

**390 MAIN STREET**

**OFFICE LEASE**

**BAY AREA HEADQUARTERS AUTHORITY**

as Landlord,

and

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

as Tenant

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- C AMENDMENT TO LEASE
- D RULES AND REGULATIONS
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**SUMMARY OF BASIC LEASE INFORMATION**

This Summary of Basic Lease Information ("**Summary**") is hereby incorporated into and made a part of the attached Office Lease. Each reference in the Office Lease to any term of this Summary shall have the meaning as set forth in this Summary for such term. In the event of a conflict between the terms of this Summary and the Office Lease, the terms of the Office Lease shall prevail. Any capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Office Lease.

**TERMS OF LEASE**

(References are to the Office Lease)

**DESCRIPTION**

1. Effective Date: \_\_\_\_\_, 20\_\_
  
2. Landlord: **BAY AREA HEADQUARTERS AUTHORITY**, a joint powers authority established pursuant to the California Joint Exercise of Powers Act
  
3. Address of Landlord (Section 24.16):  
Bay Area Headquarters Authority  
101 8<sup>th</sup> Street  
Oakland, CA 94607  
Attn: Executive Director  
(Prior to Lease Commencement Date)  
  
and  
  
Bay Area Headquarters Authority  
390 Main Street, Suite \_\_\_\_\_  
San Francisco, California 94105  
Attn: Attn: Executive Director  
(After Lease Commencement Date)
  
4. Tenant: **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**, a regional air pollution control agency
  
5. Address of Tenant (Section 24.16):  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
Attn: Executive Director  
(Prior to Lease Commencement Date)  
  
and  
  
Bay Area Air Quality Management District  
390 Main Street, Suite \_\_\_\_\_  
San Francisco, California 94105  
Attn: Executive Director  
(After Lease Commencement Date)
  
6. Premises (Article 1):
  - 6.1 Premises: Approximately 60,000 rentable square feet of office space located on the \_\_\_\_\_ ( ) floor of the Building (as defined below) and approximately 2,500 rentable square feet of specialized space for Tenant's air quality laboratory and specialized vans on the ground floor of the Building.
  - 6.2 Building: The Premises are located in the "Building" whose address is 390 Main Street, San Francisco, CA 94105, which Building is divided into "Agency Space" (including the Premises) and "Commercial Space".
  
7. Term (Article 2):
  - 7.1 Lease Term: Thirty (30) years.
  - 7.2 Rent Commencement Date: The date Tenant commences business operations in the Premises, which Rent Commencement Date is anticipated to occur in the fourth quarter of 2013.

**TERMS OF LEASE**

(References are to the Office Lease)

**DESCRIPTION**

- |     |  |   |
|-----|--|---|
| 7.3 | Lease Expiration Date:                                       | The last day of the month in which the thirtieth (30) anniversary of the Rent Commencement Date occurs.   |
| 7.4 | Amendment to Lease:  | Landlord and Tenant may confirm the Rent Commencement Date and Lease Expiration Date in an Amendment to Lease ( <b><u>Exhibit C</u></b> ).  |
| 8.  | Base Rent ( <u>Article 3</u> ):                              | <p>\$1,900,000 annually or \$158,334 monthly for years 1-10 of the Lease Term.</p> <p>Base Rent shall be adjusted on the first day of the 11<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 26<sup>th</sup> Lease Years, as provided in Section 3.2.</p>                                |
| 9.  | Tenant's Share of Common Area Expenses ( <u>Article 4</u> ): | 70% of the percentage which the rentable square feet within the Premises bears to the total rentable square feet within the Agency Space or, with respect to Jointly Shared Space Expenses, 100% of such percentage, as adjusted for usage. (See <u>Section 4.2.7</u> of the Office Lease). |
| 10. | Parking ( <u>Article 22</u> ):                               | Parking for Tenant's Board members in attendance at all public meetings and the number of passenger car parking spaces for daily use determined in accordance with <u>Article 22</u> .  |

## OFFICE LEASE

This Office Lease, which includes the preceding Summary and the exhibits attached hereto and incorporated herein by this reference (the Office Lease, Summary and the exhibits to be known sometimes collectively hereafter as the "**Lease**"), dated as of the date set forth in Section 1 of the Summary, is made by and between the BAY AREA HEADQUARTERS AUTHORITY ("**Landlord**"), and the BAY AREA AIR QUALITY MANAGEMENT DISTRICT ("**Tenant**").

### ARTICLE 1

#### BUILDING AND PREMISES

1.1 Building and Premises. Upon and subject to the terms, covenants and conditions hereinafter set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 6.1 of the Summary (the "**Premises**"), which Premises are located within the Agency Space in the Building, each as defined in Section 6.2 of the Summary, situated on the Real Property more particularly described on Exhibit A-1 attached hereto (the "**Real Property**"). The outline of the floor plan of the Premises is set forth in Exhibit A attached hereto. The Premises shall be inclusive of the furnishings and telephone and computer systems described in Exhibit B and shall also include the network closet(s) serving the Premises (whether or not physically located within the office portion of the Premises) and the right to use, in common with other occupants of the Agency Space, the library, meeting rooms, mail room, cafeteria, server rooms and other areas of the Agency Space designated as "**Jointly Shared Spaces**" and the common entry, corridors, hallways, stairwells, elevators, restrooms and other areas within the Agency Space designated as "**Common Area**". Use of the Jointly Shared Spaces and the Common Area will be subject to the Rules and Regulations attached hereto as Exhibit D and such other rules and regulations as Landlord shall promulgate from time to time, which rules and regulations shall be applied equally to all occupants of the Agency Space.

1.2 Condition of Premises. Except as expressly set forth in this Lease and in the Tenant Work Letter attached hereto as Exhibit B, Landlord shall not be obligated to provide or pay for any improvement, remodeling or refurbishment work or services related to the improvement, remodeling or refurbishment of the Premises, and Tenant shall accept the Premises in its "As Is" condition on the Lease Commencement Date.

1.3 Rentable Square Feet. If, upon finalization of the condominium map for the Agency Space, the square footage of the condominium unit constituting the Premises, as shown on such condominium map, is different than the rentable square footage set forth in Section 6.1 of the Summary, rent that is based on rentable area (including Tenant's Share, as defined in Section 4.2.7) shall be recalculated in accordance with that determination. On the recalculation of rent as provided in this Section 1.3, the parties shall execute an amendment to this Lease stating the recalculated rent. Execution of that amendment shall not be a condition precedent to the effectiveness of the recalculated rent.

### ARTICLE 2

#### LEASE TERM

The terms and provisions of this Lease shall be effective as of the date of this Lease except for the provisions of this Lease relating to the payment of Rent. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 7.1 of the Summary and shall be measured from the date rent becomes payable (the "**Rent Commencement Date**") as provided in Section 7.2 of the Summary, and shall terminate on the date (the "**Lease Expiration Date**") set forth in Section 7.3 of the Summary, unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term, provided that the last Lease Year shall end on the Lease Expiration Date. If Landlord does not deliver possession of the Premises to Tenant on or before the anticipated Rent Commencement Date (as set forth in Section 7.2(ii) of the Summary), Landlord shall not be subject to any liability nor shall the validity of this Lease nor the obligations of Tenant hereunder be affected. In the event that the Rent Commencement Date is a date which is other than the anticipated Rent Commencement Date set forth in Section 7.2(ii) of the Summary, within a reasonable period of time after the date Tenant takes possession of the Premises Landlord shall deliver to Tenant an amendment to lease in the form attached hereto as Exhibit C, setting forth the Rent Commencement Date and the Lease Expiration Date, and Tenant shall execute and return such amendment to Landlord within five (5) days after Tenant's receipt thereof.

### ARTICLE 3

#### BASE RENT

3.1 Initial Base Rent. Tenant shall pay, without notice or demand, to Landlord or Landlord's agent at the management office of the Building, or at such other place as Landlord may from time to time designate in writing, in currency or a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 8 of the Summary, payable in equal monthly installments as set forth in Section 8 of the Summary in advance on or before the first day of each and every month during the first ten (10) years of the Lease Term and thereafter as adjusted pursuant to Section 3.2 below, without any setoff or deduction whatsoever. If any rental payment date (including the Rent Commencement Date) falls on a day of the month other than the first day of such month or if any rental payment is for a period which is shorter than one month, then the rental for any such fractional month shall be a proportionate amount of a full calendar month's rental based on the proportion that the number of days in such fractional month bears to the

number of days in the calendar month during which such fractional month occurs. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

3.2 Adjustments to Base Rent. Commencing on the first day of the eleventh (11<sup>th</sup>) anniversary of the Rent Commencement Date and on the first day of each fifth (5<sup>th</sup>) Lease Year thereafter (each, a "**Rent Adjustment Date**"), the Base Rent shall be adjusted to an amount equal to ninety percent (90%) of the then current market rent, on a rentable square foot basis inclusive of the office and laboratory portions of the Premises but excluding in such calculation the square footage of the dedicated van parking, for office space in the Commercial Space portion of the Building and other comparable office space in the South of Market area of the City of San Francisco. Landlord shall provide to Tenant in writing not later than one hundred twenty (120) days prior to each Rent Adjustment Date Landlord's determination of the then current market rent. In the event Tenant disputes Landlord's determination of current market rent, Tenant shall so notify Landlord in writing within ten (10) business days following receipt of Landlord's determination. If the parties are not able to agree on the then current market rent within thirty (30) days after delivery of Tenant's objection to Landlord's determination, either party may require that the current market rent be established by a real estate professional with not less than ten years' leasing experience in the downtown San Francisco area. If Landlord and Tenant are unable to agree upon the selection of a single real estate professional within ten (10) business days following the request of either party, each party shall choose a real estate professional and the two real estate professionals so chosen shall select a third real estate professional having the same qualifications. The selected real estate professional(s) shall each submit their independent determinations of current market value to Landlord and Tenant within thirty (30) days following the date of the last to be selected. If more than one real estate professional has been selected, the current market rent shall be deemed to be the average of the two closest determinations of current market rent. "**Current market rent**" shall mean the rental rate then being offered for comparable office space on a gross lease basis, other than the pass-through of an allocable share of common area expenses, for a term of ten (10) years, without a tenant improvement allowance, free rent or other concessions.

## ARTICLE 4

### ADDITIONAL RENT

4.1 Additional Rent. In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay as additional rent "Tenant's Share" (as such term is defined below) of the annual Common Area Expenses allocated to the Agency Space (pursuant to Section 4.2.5 below) and Tenant's Share of Jointly Shared Space Expenses (pursuant to Sections 4.2.5 and 4.2.7 below. Such additional rent, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease (including, without limitation, pursuant to Article 6), shall be hereinafter collectively referred to as the "**Additional Rent**." The Base Rent and Additional Rent are herein collectively referred to as the "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner, time and place as the Base Rent. Without limitation on other obligations of Tenant which shall survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 Definitions. As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "**Calendar Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

4.2.2 "**Common Area Expenses**" shall mean those Operating Expenses (as defined in Section 4.2.5) and Utilities Costs (as defined in Section 4.2.8) which are properly allocated to the Common Area.

4.2.3 "**Expense Year**" shall mean each Calendar Year, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive-month period, and, in the event of any such change, Tenant's Share of Common Area Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.4 "**Jointly Shared Space Expenses**" shall mean those Operating Expenses and Utility Costs which are properly allocated to the Jointly Shared Spaces.

4.2.5 "**Operating Expenses**" shall mean all expenses, costs and amounts which Landlord shall pay during any Expense Year because of or in connection with the management, ordinary maintenance and repair or operation of the Agency Space, including without limitation the Common Area and the Jointly Shared Space, including, without limitation, any amounts paid for: (i) the cost of operating and maintaining "Systems and Equipment" (as defined in Section 4.2.6 of this Lease), and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections, and the cost of contesting the validity or applicability of any governmental enactments which may affect Operating Expenses; (iii) the cost of insurance carried by Landlord, in such amounts as Landlord may reasonably determine or as may be required by any mortgagees of Landlord's interest in the Real Property; (iv) the cost of landscaping, relamping, supplies, tools, equipment and materials, and all fees, charges and other costs (including consulting fees, legal fees and accounting fees) incurred in connection with the management, operation, ordinary repair and maintenance of the Agency Space; (v) the cost of parking area maintenance; (vi) any equipment rental agreements or management agreements (including the cost of any management fee and the fair rental value of any office space provided thereunder); (vii) wages, salaries and other compensation and benefits of all persons engaged in the operation, management, maintenance or security of the Agency Space, and employer's Social Security taxes, unemployment

taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits; (viii) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Real Property; (ix) the cost of janitorial service, alarm and security service, if any, window cleaning, trash removal, replacement of wall and floor coverings, ceiling tiles and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities within the Agency Space; and (x) amortization (including interest on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Agency Space.

To the extent any of the foregoing Operating Expenses apply to the Real Property as a whole and cannot be separately charged to the Agency Space or the Commercial Space, Landlord shall allocate such expenses to the Agency Space in the same percentage that the rentable square footage of the Agency Space bears to the rentable square footage of the entire Building. For the purposes of this [Article 4](#), Tenant shall be responsible only for Tenant's Share of those Common Area Expenses and Jointly Shared Space Expenses which constitute Operating Expenses properly allocated to the Agency Space.

Notwithstanding the foregoing, Operating Expenses shall not, however, include: (A) costs of leasing commissions, attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Agency Space or any other portion of the Real Property; (B) costs (including permit, license and inspection costs) incurred in renovating or otherwise improving, decorating or redecorating rentable space for other tenants or vacant rentable space; (C) costs incurred due to the violation by Landlord of the terms and conditions of any lease of space in the Agency Space or any other portion of Real Property; (D) costs of overhead or profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for services in or in connection with the Real Property to the extent the same exceeds the costs of overhead and profit increment included in the costs of such services which could be obtained from third parties on a competitive basis; (E) costs of interest on debt or amortization on any mortgages; (F) any costs attributable to capital repairs or improvements, as defined by Generally Accepted Accounting Principles, to any portion of the Building or Real Property, including without limitation the Premises; (G) costs attributable to the management, operation, leasing, maintenance or repair of the Commercial Space or the parking spaces allocated to the Commercial Space; and (H) any and all real property taxes and any other assessments not commonly paid by governmental agencies in connection with the ownership of buildings utilized solely for public purposes.

4.2.6 **"Systems and Equipment"** shall mean any plant, machinery, transformers, duct work, cable, wires, and other equipment, facilities, and systems designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security (including card access), or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment which serve the Building or the Agency Space.

4.2.7 **"Tenant's Share"** shall mean 70% of the percentage determined by dividing the number of rentable square feet of the Premises (exclusive of the dedicated van space) by the total rentable square feet in the Agency Space (including any such space occupied by Landlord) for Common Area Expenses and 100% of such percentage for Jointly Shared Space Expenses, provided that allocation of Jointly Shared Space Expenses attributable to the public meeting rooms and other services subject to variable use may be equitably adjusted among users by Landlord to reflect actual usage.

4.2.8 **"Utilities Costs"** shall mean all actual charges for utilities for the Building and the Real Property which Landlord shall pay during any Expense Year which are properly allocable to, or separately metered for, the Agency Space, including, but not limited to, the costs of water, sewer and electricity, and the costs of HVAC and other utilities as well as related fees, assessments and surcharges (but excluding those charges for which tenants directly reimburse Landlord or otherwise pay directly to the utility company). Utilities Costs payable by Tenant shall include only Tenant's Share of actual charges allocated to the Common Area and the Jointly Shared Spaces.

#### 4.3 Calculation and Payment of Additional Rent.

4.3.1 Statement of Common Area and Jointly Shared Space Expenses and Payment by Tenant. Landlord shall endeavor to give to Tenant on or before the first day of April following the end of each Expense Year, a statement (the "**Statement**") which shall state Tenant's Share of the Common Area Expenses and Jointly Shared Space Expenses actually incurred or accrued for such preceding Expense Year. Upon receipt of the Statement for each Expense Year ending during the Lease Term, Tenant shall pay, with its next installment of Base Rent due, the full amount of Tenant's Share of the Common Area Expenses and Jointly Shared Space Expenses for such Expense Year, less the amounts paid during such Expense Year as "Tenant's Estimated Share," as that term is defined in [Section 4.3.3](#) below. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this [Article 4](#). Even though the Lease Term has expired, when the final determination is made of Tenant's Share of the Common Area Expenses and Jointly Shared Space Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord the amount of any difference between Tenant's Share and Tenant's Estimated Share. The provisions of this [Section 4.3.1](#) shall survive the expiration or earlier termination of the Lease Term.

4.3.2 Statement of Estimated Expenses. In addition, Landlord shall give Tenant an expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of the total amount of Common Area Expenses and Jointly Shared Space Expenses for the succeeding Expense Year and Tenant's share of such estimated expenses ("**Tenant's Estimated Share**"). Tenant shall pay, with each installment of Base Rent due for the succeeding Expense Year, one-twelfth of Tenant's Estimated Share set forth in the Estimate Statement.

4.4 Late Charges. If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) business days following the due date therefor, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the amount due. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder, at law and/or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) business days following Tenant's receipt of written notice of delinquency shall thereafter bear interest until paid at a rate (the "**Interest Rate**") equal to the lesser of (i) the "Prime Rate" or "Reference Rate" announced from time to time by the Bank of America (or such reasonable comparable national banking institution as selected by Landlord in the event Bank of America ceases to exist or publish a Prime Rate or Reference Rate), plus two percent (2%), or (ii) the highest rate permitted by applicable law.

## ARTICLE 5

### USE OF PREMISES

Tenant shall use the Premises solely for general office purposes consistent with the character of the Agency Space as office space for governmental entities and for an air quality laboratory, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes whatsoever. Tenant further covenants and agrees that it shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of Exhibit D, attached hereto, or in violation of the laws of the United States of America, the state in which the Real Property is located, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Real Property. Tenant shall not do or permit anything to be done on or about the Premises which may in any way increase the existing rate of any insurance policy covering the Building or Real Property or any of its contents or cause cancellation of any such insurance policy. Tenant shall comply with all recorded covenants, conditions, and restrictions, now or hereafter affecting the Real Property. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage, use, treatment, manufacture or sale of "Hazardous Material," as that term is defined below, or for the transport of such materials through the Common Area, except in compliance with all laws or regulations applicable to the use, transport or storage of Hazardous Materials. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Real Property is located or the United States Government.

## ARTICLE 6

### SERVICES AND UTILITIES

6.1 Standard Tenant Services. Landlord shall provide the following services on all days during the Lease Term, unless otherwise stated below.

6.1.1 Subject to reasonable changes implemented by Landlord and to all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating, ventilation and air conditioning ("**HVAC**") when necessary for normal comfort for normal office use in the Premises, from Monday through Friday, during the period from 7:00 a.m. to 7:00 p.m., (the "**Building Hours**"), except for the date of observation of New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day thereafter, Christmas Day and other locally or nationally recognized holidays as designated by Landlord (collectively, the "**Holidays**").

6.1.2 Landlord shall provide adequate electrical wiring and facilities and power for normal general office use as determined by Landlord. Landlord shall replace lamps, starters and ballasts for Building standard lighting fixtures within the Premises. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises.

6.1.3 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes.

6.1.4 Landlord shall provide janitorial services five (5) days per week, except the date of observation of the Holidays, in and about the Premises and window washing services in a manner consistent with other comparable buildings in the vicinity of the Building.

6.1.5 Landlord shall provide nonexclusive automatic passenger elevator service at all times.

6.1.6 Landlord shall provide nonexclusive freight elevator service subject to scheduling by Landlord.

6.1.7 Landlord shall provide telecommunications, Internet and data transmission services to all offices and work stations within the Premises.

6.1.8 Landlord shall provide, as part of the Jointly Shared Spaces, server room(s), mail services, graphics and printing services and library and meeting rooms. Use of the meeting rooms shall be subject to such advance reservation and other rules as Landlord may reasonably establish from time to time with input from Tenant.

6.2 Overstandard Tenant Use. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than building standard lights in the office portion of the Premises, which may affect the temperature otherwise maintained by the air conditioning system or increase the need for water above that normally furnished to other offices in the Agency Space by Landlord pursuant to the terms of Section 6.1 of this Lease. If Tenant uses water or HVAC in excess of that supplied by Landlord pursuant to Section 6.1 of this Lease, or if Tenant's consumption of electricity shall exceed such levels, as determined by Landlord based on sub-metering of such usage, then Tenant shall pay to Landlord, within ten (10) days after billing and as additional rent, the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord may install devices (including without limitation Quadlogic revenue grade meters (or comparable devices) and related data transmission and collection systems and software) to separately meter any increased use, and in such event Tenant shall pay, as additional rent, the increased cost directly to Landlord, within ten (10) days after demand. If Tenant desires to use HVAC during hours other than the Building Hours, Tenant shall give Landlord such prior notice, as Landlord shall from time to time establish as appropriate, of Tenant's desired use.

6.3 Interruption of Use. Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Real Property after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6.

## ARTICLE 7

### REPAIRS

7.1 Tenant's Repairs. Subject to Landlord's repair obligations in Sections 7.2 and 11.1 below, Tenant shall, at Tenant's own expense, keep the Premises, including all improvements, fixtures and furnishings therein, in good order, repair and condition at all times during the Lease Term, which repair obligations shall include, without limitation, the obligation to promptly and adequately repair all damage to the Premises and replace or repair all damaged or broken fixtures and appurtenances; provided however, that, at Landlord's option, or if Tenant fails to make such repairs, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof. Tenant agrees to promptly notify Landlord or its representative of any accidents or defects in the Building of which Tenant becomes aware, including defects in pipes, electrical wiring and HVAC equipment. In addition, Tenant shall provide Landlord with prompt notification of any matter or condition which may cause injury or damage to the Building or any person or property therein.

7.2 Landlord's Repairs. Anything contained in Section 7.1 above to the contrary notwithstanding, and subject to Articles 11 and 12 of this Lease, Landlord shall repair and maintain the structural portions of the Building, including without limitation the Premises and the Common Area and the Jointly Shared Spaces, including the basic plumbing, heating, ventilating, air conditioning, electrical telecommunications and data systems serving the Building or the Agency Space; provided, however, if such maintenance and repairs are caused in part or in whole by the act, neglect, fault of or omission of any duty by Tenant, its agents, servants, employees or invitees, Tenant shall pay to Landlord as Additional Rent, the reasonable cost of such maintenance and repairs. There shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Real Property, Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect.

## ARTICLE 8

### ADDITIONS AND ALTERATIONS

8.1 Landlord's Consent to Alterations. Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord; provided, however, Landlord may withhold its consent in its sole and absolute discretion with respect to any Alterations which may affect the structural components of the Building or the Systems and Equipment. Tenant shall pay for all costs and expenses of the Alterations. The construction of the initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this Article 8.

8.2 Manner of Construction. Landlord may impose, as a condition of its consent to all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable with respect to any work affecting the structural components of the Building or Systems and Equipment

(including designating specific contractors to perform such work). Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code or ordinance and pursuant to a valid building permit, issued by the city in which the Real Property is located. Landlord's approval of the plans, specifications and working drawings for Tenant's Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing the work of any such Alterations, Tenant shall have the work performed in such manner as not to obstruct access to the Building or the Common Area, and as not to obstruct the business of Landlord or other tenants of the Agency Space, or interfere with the labor force working at the Real Property. If Tenant makes any Alterations, Tenant agrees to carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require. In addition, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee. Upon completion of any Alterations, Tenant shall (i) cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Real Property is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, (ii) deliver to Landlord or its facility operator a reproducible copy of the "as built" drawings of the Alterations, and (iii) deliver to Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

8.3 Landlord's Property. All Alterations, improvements or fixtures which may be installed or placed in or about the Premises, from time to time, shall be and become the property of Landlord. Furthermore, Landlord may require that Tenant remove any improvement or Alteration upon the expiration or early termination of the Lease Term, and repair any damage to the Premises and Building caused by such removal. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations, Landlord may do so and may charge the cost thereof to Tenant.

## ARTICLE 9

### COVENANT AGAINST LIENS

Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Real Property, Building or Premises, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Real Property, the Building or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the Premises, and, in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Lease, if any such lien is not released and removed on or before the date notice of such lien is delivered by Landlord to Tenant, Landlord, at its sole option, may immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed Additional Rent under this Lease and shall immediately be due and payable by Tenant.

## ARTICLE 10

### INDEMNIFICATION AND INSURANCE

10.1 Indemnification and Waiver. Tenant hereby assumes all risk of damage to property and injury to persons, in, on, or about the Premises from any cause whatsoever and agrees that Landlord and its officers, agents, property managers, employees, and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage to property or injury to persons or resulting from the loss of use thereof, which damage or injury is sustained by Tenant or by other persons claiming through Tenant, except to the extent caused by the negligence or willful misconduct of any Landlord Party. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises (including, without limitation, Tenant's installation, placement and removal of Alterations, improvements, fixtures and/or equipment in, on or about the Premises), and any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, licensees or invitees of Tenant or any such person, in, on or about the Premises, Building and Real Property; provided, however, that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord or any Landlord Party. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease.

10.2 Tenant's Compliance with Landlord's Fire and Casualty Insurance. Tenant shall, at Tenant's expense, comply as to the Premises with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies, then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 Tenant's Insurance. Tenant shall maintain the following coverages in the following amounts, which amounts and coverages shall be subject to adjustment by Landlord from time to time upon not less than ninety (90) days prior written notice to Tenant, provided however that Landlord may not require coverages or insurance amounts in excess of insurance requirements generally being imposed upon commercial office tenants of comparable space by landlords in the City of San Francisco central business district at the time of the required change in coverage or amount.

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

Bodily Injury and Property Damage Liability	\$2,000,000 each occurrence \$2,000,000 annual aggregate
Personal Injury Liability	\$2,000,000 each occurrence \$2,000,000 annual aggregate

10.3.2 Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise and all other items of personal property on the Premises installed or owned by Tenant. Such insurance shall be written on a "physical loss or damage" basis under a "special form" policy for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage coverage.

10.3.3 Workers' compensation insurance as required by law.

10.3.4 Tenant shall carry comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance or use of any owned, hired or non-owned automobiles.

10.3.5 The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall: (i) name Landlord, and any other party it so specifies, as an additional insured; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the state in which the Real Property is located; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. If Tenant shall fail to procure such insurance, or to deliver such policies or certificate, within such time periods, Landlord may, at its option, in addition to all of its other rights and remedies under this Lease, and without regard to any notice and cure periods set forth in Section 19.1, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within ten (10) days after delivery of bills therefor.

10.4 Subrogation. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be. Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insured under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance.

## ARTICLE 11

### DAMAGE AND DESTRUCTION

11.1 Repair of Damage to Premises by Landlord. Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any common areas of the Building or Real Property serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the base, shell, and core of the Premises and such common areas. Such restoration shall be to substantially the same condition of the base, shell, and core of the Premises and common areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Real Property, or any other modifications to the common areas deemed desirable by Landlord, provided access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Notwithstanding any other provision of this Lease, upon the occurrence of any damage to the Premises, Landlord shall also repair any injury or damage to the tenant improvements and alterations installed in the Premises and shall return such tenant improvements and alterations to their original condition. In connection with such repairs and replacements, Tenant shall, prior to the commencement of construction, submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord

shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or common areas necessary to Tenant's occupancy, and if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's employees, contractors, licensees, or invitees, Landlord shall allow Tenant a proportionate abatement of Base Rent and Tenant's Share of Common Area Expenses during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result thereof.

11.2 Landlord's Option to Repair. Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, the Building and/or any other portion of the Real Property and instead terminate this Lease by notifying Tenant in writing of such termination within sixty (60) days after the date of damage, such notice to include a termination date giving Tenant ninety (90) days to vacate the Premises, but Landlord may so elect only if the Building shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) repairs cannot reasonably be completed within twelve (12) months following the issuance of building permits for each reconstruction; or (ii) the holder of any mortgage on the Real Property shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt. Additionally, Tenant shall have the right to terminate this Lease if the repairs cannot reasonably be completed, or have not been completed, within twelve (12) months following the date of the damage. Upon any such termination of this Lease pursuant to this Section 11.2, Tenant shall pay the Base Rent and Additional Rent, properly apportioned up to such date of termination, and both parties hereto shall thereafter be freed and discharged of all further obligations hereunder, except for any monetary obligations of Tenant which, by the terms of this Lease, survive the expiration or earlier termination of this Lease Term.

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

## ARTICLE 12

### CONDEMNATION

12.1 Permanent Taking. If the whole or any part of the Premises or the Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose (other than a taking of existing office space other than the Premises for use by a governmental entity), or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking, condemnation, reconfiguration, vacation, deed or other instrument. If any portion of Premises is taken, or if access to the Premises is substantially impaired, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to receive the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claim does not diminish the award available to Landlord or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

12.2 Temporary Taking. Notwithstanding anything to the contrary contained in this Article 12, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the award made in connection with any such temporary taking to the extent required to compensate Landlord for any Base Rent or Additional Rent not payable by Tenant for such period, and any remaining award shall be payable to Tenant.

## ARTICLE 13

### COVENANT OF QUIET ENJOYMENT

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

## ARTICLE 14

### ASSIGNMENT AND SUBLETTING

14.1 Transfers. Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice in the case of a subletting of less than all of the Premises and shall be not less than two (2) years after the date of delivery of the Transfer Notice if Tenant's interest in the entirety of the Premises is to be assigned or the entire Premises subleased for the entire balance of the Term,, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) the name and address of the proposed Transferee and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, and (v) such other information as Landlord may reasonably require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under Section 19.1.2 of this Lease.

14.1.1 Landlord's Consent. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to any Transferee which is a governmental agency or instrumentality. Landlord shall have the right to withhold its consent, in its sole discretion, to a Transfer to a non-governmental Transferee.

14.2 Landlord's Option as to Subject Space. Notwithstanding anything to the contrary contained in this Article 14, Landlord shall have the option in the event Tenant desires to assign its interest in this Lease or to sublease the entirety of the Premises to a Transferee but not in the event of a proposed subletting of a portion of the Premises, by giving written notice to Tenant within fifteen (15) days after receipt of any Transfer Notice, to recapture the Premises. Such recapture notice shall cancel and terminate this Lease as of the date stated in the Transfer Notice as the effective date of the proposed Transfer until the last day of the term of the Transfer as set forth in the Transfer Notice. If Landlord declines, or fails to elect in a timely manner to recapture the Premises under this Section 14.2, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Premises to the proposed Transferee.

14.3 Effect of Transfer. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant from liability under this Lease.

## ARTICLE 15

### SURRENDER; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

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

15.2 Removal of Tenant Property by Tenant. Unless this Lease terminates as a result of Tenant's purchase of the Premises pursuant to Article 23 below, upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

## **ARTICLE 16**

### **HOLDING OVER**

If Tenant holds over after the expiration of the Lease Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to one hundred twenty-five percent (125%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein. Landlord hereby expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

## **ARTICLE 17**

### **ESTOPPEL CERTIFICATES**

Within ten (10) days following a request in writing by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be in the form as may be required by any prospective mortgagee or purchaser of the Real Property (or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of Tenant to timely execute and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

## **ARTICLE 18**

### **SUBORDINATION**

This Lease is subject and subordinate to all present and future ground or underlying leases of the Real Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Real Property, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage, or if any ground or underlying lease is terminated, to attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or underlying lease, as the case may be, if so requested to do so by such purchaser or lessor and/or if required to do so pursuant to any subordination, non-disturbance and attornment agreement executed by Tenant pursuant to this Article 18, and to recognize such purchaser or lessor as the lessor under this Lease. Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument or instruments if Tenant fails to do so, provided that such authorization shall in no way relieve Tenant from the obligation of executing such instruments of subordination or superiority. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

## **ARTICLE 19**

### **TENANT'S DEFAULTS; LANDLORD'S REMEDIES**

19.1 Events of Default by Tenant. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. The occurrence of any of the following shall constitute a default of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within ten (10) business days following the date due; or

19.1.2 Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30)-day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said default as soon as possible; or

19.1.3 Abandonment of the Premises by Tenant.

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

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

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

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

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

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

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

The term "rent" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate set forth in Section 4.5 of this Lease. As used in Section 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

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

19.2.3 Landlord may, but shall not be obligated to, make any such payment or perform or otherwise cure any such obligation, provision, covenant or condition on Tenant's part to be observed or performed (and may enter the Premises for such purposes). In the event of Tenant's failure to perform any of its obligations or covenants under this Lease, and such failure to perform poses a material risk of injury or harm to persons or damage to or loss of property, then Landlord shall have the right to cure or otherwise perform such covenant or obligation at any time after such failure to perform by Tenant, whether or not any such notice or cure period set forth in Section 19.1 above has expired. Any such actions undertaken by Landlord pursuant to the foregoing provisions of this Section 19.2.3 shall not be deemed a waiver of Landlord's rights and remedies as a result of Tenant's failure to perform and shall not release Tenant from any of its obligations under this Lease.

19.3 Payment by Tenant. Tenant shall pay to Landlord, within fifteen (15) days after delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with Landlord's performance or cure of any of Tenant's obligations pursuant to the provisions of Section 19.2.3 above; and (ii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 19.3 shall survive the expiration or sooner termination of the Lease Term.

19.4 Sublessees of Tenant. In the event Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.5 Waiver of Default. No waiver by Landlord of any violation or breach by Tenant of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach by Tenant of the same or any other of the terms, provisions, and covenants herein contained. Forbearance by Landlord in enforcement of one or more of the remedies herein provided upon a default

by Tenant shall not be deemed or construed to constitute a waiver of such default. The acceptance of any Rent hereunder by Landlord following the occurrence of any default, whether or not known to Landlord, shall not be deemed a waiver of any such default, except only a default in the payment of the Rent so accepted.

19.6 Efforts to Relet. For the purposes of this Article 19, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession.

## ARTICLE 20

### COMPLIANCE WITH LAW

Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures, other than the making of structural changes or changes to the Building's life safety system (collectively the "**Excluded Changes**") except to the extent such Excluded Changes are required due to Tenant's alterations to or manner of use of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

## ARTICLE 21

### ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant to enter the Premises to: (i) inspect them; (ii) to post notices of nonresponsibility; (iii) alter, improve or repair the Premises or the Building if necessary to comply with current building codes or other applicable laws; (iv) for alterations, repairs or improvements to the Common Area or Jointly Shared Space; or (v) as Landlord may otherwise reasonably desire or deem necessary. Notwithstanding anything to the contrary contained in this Article 21, Landlord may enter the Premises at any time, without notice to Tenant, in emergency situations and/or to perform janitorial or other services required of Landlord pursuant to this Lease. Any such entries shall be without the abatement of Rent and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby except to the extent caused by the negligence or willful misconduct of any Landlord Parties. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to enter without notice and use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

## ARTICLE 22

### TENANT PARKING

Landlord agrees to provide, at no additional cost, parking in the Building for Tenant's Board members in connection with all public meetings in the Building. In addition, Landlord acknowledges that it is aware of Tenant's requirement for 75 daily parking spaces [**inclusive/exclusive**] of the dedicated van spaces adjacent to Tenant's laboratory. Landlord shall provide to Tenant not less than the same percentage of parking spaces in the Building as the percentage which the rentable square footage of the Premises (exclusive of the dedicated van space) bears to the rentable square footage for the Agency Space as a whole. Such parking spaces shall be provided at no additional cost to Tenant. Tenant's continued right to use the parking spaces is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facilities and upon Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations. Landlord specifically reserves the right, from time to time, to change the size, configuration, design, layout, location and all other aspects of the parking facilities, and Tenant acknowledges and agrees that Landlord, from time to time, may, without incurring any liability to Tenant and without any abatement of Rent under this Lease temporarily close-off or restrict access to the parking facilities, or temporarily relocate Tenant's parking spaces to other areas within a reasonable distance from the parking facilities, for purposes of permitting or facilitating any such construction, alteration or improvements or to accommodate or facilitate renovation, alteration, construction or other modification of other improvements or structures located on the Real Property. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to Landlord. The parking spaces provided to Tenant pursuant to this Article 22 are provided solely for use by Tenant's own personnel and the right to use such spaces may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval except to a permitted Transferee under the terms of Article 14.

## ARTICLE 23

### OPTION TO PURCHASE PREMISES

Landlord and Tenant each acknowledge that they are entering into this Lease with the understanding that Landlord intends to convert the Agency Space into individual office condominium units, one or more of which will be occupied by Landlord's constituent members, the Metropolitan Transportation Commission and the Bay Area Toll Authority, and one of which will be occupied by Tenant. Landlord hereby grants to Tenant the right to purchase the Premises (the "**Purchase Option**"), inclusive of the furnishings and equipment provided by Landlord pursuant to the terms of the Tenant Work Letter and the parking spaces allocated to the Premises pursuant to Article 22 hereof (the "**Condominium Unit**"), following recordation of a condominium subdivision map and otherwise on the terms and conditions set forth in the form of Purchase and Sale Agreement and Joint Escrow Instructions attached as Exhibit F to this Lease (the "**Purchase Agreement**"). Landlord shall, at Landlord's cost, file all applications and take all other actions necessary to obtain all required governmental approvals of a condominium map establishing the Premises as a separate legal parcel and shall cause the condominium map to be recorded in the Official Records of the City and County of San Francisco as expeditiously as is commercially reasonable. If Tenant exercises the Purchase Option and closes the transaction not later than the end of the tenth (10<sup>th</sup>) Lease Year, the purchase price for the Condominium Unit shall be an amount equal to Landlord's cost per square foot of acquiring the Real Property, including all costs of renovating and improving the Building and furnishing the Agency Space but expressly excluding leasing and lease-up costs (the "**Agency Footprint Actual Cost**"), up to a maximum cost of Three Hundred Eighty-Five Dollars (\$385.00) per square foot of Building area multiplied by the square footage of the Condominium Unit, as shown on the recorded condominium subdivision map and exclusive of the parking spaces. If Tenant exercises the Purchase Option at any time after the tenth (10<sup>th</sup>) Lease Year, the purchase price for the Condominium Unit shall be the greater of (i) the foregoing cost, as increased by the percentage increase, if any, in the Consumer Price Index from the eleventh anniversary of the Lease Commencement Date to the date of the closing and (ii) the then fair market value for comparable office condominium units in the San Francisco area. For the purposes hereof, the Consumer Price Index shall mean the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San José (1982-84=100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or any replacement index. Tenant may exercise the Purchase Option at any time during the Lease Term by giving written notice of exercise to Landlord. Upon exercise of the Purchase Option, the parties shall enter into the Purchase Agreement and close the transaction as provided therein. Landlord and Tenant shall establish and agree upon the Agency Footprint Actual Cost not later than six (6) months following the Rent Commencement Date. If the parties are not able to reach agreement prior to the expiration of such six-month period, either party may invoke the dispute resolution procedures set forth in Section 12.13 of the Declaration of Covenants, Conditions and Restrictions to be recorded in connection with the recordation of the Condominium Map for the Agency Space. If the Purchase Option is exercised after the tenth (10<sup>th</sup>) Lease Year and the parties are unable to agree upon the amount of the purchase price within thirty (30) days following Tenant's notice of exercise, the purchase price shall be established in accordance with the same procedures set forth in Section 3.2 for the adjustment of Base Rent.

## ARTICLE 24

### MISCELLANEOUS PROVISIONS

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

24.2 Binding Effect. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

24.3 No Waiver. No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

24.4 Transfer of Landlord's Interest. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Real Property, the Building and/or in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. The liability of any transferee of Landlord shall be limited to the interest of such transferee in the Real Property and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

24.5 Landlord's Title; Air Rights. Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

24.6 Tenant's Signs. Tenant shall be entitled to (i) one (1) identification sign on or near the entry doors of the Premises, and (ii) a listing in the ground floor lobby directory for the Agency Space. The location, quality, design, style, lighting and size of such signs shall be consistent with the Landlord's Building standard signage program and shall be subject to Landlord's prior written approval, in its reasonable discretion. Upon the expiration or earlier termination of this Lease for any reason other than Tenant's exercise of the Purchase Option and purchase of the Premises, Tenant shall be responsible, at its sole cost and expense, for the removal of such signage and the repair of all damage to the Building caused by such removal. Except for such identification signs, Tenant may not install any signs on the exterior or roof of the Building or the Common Area of the Agency Space. Any signs, window coverings, or blinds (even if the same are located behind the Landlord approved window coverings for the Building), or other items visible from the exterior of the Premises or Building are subject to the prior approval of Landlord, in its sole and absolute discretion.

24.7 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

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

24.9 Time of Essence. Time is of the essence of this Lease and each of its provisions.

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

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

24.12 Landlord Exculpation. It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord and the Landlord Parties hereunder (including any successor landlord) and any recourse by Tenant against Landlord or the Landlord Parties shall be limited solely and exclusively to an amount which is equal to the interest of Landlord in the Real Property, and neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

24.13 Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease, including all exhibits attached hereto, supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto, and none thereof shall be used to interpret or construe this Lease. This Lease and any side letter or separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease.

24.14 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Building as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building and Real Property, provided that Landlord shall exercise its best efforts to lease all office space within the Agency Space to other governmental agencies or instrumentalities. Except as provided in this Section 24.14, Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Real Property.

24.15 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, the "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease,

shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

24.16 Notices. All notices, demands, statements or communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or delivered personally (i) to Tenant at the appropriate address set forth in Section 5 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord; or (ii) to Landlord at the addresses set forth in Section 3 of the Summary, or to such other firm or to such other place as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given on the date it is mailed as provided in this Section 24.16 or upon the date personal delivery is made. If Tenant is notified of the identity and address of Landlord's mortgagee, Tenant shall give to such mortgagee written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant.

24.17 Authority. Tenant confirms that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

24.18 Dispute Resolution. In the event of a dispute between the parties with respect to any of the provisions of this Lease other than the non-payment by Tenant of Rent, if the parties are unable to resolve the dispute, either party may require mediation in accordance with this Section 24.18. The mediation shall proceed in accordance with rules promulgated by the mediator chosen pursuant to this Section 24.18. The mediation process shall be confidential and treated as a compromise negotiation for purposes of Federal and State rules of evidence. The parties shall each pay one-half of the cost of the mediator. Within ten (10) days following notice by either party that it elects to resolve the dispute by mediation, Landlord and Tenant shall meet and select a disinterested third party to act as mediator. If the parties fail to agree on a mediator, either party may request the American Arbitration Association in San Francisco to appoint a mediator. The mediator may be replaced upon ten (10) days written request by either party, using the procedure outlined above, provided, however that either party may replace the mediator only once. The mediator shall convene the mediation session not later than ten (10) business days after his or her selection. If the parties are able to resolve their dispute through mediation, the representatives of the parties in attendance at the meeting shall execute a written agreement or memorandum that shall set forth in reasonable detail the resolution terms, the actions to be taken by a party as part of the resolution and the period in which such action or actions are to be completed. The executed agreement or memorandum shall be binding on the parties to this Lease. If the parties are unable to resolve their disputes through mediation, the matter in dispute shall be determined by binding arbitration under the Commercial Rules of the American Arbitration Association (the "**Commercial Rules**"). The arbitration hearing shall be held within the City and County of San Francisco. Any such controversy shall be arbitrated by a single arbitrator, who shall be an impartial real estate professional or lawyer having not less than ten years experience developing, managing and representing owners of commercial office properties in the San Francisco area. The arbitrator shall be appointed under the Commercial Rules and shall determine the controversy in accordance with applicable law, the intention of the parties as expressed in the Lease and any amendments thereto and any evidence produced at the arbitration hearing. Arbitration discovery shall be permitted in accordance with the Commercial Rules or California law applicable to arbitration proceedings. The arbitrator's determination shall be rendered within thirty (30) days after the conclusion of the hearing and may include an award of attorneys' fees and costs to the prevailing party. The foregoing shall not prevent Landlord from bringing an unlawful detainer proceedings in the event Tenant is in default of its obligation to pay Rent or is otherwise in material breach of the provisions of this Lease, nor shall the dispute resolution procedures described in this Section 24.18 apply to disputes involving claims by or against third parties which require the joinder of any such party for complete resolution of the claim.

24.19 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

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

24.21 Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building, Real Property or any portion thereof, of whose address Tenant has theretofore been notified, and an opportunity is granted to Landlord and such holder to correct such violations as provided above.

24.22 Building Name and Signage. Landlord shall have the right at any time to change the name of the Building and Real Property and to install, affix and maintain any and all signs on the exterior and on the interior of the Building and any portion of the Real Property as Landlord may, in Landlord's sole discretion, desire.

24.23 Early Termination. Commencing on the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, Tenant shall have the right, upon not less than two (2) years prior written notice and subject to the reasonable approval of Landlord, to terminate this Lease at any time during the Term. The foregoing shall not apply, however, to a termination of the Lease upon purchase of the Premises by Tenant.

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

"Landlord:"

BAY AREA HEADQUARTERS AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Treasurer - Auditor

Approved as to form:

\_\_\_\_\_  
General Counsel

"Tenant:"

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Officer

Approved as to form:

\_\_\_\_\_  
General Counsel

**EXHIBIT A**

**OUTLINE OF FLOOR PLAN OF PREMISES**

[To be added when Final Space Plan approved]

**EXHIBIT A-1**

**Legal Description of Real Property**

## EXHIBIT B

### TENANT WORK LETTER

This Tenant Work Letter ("**Tenant Work Letter**") sets forth the terms and conditions relating to the construction of improvements for the Premises. All references in this Tenant Work Letter to "the Lease" shall mean the relevant portions of the Lease to which this Tenant Work Letter is attached as **Exhibit B**.

#### SECTION 1

##### BASE, SHELL AND CORE

The base, shell, and core (i) of the Premises and (ii) of the floor(s) of the Building on which the Premises are located (collectively, the "**Base, Shell, and Core**") have previously been constructed and are being renovated by Landlord in accordance with [SPACE PLAN?], and Tenant shall accept the Base, Shell and Core in its "As-Is" condition existing as of the Lease Commencement Date. Landlord shall install in the Premises certain "Tenant Improvements" (as defined below) pursuant to the provisions of this Tenant Work Letter. Except for the Tenant Improvement work and the furnishings to be installed in the Premises by Landlord described in this Tenant Work Letter, Landlord shall not be obligated to make or pay for any alterations or improvements to the Premises or to incur any other costs on Tenant's behalf.

#### SECTION 2

##### CONSTRUCTION DRAWINGS FOR THE PREMISES

2.1 Selection For Agency Space Standard Components. Landlord has established or will establish specifications (the "**Specifications**") for the Agency Space standard tenant improvements and furnishings, which shall be the same improvements and furnishings made to or installed in the office space to be occupied by the Metropolitan Transportation Commission. Unless otherwise agreed to by Landlord, the tenant improvements and furnishings for the Premises (the "**Tenant Improvements**") shall comply with the Specifications, except for superficial elements such as color or finish which do not affect the cost thereof to Landlord.

2.2 Selection of Architect/Construction Drawings. Landlord shall retain an architect/space planner (the "**Architect**") to prepare the "**Construction Drawings**") as that term is defined in this Section 2.2. Landlord shall retain Landlord's engineering consultants (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises and, the power, cooling and redundancy systems for the servers and network closets serving the Premises and the cabling for the telephone, Internet and data transmission systems to and within the Premises. The card access system for the Premises shall permit Tenant to control access, including hours of access and levels of security, for all or specified portions of the Premises.

2.3 Final Space Plan. Following the full execution and delivery of the Lease by Landlord and Tenant, Tenant shall meet with Landlord's Architect and provide Landlord's Architect with information regarding the preliminary layout and designation of all proposed offices, rooms and other partitioning, and their intended use and equipment to be contained therein (the "**Information**"). Landlord and Architect shall, based on such Information, prepare the final space plan for Tenant Improvements in the Premises (collectively, the "**Final Space Plan**"), which Final Space Plan shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein, and shall deliver the Final Space Plan or any revisions thereto to Tenant. Tenant's failure to disapprove the Final Space Plan or any revisions thereto by written notice to Landlord (which notice shall specify in detail the reasonable reasons for Tenant's disapproval) in accordance with the Schedule agreed to pursuant to Section 2.6 hereof shall be deemed to constitute Tenant's approval of the Final Space Plan or such revisions.

2.4 Final Working Drawings. Based on the Final Space Plan, Landlord shall cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Tenant for Tenant's approval. The Final Working Drawings shall incorporate modifications to the Final Space Plan as necessary to comply with the floor load and other structural and system requirements of the Building. To the extent that the finishes and specifications are not completely set forth in the Final Space Plan for any portion of the Tenant Improvements depicted thereon, the actual specifications and finish work shall be in accordance with the Specifications. Tenant shall approve or reasonably disapprove the Final Working Drawings or any revisions thereto in accordance with the Schedule adopted pursuant to Section 2.6; provided, however, that Tenant may only disapprove the Final Working Drawings to the extent the same are not in substantial conformance with the Final Space Plan. Tenant's failure to reasonably disapprove the Final Working Drawings or any revisions thereto by written notice to Landlord (which notice shall specify in detail the reasonable reasons for Tenant's disapproval) in accordance with the Schedule shall be deemed to constitute Tenant's approval of the Final Working Drawings or such revisions.

2.5 Approved Working Drawings. The Final Working Drawings shall be approved or deemed approved by Tenant (the "**Approved Working Drawings**") prior to the commencement of the construction of the Tenant Improvements. Landlord shall cause the Architect to submit the Approved Working Drawing to the applicable local governmental agency for all applicable building permits necessary to allow Landlord's Contractor to

commence and fully complete the construction of the Tenant Improvements. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord.

2.6 Schedule. Landlord and Tenant shall, in conjunction with the Architect, develop and adopt a schedule for development, review and approval of the Final Space Plan and the Final Working Drawings and for the construction of the Tenant Improvements and delivery of the Premises to Tenant (the "**Schedule**"). Tenant shall use its best efforts to cooperate with Architect, the Engineers, and Landlord to complete all phases of the Construction Drawings and the permitting process as soon as possible after the execution of the Lease and in accordance with the Schedule. To the extent Landlord considers such meeting(s) to be reasonably necessary, Tenant shall meet with Landlord on a weekly basis to discuss the parties' progress in connection with the same.

### **SECTION 3**

#### **CONSTRUCTION AND PAYMENT FOR COSTS OF TENANT IMPROVEMENTS**

Landlord shall cause a contractor designated by Landlord (the "**Contractor**") to (i) obtain all applicable building permits for construction of the Tenant Improvements, and (ii) construct the Tenant Improvements as depicted on the Approved Working Drawings, in compliance with such building permits and all applicable laws in effect at the time of construction, and in good workmanlike manner. Except as otherwise provided in this Tenant Work Letter, Landlord shall pay for the cost of the design and construction of the Tenant Improvements. In the event Tenant requests any changes, change orders or modifications to the Working Drawings and/or the Approved Working Drawings (which Landlord approves pursuant to Section 2 above) which increase the cost to construct the Tenant Improvements above the cost of the tenant improvements as described in the Final Space Plan, Tenant shall pay such increased cost to Landlord immediately upon Landlord's request therefor, and, in any event, prior to the date Landlord causes the Contractor to commence construction of the changes, change orders or modifications.

### **SECTION 4**

#### **FURNISHINGS; EQUIPMENT**

4.1 Furnishings and Equipment. Landlord shall install in the Premises, at Landlord's cost and in accordance with the Final Space Plan, the work stations, cubicles, office furniture, shelving, telephone systems, computer systems and other office furnishings and equipment provided for in the Specifications. Any such items requested by Tenant which are not included in the Specifications shall be paid for by Tenant.

4.2 Relocation of Tenant's Property. Landlord shall be responsible for relocating from Tenant's current offices at 939 Ellis Street, San Francisco to the Premises all property designated by Tenant, including without limitation Tenant's computers and telephone equipment and for re-installation of such equipment in the Premises.

### **SECTION 5**

#### **SUBSTANTIAL COMPLETION OF THE TENANT IMPROVEMENTS**

Substantial Completion. For purposes of this Lease, the Premises shall be ready for occupancy upon Substantial Completion of the Premises. For purposes of this Lease, "Substantial Completion" of the Premises shall occur upon the completion of construction of the Tenant Improvements in the Premises pursuant to the Approved Working Drawings, with the exception of any punch list items that do not materially and adversely affect Tenant's use and occupancy of the Premises, and upon the installation of the work-stations, furniture, equipment and other office furnishings to be installed by Landlord.

### **SECTION 6**

#### **MISCELLANEOUS**

6.1 Tenant's Entry Into the Premises Prior to Substantial Completion. Subject to the terms hereof and provided that Tenant and its agents do not interfere with Contractor's work in the Building and the Premises, Contractor shall use commercially reasonable efforts to allow Tenant access to the Premises not less than fourteen (14) days prior to the anticipated Substantial Completion of the Premises for the purpose of Tenant installing in the Premises any equipment, fixtures or furniture being provided by Tenant. Prior to Tenant's entry into the Premises as permitted by the terms of this Section 5.1, Tenant shall submit a schedule to Landlord and Contractor, for their approval, which schedule shall detail the timing and purpose of Tenant's entry. In connection with any such entry, Tenant acknowledges and agrees that Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall fully cooperate, work in harmony and not, in any manner, interfere with Landlord or Landlord's Contractor, agents or representatives in performing work in the Building and the Premises, or interfere with the general operation of the Building. If at any time any such person representing Tenant shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and Tenant fails to immediately institute and maintain corrective actions as directed by Landlord, then Landlord may revoke Tenant's entry rights upon twenty-four (24) hours' prior written notice to Tenant. Tenant acknowledges and agrees that any such entry into and occupancy of the Premises or any portion thereof by Tenant or any person or entity working for or on behalf of Tenant shall be deemed to be subject to all of the terms, covenants, conditions and provisions of the Lease, excluding only the covenant to pay Rent (until the occurrence of the Lease Commencement Date). Tenant further acknowledges and agrees that Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's work made in or about the Premises in

connection with such entry or to any property placed therein prior to the Lease Commencement Date, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to any portion of the Premises, including the Tenant Improvement work, caused by Tenant or any of Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees. In the event that the performance of Tenant's work in connection with such entry causes extra costs to be incurred by Landlord (including without limitation) delay costs payable to the Contractor), Tenant shall promptly reimburse Landlord for such extra costs. In addition, Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Premises or Real Property and against injury to any persons caused by Tenant's actions pursuant to this Section 5.1.

6.2 Tenant's Representative. Tenant has designated \_\_\_\_\_ **[PLEASE PROVIDE]** as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

6.3 Landlord's Representative. Landlord has designated \_\_\_\_\_ as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

6.4 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord. Both Landlord and Tenant shall use commercially reasonable, good faith, efforts and all due diligence to cooperate with each other to complete all phases of the Construction Drawings and the permitting process and to receive the permits, as soon as possible after the execution of the Lease, and, in that regard, shall meet on a scheduled basis to be determined by Landlord and Tenant, to discuss progress in connection with the same.

6.5 Common Area and Jointly Shared Space. As an additional inducement to Tenant to enter into this Lease, Landlord agrees to consult with Tenant in the design of the Common Area and the Jointly Shared Spaces, and Landlord shall submit the Final Space Plan for the Common Area and the Jointly Shared Spaces to Tenant for Tenant's review and comment prior to finalizing the Common Area and Jointly Shared Spaces Final Space Plan.

**EXHIBIT C**

**AMENDMENT TO LEASE**

This AMENDMENT TO LEASE ("**Amendment**") is made and entered into effective as of \_\_\_\_\_, 20\_\_, by and between BAY AREA HEADQUARTERS AUTHORITY ("**Landlord**"), and BAY AREA AIR QUALITY MANAGEMENT DISTRICT ("**Tenant**")

R E C I T A L S:

A. Landlord and Tenant entered into that certain Office Lease dated as of \_\_\_\_\_ (the "**Lease**") pursuant to which Landlord leased to Tenant and Tenant leased from Landlord certain "**Premises**", as described in the Lease, in the Building located at 390 Main Street, San Francisco, California 94105.

B. Except as otherwise set forth herein, all capitalized terms used in this Amendment shall have the same meaning as such terms have in the Lease.

C. Landlord and Tenant desire to amend the Lease to confirm the commencement and expiration dates of the term, as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Confirmation of Dates. The parties hereby confirm that the Tenant commenced business operations in the Premises and began paying Base Rent as of \_\_\_\_\_ (the "**Rent Commencement Date**") for a term of thirty (30) years ending on \_\_\_\_\_ (the "**Lease Expiration Date**") unless sooner terminated as provided in the Lease.

2. Premises. The "**Premises**" constitutes (i) \_\_\_ rentable square feet of office space located on the \_\_\_ floor of the Building, known as Suite \_\_\_\_, (ii) \_\_\_ rentable square feet of air quality laboratory space located on the ground floor of the Building and (iii) the adjacent dedicated parking for Tenant's specialized vans used in connection with the laboratory, as shown on the floor plans attached hereto as Exhibit A.

3. Tenant's Share. "**Tenant's Share**" for the purpose of calculating Common Area and Jointly Shared Space Expenses shall be \_\_%, provided that Tenant's Share of Common Area Expenses shall be 70% of such amount and provided further that Tenant's Share of Jointly Shared Space Expenses may be increased or decreased, on an equitable basis, to reflect excess usage by Tenant or by other occupants of the Agency Space of meeting rooms or other Jointly Shared Spaces.

4. Parking. In addition to the dedicated van parking adjacent to Tenant's laboratory, Tenant shall have the right to daily use of \_\_\_ parking spaces within the Building at no additional cost to Tenant.

5. No Further Modification. Except as set forth in this Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Amendment to Lease has been executed as of the day and year first above written.

"Landlord:"

BAY AREA HEADQUARTERS AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Treasure-Auditor

Approved as to form:

\_\_\_\_\_  
General Counsel

"Tenant:"

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Executive Officer

Approved as to form:

\_\_\_\_\_  
General Counsel

## EXHIBIT D

### RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Building or Real Property.

1. Access to the Agency Space and the Premises shall be controlled by a card access system. Tenant shall have the right and responsibility to control access to the Premises or portions thereof, including without limitation hours of access and levels of security clearance.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises, unless electrical hold backs have been installed.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the vicinity of the Building. Tenant, its employees and agents must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register when so doing. After-hours access by Tenant's authorized employees may be provided by card-key access or other procedures adopted by Landlord from time to time; Tenant shall pay for the costs of all access cards provided to Tenant's employees and all replacements thereof for lost, stolen or damaged cards. Access to the Building and/or Real Property may be refused unless the person seeking access has proper identification or has a previously arranged pass for such access. Landlord and its agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building and/or Real Property of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building and/or Real Property during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

4. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility of Tenant and any expense of said damage or injury shall be borne by Tenant.

5. No furniture, freight, packages, supplies, equipment or merchandise will be brought into or removed from the Building or carried up or down in the elevators, except upon prior notice to Landlord, and in such manner, in such specific elevator, and between such hours as shall be designated by Landlord. Tenant shall provide Landlord with not less than 24 hours prior notice of the need to utilize an elevator for any such purpose, so as to provide Landlord with a reasonable period to schedule such use and to install such padding or take such other actions or prescribe such procedures as are appropriate to protect against damage to the elevators or other parts of the Building.

6. Landlord shall have the right to control and operate the public portions of the Building and Real Property, the public facilities, the heating and air conditioning, and any other facilities furnished for the common use of tenants, in such manner as is customary for comparable buildings in the vicinity of the Building.

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

8. Tenant shall not disturb, solicit, or canvass any occupant of the Building or Real Property and shall cooperate with Landlord or Landlord's agents to prevent same.

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

10. Tenant shall not overload the floor of the Premises. Tenant shall not mark, drive nails or screws, or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof without Landlord's consent first had and obtained; provided, however, Landlord's prior consent shall not be required with respect to Tenant's placement of pictures and other normal office wall hangings on the interior walls of the Premises (but at the end of the Term, Tenant shall repair any holes and other damage to the Premises resulting therefrom).

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

12. Except for any such materials used or tested in Tenant's laboratory which is part of the Premises, Tenant shall not use or keep in or on the Premises, the Building or Real Property any kerosene, gasoline or other inflammable or combustible fluid or material or use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or

objectionable to Landlord or other occupants of the Building or Real Property by reason of noise, odors, or vibrations, or interfere in any way with other tenants or those having business therewith.

13. No cooking shall be done or permitted by Tenant on the Premises. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, and does not cause odors which are objectionable to Landlord and other tenants.

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

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

16. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city in which the Real Property is located without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate.

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

18. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed, when the Premises are not occupied.

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

20. Tenant shall comply with any non-smoking ordinance adopted by any applicable governmental authority.

21. Landlord shall have the right, in consultation with Tenant and subject to Tenant's reasonable approval, to make such other reasonable Rules and Regulations pertaining to the office space within the Agency Space, including the Premises, or the Common Area or Jointly Shared Spaces as necessary or appropriate for the management of the Agency Space and the preservation of good order therein.