

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the Quarter Ended March 31, 2003

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)

**31-1429215**  
(I.R.S. Employer  
Identification No.)

**17655 Waterview Parkway**  
**Dallas, Texas 75252**  
(Address of Principal Executive Office, Including Zip Code)

**(972) 348-5100**  
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes  No

As of June 28, 2002, the last business day of the registrant's most recently completed second fiscal quarter, 74,691,912 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 \$407.0 million.

As of April 30, 2003, 78,703,786 shares of the registrant's common stock, par value \$0.01 per share, were outstanding.

**ALLIANCE DATA SYSTEMS CORPORATION**

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**PART I**

**Item 1. Financial Statements**

**ALLIANCE DATA SYSTEMS CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
(amounts in thousands, except per share amounts)

	December 31, 2002	March 31, 2003
<b>ASSETS</b>		
Cash and cash equivalents	\$ 30,439	\$ 99,664
Due from card associations	27,294	34,748
Trade receivables, net	89,097	86,034
Seller's interest and credit card receivables, net	147,899	144,838
Deferred tax asset, net	37,367	37,420
Other current assets	56,844	55,708
	388,940	458,412
Total current assets		
Redemption settlement assets, restricted	166,293	180,550
Property and equipment, net	119,638	123,110
Deferred tax asset, net	10,144	15,953
Other non-current assets	17,131	26,274
Due from securitizations	235,890	212,081
Intangible assets, net	76,774	94,573
Goodwill	438,608	443,452
	1,453,418	1,554,405
Total assets		
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable	\$ 72,586	\$ 89,307
Accrued expenses	87,568	90,266
Merchant settlement obligations	49,063	98,316
Other liabilities	33,220	48,059
Debt, current portion	184,993	166,260
	427,430	492,208
Total current liabilities		
Other liabilities	15,268	19,002

Deferred revenue—service	106,504	106,187
Deferred revenue—redemption	253,560	273,224
Long-term and subordinated debt	107,918	104,567
	<u>                    </u>	<u>                    </u>
Total liabilities	910,680	995,188
Stockholders' equity:		
Common stock, \$0.01 par value; authorized 200,000 shares; issued and outstanding 74,938 shares as of December 31, 2002, 75,127 shares as of March 31, 2003	749	751
Additional paid-in capital	522,209	525,746
Treasury stock	(6,151)	(6,151)
Retained earnings	34,341	46,656
Accumulated other comprehensive loss	(8,410)	(7,785)
	<u>                    </u>	<u>                    </u>
Total stockholders' equity	542,738	559,217
	<u>                    </u>	<u>                    </u>
Total liabilities and stockholders' equity	\$ 1,453,418	\$ 1,554,405
	<u>                    </u>	<u>                    </u>

See accompanying notes to unaudited condensed consolidated financial statements.

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**ALLIANCE DATA SYSTEMS CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(amounts in thousands, except per share amounts)

	Three months ended March 31,	
	2002	2003
	<u>                    </u>	<u>                    </u>
<b>Revenues</b>		
Transaction and marketing services	\$ 120,960	\$ 116,373
Redemption	32,677	36,108
Financing charges, net	51,673	77,276
Other income	5,029	10,432
	<u>                    </u>	<u>                    </u>
Total revenue	210,339	240,189
<b>Operating expenses</b>		
Cost of operations	164,781	180,406
General and administrative	14,638	16,875
Depreciation and other amortization	9,271	12,925
Amortization of purchased intangibles	6,837	4,353
	<u>                    </u>	<u>                    </u>
Total operating expenses	195,527	214,559
Operating income	14,812	25,630
Fair value gain (loss) on interest rate derivative	387	(1,148)
Interest expense	6,294	4,556
	<u>                    </u>	<u>                    </u>
Income before income tax expense	8,905	19,926
Income tax expense	4,446	7,612
	<u>                    </u>	<u>                    </u>
Net income	\$ 4,459	\$ 12,314
	<u>                    </u>	<u>                    </u>
Net income per share—basic and diluted	\$ 0.06	\$ 0.16
	<u>                    </u>	<u>                    </u>
Weighted average shares—basic	73,996	74,866
	<u>                    </u>	<u>                    </u>
Weighted average shares—diluted	76,607	76,463
	<u>                    </u>	<u>                    </u>

See accompanying notes to unaudited condensed consolidated financial statements.

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**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(amounts in thousands)

	Three months ended March 31,	
	2002	2003
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 4,459	\$ 12,314
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	16,108	17,278
Deferred income taxes	(2,675)	(5,862)
Accretion of deferred income	(384)	(384)
Fair value (gain) loss on interest rate derivative	(387)	1,148
Provision for doubtful accounts	3,359	2,986
Change in operating assets and liabilities, net of acquisitions:		
Change in trade receivable	5,267	5,455
Change in merchant settlement activity	(44,089)	41,799
Change in other assets	631	(3,518)
Change in accounts payable and accrued expenses	(8,346)	13,921
Change in deferred revenue	5,071	5,955
Change in other liabilities	4,320	8,712
Purchase of credit card receivables	(93,581)	—
Proceeds from sale of credit card receivable portfolios	92,373	—
Other operating activities	(1,113)	2,654
Net cash provided by (used in) operating activities	(18,987)	102,458
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Change in redemption settlement assets	926	(14,257)
Acquisitions, net of cash acquired	(26,019)	(33,006)
Change in seller's interest	6,980	351
Change in due from securitizations	35,148	23,808
Capital expenditures	(9,582)	(10,709)
Other investing activities	(710)	108
Net cash provided by (used in) investing activities	6,743	(33,705)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under debt agreements	138,200	174,468
Repayment of borrowings	(164,088)	(197,500)
Proceeds from issuance of common stock	4,033	885
Net cash used in financing activities	(21,855)	(22,147)
Effect of exchange rate changes	(6,149)	22,619
Change in cash and cash equivalents	(40,248)	69,225
Cash and cash equivalents at beginning of period	117,535	30,439
Cash and cash equivalents at end of period	\$ 77,287	\$ 99,664
Supplemental cash flow information:		
Interest paid	\$ 8,926	\$ 5,963
Income taxes paid	\$ 7,165	\$ 4,425

See accompanying notes to unaudited condensed consolidated financial statements.

The condensed consolidated financial statements included herein have been prepared by Alliance Data Systems Corporation ("ADSC" or, including its wholly owned subsidiaries, the "Company"), without audit, pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") have been condensed or omitted pursuant to such rules and regulations. However, the Company believes that the disclosures are adequate to make the information presented not misleading. These unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company's annual report filed on Form 10-K for the year ended December 31, 2002.

The unaudited condensed consolidated financial statements included herein reflect all adjustments which are, in the opinion of management, necessary to state fairly the results for the interim periods presented. The results of operations for the interim periods presented are not necessarily indicative of the operating results to be expected for any subsequent interim period or for the fiscal year.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts 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.

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

## 2. ACQUISITIONS AND INTANGIBLE ASSETS

In January 2003, the Company purchased substantially all of the assets of Exolink Corporation, a provider of utility back office support services, for approximately \$1.0 million.

In March 2003, the Company purchased the customer care back office operations of American Electric Power Company related to the deregulated Texas marketplace for approximately \$30.0 million. The preliminary purchase price allocation resulted in identifiable intangible assets of \$20.0 million which are being amortized over a two to five year period, goodwill of \$4.9 million and net other assets of \$5.1 million. As part of the transaction, the Company will provide billing and customer care services to over 800,000 accounts that were recently acquired by a U.S. subsidiary of Centrica plc.

In the first quarter of 2003, as a result of certain milestones being achieved by previously acquired entities, the Company paid an additional cash consideration of \$2.0 million. The additional consideration was treated as additional purchase price.

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Intangible assets consist of the following:

	December 31, 2002	March 31, 2003	Amortization Life and Method
(in thousands)			
Premium on purchased credit card portfolios	\$ 16,566	\$ 12,155	3 years—straight line
Customer contracts and lists	77,876	99,911	2-20 years—straight line
Noncompete agreements	4,300	4,300	1-5 years—straight line
Sponsor contracts	38,306	38,306	5 years—declining balance
Collector database	47,043	47,043	15%—declining balance
Total	184,091	201,715	
Accumulated amortization	(107,317)	(107,142)	
Intangible assets, net	\$ 76,774	\$ 94,573	

## 3. DEBT

Debt consists of the following:

	December 31, 2002	March 31, 2003
(in thousands)		
Certificates of deposit	\$ 96,200	\$ 74,700
Subordinated notes	52,000	52,000
Credit facility	139,500	138,500
Other	5,211	5,627
	292,911	270,827
Less: current portion	(184,993)	(166,260)
Long term portion	\$ 107,918	\$ 104,567

#### 4. INCOME TAXES

For the three months ended March 31, 2003, the Company has utilized an effective tax rate of 38.2% to calculate its income tax expense. In accordance with Accounting Principles Board ("APB") Opinion No. 28, Interim Financial Reporting, this effective tax rate is the Company's expected annual effective tax rate for calendar year 2003 based on all known variables.

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#### 5. COMPREHENSIVE INCOME

The components of comprehensive income, net of tax effect are as follows:

	Three months ended March 31,	
	2002	2003
	(in thousands)	
Net income	\$ 4,459	\$ 12,314
Change in fair value of derivatives	810	(1,755)
Reclassifications into earnings (1)	(131)	1,824
Unrealized gain (loss) on securities available-for-sale	(254)	(726)
Foreign currency translation adjustments	(1,688)	1,283
Total comprehensive income	\$ 3,196	\$ 12,940

- (1) Reclassifications into earnings arise from interest rate swaps, a foreign currency hedge, and amortization of amounts recorded in connection with the adoption of Statement of Financial Accounting Standards ("SFAS") No. 133.

#### 6. STOCK COMPENSATION

At March 31, 2003, the Company has two stock-based employee compensation plans. 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 Statement No. 123, Accounting for Stock-Based Compensation, to stock-based employee compensation.

	Three months ended March 31,	
	2002	2003
	(in thousands, except per share amounts)	
Net income, as reported	\$ 4,459	\$ 12,314
Deduct: Total stock-based employee compensation expense determined under fair value based method for all stock option awards, net of related tax effects	(3,182)	(2,288)
Net income, pro forma	\$ 1,277	\$ 10,026
Net income per share:		
Basic and diluted-as reported	\$ 0.06	\$ 0.16
Basic and diluted-pro forma	\$ 0.02	\$ 0.13

The Company has recognized stock compensation expense, net of tax, of \$1.7 million in the first quarter of 2003 compared to \$1.9 million for the same period in 2002, related to performance based restricted stock that has been granted to certain officers.

The Board of Directors of the Company adopted the 2003 Long Term Incentive Plan on April 4, 2003, subject to stockholder approval at the Company's 2003 annual meeting of stockholders on June 10, 2003. The plan reserves 6,000,000 shares of common stock for grants of incentive stock

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options, nonqualified stock options, restricted stock awards and performance shares to officers, employees, non-employee directors or consultants performing services for the Company or its affiliates.

#### 7. SEGMENT INFORMATION

Consistent with prior periods, the Company continues to classify its businesses into three segments: Transaction Services, Credit Services and Marketing Services.

	Transaction Services	Credit Services	Marketing Services	Other/ Elimination	Total
(in thousands)					
<b>Three months ended March 31, 2002</b>					
Revenues	\$ 132,208	\$ 82,071	\$ 54,649	\$ (58,589)	\$ 210,339
Depreciation and amortization	10,715	1,440	3,953	—	16,108
Operating income	4,703	7,576	2,533	—	14,812
Fair value gain on interest rate derivative	—	387	—	—	387

#### Three months ended March 31, 2003

Revenues	\$ 143,119	\$ 109,179	\$ 59,735	\$ (71,844)	\$ 240,189
Depreciation and amortization	11,569	1,418	4,291	—	17,278
Operating income	7,024	15,616	2,990	—	25,630
Fair value loss on interest rate derivative	—	1,148	—	—	1,148

## 8. RECENTLY ISSUED ACCOUNTING STANDARDS

In April 2003, the Financial Accounting Standards Board ("FASB") issued SFAS No. 149, Amendment of Statement 133 on Derivative Instruments and Hedging Activities. The statement amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under Statement 133. The statement is generally effective for contracts entered into or modified after June 30, 2003. The Company is evaluating the impact of this statement on its financial results.

## 9. SUBSEQUENT EVENTS

In April 2003, the Company entered into three new credit facilities to replace its prior credit facilities. The first facility provides for a \$150.0 million revolving commitment and matures in April 2006. The second facility is a 364-day facility and provides for an additional \$150.0 million revolving commitment that matures in April 2004. The third facility provides for a \$100.0 million revolving commitment to Loyalty Management Group Canada Inc., a wholly owned Canadian subsidiary, and matures in April 2006. The covenants contained in the three credit facilities are substantially identical to each other and to the covenants contained in the prior credit facilities.

In April 2003, the Company completed a public offering of 10,350,000 shares of its common stock at \$19.65 per share. 7,000,000 shares were sold by one of the Company's largest stockholders, Limited Commerce Corp., an affiliate of Limited Brands, Inc., and the remaining 3,350,000 shares were sold by the Company. The net proceeds from the offering were \$62.0 million after deducting underwriting discounts and commissions and estimated offering expenses. Concurrently with the closing of the public offering, the Company used \$52.7 million of the net proceeds to repay debt outstanding, plus accrued interest, under a 10% subordinated note that the Company issued in September 1998 to an affiliated entity of Welsh, Carson, Anderson and Stowe, the Company's largest stockholder.

## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the unaudited condensed consolidated financial statements and related notes thereto presented in this quarterly report.

### Subsequent Events

In April 2003, we entered into three new credit facilities to replace our prior credit facilities. The first facility provides for a \$150.0 million revolving commitment and matures in April 2006. The second facility is a 364-day facility and provides for an additional \$150.0 million revolving commitment that matures in April 2004. The third facility provides for a \$100.0 million revolving commitment to Loyalty Management Group Canada Inc., a wholly owned Canadian subsidiary, and matures in April 2006. The covenants contained in the three credit facilities are substantially identical to each other and to the covenants contained in the prior credit facilities.

Our Board of Directors adopted the 2003 Long Term Incentive Plan on April 4, 2003, subject to stockholder approval at our 2003 annual meeting of stockholders on June 10, 2003. The 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 or consultants performing services for us or our affiliates.

In April 2003, we completed a public offering of 10,350,000 shares of our common stock at \$19.65 per share. 7,000,000 shares were sold by one of our largest stockholders, Limited Commerce Corp., an affiliate of Limited Brands, Inc., and the remaining 3,350,000 shares were sold by us. The net proceeds from the offering were \$62.0 million after deducting underwriting discounts and commissions and estimated offering expenses. Concurrently with the closing of the public offering, we used \$52.7 million of the net proceeds to repay \$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, Anderson and Stowe, our largest stockholder.

### Use of Non-GAAP Financial Measures

EBITDA is a non-GAAP financial measure equal to operating income, the most directly comparable GAAP financial measure, plus depreciation and amortization. Operating EBITDA is a non-GAAP financial measure equal to EBITDA plus the change in deferred revenue less the (increase) decrease in redemption settlement assets. We have presented EBITDA and operating EBITDA because we use them to monitor compliance with the financial covenants in our credit agreements, such as debt-to-operating EBITDA and operating EBITDA to interest expense ratios. We also use EBITDA and operating 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. Therefore, we believe that EBITDA and operating EBITDA provide useful information to our investors regarding our performance and overall results of operations. 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 the statement of cash flows as a measure of liquidity. In addition, 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 EBITDA and operating EBITDA measures presented in this quarterly report 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. The following sets forth a reconciliation of operating income to EBITDA and operating EBITDA:

	Three months ended March 31,	
	2002	2003
	(in thousands)	
Operating income	\$ 14,812	\$ 25,630
Plus depreciation and other amortization	9,271	12,925
Plus amortization of purchased intangibles	6,837	4,353
EBITDA	30,920	42,908
Plus change in deferred revenue	5,278	19,347
Less (increase) decrease in redemption settlement assets	926	(14,257)
Operating EBITDA	\$ 37,124	\$ 47,998

## Results of Operations

### Three months ended March 31, 2002 compared to the three months ended March 31, 2003

	Three months ended March 31,							
	Revenue		EBITDA		Depreciation & amortization		Operating income	
	2002	2003	2002	2003	2002	2003	2002	2003
	(in thousands)							
Transaction Services	\$ 132,208	\$ 143,119	\$ 15,418	\$ 18,593	\$ 10,715	\$ 11,569	\$ 4,703	\$ 7,024
Credit Services	82,071	109,179	9,016	17,034	1,440	1,418	7,576	15,616
Marketing Services	54,649	59,735	6,486	7,281	3,953	4,291	2,533	2,990
Other/Eliminations	(58,589)	(71,844)	—	—	—	—	—	—
Total	\$ 210,339	\$ 240,189	\$ 30,920	\$ 42,908	\$ 16,108	\$ 17,278	\$ 14,812	\$ 25,630

**Revenue.** Total revenue increased \$29.9 million, or 14.2%, to \$240.2 million for the three months ended March 31, 2003 from \$210.3 million for the comparable period in 2002. The increase was due to a 8.3% increase in Transaction Services revenue, a 33.0% increase in Credit Services revenue and a 9.3% increase in Marketing Services revenue as follows:

- Transaction Services.** Transaction Services revenue increased \$10.9 million, or 8.3%, primarily due to an increase in the generation of statements and in the revenue per statement generated partially offset by a decrease in transactions processed. The increase in statements generated includes a change in the mix of statements generated. During the first quarter of 2003, utility statements increased 98.4%, while serviced-only private label statements declined 72.8%. The increase in the number of statements generated by utility services was led by Enlogix customers and the recent addition of Centrica and AEP accounts. The decline in serviced-only private label statements is primarily associated with the deconversion of Charming Shoppes. Additionally, full service private label statements increased 6.7%. Revenue per statement generated increased 4.8% due to the shift in statement mix. Transactions processed decreased by 24.4% due to the pruning of non-core accounts.
- Credit Services.** Credit Services revenue increased \$27.1 million, or 33.0%, primarily due to a 46.4% increase in finance charges, net. Finance charges, net increased \$24.6 million primarily as a result of a 11.4% increase in average core accounts receivable, lower financing costs and a decrease in charge-offs compared to the same period in 2002.

- Marketing Services.** Marketing Services revenue increased \$5.1 million, or 9.3%, primarily due to an increase in reward revenue related to a 4.3% increase in the redemption of AIR MILES® reward miles and an increase in the accretion of deferred services revenue. Our deferred revenue balance increased 5.4% to \$379.4 million at March 31, 2003 from \$360.1 million at December 31, 2002 due to continued growth in the program, including a 9.4% increase in AIR MILES reward miles issued during the three months ended March 31, 2003 over the comparable period in 2002.

**Operating Expenses.** Total operating expenses, excluding depreciation and amortization, increased \$17.9 million, or 10.0%, to \$197.3 million during the three months ended March 31, 2003 from \$179.4 million during the comparable period in 2002. Total EBITDA margin increased to 17.9% for the three months ended March 31, 2003 from 14.7% for the comparable period in 2002, primarily due to increased margins for Transaction Services, Credit Services and Marketing Services.



- *Transaction Services.* Transaction Services operating expenses, excluding depreciation and amortization, increased \$7.7 million, or 6.6%, to \$124.5 million for the three months ended March 31, 2003 from \$116.8 million for the comparable period in 2002, and EBITDA margin increased to 13.0% for the three months ended March 31, 2003 from 11.7% during the comparable period in 2002. The EBITDA margin improved primarily due to the increasing scale now benefiting our utility services and continued margin improvements in merchant services from the loss of certain non-core low margin accounts and in issuer services from increased scale as a result of client wins in 2002.
- *Credit Services.* Credit Services operating expenses, excluding depreciation and amortization, increased \$19.0 million, or 26.0%, to \$92.1 million for the three months ended March 31, 2003 from \$73.1 million for the comparable period in 2002, and EBITDA margin increased to 15.6% for the three months ended March 31, 2003 from 11.0% for the same period of 2002. The increased margin is the result of favorable revenue trends from increased receivable balances, lower financing costs and lower net charge-offs.
- *Marketing Services.* Marketing Services operating expenses, excluding depreciation and amortization, increased \$4.3 million, or 8.9%, to \$52.5 million for the three months ended March 31, 2003 from \$48.2 million for the comparable period in 2002, and EBITDA margin increased to 12.2% for the three months ended March 31, 2003 from 11.9% for the comparable period in 2002. The increase in EBITDA margin is being driven by the AIR MILES Reward Program from the benefits of increased scale, as greater amounts of prior period deferred revenue amortizes into revenue.
- *Depreciation and Amortization.* Depreciation and amortization increased \$1.2 million, or 7.5%, to \$17.3 million for the three months ended March 31, 2003 from \$16.1 million for the comparable period in 2002 due primarily to an increase in depreciation and other amortization of \$3.7 million related to capital spending, offset by a \$2.5 million decrease in the amortization of purchased intangibles relating to certain intangibles becoming fully amortized in 2002.

*Operating Income.* Operating income increased \$10.8 million, or 73.0%, to \$25.6 million for the three months ended March 31, 2003 from \$14.8 million during the comparable period in 2002. Operating income increased due to increases in EBITDA from each of the segments.

*Interest Expense.* Interest expense decreased \$1.7 million, or 27.0%, to \$4.6 million for the three months ended March 31, 2003 from \$6.3 million for the comparable period in 2002 due to a decrease in average debt outstanding and lower interest rates.

*Taxes.* Income tax expense increased \$3.2 million to \$7.6 million for the three months ended March 31, 2003 from \$4.4 million in 2002 due to an increase in taxable income. Our effective tax rate

of 38.2% in 2003 improved from the 49.9% effective rate in 2002 due to lower tax rates in Canada and the relatively smaller impact of non-deductible permanent items in 2003.

*Transactions with Limited Brands.* Revenue from Limited Brands and its affiliates, which includes merchant and database marketing fees, increased \$1.2 million to \$10.4 million for the three months ended March 31, 2003 from \$9.2 million for the comparable period in 2002. We generate a significant amount of additional revenue from our cardholders who are customers of Limited Brands and its affiliates.

## Asset Quality

Our delinquency and net charge-off rates reflect, among other factors, the credit risk of credit card receivables, the average age of our various credit card account portfolios, the success of our collection and recovery efforts, and general economic conditions. The average age of our 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.

*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 paid or are charged off, typically after becoming 180 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. 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 tables reflect statistics for our securitization trust as reported to the trustee for compliance reporting. Management also uses core receivables to manage and analyze the portfolios. Core receivables are defined as securitized receivables less those receivables whereby the Company does not assume any risk of loss. These losses are passed on to the respective client.

	December 31, 2002	% of total	March 31, 2003	% of total
	(dollars in thousands)			
Receivables outstanding	\$ 2,775,138	100.0%	\$ 2,495,686	100.0%
Loan balances contractually delinquent:				
31 to 60 days	53,893	1.9	44,497	1.8
61 to 90 days	33,332	1.2	30,270	1.2
91 or more days	64,295	2.3	61,750	2.5
Total	\$ 151,520	5.5%	\$ 136,517	5.5%

**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. Net charge-offs exclude accrued finance charges and fees. We believe, consistent with our statistical models and other credit analyses, that our securitized net charge-off ratio will continue to fluctuate. The following table presents our net charge-offs for the periods indicated on

a securitized basis. Average credit card portfolio outstanding represents the average balance of the securitized receivables at the beginning of each month for the period indicated.

	Three months ended March 31,	
	2002	2003
	(dollars in thousands)	
Average securitized portfolio	\$ 2,355,736	\$ 2,611,992
Net charge-offs	43,483	45,010
Net charge-offs as a percentage of average loans outstanding (annualized)	7.4%	6.9%

### Liquidity and Capital Resources

**Operating Activities.** We have historically generated cash flow from operating activities, as detailed in the table below, although that amount may vary based on fluctuations in working capital and the timing of merchant settlement activity.

	Three months ended March 31,	
	2002	2003
	(in thousands)	
Cash provided by operating activities before change in merchant settlement activity	\$ 25,102	\$ 60,659
Net change in merchant settlement activity	(44,089)	41,799
Cash (used in) provided by operating activities	\$ (18,987)	\$ 102,458

We generated cash flow from operating activities before change in merchant settlement activity of \$60.7 million for the three months ended March 31, 2003 compared to \$25.1 million for the comparable period in 2002. The increase in operating cash flows before change in merchant settlement activity is related to improved operating results for the three months ended March 31, 2003, in addition to working capital movements. Merchant settlement activity fluctuates significantly depending on the day in which the quarter ends. We utilize our cash flow from operations for ongoing business operations, acquisitions and capital expenditures.

**Investing Activities.** We utilized cash flow for investing activities of \$33.7 million for the three months ended March 31, 2003 compared to providing \$6.7 million for the comparable period in 2002. Significant components of investing activities are as follows:

- **Acquisitions.** Net cash outlays, net of cash received, for acquisitions for the three months ended March 31, 2003 were \$33.0 million compared to \$26.0 million in the comparable period in 2002. The outlay for acquisitions in 2003 relates to the January 2003 purchase of substantially all of the assets of ExoLink Corporation, a provider of utility back office support services and the March 2003 purchase of the customer care back office operations of America Electric Power Company related to the deregulated Texas marketplace.
- **Securitizations 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 March 31, 2003, we had over \$2.4 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. We intend to utilize our securitization program for the foreseeable future.

**Financing Activities.** Net cash used in financing activities was \$22.1 million for the three months ended March 31, 2003 compared to \$21.9 million of net cash used for the comparable period in 2002. Our financing activities relate primarily to funding working capital requirements, the securitization program and acquisitions.

**Liquidity Sources.** In addition to cash generated from operating activities, we have four main sources of liquidity: 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.** As of March 31, 2003, we had over \$2.4 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 private label credit cards in the securitization trust and their related performance. During the period from November to January, we are required to maintain a credit enhancement level of 6% of securitized credit card receivables as compared to 4% to 5% for the remainder of the year. Accordingly, at December 31, we typically have our highest balance of credit enhancement assets.

*Certificates of Deposit.* We utilize certificates of deposit to finance the operating activities of our credit card bank subsidiary, World Financial Network National Bank, and to fund securitization enhancement requirements. World Financial Network National Bank issues 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 2.0% to 4.8%. As of March 31, 2003, we had \$74.7 million of certificates of deposit outstanding. Certificate of deposit borrowings are subject to regulatory capital requirements.

*Credit Facilities.* On April 10, 2003, we entered into three new credit facilities to replace our prior credit facilities. The first facility provides for a \$150.0 million revolving commitment and matures in April 2006. The second facility is a 364-day facility and provides for an additional \$150.0 million revolving commitment that matures in April 2004. The third facility provides for a \$100.0 million revolving commitment to Loyalty Management Group Canada Inc., a wholly owned Canadian subsidiary, and matures in April 2006. The covenants contained in the three credit facilities are substantially identical to each other and to the covenants contained in the prior credit facilities.

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 1.0% to 1.5% 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.

At April 11, 2003, we had borrowings of \$205.0 million outstanding under these credit facilities (with an average interest rate of 4.25%), we issued no letters of credit, and we had available unused borrowing capacity of approximately \$195.0 million. The credit facilities limit our aggregate outstanding letters of credit to \$50.0 million. We can obtain an increase in the total commitment under the credit facilities of up to \$50.0 million if we are not in default under the credit facilities, one or more lenders agrees to increase its commitment and the administrative agent consents.

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We used the initial advances under the new credit facilities to refinance our prior credit facilities. 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.* In April 2003, we completed a public offering of 10,350,000 shares of our common stock at \$19.65 per share. 7,000,000 shares were sold by one of our largest stockholders, Limited Commerce Corp., an affiliate of Limited Brands, Inc., and the remaining 3,350,000 shares were sold by us. The net proceeds from the offering were \$62.0 million after deducting underwriting discounts and commissions and estimated offering expenses. Concurrently with the closing of the public offering, we used \$52.7 million of the net proceeds to repay \$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, Anderson and Stowe, our largest stockholder.

### **Recently Issued Accounting Standards**

In April 2003, the FASB issued SFAS No. 149, Amendment of Statement 133 on Derivative Instruments and Hedging Activities. The statement amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under Statement 133. The statement is generally effective for contracts entered into or modified after June 30, 2003. We are evaluating the impact of this statement on our financial results.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### **Market Risk**

There has been no material change from our annual report on Form 10-K related to our exposure to market risk from off-balance sheet risk, interest rate risk, credit risk, foreign currency exchange rate risk and redemption reward risk.

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

#### **Evaluation**

Within the 90 days prior to the filing date of this report, 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 our disclosure controls and procedures are effective 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.

There have been no significant changes in our internal controls or in other factors that could significantly affect internal controls subsequent to the date we carried out this evaluation.

#### **Audit Committee Pre-Approval**

Our audit committee has resolved to pre-approve all audit and non-audit services to be performed for us by our independent auditors, Deloitte & Touche LLP. Non-audit services that have received pre-approval include tax preparation and related tax consultation and advice, assistance with our

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## FORWARD-LOOKING STATEMENTS

This Form 10-Q 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 our Annual Report on Form 10-K for the year ended December 31, 2002.

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 quarterly report 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.

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## PART II

### Item 1. 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 2. Changes in Securities and Use of Proceeds.

On April 30, 2003, we completed a public offering of 10,350,000 shares of our common stock, which included 1,350,000 shares of common stock sold by us to cover the underwriters' over-allotment option, at a public offering price of \$19.65 per share. The offering was completed pursuant to a Registration Statement on Form S-3, File No. 333-104314 which was declared effective by the SEC on April 24, 2003. Of the shares sold in the offering, 7,000,000 shares were sold by one of our largest stockholders, Limited Commerce Corp., an affiliate of Limited Brands, Inc., and the remaining 3,350,000 shares were sold by us. Bear, Stearns & Co. Inc., Credit Suisse First Boston LLC and J.P. Morgan Securities Inc. acted as joint book-running managers for the offering and Adams, Harkness & Hill, Inc., CIBC World Markets Corp. and Lehman Brothers Inc. served as co-managers. Aggregate proceeds from the offering to us were \$65.8 million and to the selling stockholder were \$137.5 million. After deducting underwriting discounts and commissions of \$3.3 million and estimated offering expenses, we received net offering proceeds of approximately \$62.0 million.

Concurrently with the closing of the public offering, we used \$52.7 million of 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, Anderson and Stowe, our largest stockholder. We have used and anticipate continuing to use the balance of the proceeds, approximately \$9.3 million, for potential acquisitions and general corporate purposes, including working capital and capital expenditures. The amounts and timing of our expenditures for general corporate purposes will vary depending on a number of factors, including the amount of cash generated or used by our operations, competitive and technological developments and the rate of growth of our business. As a result, we have retained broad discretion in allocating the remaining proceeds from public offering. No payments of expenses or uses of net proceeds constituted direct or indirect payments to any of our directors, officers or general partners or their associates, persons owning 10% or more of any class of our equity securities, or to any of our affiliates other than (1) the repayment of the \$52.0 million of debt outstanding held by Welsh Carson and (2) reimbursements, if any, to the selling stockholder for expenses related to the offering as required under our stockholders agreement.

### Item 3. Defaults Upon Senior Securities.

None

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

None

### Item 5. Other Information.

None

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

(a) Exhibits:

Exhibit No.	Description
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 Registration Statement on Form S-1 filed with the SEC on March 3, 2000, File No. 333-94623).
*10.1	Fourth Amendment to Lease Agreement by and between Partners at Brooksedge and ADS Alliance Data Systems, Inc., dated June 30, 2001.
*10.2	Indenture of Lease by and between OTR and ADS Alliance Data Systems, Inc., dated as of February 1, 2002, as amended.
10.3	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).
10.4	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).
10.5	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).

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10.6	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).
*10.7	Amendment, dated February 4, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
*10.8	Amendment No. 2, dated April 7, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
*10.9	Amendment No. 3, dated May 8, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
*99.1	Certification of Chief Executive Officer of Alliance Data Systems Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*99.2	Certification of Chief Financial Officer of Alliance Data Systems Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Filed herewith

(b) Reports on Form 8-K:

On April 15, 2003, we furnished to the SEC a Current Report on Form 8-K, dated April 15, 2003. The Current Report on Form 8-K relates to our earnings for the first quarter of 2003.

On March 10, 2003, we filed with the SEC a Current Report on Form 8-K, dated March 10, 2003. The Current Report on Form 8-K relates to our announcement of the provision of outsourcing services to Texas deregulated utility customers of subsidiaries of Centrica North America, CPL Retail Energy and WTU Retail Energy, along with Texas deregulated utility customers of American Electric Power Company and the sale by American Electric Power Company of back office operations to us.

On January 29, 2003, we filed with the SEC a Current Report on Form 8-K, dated January 29, 2003. The Current Report on Form 8-K relates to our earnings for the fourth quarter of 2002.

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## SIGNATURES

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

### ALLIANCE DATA SYSTEMS CORPORATION

Date: May 14, 2003

By: /s/ EDWARD J. HEFFERNAN

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Edward J. Heffernan  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

Date: May 14, 2003

By: /s/ MICHAEL D. KUBIC

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Michael D. Kubic  
Senior Vice President and Corporate Controller  
(Principal Accounting Officer)

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### CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER OF ALLIANCE DATA SYSTEMS CORPORATION

I, J. Michael Parks, Chief Executive Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alliance Data Systems Corporation;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

J. Michael Parks  
Chief Executive Officer

**CERTIFICATION OF THE  
CHIEF FINANCIAL OFFICER  
OF  
ALLIANCE DATA SYSTEMS CORPORATION**

I, Edward J. Heffernan, Chief Financial Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alliance Data Systems Corporation;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

/s/ EDWARD J. HEFFERNAN

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Edward J. Heffernan  
Chief Financial Officer

**EXHIBIT INDEX**

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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).
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- 4 Specimen Certificate for shares of Common Stock of the Registrant (incorporated by reference to Exhibit No. 4 to our Registration Statement on Form S-1 filed with the SEC on March 3, 2000, File No. 333-94623).
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- \*10.2 Indenture of Lease by and between OTR and ADS Alliance Data Systems, Inc., dated as of February 1, 2002, as amended.
- 10.3 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).
- 10.4 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).
- 10.5 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).
- 10.6 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).

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- \*10.7 Amendment, dated February 4, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
  - \*10.8 Amendment No. 2, dated April 7, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
  - \*10.9 Amendment No. 3, dated May 8, 2003, to Alliance Data Systems 401(k) Retirement Savings Plan.
  - \*99.1 Certification of Chief Executive Officer of Alliance Data Systems Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
  - \*99.2 Certification of Chief Financial Officer of Alliance Data Systems Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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\* Filed herewith

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**FOURTH AMENDMENT TO LEASE**

THIS FOURTH AMENDMENT TO LEASE (hereinafter referred to as the "Amendment") is made effective as of this 1st day of June, 2000, by and between PARTNERS AT BROOKSEDGE, 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 "WFN"), as Lessee, entered into a Lease dated July 2, 1990 for certain space located at 220 West Schnock 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, and that certain Third Amendment of Lease between WFN and Lessor dated February 18, 1991.
- 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. The current term of the Lease expires on January 31, 2001, and Lessee has two (2) concurrent options to renew the Lease for additional terms of five (5) years each. Lessor and Lessee have renegotiated the terms and conditions for extension of the Lease and one (1) renewal option.

**PROVISIONS**

- 1. *Incorporation of Recitals.* The Recitals portion of this Fourth 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. *Extension of Term of Lease; Renewal Option.* Section 1.03 of the Lease ("Term") is hereby amended to provide that the term of the Lease shall be extended from its current expiration date of January 31, 2001 to an expiration date of May 31, 2006.

Section 15.01 of the Lease ("Renewal Option") is hereby amended to delete the two (2) options to renew originally set forth therein and to provide that Lessee shall have the right to renew the term the Lease for one (1) additional period of five (5) years beginning June 1, 2006 and ending on May 31, 2011. The Fixed Minimum Rent during the renewal term described in the immediately preceding sentence shall be as set forth in paragraph 3 of this Fourth Amendment, and accordingly, the provisions of Section 15.01(b) of the Lease shall be amended as set forth below. Except as otherwise provided herein, the renewal term shall be on the same terms and conditions as contained in the Lease.

- 3. *Rent.* Section 1.04 and Section 2.01 of the Lease ("Fixed Minimum Rent") are hereby amended to provide that Lessee shall pay Fixed Minimum Rent during the extended term of the Lease in the following annual and monthly amounts for the periods of the extended term shown below, subject to adjustment as set forth in paragraph 4 below, and Section 15.01(b) of the Lease is hereby amended to provide that Lessee shall pay Fixed Minimum Rent during the renewal term described in

paragraph 2 of this Fourth Amendment (if exercised in accordance with the Lease) in the following annual and monthly amounts for the renewal period shown below:

	Period per s.f.	Annual Amount	Installment	Monthly	Amount
(a)	June 1, 2000 through and including December 31, 2000	\$	832,608.00	\$	69,384.00 \$ 8.26
(b)	January 1, 2001 through and including May 31, 2006	\$	899,136.00	\$	74,928.00 \$ 8.92
<i>Renewal (if any)</i>					
(c)	June 1, 2006 through and including May 31 2011	\$	989,856.00	\$	82,488.00 \$ 9.82

- 4. *Tenant Improvement Allowance* In consideration of the extension of the current term of the Lease, Lessor shall provide a tenant improvement allowance up to a maximum of Three Hundred Thousand Dollars (\$300,000.00) (the actual disbursed amount of the tenant improvement allowance is hereinafter referred to as "Tenant Improvement Allowance"). The Tenant Improvement Allowance shall be used to construct alterations, additions and improvements to the leased premises (hereinafter referred to as the "Tenant Improvements"), which Tenant Improvements shall be subject to Lessors approval as required by Section 6.10 of the Lease The Tenant Improvement Allowance shall be paid to Lessee in a single disbursement which shall be due within thirty (30) days after Lessee has satisfied each of the following conditions precedent:

- (a) Lessee shall have furnished to Lessor copies of all invoices and other supporting documentation which indicates the actual costs incurred for the construction of the Tenant Improvements.
- (b) Lessee shall have furnished to Lessor properly executed mechanic's lien releases from all persons or entities who might be able to claim a mechanic's lien on account of the Tenant Improvements.

(c) Lessee shall have furnished to Lessor a copy of the final certificate of occupancy, if any, for the Tenant Improvements.

Lessor shall have no obligation to disburse funds in excess of the maximum amount of the Tenant Improvement Allowance or to make the single disbursement of the Tenant Improvement Allowance if Lessee has not satisfied the conditions precedent described above on or before December 1, 2000. Further, Lessor shall not be obligated to disburse all or any part of the Tenant Improvement Allowance if an event of default has occurred under the Lease or an event has occurred, which with notice or lapse of time, or both, would constitute an event of default under the Lease.

Commencing with the monthly installment payable on January 1 2001 and continuing for each month thereafter through and including May 1 2006, the Fixed Minimum Rent under Section 1.04 and Section 2.01 of the Lease as set forth in item (b) of paragraph 3 of this Fourth Amendment shall be increased by Twenty-Four Cents (24¢) per square foot of leased premises (100,800 square feet) per year for each One Hundred Thousand dollars (\$100,000.00) (or portion thereof) of Tenant Improvement Allowance that is disbursed by Lessor. For example, if the full \$300,000.00 of Tenant Improvement Allowance is disbursed, Fixed Minimum Rent under item (b) of paragraph 3 above would increase by Seventy-Two Cents (72¢) per square foot of the leased premises, but if only \$250,000 of the Tenant Improvement Allowance is disbursed, the Fixed Minimum Rent under item (b) of paragraph 3 above would increase by Sixty Cents (60¢) per square foot of the leased premises.

5. *Release of Original Guarantee; Substitute Guarantee.* In consideration of the delivery of the substitute Guarantee as provided below, Lessor does hereby release and discharge The Limited Inc. (hereinafter referred to as "Limited") from any and all liabilities and obligations which are subject to that certain Guarantee dated July 2, 1990 delivered by the Limited to Lessor (hereinafter referred to as the "Original Guarantee"). Concurrently with the execution and delivery of this Fourth Amendment, Lessee shall cause its parent corporation, Alliance Data Systems Corporation, to execute and deliver to

Lessor in substitution for the Original Guarantee a Guarantee of all past and future obligations under the Lease, which Guarantee shall be in a form and content acceptable to Lessor.

6. *No Other Changes; Ratification of Lease.* This Fourth 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 Fourth 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 Fourth Amendment and the provisions of the Lease, this Fourth Amendment shall control.

7. *Miscellaneous.* The governing law provisions set forth in the Lease shall also be applicable to this Fourth Amendment. The captions at the beginning of the several paragraphs of this Fourth Amendment are for the convenience of the reader and shall be ignored in construing this Fourth Amendment. This Fourth 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 Fourth Amendment elective as of the date first set forth above

Signed and acknowledged in-the presence of:

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

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

By:

Print Name:

Franklin E. Kass  
Managing General Partner

Signed and acknowledged in the presence of:

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

Print Name

By:

Name: Robert P. Armiak,

Print Name:

Title: Vice President, Treasurer

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 24th day of July, 2000 by Franklin E. Kass, Managing General Partner of Continental Properties, an Ohio general partnership, as Managing General Partner of PARTNERS AT BROOKSEDGE, an Ohio general partnership, on behalf of the partnership.

Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN

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Notary Public  
Expires 6/30/2004

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**CONSENT OF ORIGINAL TENANT**

The undersigned, as the original Lessee" under the Lease hereby approves the terms and conditions o(the Fourth Amendment and agrees that its continuing liability under Section 9.02.01 of the Lease shall be subject to the terms and conditions of the Fourth Amendment.

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

Dated: July 20, 2000

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

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**GUARANTEE**

This Guarantee is executed and delivered to Partners at Brookside, an Ohio general partnership ("Lessor"), to provide a substitute Guarantee for that certain Guarantee dated July 2, 1990 provided to Lessor by The Limited, Inc. This Guarantee pertains to the following Lease:

A. Continental Acquisitions, Inc., as Lessor. and World Financial Network National Bank (U.S.) (hereinafter referred to as "WFN"), 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 "Brookside 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 as June 1, 2000.

D. The interest of WFN as "Lessee" under the Lease was subsequently assigned on February 1, 1998 to ADS Alliance Data Systems, Inc. a Delaware corporation ("Lessee"). The foregoing Lease as amended and assigned is hereinafter collectively referred to as the "Lease")

For good and valuable consideration, the undersigned, intending to be legally bound hereby, does hereby covenant and agree with Lessor, its successors and assigns, that:

- (a) If said Lessee, its successors or assigns, shall default at any time during the term granted by said Lease (whether such default shall have occurred before or after the date of this Guarantee) in the payment of Fixed Minimum Rent, Additional rental payments or any other payment (a) required under the Lease Agreement, or in the performance of any of the terms, covenants or conditions of said Lease Agreement on the part of Lessee to be performed thereunder, and if any such default shall not be remedied by Lessee within any cure period provided Lessee pursuant to the terms of the Lease, then the undersigned shall, on demand, pay to Lessor, its successors or assigns, (i) the said Fixed Minimum Rent, Additional Rental Payments and all other payments required under the Lease Agreement, or any arrears thereof; and (ii) all damages that may arise or be incurred by Lessor in consequence of Lessee's default under said Lease, including all reasonable attorney's fees that may be incurred by Lessor in enforcing Lessee's covenants and agreements thereunder or that may be incurred by Lessor in enforcing the covenants and agreement of the undersigned hereunder, upon ten (10) days' notice from Lessor of any such default or defaults by Lessee, during which period Guarantor shall have the right to cure or cause Lessee to cure any such default;
- (b) The undersigned may, at Lessor's option, be joined in any action against or proceeding commenced by Lessor against Lessee in connection with or based upon said Lease or any terms covenant or condition thereof, and that recovery may be had against the undersigned in such action or proceeding against the undersigned without Lessor, its successors or assigns, first asserting, prosecuting or exhausting any remedy or claim against Lessee, its successors or assigns;
- (c) This Guarantee shall remain and continue in full force and effect as to any renewal, extension, modification or amendment of said Lease;
- (d) The validity of this Guarantee and the obligation of the undersigned hereunder shall in no manner be terminated, affected or impaired by reason of any action which Lessor may take or fail to take against Lessee or by reason of any waiver of, or failure to enforced any of the rights or remedies reserved to Lessor in said Lease or otherwise, or by reason of the bankruptcy or insolvency of Lessee and whether or not the term of said Lease shall terminate by reason of said bankruptcy or insolvency.

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- (e) So long as Lessee is controlled by the undersigned, the undersigned waives notice of any and all notices or demands which may be given by Lessor to Lessee, irrespective of whether or not required to be given to Lessee under the terms of said Lease. If, at any time during the term of the Lease, Lessee should no longer be controlled by the undersigned, the undersigned may so notify Lessor, and thereafter Lessor shall send copies o& all notices given to Lessee to the undersigned simultaneously with the giving of such notices to Lessee.
  - (f) Any notice or demand required or permitted to be delivered by the terms of this Guarantee shall be in writing and shall be deemed to be delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to Lessor and Lessee at the respective addresses set forth in Section 1.05 of the Lease Agreement and addressed to the undersigned at Alliance Data

Systems Corporation, 17655 Waterview Parkway Dallas, Texas, Attention: General Counsel, or at any other address within the United States as one party has specified to the other from time to time by written notice given in accordance with this subparagraph (f).

IN WITNESS WHEREOF, the undersigned has caused this Guarantee to be executed by its duly authorities officer as of this 1st day of June, 2000

ALLIANCE DATA SYSTEMS CORPORATION  
a Delaware corporation

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

Name:

Title: *Vice President, Treasurer*

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## QuickLinks

[Exhibit 10.1](#)

[FOURTH AMENDMENT TO LEASE](#)

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[STATE OF OHIO COUNTY OF FRANKLIN](#)

[CONSENT OF ORIGINAL TENANT](#)

[GUARANTEE](#)

Lease covering premises located  
at the intersection of Nacogdoches  
Road and El Charro Street,  
San Antonio, Texas

## OFFICE LEASE

### PARTIES

THIS INDENTURE OF LEASE, dated as of February 1, 2002, by and between OTR, an Ohio general partnership, as nominee for the Board of the State Teachers Retirement System of Ohio, with offices at 275 East Broad Street, Columbus Ohio 43215 (hereinafter called "Landlord"), and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation, with offices at 17655 Waterview Parkway, Dallas, Texas 75252 (hereinafter called "Tenant"). Attached to this lease and hereby made a part hereof are the following:

### RENT RIDER

RENT RIDER—a statement of the rent which is to be paid by Tenant hereunder together with provisions pertaining to the payment of rent.

### EXHIBITS

EXHIBIT A—a metes and bounds description of the demised land, as hereinafter defined.

EXHIBIT B—a plat of the demised premises showing the location of the parking areas, buildings and improvements to be constructed thereon (including those areas designated as future expansion areas of such buildings and improvements).

EXHIBIT C—a list of all contracts, leases, tenancies, agreements, restrictions, violations, mortgages and other liens, encumbrances and defects in title of every nature whatsoever affecting, as of the date of the execution of this lease by Landlord, the demised premises or the rights, easements and privileges granted Tenant in this lease with respect to the demised premises.

### DEFINITIONS

The following terms for purposes of this lease shall have the meanings hereinafter specified:

The term "building" shall mean the building existing on the demised land.

The term "demised land" shall mean the tract of land described on Exhibit A hereto and shown on Exhibit B hereto.

The term "demised premises" shall mean the demised land together with the building and improvements at any time thereon and the rights, easements and privileges herein granted and/or thereunto belonging or in anywise appertaining.

The term "mortgage" shall mean any mortgage or contract for deed or deed of trust or other instrument in the nature thereof evidencing a security interest in the demised premises or any part thereof.

The term "Unavoidable, Delays" shall have the meaning as defined in the article of this lease, captioned "UNAVOIDABLE DELAYS".

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### PREMISES

Landlord hereby demises and leases unto Tenant, and Tenant hereby leases from Landlord, for the consideration and upon the terms and conditions herein set forth, the demised premises as herein defined.

### TERM

TO HAVE AND TO HOLD the demised premise, together with all and singular the improvements, appurtenances, rights, privileges and easements thereunto belonging or in anywise appertaining, unto Tenant for a term commencing on February 1, 2002 and continuing thereafter to and including October 31, 2007.

### RENT

Tenant shall pay Landlord without demand, offset, deduction or abatement, except as may be specifically provided for in this lease, the rent provided for in the Rent Rider attached to and forming part of this lease in accordance with the provisions thereof.

### COVENANT OF TITLE, AUTHORITY AND QUIT POSSESSION

Landlord represents and warrants to Tenant that (i) it has full right and lawful authority to enter into this lease for the full term hereof and to perform all of its obligations hereunder, and (ii) it has good and marketable title to the demised premises, in fee simple, free and clear of all contracts, leases, tenancies, agreements,

easements, restrictions, violations, mortgages and other liens, encumbrances or defects of every nature whatsoever affecting the demised premises, or the rights, easements and privileges granted in this lease with respect to the demised premises, except for the matters, if any, specifically set forth on Exhibit C hereto and other matters specifically provided for in this lease.

Landlord covenants that this lease is not, and shall not be, subject or subordinate to any mortgage placed or to be placed on the demised premises by Landlord except for such subordination as may be accomplished in accordance with the provisions of the article of this lease, captioned "SUBORDINATION."

Landlord covenants that if Tenant shall discharge the obligations herein set forth to be performed by Tenant, Tenant shall have and enjoy, during the term hereof, and all extensions herein provided, the quiet and undisturbed possession of the, demised premises and all appurtenances appertaining thereto, together with the right to use the demised premises as in this lease contemplated, subject to the, provisions of the articles of this lease, captioned "DAMAGE CLAUSE" and "CONDEMNATION", and subject to the exceptions to title listed in Exhibit C (the "Title Exceptions").

Landlord further represents and warrants that (i) the demised premises are zoned in conformity with applicable laws in a manner permitting the existence on the demised premises of the building, (ii) the building and all parking areas do not violate any law, ordinance, order, rule or regulation of any governmental authority, including the United States, the State in which the demised premises are located and any subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them or any local authority which exercises jurisdiction over the demised premises or construction thereon, and (iii) Tenant will not be disturbed in its use or occupancy of said building, or its use and enjoyment of the demised land, subject, however, to the provisions of the articles of this lease, captioned "DAMAGE CLAUSE" and "CONDEMNATION", and subject to the Title Exceptions. Whenever in this paragraph reference is made to the building existing on the demised premises, said reference shall be deemed to include those improvements described in the article of this lease, captioned "FUTURE EXPANSION".

#### USE OF PREMISES

The demised premises shall not be used for any unlawful purpose during the term of this lease.

#### SUBLETTING AND ASSIGNING

Tenant shall have the right at any time during the term hereof to assign this lease or sublease the demised premises or any part thereof, but if Tenant does so, Tenant shall remain liable and responsible under this lease.

#### CONTINUED POSSESSION OF TENANT

If Tenant continues to occupy the demised premises after the last day of any extension of the term hereof or after the last day of the term hereof if this lease is not extended, and Landlord elects to accept rent thereafter, a monthly tenancy terminable, by either party on not less than one month's notice shall be created, which shall be upon the same terms and conditions, including rent, as those herein specified.

#### FIXTURES

Tenant may, at any time during the continuance of the term of this lease, remove from the demised premises all shelving, fixtures and other equipment which Tenant may have installed at its own expense in said premises or otherwise acquired. Tenant agrees to repair any damage which may be done to the demised premises resulting from the removal of said fixtures and equipment, but such obligation shall not extend to painting or redecorating the demised premises.

#### UTILITIES

Tenant shall pay all charges for all utilities, gas, fuel, electricity and water used on the demised premises during the term of this lease.

Landlord will furnish and install all utility, lines and sewers required by law to service the demised premises, it being understood and agreed by the parties hereto that when Landlord shall have furnished and installed the same, Tenant shall thereafter maintain the same during the term of this lease. Landlord shall have the right upon reasonable notice to Tenant to cut off and discontinue any utility service to the demised premises for the purpose of effecting repairs to utility facilities or in the case of an emergency, and no such action by Landlord or any interruption of utility service shall be deemed an eviction or disturbance of possession of Tenant. Nothing contained in this paragraph shall be deemed to modify Tenant's repair obligations as otherwise provided for in this lease.

#### ORDINANCES

Tenant shall comply with all federal, state, county and municipal laws and ordinances and all rules, regulations and orders of any duly constituted authority, present or future, which affect the carrying on of Tenant's business, and/or the demised premises.

If, however, the Tenant, in good faith, shall desire to contest any laws, rules, orders, ordinances, or regulations of the federal, state, city or other duly constituted authorities having jurisdiction over the demised premises respecting the construction of buildings and, improvements on, the use and occupancy of, or the making of repairs to or alterations or changes in, the demised premises (including the expansion of the demised premises as hereinafter provided), Tenant shall notify Landlord in writing of Tenant's intention to contest same, and it shall not be required to make such repairs, alterations or changes, so long as it shall, in good faith, at its own expense, contest the same or the validity thereof by appropriate proceedings, and pending any such proceedings the Landlord shall not have the right to comply with any such laws, rules, orders, ordinances and regulations so contested, and any such delay

of the Tenant in complying with any such laws, rules, orders, ordinances and regulations until final determination of such disputed matter shall not be deemed a default in the conditions of this lease. Landlord agrees to cooperate with Tenant in contesting any such laws, rules, orders, ordinances or regulations which Tenant shall, in good faith, desire to contest, and further agrees to execute such instruments, and give Tenant such assistance in connection with such contest as shall be necessary, reasonable and proper.

## REPAIRS

Tenant shall be responsible for and keep all parts of the demised premises and the appurtenances thereto in good, safe, tenantable condition, slightly in appearance, and in good order and repair.

This article shall not abrogate Landlord's responsibilities for repairs to all portions of the demised premises where the need for such repairs is attributable to Landlord's act, acts and/or negligence or when such repairs are expressly made the responsibility of Landlord under another article of this lease, including, without limiting the generality of the foregoing, the articles hereof, captioned "DAMAGE CLAUSE" and "CONDEMNATION".

Landlord shall in no event be required to make any repairs, replacements or corrections which are necessitated by (i) ordinary wear and tear to the applicable improvements, (ii) abuse or faulty maintenance by Tenant, its agents or employees or (iii) acts of the Tenant, its agents or employees. Landlord shall not be liable for any damage to the building or Tenant's fixtures, installations or improvements which occur ten (10) days after the date Tenant has actual knowledge of a breach by Landlord of an obligation to repair hereunder but before the date Tenant gives written notice to Landlord setting forth such breach, provided such damage could have been avoided if such notice were given.

## DAMAGE CLAUSE

If the whole or any part of any building or other improvement located upon the demised land shall during the term hereof, be damaged or destroyed by fire or other casualty required to be insured against by Tenant hereunder, Tenant shall, subject to Unavoidable Delays,, promptly remove any resulting debris and repair, restore or rebuild the damaged or destroyed improvements substantially in accordance with the plan or plans pursuant to which such property was constructed and to a condition whereby they will have a value not less than their value just prior to said loss. In the event Tenant, in good faith, is disputing with its insurer the amount of loss payable to Tenant by said insurer, and for that reason the repair and restoration work required hereunder is delayed, Tenant hereby agrees that Tenant shall indemnify Landlord for Landlord's damages occasioned by such delay. Tenant shall not be obligated to perform the undertakings set forth in this paragraph unless and until Landlord has delivered to Tenant or caused to be delivered to Tenant, without cost to Tenant, a complete set of the as-built plans and specifications for the damaged or destroyed improvements.

Anything herein to the contrary notwithstanding, it is understood and agreed that, if such damage or destruction of the type provided for in the preceding paragraph of this article shall have taken place at a time when the term (or the extended term) of this lease is scheduled to expire within a period of three (3) years thereafter, then, and in such event, Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of its election so to do within 90 days after such damage or destruction shall have taken place, and if such notice is given the term of this lease shall terminate as of the last day of the month immediately following the month during which such notice shall have been given. Tenant shall be under no duty to restore or rebuild any building or other improvement located upon the demised land if the term of this lease shall be terminated under the provisions of this article, except that Tenant agrees to restore the building or other improvement to an architectural whole, or in lieu thereof, Tenant may deliver the insurance proceeds to Landlord (or, if

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Tenant is self-insured, an amount equal to what such proceeds would presumably have been had insurance been maintained as provided for in this lease).

## INSURANCE

A. Tenant shall during the term of this lease keep the buildings and all other improvements on the demised land and all additions thereto insured against loss or damage by fire and the perils commonly covered under the extended coverage endorsement to the extent of at least that percentage of the full replacement cost thereof (exclusive of the cost of foundations, excavations and footings below the lowest basement floor, without any deduction being made for depreciation) necessary to keep Tenant from being deemed a coinsurer as to the risks covered. Such insurance shall be carried for the protection of Landlord, Tenant, the holder of any mortgage constituting a lien on the fee interest in the demised premises, or Tenant's leasehold estate therein, and, at either Landlord's or Tenant's election, any one else having an insurable interest therein, all of whom shall be named as insureds under such policy.

B. Tenant shall at all times during the term hereof, carry and maintain comprehensive liability insurance against claims for personal injury and property damage in, on or about the demised premises. Such insurance shall name Landlord as an additional insured and shall afford protection to the limit of not less than \$2,000,000.00 for any injury or death to any one person and not less than \$2,000,000.00 for injury or death in any one accident and to the limit of not less than \$1,000,000.00 insuring against claims of any and all damages to property in or about the demised premises.

C. Tenant shall furnish to Landlord, promptly upon request being made therefor, a certificate evidencing the carrying of insurance as is required hereunder. All such policies shall provide that the same shall not be cancelled or altered, except upon thirty (30) days prior written notice to each insured thereunder.

D. Any insurance coverage required to be carried by Tenant hereunder maybe carried in whole or in part (i) under any plan of self-insurance which Tenant may from time to time have in force and effect so long as Tenant or any assignee of this lease who is liable hereunder shall have a net worth of \$30,000,000 or more, or (ii) under a "blanket" policy or policies covering other properties of Tenant and its subsidiaries, controlling or affiliated corporations, or of any assignee of this lease. The scope and extent of the insurance protection afforded Landlord pursuant to this article shall not be diminished as a result of any rights of self-insurance as hereinabove provided.

E. Anything in this lease to the contrary notwithstanding, Tenant shall not be liable to Landlord or to any insurance company insuring Landlord for any loss or damage to the demised premises or to any improvement or equipment located within the demised premises which was or was required by the terms of this lease to be covered by insurance, even though such loss or damage may have been occasioned by the negligence of Tenant, its agents or employees.

F. Anything in this lease to the contrary notwithstanding, Landlord shall not be liable to Tenant or to any insurance company insuring Tenant for any loss or damage to the demised premises or to any improvement or trade fixtures or equipment located within the demised premises which was, or was required by the terms of this lease to be, covered by insurance, even though such loss or damage may have been occasioned by the negligence of Landlord, its agents or employees. The aforesaid waiver shall be applicable even though Tenant may elect to self-insure its risk as provided in subparagraph D above.

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## TAXES (IMPOSITIONS)

As used herein, the term "Impositions" shall mean all real estate taxes, assessments for local improvements, municipal or county water and sewer rates and charges which shall be levied against the demised premises or the buildings and improvements thereon, and which become a lien thereon during the term of this lease, but excluding any franchise, corporate, income, capital levy, capital stock, excess profits, transfer, revenue, estate, inheritance, gift, devaluation or succession tax payable by Landlord or any other tax, assessment, charge or levy upon, or measured in whole or in part by the rent payable hereunder by Tenant.

If due to a future change in the method of taxation, a tax shall be levied against Landlord in substitution for or in lieu of any real estate tax, then such tax shall be deemed to be included in the term Impositions to the extent and only to the extent that such tax is ascertained to be in lieu of or a substitute for a real estate tax, and provided, however, that the amount of such tax deemed to be included in the term Impositions shall be determined as if the demised premises were the only asset of the Landlord and as if the rent paid hereunder were the only income of the Landlord.

A. Tenant shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all Impositions levied against the demised premises. Landlord shall exercise its best efforts to cause the demised land and the improvements thereon to be assessed separately and apart from any other property.

B. If any Imposition, at the option of the tax payer, may be paid in installments or converted to an installment payment basis (irrespective of whether interest shall accrue on unpaid installments), Tenant may elect to pay such Imposition in installments with accrued interest thereon, as the same becomes due and payable during the term of this lease, and Tenant shall not be responsible to pay any installments falling due after the expiration of the term hereof. Landlord shall execute whatever documents may be necessary to convert any Imposition to an installment payment basis if requested to do so by Tenant.

C. Any Imposition which is payable by Tenant under Paragraph A shall be prorated between Landlord and Tenant at the commencement and then again at the expiration or earlier termination of the term of this lease if such Imposition relates to a fiscal period of the levying authority which commenced before the commencement of the term of this lease or extends beyond the expiration or earlier termination of the term hereof, so that Tenant shall only pay that portion of such Imposition equal to that proportion which the number of days of such fiscal period falling within the lease term bears to the total number of days of such fiscal period.

If any Imposition in the nature of an assessment imposed on the demised premises shall be payable in installments over a period of time extending beyond the term of this lease, Tenant shall only be required to pay such installments thereof as shall become due and payable during the term of this lease; provided, however, that if any such Imposition shall be imposed during the last 12 years of the term of this lease and which is or may be payable over a period of less than 12 years and all or a portion of the benefit to be conferred by the public improvement in question shall accrue to Landlord after the expiration of the term of this lease, Tenant and Landlord agree that such Imposition shall be paid by Landlord, but Tenant shall for each lease year thereafter pay to Landlord an amount equal to 1/12th of such Imposition, together with interest at the maximum prevailing rate on the unreimbursed portion thereof, until Landlord shall have been fully reimbursed for said Imposition, or until the term of this lease shall end, whichever shall first occur.

D. Tenant shall have the right to contest the amount or validity of any Imposition, in whole or in part, by appropriate administrative and legal proceedings, either in its own name, Landlord's name or jointly with Landlord, without any cost or expenses to Landlord, and Tenant may postpone payment of any such contested Imposition pending the prosecution of such proceedings and any appeals so long as

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such proceedings shall operate to prevent the collection of such Imposition and the sale of the demised premises to satisfy any lien arising out of the non-payment of same. Landlord shall execute and deliver to Tenant whatever documents that may be necessary, or proper to permit Tenant to so contest any such Imposition or which may be necessary to secure payment of any refund which may result from any such proceedings. Landlord shall cooperate with Tenant to carry out the intent of this paragraph.

E. Landlord hereby grants to Tenant sole and exclusive authority to deal with every matter relating to Impositions during the term of this lease. Landlord shall not have the right to process, handle or dispose of any matter which may in any way relate to Impositions or appear before any Federal, State, County, City or other competent authority with respect thereto without Tenant's prior written approval in each such instance. Landlord agrees to notify Tenant immediately and to refer to Tenant for response all inquiries which may relate to Impositions, including, without limitation, inquiries from all governmental authorities or other agencies with regard to cost of site acquisition or construction costs relating to the demised premises or the improvements to be erected thereon. Notwithstanding the aforesaid, if an Imposition involves an assessment which could affect the taxes covering the demised premises following the end of the term of this lease and if Landlord shall be affected by such an Imposition, then Landlord may join with Tenant in dealing with such Imposition.

F. Anything in this lease to the contrary notwithstanding, Tenant shall have no responsibility for any special or other assessments or taxes for any street; utility, sewer or other improvements imposed upon the demised premises, which assessments have been imposed, mandated, assessed or have accrued prior to the commencement date of this lease. Any such assessments or tax for which Tenant is not responsible shall be paid by Landlord when due or if said assessment or tax shall have been paid by Tenant, Landlord shall reimburse Tenant within ten (10) days of presentation of an invoice therefor. Notwithstanding the foregoing if any such assessment or tax (i) is required to be paid in installments, (ii) may be paid in installments, or (iii) may be converted to installments, Landlord may elect to pay such tax or assessment in installments, as the same becomes due and payable; provided, however, Tenant shall not be required to pay any such installments, regardless of whether they may be due and payable during the term or extended term of this lease.

G. Within thirty (30) days of the payment of an Imposition, Tenant shall deliver to Landlord, a copy of the tax receipt indicating payment of the Imposition.

## UNPERFORMED COVENANTS OF LANDLORD MAY BE PERFORMED BY TENANT

If Landlord shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Landlord pursuant to this lease, or if Landlord should fail to make any payment which Landlord agrees to make, and any such failure shall, if it relates to a matter which is not of an emergency nature, remain uncured for a period of 30 days (or such longer time as may be reasonably necessary if a cure cannot be effected within 30 days, provided Landlord is proceeding diligently and promptly to remedy any breach or failure to perform) after Tenant shall have served upon Landlord notice of such failure, or for a period of 48 hours (or such longer time as may be reasonably necessary if a cure cannot be effected within 48 hours, provided Landlord is proceeding diligently and promptly to remedy any breach or failure to perform) after service of such notice if in Tenant's judgment, reasonably exercised, such failure relates to a matter which is of an emergency nature (and the notice so states), then Tenant may at Tenant's option perform any such term, provision, covenant or condition

or make any such payment, as Landlord's agent, and in Tenant's sole discretion as to the necessity therefor and the full amount of the cost and expense entailed, or the payment so made, shall immediately be owing by Landlord to Tenant, and Tenant shall have the right to deduct the amount thereof, together with interest at the maximum legal rate or 12% per annum, whichever is lower, on all amounts due from the date of payment, without liability of forfeiture, from rents then due or thereafter coming due hereunder, and irrespective of who may own or have an interest in the demised premises at the time such deductions are made. Any such deduction shall not constitute a

default in the payment of rent unless Tenant shall fail to pay the amount of such deduction to Landlord within 30 days after final adjudication that such amount is owing to Landlord. The option given in this article is for the sole protection of Tenant, and its existence shall not release Landlord from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord.

In all instances where Tenant shall be permitted to serve notice which is classified herein as an emergency, Tenant shall also hand deliver to Landlord, at its principal office within the continental United States (provided Tenant has received notice of the location of such principal office) a copy of said notice. Such notice shall not be effective until such hand delivery is received by Landlord.

Any notice given pursuant to this article shall state whether or not Tenant intends to perform any work on behalf of Landlord if Landlord shall fail to remedy any breach or fail to perform an obligation of the Landlord required under this lease.

#### OLD MATERIALS

Tenant may convert to Tenant's own use all old materials removed by Tenant when making alterations, changes, improvements and/or additions to the demised premises and in performing any term, provision, covenant or condition which Landlord is obligated to perform under the terms and conditions of this lease and which Landlord fails to perform.

#### INDEMNIFICATION

Tenant covenants to indemnify and hold harmless Landlord from and against all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, as shall occur in, about or on the demised premises during the term of this lease or (b) any act or omission whatsoever or negligence of Tenant or of any subtenant, or of the agents, contractors, servants or employees of Tenant or of any such subtenant, excepting, however, in each case, claims, accidents, injuries, loss or damages arising from or as a result of any act or omission whatsoever or negligence of Landlord or its agents, contractors, servants or employees. Landlord covenants to indemnify and hold harmless Tenant from and against all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, as shall occur in or about the demised premises prior to the commencement of the term of this lease or (b) any act or omission whatsoever or negligence of Landlord or the agents, contractors, servants or employees of Landlord; excepting, however, in each case, claims, accidents, injuries, loss, or damages arising from or as a result of any act or omission whatsoever or negligence of Tenant or of any subtenant of Tenant or of the agents, contractors, servants or employees of Tenant or of any such subtenant of Tenant. Each party hereto shall promptly notify the other of any claim asserted against such party with respect to which such party is indemnified against loss by the other party hereunder, and the party giving such notice shall promptly deliver to the other party the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such claim. The party so notified of any claim against which such party has indemnified the other party hereunder against loss shall defend any such suit at its sole cost and expense with attorneys of its own selection, but the party so indemnified shall have the right, it sees fit, to participate in such defense at its own expense.

#### ALTERATIONS

Tenant shall have the right and privilege at all times during the continuance of this lease to make, at its own expense, such alterations, changes, improvements and additions to the demised premises as Tenant may desire provided such work will not impair the structural integrity or soundness of any building. Any alterations, changes, improvements and additions made by Tenant shall immediately become the property of Landlord and shall be considered as a part of the demised premises, except any new building or any addition to the existing building constructed by Tenant shall remain the property of the Tenant until the end of the term. Tenant shall have the right to construct at its own cost and expense within the boundaries of any property constituting part of the demised land (i) an extension or addition to any building demised to Tenant hereunder, all as more particularly provided for pursuant to the article of this lease, captioned "FUTURE EXPANSION", or (ii) a separate and detached building (from the one initially constructed by Landlord). Landlord shall after receiving written request from Tenant apply to or join in the application of Tenant to any governmental authority having jurisdiction thereover for such building and other permits and licenses as may be necessary in connection with any work which Tenant is authorized to perform under the provisions of this article, and Landlord agrees upon request by Tenant to execute or join in the execution of any application for such permits and licenses.

#### SIGNS AND ANTENNAE

A. Tenant shall have the right to maintain on any building demised to Tenant hereunder or in which the demised premises are located signs or other advertising devices, electrical or non-electrical, either parallel to said building or at any angle thereto, at or on either the front, back, or sides thereof, and Tenant shall also have the right to maintain an illuminated pylon or monument sign at free location (if any) shown therefor on Exhibit B hereto. All such signs and advertising devices shall be furnished by Landlord, at its expense, and Landlord will, at Landlord's expense, install all such signs and advertising devices for the improvements which are to be constructed for Tenant's use under the terms of this lease, including any such pylon sign, monument sign, its concrete base and the electrical service thereto. Prior to installation of any signs, Landlord shall provide Tenant with a sketch plan and sign study for Tenant's prior written approval. Landlord agrees to comply with any applicable laws and ordinances in erecting any such signs which may be installed by Landlord under the provisions of this article. At the end of the term of this lease, the Tenant shall remove all signs and logo from the demised premises and repair any damage caused by such removal.

B. Tenant may, if it so elects, install on the roof, or other portions of the demised premises (whether above ground or underground) any aerials, antennae, radar equipment, satellite equipment, telecommunications equipment or other equipment it shall deem necessary, for the transmission or receipt of information or other data.

## CONDEMNATION

A. If 15% or more of either the ground floor area or total floor area of the building located on the demised premises or 15% or more of any area over which said building may be expanded laterally under the provisions of the article of this lease, captioned "FUTURE EXPANSION", shall be taken in any proceeding by the public authorities by condemnation or otherwise, or be acquired for public or quasi-public purposes (hereinafter referred to as "the Proceeding"), or if said building shall be divided into separate parts by reason of such taking, Tenant shall have the option of terminating the term of this lease by notifying Landlord of its election so to do on or before the date which is six (6) months after Tenant shall have been deprived of possession of the condemned property, and upon such notice being given the term of this lease shall automatically terminate and end.

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B. In the event that less than 15% of the ground floor area or total floor area of said building shall be taken in any such Proceeding or be acquired for public or quasi-public purposes, or if 15% or more of the ground floor area or total floor of said building shall be so taken or said building shall be divided into separate parts and Tenant elects not to terminate the term of this lease, then Landlord shall restore said building to a complete office building as similar as is reasonably possible in design, character and quality to the building which existed before such taking. If Landlord shall be obligated to perform restoration work under the provisions of this article, so much of any fixed rent payable by Tenant as is fairly allocable to the space which is to be restored shall abate in accordance with the applicable formula set forth in the Rent Rider until such restoration work shall have been completed. Any restoration work to be performed by Landlord pursuant to the terms of this article shall be completed in accordance with plans and specifications which shall have been approved in writing by Tenant, it being understood that such approval shall not be unreasonably withheld.

Anything contained in this article to the contrary notwithstanding, it is understood and agreed that Landlord shall not be obligated to spend, for the restoration of the building, a sum in excess of the amount (hereinafter referred to as the "cost limit") of the award to be received from condemning authority by reason of such taking. If the bid or bids received by Landlord indicate that the cost of said building restoration will exceed said cost limit and if Landlord is unwilling to pay the amount of the excess cost, then and in such event Landlord will notify Tenant of the amount of each such bid and the name and address of the contractor submitting the same, and Tenant may, at its option, do any of the following:

(a) ask that new bids be submitted, in which case Landlord will procure additional bids for the work;

(b) negotiate with any contractor who has submitted a bid for a reduction in the amount of such bid;

(c) make such revisions in the plans and specifications for said building as Tenant may deem desirable in an effort to reduce the cost thereof,

(d) elect to pay the difference between said cost limit and the amount of the contract or contracts providing for the restoration of said building, in which event Landlord shall enter into such contract or contracts providing for the restoration of said building as shall have been approved in writing by Tenant, and Tenant, upon completion of the restoration of said building and upon being furnished an architect's certificate stating that the work has been satisfactorily completed in accordance with such approved contract or contracts and proper waivers of lien, shall reimburse Landlord for the amount of such difference; or, at Landlord's option, reimbursement shall be made in monthly installments as the costs accrue subject to the provisions hereof; or

(e) elect not to have said building restored, in which event, the term of this lease shall terminate and end as of the date 120 days after Tenant shall have notified Landlord of its election hereunder.

C. If a portion or portions of the demised land shall be taken in any Proceeding by the public authorities by condemnation or otherwise, or be acquired for public or quasi-public purposes so as to reduce by 25% or more Tenant's parking spaces for passenger automobiles within 600 feet of the building, Tenant shall have the option of terminating the term of this lease by giving Landlord notice of its election so to do on or before the date which is six (6) months after such area shall have become unavailable for the use by Tenant, and upon such notice being given the term of this lease shall automatically terminate and end 30 days after the giving of such notice; provided, however, that such right on the part of Tenant to terminate this lease by reason of the taking of the aforesaid parking area for automobiles shall be nullified if Landlord shall (i) on or before the 30th day after the giving of such notice advise Tenant in writing of Landlord's intention to forthwith provide and furnish for parking a

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substitute parking area of comparable quality and equal in size to the area taken and contiguous to the remaining parking area; and (ii) within six (6) months after so advising Tenant, actually provide such substitute parking area and enter into a written agreement modifying and amending this lease so as to provide for the inclusion of said substitute parking area as part of the parking area within the demised premises, all at no cost to Tenant.

D. Notwithstanding the provisions of C above, if a portion or portions of the demised land shall be taken in a Proceeding so as to reduce by 35% or more Tenant's parking spaces for passenger automobiles as shown on Exhibit B, Tenant shall have the option of terminating the term of this lease by giving Landlord notice of its election so to do on or before the date which is six (6) months after such area shall have become unavailable for use by Tenant, and upon such notice being given, the term of this lease shall automatically terminate and end 30 days after the giving of such notice.

E. In any such Proceeding whereby all or part of the demised premises is taken, whether or not Tenant elects to terminate the term of this lease, each party shall be free to make claim against the condemning authority for the amount of the actual provable damage done to each of them by such Proceeding.

If the condemning authority shall refuse to permit separate claims to be made, then and in that event Landlord shall prosecute with counsel satisfactory to Tenant the claims of both Landlord and Tenant, and the proceeds of the award shall be used to the extent necessary for the restoration and reconstruction of the remainder of the demised premises in compliance with Landlord's obligations as set forth in this article, and the balance thereof divided between Landlord and Tenant in proportion to their respective losses, including but not limited to the value to Tenant of its leasehold estate granted under this lease.

Anything herein to the contrary notwithstanding, it is understood and agreed that any temporary taking by public authorities causing a temporary cessation by Tenant of business for a period not in excess of three (3) months shall not constitute a taking of the type that shall permit Tenant thereupon to exercise its right

to cancel the balance of the term of this lease.

#### UNAVOIDABLE DELAYS

The time within which either party hereto shall be required to perform any act under this lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of either party hereto ("Unavoidable Delays"), excluding, however, the inability or failure of either party to obtain any financing which may be necessary to carry out its obligations. Notwithstanding the foregoing unless the party entitled to such extension shall give notice to the other party hereto of its claim to such extension within thirty (30) days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

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#### FUTURE EXPANSION

A. Tenant shall have the right and option at any time and from time to time (and at its expense) during the term of this lease, as the same may be extended as hereinafter provided, to expand the building (or to construct a separate and detached building) up to 25,000 square feet of additional floor area (either at one time—or in stages) by erecting an addition on the demised land containing such number of square feet of floor area as Tenant may elect (but not in excess of 25,000 square feet), and to make such other changes (including changes to the parking areas), alterations, improvements and repairs in and to the original structure and improvements as Tenant may require for the conduct of its business in said addition as an integral part of Tenant's building as operated prior to the construction of said addition or additions. If Tenant elects to exercise such option, it shall, following completion of the addition, supply Landlord with an as-built survey of said addition. Tenant may construct a separate and detached building (up to 25,000 square feet) even though said building is not shown on the Plot Plan.

B. Upon completion, said addition and all other changes, alterations, improvements and repairs hereinbefore provided shall become part of the demised premises covered by this lease and shall thereafter be held and enjoyed by Tenant (with no additional rental being due hereunder) upon and subject to all the terms and conditions of this lease, except title to any addition constructed hereunder shall remain in Tenant until the end of the term of this lease. Any such addition constructed by Tenant shall comply with all laws, ordinances, rules, regulations and orders of all duly constituted authorities.

#### OPTIONS TO EXTEND

Tenant shall have one (1) option to extend the term of this lease from the date upon which it would otherwise expire upon the same terms and conditions as those herein specified for one (1) additional period of five (5) years, except Tenant shall pay the rent during the option periods as provided for in the Rent Rider.

If Tenant elects to exercise said option, it shall do so by giving Landlord written notice, of such election at least twelve (12) months before the beginning of the additional period for which the term hereof is to be extended by the exercise of such option. If Tenant gives such notice, the term of this lease shall be automatically extended for the additional period of years covered by the option so exercised without execution of an extension or renewal lease. If Tenant elects not to exercise an option granted to Tenant hereunder, then Tenant may not at a future time exercise its option to extend a successive option as provided herein.

#### BROKERS

Landlord covenants that it has not dealt with or negotiated with or through a broker with respect to the leasing of the demised premises. Landlord agrees to indemnify and hold Tenant harmless against the claims for commissions or other compensation of any broker, agent or other party with whom Landlord may have dealt or negotiated with in connection with said demised premises. Notwithstanding the foregoing, Tenant agrees to indemnify and hold harmless Landlord against the claims for commissions or other compensation of any brokers, agent or other party with whom Tenant may have dealt with in connection with said demised premises.

#### SUBORDINATION

At Landlord's request, Tenant will subordinate this lease to any first mortgage, and all renewals, modifications, consolidations, replacements and extensions thereof, which may hereafter affect the demised premises or any part thereof, provided that any such mortgage shall be made in connection with a loan from an insurance company, savings bank or trust company or other institutional leader, and provided further that as a condition of such subordination such mortgage shall contain a covenant

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binding upon the holder thereto to the effect that as long as Tenant shall not be in default under this lease, or, if Tenant is in such default, as long as Tenant's time to cure such default shall not have expired, the term of this lease shall not be terminated or modified in any respect whatsoever nor the rights of Tenant hereunder or its occupancy of the demised premises be affected in any way by reason of such mortgage or any foreclosure action or other proceeding that may be instituted in connection therewith, and that Tenant shall not be named as a defendant in any such foreclosure action or other proceedings.

#### DEFAULT CLAUSE

A. If the rent above referred to or any part thereof shall be unpaid on the date of payment by the terms hereof, and remain so for a period of twenty (20) days after Landlord shall have given to Tenant notice in writing of such default, then and in such case it shall and may be lawful for Landlord, at Landlord's option, by summary proceedings or by any other appropriate legal action or proceedings to terminate the term of this lease and to enter into the demised premises or any part thereof and expel Tenant or any person or persons occupying the demised premises, and so to repossess and enjoy the demised premises as in Landlord's former estate. Should the term of this lease at any time be terminated under the terms and conditions hereof, or in any other way, Tenant hereby covenants and agrees to surrender and deliver up the demised premises peaceably to Landlord immediately upon the termination of the term hereof. Landlord agrees that in no event shall the nonpayment of rent be the basis of a forfeiture of this lease or otherwise result in the eviction of Tenant or the termination of the

term of this lease unless said written notice shall have been served on Tenant as hereinbefore provided and Tenant shall have failed to cure such default within said 20-day period after the service of said notice. In the event of a termination of the term of this lease prior to the expiration date thereof pursuant to the provisions of this Paragraph A, Tenant shall not thereby be relieved from liability for damages sustained or to be sustained by Landlord by reason of the breach of this lease by Tenant and Tenant shall pay to Landlord all such damages incurred by Landlord by reason of such breach.

B. It is mutually agreed that if Tenant shall be in default in performing any of the terms or provisions of this lease other than the provision requiring the payment of rent and Landlord shall give to Tenant notice in writing of such default, and if Tenant shall fail to cure such default within 30 days after service of such notice, or if the default is of such character as to require more than 30 days to cure and Tenant shall fail to use reasonable diligence in curing such default after service of such notice, then and in any such event Landlord may cure such default for the account of and at the cost and expense of Tenant, and the full amount so expended by Landlord shall immediately be owing by Tenant to Landlord as additional rent hereunder together with interest at the highest rate permitted by applicable law or 12% per annum, whichever is lower, and necessary and incidental costs and expenses in connection with the performance of any such act by Landlord. Landlord agrees that in no event shall such default be the basis of a forfeiture of this lease or otherwise result in the eviction of Tenant or the termination of the term of this lease.

#### LEASE NOT TO BE RECORDED

The parties hereto have executed and delivered a memorandum of this lease for recording purposes with the expectation that such memorandum is in recordable form.

#### TRANSFER OF TITLE

A. Landlord shall promptly notify Tenant in writing of any change in the ownership of the demised premises, giving the name and address of the new owner and instructions regarding the payment of rent. In the event of any change in or transfer of title of Landlord in and to the demised premises or any part thereof, whether voluntary or involuntary, or by act of Landlord or by operation of law, Tenant shall be under no obligation to pay rents thereafter accruing until Tenant shall have

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been notified in writing of such change in title and given satisfactory proof thereof, and the withholding of rents in the meantime shall not be deemed a default upon the part of Tenant.

B. If during the term hereof Landlord's interest in this lease shall be acquired by more than one person, firm, corporation, or other entity, whether by conveyance, operation of law or otherwise, Landlord shall by notice to Tenant signed by all of the then lessors hereunder appoint one such lessor to whom rent may be paid by Tenant and upon whom all notices which Tenant may give hereunder may be served. Until such appointment shall be made, Tenant shall be authorized from time to time to select any one of such lessors, and to pay all rent coming due hereunder to, and serve all notices upon the lessor so selected until such time as such appointment shall have been made as aforesaid. The service of any notice upon and the payment of any rent to the appointed or selected lessor as herein provided shall constitute service of notice upon, and payment of rent to Landlord.

C. Landlord shall have the right to assign, transfer and convey all or any part of Landlord's interest in this lease or in the demised premises at any time, subject, however, to the terms and conditions hereinafter set forth in this paragraph. Except with regard to obligations of Landlord (i) arising by reason of a breach of the covenants or agreements of Landlord as set forth in this lease which exist at the date of such assignment, transfer or conveyance or (ii) accruing prior to the date of such assignment, transfer or conveyance, Landlord's obligations to Tenant shall cease as of the date such assignment becomes unconditional, or such transfer or conveyance becomes effective, and Tenant shall thereafter look only to each subsequent assignee, transferee or purchaser thereof.

#### LIMITATION OF LANDLORD'S LIABILITY

If Landlord shall fail to perform any covenant, term or condition of this lease upon Landlord's part to be performed and as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of (i) the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the demised premises, (ii) any net income from such property receivable by Landlord, when and as be accorded Tenant by law or under the terms of this lease by reason of Landlord's failure to perform its obligations thereunder received (i.e. net of all ad valorem taxes and operating expenses [including debt service]), and (iii) the consideration received by Landlord from the sale or other disposition (other than a mortgage) of all or any part of Landlord's right, title and interest in the demised premises (which consideration shall be deemed to include any assets at any time held by Landlord having a value not exceeding that of the proceeds of such sale or other disposition), and Landlord shall not be liable for any deficiency; provided, however, that in the event of Landlord's failure to perform any covenant or obligation of Landlord under the article hereof, captioned "CONDEMNATION", following a taking of all or any part of the demised premises any judgment recovered by Tenant as a consequence thereof may also be satisfied out of the condemnation award, as the case may be, payable to Landlord as a result of such taking. The provisions of this article shall not be deemed to deny to Tenant, or limit its right to obtain injunctive relief of Landlord's covenants under this lease or to avail itself of any other right or remedy, including specific performance (not involving a personal liability of Landlord in excess of the limits of personal liability fixed by this article, or in the case of specific performance, enforcement of the Landlord's obligations to the extent that Landlord shall be required to expend more than the limits of personal liability fixed by this article, less all amounts previously paid to Tenant as liquidated damages pursuant to the terms of this lease) which may be accorded Tenant by law or under the terms of this lease by reason of Landlord's failure to perform its obligations thereunder.

#### NOTICES

A. Whenever any notice, consent, request, or other communication between the parties ("Notice") is required or permitted hereunder, such Notice shall be in writing. All Notices by Landlord to Tenant shall be deemed to have been duly given if sent to Tenant by overnight mail, registered or

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certified mail in triplicate, one copy to the demised premises, one copy to ADS Alliance Data Systems, Inc., 17655 Waterview Parkway, Dallas, Texas 75252, Attention: \_\_\_\_\_, and one copy to \_\_\_\_\_, or to such other addresses as Tenant may later designate in writing.

B. Until Tenant receives other instructions from Landlord, all Notices by Tenant to Landlord shall be deemed to have been duly given if sent by registered or certified mail to Landlord at Landlord's address as set forth in the opening paragraph of this lease. Landlord shall promptly notify Tenant in writing of any

change in the address of Landlord.

C. Any written notice sent by registered or certified mail shall be deemed to have been served as of the date it is mailed in accordance with the foregoing provisions and notices sent by hand delivery or overnight mail shall be deemed received upon delivery. Notwithstanding anything to the contrary herein, Tenant may give Landlord telegraphic notice of the exercise of any option herein granted Tenant or of the need of emergency repairs.

#### WAIVER OF PERFORMANCE BY EITHER PARTY

One or more waivers of any covenant, term or condition of this lease by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek a remedy for any breach of this lease or to exercise a right accruing to such party by reason of such breach be deemed a waiver by such party of its remedies or rights with respect to such breach. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

#### INTERPRETATION OF WORD "LANDLORD"

If more than one party is designated as Landlord in the article of this lease, captioned "PARTIES", all of the parties so designated shall be deemed to be landlords hereunder and their obligations in such capacity shall be joint and several obligations.

#### MECHANICS' LIENS

A. If any mechanics', materialman's or other similar lien shall at any time be filed against the demised premises on account of any-work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of Tenant or anyone holding or occupying the demised premises through or under Tenant, Tenant shall, without cost or expense to Landlord, forthwith either cause the same to be (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

B. If any mechanics', materialman's or other similar lien shall at any time be filed against any part of the demised premises for any reason whatsoever on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of Landlord or by any of Landlord's agents, contractors or subcontractors, Landlord shall, without cost or expense to Tenant, forthwith either cause the same to be (i) discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

#### PREVAILING PARTY

In the event either party is required to commence any action or proceeding against the other in order to enforce the provisions hereof, or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing party therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable attorney's fees incurred in connection therewith.

#### ESTOPPEL CERTIFICATE

Each of the parties hereto agrees, at any time and from time to time upon not less than 30 days' prior request by the other party, to execute and deliver to the party making such request a written certificate stating (a) whether this lease is in full force and effect; (b) whether this lease has been modified or amended and if so, identifying and describing, any such modification or amendment; (c) whether rent and other charges have been paid more than 30 days in advance of the date when due and if so the date to which they have been paid in advance; and (d) whether to the best knowledge of the party to whom such request is directed any uncured default exists on the part of the other party hereunder, and, if so, specifying the nature of such default.

#### CAPTIONS

Captions throughout this instrument are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this lease.

#### MISCELLANEOUS

A. If any term or provision of this lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this lease shall not be affected thereby, but each term and provision of this lease shall be valid and enforced to the fullest extent permitted by law.

B. This Lease shall be construed and enforced in accordance with-the laws of the State of Texas.

C. Tenant and Landlord acknowledge and agree that neither party has relied upon any statements, representations, agreements or warranties of the other party, except such as are expressed herein.

D. No amendment or modification of this lease, or any approvals or permissions of Landlord or Tenant required under this lease, shall be valid or binding unless reduced to writing and executed by the parties hereto in the same manner as the execution of this lease.

E. This lease may be executed in multiple counterparts, each of which is to be deemed an original for all purposes, and in making proof of this lease it shall not be necessary to produce more than one (1) counterpart hereof. A facsimile or similar transmission of a counterpart signed by a party hereto will be regarded as signed by such party for purposes hereof.

#### LEASE BINDING ON HEIRS, ETC.



THENCE, S 47 Deg. 02' 01" W, along the rear lot line of aforementioned NCB 16673, a distance of 574.60 feet to an iron pin at the most southerly corner of this tract;

THENCE, N 42 deg. 57' 59" W, on a perpendicular line for 420.00 feet to an iron pin on the southeast line of Nacogdoches road (FM 2252);

THENCE, N 47 deg. 02' 01" E, along the southeast line of the above said Nacogdoches Road for 537.53 feet to an iron pin at the Point of Curve forming an intersection flare line for El Charro Street;

THENCE, along a curve to the right an arc distance of 39.27 feet whose elements are I=90, T=25.00, R=25.00 and whose chord bears S 87 deg. 57' 59" E for 35.36 feet to a point on the west line of El Charro Street;

THENCE the next three (3) calls along the west line of El Charro Street:

1. S 42 deg. 57' 59" E, for 65.00 feet to an iron pin;
2. S 50 deg. 33' 40" E, for 90.80 feet to an iron pin;
3. S 42 deg. 57' 59" E, for 240.00 feet to THE POINT OF BEGINNING, and containing 5.500 acres of land,

which is now known as Lot 26, Block 2, New City Block 16673, VALENCIA Unit 7A, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9000, Page 235, Deed and Plat Records of Bexar County, Texas.

A-1

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**EXHIBIT B**

**SITE PLAN**

(Follows this Page)

B-1

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**EXHIBIT C**

**TITLE EXCEPTIONS**

1. Standby fees, taxes and assessments by any taxing authority for the year 2002, and subsequent years.
2. Electrical overhang easement 14 feet in width along Nacogdoches Road R.O.W. property line(s), as shown by the Plat(s) recorded in Volume 9000, Page(s) 235 of the Deed and Plat Records of Bexar County, Texas.
3. Building setback line 25 feet in width along Nacogdoches Road R.O.W. and El Charro R.O.W. property line(s), as shown on the Plat(s) recorded in Volume 9000, Page(s) 235 of the Deed and Plat Records of Bexar County, Texas.

C-1

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**FIRST AMENDMENT TO LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") dated 1/8/2002, is between OTR, an Ohio general partnership acting as the duly authorized nominee of the Board of the State Teachers Retirement System Of Ohio ("Landlord") and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation ("Tenant").

DT  
SA

**RECITALS**

A. Hines Industrial, Ltd., a Texas limited partnership, Landlord's predecessor in interest, and J. C. Penney Company, Inc., a Delaware corporation, Tenant's predecessor in interest ("J. C. Penney"), entered into a certain Office Lease dated June 9, 1981 (the "Lease") for approximately sixty-seven thousand five hundred forty (67,540) rentable square feet located at 13526 Nacogdoches Road, San Antonio, Texas 78217 (the "demised premises").

B. J. C. Penney exercised its first option to extend the Lease, the term of which expires on January 31, 2002.

C. Landlord and Tenant now desire to extend the term of the Lease, in lieu of Tenant's exercising its second option to renew (the "Second Option"), and to amend certain provisions of the Lease, all upon the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, Landlord and Tenant, intending to be legally bound, agree as follows:

1. *Exercise of Second Option to Extend.* Landlord and Tenant hereby extend the term of the Lease, commencing on February 1, 2002 and ending on January 31, 2003 (the "Extension Term"). Except as provided in this First Amendment, the Extension Term shall be on the same terms and conditions as set forth



in the Lease. As a result of the extension of the Lease term, Tenant waives its Second Option.

2. *Annual Fixed Rent.* During the Extension Term, Tenant shall pay Landlord an annual fixed rental for the demised premises as follows:

Lease Year	Annual Base Rental	Monthly Base Rental	Dollar Per Square Foot
2/01/02-1/31/03	\$ 810,480.00	\$ 67,540.00	\$ 12.00

3. *New Roof.* On or before August 31, 2002, Tenant, at its sole cost and expense, shall install, or caused to be installed, a new roof on the demised premises in a good and workmanlike and lien-free manner complying will all applicable laws.

DT  
SA

4. *Landlord's Marketing the Property.* Landlord may place a sign on the demised premises for sale and/or lease on the earliest of the following: (a) announcement of closing the operation to tenant's employees; (b) the closing of the operation appears in a newspaper or local business publication; or (c) May 1, 2002. Landlord may begin, immediately, marketing the demised premises for sale (without a sign). Landlord shall use reasonable efforts to maintain sale efforts on a confidential basis prior to announcement of the closing to tenant's employees. Landlord shall have access to the demised premises for marketing the demised premises upon twenty-four (24) hour prior oral notice.

5. *Successors and Assigns.* Except as modified herein, the terms, covenants and conditions of the Lease are ratified and confirmed and the parties, their successors and assigns, shall be bound by, and shall have the benefits of, all the terms, covenants and conditions of the Lease.

[NOTARY PUBLIC SEAL]

STATE OF OHIO )  
)SS  
COUNTY OF FRANKLIN )

BE IT REMEMBERED, that on this 7th day of January, 2002, before me, the subscriber, a Notary Public, personally appeared the above named OTR, an Ohio general partnership by Stephen A. Mitchell, a general partner, known to me and known to me to be the person who signed the foregoing instrument in such capacity, who acknowledged to me that he signed said instrument in such capacity, duly authorized by the partnership so to do, and that the signing of the same was his free act and deed, as a general partner, for and on behalf of OTR, for the uses and purposes therein set forth.

DT  
SA

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of my office at Columbus, Ohio on the day and year last above written.

/s/ Dorene M. Browning

Notary Public  
My Commission Expires: 11-8-2004

STATE OF TEXAS )  
)SS  
COUNTY OF COLLIN )

BE IT REMEMBERED, that on this 2nd day of January, 2001, before me, the subscriber, a Notary Public, personally appeared the above-named [ILLEGIBLE] of Alliance Data Systems Inc., a Delaware corporation, known to me and known to me to be the person who signed the foregoing instrument in such capacity, who acknowledged to me that he signed said instrument in such capacity, duly authorized by Alliance Data Systems Corp. so to do, and that the signing of the same was his free act and deed, as [ILLEGIBLE], for and on behalf of Alliance Data Systems Corp. for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of my office at Dallas, Texas on the day and year last above written.

[NOTARY PUBLIC SEAL]

/s/ Teresa C. Johnson

Notary Public  
My Commission Expires: 12/9/03

This Instrument Prepared By:  
Thomas S. Counts, Esq.  
275 E. Broad Street  
Columbus, Ohio 43215

**SECOND AMENDMENT TO LEASE AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Second Amendment") dated 5/7, 2002, is between OTR, an Ohio general partnership acting as the duly authorized nominee of the Board of the State Teachers Retirement System Of Ohio ("Landlord") and ADS ALLIANCE DATA SYSTEMS, INC., a Delaware corporation ("Tenant").

**RECITALS**

A. Hines Industrial, Ltd., a Texas limited partnership, Landlord's predecessor in interest, and J. C. Penney Company, Inc., a Delaware corporation, Tenant's predecessor in interest ("J. C. Penney"), entered into a certain Office Lease dated June 9, 1981 (the "Lease") for approximately sixty-seven thousand five hundred forty (67,540) rentable square feet located at 13526 Nacogdoches Road, San Antonio, Texas 78217 (the "demised premises").

B. J. C. Penney exercised its first option to extend the Lease, the term of which expires on January 31, 2002.

C. On January 8, 2002, Landlord and Tenant entered into a certain First Amendment to Lease Agreement (the "First Amendment"), extending the term of the lease from February 1, 2002 to January 31, 2003.

D. Landlord and Tenant now desire to extend the term of the Lease for one (1) additional year, and to amend certain provisions of the Lease, all upon the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, Landlord and Tenant, intending to be legally bound, agree as follows:

1. *Extension of Lease.* Landlord and Tenant hereby extend the term of the Lease, commencing on February 1, 2003 and ending on January 31, 2004 (the "Extension Term"). Except as provided in this Second Amendment, the Extension Term shall be on the same terms and conditions as set forth in the Lease, as amended by the First Amendment.

2. *Annual Fixed Rent.* During the Extension Term, Tenant shall pay Landlord an annual fixed rental for the demised premises as follows:

<u>Lease Year</u>	<u>Annual Base Rental</u>	<u>Monthly Base Rental</u>	<u>Dollar Per Square Foot</u>
2/01/03 - 1/31/04	\$ 1,020,000.00	\$ 85,000.00	\$ 15.10

Upon Tenant's execution of this Second Amendment, Tenant shall pay to Landlord a one-time cash payment of Twenty-five Thousand Dollars (\$25,000.00).

3. *Landlord's Marketing the Property.* Landlord may place a "For Lease" sign on the demised premises on or after August 1, 2003.

4. *Successors and Assigns.* Except as modified herein, the terms, covenants and conditions of the Lease are ratified and confirmed and the parties, their successors and assigns, shall be bound by, and shall have the benefits of, all the terms, covenants and conditions of the Lease.

5. *Second Amendment to Control.* If any terms, covenants and conditions of this Second Amendment conflict with the terms, covenants and conditions of the Lease, as amended by the First Amendment, the terms, covenants and conditions of this Second Amendment shall control. All other terms, covenants and conditions of the Lease, as amended by the First Amendment, that are not inconsistent with the this Second Amendment shall be applicable to the Expansion Space.

6. *Capitalized Terms.* Capitalized terms not defined in this Second Amendment have the meanings given to them in the Lease, as amended by the First Amendment. The term "Lease" shall mean the Lease as modified by the First Amendment and this Second Amendment.

7. *No Broker.* Landlord and Tenant represent and warrant each to the other that each has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Tenant shall indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Paragraph 7 shall survive the termination of this Lease.

IN WITNESS WHEREOF, the parties to this Second Amendment have executed the same on the day and year written above.

LANDLORD:

OTR, an Ohio general partnership, acting as the duly authorized nominee of THE BOARD OF THE STATE TEACHERS RETIREMENT SYSTEM OF OHIO

By: /s/ STEPHEN A. MITCHELL

\_\_\_\_\_  
Name: Stephen A. Mitchell  
Title: a General Partner

TENANT:

ADS ALLIANCE DATA SYSTEMS INC., a Delaware corporation

By: /s/ DWAYNE H. TUCKER

\_\_\_\_\_  
Name: Dwayne H. Tucker  
Title: EVP & CAO

STATE OF OHIO )  
 ) SS  
COUNTY OF FRANKLIN )

BE IT REMEMBERED, that on this 7th day of May, 2002, before me, the subscriber, a Notary Public, personally appeared the above named OTR, an Ohio general partnership by Stephen A. Mitchell, a general partner, known to me and known to me to be the person who signed the foregoing instrument in such capacity, who acknowledged to me that he signed said instrument in such capacity, duly authorized by the partnership so to do, and that the signing of the same was his free act and deed, as a general partner, for and on behalf of OTR, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of my office at Columbus, Ohio on the day and year last above written.

/s/ CYNTHIA K. MANNING  
Notary Public  
My Commission Expires: 11/20/06

[SEAL]

STATE OF TEXAS )  
 ) SS  
COUNTY OF COLLIN )

BE IT REMEMBERED, that on this 29th day of April, 2002, before me, the subscriber, a Notary Public, personally appeared the above-named Dwayne H. Tucker of ADS Alliance Data Systems, Inc., a Delaware corporation, known to me and known to me to be the person who signed the foregoing instrument in such capacity, who acknowledged to me that he signed said instrument in such capacity, duly authorized by ADS Alliance Data Systems, Inc. so to do, and that the signing of the same was his free act and deed, as EVP & CAO, for and on behalf of ADS Alliance Data Systems, Inc. for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of my office at Dallas, Texas on the day and year last above written.

/s/ TERESA C. JOHNSON  
Notary Public  
My Commission Expires: 12/7/03

This Instrument Prepared By:  
Thomas S. Counts, Esq.  
275 E. Broad Street  
Columbus, Ohio 43215

[SEAL]

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### THIRD AMENDMENT TO LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("Third Amendment") dated 10, 2, 2002, is between OTR, an Ohio general partnership acting as the duly authorized nominee of the Board of the State Teachers Retirement System Of Ohio ("Landlord") and ADS ALLIANCE DATA SYSTEMS INC., a Delaware corporation ("Tenant").

#### RECITALS

- A. Hines Industrial, Ltd., a Texas limited partnership, Landlord's predecessor in interest, and J. C. Penney Company, Inc., a Delaware corporation, Tenant's predecessor in interest ("J. C. Penney"), entered into a certain Office Lease dated June 9, 1981 (the "Original Lease") for approximately sixty-seven thousand five hundred forty (67,540) rentable square feet located at 13526 Nacogdoches Road, San Antonio, Texas 78217 (the "demised premises").
- B. J. C. Penney exercised its first option to extend the Lease, the term of which expires on January 31, 2002.
- C. On January 8, 2002, Landlord and Tenant entered into a certain First Amendment to Lease Agreement (the "First Amendment"), extending the term of the lease from February 1, 2002 to January 31, 2003.
- D. On May 7, 2002, Landlord and Tenant entered into a certain Second Amendment to Lease Agreement (the "Second Amendment"), extending the term of the lease for one additional year, from February 1, 2003 to January 31, 2004 (the Original Lease, as amended by the First Amendment and the Second Amendment, is referred to in this Third Amendment as the "Lease").
- E. Landlord and Tenant now desire amend the Lease, all upon the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, Landlord and Tenant, intending to be legally bound, agree as follows:

1. *Extension of Lease.* Landlord and Tenant hereby extend the term of the Lease, commencing on February 1, 2004 and ending on October 31, 2007, on the same terms and conditions as set forth in the Lease, except as provided in this Third Amendment.
2. *Annual Fixed Rent.* Effective November 1, 2002, Tenant shall pay Landlord an annual fixed rental for the demised premises as follows:

Lease Year	Annual Base Rental	Monthly Base Rental	Dollar Per Square Foot
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BE IT REMEMBERED, that on this 27th day of Sept., 2002, before me, the subscriber, a Notary Public, personally appeared the above-named Dwayne H. Tucker, CAO & EVP of ADS Alliance Data Systems Inc., a Delaware corporation, known to me and known to me to be the person who signed the foregoing instrument in such capacity, who acknowledged to me that he signed said instrument in such capacity, duly authorized by ADS Alliance Data Systems Inc. so to do, and that the signing of the same was his free act and deed, as CAO & EVP, for and on behalf of ADS Alliance Data Systems Inc. for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of my office at Dallas, Texas on the day and year last above written.

Notary Public

/s/ TERESA C JOHNSON

My Commission Expires

12/9/03

This Instrument Prepared By:  
Thomas S. Counts, Esq.  
275 E. Broad Street  
Columbus, Ohio 43215

[SEAL]

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## QuickLinks

[Exhibit 10.2](#)

[OFFICE LEASE](#)

**AMENDMENT TO THE  
ALLIANCE DATA SYSTEMS 401(k) AND RETIREMENT SAVINGS PLAN  
(EFFECTIVE AS OF JANUARY 1, 2001)**

The Alliance Data Systems 401(k) and Retirement Savings Plan, established effective as of January 24, 1996 and amended and restated effective as January 1, 2001 (the "Plan") is hereby further amended in the following respects:

1. Effective January 1, 1997, Article 3, Section 3.8(C) is amended and restated in its entirety and replaced with the following:

"(C) Any distribution of Excess Contributions for any Plan Year shall be made to Highly Compensated Employees in accordance with Code Section 401(k)(8)(C) and the rulings and regulations thereunder. If, after performance of the two tests in Section 3.6, the deferral percentage test would still be violated as of the end of the Plan Year, then notwithstanding any other provision hereof, every Tax Deferred Deposit included in the Actual Deferral Percentage for a Participant who is a Highly Compensated Employee and whose Actual Deferral Percentage is greater than the permitted maximum shall be revoked to the extent necessary to comply with such deferral percentage limitation of Section 3.6 and the amount of such Tax Deferred Deposits, to the extent revoked, shall constitute an Excess Contribution to be distributed to such Participant (with earnings thereon as calculated in Section 3.8(B)) no later than the last day of the Plan Year following the Plan Year for which such contribution was made. Excess Contributions are allocated to the Highly Compensated Employees with the largest amounts of Tax Deferred Deposits (and Employer contributions, as applicable), which are taken into account in calculating the deferral percentage limitation for the Plan Year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Tax Deferred Deposits (and Employer contributions, as applicable), and continuing in descending order until all Excess Contributions have been allocated. For purposes of the preceding sentence, the "largest" amount is determined after distribution of any amounts distributed hereunder pursuant to Section 3.5 hereof."

2. Effective January 1, 1997, Article 4, Section 4.4(C) is amended and restated in its entirety and replaced with the following:

"(C) Any distribution of Excess Aggregate Contributions for any Plan Year shall be made to Highly Compensated Employees in accordance with Code Section 401(m)(6)(C) and the rulings and regulations thereunder. If, after performance of the percentage limitation in Section 4.2, the contribution percentage test would still be violated as of the end of the Plan Year, then notwithstanding any other provision hereof, every Employer Matching Contribution and Taxed Deposit included in the Average Contribution Percentage for a Highly Compensated Participant whose Average Contribution Percentage is greater than the permitted maximum shall automatically be revoked to the extent necessary to comply with such contribution percentage test of Section 4.2 and the amount of such contribution, to the extent revoked, shall constitute an Excess Aggregate Contribution to be distributed to such Participant (with earnings thereon as calculated in Section 4.4(B)) or forfeited, if applicable, no later than the last day of the Plan Year following the Plan Year for which such contribution was made. Excess Aggregate Contributions are allocated to the Highly Compensated Employees with the largest amounts of Employer Matching Contributions and Taxed Deposits (and Employer contributions, as applicable), taken into account in calculating the contribution percentage test for the Plan Year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Employer Matching Contributions and Taxed Deposits (and Employer contributions, as applicable), and continuing in descending order until all Excess

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Aggregate Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after first determining required distributions under Section 3.5 hereof, and then determining Excess Contributions under Section 3.8(C)."

3. Effective January 1, 2000, Article 18, Section 18.2(A) is amended and restated in its entirety and replaced with the following:

**"(A) Eligible Rollover Distribution**

An Eligible Rollover Distribution is any distribution of all or any portion of any benefit due to the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of other Distributee or other joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code (or, on or after January 1, 2002, any distribution made upon hardship); and any other distribution(s) that is reasonably expected to total less than \$200 during a Plan Year. Effective for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible."

4. Effective January 1, 2001, Article 16, Section 16.2(E) is amended and restated in its entirety and replaced with the following:

"(E) "Required Aggregation Group" means

- (1) Each qualified plan of the Employer in which a Key Employee participates or participated (regardless of whether the Plan has terminated); and
- (2) Each other such qualified plan of an Employer which enables any plan in which a Key Employee participates to meet the requirements of Section 401(a)(4) or Section 410 of the Code."

IN WITNESS WHEREOF, ADS Alliance Data Systems, Inc. has caused this instrument to be executed on February 4, 2003, effective as provided herein.

**ADS ALLIANCE DATA SYSTEMS, INC.**

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

Printed Name: Dwayne Tucker

Title: Chief Administrative Officer

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QuickLinks

[Exhibit 10.7](#)

[AMENDMENT TO THE ALLIANCE DATA SYSTEMS 401\(k\) AND RETIREMENT SAVINGS PLAN \(EFFECTIVE AS OF JANUARY 1, 2001\)](#)

**AMENDMENT NO. 2 TO  
ALLIANCE DATA SYSTEMS 401(k) AND RETIREMENT SAVINGS PLAN  
(EFFECTIVE AS OF JANUARY 1, 2001)**

The Alliance Data Systems 401(k) and Retirement Savings Plan, established effective as of January 24, 1996 and amended and restated effective as January 1, 2001 (the "Plan") is hereby further amended in the following respects:

1. Effective January 1, 1999, Article 9 is amended by adding the following Section 9.7 at the end thereof:

**"9.7 Harmonic Systems Qualified Joint and Survivor Provisions**

(A) **Joint and Survivor Annuity.** The Benefits Administration Committee must direct the Trustee to distribute a married or unmarried Participant's nonforfeitable Accrued Benefit in the form of a qualified joint and survivor annuity, unless the Participant makes a valid waiver election (described in paragraph (b) below) within the 90 day period ending on the annuity starting date. If, as of the annuity starting date, the Participant is married, a qualified joint and survivor annuity is an immediate annuity which is purchasable with the Participant's nonforfeitable Accrued Benefit and which provides a life annuity for the Participant and a survivor annuity payable for the remaining life of the Participant's surviving Spouse equal to 50% of the amount of the annuity payable during the life of the Participant. If, as of the annuity starting date, the Participant is not married, a qualified joint and survivor annuity is an immediate life annuity for the Participant which is purchasable with the Participant's nonforfeitable Accrued Benefit. On or before the annuity starting date, the Benefits Administration Committee, without Participant or spousal consent, must direct the Trustee to pay the Participant's nonforfeitable Accrued Benefit in a lump sum, in lieu of a qualified joint and survivor annuity, in accordance with Section 9.3, if the Participant's nonforfeitable Accrued Benefit is not greater than \$5,000 (\$3,500 before January 1, 1998). This Section applies only to a Participant who has completed at least one Hour of Service with the Employer after August 22, 1984.

- (1) *Preretirement Survivor Annuity.* If a married Participant dies prior to his annuity starting date, the Benefits Administration Committee will direct the Trustee to distribute a portion of the Participant's nonforfeitable Accrued Benefit to the Participant's surviving Spouse in the form of a preretirement survivor annuity, unless the Participant has a valid waiver election (as described in paragraph (c) below) in effect, or unless the Participant and his Spouse were not married throughout the one year period ending on the date of his death. A preretirement survivor annuity is an annuity which is purchasable with 50% of the Participant's nonforfeitable Accrued Benefit (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving Spouse. The value of the preretirement survivor annuity is attributable to Employer contributions and to Employee contributions in the same proportion as the Participant's nonforfeitable Accrued Benefit is attributable to those contributions. The portion of the Participant's nonforfeitable Accrued Benefit is payable to the Participant's Beneficiary, in accordance with the other provisions of this Plan. If the present value of the preretirement survivor annuity does not exceed \$5,000 (\$3,500 before January 1, 1998), the Benefits Administration Committee, on or before the annuity starting date, must direct the Trustee to make a lump sum distribution to the Participant's surviving Spouse, in lieu of a preretirement survivor annuity. This paragraph (1) applies only to a Participant who dies after August 22, 1984, and either (i) completes at

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least one Hour of Service with the Employer after August 22, 1984, or (ii) Separated from Service with at least 10 Years of Vesting Service and completed at least one Hour of Service with the Employer in a Plan Year beginning after December 31, 1975.

- (2) *Surviving Spouse Elections.* If the present value of the preretirement survivor annuity exceeds \$5,000 (\$3,500 before January 1, 1998), the Participant's surviving Spouse may elect to have the Trustee commence payment of the preretirement survivor annuity at any time following the date of the Participant's death, but not later than the mandatory distribution periods described in Section 401(a)(9) of the Code, and may elect any of the forms of payment described in Section 9.2, in lieu of the preretirement survivor annuity. In the absence of an election by the surviving Spouse, the Benefits Administration Committee must direct the Trustee to distribute the preretirement survivor annuity on the first distribution date following the close of the Plan Year in which the latest of the following events occurs: (i) the Participant's death; (ii) the date the Benefits Administration Committee receives notification of or otherwise confirms the Participant's death; (iii) the date the Participant would have attained Normal Retirement Age; or (iv) the date the Participant would have attained age 62.
- (3) *Special Rules.* If the Participant has in effect a valid waiver election regarding the qualified joint and survivor annuity or the preretirement survivor annuity, the Benefits Administration Committee must direct the Trustee to distribute the Participant's nonforfeitable Accrued Benefit in accordance with the terms of the Plan. The Benefits Administration Committee will reduce the Participant's nonforfeitable Accrued Benefit by any security interest (pursuant to any offset rights authorized by Article 11) held by the Plan by reason of a Participant loan to determine the value of the Participant's nonforfeitable Accrued Benefit distributable in the form of a qualified joint and survivor annuity or preretirement survivor annuity, provided any post-August 18, 1985, loan satisfied the spousal consent requirement described in Article 11 of the Plan. For purposes of applying this paragraph (3), the Benefits Administration Committee treats a former Spouse as the Participant's Spouse or surviving Spouse to the extent provided under a qualified domestic relations order described in Article 7. The provisions of this Section 9.7(A) and of Section 9.7(B) and Section 9.7(C) apply separately to the portion of the



Participant's nonforfeitable Accrued Benefit subject to the qualified domestic relations order and to the portion of the Participant's nonforfeitable Accrued Benefit not subject to that order.

- (B) **Waiver Election—Qualified Joint and Survivor Annuity.** Not earlier than 90 days, but not later than 30 days, before the Participant's annuity starting date, the Benefits Administration Committee must provide the Participant a written explanation of the terms and conditions of the qualified joint and survivor annuity, the Participant's right to make, and the effect of, an election to waive the joint and survivor form of benefit, the rights of the Participant's Spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election. The Plan does not limit the number of times the Participant may revoke a waiver of the qualified joint and survivor annuity or make a new waiver during the election period.

A married Participant's waiver election is not valid unless (1) the Participant's Spouse (to whom the survivor annuity is payable under the qualified joint and survivor annuity), after the Participant has received the written explanation described in this Section 9.7(B), has consented in writing to the waiver election, the Spouse's consent acknowledges the effect of the election, and a notary public or the Benefits Administration Committee (or its representative) witnesses the Spouse's consent,

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(2) the Spouse consents to the alternate form of payment designated by the Participant or to any change in that designated form of payment, and (3) unless the Spouse is the Participant's sole primary Beneficiary, the Spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation. The Spouse's consent to a waiver of the qualified joint and survivor annuity is irrevocable, unless the Participant revokes the waiver election. The Spouse may execute a blanket consent to any form of payment designation or to any Beneficiary designation made by the Participant, if the Spouse acknowledges the right to limit that consent to a specific designation but, in writing, waives that right. The consent requirements of this Section 9.7(B) apply to a former Spouse of the Participant, to the extent required under a qualified domestic relations order described in Article 7.

The Benefits Administration Committee will accept a valid waiver election which does not satisfy the spousal consent requirements if the Benefits Administration Committee establishes the Participant does not have a Spouse, the Benefits Administration Committee is not able to locate the Participant's Spouse, the Participant is legally separated or has been abandoned (within the meaning of state law) and the Participant has a court order to that effect, or other circumstances exist under which the Secretary of the Treasury will excuse the consent requirement. If the Participant's Spouse is legally incompetent to give consent, the Spouse's legal guardian (even if the guardian is the Participant) may give consent.

- (C) **Waiver Election—Preretirement Survivor Annuity.** The Benefits Administration Committee must provide a written explanation of the preretirement survivor annuity to each married Participant, within the following period which ends last: (1) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (2) a reasonable period after an Employee becomes a Participant; (3) a reasonable period after the joint and survivor rules become applicable to the Participant; or (4) a reasonable period after a fully subsidized preretirement survivor annuity no longer satisfies the requirements for a fully subsidized benefit. A reasonable period described in paragraphs (2), (3) and (4) is the period beginning one year before and ending one year after the applicable event. If the Participant separates from Service before attaining age 35, paragraphs (1), (2), (3) and (4) do not apply and the Benefits Administration Committee must provide the written explanation within the period beginning one year before and ending one year after the Separation from Service. The written explanation must describe, in a manner consistent with Treasury regulations, the terms and conditions of the preretirement survivor annuity comparable to the explanation of the qualified joint and survivor annuity required under Section 9.7(B). The Plan does not limit the number of times the Participant may revoke a waiver of the preretirement survivor annuity or make a new waiver during the election period.

A Participant's waiver election of the preretirement survivor annuity is not valid unless (i) the Participant makes the waiver election no earlier than the first day of the Plan Year in which he attains age 35 and (ii) the Participant's Spouse (to whom the preretirement survivor annuity is payable) satisfies the consent requirements described in Section 9.7(B), except the Spouse need not consent to the form of benefit payable to the designated Beneficiary. The Spouse's consent to the waiver of the preretirement survivor annuity is irrevocable, unless the Participant revokes the waiver election. Irrespective of the time of election requirement described in clause (i), if the Participant separates from Service prior to the first day of the Plan Year in which he attains age 35, the Benefits Administration Committee will accept a waiver election as respects the Participant's Accrued Benefit attributable to his

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Service prior to his Separation from Service. Furthermore, if a Participant who has not separated from Service makes a valid waiver election, except for the timing requirement of clause (a), the Benefits Administration Committee will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35. A waiver election described in this paragraph is not valid unless made after the Participant has received the written explanation described in this Section 9.7(C)."

2. Effective January 1, 2002, the first paragraph of Section 3.5 is hereby amended and restated in its entirety with the following paragraph:

"No Participant shall be permitted to have Tax Deferred Deposits made under this Plan in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Section 414(v) of the Code, if applicable. The limitation set by this Section 3.5 applies on an individual basis to all elective deferrals (within the meaning of Section 401(k) of the Code) made by each Participant during a year under this or any other qualified plan of the Employer."

3. Effective January 1, 2002, Article 13 is amended by adding the following Section 13.7 at the end thereof:

### "13.7 Conversion Period

However, notwithstanding any provision of the Plan to the contrary, during any conversion period, in accordance with procedures established by the Employer, the Employer may temporarily suspend, in whole or in part, certain provisions of the Plan, which may include, but are not limited to, a Participant's right to change his Deposit Election, to change his investment election, to borrow or withdraw from his Account, or to obtain a distribution from his Account."

4. Effective January 1, 2002, Appendix A, Service Commencement Date, is hereby amended by adding the following rows of information to the end thereof:

<u>"Employing Company"</u>	<u>Years of Eligibility</u>	<u>Years of Vesting"</u>
Frequency Marketing, Inc. ("FMI")	Date of hire with FMI if employed with FMI on December 31, 2001	Date of hire with FMI if employed with FMI on December 31, 2001
Loyalty RealTime, Inc. (formerly d/b/a Loyalty RealTime, LLC) ("LRI")	Date of hire with LRI if employed with LRI on December 31, 2001	Date of hire with LRI if employed with LRI on December 31, 2001

IN WITNESS WHEREOF, ADS Alliance Data Systems, Inc. has caused this instrument to be executed on April 7, 2003, effective as provided herein.

**ADS ALLIANCE DATA SYSTEMS, INC.**

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

Printed Name: Dwayne Tucker  
\_\_\_\_\_

Title: Chief Administrative Officer  
\_\_\_\_\_

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[Exhibit 10.8](#)

[AMENDMENT NO. 2 TO ALLIANCE DATA SYSTEMS 401\(k\) AND RETIREMENT SAVINGS PLAN \(EFFECTIVE AS OF JANUARY 1, 2001\)](#)

**AMENDMENT NO. 3 TO  
THE ALLIANCE DATA SYSTEMS 401(K) AND RETIREMENT SAVINGS PLAN**  
(amended and restated as of January 1, 2001)

ADS Alliance Data Systems, Inc. hereby adopts this Amendment No. 3 to the Alliance Data Systems 401(k) and Retirement Savings Plan (the "Plan"), effective as of January 1, 2003, except as otherwise provided. A portion of this amendment is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), and that portion is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

1. Section 1.67 shall be amended by adding new subsection (C) at the end thereof to read as follows:

Notwithstanding the foregoing, former employees of ExoLink, Inc., who became employees of the Company as of January 1, 2003, as the result of an asset purchase shall have the service credited to them for purpose of determining eligibility to participate under the ExoLink, Inc. 401(k) Plan, credited to them for the same purpose under the Plan.

2. Section 1.68 of the Plan shall be amended by adding new subsection (E) at the end thereof to read as follows:

Notwithstanding the foregoing, former employees of ExoLink, Inc., who became employees of the Company as of January 1, 2003, as the result of an asset purchase shall have the service credited to them for purpose of determining their right to vest under the ExoLink, Inc. 401(k) Plan, credited to them for the same purpose under the Plan.

3. Article 4 shall be amended, effective February 1, 2003, by adding new Section 4.14 at the end thereto to read as follows:

4.14 Catch-Up Contributions

All Participants who are eligible to make elective deferrals under the Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions. No Participant shall be permitted to have elective deferrals made under the Plan, or any other qualified plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for such taxable year, except to the extent permitted under this Section.

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IN WITNESS WHEREOF, this amendment has been executed on this            day of May, 2003, but effective as provided above.

ADS ALLIANCE DATA SYSTEMS, INC.

By:

\_\_\_\_\_  
Dwayne Tucker,  
Chief Administrative Officer

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[Exhibit 10.9](#)

[AMENDMENT NO. 3 TO THE ALLIANCE DATA SYSTEMS 401\(K\) AND RETIREMENT SAVINGS PLAN \(amended and restated as of January 1, 2001\)](#)

**Certification of  
Chief Executive Officer  
of  
Alliance Data Systems Corporation**

This certification is provided pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the quarterly report on Form 10-Q for the quarter ended March 31, 2003 (the "Form 10-Q") of Alliance Data Systems Corporation (the "Registrant").

I, J. Michael Parks, the Chief Executive Officer of Registrant certify that to the best of my knowledge:

- (i) the Form 10-Q 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-Q fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: May 14, 2003

/s/ J. MICHAEL PARKS

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Name: J. Michael Parks  
*Chief Executive Officer*

Subscribed and sworn to before me this 14<sup>th</sup> day of  
May, 2003.

/s/ JANE BAEDKE

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Name: Jane Baedke  
Title: *Notary Public*

My commission expires:

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.

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[Certification of Chief Executive Officer of Alliance Data Systems Corporation](#)

**Certification of  
Chief Financial Officer  
of  
Alliance Data Systems Corporation**

This certification is provided pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the quarterly report on Form 10-Q for the quarter ended March 31, 2003 (the "Form 10-Q") of Alliance Data Systems Corporation (the "Registrant").

I, Edward J. Heffernan, the Chief Financial Officer of Registrant certify that to the best of my knowledge:

- (i) the Form 10-Q 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-Q fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: May 14, 2003

/s/ EDWARD J. HEFFERNAN

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Name: Edward J. Heffernan  
Chief Financial Officer

Subscribed and sworn to before me this 14<sup>th</sup> day of  
May, 2003.

/s/ JANE BAEDKE

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Name: Jane Baedke  
Title: Notary Public

My commission expires:

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.

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[Certification of Chief Financial Officer of Alliance Data Systems Corporation](#)