to an amount that allows the Landlord to collect all Taxes payable by the Tenant by the final due date of Taxes for the calendar year; and/or
- (ii) to schedule and require payment by the Tenant of instalments on account of Taxes payable by the Tenant such that by the final due date of Property Taxes for any calendar year, the Tenant shall have paid to the Landlord the full amount of Taxes payable by the Tenant for such calendar year.

(2) Annual Statement and Adjustment - The Landlord shall deliver to the Tenant within 120 days after the end of each Fiscal Year prepared by or for the Landlord, a written statement of its auditors (who shall be a firm of independent chartered accountants), setting out in reasonable detail the amount of the Tenant's Proportionate Share of Operating Costs for such Fiscal Year. If requested by the Tenant, the Landlord shall provide the Tenant with access to its financial records for the purpose of determining the amount of Operating Costs payable by the Tenant for the relevant Fiscal Year. If the total of monthly instalments of the Tenant's Proportionate Share of Operating Costs actually paid by the Tenant to the Landlord during that Fiscal Year differs from the amount of the Tenant's Proportionate Share of Operating Costs payable for that Fiscal Year under Subsection 4.01(b), the Tenant shall pay to the Landlord or, if the Tenant is not in default notice of which has been delivered to the Tenant, the Landlord shall credit to the Tenant on account of the next succeeding payments of the Tenant's Operating Costs and Taxes, as the case may be, the difference, without interest, within 30 days after the date of delivery of the statement.

(3) Disputes - If the Tenant disputes the Landlord's auditors' statement setting out Operating Costs or the Tax Statement for any Fiscal Year or Property Tax Year, as the case may be, the Tenant shall provide notice thereof in writing to the Landlord within 180 days of delivery of the applicable statement in respect of that Fiscal Year or Property Tax Year, as the case may be. Notwithstanding delivery of such notice, the Tenant shall continue to pay Rent in accordance with

the terms of this Lease. In the event of a dispute, the determination of the Tenant's Proportionate Share of Operating Costs or the Tenant's Proportionate Share of Taxes as made by the Landlord's auditors shall be conclusive and binding upon both the Landlord and the Tenant unless manifest error is demonstrated. All costs of obtaining such determination shall be included in Operating Costs; provided that if the Landlord's auditors confirm the Landlord's calculations within a variance of 3%, the Tenant shall be solely responsible for the entire cost of such determination and shall pay such costs to the Landlord forthwith upon demand. If the Tenant and any one or more of the other tenants in the Project are responsible to pay such costs, the Tenant shall be jointly and severally liable with such other tenant or tenants.

4.06 Resolution of Disputes — In the event of any disagreement as to the amount or propriety of any amount included in Operating Costs, a certificate of the external auditor of the Landlord, acting reasonably, shall be conclusive as to the amount of Operating Costs for any period to which such certificate relates unless manifest error is demonstrated.

4.07 Area Determination — The Landlord and the Tenant agree that the Rentable Area of the Leased Premises has been measured by the Landlord's architect or surveyor in accordance with the BOMA Standard and is deemed for the purposes of this Lease to be 27,599 square feet for the Term and any extension and renewal periods thereof and that the Tenant shall be required to pay Rent based on this area. The Landlord may from time to time, as it deems necessary, cause the Rentable Area of the Leased Premises and the Total Rentable Area of the Building or any part thereof to be recalculated or remeasured and the cost thereof except for the Leased Premises shall be included in Operating Costs (except as otherwise provided in this Section 4.08 and in Section 1 of Schedule E of this Lease). Upon any such recalculation or remeasurement, Rent (including without limitation Basic Rent) shall be adjusted accordingly. If any calculation or determination by the Landlord of the Rentable Area of any premises (including the Leased Premises) is disputed or called into question by the Tenant, it shall be calculated or determined by the Landlord's independent and duly qualified architect or surveyor from time to time appointed for that purpose, whose certificate shall be conclusive and binding upon the parties hereto unless manifest error is demonstrated. The cost of such calculation or determination shall subject to Section 1 of Schedule E of this Lease be included in Operating Costs; provided that if the Tenant disputes the Landlord's calculation or determination and the calculation or determination by the Landlord's architect or surveyor agrees with the Landlord's calculation or determination within a 2% variance, the Tenant shall pay the full cost of such calculation or determination forthwith upon demand. If the Tenant and any one or more of the other tenants in the Project are responsible to pay such costs, the Tenant shall be jointly and severally liable with such other tenant or tenants.

If any error shall be found in the calculation of the Rentable Area of the Leased Premises or in the calculation of the Tenant's Proportionate Share, Rent (including without limitation Basic Rent) shall be adjusted for the Fiscal Year in which the error is discovered and for the Fiscal Year preceding the Fiscal Year in which the error was discovered, if any, and thereafter, but not for any prior period.

Notwithstanding the foregoing, so long as the Leased Premises comprise full floors in the Building, the Landlord shall not be entitled to recalculate or remeasure the Rentable Area of same in accordance with this Section 4.08.

4.08 Vacancy — If any part of the Building available for leasing is not occupied, the Landlord shall have the right, in respect of amounts forming part of Operating Costs which vary proportionately with occupancy, to include in Operating Costs a larger amount of costs, which larger amount shall be based on a reasonable estimate of the actual cost which would have been incurred if the unoccupied parts of the Building available for leasing were occupied, it being intended hereby that the Landlord shall obtain, to the extent reasonably possible, full reimbursement of Operating Costs attributable to or in respect of occupied premises, and not that: (i) the Tenant shall subsidize Operating Costs incurred by the Landlord attributable to or in respect of vacant premises; or (ii) the Landlord shall recover more than actual Operating Costs.

ARTICLE 5.00 — USE AND OCCUPATION

5.01 Use of Leased Premises — The Tenant may use and occupy the Leased Premises only for the purposes set out in Item 9 of the Term Sheet and shall not use or permit the Leased Premises or any part thereof to be used or occupied for any other purpose or business except as otherwise expressly permitted under this Lease or by any Person other than the Tenant except as otherwise provided for in Article 12.00. The Tenant shall be responsible for obtaining at its expense all necessary approvals, licences and permits, including but not limited to zoning, development, building, occupancy and business approvals, licences and permits, for its intended use of the Leased Premises and shall submit all applications for such approvals, licences and permits to the Landlord for its consent (which consent, may not be unreasonably withheld by the Landlord) prior to making application. Notwithstanding the Landlord's consent to an application, the Tenant shall indemnify and defend the Landlord and hold it harmless from and against any and all Claims incurred or suffered by the Landlord directly or indirectly arising out of the Tenant's application for

such approvals, licences or permits or the resulting approvals, licences and permits with respect to the use, intended or otherwise, of the Leased Premises whether such Claims are in respect of the Leased Premises or in respect of the Building or the Project. The Landlord makes no representation whether or not necessary approvals can be obtained for the Tenant's use or intended use. The Landlord makes no representation or warranty, express or implied, that the present or future use of the Leased Premises, if such use is anything other than office use, is legally fit for the intended use, or complies with any law, by-law or regulation governing the use of the Leased Premises.

5.02 Compliance with Laws — The Tenant shall promptly and at its own cost comply with all present and future laws, regulations and orders relating to, and obtain and maintain in force all approvals, permits, licences and registrations required for, any of the following:

- (a) the occupation or use of and the conduct of any business in or from the Leased Premises;
- (b) the condition of the Leasehold Improvements, fixtures, furniture and equipment installed therein;
- (c) Pollutants and the protection of the environment so far as those laws, regulations and orders or any of them relate to the Leased Premises; and
- (d) the making by the Tenant of any repairs, changes or improvements in or to the Leased Premises;

and the Tenant shall immediately give written notice to the Landlord of the occurrence of any event in the Leased Premises constituting an offence thereunder or being in breach thereof and if the Tenant shall, either alone or with others, cause the happening of any such event, the Tenant shall immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the foregoing provisions of this Section.

The Tenant agrees that if the Landlord determines in its sole discretion that the Landlord, its property, its reputation or the Leased Premises or any one or more of the foregoing is placed in any jeopardy, as determined by the Landlord, by the requirements for any work required to ensure compliance with the foregoing provisions of this Section 5.02, or the Tenant is unable to fulfil its obligations under this Section, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant.

The Tenant shall, at its own expense, remedy any damage to the Leased Premises caused by such event or work or by the performance of the Tenant's obligations under this Section.

If alterations or improvements to the Leasehold Improvements or to the Leased Premises are necessary to comply with any of the foregoing provisions of this Section or with the requirements of insurance carriers, the Tenant shall forthwith complete such work, complying always with the applicable provisions of this Lease, to the extent that it can be done within the Leased Premises and in any event shall pay the entire cost of alterations and improvements so required.

Notwithstanding anything contained herein to the contrary, the Landlord shall be responsible at its sole cost and expense and to the complete exoneration of the Tenant for remedying any work done by it in the Leased Premises during the Term, which has not been done in compliance with the requirements of any applicable laws, regulations or orders applicable to any such work. In addition, the Landlord shall be responsible at its sole cost and expense to make all repairs and replacements to the Leased Premises which are required as a result of any present or future laws, regulations or orders which are of a general application as opposed to a result of the specific use of the Leased Premises by the Tenant.

5.03 Prohibited Uses — The Tenant shall not commit, cause or permit any nuisance in or about or any damage to the Leased Premises or any part thereof, the Building, the Project or any of the Leasehold Improvements or goods or fixtures therein, any overloading of the floors of the Leased Premises or any use or manner of use causing annoyance to other tenants or occupants of the Project. Without limiting the generality of the foregoing, the Tenant shall not use or permit the use of any portion of the Leased Premises for any dangerous, illegal, noxious, odorous or offensive trade, business or occurrence. The Tenant shall keep the Leased Premises free of debris, Pollutants and anything of a dangerous, noxious, odorous or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or vibration, heat, odour or noise detectable outside the Leased Premises in the sole discretion of the Landlord. The Tenant shall not use equipment in the Leased Premises in a manner that results in its being seen or heard outside the Leased Premises. The Landlord acknowledges and agrees that the permitted use of the Leased Premises set out in Item 9 of the Term Sheet shall be deemed not to constitute a default by the Tenant under the provisions of this Section 5.03.

5.04 Common Elements — The Tenant and its employees and invitees shall be entitled to use, in common with others entitled thereto, for purposes for which they are intended 24 hours a day, 7

days a week, the Common Elements. The Tenant and its employees and invitees shall not obstruct the Common Elements or use the Common Elements other than for their intended purposes and then only in accordance with the rules and regulations set by the Landlord from time to time.

5.05 Hazardous Use — The Tenant shall not do, omit to do or permit to be done anything other than the permitted use of the Leased Premises as set out in Item 9 of the Term Sheet which will cause or may have the effect of causing the cost of the Landlord's insurance in respect of the Project or any part thereof to be increased at any time during the Term or any policy of insurance on or relating to the Project to be subject to cancellation. Without waiving or limiting the foregoing prohibition, the Landlord may demand and the Tenant shall pay to the Landlord upon demand, the amount of any increase in the cost of insurance caused by anything so done or omitted or permitted to be done other than the permitted use of the Leased Premises as set out in Item 9 of the Term Sheet. The Tenant shall forthwith upon the Landlord's request comply with the requirements of the Landlord's insurers, cease any activity complained of other than the permitted use of the Leased Premises as set out in Item 9 of the Term Sheet and make good any circumstance which has caused any increase in insurance premiums or the cancellation or threatened cancellation of any insurance policy. In determining the amount of increased premiums for which the Tenant is responsible, a schedule or statement issued by the Person who computes the insurance rates for the Landlord showing the components of the rate shall be conclusive evidence of the items that make up the rate unless manifest error is demonstrated. If any policy of insurance in respect of the Project or any part thereof is cancelled or becomes subject to cancellation by reason of anything so done or omitted or permitted to be done, other than the permitted use of the Leased Premises as set out in Item 9 of the Term Sheet and in the event comparable replacement insurance is not available, the Landlord may without prior notice terminate this Lease and re-enter the Leased Premises.

5.06 Tenant's Security Interest — The Tenant shall not, without the Landlord's prior written consent, create a security interest in Leasehold Improvements installed by the Tenant or the Landlord in the Leased Premises.

5.07 Rules and Regulations — The Tenant shall observe and cause its employees, servants, agents, invitees, customers, subtenants, licensees and others over whom the Tenant can reasonably be expected to exercise control to observe the rules and regulations attached as Schedule C hereto and such further and other reasonable rules and regulations and amendments and additions thereto as may be made by the Landlord and notified to the Tenant by mailing a copy thereof to the Tenant or by posting same in a conspicuous place in the Building. All such rules and regulations now or hereafter in force shall be read as forming part of this Lease; provided that if there is a conflict between the rules and regulations and this Lease, the terms of this Lease shall prevail. The Landlord shall not be responsible to the Tenant for the non-observance of any rule or regulation or the terms of any lease or agreement to lease by any other tenant of the Project. Such rules and regulations as amended shall not be promulgated or enforced in an arbitrary or discriminatory manner as against the Tenant.

5.08 Permitted Signs — Subject to Section 8 of Schedule E of this Lease, the Tenant shall use only such identification signs as are prescribed by the Landlord from time to time and as comply with all applicable by-laws, regulations and codes as to size, location, arrangement, type of lettering, colour, appearance and design for uniform use by office tenants in the Building. Such signs shall contain only the name under which the Tenant carries on business.

5.09 Prohibited Signs — Except with the prior written consent of the Landlord, which consent may not be unreasonably withheld or delayed, or as provided in Section 5.08 and subject to Section 8 of Schedule E of this Lease, the Tenant shall not paint, display, inscribe, place or affix any sign, symbol, notice, advertisement, display or direction of any kind anywhere outside the Leased Premises or on the interior of any glass, windows or doors or elsewhere within the Leased Premises so as to be visible from the outside of the Leased Premises.

5.10 Window Coverings — Without the prior written consent of the Landlord, the Tenant shall not install any blinds, drapes, curtains or any other window coverings in the Leased Premises and shall not remove, add to or change the blinds, drapes, curtains or other window coverings installed by the Landlord from time to time. The Tenant shall keep all window coverings open or closed at various times as the Landlord may from time to time direct by the rules and regulations or otherwise.

5.11 Parking — Any Parking Facilities provided by the Landlord shall at all times be subject to the exclusive control and management of the Landlord or those whom the Landlord may designate from time to time. Subject to Section 12 of Schedule E of this Lease, the Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to any Parking Facilities and shall have the right from time to time:

- (a) to expand, reduce, or change the area, level, location and arrangement of the Parking Facilities and to construct any Parking Facilities;
- (b) to enforce parking charges with appropriate provisions for free parking ticket validating by tenants of the Building;

- (c) to temporarily close all or any portion of the Parking Facilities to such extent as may, in the Landlord's opinion, be legally sufficient to prevent a dedication thereof or the accrual of rights to any Person or the public;
- (d) to temporarily obstruct or close off all or any part of the Parking Facilities for the purpose of maintenance or repair; and
- (e) to do and perform such other acts in and to the Parking Facilities as, in the judgment of the Landlord, shall be advisable with a view to the improvement of the convenience of and use of the Building by tenants, their employees and invitees.

The Landlord will operate and maintain the Parking Facilities in such manner as the Landlord in its sole discretion shall determine from time to time, but in any event, in a manner as would a prudent owner of a similar building, of similar age, use and class in the area in which the Building is located and in accordance with all applicable governmental laws including, without limitation, Environmental Laws, by-laws and regulations. Without limiting the scope of such discretion, the Landlord shall have the sole right to employ all personnel and make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Parking Facilities. The Tenant shall participate in any free parking or other ticket validation system established by the Landlord and abide by all rules and regulations pertaining thereto and the Tenant shall pay to the Landlord monthly, together with payments on account of Basic Rent, all parking charges attributable to the Tenant as evidenced by parking tickets validated by the Tenant in accordance with any system established by the Landlord.

5.12 Authorization of Enquiries — The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or municipality or governmental or municipal agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the Tenant or the business conducted in the Leased Premises including, without limitation, laws and regulations pertaining to Pollutants and the protection of the environment; and the Tenant covenants and agrees that the Tenant shall from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

5.13 Records — The Tenant shall keep on the Leased Premises or at the Tenant's head office complete records as required by Environmental Laws of all goods stored on, or processed, manufactured, packaged or used in any process in the Leased Premises by the Tenant and by any other occupant of the Leased Premises or any part thereof. The Landlord may examine such records upon reasonable notice to the Tenant and the Tenant shall provide extracts from or copies thereof relating to environmental matters only all as required by the Landlord from time to time. This requirement to maintain such records shall survive the expiry or earlier termination of the Term for the period required by Environmental Laws.

5.14 Overloading — The Tenant shall not install or permit the installation of equipment or storage of items that, in the opinion of the Landlord's independent and duly qualified engineer, overloads the capacity of any utility or of any electrical or mechanical facility in the Project or which may exceed the load-bearing capacity of the floors of the Project. If damage is caused to the Leased Premises or to the Project as a result of any installation in contravention of this Section, the Tenant shall repair the damage or, at the Landlord's option, pay to the Landlord on demand the cost of repairing the damage incurred by the Landlord.

5.15 Telecommunications

(1) The Tenant may utilize a telecommunication service provider of its choice with the Landlord's prior written consent, which consent shall not be unreasonably withheld, subject to the provisions of this Lease, including but not limited to the following:

- (a) prior to commencing any work in the Project, the service provider shall execute and deliver the Landlord's standard form of licence agreement, which shall include a provision for the Landlord to receive compensation for the use of the space for the service provider's equipment and materials;
- (b) the Landlord shall incur no expense or liability whatsoever with respect to any aspect of the provision of telecommunication services, including without limitation, the cost of installation, service, materials, repairs, maintenance, removal, interruption or loss of telecommunication service;
- (c) the Landlord must first reasonably determine that there is sufficient space in the risers of the Building for the installation of the service provider's wiring and cross connect; and
- (d) the Tenant hereby releases the Landlord from all Claims incurred by the Tenant, caused by or arising out of, either directly or indirectly, any acts or omissions by the service provider or the Tenant or those for whom either of them is responsible at law with respect to such telecommunication services.

(2) The Tenant shall be responsible for the costs associated with the supply and installation of telephone, computer and other communication equipment and systems and related wiring within the Leased Premises to the boundary of the Leased Premises for hook up or other integration with telephone and other communication equipment and systems of a telephone or other communication service provider, which equipment and systems of the service provider are located or are to be located in the Building pursuant to the Landlord's standard form of licence agreement and, subject to the provisions of Section 14.01, for the removal of same.

(3) The Landlord shall supply space in risers in the Building and space on floor(s) of the Building in which the Leased Premises are located, the location of which shall be designated by the Landlord in its discretion, to telecommunication service providers who have entered into the Landlord's standard form of licence agreement for the purpose, without any cost or expense to the Landlord therefor, of permitting installation in such risers and on such floor(s) of telephone and other communication services and systems (including data cable patch panels) to the Leased Premises at a point designated by the Landlord.

(4) The Landlord shall have the right to assume control of wiring, cables and other telecommunication equipment in the Building and may designate them as part of the Common Elements.

ARTICLE 6.00 SERVICES, MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD

6.01 Operation of Project — During the Term the Landlord shall operate, maintain and repair the Project in accordance with all applicable governmental laws including, without limitation, Environmental Laws, bylaws and regulations and as would a prudent owner of a similar building, of similar age, use and class in the area in which the Building is located, and shall provide the Services set out in this Article 6.00; provided that the Landlord shall not be responsible for operating, maintaining, repairing or replacing any systems, facilities or equipment to the extent that the operation, maintenance, repair or replacement thereof are specifically stated in this Lease to be the responsibility of the Tenant.

6.02 Building Services and Facilities — The Landlord shall provide:

- (a) washrooms accessible to the Leased Premises for the use of the Tenant, its employees and invitees in common with other persons entitled thereto;
- (b) domestic running water to the building standard washrooms in the Leased Premises, if any, and to washrooms available for the Tenant's use in common with others entitled thereto;
- (c) access to and egress from the Leased Premises for use by the Tenant, its employees and invitees in common with other persons entitled thereto, provided that the Landlord may restrict access for security purposes or require that all persons seeking access produce identification;
- (d) heating, ventilation and air conditioning to the Building, including the Leased Premises, to a level sufficient to maintain therein conditions of reasonable temperature and comfort provided that, unless otherwise agreed by the parties, a full standard of interior climate control shall only be maintained during those hours and on those days established from time to time by the Landlord as being operating periods for the Building which operating periods currently are 7:00 a.m. to 6:00 p.m. Monday to Friday (except statutory and public holidays), having reasonable regard to energy conservation;
- (e) lighting and electrical power to the Common Elements as reasonably required;
- (f) electrical power to the Leased Premises for lighting and for standard office equipment capable of operating from the voltage circuits available and then standard for the Building;
- (g) janitorial services to the Leased Premises and Common Elements to a standard consistent from time to time with similar buildings, of similar age, use and class, in the area in which the Building is located;
- (h) a directory board located in the Common Elements providing identification of the tenants in the Building in such manner and containing such information as the Landlord may determine; and
- (i) subject to Section 5.15, appropriate ducts for bringing telephone services to the Leased Premises.

6.03 Maintenance, Repair and Replacement — Subject to the provisions of Article 10.00, the Landlord shall operate, maintain, repair and replace the systems, facilities and equipment necessary

for the proper operation of the Project and for provision of the Landlord's Services set out in Section 6.02 (except as may be installed by or be the property of the Tenant) all in accordance with all applicable governmental laws including, without limitation, Environmental Laws, by-laws, and regulations, and in a manner as would a prudent owner of a similar building, of similar age, use and class in the area in which the Building is located and shall maintain and repair the foundations, structure and roof of the Building and repair damage to the Building which the Landlord is obligated to insure against under Article 9.00 all in accordance with all applicable governmental laws including, without limitation, Environmental Laws, by-laws, and regulations and in a manner as would a prudent owner of a similar building, of similar age, use and class in the area in which the Building is located, provided that:

- (a) if and so long as all or part of the systems, facilities and equipment in the Project or the supply of utilities to the Project are destroyed, damaged or interrupted, the Landlord shall have a reasonable time within which to complete any necessary repair or replacement and, during that time, shall only be required to maintain such Services as are reasonably possible in the circumstances;
- (b) the Landlord may upon reasonable prior notice to the Tenant temporarily discontinue such Services or any of them at such times as may reasonably be necessary;
- (c) the Landlord shall use reasonable diligence in carrying out its obligations under this Section 6.03, but shall not be liable under any circumstances for any consequential damages, whether direct or indirect, to any Person or property resulting from any failure to do so;
- (d) no reduction or discontinuance of Services under this Section 6.03 shall be construed as a breach of the Landlord's covenant for quiet enjoyment or as an eviction of the Tenant or, except as specifically provided otherwise in this Lease, release the Tenant from any obligation under this Lease;
- (e) the Landlord shall not be liable under any circumstances for any damage caused by interruption or failure of any satellite, telecommunications system, utility, wiring, elevator or escalator;
- (f) the Landlord shall have no responsibility for any inadequacy of performance of any systems within the Leased Premises if the Leased Premises or the use thereof depart from the design criteria for such systems as established by the Landlord for the Building as previously provided to the Tenant; and
- (g) nothing contained herein shall derogate from the provisions of Article 10.00.

6.04 Alterations / Renovations by Landlord — During the Term or any renewal or extension thereof, it is understood and agreed that, if the Landlord intends to make changes, additions or improvements to or renovate the Project or any part thereof, of which the Leased Premises form a part (the "Renovation Work"), notwithstanding anything contained in this Lease to the contrary, the Landlord, its servants, agents, contractors and representatives may proceed with the Renovation Work without further consent or approval of the Tenant and the Tenant hereby irrevocably grants to the Landlord its consent to the carrying out of the Renovation Work; provided that the Renovation Work shall not materially interfere with or adversely affect access to and egress from the Leased Premises, and the business of the Tenant carried on in the Leased Premises. The Landlord shall proceed expeditiously with completion of the Renovation Work and to the extent reasonably possible in the circumstances shall attempt to minimize any material interference with the vista of the Tenant's exterior signage referred to in Section 8 of Schedule E of this Lease in the course of completing same. It is specifically understood and agreed that there shall be no compensation paid to the Tenant nor shall there be any abatement of Rent in connection with the Renovation Work. In exercising its rights pursuant to this Section 6.04, the Landlord shall be entitled to:

- (a) enter the Leased Premises from time to time to make changes or additions to the structure, systems, facilities and equipment in the Leased Premises where necessary to serve the Leased Premises or other parts of the Building;
- (b) limit from time to time as may be necessary by reason of the Renovation Work, ingress to and egress from the Leased Premises and/or the Project;
- (c) change, add to, diminish, demolish, dedicate for public purposes part or parts of, improve or alter any part of the Project not in or forming part of the Leased Premises; and
- (d) change, add to, diminish, improve or alter the location and extent of the Common Elements.

The Landlord agrees to use commercially reasonable efforts to give to the Tenant reasonable prior notice of its intention to proceed with the Renovation Work and the Tenant shall cooperate with the Landlord in order to allow the Renovation Work to be completed as expeditiously as possible. It is specifically agreed by the Landlord and the Tenant that the Landlord shall not, by reason of

exercising its rights pursuant to this Section 6.04, be in default or be deemed to be in default of any covenant or proviso contained in this Lease or at law. The Landlord shall at its sole cost and expense repair any damage done to the Leased Premises or its contents as a result of the exercise of any of its rights pursuant to this Section 6.04.

6.05 Access by Landlord — The Tenant shall permit the Landlord to enter the Leased Premises at any time in case of an emergency or a health related issue, either real or perceived, and otherwise during normal business hours where such entry will not unreasonably disturb or interfere with the Tenant's use of the Leased Premises or operation of its business, to: (i) examine, inspect and show the Leased Premises for purposes of leasing, sale or financing; (ii) provide Services or make repairs, replacements, changes or alterations as provided for in this Lease; or (iii) take such steps as the Landlord may deem necessary for the safety, improvement or preservation of the Leased Premises or the Project. The Tenant shall cooperate with the Landlord in any such showing of the Leased Premises. The Landlord shall, whenever possible, consult with or give reasonable prior notice to the Tenant prior to entry but no such entry shall constitute an eviction or a breach of the Landlord's covenant for quiet enjoyment or entitle the Tenant to any abatement of Rent. In the exercise of its rights pursuant to this Section 6.05, the Landlord shall not materially interfere with or adversely affect access to and egress from the Leased Premises and the business of the Tenant carried on in the Leased Premises and shall repair at its sole cost and expense any damage done to the Leased Premises or its contents as a result of the exercise by it of any of its rights pursuant to this Section 6.05.

6.06 Energy Conservation — The Landlord shall be deemed to have observed and performed its obligations under this Lease, including those relating to the provision of utilities and Services, if in so doing it acts in accordance with a directive, policy or request of an authority having jurisdiction in the field of energy conservation, security or environmental matters.

6.07 Supervision and Extended Services — The Landlord, if it shall from time to time so elect, shall have the right to supervise the moving of furniture or equipment of the Tenant and (in addition to supervising the Tenant's work as provided for in this Lease) to supervise the making of repairs conducted within the Leased Premises and the exclusive right to supervise or make deliveries to the Leased Premises. In addition, and by arrangement with the Tenant, the Landlord may provide extended cleaning or other services to the Tenant in addition to those normally supplied and referred to in this Lease. In each case, the Landlord's costs and expenses incurred with respect thereto together with a reasonable administration fee with respect to the items provided to the Tenant at its request shall except as is otherwise provided for in Section 3 of Schedule E of this Lease be paid to the Landlord by the Tenant from time to time promptly upon receipt of invoices from the Landlord.

6.08 Landlord's Work — The Tenant agrees that it has entered into this Lease on the express understanding that, unless otherwise specifically provided in Schedule D or Schedule E, the Leased Premises are being leased "as is" and that the Landlord's work in respect of the Leased Premises is limited to the scope delineated as Landlord's work in Schedule D. Provided it is understood and agreed that the Leasehold Improvements in place as of the Commencement Date shall remain for the use of the Tenant, all other improvements to the Leased Premises shall be performed at the sole expense of the Tenant in accordance with the terms of this Lease including, but not limited to, Section 7.04.

6.09 Control by Landlord — The Tenant agrees that the Landlord shall have control of the Project and, without limiting the generality of anything contained elsewhere in this Lease, the Landlord may make such use of the Common Elements and permit others to make such use of the Common Elements as the Landlord acting reasonably may from time to time determine subject, in the case of use by others, to such terms and conditions and for such consideration as the Landlord acting reasonably determine, provided that such uses do not materially adversely affect access to and egress from the Leased Premises and the business of the Tenant carried on in the Leased Premises and the Landlord may temporarily close all or any part or parts of the Project to such extent as may, in the opinion of the Landlord or any Consultants engaged by the Landlord in that regard, be legally sufficient to prevent a dedication thereof or the accrual of rights therein to any Person or the public.

ARTICLE 7.00 — PAYMENT FOR SERVICES AND MAINTENANCE, REPAIR AND ALTERATIONS BY TENANT

7.01 Utilities — In addition to the payment of the Tenant's Occupancy Costs and notwithstanding Sections 6.01 and 6.02, the Tenant shall be responsible for the cost of all utilities including electricity supplied to the Leased Premises. The Tenant shall not, without the prior written approval of the Landlord, install or cause to be installed in the Leased Premises any equipment that will require additional utility usage or any telecommunications lines and/or conduits which approval may be arbitrarily withheld in the event any such equipment will require additional utility usage or any telecommunication lines and/or conduits in excess of that normally required for office premises and/or would involve the diminution of the Landlord's ability to lease other premises in the Building. If, with the Landlord's approval, such additional equipment is installed, the Tenant shall be solely responsible for such excess utility usage. If utilities are supplied to the Tenant through a meter

common to other tenants in the Project (there being no obligation on the Landlord to install separate meters), the Landlord shall pay the cost of the utilities and apportion the cost *pro rata* among the tenants supplied through the common meter, based on all relevant factors including, but not limited to, the hours of use, number and types of lights and electrical equipment and the proportion of each tenant's Rentable Area to the Rentable Area of all tenants to which the common meter relates. Upon receipt of the Landlord's statement of apportionment, the Tenant shall promptly reimburse the Landlord for all amounts apportioned to the Tenant by the Landlord; provided that the Landlord may elect by notice to the Tenant to estimate the amount which will be apportioned to the Tenant and require the Tenant to pay that amount in monthly instalments in advance simultaneously with the Tenant's payments of Basic Rent. Notwithstanding the foregoing, and whether the Leased Premises are separately metered or not, the Landlord may purchase in bulk from the utility supplier the aggregate utility requirements of the Project at the applicable rates determined by a single meter on the Project and may, in billing the Tenant for its share of such utility, apply a scale of rates not greater than the current scale of rates at which the Tenant would from time to time be purchasing the whole of its utilities required and consumed in respect of the Leased Premises if the Tenant were purchasing directly from the utility supplier. The Landlord shall upon the Landlord's or Tenant's request install a separate check meter or meters in the Leased Premises at the Landlord's expense.

In addition to the payments to the Landlord required by this Article 7.00, the Tenant shall pay all rates, charges, costs and expenses as may be assessed or levied by any supplier of utilities to the Tenant other than those supplied by the Landlord.

7.02 Lights — In addition to the payment of the Tenant's Occupancy Costs and notwithstanding Sections 6.01 and 6.02, except to the extent the same is included in Operating Costs, the Tenant shall pay to the Landlord monthly in advance, with its payments of Basic Rent, a reasonable amount as determined by the Landlord in respect of replacement of building standard fluorescent tubes, light bulbs and ballasts in the Leased Premises on a periodic basis or as required from time to time and the costs of cleaning, maintaining and servicing of the electrical light fixtures in the Leased Premises.

7.03 Heating, Ventilation and Air Conditioning — In addition to the payment of the Tenant's Occupancy Costs and notwithstanding Sections 6.01 and 6.02, the Tenant shall be responsible for the cost of all heating, ventilation and air conditioning provided at the Tenant's request to the Leased Premises or any part thereof at times outside of the times required to be provided by the Landlord under Section 6.02(d). The Landlord shall at least once in each Fiscal Year deliver to the Tenant a statement in writing and in reasonable detail setting out the cost to the Tenant for the provision of such excess heating, ventilating and air conditioning for the Leased Premises, which cost shall be charged by the Landlord to the Tenant, at the same rate as it charges from time to time to other tenants in the Building for the provision of such excess heating, ventilation and air conditioning to their respective premises and the Tenant shall promptly reimburse the Landlord for the amount shown in the statement as attributable to the Leased Premises.

7.04 Alterations by Tenant — The Tenant may from time to time at its own expense make changes, additions and improvements to the Leased Premises to better adapt the same to its business, provided that any change, addition or improvement shall:

- (a) comply with the requirements of the Landlord's insurers and any governmental or municipal authority having jurisdiction;
- (b) be made only if, prior to preparation of any plans and specifications and prior to commencement of any work in the Leased Premises, including, without limiting the generality of the foregoing, any demolition, construction or alterations, the Tenant has determined through testing at its own cost and expense what Pollutants, if any, are present in the Leased Premises and, if the Tenant fails to do so, the Tenant acknowledges and agrees that it shall indemnify and hold harmless the Landlord from and against any and all Claims growing or arising out of the Tenant's failure to do so;
- (c) if the cost of such improvements are less than \$25,000.00 (increased by 3% compounded annually on each anniversary date of the Commencement Date) and do not affect the Leased Premises structurally, the Tenant may proceed with the improvements without the Landlord's prior written approval. If the cost of such improvements exceed \$25,000.00 as such amount may be increased as aforesaid, the Tenant may proceed with the improvements only after detailed plans and specifications therefor have been submitted to the Landlord and received the prior written approval of the Landlord, all at the expense of the Tenant, and should the Landlord provide its written approval, such approval shall not be deemed to mean that the proposed changes, additions or improvements comply with any existing or future municipal by-laws or any other applicable laws, by-laws, codes or requirements. All costs incurred with respect to such approval shall be at the expense of the Tenant. Any changes, additions and/or improvements affecting the Building's electrical, mechanical and/or structural components shall only be performed by contractors selected by the Landlord (the "Landlord's Contractors"). A list of the Landlord's Contractors is available upon request;

- (d) equal or exceed the then current standard for the Building;
- (e) be carried out in a good and workmanlike manner and, subject to Subsection 7.04(c), only by Persons selected by the Tenant and approved in writing by the Landlord who shall, if required by the Landlord, deliver to the Landlord before commencement of the work, performance and payment bonds as well as proof of workers' compensation and public liability and property damage insurance coverage, with the Landlord and the Landlord's Agent and nominee (if any) named as additional insureds, in amounts, with companies and in a form reasonably satisfactory to the Landlord, which shall remain in effect during the entire period in which the work will be carried out; and
- (f) be made only after the Tenant has provided to the Landlord evidence of all requisite permits and licences and any other information reasonably required by the Landlord.

Upon completion of such change, addition or improvement, the Tenant shall provide to the Landlord as-built drawings and/or a CAD disk of same in a format useable by the Landlord, together with evidence satisfactory to the Landlord of a final inspection of such change, addition or improvement (including inspection of mechanical and electrical systems where applicable) by the authority which issued the permit or licence for same.

7.05 Tenant's Trade Fixtures and Personal Property — The Tenant may install in the Leased Premises its usual trade fixtures and personal property in a proper manner; provided that no installation or repair shall interfere with or damage the mechanical or electrical systems or the structure of the Building. If the Tenant is not then in default hereunder, notice of which has been delivered to the Tenant, the trade fixtures and personal property installed in the Leased Premises by the Tenant may be removed by the Tenant from time to time in the ordinary course of the Tenant's business or in the course of reconstruction, renovation or alteration of the Leased Premises by the Tenant, or in the event the Tenant vacates all or any portion of the Leased Premises, and provided that the Tenant promptly repairs at its own expense any damage to the Leased Premises and the Building resulting from the installation and removal and provided further that in the event of removal of trade fixtures, except at the expiration or earlier termination of the Term, the Tenant shall unless such trade fixtures have become obsolete or are no longer required for the Tenant's business operations in the Leased Premises, promptly replace such trade fixtures with trade fixtures of equal or greater quality and value, subject to the provisions of Section 14.01.

7.06 Maintenance and Repair — Except to the extent that the Landlord is specifically responsible therefor under this Lease with the further exception of reasonable wear and tear, the Tenant, at its cost, shall maintain, repair and replace the interior of the Leased Premises, all Leasehold Improvements and all apparatus therein in good order and condition, and in compliance with the requirements of all authorities having jurisdiction, including without limitation:

- (a) keeping the Leased Premises and the immediate surrounding area in a clean and tidy condition and free of debris and garbage;
- (b) cleaning and maintaining window coverings and carpets at reasonable intervals as reasonably required by the Landlord;
- (c) making repairs and replacements as needed to the interior of the Leased Premises including, without limitation, to internal and external glass within or on the exterior of the Leased Premises (with the exception of glass comprising the curtain wall), doors, hardware, partitions, walls, fixtures, lighting and plumbing fixtures, wiring, piping, ceilings, floors and thresholds in the Leased Premises; and
- (d) keeping the Leased Premises in such condition as to comply with the requirements of any authority having jurisdiction.

7.07 Inspection — The Landlord and its Consultants may from time to time enter upon the Leased Premises:

- (a) to inspect the Leased Premises and its condition; and
- (b) to inspect any work being done by the Tenant both during the course of such work and following completion thereof.

If the Landlord or the Landlord's Agent shall determine that the work being done by the Tenant is in breach of this Lease or fails to comply with the requirements of this Lease in any respect, the Tenant shall forthwith remedy such breach or failure to comply and shall desist from continuing the same. The Tenant shall, at its own cost, make good any deficiency in such work and remedy any failure to comply with the requirements of this Lease.

7.08 Failure to Maintain — If the Tenant fails to perform any obligation under this Article 7.00, or commence and diligently proceed to perform such obligation, then on not less than 5 days' written

notice to the Tenant, the Landlord may enter the Leased Premises and perform the obligation without liability to the Tenant for any loss or damage thereby incurred. The Tenant shall promptly after receiving the Landlord's invoice therefor reimburse the Landlord for all costs incurred by the Landlord in performing the obligation plus 15% of the costs for overhead and supervision.

7.09 Liens — The Tenant shall:

- (a) pay promptly when due all costs for work done or caused to be done or goods affixed by the Tenant in the Leased Premises which could result in any lien or encumbrance on the Landlord's interest in the Project or any part thereof, or the filing or registration of any security interest or notice thereof;
- (b) keep the title to the Project, including every part thereof and the Leasehold Improvements, free and clear of any lien, encumbrance or security interest or notice thereof; and
- (c) indemnify and hold harmless the Landlord against any Claims arising out of the supply of goods, materials, services or labour for the work.

The Tenant shall immediately notify the Landlord of any lien, encumbrance, claim of lien, security interest, or notice thereof or other action of which it has, or reasonably should have, knowledge and which affects the title to the Project or any part thereof and, shall cause the same to be removed within 5 Business Days (or such additional time as the Landlord may consent to in writing), failing which the Landlord may take such action as the Landlord deems necessary to remove same and the entire cost thereof shall immediately become due and payable by the Tenant to the Landlord. The Tenant shall not affix or cause to be affixed to the Project any goods acquired under conditional sale or with respect to which any lien, encumbrance or security interest exists. The Landlord may from time to time post such notices in such places on the Leased Premises as the Landlord considers advisable to prevent or limit the creation of any liens upon the Project or any part thereof. Notwithstanding anything contained in this Section 7.09 or in Article 12.00 of this Lease to the contrary, any security agreement entered into by the Tenant with a lender shall not require the Landlord's consent and shall not be considered to be a Transfer or to cause a default of any of the Tenant's obligations under this Lease including, without limitation, any of the Tenant's obligations under this Section 7.09.

7.10 Roof — Subject to Section 7 of Schedule E of this Lease and Schedule J of this Lease, the Tenant shall not be entitled to install upon the roof of the Building any equipment except as consented to in writing by the Landlord, which consent may not be unreasonably withheld, but if given shall be subject to whatever conditions the Landlord, acting reasonably, deems necessary in the circumstances.

ARTICLE 8.00 — TAXES

8.01 Taxes Payable by Landlord — The Landlord covenants and agrees to pay all Taxes assessed against the Landlord or the Project on account of its ownership when due (except for Business Taxes payable directly to the taxing authority by the Tenant under Subsection 8.02(b) and similar taxes levied or assessed separately from Taxes and payable directly to the taxing authority by other tenants or occupants of the Project) and subject to the provisions hereinafter contained in this Article 8.00. Provided however, that the Landlord may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levy of such Taxes in each case to the fullest extent permitted by law as long as it shall diligently prosecute any contest or appeal of such Taxes.

8.02 Taxes Payable by Tenant — The Tenant shall pay promptly when due, without duplication, all Taxes upon or on account of the following:

- (a) to the Landlord, the Tenant's Proportionate Share of Taxes. Notwithstanding the foregoing, the Tenant's Proportionate Share of Taxes so determined may be adjusted by the Landlord, acting reasonably and equitably to the extent necessary, to ensure that the Tenant's Proportionate Share of Taxes is the same as it would have been following application of any special provision of real property tax related legislation applicable to this Lease; and
- (b) to the taxing authority or to the Landlord at the Landlord's direction, any Taxes imposed or assessed against or in respect of the personal property and Leasehold Improvements of the Tenant in the Leased Premises or in respect of any business operations carried on or in respect of the use or occupancy thereof by the Tenant or by any subtenant or licensee, if levied or assessed separately from Taxes upon the remainder of the Land and Building and referred to herein as "Business Taxes".

The Tenant agrees to provide to the Landlord within 3 days of receipt thereof, an original or duplicate copy of any separate bill for Taxes. The Tenant shall deliver promptly, upon request of the Landlord, receipts for all such payments and will furnish such other information as the Landlord may require.

8.03 Tax Increases Attributable to Tenant — If any Taxes in respect of the Leased Premises or Project are greater than they otherwise would have been by reason of the constitution or ownership of the Tenant, the use of the Leased Premises by the Tenant, the school support of the Tenant or any other reason peculiar to the Tenant, the portion of such Taxes in each year attributable to such reason, as determined by the Landlord, shall be paid by the Tenant to the Landlord within 15 days of demand therefor which demand shall be accompanied with reasonable particulars of any such additional Taxes and the reasons same are attributable to the Tenant, and in addition to Property Taxes and other Taxes otherwise payable by the Tenant under this Lease.

8.04 GST — The Tenant shall pay to the Landlord the amount of all GST accruing due with respect to Rent at the time the Rent is due and payable to the Landlord under this Lease. The Tenant's obligation to pay GST under this Section shall not be limited or precluded by any limitation contained in this Lease upon the Landlord's right to recover or receive payment from the Tenant of taxes upon the Landlord's income or profits or otherwise.

8.05 Landlord's Election — Notwithstanding anything contained in this Lease to the contrary, in the event that any Taxes are separately imposed, levied, assessed or charged by the appropriate authority for or in respect of the Leased Premises, the Tenant shall pay in lieu of its Proportionate Share of Taxes, the amount of such Taxes separately imposed, levied, assessed or charged by the appropriate authority for or in respect of the Leased Premises as part of the Tenant's Occupancy Costs.

8.06 Right to Contest — Each of the Landlord and the Tenant (provided the Tenant is legally entitled to do so) shall have the right to contest in good faith the validity or amount of any Taxes which, in the case of the Landlord, the Landlord is responsible to pay under this Article 8.00 and which, in the case of the Tenant, the Tenant is responsible to pay under Subsection 8.02(b) and for which it is separately assessed or Section 8.05. Notwithstanding anything to the contrary herein, the Tenant may, upon prior written notice to the Landlord, defer payment of any amount payable by it pursuant to Subsection 8.02(b) for which it is separately assessed or Section 8.05, to the extent permitted by law; provided that no contest by the Tenant shall involve the possibility of forfeiture, sale or disturbance of the Landlord's interest in the Leased Premises or the imposition of any penalty or interest, charge or lien and that, upon the final determination of any contest by the Tenant, the Tenant shall immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. If, as a result of any contest by the Tenant, any tax, rate, levy, assessment, fee or other charge is increased, the Tenant shall be responsible for the full amount of such increase in respect of the period to which the contest relates and to any subsequent tax periods which commence during the Term.

The Tenant shall not contest any amount payable by it under Subsection 8.02(a) but may contest any amount payable by it under Subsection 8.02(b) or Section 8.05 or appeal any assessment therefor subject to complying with the following:

- (a) the Tenant shall deliver to the Landlord any notices of appeal or other like instrument and obtain the Landlord's consent thereto, which consent shall not be unreasonably withheld, before filing the same;
- (b) the Tenant shall deliver whatever security the Landlord reasonably requires;
- (c) the Tenant shall promptly and diligently prosecute the contest or appeal at its sole expense; and
- (d) the Tenant shall keep the Landlord fully informed thereof.

ARTICLE 9.00 — INSURANCE, LIABILITY AND ENVIRONMENTAL

9.01 Landlord's Insurance — During the Term, the Landlord shall place insurance coverage on and with respect to the Project excluding the area(s) to be insured by the Tenant as set out in Section 9.02, which coverage shall include the following:

- (a) all risks insurance for the full reconstruction value of the Project, excluding Leasehold Improvements, as determined by the Landlord;
- (b) as an extension to the insurance maintained pursuant to Subsection 9.01(a), insurance on the rental income derived by the Landlord from the Project on a gross rental income form with a period of indemnity of not less than the period as estimated by the Landlord from time to time which would be required to rebuild and, if necessary, to re-tenant the Project in the event of the complete destruction thereof;
- (c) boiler and machinery insurance, including repair or replacement and rental income coverage, if applicable;

- (d) plate glass insurance (not including plate glass fronting or within the Leased Premises) if deemed appropriate by the Landlord;
- (e) commercial general liability insurance; and
- (f) such other insurance which is or may become customary or reasonable for owners of projects similar to the Project to carry in respect of loss of, or damage to, the Project or liability arising therefrom.

The insurance referred to in this Section shall be carried in amounts determined reasonably by the Landlord. The insurance shall be written in the name of the Landlord with loss payable to the Landlord and to any mortgagee (including any trustee under a deed of trust and mortgage) of the Project from time to time. The policies of insurance referred to in Subsections 9.01(a), (b), (c), (d) and (e) shall contain a waiver of the insurer's right of subrogation as against the Tenant. The Landlord hereby waives its right of recovery against the Tenant, its employees and those for whom the Tenant is in law responsible with respect to all Claims required to be insured against by the Landlord hereunder.

In addition, the Landlord hereby waives its right of recovery against the Tenant, its employees and those for whom the Tenant is in law responsible with respect to all Claims for which the Landlord otherwise maintains insurance for the premiums for which are included in whole or in part in Operating Costs and in respect of which the Tenant is not insured or required to be insured pursuant to Section 9.02(g) of this Lease. The Landlord covenants, warrants and represents that as of the date of this Lease it is carrying terrorism insurance on both its property and liability insurance policies. The Landlord further acknowledges and agrees that notwithstanding anything contained in this Lease to the contrary, the Tenant is not required during the Fixturing Period or the Term to carry property or liability terrorism insurance under this Lease including, without limitation, pursuant to the provisions of Subsection 9.02(g) of this Lease.

Notwithstanding any contribution by the Tenant to insurance premiums as provided for in this Lease, no insurable interest is conferred upon the Tenant under policies carried by the Landlord. Except as specifically provided in this Lease, the Landlord shall in no way be accountable to the Tenant regarding the use of the insurance proceeds arising from any Claims.

9.02 Tenant's Insurance — At its own expense the Tenant shall take out and thereafter maintain in force at all times during the Term and at all times when the Tenant is in possession of the Leased Premises insurance policies as follows:

- (a) all risks insurance on Leasehold Improvements and on all other property of every description, nature and kind owned by the Tenant or for which the Tenant is legally liable, which is installed, located or situate within the Leased Premises or elsewhere in the Project, including without limitation, all inventory or stock-in-trade in an amount not less than the full replacement cost thereof without deduction for depreciation; such insurance shall be subject to a replacement cost endorsement and shall include a stated amount co-insurance clause and a breach of conditions clause;
- (b) commercial general liability insurance to respond to any and all incidents occurring in the Leased Premises in the minimum amount of \$3,000,000.00 per occurrence including the following extensions: owners and contractors protective; hostile fire endorsement; products and completed operations; personal injury; occurrence basis property damage; blanket contractual and non-owned automobile liability; such insurance shall include the Landlord and the Landlord's Agent and nominee (if any) as additional insureds, and shall protect and indemnify the Landlord and the Landlord's Agent and nominee (if any) in respect of all Claims, including Claims by the Tenant, as if the Landlord and the Landlord's Agent and nominee (if any) were separately insured; such insurance shall include cross liability and severability of interest clauses;
- (c) boiler and machinery or equipment breakdown insurance, including repair or replacement endorsement, in an amount satisfactory to the Landlord and providing coverage with respect to all objects introduced into the Leased Premises by or on behalf of the Tenant or otherwise constituting Leasehold Improvements;
- (d) plate glass insurance on all internal and external glass within or fronting the Leased Premises; however, notwithstanding the foregoing, the Tenant may elect to self-insure for the insurance described in this Subsection 9.02(d);
- (e) business interruption insurance on the profit form providing all risks coverage with a period of indemnity of not less than 12 months and subject to a stated amount co-insurance clause. The Tenant, or a Permitted Transferee, may elect to self-insure for the insurance described in this Subsection 9.02(e);

- (f) any other form of insurance in such amounts and against such risks as the Landlord may from time to time reasonably require provided such other forms of insurance are standard types of insurance usually maintained by tenants in the real estate industry in similar office buildings as the Building.

The Tenant acknowledges and agrees that it shall be solely responsible for insuring the Leasehold Improvements, its equipment and stock and any other property owned or brought into the Leased Premises by the Tenant whether affixed to the Building or not.

The insurance policies referred to in this Section shall be subject to such higher limits as the Tenant, or the Landlord acting reasonably, or any mortgagee of the Landlord's interest in the Project may require from time to time. The policies of insurance referred to in Subsections 9.02(a), (b), (c), (d), (e), (f) and (g) shall contain a waiver of the insurer's right of subrogation as against the Landlord. The Tenant hereby waives its right of recovery against the Landlord, its employees and those for whom the Landlord is in law responsible with respect to all Claims required to be insured against by the Tenant hereunder. Any and all deductibles in the Tenant's insurance policies shall be borne solely by the Tenant and shall not be recovered or attempted to be recovered from the Landlord. In addition, all such policies shall be non-contributing with, and will apply only as primary and not excess to, any insurance proceeds available to the Landlord.

The Tenant shall provide to the Landlord at the commencement of the Term and at least 30 days prior to the renewal of all insurance referred to in this Section 9.02, and promptly at any time upon request, a certificate of insurance evidencing the insurance coverage maintained by the Tenant in accordance with this Section 9.02. The delivery to the Landlord of a certificate of insurance or any review thereof by or on behalf of the Landlord shall not limit the obligation of the Tenant to provide and maintain insurance pursuant to this Section 9.02 or derogate from the Landlord's rights if the Tenant shall fail to fully insure.

All policies shall provide that the insurance shall not be cancelled or changed to the prejudice of the Landlord without at least 30 days' prior written notice given by the insurer to the Landlord. All policies of insurance shall be placed with a company licensed to sell commercial insurance in Canada.

The Tenant acknowledges and agrees that, if it fails to obtain and maintain in force any of the insurance policies set out in this Section 9.02, then the Tenant shall indemnify and hold harmless the Landlord in respect of any losses arising therefrom.

9.03 Placement of Tenant's Insurance by Landlord — If the Tenant fails to place or maintain all or any of the insurance coverage referred to in Section 9.02, the Landlord may, at its option, place all or any part of such insurance in the name of or on behalf of the Tenant and the Tenant shall pay to the Landlord upon demand all costs incurred by the Landlord in so doing including, without limitation, the premium or premiums for such insurance together with the Landlord's administrative fee of 15% of such premium.

9.04 Limitation of Landlord's Liability — The Landlord, the Landlord's Agent, their employees and any Person for whom any of them are in law responsible shall not be liable under any circumstances for any damage caused by anything done or omitted to be done by any other tenant of the Project or any Person for whom such tenant is in law responsible.

9.05 Environmental Issues

(1) Landlord's Requirements - The Tenant shall not bring into or allow to be present in the Leased Premises or the Project any Pollutants except such as are disclosed in Schedule H hereto. If the Tenant shall bring, create, discharge or release upon, in or from the Project, including the Leased Premises, any Pollutants, whether or not disclosed in Schedule H and whether during the Term of this Lease or any prior lease by the Tenant, then such Pollutants shall be and remain the sole property of the Tenant and the Tenant shall promptly remove same at its sole cost at the expiration or sooner termination of the Term or sooner if required by the Landlord.

(2) Governmental Requirements - If, during the Term or any renewal or extension of this Lease or at any time thereafter, any governmental authority shall require the clean-up of any Pollutants:

- (a) held in, discharged in or from, released from, abandoned in, or placed upon the Leased Premises or the Project by the Tenant or its employees or those for whom it is in law responsible; or
- (b) released or disposed of by the Tenant or its employees or those for whom it is in law responsible;

whether during the Tenant's occupancy of the Leased Premises or any other premises in the Project pursuant to this Lease or any prior lease by the Tenant of the Leased Premises or any other

premises in the Project, then the Tenant shall, at its own expense, carry out all required work, including preparing all necessary studies, plans and approvals and providing all bonds and other security required by any governmental authority or required by the Landlord and shall provide full information with respect to all such work to the Landlord; provided that the Landlord may, at its option, perform any such work at the Tenant's sole cost and expense, payable on demand as additional Rent.

(3) Environmental Covenants - In addition to and without restricting any other obligations or covenants herein, the Tenant covenants that it will:

- (a) comply in all respects with all Environmental Laws relating to the Leased Premises or the use of the Leased Premises;
- (b) promptly notify the Landlord in writing of any notice by any governmental authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to operations in the Leased Premises or relating to any Person for whom it is in law responsible or any notice from any other party concerning any release or alleged release of any Pollutants; and
- (c) permit the Landlord upon prior notice to the Tenant to:
 - (i) enter and inspect the Leased Premises and the operations conducted therein;
 - (ii) conduct tests and environmental assessments or appraisals;
 - (iii) remove samples from the Leased Premises; and
 - (iv) examine and make copies of any documents or records relating to the Leased Premises and interview the Tenant's employees as necessary; and
- (d) promptly notify the Landlord of the existence of any Pollutants in the Project.

In the exercise of its rights pursuant to Subsection (3)(c) of this Section 9.05, the Landlord shall use reasonable efforts to not materially interfere with or materially adversely affect access to and egress from the Leased Premises and the business of the Tenant carried on in the Leased Premises and shall repair at its sole cost and expense all damage caused to the Leased Premises or its contents as a result of the exercise of any such rights.

(4) Environmental Indemnification - The Tenant shall, during the Term and at all times thereafter, indemnify and hold the Landlord harmless from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client or substantial indemnity basis and Consultants' fees and expenses) resulting from:

- (a) any breach of or non-compliance with the environmental obligations and covenants of the Tenant as set out in this Lease; and
- (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any governmental authority, to or against the Landlord and pursuant to or under any Environmental Laws or concerning a release or alleged release of Pollutants at the Project into the environment to the extent in each instance caused by the Tenant or its employees or those for whom it is in law responsible.

(5) Environmental Indemnification (Landlord) - The Landlord shall, during the Term and at all times thereafter, indemnify and hold the Tenant harmless from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client or substantial indemnity basis and Consultants' fees and expense) resulting from:

- (a) any breach of or non-compliance with the environmental obligations and covenants of the Landlord as set out in this Lease; and
- (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any governmental authority, to or against the Tenant and pursuant to or under any Environmental Laws or concerning a release or alleged release of Pollutants at the Project into the environment to the extent in each instance caused by the Landlord or its employees or those for whom it is in law responsible.

ARTICLE 10.00 — DAMAGE AND DESTRUCTION

10.01 Limited Damage to Leased Premises, Access or Services — If during the Term, the Leased Premises or any part thereof, or other portions of the Building providing access or Services essential to the Leased Premises, shall be destroyed or damaged by any hazard the Landlord, if

permitted by law to do so, shall proceed with reasonable diligence to rebuild and restore or repair the Leased Premises or comparable premises or such access routes or Service systems, as the case may be, in conformance with current laws. The covenants of the Tenant to repair shall not include any repairs of damage required to be made by the Landlord under this Section 10.01. For greater certainty, it is understood and agreed that, upon substantial completion of the Landlord's work, the Tenant shall repair or restore the Leased Premises as required by Section 7.06. Rent payable by the Tenant shall abate from the date of such damage or destruction to the date which is the 91st day following substantial completion of the Landlord's work as determined by the Landlord's independent and duly qualified architect or engineer or restoration of access or Services, as the case may be. If less than all of the Leased Premises is destroyed or damaged as contemplated in this Section 10.01, Rent payable by the Tenant shall abate from the date of such damage or destruction to the date which is the 31st day following substantial completion of the Landlord's work in the same proportion as the Rentable Area of the Leased Premises so damaged or destroyed is of the total Rentable Area of the Leased Premises.

10.02 Major Damage to Leased Premises — Notwithstanding any other right of termination contained herein, if the Leased Premises shall be damaged or destroyed by any hazard, and if in the opinion of the Landlord's architect or engineer, given within 30 Business Days of the happening of said damage or destruction, said damage or destruction is to the extent that the Leased Premises shall be incapable of being rebuilt or repaired or restored with reasonable diligence within 6 months after the occurrence of such damage or destruction, then the Landlord or the Tenant may, at its option, terminate this Lease by notice in writing to the other. If such notice is given by the Landlord or the Tenant under this Section 10.02, then this Lease shall terminate on the date of such notice and the Tenant shall immediately surrender the Leased Premises and all interest therein to the Landlord and Rent shall be apportioned and shall be payable by the Tenant only to the date of such damage or destruction and the Landlord may thereafter re-enter and repossess the Leased Premises. For greater certainty, it is understood and agreed that if this Lease is not terminated as aforesaid, upon substantial completion of the Landlord's work, the Tenant shall repair or restore the Leased Premises as required by Section 7.06.

10.03 Damage to Building — Notwithstanding anything to the contrary contained in this Lease or that the Leased Premises may not be affected, if in the reasonable opinion or determination of the Landlord's independent and duly qualified architect or engineer, rendered within 30 Business Days of the happening of damage or destruction, the Building shall be damaged or destroyed to the extent that any one or more of the following conditions exist:

- (a) the Building must be totally or partially demolished, whether or not to be reconstructed in whole or in part;
- (b) the Building shall be incapable of being rebuilt or repaired or restored with reasonable diligence within 6 months after the occurrence of such damage or destruction;
- (c) more than 35% of the Total Rentable Area of the Building is damaged or destroyed; or
- (d) any or all of the heating, ventilating, air conditioning, electrical, mechanical or elevator systems in the Building are damaged or destroyed as reasonably determined by the Landlord's architect or engineer and cannot be repaired or rebuilt or restored with reasonable diligence within 6 months after the occurrence of such damage or destruction;

then the Landlord may at its sole option terminate this Lease by notice in writing to the Tenant. If notice is given by the Landlord under this Section 10.03, then this Lease shall terminate from the date of such notice and the Tenant shall immediately surrender the Leased Premises and all interest therein to the Landlord and Rent shall be apportioned and shall be payable by the Tenant only to the date of such notice and the Landlord may thereafter re-enter and repossess the Leased Premises. If the Building is damaged to the extent described in this Section 10.03 and the Landlord does not terminate this Lease, the Landlord will, rebuild or repair the Building to base building standards, but the rebuilt or repaired Building may be different in configuration and design from that comprising the Project prior to the damage or destruction.

10.04 No Abatement — Except as specifically provided in this Article 10.00, there shall be no abatement of Rent and the Landlord shall have no liability to the Tenant by reason of any injury to, loss of or interference with the Tenant's business or property arising directly or indirectly from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom or to any portion of the Building or the Leased Premises.

10.05 Notify Landlord — The Tenant shall immediately notify the Landlord or its representative in the Project in case of fire or any accident or material defect in the Project, the Leased Premises or any systems thereof of which it becomes aware and, as well, of any matter or condition which may cause injury or damage to the Project or any person or property located therein.

10.06 Expropriation — In the event of Expropriation of all or part of the Leased Premises and/or the Building, neither the Landlord nor the Tenant shall have a claim against the other for the shortening

of the Term, nor the reduction or alteration of the Leased Premises or the Building. The Landlord and the Tenant shall each look only to the Expropriating authority for compensation. The Landlord and the Tenant agree to cooperate with one another so that each is able to obtain the maximum compensation from the Expropriating authority as may be permitted in law in relating to their respective interests in the Leased Premises and the Building. Nothing herein contained shall be deemed or construed to prevent the Landlord or the Tenant from enforcing and prosecuting a claim for the value of their respective interests in any Expropriation proceedings. However, to the extent that a part of the Project other than the Leased Premises is Expropriated, the full proceeds paid or awarded therefor will belong solely to the Landlord and the Tenant will assign to the Landlord any rights it might have or acquire in respect of such proceeds or awards and will execute those documents that the Landlord reasonably requires in order to give effect to this intention.

Where used in this Section 10.06 "Expropriation" means expropriated by a governmental or municipal authority, or transferred, conveyed or dedicated in contemplation of a threatened expropriation and "Expropriated" and "Expropriating" have corresponding meanings.

ARTICLE 11.00 — DEFAULT

11.01 Arrears — The Tenant shall pay monthly to the Landlord interest at a rate per annum of Prime Rate plus 5% upon all Rent required to be paid hereunder from the due date for payment thereof until the same is fully paid and satisfied.

In addition to the interest charges, in order to cover the extra expense involved in handling delinquent payments, the Tenant, at the Landlord's sole option, shall pay to the Landlord a charge of \$100.00 (the "Late Charge") when any instalment of Rent is received by the Landlord after the relevant due date thereof.

In addition, if any cheque presented to the Landlord by the Tenant representing payment of Rent is not honoured by the Tenant's bank or such cheque is returned to the Landlord indicating that there are not sufficient funds in the Tenant's account to honour such cheque, the Tenant shall pay to the Landlord a charge of \$50.00 for the first such occurrence during the Term, \$150.00 for the second such occurrence during the Term and \$250.00 for each such subsequent occurrence during the Term (the "NSF Charge"). It is hereby understood and agreed that the Late Charge and the NSF Charge is charged as Rent and not as a penalty or interest, for the purpose of defraying the Landlord's expenses incident to the processing of such overdue payments and that such Late Charge or NSF Charge is due and payable on and from the day immediately following the due date of such overdue payment or, if no due date is specified in this Lease, then on the 10th day following demand for same by the Landlord.

11.02 Costs of Enforcement — The Tenant shall indemnify the Landlord against all costs and charges (including legal fees on a solicitor and client or substantial indemnity basis and the Landlord's reasonable administration charges) reasonably incurred either during or after the Term in enforcing payment of Rent hereunder and in obtaining possession of the Leased Premises after default of the Tenant or upon expiration or earlier termination of this Lease or in enforcing any covenant, proviso or agreement of the Tenant herein contained or in determining the Landlord's rights or the Tenant's obligations under this Lease or both. All such costs and charges shall be paid by the Tenant to the Landlord forthwith upon demand.

11.03 Performance of Tenant's Obligations — All covenants and agreements to be performed by the Tenant under any of the terms of this Lease shall be performed by the Tenant, at the Tenant's sole cost and expense, and without any abatement of Rent except as is otherwise provided for in this Lease. If the Tenant fails to perform any act to be performed by it hereunder then, in the event of an emergency, either real or perceived, or if the failure continues for 10 days following notice thereof, the Landlord may (but shall not be obligated to) perform the act without waiving or releasing the Tenant from any of its obligations relative thereto, but having commenced to do so may cease to do so without completing performance thereof. All sums paid and costs incurred by the Landlord in so performing the act, plus 20% of the cost for overhead and supervision together with interest thereon at the rate set out in Section 11.01 from the date payment was made or such cost was incurred by the Landlord, shall be payable by the Tenant to the Landlord on demand.

11.04 Remedies on Default — Upon the happening of an Event of Default the Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of the Landlord available to it either by any other provision of this Lease or by statute or the general law, exercise any one or more of the following remedies:

- (a) be entitled to the full amount of the current month's and the next ensuing 3 months' instalments of Rent which shall immediately become due and payable and the Landlord may immediately distrain for the same, together with any arrears then unpaid;
- (b) without notice or any form of legal process, forthwith re-let or sublet the Leased Premises or any part or parts thereof for whatever term or terms and at whatever rent and upon whatever

other terms, covenants and conditions the Landlord considers advisable including, without limitation, the payment or granting of inducements all on behalf of the Tenant; and on each such re-letting or subletting the rent received by the Landlord therefrom will be applied first to reimburse the Landlord for any such inducements and for any expenses, capital or otherwise, incurred by the Landlord in making the Leased Premises ready for re-letting or subletting; and secondly to the payment of any costs and expenses of re-letting or subletting including brokerage fees and legal fees on a solicitor and client or substantial indemnity basis; and third to the payment of Rent; and the residue, if any, will be held by the Landlord and applied to payment of Rent as it becomes due and payable. If rent received from re-letting or subletting during any month is less than Rent to be paid during that month hereunder, the Tenant will pay the deficiency which will be calculated and paid monthly on or before the first day of every month; and no re-letting or subletting of the Leased Premises by the Landlord or entry by the Landlord or its agents upon the Leased Premises for the purpose of re-letting or subletting or other act of the Landlord relating thereto including, without limitation, changing or permitting a subtenant to change locks, will be construed as an election on its part to terminate this Lease unless a written notice of termination is given to the Tenant; and if the Landlord elects to re-let or sublet the Leased Premises without terminating, it may afterwards elect to terminate this Lease at any time by reason of any Event of Default then existing;

- (c) seize and sell such goods, chattels and equipment of the Tenant as are in the Leased Premises and the Landlord may, but shall not be obligated to, apply the proceeds thereof to all Rent to which the Landlord is then entitled under this Lease. Any such sale may be effected by public auction, private sale or otherwise, and either in bulk or by individual item, or partly by one means and partly by another, all as the Landlord in its sole discretion may decide;
- (d) terminate this Lease by leaving upon the Leased Premises notice in writing of the termination, and such termination shall be without prejudice to the Landlord's right to damages; it being agreed that the Tenant shall pay to the Landlord on demand as damages the loss of income of the Landlord to be derived from this Lease and the Leased Premises for the unexpired portion of the Term had it not been terminated; or
- (e) re-enter into and upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of the Landlord's former estate, anything herein contained to the contrary notwithstanding;

and the Tenant shall pay to the Landlord forthwith upon demand all expenses of the Landlord in re-entering, terminating, re-letting, collecting sums due or payable by the Tenant or realizing upon assets seized or otherwise exercising its rights and remedies under this Section 11.04 including tenant inducements, leasing commissions, legal fees on a solicitor and client or substantial indemnity basis and all disbursements and the expense of keeping the Leased Premises in good order, repairing the same and preparing the same for re-letting.

In addition, and without limiting the generality of the foregoing provisions of this Section 11.04, upon the happening of an Event of Default, and as a consequence thereof this Lease is terminated in accordance with such provisions, the Landlord shall have no further liability to pay to the Tenant or any third party any amount on account or in respect of a refund of any Security Deposit, prepaid Rent or prepaid Taxes or any tenant inducement, leasehold improvement allowance, lease takeover or lease subsidy or any other concession or inducement otherwise provided to the Tenant under or with respect to this Lease, and any Rent free period otherwise provided to the Tenant hereunder shall be null and void and of no further force or effect and Rent shall be payable in full hereunder without regard to any such Rent free period.

11.05 Availability of Remedies — The Landlord may from time to time resort to any or all of the rights and remedies available to it upon the occurrence of an Event of Default either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions herein as to certain rights and remedies are not to be interpreted as excluding any other or additional rights or remedies available to the Landlord by statute or the general law.

11.06 Waiver — If the Landlord or the Tenant shall overlook, excuse, condone or suffer any default, breach or non-observance by the other of any obligation hereunder, this shall not operate as a waiver of the obligation in respect of any continuing or subsequent default, breach or non-observance and no such waiver shall be implied but shall only be effective if expressed in writing.

The Landlord's acceptance of Rent after a default is not a waiver of any preceding default under this Lease even if the Landlord knows of the preceding default at the time of acceptance of the Rent. No term, covenant or condition of this Lease shall be considered to have been waived by the Landlord or the Tenant unless the waiver is in writing. Except as is otherwise provided for in this Lease, the Tenant waives any statutory or other rights in respect of abatement, set-off or compensation in its favour that may exist or come into existence hereafter with respect to Rent.

11.07 Waiver of Exemption and Redemption — Notwithstanding anything contained in any statute now or hereafter in force limiting the right of distress, none of the Tenant's goods or chattels in the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and this agreement of the Tenant in this Section may be pleaded as an estoppel against the Tenant. Notwithstanding the foregoing, the Landlord shall not be entitled to effect a distress against computer software, computer disks, CD-ROMs, computer programs and tapes, client and customer property (including, without limitation, computer hardware and software), as well as the servers in any offices in the Leased Premises and any data in the hard drives of any computers on the Leased Premises, nor against the books, records, accounts, files, correspondence and documents found upon the Leased Premises or any part thereof including, without limitation, all proprietary and confidential information and the Landlord hereby waives any right, statutory or otherwise, to levy a distress in that regard.

11.08 Companies' Creditors Arrangement Act — By virtue of its interest in this Lease, the importance of the Tenant continuing to carry on business in the Leased Premises in accordance with this Lease, and the Landlord's entitlement to damages where this Lease is terminated by reason of an Event of Default, the Landlord does and will (despite any changes in circumstances of the Tenant or its business) constitute a separate class or category of creditor in any plan of arrangement or other proposal submitted by or on behalf of the Tenant under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation for bankrupt or insolvent debtors.

ARTICLE 12.00 — ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS

12.01 Request for Consent — The Tenant shall not effect a Transfer of this Lease or of all or part of the Leased Premises without the prior consent in writing of the Landlord, which consent shall not, provided no Event of Default has occurred, be unreasonably withheld or delayed. Provided that the Tenant shall, at the time the Tenant shall request the consent of the Landlord, deliver to the Landlord such information in writing (herein called the "required information") as the Landlord may reasonably require respecting the proposed Transferee including, without limitation, the name, address, nature of business, financial responsibility and standing of such proposed Transferee.

12.02 Basis for Consent — Notwithstanding anything in the *Landlord and Tenant Act*, the *Commercial Tenancies Act* or any other statute or law and without limiting the grounds upon which a consent may be refused, the Landlord will not be deemed to be unreasonable in refusing consent when:

- (a) the giving of such consent would place the Landlord in breach of any other tenant's lease in the Project or the proposed use by the Transferee (if same is other than for general office purposes) is not substantially the same as that of the Tenant;
- (b) such consent is requested for a mortgage, charge, debenture (secured by floating charge or otherwise) or other encumbrance of, or in respect of, this Lease or the Leased Premises or any part of them;
- (c) the Transferee, in the opinion of the Landlord: (i) does not have a history of successful business operation in the business to be conducted in the Leased Premises; (ii) does not have a good credit rating or a substantial net worth; or (iii) there is a history of default under other leases by the Transferee or by companies or partnerships that the Transferee was a principal shareholder of or a partner in at the time of the default;
- (d) in the case of a Transfer to a subtenant of less than the entire Leased Premises, if such would result in a configuration which: (i) would require access to be provided through space leased or held for lease to another tenant or improvements to be made outside of the Leased Premises; or (ii) would, in the sole opinion of the Landlord, be unreasonable to attempt to re-lease to a third party provided that this Subsection 12.02(f) shall not apply so long as the portion of the Leased Premises to be sublet is located on a full floor leased by the Tenant;
- (e) the required information received from the Tenant or the proposed Transferee is not sufficient in the Landlord's opinion to enable the Landlord to make a determination concerning the matters set out above; or
- (f) the use of the Leased Premises by the proposed Transferee if same be other than that permitted pursuant to Item 9 of the Term Sheet, in the Landlord's opinion arrived at in good faith, could result in excessive use of the systems or Services in the Project, be inconsistent with the image and standards of the Project or expose the occupants of the Project to risk of harm, damage or interference with their use and enjoyment thereof, or reduce the value of the Project.

The Landlord shall not be liable for any claims, actions, damages, liabilities, losses or expenses of the Tenant or any proposed Transferee arising out of the Landlord's unreasonably withholding its

consent to any Transfer and the Tenant's only recourse will be to bring an application for a declaration that the Landlord must grant its consent to the Transfer.

In no event shall any Transfer to which the Landlord may have consented release or relieve the Tenant or any Indemnifier from its obligations fully to perform all the terms, covenants and conditions of this Lease, the Indemnity Agreement or any remaining unexercised renewals or extensions of this Lease or the Term on its part to be performed and, in any event, the Tenant shall be liable for the Landlord's costs incurred in connection with the Tenant's request for consent as set out in Subsection 12.03(g).

12.03 Terms and Conditions Relating to Consents — The following terms and conditions apply in respect of a consent given by the Landlord to a Transfer:

- (a) the consent by the Landlord is not a waiver of the requirement for consent to subsequent Transfers, and no Transfer shall relieve the Tenant of its obligations under this Lease, unless specifically so provided in writing;
- (b) no acceptance by the Landlord of Rent or other payments by a Transferee is: (i) a waiver of the requirement for the Landlord to consent in writing to the Transfer; (ii) the acceptance of the Transferee as tenant or subtenant; or (iii) a release of the Tenant or Indemnifier from its obligations under this Lease or any Indemnity Agreement;
- (c) the Landlord may apply amounts collected from the Transferee to any unpaid Rent;
- (d) the Transferor, unless the Transferee is a subtenant of the Tenant, will retain no rights under this Lease in respect of obligations to be performed by the Landlord or in respect of the use or occupation of the Leased Premises after the Transfer and will execute an Indemnity Agreement on the Landlord's standard form in respect of obligations to be performed after the Transfer by the Transferee;
- (e) the Transferee shall, when required by the Landlord, jointly and severally with the Tenant, enter into an agreement directly with the Landlord agreeing that the Transferee will be bound from and after the effective date of the Transfer by all the terms of this Lease as it relates to the portion of the Leased Premises which is the subject matter of the Transfer (except for any Transferee who is not an assignee of this Lease which need only covenant and agree to pay the minimum rent and additional rent set out in its occupancy agreement as opposed to the Rent set out in this Lease as it relates to the portion of the Leased Premises which is the subject matter of the Transfer) and the Tenant will not be released nor relieved from its obligations under this Lease including, without limitation, the obligation to pay Rent;
- (f) in the event that this Lease is disaffirmed, disclaimed or terminated by any trustee in bankruptcy of a Transferee, the original Tenant named in this Lease shall be deemed, upon notice by the Landlord given within 30 days of such disaffirmation, disclaimer or termination to have entered into a lease with the Landlord containing the same terms and conditions as in this Lease, with the exception of the Term of such Lease which shall expire on the date on which this Lease would have ended save for such disaffirmation, disclaimer or termination; and
- (g) any documents relating to a Transfer or the Landlord's consent will be prepared by the Landlord or its solicitors and a reasonable administration charge of at least \$250.00 and the greater of: (i) a reasonable document preparation fee of at least \$450.00; or (ii) those legal fees on a solicitor and client or substantial indemnity basis incurred by the Landlord will be paid to the Landlord by the Tenant on demand.

12.04 Subsequent Transfers — The Landlord's consent to a Transfer shall not be deemed to be consent to any subsequent Transfer, whether or not so stated.

12.05 Profit Rents upon Transfers — In the event of any Transfer by the Tenant by virtue of which the Tenant receives a rent which is directly referable to the Tenant's interest in this Lease in the form of cash, goods or services from the Transferee which is greater than the Rent payable hereunder to the Landlord, the Tenant shall pay any such excess to the Landlord (after deducting the Tenant's costs on account of real estate commissions, the value of not more than a 3 month rent-free period, inducements and improvement allowances granted to the Transferee and all other reasonable direct costs incurred by the Tenant to effect the Transfer) in addition to all Rent payable under this Lease and such excess rent shall be deemed to be further Rent payable hereunder.

12.06 Advertising — The Tenant shall not advertise the Leased Premises or any part thereof as being available for leasing or this Lease as being available for transfer in any medium and will not cause or permit any such advertisement, unless the Landlord has permitted the Tenant to do so in writing and has given written approval of the wording of such advertisement, which permission and approval may not be unreasonably withheld.

The Tenant shall pay all costs associated with the granting and perfection of mortgages, charges and security interests granted pursuant to this Lease upon any Transfer.

ARTICLE 13.00 — TRANSFERS BY LANDLORD

13.01 Sale, Conveyance and Assignment — Nothing in this Lease shall restrict the right of the Landlord to sell, convey, assign, pledge or otherwise deal with the Project, subject (except as provided in Section 13.03) only to the rights of the Tenant under this Lease.

13.02 Effect of Transfer — A sale, conveyance or assignment of the Project by the Landlord shall operate to release the Landlord from liability from and after the effective date thereof in respect of all of the covenants, terms and conditions of this Lease, express or implied, except as they may relate to the period prior to the effective date, and the Tenant shall thereafter look solely to the Landlord's successor in interest.

13.03 Subordination — Subject to Section 13.04, this Lease, at the option of any mortgagee, trustee or chargee, is and shall be subject and subordinate in all respects to any and all mortgages (including deeds of trust and mortgage) now or hereafter registered against title to the Building or Land and all advances thereunder, past, present and future and to all renewals, modifications, consolidations, replacements and extensions thereof, so long as the holder(s) of any such mortgage(s), deed(s) of trust or charge(s) first provides the Tenant with its standard form of non-disturbance agreement which shall provide that, so long as the Tenant is not in default of a material covenant under this Lease, it shall be entitled to remain undisturbed in its possession of the Leased Premises, subject to the terms, covenants and conditions of this Lease. Subject to being first provided with such a non-disturbance agreement, the Tenant agrees to execute promptly and in any event within 10 days after request therefor by the Landlord or the mortgagee or trustee under any such mortgage or deed of trust and mortgage an instrument of subordination as may be requested.

13.04 Attornment — The Tenant agrees, whenever requested by any mortgagee, trustee or chargee (in this Section 13.04 and in Section 13.05 called the "Mortgagee") taking title to the Project by reason of foreclosure or other proceedings for enforcement of any mortgage or deed of trust, or by delivery of a deed in lieu of such foreclosure or other proceeding, to attorn to such Mortgagee as a tenant under all of the terms of this Lease. The Tenant agrees to execute promptly and in any event within 10 days after a request by any Mortgagee an instrument of attornment as may be required by it.

13.05 Effect of Attornment — Upon attornment pursuant to Section 13.04, this Lease shall continue in full force and effect as a direct lease between the Mortgagee and the Tenant, upon all of the same terms, conditions and covenants as are set forth in this Lease except that, after attornment, the Mortgagee and its successors in title shall not be:

- (a) liable for any act or omission of the Landlord;
- (b) subject to any offset or defence which the Tenant might have against the Landlord; or
- (c) bound by any prepayment by the Tenant of more than 1 month's instalment of Rent unless the prepayment shall have been approved in writing by the Mortgagee or by any predecessor of the Mortgagee's former interest as mortgagee of the Project.

ARTICLE 14.00 — SURRENDER

14.01 Possession and Restoration

(1) Upon the expiration or other termination of the Term, the Tenant shall immediately quit and surrender possession of the Leased Premises and all Leasehold Improvements in substantially the condition in which the Tenant is required to maintain the Leased Premises pursuant to this Lease, excepting only reasonable wear and tear, damage covered by the insurance required to be maintained by the Landlord pursuant to Section 9.01 of this Lease or otherwise maintained by the Landlord and the Landlord's maintenance, repair and replacement obligations under this Lease, and the Tenant shall deliver to the Landlord the keys, mechanical or otherwise, and combinations, if any, to the locks in the Leased Premises and entries thereto. In addition, the Landlord shall have the right, at its sole option upon expiration or other termination of the Term, to require that the Tenant remove or cause to be removed at the Tenant's cost all or any part of any wiring, cables, risers or similar installations appurtenant thereto installed by the Tenant or on the Tenant's behalf in the risers of the Building (the "Wiring") and to restore the risers and other parts of the Project affected by the installation or removal of the Wiring to their condition existing prior to the installation of the Wiring (the "Wire Restoration Work"). Notwithstanding the foregoing, the Landlord may, at its sole option,

perform the Wire Restoration Work at the Tenant's sole cost and expense. Upon surrender, all right, title, and interest of the Tenant in the Leased Premises and all Leasehold Improvements located therein and in all Wiring shall cease.

(2) If the Landlord elects to perform the said removal and restoration work and/or the Wire Restoration Work, 90 days (or as soon after such date as is reasonably possible) prior to the expiration of the Term the Landlord may inspect the Leased Premises to determine the extent of the Wire Restoration Work and upon receipt of the Landlord's estimate of the costs thereof (the "restoration cost") the Tenant shall provide to the Landlord, by certified cheque, the restoration cost.

14.02 Tenant's Trade Fixtures and Personal Property — After the expiration or other termination of the Term or in the event of the abandonment of the Leased Premises by the Tenant, all of the Tenant's trade fixtures and personal property remaining in the Leased Premises shall be deemed conclusively to have been abandoned by the Tenant and may be appropriated, sold, destroyed or otherwise disposed of by the Landlord without notice or obligation to compensate the Tenant or to account therefor, and the Tenant shall pay to the Landlord upon written demand all of the costs incurred by the Landlord in connection therewith.

14.03 Overholding — If the Tenant remains in the Leased Premises or any part thereof after the expiration or other termination of the Term:

- (a) without the consent of the Landlord, no yearly or other periodic tenancy shall be created and the Tenant shall be deemed, notwithstanding any statutory provision or legal assumption to the contrary, to be occupying the Leased Premises as a tenant at will of the Landlord, which tenancy may be terminated at any time by the Landlord without the necessity of any prior notice to the Tenant, but the Tenant shall be bound by the terms and provisions of this Lease except any options thereby granted to the Tenant and except the Basic Rent which shall be twice the greater of: (i) the rate provided for herein for the final year of the Term; and (ii) the market rate for similar premises as determined by the Landlord at the time of such overholding, and subject to such additional obligations and conditions as the Landlord may impose by notice to the Tenant; or
- (b) with the consent of the Landlord and agreement as to the Rent payable, the tenancy shall be month-to-month at the Rent agreed and otherwise on the terms and conditions of this Lease, but without any option to renew or for a new lease.

The Landlord may recover possession of the Leased Premises during any period with respect to which the Tenant has prepaid the amount payable under Subsection 14.03(a).

The Tenant shall promptly indemnify and hold harmless the Landlord from and against all Claims against the Landlord as a result of the Tenant remaining in possession of all or any part of the Leased Premises after the expiry of the Term without the consent of the Landlord (including, without limitation, any compensation to any new tenant or tenants which the Landlord may elect to pay whether to offset the cost of overtime work or otherwise).

ARTICLE 15.00 — GENERAL

15.01 Estoppel Certificates — The Tenant shall whenever requested by the Landlord, a prospective purchaser or any mortgagee (including any trustee under a deed of trust and mortgage) promptly, and in any event within 10 days after request, execute and deliver to the Landlord or to any party or parties designated by the Landlord a certificate in writing as to the then status of this Lease, including as to whether it is in full force and effect, is modified or unmodified, confirming the Rent payable hereunder and each element hereof and the then state of the accounts between the Landlord and the Tenant, the existence or non-existence of defaults and any other matters pertaining to this Lease in respect of which the Landlord shall request a certificate, and provide such other information as may reasonably be required. The party or parties to whom such certificates are addressed may rely upon them.

15.02 Entire Agreement — There is no promise, warranty, representation, undertaking, covenant or understanding by or binding upon the Landlord except such as are expressly set forth in this Lease and this Lease, including the Term Sheet and schedules hereto, contains the entire agreement between the parties hereto.

15.03 Registration of Notice of Lease — The Tenant acknowledges the confidential nature of this Lease and agrees with the Landlord not to register this Lease. However, if the Tenant wishes to register a caveat or notice of this Lease, the Tenant shall prepare and execute at the sole expense of the Tenant, an acknowledgement, caveat or short form of lease sufficient for such purpose in such form as will preserve the confidentiality of the Rent and other financial terms of this Lease and submit same to the Landlord for approval, which approval shall not be unreasonably withheld, and execution prior to registering same; provided that, if there is a conflict between the provisions of such notice or short form of lease and this Lease, the

provisions of this Lease shall govern. The Tenant shall discharge any such registration upon the expiry or earlier termination of this Lease.

15.04 Project Name and Trademarks — The Tenant shall not refer to the Project or Building by any name other than that designated from time to time by the Landlord and the Tenant shall use the name of the Building for the business address of the Tenant, but for no other purpose. Compliance with this Section shall be at the sole cost and expense of the Tenant and the Tenant shall have no claim against the Landlord for any costs or expenses incurred by the Tenant, whether direct or indirect, in complying with this Section.

15.05 "For Lease" Signs — The Landlord shall have the right during the last 12 months of the Term to place upon the Leased Premises a notice of reasonable dimensions stating that the Leased Premises are "for lease" and the Tenant shall not obscure or remove such notice or permit the same to be obscured or removed.

15.06 Unavoidable Delays — If the Landlord or the Tenant (the "delayed party") shall be delayed, hindered or prevented in or from the performance of any of its covenants under this Lease by any cause not within the control of the delayed party, as determined by the Landlord acting reasonably (excluding lack of finances of the delayed party), the performance of the covenant shall be excused for the period during which performance is rendered impossible and the time for performance thereof shall be extended accordingly, but this shall not excuse the Tenant from the prompt payment of Rent or from the performance of any of its other obligations under this Lease not related to such cause.

15.07 Limitation of Recourse — The Tenant acknowledges that, notwithstanding any other provision contained in this Lease, the obligations of and rights against the Landlord under this Lease shall be performed, satisfied and paid only out of and enforced against, and recourse hereunder shall be had only after judgment and only against, the right, title and interest of the Landlord from time to time in, and the Landlord's revenue derived from, the Project including without limitation, the rents and other sums received or receivable from the Project and any consideration received or receivable by the Landlord from the sale, transfer, or conveyance of all or any part of the Landlord's interest in the Project, property insurance and rental income insurance paid or available to the Landlord. No obligation of the Landlord hereunder or in respect hereof is personally binding upon, nor shall any resort or recourse be had, judgment issued or execution or other process levied against, the Landlord (except to the extent necessary for enforcement under the first sentence of this Section 15.09 and only for that purpose), or against any other assets or revenues of the Landlord.

If the Landlord is, or this Lease is assigned by the Landlord to, a real estate investment trust ("REIT"), the parties acknowledge and agree that the obligations of the REIT hereunder and under all documents delivered pursuant hereto (and all documents to which this document may be pursuant) or which give effect to, or amend or supplement, the terms of this Lease are not personally binding upon any trustee thereof, any registered or beneficial holder of units (a "Unitholder") or any annuitant under a plan of which a Unitholder acts as a trustee or carrier, or any officers, employees or agents of the REIT and resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing or the private property of any of the foregoing, and the obligations of and rights against the REIT under this Lease shall be enforced against and recourse hereunder shall be had only after judgment and only against, the right, title and interest of the REIT from time to time in, and from the REIT's revenue derived from the Project including without limitation, the rents and other sums received or receivable from the Project and any consideration received and receivable by the REIT from the sale, transfer, or conveyance of all or any part of the REIT's interest in the Project, property insurance and rental income insurance paid or available to the REIT.

15.08 Notice — Any notice required or contemplated by any provision of this Lease shall be given in writing and delivered either: (i) personally; or (ii) by prepaid courier service; and if to the Landlord at the Landlord's local office as specified in Item 1(a) of the Term Sheet, with a copy to the Landlord's head office address as specified in Item 1(b) of the Term Sheet and if to the Tenant at the Leased Premises (whether or not the Tenant has departed from, vacated or abandoned the same), together with a copy to the Indemnifier at the address specified in Item 11 of the Term Sheet. Notwithstanding the provision of any statute or law relating thereto, service by means of electronic mail of any notice required to be given in writing by either party hereto pursuant to this Lease shall not constitute good and effective service.

Any notice shall be considered to have been given or made: (i) if delivered personally or by prepaid courier, on the day of delivery. Either party may from time to time by notice in writing to the other designate another address or addresses in Canada as the address to which notices are to be sent.

If two or more Persons are named as, or bound to perform the obligations of, the Tenant hereunder, notice given as herein provided to any one of the Persons constituting the Tenant or so bound shall be deemed to be notice simultaneously to all Persons constituting the Tenant and to all Persons so bound. Any notice given to the Indemnifier or the Tenant shall be deemed to have been given simultaneously to the other of them and to all Persons bound by their obligations hereunder.

15.09 Delegation of Authority — The Landlord's Agent may act on behalf of the Landlord in any manner provided for herein. The Tenant acknowledges that, if this Lease has been executed for and on behalf of, in the name of and with the authority of the Landlord by the Landlord's Agent, the covenants and agreements of the Landlord are obligations of the Landlord and its successors and assigns only and are not obligations personal to or enforceable against the Landlord's Agent in its own right. The Landlord's Agent hereby covenants, warrants and represents to the Tenant that it has the authority to bind the Landlord under this Lease.

15.10 Relationship of Parties — Nothing contained in this Lease shall create any relationship between the parties hereto other than that of landlord and tenant and, if applicable, indemnifier.

15.11 Governing Law — This Lease shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the province in which the Project is situated and the laws of Canada applicable therein and shall be subject to the exclusive jurisdiction of the courts of the province in which the Project is situated.

15.12 Amendment or Modification — No amendment, modification or supplement to this Lease shall be valid or binding unless set out in writing and executed by the Landlord and the Tenant with the same degree of formality as the execution of this Lease.

15.13 Legal and Administration Costs — The Tenant shall indemnify the Landlord against all legal fees on a solicitor and client or substantial indemnity basis and disbursements incurred by the Landlord or by the Landlord's Agent in connection with the negotiation, preparation and execution of any amendment, assignment, cancellation, approval or consent requested by the Tenant in connection with this Lease, including the Landlord's reasonable administration charges. All such costs and charges shall be paid by the Tenant to the Landlord forthwith upon demand.

15.14 Construction — All of the provisions of this Lease are to be construed as covenants and agreements. If any provision of this Lease is illegal or unenforceable, it shall be considered separate and severable from the remaining provisions of this Lease, which shall remain in force and be binding as though the provision had never been included. Any language or wording in this Lease which has been struck out shall be deemed not to have ever been included herein and shall not be considered in construing or interpreting any other provision of this Lease, nor shall there be any implication that by the deletion of any language or wording, the parties hereto intended to state the opposite of the struck out language or wording.

15.15 Captions and Headings — The captions and headings contained in this Lease are for convenience of reference only and are not intended to limit, enlarge or otherwise affect the interpretation of the Articles, Sections or parts hereof to which they apply.

15.16 Interpretation — In this Lease, "herein", "hereof", "hereunder", "hereafter" and similar expressions refer to this Lease and not to any particular Article, Section or other portion thereof unless there is something in the subject matter or context inconsistent therewith. Wherever necessary or appropriate in this Lease, the plural shall be interpreted as singular, the masculine gender as feminine or neuter and *vice versa*; and when there are two or more parties bound by the Tenant's covenants herein contained, their obligations shall be joint and several. If the Tenant is a partnership (other than a limited partnership), each Person who is presently a member of such partnership and each Person who becomes a member of any successor partnership shall be and continue to be liable jointly and severally for the performance of the obligations of this Lease, whether or not such Person ceases to be a member of such partnership or successor partnership and after the partnership ceases to exist.

15.17 Time of the Essence — Time shall be of the essence hereof and no extension or variation of this Lease shall operate as a waiver of this provision.

15.18 Successors and Assigns — Subject to specific provisions contained in this Lease to the contrary, this Lease shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and the heirs, executors and administrators and the permitted successors and assigns of the Tenant.

15.19 Counterparts — This Lease may be executed in counterparts and the counterparts together shall constitute an original.

15.20 Further Schedules — Any additional covenants, agreements and conditions forming part of this Lease will be attached as Schedule E and the Landlord and the Tenant agrees with the other to comply with the provisions of Schedule E. If an Indemnifier is a party hereto, the form of Indemnity Agreement to be executed by the Indemnifier and the Landlord as a separate agreement will be attached as Schedule F.

15.21 Independent Legal Advice — The Tenant and the Indemnifier each acknowledge that the Landlord hereby advises each of the Tenant and the Indemnifier to obtain advice from independent legal counsel prior to signing this Lease and/or the Indemnity Agreement. The Tenant and the

Indemnifier further acknowledge that any information provided by the Landlord is not to be construed as legal, tax or any other expert advice and the Tenant and the Indemnifier are cautioned not to rely on any such information without seeking legal, tax or other expert advice.

The Landlord and the Tenant understand, acknowledge and agree that this Lease has been freely negotiated by both parties and that, in any dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

15.22 No Offer — The Landlord will not be deemed to have made an offer to the Tenant by furnishing an unexecuted copy of this Lease with particulars inserted. Notwithstanding that a Security Deposit or payment of advance Rent is received by the Landlord when this Lease is received by the Landlord for execution, no contractual or other right will exist between the Landlord and the Tenant with respect to the Leased Premises until the Landlord, the Tenant and the Indemnifier, if any, have executed and delivered this Lease and any required Indemnity Agreement.

15.23 Survival of Covenants and Indemnities — All obligations of the Landlord and the Tenant which arise during the Term pursuant to this Lease and which have not been satisfied at the end of the Term and all indemnities of the Landlord and the Tenant contained in this Lease shall survive the expiration or other termination of this Lease.

15.24 Exculpatory Provisions — In all provisions of this Lease containing a release, indemnity or other exculpatory language in favour of the Landlord or the Tenant, reference to the Landlord or the Tenant includes reference also to the Landlord's Agent and nominee (if any) and the Tenant's agent and nominee (if any) and any Person for whom any one or more of them is in law responsible and the directors, officers and employees of the Landlord, the Landlord's Agent and nominee (if any) and the Tenant's agent and nominee (if any) and any Person for whom they are in law responsible (including the agents of any of them) while acting in the ordinary course of their employment (collectively the "Released Persons"), it being understood and agreed that, for the purposes of this Section 15.24, the Landlord or the Tenant are deemed to be acting as the agent or trustee on behalf of and for the benefit of the Released Persons solely to the extent necessary for the Released Persons to take the benefit of this Section 15.24.

15.25 Brokerage Commissions — The Tenant covenants that no act of the Tenant has given rise nor shall give rise to any Claims against the Landlord for any brokerage commission, finder's fee or similar fee in respect of this Lease. The Tenant hereby indemnifies and agrees to hold the Landlord harmless from any Claims for such commission or fees with respect to this Lease except any which were directly contracted for by the Landlord. The Landlord hereby acknowledges that it is solely responsible for and will pay all brokerage fees payable to Avison Young Commercial Real Estate (Ontario) Inc. in respect of this lease transaction. The Landlord acknowledges and agrees that the fee of Avison Young Commercial Real Estate (Ontario) Inc. has previously been agreed to in writing between Avison Young Commercial Real Estate (Ontario) Inc. and Morguard Investments Limited, as agent of the Landlord.

15.26 Covenants to be Performed at Landlord's Option — Where any provision in this Lease gives the Landlord the option of having the Landlord or the Tenant perform the covenants set out in such provision, the Tenant shall perform such covenants unless the Tenant is otherwise directed by way of written notice from the Landlord.

15.27 Radiation — Only if the Landlord believes on reasonable grounds that radiation is or has been used or created by the Tenant or any Person permitted by the Tenant to be in the Leased Premises shall this Section 15.27 apply to the Tenant.

The Tenant agrees, if so requested by the Landlord, to conduct at its own expense a survey by an accredited firm of consultants acceptable to the Landlord to determine the level of radiation in the Leased Premises, and if such levels are in excess of those allowable under Environmental Laws and set by the applicable regulatory authorities governing radiation, the Tenant agrees, at its own cost and expense and on terms and conditions approved by the Landlord, to reduce the level of radiation to a level allowable under Environmental Laws and set by such applicable regulatory authorities.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date first set forth above.

LANDLORD:
MORGUARD REAL ESTATE INVESTMENT TRUST by its
agent MORGUARD INVESTMENTS LIMITED

By: _____
Name: John Borrelli
Title: Authorized Signatory c/s

By: _____
Name: Tullio Capulli
Title: Authorized Signatory

We have authority to bind the corporation which has authority to bind the Trust

WITNESS to signature of Tenant:

signature: _____

print name: _____

address: _____

occupation: _____

TENANT:
ALLIANCE DATA L.P. by its general partner ENLOGIX INC.

By: _____
Name:
Title: c/s

By: _____
Name:
Title:

I/We have authority to bind the corporation which has authority to bind the partnership

INDEMNIFIER:
ALLIANCE DATA SYSTEMS, CORP.

By: _____
Name:
Title: c/s

By: _____
Name:
Title:

I/We have authority to bind the corporation

WITNESS to signature of Indemnifier:

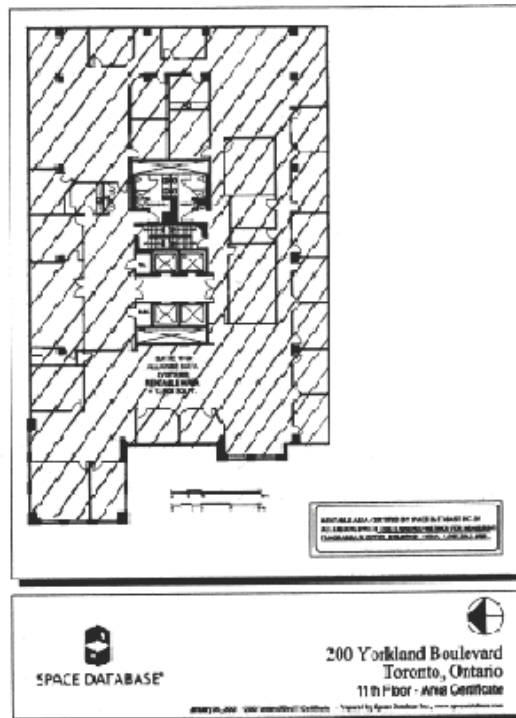
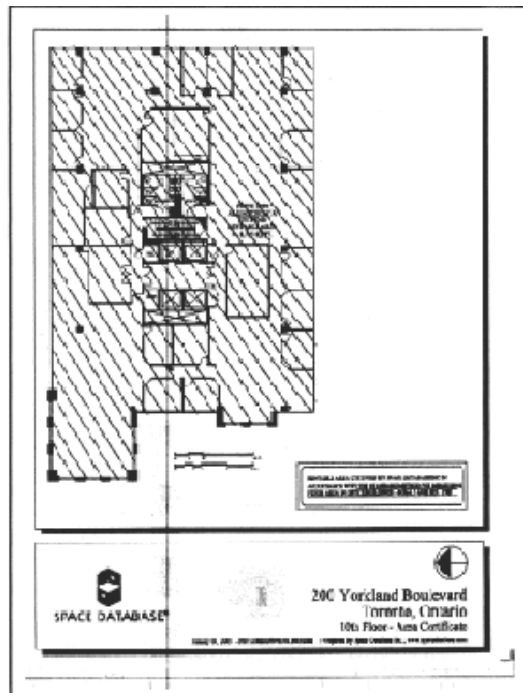
signature: _____

print name: _____

address: _____

occupation: _____

SCHEDULE A
PLAN SHOWING LEASED PREMISES



SCHEDULE A1

LEGAL DESCRIPTION OF LAND

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of North York, in the Municipality of Metropolitan Toronto and being composed of part of Blocks G and H, Registered Plan 7612 York, in the said City of Toronto designated as Part 1 on Plan 66R-21792.

Confirmed by Plan BA-1802, registered as Instrument No. 788457 North York.

The said land is registered in the Land Registry Office for the Land Titles Division of Metropolitan Toronto as P.I.N. 10085-0187 (LT).

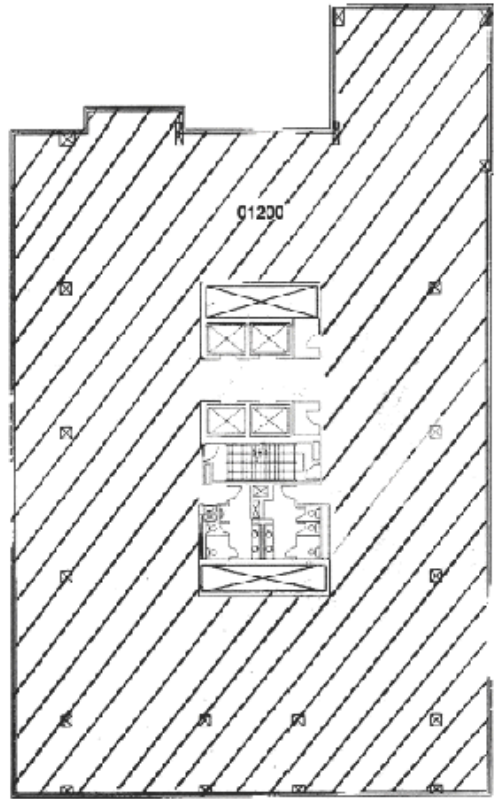
Municipally known as 200 Yorkland Boulevard, North York, Ontario .

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SCHEDULE A2
ADDITIONAL LEASED PREMISES

Morguard	3158 - 200 Yorkland Blvd Twelfth Floor	1/18/2006
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Note: all dimensions and square footage shown are approximate.

SCHEDULE B

DEFINITIONS

“**Article**”, “**Item**”, “**Schedule**”, “**Section**” and “**Subsection**” mean the specified article, item, schedule, section or subsection, as the case may be, of this Lease.

“**Basic Rent**” means the amount set out in Item 8 of the Term Sheet payable by the Tenant to the Landlord in respect of each year of the Term.

“**Bio-Medical Waste**” shall mean and include the following:

- (a) (i) surgical waste including all materials discarded from surgical procedures, including but not limited to, disposable gowns, soiled dressings, sponges, casts, lavage tubes, drainage sets, underpads and surgical gloves;
 - (ii) pathological waste including all human tissues and anatomical parts which emanate from surgery, obstetrical procedures, autopsy and laboratory;
 - (iii) biological waste including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including solid/liquid waste from renal dialysis;
 - (iv) isolation waste including all waste emanating from the care or treatment of a patient on any type of isolation or precaution except reverse (protective) isolation;
 - (v) cultures and stocks of etiologic agents and associated biologicals including, without limitation, specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;
 - (vi) laboratory waste which has come in contact with pathogenic organisms, including but not limited to, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures;
 - (vii) animal carcasses exposed to pathogens in research, their bedding and other waste from such animals;
 - (viii) sharps, including any discarded article that may cause punctures or cuts, including but not limited to, needles, IV tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers; and
 - (ix) any other wastes identified as infectious or similar wastes in any other applicable federal, provincial or municipal laws, regulations and guidelines; and
- (b) “**Chemotherapy Waste**” (also known as antineoplastic or cytotoxic waste) means and includes discarded items, including but not limited to, masks, gloves, gowns, empty IV tubing bags, vials, syringes and other contaminated materials which have been contaminated by chemotherapeutic drugs or antineoplastic agents; and
- (c) any waste defined as bio-medical waste under any applicable law or regulation.

“**Building**” means the buildings, structures and improvements from time to time during the Term erected in, upon or under the Land municipally identified in Item 3 of the Term Sheet and all alterations and additions thereto and replacements thereof.

“**Business Day**” means any day which is not a Saturday, Sunday or a statutory holiday observed in the province in which the Project is situated.

“**Capital Tax**” means the applicable amount of any tax or taxes including but not limited to Large Corporations Tax payable based upon or computed by reference to the paid-up capital or place of business of the Landlord as determined for the purposes of such tax or taxes; provided that for the purposes hereof, the “applicable amount” of such tax or taxes shall mean the amount thereof that would be payable if the Project were the only establishment of the Landlord in the jurisdiction of the taxing authority or if any other establishment of the Landlord therein were located outside that jurisdiction.

“**Claims**” means claims, losses, actions, suits, proceedings, causes of action, demands, damages (direct, indirect, consequential or otherwise), judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees on a solicitor and client or substantial indemnity basis and any associated disbursements.

“**Collateral**” has the meaning ascribed in Section 15.25.

"Commencement Date" means the first day of the Term as specified in Item 7(a) of the Term Sheet.

"Common Elements" means the areas, facilities, utilities, improvements, equipment and installations (collectively, "elements") in the Project that, from time to time, are not intended to be leased to tenants of the Project (including, without limitation, elements within rentable premises that are intended for the benefit of tenants of the Project and their invitees and employees) or are designated from time to time as Common Elements by the Landlord and includes access roads, driveways and parking areas and facilities.

"Consultants" means any reference in this Lease to the Landlord's accountant, auditor, architect, surveyor or other consultant shall be deemed to be such independent and duly qualified consultant appointed by the Landlord in its absolute discretion for the purposes of this Lease or of any provision hereof; and they will act in accordance with this Lease and the principles and standards of their professions. In determining any cost allocation the Landlord may rely on, and the parties shall be bound by, the decision or determination of the Landlord's Consultants, absent manifest error.

"Environmental Laws" shall include any domestic and foreign federal, provincial, municipal or local laws, statutes, regulations, ordinances, guidelines, policies, judge made laws or common laws and any orders of a court or governmental authority, relating in any way to the natural or human environment (including land, surface water, groundwater, and real, personal, moveable and immovable property), public or occupational health and safety, and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, elimination and treatment of a substance, hazardous or otherwise.

"Event of Default" means any of the following events:

- (a) all or any part of the Rent hereby reserved is not paid within 5 Business Days of written notice of when due;
- (b) the Term or any substantial portion of goods, merchandise, stock in trade, chattels or equipment of the Tenant or any Indemnifier is or are seized or taken in execution or in attachment or if a creditor takes possession thereof and such seizure, taking or taking possession is not bona fide defended or set aside within 10 days thereof;
- (c) the Tenant or any Indemnifier takes any steps in furtherance of or suffers any order to be made for its winding-up (other than in connection with a bona fide reorganization) or other termination of its corporate existence or becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary (other than in connection with a bona fide reorganization) or involuntary winding-up proceedings or if a receiver or receiver/manager shall be appointed for all or any part of the business, property, affairs or revenues of the Tenant or such Indemnifier and any such order, proceedings or appointment is not bona fide defended or set aside within 10 days thereof;
- (d) the Tenant abandons the Leased Premises;
- (e) a report or statement required from the Tenant under this Lease is materially false or misleading except if it results from or due to clerical or demonstrable error or as a result of the fraud or negligence of: (i) an employee of the Tenant; or (ii) the Person or an employee of the Person preparing any such report or statement;
- (f) any policy of insurance taken out by either the Landlord or the Tenant with respect to the Project shall be cancelled by reason of any act or omission of the Tenant other than its use of the Leased Premises for the purposes permitted pursuant to Item 9 of the Term Sheet;
- (g) the Tenant enters into a Transfer except in compliance with the provisions of this Lease; or
- (h) the Tenant or any Indemnifier fails to observe, perform and keep each and every covenant, agreement, provision, stipulation and condition herein contained to be observed, performed and kept by the Tenant or the Indemnifier, including observance and performance of the rules and regulations, (other than payment of Rent) and persists in the failure after 15 days' written notice by the Landlord requiring the Tenant to remedy, correct, desist or comply (or if any breach would reasonably require more than 15 days to rectify, unless the Tenant commences rectification within the 15 day notice period and thereafter promptly, effectively and continuously proceeds with the rectification of the breach).

"Expropriated", "Expropriating" and "Expropriation" have the meanings ascribed in Section 10.06.

"Fiscal Year" means a period, from time to time determined by the Landlord, all or part of which falls within the Term, at the end of which the Landlord's accounts in respect of the Project are balanced for auditing or bookkeeping purposes. Such period shall be 12 months except when the Landlord designates a new date upon which the fiscal year shall end.

"GST" means goods and services tax, being that tax payable pursuant to Parts VIII and IX of the *Excise Tax Act*, as amended and re-enacted from time to time, and other like taxes levied from time to time and includes any blended sales tax which combines GST and provincial sales tax.

"Indemnifier" means the Person, if any, so identified in the Term Sheet and who has signed this Lease as Indemnifier.

"Indemnity Agreement" means the agreement attached as Schedule F.

"Land" means those lands legally described in Schedule A1 as same may be expanded or contracted from time to time.

"Landlord's Agent" means the Person retained by the Landlord from time to time to operate or manage the Project which, as of the date of this Lease, is Morguard Investments Limited.

"Lease" means this lease, the Term Sheet, and all Schedules attached hereto which are referred to in this lease and every properly executed instrument which by its terms amends, modifies or supplements this lease.

"Leased Premises" means those premises in the Building which are described and identified in Item 4 of the Term Sheet and which are marked in a distinguishing manner on the plan attached as Schedule A.

"Leasehold Improvements" means:

(a) all improvements, fixtures, installations, alterations and additions from time to time made, erected or installed to or in the Leased Premises, in addition to, beyond or replacing the base building standards, including all partitions however affixed (including moveable and demountable partitions), millwork and affixed wall units, internal stairways, doors, hardware, light fixtures, carpeting and other applied floor finishes, and heating, ventilating and air conditioning equipment and other building services not forming part of the Landlord's base building equipment and services; and

(b) alterations, improvements and equipment made or installed for the exclusive benefit of the Tenant elsewhere in the Project;

in either case whether or not installed by or on behalf of the Tenant and whether or not installed during the Term including, without limitation, all fixtures (except trade fixtures, furniture and equipment) in the Leased Premises.

"Mortgagee" has the meaning ascribed in Section 13.04.

"Operating Costs" means in respect of any Fiscal Year the total of all actual and bona fide costs, expenses and amounts, incurred or accrued in that Fiscal Year for or with respect to ownership, management, operation, maintenance, repair, upkeep, insurance, supervision, reasonable decoration, cleaning and upgrading of the Project to maintain same in substantially the same condition which exists at the Commencement Date and the determination and allocation of such costs, expenses and amounts, whether incurred or accrued by or on behalf of the Landlord or by or on behalf of the Landlord's Agent including, without limitation and without duplication and profit:

A. Inclusions — if provided by the Landlord (subject to certain exclusions and deductions as hereinafter set out):

(a) the cost of providing and maintaining security, landscaping, gardening and snow and refuse removal;

(b) the cost of heating, air conditioning and ventilating the Building and investigating and remedying air quality and moisture issues and issues related thereto, if any;

(c) the cost of providing hot and cold or tempered water, electricity (including lighting) and all other utilities to the Common Elements (excluding, for greater certainty, premises leased or intended to be leased to tenants of the Project);

(d) the cost of providing janitor, window cleaning and general cleaning services including supplies to all parts of the Project including all premises leased to tenants of the Project;

- (e) the cost of replacement of building standard fluorescent tubes, light bulbs and ballasts in the Leased Premises and the costs of cleaning, maintaining and servicing of the electrical light fixtures in the Leased Premises if not separately invoiced pursuant to Section 7.02;
- (f) the cost of all insurance taken out and maintained by the Landlord under Article 9.00 and the cost of any deductible amount paid by the Landlord in connection with a claim under its insurance;
- (g) the rental or lease cost of all rented or leased equipment acquired for the operation or maintenance of the Project;
- (h) accounting costs incurred in connection with the Project including computations required for the imposition of charges to tenants and audit fees incurred for the determination of any costs hereunder;
- (i) the cost of all equipment acquired for operation or maintenance of the Project if expensed fully in the Fiscal Year in which such equipment is acquired in accordance with generally accepted accounting principles;
- (j) if expensed fully in the Fiscal Year in which the expense is incurred in accordance with generally accepted accounting principles, the cost of any improvement, replacement, repair or alteration whether with respect to buildings, improvements, equipment, fixtures or otherwise and whether on-site or off-site which, in the opinion of the Landlord, is necessary to reduce or limit increases in Operating Costs or is required by the Landlord's insurance carriers or by any changes subsequent to the Commencement Date in the laws, rules, regulations or orders of any governmental authority having jurisdiction, including those necessary to comply with energy conservation, pollution and environmental control standards and the costs of any procedures required with respect thereto;
- (k) if expensed fully in the Fiscal Year in which the expense is incurred in accordance with generally accepted accounting principles, the cost of repairs and replacements to or in respect of the Project including those resulting from normal wear and tear and otherwise and including those necessary with respect to the window coverings, decorations, elevators and escalators (if any), roof or any Parking Facilities;
- (l) if expensed fully in the Fiscal Year in which the expense is incurred in accordance with generally accepted accounting principles, the cost of repairs, replacements and improvements to systems in the Project including, without limitation, the heating, ventilating, air conditioning and energy-saving and security systems and devices;
- (m) at the Landlord's election (such election to be evidenced by the method of calculating Operating Costs for each Fiscal Year), either amortization, in an amount determined by the Landlord's accountant in accordance with generally accepted accounting principles, of the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Landlord at any time or its predecessor in title or interest) of any repair, replacement, reasonable decoration or improvement of the Project not included within Operating Costs for the Fiscal Year in which the expenditure was incurred in accordance with subsections (i), (j), (l) and (m) above and of all equipment required for the operation and maintenance of the Project not included within Operating Costs for the Fiscal Year in which the expenditure occurred in accordance with Subsections (i), (j), (l) and (m) above, or depreciation in an amount determined by the Landlord's accountant based on the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Landlord at any time or its predecessor in title or interest) of any of those items which are capital in nature as determined in accordance with generally accepted accounting principles together with, in each case, an amount equal to interest at the Prime Rate plus 1.5% per annum on the undepreciated or unamortized amount thereof;
- (n) the amount of all salaries, wages and fringe benefits customarily paid to or for the benefit of employees and others engaged either full-time or part-time in the operation or maintenance of the Project provided that to the extent such personnel are not engaged full time to perform such operations, then only such portion of their salaries, wages and fringe benefits as are attributable to such performance, but in any event excluding corporate office personnel, save for corporate office staff to the extent such staff are providing accounting, computer and other similar service functions for the Building;
- (o) amounts paid for service contracts with independent contractors;
- (p) the cost of energy audits, conservation studies and other measures taken to conserve energy or reduce costs or liability;
- (q) the cost of renting, operating and maintaining Project signs and providing directional signage;

- (r) all other expenses of every nature incurred in connection with the maintenance and operation of the Project;
- (s) the cost of direct supervision attributable to any of the above;
- (t) the fair rental value of space not to exceed 1,000 square feet in the Building which would otherwise be rentable occupied by the Landlord, its manager or personnel in connection with the Services; and
- (u) any Capital Tax imposed upon the Landlord; provided that if the Capital Tax payable by the Landlord in this connection is for a period not coinciding with the Fiscal Year, the amount of the Capital Tax included in Operating Costs in each Fiscal Year shall be that amount payable by the Landlord accruing during the Fiscal Year, provided that so long as the Landlord is not required to pay Capital Tax, the Tenant shall not be required to pay Capital Tax;

plus a management fee equal to that amount paid to the Landlord's Agent in respect of management of the Project or any part thereof or the Landlord's reasonable charges in lieu thereof if the Landlord elects to self manage the Project or any part thereof, which management fee in either case shall be in keeping with the industry standard.

B. Exclusions — Operating Costs shall exclude, without duplication and without limiting the generality of the foregoing:

- (a) the cost of arranging financing and any and all interest on debt and the capital retirement of debt of the Landlord;
- (b) major structural repairs;
- (c) costs determined by the Landlord from time to time to be fairly allocable to the correction of construction faults or maladjustments in operating equipment, but only to the extent that such costs are recovered from the contractor or others responsible;
- (d) any ground rent payable by the Landlord in respect of a lease of the Land or part thereof; and
- (e) tenant improvement allowances, advertising, legal expenses, inducements, leasing commissions and leasing costs in connection with the leasing of the Building;
- (f) any amount payable due to the Landlord's non-compliance with any law, bylaw, regulation or act;
- (g) any cost or penalty incurred as a result of the Landlord's default respecting its obligations in respect of any mortgage or other obligations affecting the Building or the Lands;
- (h) capital costs that are for the upgrading, improving, or repairing the structure of the Building, including but not limited to, the roof structure, load bearing walls, windows, floor slabs and masonry walls, the columns of the ceilings, the foundation, the exterior walls of the Building, and the exterior parking structure;
- (i) the cost of investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Pollutants which are in or about the Project or any part thereof or which have entered the environment from the Project but for greater certainty, this shall not exclude the Tenant from complying with its obligations pursuant to Section 9.05 of this Lease;
- (j) all amounts which would otherwise be included in Operating Costs and are recovered or recoverable by the Landlord from third parties;
- (k) bad debts and any costs incurred in the collection of such bad debts, including legal costs associated with the same;
- (l) all costs and expenses which are otherwise expressed as the Landlord's responsibility under this Lease;
- (m) the amount of GST paid or payable by the Landlord on the purchase of goods and services included in Operating Costs which may be available to the Landlord as a credit in determining the Landlord's net tax liability or refund on account of GST;
- (n) Taxes and amounts excluded from the definition of Taxes; and
- (o) costs of repairing damage or destruction arising from a peril or cause insured against by the Landlord or required to be insured against by the Landlord.

C. Deductions — There shall be deducted from Operating Costs:

- (a) the proceeds of insurance recovered by the Landlord applicable to damage, the cost of repair of which was included in the calculation of Operating Costs paid by the Tenant; and
- (b) amounts recovered or recoverable as a result of direct charges to the Tenant and other tenants to the extent that the cost thereof was included in the calculation of Operating Costs.

"Parking Facilities" means that part of the Project containing parking facilities with vehicular access thereto including, without limitation, parking spaces, ramps, circulation space, vehicular entrances and exits, the structural elements thereof and services, facilities and systems contained in or servicing such parking facilities.

"Person" means an individual, partnership, firm, corporate entity, trust, government or any department or agency thereof or any combination of them.

"Pollutants" means any substance which is regulated by or which would be considered a contaminant, pollutant, waste or deleterious or hazardous substance under Environmental Laws, or which is or may be hazardous to persons or property or detrimentally affect property value and includes, without limiting in any way the generality of the foregoing:

- (a) radioactive materials;
- (b) explosives;
- (c) any substance that, if added to any air, land and/or water, would degrade or alter or form part of a process of degradation or alteration of the quality of that air, land and/or water, to the extent that it is detrimental to its use by human beings or by any animal or plant;
- (d) any solid, liquid, gas, microorganism, mould, sound, vibration, ray, heat, radiation, odour or combinations of any of them that is likely to alter the quality of the environment (including air, land and water) in any way or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of soil, vegetation, wildlife or property;
- (e) toxic substances;
- (f) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental or municipal authority having jurisdiction over the Landlord, the Tenant, the Leased Premises or the Project of which the Leased Premises form a part;
- (g) any substance, the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under Environmental Laws;
- (h) anything contaminated by any Pollutants; and
- (i) Bio-Medical Waste.

"Prime Rate" means the rate of interest per annum established from time to time by The Bank of Nova Scotia (or such other bank being one of the 5 largest Canadian chartered banks measured by assets as the Landlord may designate from time to time) at its head office in Toronto, Ontario as the reference rate of interest to determine interest rates it will charge on Canadian dollar loans to its Canadian customers and which it refers to as its "prime rate".

"Project" means the Land and Building and includes, without limitation, all Common Elements.

"Property Tax Year" means the 12 month period set by the municipal taxing authorities as the period for and over which Property Taxes and, where applicable, business taxes are assessed, charged and payable by the owner or occupant of the Project or Leased Premises respectively, whether on a calendar or fiscal year or any other basis.

"Property Taxes" means all taxes, rates, levies, duties and assessments whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, charged, imposed or assessed against the Project or upon the Landlord in respect thereof or from time to time levied, charged, imposed or assessed in the future in lieu thereof or in addition thereto, including, without limitation, those levied, charged, imposed or assessed for education, school and local improvements and all business taxes, if any, from time to time payable by the Landlord or levied against the Landlord on account of its ownership of, or interest in, or the operation of the Project; and all costs and expenses incurred by the Landlord in good faith in contesting, resisting or appealing any such taxes, rates, duties, levies or assessments including, without limitation, legal fees on a solicitor and client or

substantial indemnity basis and other professional fees and interest and penalties on deferred payments incurred as a result of an appeal, but excluding income or profits taxes upon the income of the Landlord. If any portion of the Project is assessed or taxed other than at the prevailing commercial assessment rates and mill rates due to the occupancy of any tenants or the nature of any tenant's operation, then the amount of such taxes, rates, levies, duties or assessments shall be adjusted to be an amount equal to the amount which would have been incurred had such portion of the Project been assessed and taxed at the prevailing commercial assessment rates and mill rates throughout the entire period for which the calculation is being made. Any tax levied on commercial property or other like tax based on the area or use of the Project or the Leased Premises or any tax on rent imposed in lieu of the foregoing taxes are included herein. Property Taxes shall not include any Business Taxes payable by the Tenant pursuant to Section 8.02 and any similar Taxes levied or assessed separately against other rentable premises in the Project; the Landlord's corporate, inheritance, estate, succession and excess profits taxes and any other tax, rate, levy, duty or assessment of a personal nature; and any penalties or carrying charges relating to the late payment by the Landlord of any Property Tax or any instalments thereof excepting any charges incurred as a result of an appeal.

"Rent" means the aggregate of all amounts payable by the Tenant to the Landlord under this Lease. Provided that any and all amounts so payable which are collectible by the Landlord as agent of a taxing authority and which are Taxes imposed by that authority on the Tenant are included in Rent so as to determine the Landlord's rights and remedies in the case of delay or failure to pay the same notwithstanding that the same do not accrue to the Landlord as rent hereunder.

"Rentable Area" means the area of the Leased Premises, the Building or any part thereof as determined by the Landlord and which may be adjusted from time to time to give effect to any structural or functional change and any change in the leasing pattern in the Building, and which shall be calculated in accordance with the BOMA ANSI standards specified in Item 5 of the Term Sheet (except to the extent altered by this definition) as follows:

"Security Deposit" has the meaning ascribed in Section 4.02.

"Security Interest" has the meaning ascribed in Section 15.25.

"Service(s)" means those activities, personnel, facilities, systems and supplies required for the complete **reasonable** decoration, repair, administration, replacement, maintenance, improvement and operation of the Project.

"Taxes" means comprehensively all various classes and types of taxes, rates, levies, fees, duties, charges and assessments from whatever source arising and levied, rated, imposed, assessed, conferred or chargeable against the Project, the Leased Premises or in respect of the occupancy and activity carried on therein or on account of the Landlord's ownership of or interest in the Project or on account of rents payable with respect therefor and includes Property Taxes, business taxes or any like tax or other amount levied or assessed in lieu of, in addition to, or in substitution therefor, whether or not similar to or of the foregoing character and whether or not in existence on the date hereof, and all costs and expenses incurred by the Landlord in good faith in contesting, resisting or appealing any such taxes, rates, duties, levies or assessments including, without limitation, legal fees on a solicitor and client or substantial indemnity basis and other professional fees and interest and penalties on deferred payments, but excluding income or profits taxes upon the income of the Landlord, the Landlord's corporate, inheritance, estate, succession and excess profits taxes and any other tax, rate, levy, duty or assessment of a personal nature; and any penalties or carrying charges relating to the late payment by the Landlord of any Tax or any instalments thereof excepting any charges incurred as a result of an appeal.

"Tenant's Occupancy Costs" means for each Fiscal Year the Tenant's Proportionate Share of the Operating Costs and the Tenant's Proportionate Share of Taxes, in each case for that Fiscal Year.

"Tenant's Proportionate Share" means that proportion that the Rentable Area of the Leased Premises bears to the Total Rentable Area of the Building.

"Term" means the period of time set out in Item 7 of the Term Sheet unless sooner terminated.

"Term Sheet" means the pages identified as Term Sheet attached to this Lease; and all information and particulars contained therein shall form part of this Lease.

"Total Rentable Area of the Building" means the total Rentable Area of the Building located at or above grade level.

"Transfer" means:

- (a) an assignment, sublease, licensing or other disposition by the Tenant of this Lease or any interest therein or any interest in the Leased Premises (whether or not by operation of law) or in a partnership that is the Tenant under this Lease, or a mortgage or charge (floating or

otherwise) or other encumbrance of or upon this Lease by the Tenant, except a Transfer that occurs on the death of the Transferor;

- (b) a parting with or sharing of possession of all or part of the Leased Premises; and
- (c) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, of all or part of the corporate shares of the Tenant which results in a change in the effective voting control of the Tenant (unless the Tenant is a corporation whose shares are traded on a stock exchange in Canada or the United States of America or is a subsidiary of such a corporation).

“**Transferor**” and “**Transferee**” have meanings corresponding to the definition of “Transfer”. In the case of a Transfer described in item (c) of the definition of Transfer, the Transferor is the Person that has or would have effective voting control before the Transfer and the Transferee is the Person that has or would have effective voting control after the Transfer. The singular and plural forms of defined words and phrases shall have corresponding meanings.

SCHEDULE C

RULES AND REGULATIONS

1. **Definition** — In these rules and regulations, “Tenant” includes the employees, servants, agents, invitees, subtenants and licensees of the Tenant and others over whom the Tenant can reasonably be expected to exercise its control.
2. **Common Elements** — The Landlord reserves the right to regulate the use of the Common Elements by the Tenant and by persons making deliveries to the Tenant.
3. **Smoking** — Smoking is not permitted in the Common Elements, except as may be otherwise designated. The Landlord shall have the right, in its sole discretion, to determine whether any designated smoking area shall be established, and the size and location of any such area.
4. **Obstructions** — The sidewalks, driveways, entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered or obstructed by the Tenant or be used by it for any purpose other than for entrance to and exit from the Leased Premises.
5. **Deliveries** — The Tenant shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area or other Common Elements. The Tenant shall ensure that deliveries of materials and supplies to the Leased Premises are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in or to the Building caused by any person making such deliveries. The Landlord reserves the right to remove at the expense and risk of the owner any vehicle not using designated “vehicle standing” areas.
6. **Security** — The Landlord may from time to time adopt appropriate systems and procedures for the security and safety of the Building including restricting access during non-business hours and the Tenant shall comply with the Landlord’s reasonable requirements relating thereto.
7. **Locks** — No additional locks or bolts of any kind shall be placed by the Tenant upon any of the doors or windows of the Leased Premises, nor shall any changes whatsoever be made to existing locks or the mechanics thereof except by the Landlord at its option. The Tenant shall not permit any duplicate keys to be made, but additional keys as reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and at the Tenant’s expense. Upon termination of this Lease, the Tenant shall surrender to the Landlord all keys to the Leased Premises and any other parts of the Building together with any parking passes or other devices permitting entry.
8. **Antennae** — The Tenant shall not mount or place an antenna or aerial of any nature on the exterior of the Leased Premises or Building except as otherwise provided in Schedule E and Schedule J of this Lease.
9. **Garbage** — The handling and disposal of garbage shall comply with arrangements prescribed by the Landlord from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in the Leased Premises and the cost of removal or clearing of quantities in excess of such normally provided service may be charged to the Tenant.
10. **Repairs, Alterations and Improvements** — The Tenant shall carry out repairs, maintenance, alterations and improvements in the Leased Premises only during times agreed to in advance by the Landlord and in a manner which will not materially interfere with the rights of other tenants in the Building.
11. **Maintenance** — The Tenant shall provide adequate facilities and means to prevent the soiling of walls, floors and carpets in and abutting the Leased Premises whether by shoes, overshoes, any acts or omissions of the Tenant or otherwise.
12. **Installations and Wiring** — The Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Leased Premises and the Building except with the prior written consent of the Landlord and as it may direct. If the Tenant desires electrical or communications connections, the Landlord reserves the right to direct qualified persons as to where and how the wires should be introduced, and without such directions, no boring or cutting for wires will be permitted. No gas pipe or electric wire will be permitted which has not been ordered or authorized in writing by the Landlord.
13. **Heating, Air Conditioning and Plumbing Systems** — The Tenant shall not attempt any repairs, alterations or modifications to the heating, air conditioning or plumbing systems.

14. **Water Fixtures** — The Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Tenant shall pay the cost of any breakage, stoppage or damage resulting from a violation of this provision.
15. **Personal Use of Leased Premises** — The Leased Premises shall not be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes as permitted under this Lease.
16. **Solicitations** — The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling in the Building.
17. **Heavy Articles** — The Tenant shall not, in the Leased Premises or the Building, bring in, take out, position, construct, install or move anything liable to injure or destroy any part of the Building including, without limiting the generality of the foregoing, any safe, business machinery or other heavy machinery or equipment without the prior written consent of the Landlord, such consent not to be unreasonably withheld. In giving such consent, the Landlord shall have the right, acting reasonably, to prescribe the permitted weight and the position thereof, and the use and design of planks, skids or platforms required to distribute the weight thereof. All damage done to the Building by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Tenant. The moving of all heavy equipment or other machinery shall occur only by prior arrangement with the Landlord.
18. **Bicycles, Animals** — The Tenant shall not bring any animals, except for guide dogs, into the Building and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Building except in areas designated from time to time by the Landlord for such purposes.
19. **Furniture and Equipment** — The Tenant shall ensure that furniture, equipment and fixtures being moved into or out of the Leased Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in the Building caused thereby.
20. **Heating / Cooling** — The Tenant shall not use any means of heating or cooling the Leased Premises other than that provided by or specifically otherwise permitted in writing by the Landlord.
21. **Undue Electrical Loads, Heat, Vibration** — No material or equipment which could cause undue loads on electrical circuits or undue vibration, heat or noise shall be brought into the Building or used therein by or on behalf of the Tenant and no machinery or tools of any kind shall be affixed to or used in the Leased Premises without the prior written consent of the Landlord.
22. **Fire Regulations** — No Tenant shall do or permit anything to be done in the Leased Premises or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants, or violate or act at variance with the laws relating to fires or with the regulations of the fire department or the board of health. The Tenant shall cooperate in any fire drills and shall participate in all fire prevention or safety programs designated by the Landlord.
23. **Flammable Materials** — No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Leased Premises except in compliance with all applicable laws, by-laws and regulations pertaining to same.
24. **Food and Beverages** — Only persons approved from time to time by the Landlord may prepare, solicit orders for, sell, serve or distribute foods or beverages in the Building or use the elevators, corridors or other Common Elements for any such purpose. The Tenant shall not permit in the Leased Premises the use of equipment for the preparation, serving, sale, distribution or dispensing of food and beverages except with the prior written consent of the Landlord and in accordance with arrangements approved by the Landlord. Notwithstanding the foregoing, the Tenant shall be permitted microwave ovens, kettles and the like in the Leased Premises for the exclusive use of the Tenant's employees and invitees.
25. **Janitorial Services** — The Tenant shall not use or engage any person or persons other than the janitor or janitorial contractor of the Landlord for the purpose of any cleaning of the Leased Premises, except with the prior written consent of the Landlord.
26. **Dangerous or Immoral Activities** — The Tenant shall not make any use of the Leased Premises which could result in risk or injury to any person, nor shall the Leased Premises be used for any immoral or criminal purpose.

27. **Proper Conduct** — The Tenant shall not perform any acts or carry on any practice which may damage the Common Elements or be a nuisance to any other tenant in the Project.

28. **Additional Rules and Regulations** – Subject to Section 5.07 of this Lease, the Landlord shall have the right to make such other and further reasonable rules and regulations as in its sole judgment may from time to time be necessary or of benefit for the safety, care, cleanliness and appearance of the Project and for the preservation of good order therein.

SCHEDULE D
LANDLORD'S WORK

The Landlord shall complete the Landlord's Work within 30 days of receipt of this Lease signed by the Tenant in a form acceptable to the Landlord, (the "Access Date") to permit the Tenant to carry out the construction of its work (the "Tenant's Work"), for the installation of the Tenant's trade fixtures, and equipment.

The Landlord hereby understands and agrees that it shall complete the Landlord's Work to the Leased Premises on or before the Access Date, at its sole cost and expense which work shall include the following:

- (a) Ensure all mechanical, electrical and life safety systems, including HVAC systems serving the Leased Premises are in good working order, and meet or exceed all governmental authorities having jurisdiction;
- (b) Repair or replace any damaged or broken light fixtures located in the Leased Premises;
- (c) Repair or replace any damaged office window blinds on all exterior windows in the Leased Premises;
- (d) Replace any damaged or stained ceiling tiles, with new or like new ceiling tiles of the same style;
- (e) If required by the Landlord, the Landlord to provide meter(s) for the Tenant's hydro consumption in the Leased Premises.

It is understood and agreed that the Landlord shall complete all Landlord's Work outlined herein in a good and workmanlike manner, and shall comply with all municipal and provincial by-laws having jurisdiction over the provision of such work in the Leased Premises.

The Landlord shall be responsible at its sole cost and expense to promptly remedy any and all defects in the Landlord's Work which arise during the first year of the Term. In addition, the Landlord shall enforce for the benefit of the Tenant and at no cost to the Tenant, all guarantees and warranties received by it with respect to the Landlord's Work, or alternatively, at the request of the Tenant, assign same to the Tenant.

<u>Initials</u>	
Landlord	Tenant

- (i) an affiliate of the general partner of the Tenant or the Tenant (if the Tenant is or becomes a corporation);
- (ii) any entity which controls, is controlled by or is under common control with the general partner of the Tenant or Tenant (if the Tenant is or becomes a corporation);
- (iii) any entity which owns the majority of the units of the Tenant; or
- (iv) the purchaser of all or substantially all of the Tenant's business,

without the consent of the Landlord, but with notice to the Landlord, provided the Tenant is not released from this Lease and is not in default.

A merger or amalgamation of the Tenant with another corporation will not be an assignment, sublease or parting of possession that requires the consent of the Landlord. All of the entities referred to in subsections (i) to (iv) inclusive above are hereafter referred to individually and collectively as a "Permitted Transferee".

7. ROOF MOUNTED COMMUNICATION EQUIPMENT

The Tenant shall have the non-exclusive right, exercisable at its option, risk and expense to place communication equipment on the roof of the Building, for its own use, substantially in accordance with Schedule J. The Landlord shall first approve the size and location and method of installation of the communication equipment, such approval not to be unreasonably withheld or delayed. The Tenant shall be responsible to repair and restore any damage caused to the Building and roof by installation, use or removal of such equipment.

8. SIGNAGE

The Landlord shall permit the Tenant to install and maintain, on a non-exclusive basis, its name and corporate identification on the Building's podium signage located in front of the main entrance of the Building, at the Tenant's cost. The size, design and location of the Tenant's signage shall be in accordance with the Tenant's specifications and shall be subject to the Landlord's approval, not to be unreasonably withheld or delayed.

Together with the existing rights of other tenants in the Building, from and after December 1, 2006, and throughout the Term, and any extension or renewal thereof, the Landlord shall make available to the Tenant non-exclusive signage on the top of the Building. The size, design and location of the Tenant's signage shall be in accordance with the Tenant's specifications and shall be subject to the Landlord's approval, not to be unreasonably withheld or delayed. The Tenant shall be responsible for the cost to install, and remove its signage and shall make good any damage done to the Building as a result of the installation of the Tenant's signage on the Building, at the expiration or other termination of this Lease. Any and all of the foregoing signage (podium or Building) shall be subject to any applicable governmental regulations and approvals.

9. RESTORATION

The Tenant shall not be responsible for the restoration of the Leased Premises or the removal of any Leasehold Improvements in the Leased Premises at the expiry or earlier termination of this Lease.

10. OPTION TO EXTEND

So long as the Tenant is Alliance Data L.P. or a Permitted Transferee, and the Tenant is not then in default, after notice of default has been provided and time to remedy such default has passed, at the notice date or commencement date of the extension of any covenants, conditions and agreements herein reserved and contained and on the part of the Tenant to be paid and performed, the Landlord will, upon the Tenant's request in writing, given at least 6 months and not more than 12 months prior to the expiration of the original Term, grant to the Tenant an option to extend this Lease, on the same terms and conditions, for a further 5 years save and except that there shall be no further rights to extend and save and except that Basic Rent during such extension period shall be mutually agree upon between the parties at least 4 months prior to the expiry of the original Term.

<u>Initials</u>	
<u>Landlord</u>	<u>Tenant</u>

In the event that the parties are unable to agree on the Basic Rent payable by the Tenant during such extension at least 4 months prior to the expiration of the original Term of this Lease, then it shall be determined at least 30 days prior to the expiration of the original Term by 3 accredited real estate brokers (the "Three Experts"), which experts shall be familiar with rental rates for premises of similar use in the area of the Leased Premises, one of whom shall be appointed by the Landlord (the "Landlord's Expert") and all costs associated with the Landlord's Expert shall be the sole responsibility of the Landlord, and one expert shall be appointed by the Tenant (the "Tenant's Expert") and all costs associated with the Tenant's Expert shall be the sole responsibility of the Tenant. The appointment of the third expert (the "Third Expert") shall be agreed upon by the Landlord's Expert and the Tenant's Expert, both acting reasonably, and 50% of costs attributable to the Third Expert shall be borne by the Landlord and the remaining 50% of costs attributable to the Third Expert shall be borne by the Tenant. Together the Three Experts, acting reasonably, shall make the final determination of the Basic Rent payable by the Tenant during such extension and, should the Three Experts be unable to agree among themselves on the determination, the opinion of the majority, being 2 of the Three Experts, shall be final and binding on the Landlord and the Tenant.

11. OPTION TO EXPAND

During the period from and after December 15, 2005 up to and including June 30, 2006, the Tenant shall have the option to lease the area hatched on Schedule A2 (the "Additional Leased Premises") upon a minimum of 3 months prior notice in writing to that effect (the "Expansion Option"). Should the Tenant exercise its Expansion Option, the lease of such space shall be under the terms and conditions of this Lease, save and except for the Leasehold Improvement Allowance, which shall be \$10.00 plus GST per rentable square foot of the Rentable Area of the Additional Leased Premises.

12. PARKING

The Tenant shall have the right, and the Landlord shall make available to the Tenant, 75 unreserved and 8 reserved parking spaces located in the parking garage of the Building throughout the Term, and any renewal or extension thereof, at an initial charge of \$35.00 per month per space, and thereafter at such monthly rates per parking space as determined by the Landlord from time to time. Such rental shall be payable by the Tenant to the Landlord on the first day of each month of the Term. Partial months' rent owing shall be calculated and paid on a pro rated basis. It is further understood that this right shall be transferable to any permitted transferee of the Tenant. In addition, the Tenant shall, subject to availability from time to time have the right to use up to 17 additional parking spaces located in the parking garage of the Building on a month to month basis terminable by either party on 30 days notice at an initial charge of \$35.00 per month per space and thereafter at such monthly rate per parking space as determined by the Landlord from time to time. Such rental shall be payable by the Tenant to the Landlord on the first day of each month of the Term.

13. SALE AND DEMOLITION

The Landlord shall not have the right of early termination in the event of any sale, redevelopment, renovation or demolition of the Building.

14. NO REQUIREMENT TO OCCUPY

During the Term, the Tenant shall be permitted to vacate the Leased Premises, but may not abandon the Leased Premises. Should the Tenant vacate the Leased Premises, it shall maintain all its financial obligations, as if it were in occupancy. The Tenant shall have the right to resume occupancy of the Leased Premises at anytime without notice to the Landlord.

15. NON DISTURBANCE AGREEMENT

Upon execution of this Lease, the Landlord shall use reasonable commercial effort, at the Tenant's cost, which cost shall not exceed \$1,000.00 to obtain a non-disturbance agreement in writing from any existing mortgagee, trustee for bondholders, land lessor or other Person who has an interest in the Building or the Lands on which it is situated. Such non-disturbance agreement shall be on a standard form of any such mortgagee, trustee for bondholders, land lessor, or other Person and shall provide that, provided the Tenant is not

Initials	
Landlord	Tenant

20. GERMANE POLLUTANTS

Notwithstanding the provisions of Sections 5.01, 5.03 and 9.05 of this Lease and, so long as the Tenant is Alliance Data L.P. , a Permitted Transferee or an assignee of this Lease which has been approved by the Landlord, and no part of the Leased Premises has been subleased then, providing any Pollutants brought into the Leased Premises are strictly germane to the business operations of the Tenant as described in Item 9 of the Term Sheet and Section 5.01 of this Lease and providing further that such germane Pollutants are standard, with regard to the type and amount, in the industry in which the Tenant conducts its business and are necessary or beneficial to conduct the business operations of the Tenant described in Item 9 of the Term Sheet and Section 5.01 of this Lease ("Germane Pollutants"), the Tenant shall not be required to obtain the prior written approval of the Landlord to bring into the Leased Premises Germane Pollutants nor to notify the Landlord of the existence of Germane Pollutants in the Leased Premises.

<u>Initials</u>	
<u>Landlord</u>	<u>Tenant</u>

SCHEDULE F

FORM OF INDEMNITY AGREEMENT (if applicable)

MORGUARD February 2005 — Net Office, Multi-Tenant (General Application)

Page F - 1

INDEMNITY AGREEMENT

THIS AGREEMENT made the 19th day of December, 2005.

BETWEEN:

ALLIANCE DATA SYSTEMS CORP.

(the "Indemnifier")

OF THE FIRST PART

AND:

MORGUARD REAL ESTATE INVESTMENT TRUST

(the "Landlord")

OF THE SECOND PART

1. FOR VALUE RECEIVED and in consideration of and as an inducement to the Landlord entering into the lease dated the 19th day of December, 2005, and made between the Landlord and Alliance Data L.P. by its general partner Enlogix Inc. as Tenant of certain premises located in the Landlord's building or complex known as 200 Yorkland Boulevard, Suites 1000 and 1100, in the City of Toronto, in the Province of Ontario (the "Lease"), which premises are more particularly described in the Lease (the "Leased Premises"), the Indemnifier covenants and agrees with the Landlord that the Indemnifier will:

- (a) make due and punctual payment during the term of the Lease and any extension or renewal thereof, if any, exercised by Alliance Data L.P. or a Permitted Transferee of Alliance Data L.P. of the type described in Section 6 of Schedule E of the Lease (hereinafter referred to as the "Indemnification Period") but subject to earlier termination pursuant to Subsection 3(d) hereof of all amounts expressed to be payable under the Lease during the Indemnification Period whether as Rent or otherwise;
- (b) observe and perform during the Indemnification Period all covenants and agreements in the Lease contained on the part of the Tenant to be observed and performed during the Indemnification Period; and
- (c) indemnify and hold harmless the Landlord from any and all loss, costs or damages arising out of any failure to pay any of the said amounts and/or any failure to observe and perform any of the said covenants and agreements.

2. This Agreement and the obligations of the Indemnifier hereunder shall not be terminated or impaired by reason of the granting by the Landlord of any indulgences to the Tenant or the assertion by the Landlord against the Tenant of any of the Landlord's rights or remedies under the Lease or by the release of the Tenant from any of the Tenant's obligations under the Lease by operation of law or otherwise, whether or not the Indemnifier has received notice of same. The Indemnifier waives all suretyship defence and waives notice of any default by the Tenant in the payment of any amounts expressed to be payable under the Lease or in the observance and performance of any of the covenants and agreements therein contained. The obligations of the Indemnifier shall:

- (a) continue until all of the said amounts accruing during the Indemnification Period as same may be earlier terminated pursuant to Subsection 3(d) hereof have been paid and all of the said covenants and agreements have been observed and performed or until the Landlord shall have delivered to the Indemnifier an instrument in writing discharging the Indemnifier from the Indemnifier's obligations hereunder;
- (b) be independent of the obligations of the Tenant and be construed for all purposes as if the Indemnifier were a primary obligor and not merely a surety for the obligations of the Tenant under the Lease; and
- (c) be unaffected by any failure of the Landlord to enforce any of the covenants and agreements in the Lease.

3. The Indemnifier further acknowledges and agrees that the Landlord shall be entitled, without prior notice or demand and without affecting the obligations of the Indemnifier hereunder, to:

- (a) change the time or manner of payment of any amounts expressed to be payable under the Lease;
- (b) modify or supplement any of the covenants and agreements in the Lease provided that the Indemnifier shall not be bound by such modifications or supplements made without its consent;
- (c) grant extensions of time, indulgences, releases or discharges in respect of the payment of any amounts or the observance and performance of any covenants and agreements;
- (d) extend or renew the Lease pursuant to the extension or renewal provisions therein contained, if any provided that the Indemnifier shall not be bound by any such extension or renewal which extends beyond the Indemnification Period;
- (e) assign the Lease or the benefit of any amounts expressed to be payable thereunder;
- (f) consent to an assignment of the Lease by the Tenant or to a sublease by the Tenant of all or any part of the Leased Premises. In the event of an assignment that requires the Landlord's consent as described in Article 12.00 of the Lease, notwithstanding anything in this agreement to the contrary, the Indemnifier will be released from its obligations herein with respect to the period commencing from and after the effective date of such assignment if the consent of the Landlord is given to the assignment.
- (g) consent to changes in the Leased Premises and to any lease of additional space by way of amendment to the Lease provided that the Indemnifier shall not be bound by such modifications or supplements made without its consent;
- (h) assign this Agreement in whole or in part; and
- (i) take or require security from the Tenant.

4. The liability of the Indemnifier under this Indemnity Agreement is primary and absolute and, in the event of a default under the Lease, the Indemnifier waives any right to require the Landlord to:

- (a) proceed against the Tenant or pursue any rights and remedies with respect to the Lease;
- (b) proceed against or exhaust any security of the Tenant held by the Landlord; or
- (c) pursue any other remedy whatsoever in the Landlord's power before proceeding against the Indemnifier under this Agreement.

The Landlord shall have the right to enforce this Agreement regardless of the release or discharge of the Tenant by the Landlord or by others or by operation of law.

5. The Landlord's delay or failure to insist upon the strict performance or observance of any obligation of the Tenant under the Lease or to exercise any right or remedy available under the Lease or at law or in equity or to give the Indemnifier notice of default by the Tenant shall not be construed to be a waiver of the Landlord's right to insist upon such strict performance or observance or to exercise any such right or remedy. Receipt by the Landlord of rent or other payment with knowledge of a breach of any term or condition of the Lease shall not be construed to be a waiver of such breach.

6. The liability of the Indemnifier hereunder shall not be deemed to have been waived, released, discharged, impaired, affected or limited by: (i) the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings; (ii) the impairment, limitation or modification of the liability of the Tenant or the estate of the Tenant in bankruptcy or of any remedy for the enforcement of the Tenant's said liability under the Lease, resulting from the operation of any present or future provision of any bankruptcy laws or other statutes or from the decision in any court; (iii) the rejection, repudiation, disaffirmance or disclaimer of the Lease in any such proceedings; (iv) any disability or other defence of the Tenant; or (v) the cessation, from any cause whatsoever, of the liability of the Tenant. The liability of the Indemnifier shall not be affected by any repossession of the Leased Premises by the Landlord provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossession and/or reletting the same shall be credited from time to time by the Landlord to the account of the Indemnifier and the Indemnifier shall pay any balance owing to the Landlord from time to time immediately upon ascertainment.

7. In the event of either the termination of the Lease (except by a surrender of the Lease by the Tenant accepted in writing by the Landlord) or a repudiation or disclaimer of the Lease pursuant to any statute, then in either case at the sole option of the Landlord exercisable at any time within 6 months of such termination, repudiation or disclaimer, as the case may be, the Indemnifier agrees to execute and deliver or cause its nominee to execute and deliver (in which event the Indemnifier shall enter into an Indemnity Agreement on a similar form with respect to its nominee's obligations under such new lease) a new lease of the Leased Premises between the Landlord and the Indemnifier as tenant for a term equal to the residue of the Indemnification Period of the Lease remaining unexpired at the time of such termination, repudiation or disclaimer. Such new lease shall contain the same covenants, obligations, agreements, terms and conditions in all respects (including the proviso for re-entry) as are contained in the Lease, save for the term which shall be as aforesaid.

8. No action or proceeding brought or instituted under this Agreement and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Agreement by reason of any further default under the Lease.

9. Any notice required or permitted hereunder shall be given in writing and delivered either: (i) personally or (ii) by prepaid courier service:

to the Landlord at the Landlord's head office:

MORGUARD REAL ESTATE INVESTMENT TRUST
c/o Morguard Investments Limited
800 — 55 City Centre Drive
Mississauga, ON L5B 1M3

Attention: President
Facsimile Number: 905.281.1800

with a copy to the Landlord's manager as follows:

MORGUARD REAL ESTATE INVESTMENT TRUST
c/o Morguard Investments Limited
800 — 55 City Centre Drive
Mississauga, ON L5B 1M3

Attention: Vice President, Property Management, Office/Industrial, Eastern Canada
Facsimile Number: 905.281.4826

and to the Indemnifier at:

ALLIANCE DATA SYSTEMS CORP.
17655 Waterview Parkway
Dallax, TX 75252

Attention: General Counsel

Notwithstanding the provision of any statute or law relating thereto, service by means of electronic mail of any notice required to be given in writing by either party hereto pursuant to this Agreement shall not constitute good and effective service.

Any notice shall be considered to have been given or made if delivered personally or by prepaid courier, on the day of delivery. Either party may from time to time by notice in writing to the other designate another address or addresses in Canada as the address to which notices are to be sent.

10. This Agreement shall be construed in accordance with the laws of the province in which the Leased Premises are located and the laws of Canada applicable therein.

11. All the terms of this Agreement shall extend to and be binding upon the Indemnifier, its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and shall enure to the benefit of and may be enforced by the Landlord, its successors and assigns, including the holder of any mortgage to which the Lease is subject and subordinate. If there is more than one Indemnifier or the Indemnifier is a male or female person or corporation, this Agreement shall be read with all grammatical changes appropriate by reason thereof, and all covenants, liabilities and obligations shall be joint and several.

12. This Indemnity Agreement is irrevocable and may not be changed, affected, discharged or terminated other than by an agreement in writing signed by the Indemnifier and the Landlord. Neither this Indemnity Agreement nor any rights or obligations of the Indemnifier may be assigned by the Indemnifier without the prior written consent of the Landlord.

13. The Indemnifier acknowledges that the Landlord hereby advises the Indemnifier to obtain advice from independent legal counsel prior to signing this Indemnity Agreement. The Indemnifier further acknowledges that any information provided by the Landlord is not to be construed as legal, tax or any other expert advice and the Indemnifier is cautioned not to rely on any such information without seeking legal, tax or other expert advice.

14. The Indemnifier shall pay all costs and expenses paid or incurred by the Landlord in enforcing either the Lease or this Agreement, including court costs and legal fees on a solicitor and client or substantial indemnity basis, whether legal counsel is employed or retained by the Landlord.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first set forth above.

SIGNED, SEALED AND DELIVERED

WITNESS to signature of Indemnifier:

signature: _____

print name: _____

address: _____

occupation: _____

**INDEMNIFIER:
ALLIANCE DATA SYSTEMS CORP.**

By: _____

Name:
Title: c/s

By: _____

Name:
Title:

I/We have authority to bind the Corporation

**LANDLORD:
MORGUARD REAL ESTATE INVESTMENT TRUST by its
agent MORGUARD INVESTMENTS LIMITED**

By: _____

Name:
Title: c/s

By: _____

Name:
Title:

We have authority to bind the Corporation
which has authority to bind the Trust



SCHEDULE G

**SECURITY INTEREST — REMEDIES ON DEFAULT
INTENTIONALLY DELETED**

SCHEDULE J

TELECOMMUNICATIONS FACILITIES

1. **Prerequisites** — The Tenant's rights set out in this Schedule (the "Licence") are subject to the following conditions:
 - (a) the Tenant must not be in default under this Lease notice of which has been delivered to the Tenant and has remained uncured beyond the relevant grace period provided for in this Lease for the remedying of same;
 - (b) the Tenant must be in occupation of substantially the whole of the Leased Premises and must use the Leased Premises solely for the purposes stipulated in this Lease;
 - (c) the Tenant must pay the fees and perform the obligations stipulated in this Schedule; and
 - (d) the Lease must remain in full force and effect.
2. **Telecommunication Facilities** — Those of the facilities which are listed below and have the initials of the respective representatives of the Tenant and the Landlord within the brackets preceding them are referred to in this Schedule as the "Telecom Facilities".
 - (a) Rooftop antenna(s) — **[insert permitted number]** 1 with the characteristics outlined on Exhibit A attached to this Schedule J;
3. **Requirements and Conditions** — The Tenant may install and operate the Telecom Facilities subject to strict adherence by the Tenant to the requirements and conditions stipulated in this Schedule. The requirements and conditions are as follows:
 - (a) **Location** — The size, configuration and location of the area or areas in which the Telecom Facilities are situated from time to time (the "Licensed Areas") are all subject to the Landlord's prior written approval and are subject to reconfiguration and relocation from time to time at the Tenant's expense on prior reasonable written notice from the Landlord. The Landlord will not exercise this right to reconfigure or relocate the Licensed Areas except on a *bona fide* basis and in circumstances where:
 - (i) it is necessary or advisable in conjunction with alterations that are made or to be made in connection with the Building, the Land or the Common Elements;
 - (ii) where the Telecom Facilities or components of the Telecom Facilities have become surplus;
 - (iii) where operating efficiencies, cost savings or other enhancements in respect of the Common Elements or other components of the Building require it; or
 - (iv) where the operation of the Telecom Facilities or any components of them interfere with the use or operation of other parts of the Building, other equipment (regardless of its nature) within the Building or in any nearby buildings or properties or with other users or occupants of the Building or the Land.
 - (b) **Term** — The term during which the Tenant is entitled to keep the Telecom Facilities and use them within the Licensed Areas is coincident with the term of this Lease and any renewals or extensions of the Term.
 - (c) **Plans and Specifications** — The Telecom Facilities must not be installed until detailed plans, specifications and working drawings prepared in accordance with the best engineering standards have been prepared by the Tenant and reviewed (at the Tenant's expense) by the Landlord or the Landlord's Consultants and approved in writing. The Landlord, in reviewing and approving the plans, specifications and working drawings for the Telecom Facilities, will be entitled to take into consideration the aesthetics of the Building and any safety, operating and other factors which it considers reasonable. The Tenant shall provide to the Landlord, within 30 days after installation of the Telecom Facilities, detailed as-built drawings prepared by a professional, qualified engineer, confirming installation in accordance with the approved plans, specifications and working

drawings. No alteration of any component of the Telecom Facilities will be permitted without the Landlord's prior written consent. All costs and expenses incurred by the Landlord in reviewing plans and specifications in connection with any alterations will also be paid by the Tenant. An administration fee of 10% will be added to all amounts payable by the Tenant under this Subsection.

- (d) Standards of Construction — All construction will be completed in accordance with all provisions of the Lease, in particular Article 7.00 thereof, and in a good and workmanlike manner, in accordance with all governmental requirements and the best engineering standards, and will be in full compliance with all requirements and conditions pertaining to building permits, user permits and operating permits. All work will be performed and all design and operation will be consistent with the requirements of all occupational health and safety legislation, safety codes and Environmental Laws. Before commencing any work in connection with the Telecom Facilities, the Tenant shall provide particulars to the Landlord concerning all proposed contractors and subcontractors and no contractor or subcontractor to which the Landlord acting reasonably objects will be permitted to do any part of the work. The Tenant will ensure that no construction lien or other lien relating to any part of the work involved in installation, maintenance or repair of the Telecom Facilities will remain outstanding longer than 5 days after the Landlord gives written notice to the Tenant requiring removal of the claim, notice of claim or registration.

Each component of the Telecom Facilities will be clearly labelled by or on behalf of the Tenant in accordance with the Landlord's requirements in that regard.

All work will be completed in accordance with any reasonable directions or requirements imposed by the Landlord or the Landlord's agent and, should the Landlord require it, any work affecting the Building's basic systems, structure, aesthetics, exterior or roof will be completed under the supervision of a representative of the Landlord or, at the Landlord's option, by a contractor designated by the Landlord. The Tenant will pay any reasonable costs of supervision which the Landlord incurs in this regard.

- (e) Removal, Restoration and Acquisition Rights — The Landlord may require the Tenant to remove all or any component of the Telecom Facilities at the expiry or earlier termination of this Lease or upon termination of the Tenant's rights under this Schedule and the Tenant will complete the removal and will restore all damage to the Building and the Land caused by the installation or removal of the Telecom Facilities or any component thereof within a time frame specified by the Landlord (which will be reasonable), all at the Tenant's cost. Alternatively, where the Tenant's right to continue to use the Telecom Facilities has been terminated, the Landlord may require that components such as cable, conduit or any portions that are not easily removable or that may be useful to the Landlord be left in place and that title thereto be transferred to the Landlord (without payment of any compensation) free and clear of all encumbrances.

- (f) Third Party Providers — Should the Tenant require dark fibre, cable, conduit or other facilities or components to be installed in conjunction with the Telecom Facilities by any third party or made available to the Tenant by a third party such as, by way of example, but without limitation, a supplier of electrical power, the third party will be required to enter into a form of agreement satisfactory to the Landlord dealing with the installation, operation and use of the improvements or facilities to be installed by that third party.

No component of the Telecom Facilities may be owned, encumbered or otherwise charged or liened in favour of any third party whether by means of personal property security registration, mortgage, charge or a claim of ownership under the *Personal Property Security Act* (or similar legislation) or otherwise.

- (g) Use — The Telecom Facilities shall be used solely to provide or facilitate the provision of telecommunication services to or by the Tenant and may not be used to provide telecommunication services to any third party in the Building or on the Land. The benefit of the licence under this Schedule is not transferable by the Tenant in whole or in part except in conjunction with a Transfer under the Lease.
- (h) Standards of Operation — All aspects of the use and operation of the Telecom Facilities will be strictly in accordance with all applicable governmental requirements and regulations. In particular, without limiting the general nature of this requirement, the Tenant will ensure that the guidelines set out in Safety Code 6 of Health Canada and Industry Canada (or any successor or replacement legislation or guidelines) are fully

complied with in connection with radio frequency emission levels and the Tenant will provide to the Landlord whatever evidence the Landlord reasonably requests from time to time including, without limitation, a report by a qualified engineer confirming that any antennae included in the Telecom Facilities do not either by themselves or in conjunction with any other existing antennae that might be situated on the roof of the Building or elsewhere on the Land exceed recommended radio frequency emission levels. The Tenant will also ensure that there is no interference by any of the Telecom Facilities with the operation of any equipment or facilities in the Building or on the Land and, should the Landlord believe that this requirement is not being complied with, the Tenant will be required to provide whatever evidence (including engineer's reports) the Landlord may reasonably require to confirm compliance by the Tenant. If the Tenant fails to ensure that this interference does not occur, the Landlord may cut off power to the Telecom Facilities and may require the immediate removal of the Telecom Facilities or those parts of the Telecom Facilities that the Landlord determines are responsible for the interference. The Tenant will not alter any part of the Telecom Facilities or the manner in which any part of the Telecom Facilities is used without the Landlord's consent. The Tenant will not use any of the Telecom Facilities for any purpose other than as specified above and in particular will not use any antenna or any other component as a sign, sign base or for advertising.

- (i) Acknowledgments, Representations and Warranties — The Tenant acknowledges that it has received no representation or warranty from the Landlord in connection with any aspect of the Building or the Land in relation to the Telecom Facilities, that the Tenant has satisfied itself concerning all aspects of the Building and the Land, all site conditions and all other information pertinent to the installation, use and operation of the Telecom Facilities. No review or approval of any plans, specifications or drawings or other information submitted to the Landlord by the Tenant will be considered as a representation, acknowledgment, confirmation or inference that the Landlord has assumed or acknowledged any responsibility in connection with any aspect of the Telecom Facilities, their design, installation, use or operation, or as a waiver of the Landlord's rights under this Schedule.
- (j) Maintenance, Repairs and Replacement — The Tenant will at all times maintain the Telecom Facilities in first-class condition and repair and will ensure that the Telecom Facilities operate at all times properly and in accordance with all governmental requirements. The Tenant will provide to the Landlord from time to time whatever evidence the Landlord reasonably requests to ensure that this requirement is satisfied. In connection with any installations situated on the roof or the exterior of the Building and comprising part of the Telecom Facilities, the Tenant will be required to prepare periodic inspections at its cost, at intervals reasonably specified by the Landlord in connection with all fasteners, hooks, hardware, metal, flashings, penetrations, core sleeve and other components to ensure that they are all in first-class condition and to complete promptly any repairs, remediation or modifications that may be required in connection with them so as to ensure that the Telecom Facilities and the Building are not, as a consequence of the Telecom Facilities, in less than first-class condition.
- (k) Costs and Expenses — The Tenant will be responsible for payment to the Landlord, on demand, of all invoices submitted by the Landlord to the Tenant in respect of administration, costs of operation in connection with the Building, the Land and the Common Elements incurred by the Landlord and associated with the installation, operation and use of the Telecom Facilities. The Tenant will also pay all utilities consumed or reasonably attributable to the operation of the Telecom Facilities, all Property Taxes and other Taxes associated with or reasonably allocable to the Telecom Facilities (as determined by the Landlord acting reasonably), and all costs of altering, relocating or otherwise adapting components of the Building or the Common Elements and facilities associated with the installation, use and operation of the Telecom Facilities.
- (l) Fees — In consideration of the licence granted to the Tenant under this Schedule, the Tenant will pay to the Landlord an annual fee of \$NIL (the "Fee") payable in equal monthly instalments in advance, together with applicable GST. The Fee will be considered as Rent under this Lease.
- (m) Default — Any default with respect to any provision of this Schedule by the Tenant shall be an Event of Default under the Lease and shall entitle the Landlord to all enforcement provisions contained in the Lease.

- (n) No Property Rights — The Tenant acknowledges that the rights granted under this Schedule confer no property right, leasehold interest or easement in connection with any of the Telecom Facilities or the Licensed Areas. The Tenant's rights under this Schedule are subordinate to the rights of all lenders, mortgagees, secured creditors and any Person claiming by or through them.
- (o) Insurance — The provisions in the Lease pertaining to insurance apply to the Telecom Facilities, as well as the use, and operation of those Telecom Facilities and all liabilities associated with the installation, use and operation of the Telecom Facilities. In recognition of the increased risk to the Landlord associated with the Telecom Facilities, the Tenant agrees to increase the liability limits under its comprehensive general liability policies to \$5,000,000.00 per occurrence.
- (p) Release — The Tenant releases the Landlord in respect of all liability, Claims, loss, damage and expense which the Tenant might suffer for any reason whatsoever in connection with damage to, interruption of, or interference with, the Telecom Facilities regardless of any negligence, gross negligence, wilful act or other wrongful act which is alleged to, or is in fact established to, have taken place on the part of the Landlord.
- (q) Indemnity — Unless caused by or to the extent contributed by the act, fault or negligence of the Landlord or those for whom it is in law responsible, the Tenant hereby indemnifies the Landlord from and against all liability, Claims, loss, damage and expense arising in any way in connection with the installation, use, operation or otherwise in connection with the Telecom Facilities, this Schedule, and from and against all liability, Claims, loss, damage and expense which the Landlord might suffer as a result of any breach by the Tenant of its obligations under this Schedule.



ALLIANCE DATA

2006 Incentive Compensation Plan

(As Amended and Restated Effective January 1, 2006)

Effective January 1 – December 31, 2006

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Plan Philosophy

The intent of the Alliance Data Incentive Compensation (“IC”) Plan (“Plan”) is to:

- Provide IC to round out an eligible associate’s total compensation package in order to attract and retain high performing associates;
- Improve organizational performance by driving financial and individual performance and increasing Associate Satisfaction;
- Improve the alignment between strategic imperatives and initiatives with the Alliance Data Scorecard; and
- Provide an opportunity for associates to share in the success they help create.

Participation in this Plan reflects the importance of an associate’s position and the impact that the associate’s performance can have on the success of the Company.

Effective Date

The Plan Year is January 1, 2006 through December 31, 2006.

Eligibility

Subject to the provisions of this Plan, Associates are eligible to receive IC under this Plan if they are:

- Employed by Alliance Data Systems Corporation or any of its subsidiaries (collectively, the “Company”) and are either (a) a member of the Alliance Data Senior Leadership Team, as defined by the title Director through Senior Vice President, or (b) in an Exempt position that is designated by the Senior Director of Corporate Compensation as IC eligible (currently jobs in pay bands K-Q);
- Employed or promoted into an IC eligible position by the Company before October 1, 2006;
- On active status on the date of the award distribution or are eligible under the guidelines for retirement, disability or leave of absence; and
- Designated by supervisor as having an Incentive Compensation target as a component of their overall pay package.

In the case of part-time associates in one of the specified pay grades or pay bands listed above, they must be working a schedule equal to a minimum of 25 hours per week in order to be eligible for this IC Plan.

Associates are not eligible if they:

- Do not meet the eligibility requirements listed above;
- Are participating in a sales commission or other incentive plan, unless approved by the appropriate Executive Vice President of a Line of Business (“LOB”) or of a Business Support Group (“BSG”) and confirmed by the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation;
- Are temporary or on-call associates or contractors;

Effective January 1 — December 31, 2006

- Are hired on or after October 1, 2006 or are promoted into an IC eligible pay grade/pay band on or after October 1, 2006; or
- Are on a documented performance improvement plan as of the date of award distribution.

Being eligible for the IC Plan does not mean associates automatically participate in the program. The associate's manager, with appropriate approvals, must specifically designate that incentive compensation is a component of the associate's overall pay package.

Base Compensation Used in Calculating IC Payout

Annualized base pay as of October 1, 2006 will be used as part of the IC calculation. The IC target percentage(s) will be applied to October 1, 2006 base salary for purposes of calculating the dollar target amount.

Determining IC Targets

Each participant has an IC target. IC targets are determined by the participant's manager using the guidelines established by the Senior Director of Corporate Compensation in the following table:

<u>Band Level</u>	<u>IC Target</u>
(Senior Vice President) Q	0% - 45%
(Vice President)P	0% - 35%
(Director/Senior Director) O	0% - 25%
M & N	0% - 15%
K & L	0% - 10%

IC targets are set in 5% increments. When determining the appropriate target, the following are considered:

- The associate's anticipated contribution to the organization's success; and
- Targeted total compensation package that is competitive with similar positions in the appropriate labor market or industry.

IC targets will be set at the beginning of the Plan year or at time of hire. If the IC target percentage changes, the manager will explain how the target will be prorated for payout purposes (if appropriate) and whether or not the performance expectations and weightings will change for the current Plan year.

IC Components

All performance goals should be established and communicated to the participant at the beginning of the Plan year or as soon as feasible after becoming a participant in the Plan. The degrees to which these performance goals are accomplished have an impact on the actual incentive earned from the Plan.

Alliance Data Revenue and EBITDA Targets: The Revenue and Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") targets generally make up 25%-75% of a participant's IC payment

(see Standard Weightings Chart below). LOBs are not required to have an Alliance Data Revenue or EBITDA component if they utilize LOB Revenue and EBITDA targets.

LOB Revenue and EBITDA Targets: There are a number of financial measures that can be used to determine success for a particular area or individual. The appropriate Executive Vice President, along with the LOB Human Resources Executive and the Senior Director of Corporate Compensation will determine if sub-measures will be used for a particular LOB or a particular individual. However, it is intended that the Board of Directors approve the achievement of LOB Revenue and EBITDA for payout purposes.

Associate Satisfaction Index: The annual administration of the Associate Survey and the tracking of data (i.e., improvement expectations) are designed to motivate ongoing attention to issues that affect quality of client service, as well as the development and retention of associates. The Associate Satisfaction Index ("ASI") is a component of the Associate Survey process. The ASI component is designed to recognize and incent critical non-financial organizational factors that contribute to sustainable business performance and provide a competitive advantage in recruiting, developing and retaining high performing associates. Targets are set at the beginning of each year along with a payout schedule.

Individual Expectations: Participants may have a portion of their IC payments based upon the achievement of individual expectations or team strategic imperatives (or action steps to accomplish the strategic imperatives) as determined between the participant and his or her manager. Achievement must fall into one of three (3) categories: accomplishments fall below expectations; fully meets and/or exceeds the requirements; or has achieved/contributed well beyond expectations. The percentage of payout will be 80%, 100% or 110% depending on the level of achievement. If performance/accomplishments fall below 80% achievement, no payout will be made for the Individual Expectation component.

Associate performance is defined as obtaining the needed results of the job and living the Company values. The associate's manager will focus on the following factors to determine whether and to what extent the associate met his/her yearly goals for purposes of IC:

- **Results** - To what extent were results at, above, or below expectations and/or standards?
- **Values** - To what extent did the associate demonstrate/live the values?

Differentiation of performance is considered within three broad levels. Performance toward objectives and manager's expectations within each category can be defined by meeting some or all of the specified characteristics below:

- **Accomplishments fall below expectations:** associate completes 80 – 95% of individual objectives and expectations. Associate falls short of completing all of the objectives that are important to business strategy. Quality of work is less than expected and/or work falls short of productivity, financial or schedule expectations.
- **Fully meets and/or exceeds the requirements:** associate completes up to 110% of objectives or at least 95% of objectives with extenuating circumstances. The associate's completed objectives are closely tied to business strategy and success. The associate's work is of sufficient quality and meets productivity, financial and schedule expectations.

- **Achieved/contributed well beyond expectations:** associate completes more objectives than committed to in all cases. Completed objectives are most important to business strategy. Work exceeds all quality requirements and performed more efficiently, cheaply and/or quickly than expected.

Less than 80% completion of individual objectives is below minimum level of performance and no IC payout will be made for the Individual Expectation component.

Standard Weightings Chart for IC Components

IC objectives are weighted to drive financial and individual performance and increase Associate Satisfaction. LOBs have the ability to use specific components that closely reflect Alliance Data Scorecard measurements. Standard weightings have been established, however, LOBs/BSGs may adjust the standard weightings and adjust the standard components to include measurable financial drivers, such as bad debt or specific client revenue goals, with review and approval by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation. All measures that deviate from the standard financial measures must be objective and quantifiable.

The participant's band/job level as of October 1, 2006 will be used to determine the overall weightings. The standard components and weightings are listed in the chart below. In certain cases, LOBs/BSGs may use discretion to determine the overall weightings with the approval of the associate's supervisor and the LOB/BSGs Human Resources Executive.

Approved changes to the standard components and weightings should be communicated to associates as soon as feasible after the beginning of the plan year.

**2006 IC Plan
Standard Components and Weightings**

		<u>Senior Leadership Team¹</u>	<u>Exempts with Direct Supervisory Responsibility</u>	<u>All Other Exempts²</u>
LOB	LOB EBITDA	50%	25%	25%
	LOB Revenue	25%	25%	25%
	Associate Satisfaction³	25%	25%	0%
	Individual Expectations⁴	0%	25%	50%
BSG	Alliance Data EBITDA	50%	25%	25%
	Alliance Data Revenue	25%	25%	25%
	Associate Satisfaction³	25%	25%	0%
	Individual Expectations⁴	0%	25%	50%

¹ The LOB/BSG executive has some flexibility to establish targets that are important for the success of his or her respective area. The Individual Expectations weighting should not be used for SLT members unless it is used to drive financial performance. Any changes to the standard components, weightings or payout tables should be sent to the Senior Director of Corporate Compensation for approval by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive.

- 2 The LOB/BSG executive has some flexibility in reassigning weightings with approval from the Senior Director of Corporate Compensation.
- 3 Some participants, such as National Account Managers (“NAMs”), may have more emphasis on client relationships than Associate Satisfaction. LOB/BSG executives can determine how they want to distribute the weightings for these positions.
- 4 Eligible exempt associates below the Director level should have Individual Expectations that support strategic imperatives ensuring the success of their LOB/BSG and the Company.

Determining Payment Calculations

Payment calculations are determined as provided below. With proper approval from the Senior Director of Corporate Compensation, the appropriate Executive Vice President, and the LOB Human Resources Executive, LOBs may provide for an alternate payout table for specific LOB measures except for LOB Revenue or EBTIDA. LOB Revenue and EBITDA must follow the table specified in Attachment B. A minimum of 100% achievement must be met for LOB Revenue and EBTIDA before any other measures will payout over 100%.

Attachment A: Performance/Payout Table for Revenue, EBITDA, Associate Satisfaction and other measures as approved.

Identifies the relationship between level of performance and the percentage to be paid for the achievement of the Alliance Data Revenue & Alliance Data EBITDA, LOB Revenue & LOB EBITDA, and ASI. A minimum of 80% must be achieved for any payment to be received; performance of 120% or greater receives the maximum payment of 150%. Percentages are rounded to the nearer whole number.

For BSGs, both the Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for ASI to be paid above 100% of target. For LOBs, both the LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for ASI and any LOB specific financial measures to be paid above 100% of target.

Attachment B: Performance/Payout Table for Individual Expectations

Identifies the relationship between level of performance and the percentage to be paid for the achievement of Individual Expectations. A minimum of 80% accomplishment of standard objectives must be achieved for any payment to be received.

For BSGs, both the Alliance Data EBITDA and Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target. For LOBs, both the LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target.

Timing of Payment

IC earned for the 2006 Plan year is paid in the first quarter of the following year. A participant must be actively employed on the date payment is made to receive his or her award. Any participant who is on an approved leave

Effective January 1 — December 31, 2006

of absence or disability leave but is still on active status will receive his or her payment even if he or she is not actively at work on the date payment is made.

Status Changes That May Affect IC Targets and Payout

Status changes can affect the amount of incentive a participant receives. Status changes include:

- Transfers;
- New Hires;
- IC Target Changes;
- Leaves of Absence; and
- Terminations.

Transfers: The LOB or BSG a participant is assigned to as of October 1, 2006 will be used to determine any payments dependent upon LOB/BSG level of performance (see Standard Weightings Chart). Year-end performance for the LOB/BSG will be used to calculate the incentive amount to be paid for this component. No prorating will be done for the amount of time spent in another LOB/BSG or in a different IC eligible grade over the Plan year without prior approval of the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation.

For the ASI component, leaders who have moved or transferred during the course of the year, and who could therefore have their compensation tied to different reporting groups, will be reviewed as follows:

- Determine where the associate spent the most time during the action planning cycle;
- Assess where the associate had the greatest opportunity to influence Associate Satisfaction; and
- Before the end of December, the appropriate HR Executive will make a report recommendation to the Senior Director of Corporate Compensation, to be approved by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive.

New Hires: For associates hired between **January 1 and September 30, 2006** into an IC eligible position, the base salary as of October 1, 2006 will be used to calculate the IC dollar target. The dollar target will be prorated as follows:

Hired Between These Dates	Prorated Amount
January 1 – March 31	100%
April 1 – June 30	75%
July 1 – September 30	50%
October 1 – December 31	No IC

For example, if an associate is hired on March 12, the IC dollar target will not be prorated. If an associate is hired on July 4, then the IC dollar target will be prorated by 50%.

IC Target Changes: For current Company associates, if there is a promotion or a grade level change during the Plan year but before October 1 which results in either (a) an associate becoming newly IC eligible or (b) a

change in IC target, the IC target will be prorated according to the chart below depending on the associate's **IC eligible effective date**. Note: changes in IC targets **after October 1, 2006** will not be used to calculate IC payout for the 2006 Plan year.

IC Eligible Effective Date Between These Dates	Prorated Amount For Old/New IC % Target
January 1 – March 31	0% / 100%
April 1 – June 30	25% / 75%
July 1 – September 30	50% / 50%
October 1 – December 31	100% / 0%

The base salary as of October 1 will be used to calculate the dollar target, even if there is a corresponding change in base salary at the time of the promotion or IC target change. For example, a grade level change in April results in an IC target change from 5% to 10% and a base salary change from \$35,000 to \$40,000. The base salary on October 1 is \$40,000, so that is the salary used in the calculation. The IC dollar target is then calculated using the following formula:

	<u>10/01 Base</u>	<u>IC</u>	<u>Target</u>	<u>Prorate</u>	<u>Subtotal</u>
Old	\$40,000	5%	\$2,000	25%	\$ 500
New	\$40,000	10%	\$4,000	75%	\$3,000
TOTAL					\$3,500

The participant's manager should communicate to the participant the new weightings of financial and Individual Expectations (if applicable).

Leaves of Absence: If a participant takes a leave of absence in excess of twelve (12) weeks, either paid or unpaid, during the Plan year, he or she will receive a prorated award. Leaves of absence under twelve (12) weeks are not prorated. For any part of a week that a participant is on a leave of absence over twelve (12) weeks, the IC payment will be prorated by one week. For instance, if a participant is on leave for 12 weeks and 2 days, he or she will receive 51/52nds of the normal IC payout. If a participant is on leave for 13 weeks and 2 days, then he or she will receive 50/52nds of the normal IC payout and so on.

Terminations: If a participant terminates his or her position voluntarily or involuntarily during the Plan year, he or she will **not** be eligible for an IC payment because he or she would not be on active status on the date of the award distribution. If a participant retires, becomes disabled or dies during the Plan year, he or she may be eligible for a prorated award at the discretion of the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation. In the event of death, any incentive award is made to the beneficiary named in the Company-paid life insurance program.

Other Terms and Conditions

- All decisions by the Company will be final in the interpretation and administration of the Plan and shall lie within the Company's sole and absolute discretion. Decisions shall be final, conclusive and binding on all parties concerned.

- This Plan does not constitute a contract for the participant's continued employment with the Company. All Company associates are employed "at-will" which means either the Company or the associate may terminate the employment relationship at any time with or without cause.
- Participant's rights under the Plan may not be assigned or transferred in any way, except as otherwise set forth herein.
- The Alliance Data 2006 Incentive Compensation Plan may be amended, modified, suspended or terminated by the Company at any time, without prior consent by or prior notice to associates. The Company at its sole discretion may change objectives at any time without prior consent by or prior notice to associates.
- The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make other segregation of assets to assure the payment of the amounts under the Plan. Rights to the payment of amounts under the Plan shall be no greater than the rights of the Company's general creditors.
- Texas state law governs the validity, construction, interpretation, administration and effect of the Plan and the substantive laws, but not the choice of law rules of the State of Texas, shall govern rights relating to the Plan.
- Generally, all applicable employment and tax deductions plus 401(k) contribution deferrals will be withheld from the IC payout.
- No associate has the right nor is guaranteed the right to participate in the Plan by virtue of being an associate or fulfilling any specific position with the Company. Selection for participation in the Plan is solely within the discretion of the Company. The Company may offer participation in the Plan to additional associates or terminate the participation of any participant in the Plan at any time during the Plan Year.
- Revenues and earnings classified as "windfalls" or business losses may or may not be excluded in whole or in part from the calculation of Revenue and EBITDA at the discretion of the Company.
- Notice to participate in the Plan shall not impair or limit the Company's rights to transfer, promote or demote Plan participants to other jobs or to terminate their employment, nor shall it create any claim or right to receive any payment under the Plan or any right to be retained in the employ of the Company.
- The Plan is established for the current fiscal year. There shall be no obligation on the part of the Company to continue the Plan in the same or modified form for any future years.
- In the event that a participant has a dispute concerning the administration of this Plan, it shall first be submitted in writing to the Senior Director of Corporate Compensation. In the event that the Senior Director of Corporate Compensation does not provide a response satisfactory to the participant within 30 business days, the participant may submit the dispute in writing within five business days thereafter to the EVP, Human Resources, whose decision regarding the dispute shall be final and binding on each participant or person claiming under the Plan.

- The Plan is effective January 1, 2006, and supersedes and replaces all previous IC Plans. All such previous plans, unless earlier terminated, are terminated at midnight, December 31, 2005. If not renewed by the Company, this Plan will automatically terminate on December 31, 2006.
- In the event an eligible associate's performance falls below satisfactory standards during the Plan year, the associate may receive a reduced IC payment, at the discretion of the Company, regardless of the performance results of the Company, LOB, BSG or the ASI results (if applicable).
- The Company, at its sole discretion, may adjust or modify the methodology for calculating IC payments, the eligibility for receiving IC payments, and the actual amount of IC payments. All adjustments or modifications must be approved by the EVP, Human Resources, the appropriate Executive Vice President, the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation.

Effective January 1 — December 31, 2006

Attachment A

**PERFORMANCE/PAYOUT TABLE
FOR REVENUE, EBITDA, ASSOCIATE SATISFACTION**

	% of Objective(s) Achieved*	% Payout*	
	79% or less	0%	
80% is the threshold for performance achievements to result in a payout.	80%	65%	
	81%	67%	
	82%	69%	
	83%	70%	
	84%	72%	
	85%	74%	
	86%	76%	
	87%	77%	
	88%	79%	
	89%	81%	
	90%	83%	
	91%	84%	
	92%	86%	
	93%	88%	
	94%	89%	
	95%	91%	
	96%	93%	
	97%	95%	
	98%	96%	
	99%	98%	
	100%	100%	£100% is the target for performance achievements to receive 100% payout.
	101%	102.5%	
	102%	105.0%	
	103%	107.5%	
	104%	110.0%	
	105%	112.5%	
	106%	115.0%	
	107%	117.5%	
	108%	120.0%	
	109%	122.5%	
	110%	125.0%	
	111%	127.5%	
	112%	130.0%	
	113%	132.5%	
	114%	135.0%	
	115%	137.5%	
	116%	140.0%	
	117%	142.5%	
	118%	145.0%	
	119%	147.5%	
	120% or greater	150.0%	£150% is the maximum payout level.

For business support groups, both Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for ASI to be paid above 100% of target. For lines of business, both LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for ASI or any LOB specific measure to be paid above 100% of target.

Attachment B

PERFORMANCE/PAYOUT TABLE
FOR INDIVIDUAL EXPECTATIONS

	% of Objective(s) Achieved*	%	
	Achieved*	Payout*	
80% performance is the threshold for performance achievements to result in a payout. à	Below Minimum Accomplishments fall below expectations	0%	
	Fully meets and/or exceeds the requirements	100%	Fully meets and/or exceeds the requirements is the target for performance achievements to receive 100%
110% is the maximum payout level. à	Has achieved/contributed well beyond expectations	110%	

For business support groups, both Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target. For lines of business, both LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target.

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ALLIANCE DATA

2006 Incentive Compensation Plan for Retail and Alliance Data Consolidated

(As Amended and Restated Effective January 1, 2006)

Effective January 1 — December 31, 2006

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Plan Philosophy

The intent of the Alliance Data Incentive Compensation (“IC”) Plan (“Plan”) is to:

- Provide IC to round out an eligible associate’s total compensation package in order to attract and retain high performing associates;
- Improve organizational performance by driving financial and individual performance and increasing Associate Satisfaction;
- Improve the alignment between strategic imperatives and initiatives with the Alliance Data Scorecard; and
- Provide an opportunity for associates to share in the success they help create.

Participation in this Plan reflects the importance of an associate’s position and the impact that the associate’s performance can have on the success of the Company.

Effective Date

The Plan Year is January 1, 2006 through December 31, 2006.

Eligibility

Subject to the provisions of this Plan, Associates are eligible to receive IC under this Plan if they are:

- Employed by Alliance Data Systems Corporation or any of its subsidiaries (collectively, the “Company”) and are either (a) a member of the Alliance Data Senior Leadership Team, as defined by the title Director through Senior Vice President, or (b) in an Exempt position that is designated by the Senior Director of Corporate Compensation as IC eligible (currently jobs in pay bands K-Q);
- Employed or promoted into an IC eligible position by the Company before October 1, 2006;
- On active status on the date of the award distribution or are eligible under the guidelines for retirement, disability or leave of absence; and
- Designated by supervisor as having an Incentive Compensation target as a component of their overall pay package.

In the case of part-time associates in one of the specified pay grades listed above, they must be working a schedule equal to a minimum of 25 hours per week in order to be eligible for this IC Plan.

Associates are not eligible if they:

- Do not meet the eligibility requirements listed above;
- Are participating in a sales commission or other incentive plan, unless approved by the appropriate Executive Vice President of a Line of Business (“LOB”) or of a Business Support Group (“BSG”) and confirmed by the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation;
- Are temporary or on-call associates or contractors;

- Are hired on or after October 1, 2006 or are promoted into an IC eligible pay grade on or after October 1, 2006; or
- Are on a documented performance improvement plan as of the date of award distribution.

Being eligible for the IC Plan does not mean associates automatically participate in the program. The associate's manager, with appropriate approvals, must specifically designate that incentive compensation is a component of the associate's overall pay package.

Base Compensation Used in Calculating IC Payout

Annualized base pay as of October 1, 2006 will be used as part of the IC calculation. The IC target percentage(s) will be applied to October 1, 2006 base salary for purposes of calculating the dollar target amount.

Determining IC Targets

Each participant has an IC target. IC targets are determined by the participant's manager using the guidelines established by the Senior Director of Corporate Compensation in the following table:

Band Level	IC Target
(Senior Vice President)Q	0% - 45%
(Vice President)P	0% - 35%
(Director/Senior Director)O	0% - 25%
M & N	0% - 15%
K & L	0% - 10%

IC targets are set in 5% increments. When determining the appropriate target, the following are considered:

- The associate's anticipated contribution to the organization's success; and
- Targeted total compensation package that is competitive with similar positions in the appropriate labor market or industry.

IC targets will be set at the beginning of the Plan year or at time of hire. If the IC target percentage changes, the manager will explain how the target will be prorated for payout purposes (if appropriate) and whether or not the performance expectations and weightings will change for the current Plan year.

IC Components

All performance goals should be established and communicated to the participant at the beginning of the Plan year or as soon as feasible after becoming a participant in the Plan. The degrees to which these performance goals are accomplished have an impact on the actual incentive earned from the Plan.

Alliance Data Revenue and EBITDA Targets: The Revenue and Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") targets generally make up 25%-75% of a participant's IC payment

Effective January 1 — December 31, 2006

(see Standard Weightings Chart below). LOBs are not required to have an Alliance Data Revenue or EBITDA component if they utilize LOB Revenue and EBITDA targets.

LOB Revenue and EBITDA Targets: There are a number of financial measures that can be used to determine success for a particular area or individual. The appropriate Executive Vice President, along with the LOB Human Resources Executive and the Senior Director of Corporate Compensation will determine if sub-measures will be used for a particular LOB or a particular individual. However, it is intended that the Board of Directors approve the achievement of LOB Revenue and EBITDA for payout purposes.

Associate Satisfaction Index: The annual administration of the Associate Survey and the tracking of data (i.e., improvement expectations) are designed to motivate ongoing attention to issues that affect quality of client service, as well as the development and retention of associates. The Associate Satisfaction Index (“ASI”) is a component of the Associate Survey process. The ASI component is designed to recognize and incent critical non-financial organizational factors that contribute to sustainable business performance and provide a competitive advantage in recruiting, developing and retaining high performing associates. Targets are set at the beginning of each year along with a payout schedule.

Individual Expectations: Participants may have a portion of their IC payments based upon the achievement of individual expectations or team strategic imperatives (or action steps to accomplish the strategic imperatives) as determined between the participant and his or her manager. Achievement must fall into one of three (3) categories: accomplishments fall below expectations; fully meets and/or exceeds the requirements; or has achieved/contributed well beyond expectations. The percentage of payout will be 80%, 100% or 110% depending on the level of achievement. If performance/accomplishments fall below 80% achievement, no payout will be made for the Individual Expectation component.

Associate performance is defined as obtaining the needed results of the job and living the Company values. The associate’s manager will focus on the following factors to determine whether and to what extent the associate met his/her yearly goals for purposes of IC:

- **Results** - To what extent were results at, above, or below expectations and/or standards?
- **Values** - To what extent did the associate demonstrate/live the values?

Differentiation of performance is considered within three broad levels. Performance toward objectives and manager’s expectations within each category can be defined by meeting some or all of the specified characteristics below:

- **Accomplishments fall below expectations:** associate completes 80 — 95% of individual objectives and expectations. Associate falls short of completing all of the objectives that are important to business strategy. Quality of work is less than expected and/or work falls short of productivity, financial or schedule expectations.
- **Fully meets and/or exceeds the requirements:** associate completes up to 110% of objectives or at least 95% of objectives with extenuating circumstances. The associate’s completed objectives are closely tied to business strategy and success. The associate’s work is of sufficient quality and meets productivity, financial and schedule expectations.

- **Achieved/contributed well beyond expectations:** associate completes more objectives than committed to in all cases. Completed objectives are most important to business strategy. Work exceeds all quality requirements and performed more efficiently, cheaply and/or quickly than expected.

Less than 80% completion of individual objectives is below minimum level of performance and no IC payout will be made for the Individual Expectation component.

Standard Weightings Chart for IC Components

IC objectives are weighted to drive financial and individual performance and increase Associate Satisfaction. LOBs have the ability to use specific components that closely reflect Alliance Data Scorecard measurements. Standard weightings have been established, however, LOBs/BSGs may adjust the standard weightings and adjust the standard components to include measurable financial drivers, such as bad debt or specific client revenue goals, with review and approval by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation. All measures that deviate from the standard financial measures must be objective and quantifiable.

The participant's band/job level as of October 1, 2006 will be used to determine the overall weightings. The standard components and weightings are listed in the chart below. In certain cases, LOBs/BSGs may use discretion to determine the overall weightings with the approval of the associate's supervisor and the LOB/BSGs Human Resources Executive.

Approved changes to the standard components and weightings should be communicated to associates as soon as feasible after the beginning of the plan year.

2006 IC Plan
Standard Components and Weightings

		<u>Senior Leadership Team¹</u>	<u>Exempts with Direct Supervisory Responsibility</u>	<u>All Other Exempts²</u>
LOB	LOB EBITDA	50%	25%	25%
	LOB Revenue	25%	25%	25%
	Associate Satisfaction³	25%	25%	0%
	Individual Expectations⁴	0%	25%	50%
BSG	Alliance Data EBITDA	50%	25%	25%
	Alliance Data Revenue	25%	25%	25%
	Associate Satisfaction³	25%	25%	0%
	Individual Expectations⁴	0%	25%	50%

¹ The LOB/BSG executive has some flexibility to establish targets that are important for the success of his or her respective area. The Individual Expectations weighting should not be used for SLT members unless it is used to drive financial performance. Any changes to the standard components, weightings or payout tables should be sent to the Senior Director of Corporate Compensation for approval by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive.

² The LOB/BSG executive has some flexibility in reassigning weightings with approval from the Senior Director of Corporate Compensation.

³ Some participants, such as National Account Managers (“NAMs”), may have more emphasis on client relationships than Associate Satisfaction. LOB/BSG executives can determine how they want to distribute the weightings for these positions.

⁴ Eligible exempt associates below the Director level should have Individual Expectations that support strategic imperatives ensuring the success of their LOB/BSG and the Company.

Determining Payment Calculations

Payment calculations are determined as provided below. With proper approval from the Senior Director of Corporate Compensation, the appropriate Executive Vice President, and the LOB Human Resources Executive, LOBs may provide for an alternate payout table for specific LOB measures except for LOB Revenue or EBTIDA. LOB Revenue and EBITDA must follow the table specified in Attachment B. A minimum of 100% achievement must be met for LOB Revenue and EBTIDA before any other measures will payout over 100%.

Attachment A: Performance/Payout Table for Revenue and EBITDA

This table identifies the relationship between level of performance and the percentage to be paid for the achievement of the Alliance Data Revenue, Alliance Data EBITDA, LOB Revenue and LOB EBITDA. A minimum of 90% must be achieved for any payment to be received; performance of 110% or greater receives the maximum payment of 150%. Percentages are rounded to the nearer whole number.

Attachment B: Performance/Payout Table for Associate Satisfaction and other measures as approved

This table identifies the relationship between level of performance and percentage to be paid for the achievement of associate satisfaction and any other LOB specific financial measures as approved. For BSGs, both the Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for ASI to be paid above 100% of target. For LOBs, both the LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for ASI and any LOB specific financial measures to be paid above 100% of target.

Attachment C: Performance/Payout Table for Individual Expectations

This table identifies the relationship between level of performance and the percentage to be paid for the achievement of Individual Expectations. A minimum of 80% accomplishment of standard objectives must be achieved for any payment to be received.

For BSGs, both the Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target. For LOBs, both the LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target.

Timing of Payment

IC earned for the 2006 Plan year is paid in the first quarter of the following year. A participant must be actively employed on the date payment is made to receive his or her award. Any participant who is on an approved leave of absence or disability leave but is still on active status will receive his or her payment even if he or she is not actively at work on the date payment is made.

Status Changes That May Affect IC Targets and Payout

Status changes can affect the amount of incentive a participant receives. Status changes include:

- Transfers;
- New Hires;
- IC Target Changes;
- Leaves of Absence; and
- Terminations.

Transfers: The LOB or BSG a participant is assigned to as of October 1, 2006 will be used to determine any payments dependent upon LOB/BSG level of performance (see Standard Weightings Chart). Year-end performance for the LOB/BSG will be used to calculate the incentive amount to be paid for this component. No prorating will be done for the amount of time spent in another LOB/BSG or in a different IC eligible grade over the Plan year without prior approval of the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation.

For the ASI component, leaders who have moved or transferred during the course of the year, and who could therefore have their compensation tied to different reporting groups, will be reviewed as follows:

- Determine where the associate spent the most time during the action planning cycle;
- Assess where the associate had the greatest opportunity to influence Associate Satisfaction; and
- Before the end of December, the appropriate HR Executive will make a report recommendation to the Senior Director of Corporate Compensation, to be approved by the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive.

New Hires: For associates hired between **January 1 and September 30, 2006** into an IC eligible position, the base salary as of October 1, 2006 will be used to calculate the IC dollar target. The dollar target will be prorated as follows:

Hired Between These Dates	prorated Amount
January 1 - March 31	100%
April 1 - June 30	75%
July 1 - September 30	50%
October 1 - December 31	No IC

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For example, if an associate is hired on March 12, the IC dollar target will not be prorated. If an associate is hired on July 4, then the IC dollar target will be prorated by 50%.

IC Target Changes: For current Company associates, if there is a promotion or a grade level change during the Plan year but before October 1 which results in either (a) an associate becoming newly IC eligible or (b) a change in IC target, the IC target will be prorated according to the chart below depending on the associate's **IC eligible effective date**. Note: changes in IC targets **after October 1, 2006** will not be used to calculate IC payout for the 2006 Plan year.

IC Eligible Effective Date Between These Dates	Prorated Amount For Old/New IC % Target
January 1 - March 31	0% / 100%
April 1 - June 30	25% / 75%
July 1 - September 30	50% / 50%
October 1 - December 31	100% / 0%

The base salary as of October 1 will be used to calculate the dollar target, even if there is a corresponding change in base salary at the time of the promotion or IC target change. For example, a grade level change in April results in an IC target change from 5% to 10% and a base salary change from \$35,000 to \$40,000. The base salary on October 1 is \$40,000, so that is the salary used in the calculation. The IC dollar target is then calculated using the following formula:

	10/01 Base	IC	Target	Prorate	Subtotal
Old	\$ 40,000	5%	\$ 2,000	25%	\$ 500
New	\$ 40,000	10%	\$ 4,000	75%	\$ 3,000
TOTAL					\$ 3,500

The participant's manager should communicate to the participant the new weightings of financial and Individual Expectations (if applicable).

Leaves of Absence: If a participant takes a leave of absence in excess of twelve (12) weeks, either paid or unpaid, during the Plan year, he or she will receive a prorated award. Leaves of absence under twelve (12) weeks are not prorated. For any part of a week that a participant is on a leave of absence over twelve (12) weeks, the IC payment will be prorated by one week. For instance, if a participant is on leave for 12 weeks and 2 days, he or she will receive 51/52nds of the normal IC payout. If a participant is on leave for 13 weeks and 2 days, then he or she will receive 50/52nds of the normal IC payout and so on.

Terminations: If a participant terminates his or her position voluntarily or involuntarily during the Plan year, he or she will **not** be eligible for an IC payment because he or she would not be on active status on the date of the award distribution. If a participant retires, becomes disabled or dies during the Plan year, he or she may be eligible for a prorated award at the discretion of the appropriate Executive Vice President, along with the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation. In the event of death, any incentive award is made to the beneficiary named in the Company-paid life insurance program.

Other Terms and Conditions

- All decisions by the Company will be final in the interpretation and administration of the Plan and shall lie within the Company's sole and absolute discretion. Decisions shall be final, conclusive and binding on all parties concerned.
- This Plan does not constitute a contract for the participant's continued employment with the Company. All Company associates are employed "at-will" which means either the Company or the associate may terminate the employment relationship at any time with or without cause.
- Participant's rights under the Plan may not be assigned or transferred in any way, except as otherwise set forth herein.
- The Alliance Data 2006 Incentive Compensation Plan may be amended, modified, suspended or terminated by the Company at any time, without prior consent by or prior notice to associates. The Company at its sole discretion may change objectives at any time without prior consent by or prior notice to associates.
- The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make other segregation of assets to assure the payment of the amounts under the Plan. Rights to the payment of amounts under the Plan shall be no greater than the rights of the Company's general creditors.
- Texas state law governs the validity, construction, interpretation, administration and effect of the Plan and the substantive laws, but not the choice of law rules of the State of Texas, shall govern rights relating to the Plan.
- Generally, all applicable employment and tax deductions plus 401(k) contribution deferrals will be withheld from the IC payout.
- No associate has the right nor is guaranteed the right to participate in the Plan by virtue of being an associate or fulfilling any specific position with the Company. Selection for participation in the Plan is solely within the discretion of the Company. The Company may offer participation in the Plan to additional associates or terminate the participation of any participant in the Plan at any time during the Plan Year.
- Revenues and earnings classified as "windfalls" or business losses may or may not be excluded in whole or in part from the calculation of Revenue and EBITDA at the discretion of the Company.
- Notice to participate in the Plan shall not impair or limit the Company's rights to transfer, promote or demote Plan participants to other jobs or to terminate their employment, nor shall it create any claim or right to receive any payment under the Plan or any right to be retained in the employ of the Company.
- The Plan is established for the current fiscal year. There shall be no obligation on the part of the Company to continue the Plan in the same or modified form for any future years.

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- In the event that a participant has a dispute concerning the administration of this Plan, it shall first be submitted in writing to the Senior Director of Corporate Compensation. In the event that the Senior Director of Corporate Compensation does not provide a response satisfactory to the participant within 30 business days, the participant may submit the dispute in writing within five business days thereafter to the EVP, Human Resources, whose decision regarding the dispute shall be final and binding on each participant or person claiming under the Plan.
- The Plan is effective January 1, 2006, and supersedes and replaces all previous IC Plans. All such previous plans, unless earlier terminated, are terminated at midnight, December 31, 2005. If not renewed by the Company, this Plan will automatically terminate on December 31, 2006.
- In the event an eligible associate's performance falls below satisfactory standards during the Plan year, the associate may receive a reduced IC payment, at the discretion of the Company, regardless of the performance results of the Company, LOB, BSG or the ASI results (if applicable).
- The Company, at its sole discretion, may adjust or modify the methodology for calculating IC payments, the eligibility for receiving IC payments, and the actual amount of IC payments. All adjustments or modifications must be approved by the EVP, Human Resources, the appropriate Executive Vice President, the LOB/BSG Human Resources Executive and the Senior Director of Corporate Compensation.

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Attachment A

**PERFORMANCE/PAYOUT TABLE
FOR REVENUE and EBITDA**

	<u>% of Objective(s) Achieved*</u>	<u>% Payout*</u>	
	89% or less	0%	
90% is the threshold for performance achievements to result in a payout. à	90%	65%	
	91%	68.5%	
	92%	72%	
	93%	75.5%	
	94%	79%	
	95%	82.5%	
	96%	86%	
	97%	89.5%	
	98%	93%	
	99%	96.5%	
	100%	100%	§ 100% is the target for performance achievements to receive 100% payout.
	101%	105%	
	102%	110%	
	103%	115%	
	104%	120%	
	105%	125%	
	106%	130%	
	107%	135%	
	108%	140%	
	109%	145%	
	110% or greater	150%	§ 150% is the maximum payout level.

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Attachment B

**PERFORMANCE/PAYOUT TABLE
FOR ASSOCIATE SATISFACTION and LOB SPECIFIC MEASURES**

	% of Objective(s) Achieved*	% Payout*	
	79% or less	0%	
80% is the threshold for performance achievements to result in a payout. †	80%	65%	
	81%	67%	
	82%	69%	
	83%	70%	
	84%	72%	
	85%	74%	
	86%	76%	
	87%	77%	
	88%	79%	
	89%	81%	
	90%	83%	
	91%	84%	
	92%	86%	
	93%	88%	
	94%	89%	
	95%	91%	
	96%	93%	
	97%	95%	
	98%	96%	
	99%	98%	
	100%	100%	‡ 100% is the target for performance achievements to receive 100% payout.
	101%	102.5%	
	102%	105.0%	
	103%	107.5%	
	104%	110.0%	
	105%	112.5%	
	106%	115.0%	
	107%	117.5%	
	108%	120.0%	
	109%	122.5%	
	110%	125.0%	
	111%	127.5%	
	112%	130.0%	
	113%	132.5%	
	114%	135.0%	
	115%	137.5%	
	116%	140.0%	
	117%	142.5%	
	118%	145.0%	
	119%	147.5%	
	120% or greater	150.0%	‡ 150% is the maximum payout level.

For business support groups, both Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for ASI to be paid above 100% of target. For lines of business, both LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for ASI or any LOB specific measure to be paid above 100% of target.

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Attachment C

PERFORMANCE/PAYOUT TABLE FOR INDIVIDUAL EXPECTATIONS

	% or Objective(s) Achieved*	% Payout*	
80% performance is the threshold for performance achievements to result in a payout.à	Below Minimum Accomplishments fall below expectations	0%	
	Fully meets and/or exceeds the requirements	80%	
	Has achieved/contributed well beyond expectations	100%	β Fully meets and/or exceeds the requirements is the target for performance achievements to receive 100%
110% is the maximum payout level.à		110%	

For business support groups, both Alliance Data EBITDA and Alliance Data Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target. For lines of business, both LOB EBITDA and LOB Revenue targets must be achieved at 100% or greater in order for Individual Expectations to be paid above 100% of target.

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**List of Subsidiaries
of
Alliance Data Systems Corporation**

<u>Name of Direct Subsidiary</u>	<u>State & Date of Inc.</u>	<u>Doing Business As</u>	<u>Subsidiaries</u>
ADS Alliance Data Systems, Inc.	Delaware 4/22/83	ADS Alliance Data Systems, Inc.	LoyaltyOne, Inc. (Ohio 12/13/00)
			Enlogix, Inc. (Canada, amalgamated 03/01/02)
			Subsidiary Alliance Data L.P. (Alberta, Canada 06/01/98)
			Orcom Solutions, Inc. (Delaware 12/10/96)
			Conservation Billing Services, Inc. (Florida 06/26/91)
			Alliance Recovery Management, Inc. (Delaware 02/02/01)
			Atrana Solutions, Inc. (Texas 4/14/95)
			Epsilon Marketing Services, LLC (Delaware 07/20/00)
			Subsidiary Epsilon Interactive, LLC (Delaware 3/12/01)
			Subsidiary DNCE LLC (Delaware 06/09/03)
			Subsidiary Epsilon Data Management, LLC (Delaware 07/30/70)
			Subsidiary Interact Connect LLC (Delaware 01/05/99)
			Subsidiary DMDA Limited Partner LLC (Delaware 11/14/02)
			Subsidiary DMDA General Partner LLC

<u>Name of Direct Subsidiary</u>	<u>State & Date of Inc.</u>	<u>Doing Business As</u>	<u>Subsidiaries</u>
			(Delaware 11/14/02) Subsidiary Epsilon Texas Ltd. LLP (Texas 12/27/02) Subsidiary Northstar U.S., LLC (Delaware 2/22/06)
			ICOM, Ltd. (Canada 1/26/06) Subsidiary ICOM Information & Communications, LP (Ontario Canada 1/26/06)
			iCOM Information & Communications, Inc. (Delaware 8/18/97)
World Financial Capital Bank	Utah 04/02/03	World Financial Capital Bank	NONE
World Financial Network National Bank	Federal Charter 05/01/89	World Financial Network National Bank	WFN Credit Company, LLC (Delaware Chartered 05/01/01)
Loyalty Management Group Canada, Inc.	Ontario, Canada amalgamated 07/24/98	Loyalty Management Group Canada, Inc.	LMG Travel Services Ltd. (Ontario, Canada 02/21/92)
			Alliance Data L.P. (Alberta, Canada 06/01/98)
			ICOM Information & Communications, LP (Ontario Canada 1/26/06)
ADS Reinsurance Ltd.	Bermuda 11/26/98	ADS Reinsurance Ltd.	NONE
ADS Commercial Services, Inc.	Delaware 01/18/95	ADS Commercial Services, Inc.	NONE
ADS MB Corporation	Delaware 08/29/01	The Mail Box Alliance Data	NONE
Alliance Travel Services, Inc.	Delaware 11/03/04	Alliance Travel Services, Inc.	NONE
Alliance Data FHC, Inc.	Delaware 2/3/06	Alliance Data FHC, Inc.	NONE

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-125770, 333-106246, 333-68134 and 333-65556 on Form S-8 of our reports dated March 2, 2006, relating to the consolidated financial statements and financial statement schedule of Alliance Data Systems Corporation and management's report on the effectiveness of internal control over financial reporting, appearing in this Annual Report on Form 10-K of Alliance Data Systems Corporation for the year ended December 31, 2005.

/s/ DELOITTE & TOUCHE LLP
Dallas, Texas
March 2, 2006

**CERTIFICATION OF THE
CHIEF EXECUTIVE OFFICER
OF
ALLIANCE DATA SYSTEMS CORPORATION**

I, J. Michael Parks, certify that:

1. I have reviewed this annual report on Form 10-K of Alliance Data Systems Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2006

/s/ J. MICHAEL PARKS

J. Michael Parks
Chief Executive Officer

**CERTIFICATION OF THE
CHIEF FINANCIAL OFFICER
OF
ALLIANCE DATA SYSTEMS CORPORATION**

I, Edward J. Heffernan, certify that:

1. I have reviewed this annual report on Form 10-K of Alliance Data Systems Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2006

/s/ EDWARD J. HEFFERNAN

Edward J. Heffernan
Chief Financial Officer

**CERTIFICATION OF
CHIEF EXECUTIVE OFFICER
OF
ALLIANCE DATA SYSTEMS CORPORATION**

This certification is provided pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the annual report on Form 10-K for the year ended December 31, 2005 (the "Form 10-K") of Alliance Data Systems Corporation (the "Registrant").

I, J. Michael Parks, the Chief Executive Officer of the Registrant certify that to the best of my knowledge:

(i) the Form 10-K fully complies with the requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(ii) the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: March 3, 2006

/s/ J. MICHAEL PARKS

Name: J. Michael Parks
Chief Executive Officer

Subscribed and sworn to before me
this 3rd day of March, 2006.

/s/ KELLY VINTON

Name: Kelly Vinton
Title: Notary Public

My commission expires:
March 1, 2008

A signed original of this written statement required by Section 906 has been provided to the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF
CHIEF FINANCIAL OFFICER
OF
ALLIANCE DATA SYSTEMS CORPORATION**

This certification is provided pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the annual report on Form 10-K for the year ended December 31, 2005 (the "Form 10-K") of Alliance Data Systems Corporation (the "Registrant").

I, Edward J. Heffernan, the Chief Financial Officer of the Registrant certify that to the best of my knowledge:

(i) the Form 10-K fully complies with the requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(ii) the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: March 3, 2006

/s/ EDWARD J. HEFFERNAN

Name: Edward J. Heffernan

Chief Financial Officer

Subscribed and sworn to before me
this 3rd day of March, 2006.

/s/ KELLY VINTON

Name: Kelly Vinton

Title: Notary Public

My commission expires:

March 1, 2008

A signed original of this written statement required by Section 906 has been provided to the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.