

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

FORM 10-Q

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

For the Quarterly Period Ended March 31, 2022

OR

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

For the Transition Period from _____ to _____

Commission File Number 000-28275

PFSweb, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

75-2837058
(I.R.S. Employer
Identification Number)

505 Millennium Drive, Allen, Texas
(Address of principal executive offices)

75013
(Zip Code)

Registrant's telephone number, including area code: (972) 881-2900

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	PFSW	Nasdaq Capital Market

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

Indicate by checkmark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller Reporting Company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

As of June 6, 2022, there were 22,641,560 shares of registrant's common stock outstanding.

PFSWEB, INC. AND SUBSIDIARIES

Form 10-Q

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PFSWEB, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Share Data)

	(Unaudited) March 31, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 154,781	\$ 152,332
Restricted cash	214	214
Accounts receivable, net of allowance for doubtful accounts of \$651 and \$867 at March 31, 2022 and December 31, 2021, respectively	55,533	78,024
Inventories, net of reserves of \$0 and \$57 at March 31, 2022 and December 31, 2021, respectively	—	3,133
Other receivables	6,579	7,005
Prepaid expenses and other current assets	7,164	7,244
Total current assets	224,271	247,952
Property and equipment:		
Cost	92,930	92,079
Less: accumulated depreciation	(74,246)	(72,764)
	18,684	19,315
Operating lease right-of-use assets, net	33,811	35,371
Goodwill	21,984	22,218
Other assets	1,784	1,610
Total assets	\$ 300,534	\$ 326,466
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	\$ 22,759	\$ 36,450
Accrued expenses	30,061	31,643
Current portion of operating lease liabilities	10,054	10,104
Current portion of finance lease obligations	138	222
Deferred revenues	4,061	4,391
Total current liabilities	67,073	82,810
Finance lease obligations, less current portion	69	89
Deferred revenue, less current portion	664	833
Operating lease liabilities, less current portion	28,512	30,393
Other liabilities	2,675	2,565
Total liabilities	98,993	116,690
Commitments and Contingencies		
Shareholders' equity:		
Preferred stock, \$1.00 par value; 1,000,000 shares authorized; none issued or outstanding	—	—
Common stock, \$0.001 par value; 35,000,000 shares authorized; 22,474,862 and 22,131,546 issued and 22,441,395 and 22,098,079 outstanding at March 31, 2022 and December 31, 2021, respectively	21	21
Additional paid-in capital	177,250	177,511
Retained earnings	26,055	33,522
Accumulated other comprehensive loss	(1,660)	(1,153)
Treasury stock at cost, 33,467 shares	(125)	(125)
Total shareholders' equity	201,541	209,776
Total liabilities and shareholders' equity	\$ 300,534	\$ 326,466

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

PFSWEB, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In Thousands, Except Per Share Data)

	Three Months Ended March 31,	
	2022	2021
Revenues:		
Service fee revenue	\$ 45,531	\$ 45,520
Product revenue, net	3,197	4,308
Pass-through revenue	17,759	10,876
Total revenues	66,487	60,704
Costs of Revenues:		
Cost of service fee revenue	36,492	33,530
Cost of product revenue	2,951	4,086
Cost of pass-through revenue	17,759	10,876
Total costs of revenues	57,202	48,492
Gross profit	9,285	12,212
Selling, general and administrative expenses	16,428	12,931
Loss from operations	(7,143)	(719)
Interest expense, net	6	375
Loss from continuing operations before income taxes	(7,149)	(1,094)
Income tax expense, net	318	279
Net loss from continuing operations	(7,467)	(1,373)
Loss from discontinued operations before income taxes	—	(820)
Income tax expense, net	—	29
Net loss from discontinued operations	—	(849)
Net loss	\$ (7,467)	\$ (2,222)
Basic loss per share:		
Net loss from continuing operations per share	\$ (0.33)	\$ (0.06)
Net loss from discontinued operations per share	—	(0.04)
Basic loss per share	\$ (0.33)	\$ (0.10)
Diluted loss per share:		
Net loss from continuing operations per share	\$ (0.33)	\$ (0.06)
Net loss from discontinued operations per share	—	(0.04)
Diluted loss per share	\$ (0.33)	\$ (0.10)
Weighted average number of shares outstanding:		
Basic	22,445	21,274
Diluted	22,445	21,274
Comprehensive loss:		
Net loss	\$ (7,467)	\$ (2,222)
Foreign currency translation adjustment	(507)	(355)
Total comprehensive loss	\$ (7,974)	\$ (2,577)

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

PFSWEB, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(In Thousands, Except Share Data)

Three Months Ended March 31, 2022

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Amount				Shares	Amount	
Balance, December 31, 2021	22,131,546	\$ 21	\$ 177,511	\$ 33,522	\$ (1,153)	33,467	\$ (125)	\$ 209,776
Net loss	—	—	—	(7,467)	—	—	—	(7,467)
Stock-based compensation	—	—	739	—	—	—	—	739
Exercise of stock options	55,999	—	303	—	—	—	—	303
Issuance of shares under stock-based compensation awards	287,317	—	—	—	—	—	—	—
Tax withholding on shares issued under stock-based compensation awards	—	—	(1,303)	—	—	—	—	(1,303)
Foreign currency translation	—	—	—	—	(507)	—	—	(507)
Balance, March 31, 2022	22,474,862	\$ 21	\$ 177,250	\$ 26,055	\$ (1,660)	33,467	\$ (125)	\$ 201,541

Three Months Ended March 31, 2021

	Common Stock		Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Amount				Shares	Amount	
Balance, December 31, 2020	20,408,558	\$ 20	\$ 168,244	\$ (113,712)	\$ (329)	33,467	\$ (125)	\$ 54,098
Net loss	—	—	—	(2,222)	—	—	—	(2,222)
Stock-based compensation	—	—	853	—	—	—	—	853
Exercise of stock options	74,416	—	377	—	—	—	—	377
Foreign currency translation	—	—	—	—	(355)	—	—	(355)
Balance, March 31, 2021	20,482,974	\$ 20	\$ 169,474	\$ (115,934)	\$ (684)	33,467	\$ (125)	\$ 52,751

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

PFSWEB, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Three Months Ended March 31,	
	2022	2021
Cash flows from operating activities:		
Net loss	\$ (7,467)	\$ (2,222)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	1,955	2,216
Deferred income taxes	68	15
Stock-based compensation expense	739	853
Other	(74)	37
Changes in operating assets and liabilities:		
Accounts receivable	22,517	19,916
Related party receivable	—	283
Inventories	3,186	(258)
Prepaid expenses, other receivables and other assets	320	(1,289)
Operating leases	(394)	(158)
Trade accounts payable, deferred revenues, accrued expenses and other liabilities	(15,440)	(10,909)
Net cash provided by operating activities	5,410	8,484
Cash flows from investing activities:		
Purchases of property and equipment	(1,662)	(969)
Proceeds from sale of property and equipment	10	—
Net cash used in investing activities	(1,652)	(969)
Cash flows from financing activities:		
Net proceeds from issuance of common stock	303	377
Taxes paid on behalf of employees for withheld shares	(1,303)	—
Payments on finance lease obligations	(102)	(262)
Payments on revolving loan	—	(50,817)
Borrowings on revolving loan	—	45,325
Payments on other debt	—	(1,646)
Net cash used in financing activities	(1,102)	(7,023)
Effect of exchange rates on cash, cash equivalents and restricted cash	(207)	(399)
Net increase in cash and cash equivalents	2,449	93
Cash and cash equivalents, beginning of period	152,332	10,359
Restricted cash, beginning of period	214	214
Cash and cash equivalents discontinued operations, beginning of period	—	392
Cash, cash equivalents and restricted cash, beginning of period	152,546	10,965
Cash and cash equivalents, end of period	154,781	7,888
Restricted cash, end of period	214	214
Cash and cash equivalents discontinued operations, end of period	—	2,956
Cash, cash equivalents and restricted cash, end of period	\$ 154,995	\$ 11,058
Supplemental cash flow information:		
Cash paid for income taxes	\$ 146	\$ 352
Cash paid for interest	\$ 5	\$ 309
Non-cash investing and financing activities:		
Property and equipment acquired under long-term debt and finance leases	\$ —	\$ 600

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

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of PFSweb, Inc. and its subsidiaries have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and include all normal and recurring adjustments necessary to present fairly the unaudited condensed consolidated balance sheets, statements of operations and comprehensive loss, statements of shareholders' equity, and statements of cash flows for the periods indicated. Certain information and note disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") have been condensed or omitted pursuant to the rules and regulations of the SEC. This report should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2021. We refer to PFSweb, Inc. and its consolidated subsidiaries collectively as "PFSweb," the "Company," "us," "we" and "our" in these unaudited condensed consolidated financial statements.

In July 2021, we announced an agreement to sell our LiveArea Professional Services business unit ("LiveArea") and the divestiture was completed on August 25, 2021 (the "LiveArea Transaction"). As such, the three months ended March 31, 2021 presented in the Company's Quarterly Report on Form 10-Q (this "Form 10-Q") has been recast to present LiveArea as a discontinued operation. See Note 3. Discontinued Operations for additional information on our sale of LiveArea.

Results of our operations for interim periods may not be indicative of results for the full fiscal year.

2. Significant Accounting Policies

Use of Estimates

The preparation of consolidated financial statements and related disclosures in conformity with U.S. GAAP requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and disclosure of contingent assets and liabilities. The recognition and allocation of certain revenues, costs of revenues and selling, general and administrative expenses in these unaudited condensed consolidated financial statements also require management estimates and assumptions.

Estimates and assumptions about future events and their effects cannot be determined with certainty. The Company bases its estimates on historical experience and various other assumptions believed to be applicable and reasonable under the circumstances. These estimates may change as new events occur, as additional information is obtained and as the operating environment changes. These changes have been included in the unaudited condensed consolidated financial statements as soon as they became known. In addition, management is periodically faced with uncertainties, the outcomes of which are not within its control and will not be known for prolonged periods of time. Based on a critical assessment of accounting policies and the underlying judgments and uncertainties affecting the application of those policies, management believes the Company's unaudited condensed consolidated financial statements are fairly stated in accordance with U.S. GAAP and provide a fair presentation of the Company's financial position and results of operations.

Furthermore, we considered the impact of the COVID-19 pandemic on the use of estimates and assumptions used for financial reporting and determined that there was no adverse material impact to our results of operations for the three months ended March 31, 2022; however, the extent and duration of future impacts of the COVID-19 pandemic and any resulting economic impact are largely unknown and difficult to predict due to these unknown factors which may have a material impact on our financial position and results of operations in the future.

Income Taxes

For the three months ended March 31, 2022 and 2021, we have utilized the discrete effective tax rate method, as allowed by Accounting Standards Codification ("ASC") 740-270-30-18, "Income Taxes—Interim Reporting," to calculate the interim income tax provision. The discrete method is applied when the application of the estimated annual effective tax rate is impractical because it is not possible to reliably estimate the annual effective tax rate. The discrete method treats the year to date period as if it was the annual period and determines the income tax expense or benefit on that basis. We believe that, at this time, the use of this discrete method is more appropriate than the annual effective tax rate method as (i) the estimated annual effective tax rate method is not reliable due to the high degree of uncertainty in estimating annual pretax earnings by certain jurisdictions and (ii) our ongoing assessment that the recoverability of our deferred tax assets is not likely in certain jurisdictions.

Impact of Recently Issued Accounting Standards

Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU 2016-13, "Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," ("ASU 2016-13") which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss methodology, which will result in more timely recognition of credit losses. ASU 2016-13 is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019 for all public entities, excluding smaller reporting companies, and after December 15, 2022 for smaller reporting companies. It requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. We will adopt ASU 2016-13 on January 1, 2023. We are currently in the early phase of evaluating the impact of the adoption of ASU 2016-13 on our condensed consolidated financial statements.

3. Discontinued Operations

On July 2, 2021, the Company entered into a definitive agreement to sell LiveArea. As of June 30, 2021, the Company met the criteria set forth in ASC 205-20, "Presentation of Financial Statements - Discontinued Operations," therefore, the LiveArea segment has been presented as a discontinued operation in the Company's June 30, 2021 Form 10-Q, the Company's September 30, 2021 Form 10-Q, the Company's December 31, 2021 Form 10-K and is reported as a discontinued operation in this Form 10-Q for the three months ended March 31, 2021. The LiveArea Transaction closed on August 25, 2021. As a result of the LiveArea Transaction, we now only operate in one business segment, PFS Operations, and therefore we no longer present segment data.

In connection with the LiveArea Transaction, the Company entered into a transition services agreement with the purchaser to provide certain accounting and administrative services for a period of up to twelve months. Income generated from transition services provided to the purchaser was \$0.6 million for the three months ended March 31, 2022 and is recorded in selling, general and administrative expenses in the consolidated statement of operations and comprehensive loss. The transition services agreement was substantially completed by March 31, 2022.

The following table presents the major components of net loss of LiveArea for three months ended March 31, 2021 and a reconciliation to the amounts reported in the unaudited condensed consolidated statements of operations and comprehensive loss (in thousands):

	Three months ended March 31, 2021
Revenues:	
Service fee revenue	\$ 16,798
Related party revenue	468
Total revenues	17,266
Costs of revenues:	
Cost of service fee revenue	9,714
Total costs of revenues	9,714
Gross profit	7,552
Selling, general and administrative expenses	(8,372)
Loss from discontinued operations before income taxes	(820)
Income tax expense	29
Net loss from discontinued operations	\$ (849)

The following table presents the depreciation and amortization, capital expenditures and significant noncash operating items for the three months ended March 31, 2021 (in thousands):

	Three months ended March 31, 2021	
Cash flows from operating activities discontinued operations:		
Depreciation and amortization	\$	205
Stock-based compensation expense	\$	236
Cash flows from investing activities discontinued operations:		
Capital expenditures	\$	30

4. Revenue from Contracts with Clients and Customers

Contract Assets and Contract Liabilities

Costs to fulfill contract assets decreased \$1.2 million from December 31, 2021 to March 31, 2022, primarily due to amortization and recognition of costs. Costs to fulfill contract assets relate to deferred costs, which are included within other current assets and/or other assets, and software development costs, which are included within property and equipment, in our condensed consolidated balance sheets.

Contract liabilities were \$7.9 million at December 31, 2021, of which \$1.3 million was recognized as revenue during the three months ended March 31, 2022.

The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables, and customer advances and deposits (contract liabilities) on the condensed consolidated balance sheets. Changes in the contract asset and liability balances during the three months ended March 31, 2022 were not materially impacted by any other factors.

Contract balances consist of the following (in thousands):

	March 31, 2022		December 31, 2021	
Contract Assets				
Costs to fulfill	\$	3,171	\$	4,392
Total contract assets	\$	3,171	\$	4,392
Contract Liabilities				
Accrued contract liabilities	\$	2,913	\$	2,673
Deferred revenue		4,725		5,224
Total contract liabilities	\$	7,638	\$	7,897

Remaining performance obligations represent the transaction price of firm orders for which work has not yet been performed. The amount reported for remaining performance obligations does not include 1) contracts that are less than one year in duration, 2) contracts for which we recognize revenue based on the right to invoice for services performed, or 3) variable consideration allocated entirely to a wholly unsatisfied performance obligation. Much of our revenue qualifies for one of these exemptions. As of March 31, 2022, the aggregate amount of the transaction price allocated to remaining performance obligations for contracts with an original expected duration of one year or more was \$8.7 million. We expect to recognize revenue on approximately 52% of the remaining performance obligations in 2022, 24% in 2023, and the remaining recognized thereafter.

Disaggregation of Revenues

The following table presents our revenues, excluding sales and usage-based taxes, disaggregated by timing of revenue recognition (in thousands):

	Three Months Ended March 31,	
	2022	2021
Revenues:		
Over time	\$ 63,290	\$ 56,396
Point-in-time	3,197	4,308
Total revenues	<u>\$ 66,487</u>	<u>\$ 60,704</u>

The following table presents our revenues, excluding sales and usage-based taxes, disaggregated by region (in thousands):

	Three Months Ended March 31,	
	2022	2021
Revenues by region:		
United States	\$ 55,940	\$ 47,173
Canada	1,232	1,371
Europe	9,315	12,160
Total revenues	<u>\$ 66,487</u>	<u>\$ 60,704</u>

5. Inventory Financing

Supplies Distributors, an indirect wholly-owned subsidiary of the Company, had a short-term credit facility with Peridot Financing Solutions (as successor to IBM Credit LLC) and its assignees ("IBM Credit Facility") to finance its purchase and distribution of Ricoh products in the United States, providing financing for eligible Ricoh inventory and certain receivables up to \$5.5 million, as per the amended agreement. The agreement has no stated maturity date and provides either party the ability to exit the facility following a 90 day notice.

There was no outstanding balance under the IBM Credit Facility at March 31, 2022. The outstanding balance under the IBM Credit Facility, which represented inventory purchases, was \$3.5 million as of December 31, 2021 and was classified as trade accounts payable in the consolidated balance sheets.

Product revenue and the related inventory are dependent on the Ricoh distributor agreement. Effective March 2022, as part of Ricoh's continued restructuring of its operations, the Ricoh distributor agreement was terminated and as a result, our product revenue model with Ricoh was discontinued. The Company does not expect to have inventory following the termination of this agreement.

The IBM Credit Facility was subsequently terminated in connection with the termination of the Ricoh distributor agreement. As a result, the lender waived all compliance requirements with restrictive covenants for the quarter ended March 31, 2022.

6. Loss Per Share

Basic loss per share is computed by dividing net loss available to common stockholders by the weighted-average number of common shares outstanding for the reporting period. Diluted loss per share is computed by dividing net loss available to common stockholders by the weighted-average number of common stock and common stock equivalents outstanding for the reporting period. In periods when we recognize a net loss from continuing operations, we exclude the impact of outstanding common stock equivalents from the diluted loss per share calculation as their inclusion would have an antidilutive effect. As of March 31, 2022 and 2021 we had outstanding common stock equivalents of approximately 1.5 million and 2.5 million, respectively, that have been excluded from the calculations of diluted earnings per share attributable to common stockholders because their effect would have been antidilutive.

7. Commitments and Contingencies

The Company is subject to claims in the ordinary course of business, including claims of alleged infringement by the Company or its subsidiaries of the patents, trademarks and other intellectual property rights of third parties as well as confidentiality and data privacy matters. The Company is generally required to indemnify its service fee clients against any third party claims asserted against such clients alleging infringement by the Company of the patents, trademarks and other intellectual property rights of third parties. While we are unable to determine the ultimate outcome of any liabilities resulting from these claims, we do not believe the resolution of any particular matter will have a material adverse effect on the Company's financial position or results of operations.

8. Related Party Transactions

In December 2020, on behalf of a client, the Company entered into an agreement with Pilot Freight Services ("Pilot") under which Pilot provides the Company various freight services. David Beatson, a member of our Board of Directors is also on the Board of Directors of Pilot and holds less than 1% of the outstanding shares in Pilot. Pilot is a portfolio company of ATL Partners, LLC, where Mr. Beatson serves on the Executive Board and is a shareholder of its two funds (less than 1% holdings of each). On May 2, 2022, ATL Partners, LLC closed on the sale of Pilot to an unrelated third party and as such, Pilot is no longer a related party of the Company.

We recognized \$0.1 million related party cost of revenues in three months ended March 31, 2022 and as of March 31, 2022, we had no trade accounts payable balance due to Pilot. There were no related party cost of revenues in the three months ended March 31, 2021.

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

The following discussion and analysis of our results of operations and financial condition should be read in conjunction with the unaudited condensed consolidated financial statements and related notes appearing elsewhere in this Form 10-Q.

Forward-Looking Information

This Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including statements that involve expectations, plans or intentions (such as those relating to future business, future results of operations or financial condition, new or planned features or services, or management strategies). You can identify these forward-looking statements by words such as "may," "will," "would," "should," "could," "expect," "anticipate," "believe," "estimate," "intend," "plan," "potential," "project," "predict," "future," "target," "seek," "continue" and other similar expressions. These forward-looking statements involve risks and uncertainties and may include assumptions as to how we may perform in the future. Although we believe the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee these expectations will actually be achieved. In addition, some forward-looking statements are based upon assumptions about future events that may not prove to be accurate. Therefore, our actual results may differ materially from those expressed or implied in our forward-looking statements. Such risks and uncertainties include, among others, those discussed in "Part I, Item 1A: Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 filed with the Securities and Exchange Commission (the "SEC") on May 9, 2022 (the "Annual Report"), as well as in our consolidated financial statements, related notes, and the other information appearing elsewhere in the Annual Report and our other filings with the SEC, including any quarterly reports on Form 10-Q. We do not intend, and undertake no obligation, to update any of our forward-looking statements after the date of this report to reflect actual results or future events or circumstances. There may be additional risks we do not currently view as material or that are not presently known or that are beyond our ability to control or predict. Given these risks and uncertainties, investors are cautioned not to place undue reliance on such forward-looking statements.

Key Events and Trends

On July 2, 2021, the Company entered into a definitive agreement to sell LiveArea for approximately \$250.0 million in cash, subject to certain adjustments and customary closing conditions including receipt of regulatory approvals (the "LiveArea Transaction"). The LiveArea Transaction closed on August 25, 2021 ("the LiveArea Transaction Date"). As of June 30, 2021, the criteria for reporting LiveArea as a discontinued operation were met and, as such, the three months ended March 31, 2021 presented in this Form 10-Q have been recast to present LiveArea as a discontinued operation. Unless otherwise specified, the financial information and discussion in this Form 10-Q are based on our continuing operations (i.e., PFS Operations) and exclude any results of our discontinued operations (i.e., LiveArea).

See Note 3. Discontinued Operations to the condensed consolidated financial statements included in this Form 10-Q for additional information on our discontinued operations.

COVID-19 Pandemic

We continue to monitor the impact of the COVID-19 pandemic (and any variants thereof) on all aspects of our business. While the COVID-19 pandemic has not had a material adverse impact on our results of operations to date, the future impacts of the pandemic and any continuing and/or additional future economic impacts are still uncertain, especially as the pandemic continues. We have experienced labor rate increases in certain of our markets for fulfillment activities and labor shortages in all markets. We believe this will continue and will impact our overall fulfillment related costs and staffing. In the interim, we are leveraging our multi-node network and distributing work to our centers with more available labor and/or lower costs, implementing certain productivity enhancements, working together with our clients to reduce costs, and offsetting the cost increases with price increases where necessary.

We have taken a number of precautionary measures designed to help minimize the risk of the spread of the virus to our employees and adjusted our operations wherever necessary to help ensure a safe environment for our staff across business functions. As a result of the impact of COVID-19, many businesses continue to experience short-term or long-term liquidity issues. Based on our current expectations, we believe we have the appropriate financial structure in place to support our own business operations through the pandemic. However, we do expect potential risk from the viability of clients and their ability to make payments on time. We have and will continue to closely monitor our clients' financial results, payment patterns and business updates in an effort to minimize any potential credit risk impact.

While many of the related restrictions have been lifted, we have also seen a resurgence of the virus (including new variants) in many geographic regions, which could have a negative impact on our business and adversely affect the Company's results of operations, cash flows and financial position as well as that of our clients.

We incurred additional costs related to the enhanced cleaning regimen implemented in our facilities and purchases of personal protective equipment ("PPE") for employees. However, for the three months ended March 31, 2022 and 2021, the increased costs related to the COVID-19 pandemic, excluding hourly wage rate related labor cost increases, were not material. We will continue to monitor these for potential impacts to future cash flow.

While the COVID-19 pandemic has not had a material adverse impact on our operations to date, the extent and duration of future impacts of the pandemic (including any variants of COVID-19) and any resulting economic impact on our business are largely unknown and difficult to predict.

Overview

PFSweb is a Global Commerce Services Company. We manage the customer shopping experience for major branded manufacturers and retailers. We provide services to support or improve the physical, post-click experience, such as logistics and order fulfillment, customer care, and order-to-cash services including distributed order orchestration and payment services. We offer each of these services on an à la carte basis or as a complete solution. Major brands and other companies turn to us to optimize their customer experiences and enhance their traditional and online business channels, creating commerce without compromise.

Operating Results

The following table discloses certain financial information about our continuing operations for the periods presented and excludes results of our discontinued operations. The financial information below is expressed in terms of dollars, dollar change, percentage change and as a percentage of total revenues (in thousands, except percentages):

	Three Months Ended March 31,			% of Total Revenues	
	2022	2021	Change	2022	2021
Revenues					
Service fee revenue	\$ 45,531	\$ 45,520	\$ 11	68.5 %	75.0 %
Product revenue, net	\$ 3,197	\$ 4,308	\$ (1,111)	4.8 %	7.1 %
Pass-through revenue	\$ 17,759	\$ 10,876	\$ 6,883	26.7 %	17.9 %
Total revenues	\$ 66,487	\$ 60,704	\$ 5,783	100.0 %	100.0 %
Costs of Revenues					
Cost of service fee revenue	\$ 36,492	\$ 33,530	\$ 2,962	80.1 % (1)	73.7 %
Cost of product revenue	\$ 2,951	\$ 4,086	\$ (1,135)	92.3 % (2)	94.8 %
Cost of pass-through revenue	\$ 17,759	\$ 10,876	\$ 6,883	100.0 % (3)	100.0 %
Total costs of revenues	\$ 57,202	\$ 48,492	\$ 8,710	86.0 %	79.9 %
Service fee gross profit	\$ 9,039	\$ 11,990	\$ (2,951)	19.9 % (1)	26.3 %
Product revenue gross profit	\$ 246	\$ 222	\$ 24	7.7 % (2)	5.2 %
Total gross profit	\$ 9,285	\$ 12,212	\$ (2,927)	14.0 %	20.1 %
Selling, General and Administrative expenses	\$ 16,428	\$ 12,931	\$ 3,497	24.7 %	21.3 %
Loss from continuing operations	\$ (7,143)	\$ (719)	\$ (6,424)	(10.7)%	(1.2)%
Interest expense, net	\$ 6	\$ 375	\$ (369)	— %	0.6 %
Loss from continuing operations before income taxes	\$ (7,149)	\$ (1,094)	\$ (6,055)	(10.8)%	(1.8)%
Income tax expense, net	\$ 318	\$ 279	\$ 39	0.5 %	0.5 %
Net loss from continuing operations	\$ (7,467)	\$ (1,373)	\$ (6,094)	(11.2)%	(2.3)%

- (1) Represents the percentage of Service fee revenue.
(2) Represents the percentage of Product revenue, net.
(3) Represents the percentage of Pass-through revenue.

Total revenues for the three months ended March 31, 2022 increased by \$5.8 million compared with the corresponding period in 2021. Service fee revenue for the three months ended March 31, 2022 was relatively flat, compared to the corresponding period in 2021 as new client activity and expansion of existing client relationships were offset by the impact of certain client terminations and the impact on service fee revenue of certain contracts shared with LiveArea (as described in the next paragraph).

Certain client contracts supported by the LiveArea segment were not fully transferred to the buyer as part of the LiveArea Transaction. Subsequent to the LiveArea Transaction Date, PFSweb is acting as a prime contractor for these certain client contracts and the related services are being provided by the former LiveArea business as a subcontractor of PFSweb. The services provided under these client contracts are currently being managed by PFSweb, and as such, the related service fee revenues, costs of revenues and gross profit previously generated by this LiveArea related activity have been included in our continuing operations during the three months ended March 31, 2021 period. Subsequent to the LiveArea Transaction in August 2021, revenue billed under this contractor-subcontractor relationship are recorded as pass-through revenue and pass-through costs for as long as such contracts continue to be managed directly by PFSweb. Service fee revenues generated under these contracts applicable to our former LiveArea segment of \$3.1 million are included in service fee revenue in the condensed consolidated statement of operations and comprehensive loss for the three months ended March 31, 2021.

Product revenue, net, for the three months ended March 31, 2022, decreased by \$1.1 million, compared with the corresponding period in 2021. Product revenue declined as it was primarily dependent on one client, which restructured its operations and discontinued certain product lines. Effective March 2022, our agreement with this client was terminated and as a result our product revenue model with this client was discontinued.

Pass-through revenue for the three months ended March 31, 2022 increased by \$6.9 million compared to the corresponding period in 2021. The increase is primarily due to increased freight activity (the primary component of pass-through revenue) applicable to certain client accounts and the impact of approximately \$3.4 million on pass-through revenue of certain contracts shared with LiveArea (as noted above).

Gross margin decreased by 6.1% to 14.0% for the three months ended March 31, 2022 as compared to 20.1% in the same period of the prior year. The decreased gross margin is due to a decrease of our service fee margin of 6.4% to 19.9% for the three months ended March 31, 2022 as compared to 26.3% in the same period of the prior year, primarily as a result of increased fulfillment labor costs, which were partially offset by certain price increases. We continue to implement actions to offset labor costs including leveraging our multi-node network and distributing work to our centers with more available labor and/or lower costs, implementing certain productivity enhancements, working together with our clients to reduce costs, and offsetting the cost increases with price increases where necessary. Additionally, our comparative gross margin for the three months ended March 31, 2022 versus the prior year period was negatively impacted by reduced levels of both technology-related project activity and other higher margin non-fulfillment related activity, as well as the negative gross margin impact of the LiveArea related contract activity which generated gross margin in the three months ended March 31, 2021 and, as described above, subsequent to the LiveArea Transaction was accounted for as pass-through revenue and pass-through costs in the three months ended March 31, 2022. The overall gross margin decrease was also due to our service fee business, which generates a higher gross margin than the product revenue and pass-through revenue activity, representing a smaller proportion of our total revenues for the quarter ended March 31, 2022, as compared to the prior year.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased \$3.5 million for the three months ended March 31, 2022, compared to the corresponding period in 2021. The increase was primarily attributable to (1) professional fees and other costs related to regaining SEC filing compliance, (2) increased personnel related costs, including severance costs applicable to our ongoing efforts to optimize certain corporate functions and (3) costs related to the Company's ongoing strategic alternatives assessment process. These increases were slightly offset by \$0.6 million of other income applicable to the transition services agreement related to the LiveArea Transaction which was substantially completed at March 31, 2022.

Income Taxes

For the three months ended March 31, 2022 loss from continuing operations before income taxes was \$7.1 million and income tax expense was \$0.3 million resulting in an effective tax rate of 4.4%. The effective tax rate varied from the U.S. federal statutory rate for the three months ended March 31, 2022 primarily due to state and foreign tax expense.

For the three months ended March 31, 2021, loss from continuing operations before income taxes was \$1.1 million and income tax expense was \$0.3 million resulting in an effective tax rate of 25.5%. The effective tax rate varied from the U.S. federal statutory rate for the three months ended March 31, 2021 primarily due to state and foreign tax expense.

Discontinued Operations

See Note 3. Discontinued Operations to the unaudited condensed consolidated financial statements included in this Form 10-Q for information regarding discontinued operations.

Liquidity and Capital Resources

As of March 31, 2022, we have \$154.8 million of cash and cash equivalents, no bank debt and only \$0.2 million of finance leases. Our cash position will satisfy our known operating cash needs, working capital and capital expenditure requirements, debt and lease obligations, and loans to our subsidiaries, if needed, and potential distributions to shareholders for at least the next twelve months. However, our cash position could be adversely impacted by the increasing labor costs as a result of labor market shortages and our ability to adjust our overall cost structure to support a smaller remaining business following the completion of the LiveArea Transaction.

Cash Flows from Operating Activities

During the three months ended March 31, 2022, net cash provided by operations was \$5.4 million, compared to net cash provided by operations of \$8.5 million in the same period of the prior year. The three months ended March 31, 2022 included a net use from cash related to operations before changes in operating assets and liabilities. The three months ended March 31, 2021 included a benefit from cash income generated from operations before changes in operating assets and liabilities. Such cash use and benefit were then either increased or decreased, depending on period, by the net impact of changes in assets and liabilities, primarily related to the amount and timing of client revenue billings and collections and vendor purchasing and payment activity, all of which fluctuated during our seasonal peak periods.

Cash Flows from Investing Activities

Cash used in investing activities include capital expenditures of \$1.7 million and \$1.0 million during the three months ended March 31, 2022 and 2021, respectively, exclusive of property and equipment acquired under debt and finance lease financing, which consisted primarily of capitalized software costs and equipment purchases. Due to the proceeds received applicable to the LiveArea Transaction, the Company is now primarily using its existing cash to fund capital expenditures, whereas in the past the company would utilize a combination of cash and debt. Capital expenditures have historically consisted of additions to upgrade our management information systems, development of customized technology solutions to support and integrate with our service fee clients and general expansion and upgrades to our facilities, both domestic and foreign. We expect to incur capital expenditures to support new facilities, contracts and anticipated future growth opportunities. Based on our current client business activity and our targeted growth plans, we anticipate our total investment in additions and upgrades to facilities and information technology solutions and services for the upcoming twelve months, including costs to implement new clients, will be approximately \$8.0 million to \$10.0 million, although additional capital expenditures may be necessary to support the infrastructure requirements of new clients. To maintain our current operating cash position, a portion of these expenditures may be financed through client reimbursements, debt, operating or finance leases or additional equity.

Cash Flows from Financing Activities

During the three months ended March 31, 2022, cash used in financing activities was \$1.1 million primarily driven by taxes paid on behalf of employees for withheld shares. Cash used in financing activities was \$7.0 million during the three months ended March 31, 2021 primarily due to net borrowing and payment activity on our revolving loan and other debt.

Working Capital

During the three months ended March 31, 2022, our working capital decreased to \$157.2 million compared to \$165.1 million at December 31, 2021, which was primarily a result of the losses incurred from operations, \$1.7 million of capital expenditures and \$1.3 million of tax withholding on shares issued under stock-based compensation awards in the three months ended March 31, 2022.

To obtain any necessary additional financing in the future, in addition to our current cash position, we continue to evaluate our needs in light of various financing alternatives potentially available including the sale of equity, utilizing capital or operating leases, or entering into new debt agreements. No assurances can be given we will be successful in obtaining any additional financing or the terms thereof. We currently believe our cash position and funds generated from operations will satisfy our presently known operating cash needs, our working capital and capital expenditure requirements, our current debt and lease obligations, and additional loans to our subsidiaries, if necessary, for at least the next twelve months.

Inventory Financing

Supplies Distributors, an indirect wholly-owned subsidiary of the Company, had a short-term credit facility with Peridot Financing Solutions (as successor to IBM Credit LLC) and its assignees ("IBM Credit Facility") to finance its purchase and distribution of Ricoh products in the United States, providing financing for eligible Ricoh inventory and certain receivables up to \$5.5 million, as per the amended agreement. The agreement has no stated maturity date and provides either party the ability to exit the facility following a 90 day notice.

There was no outstanding balance under the IBM Credit Facility at March 31, 2022. The outstanding balance under the IBM Credit Facility, which represented inventory purchases, was \$3.5 million as of December 31, 2021 and was classified as trade accounts payable in the consolidated balance sheets.

Product revenue and the related inventory are dependent on the Ricoh distributor agreement. Effective March 2022, as part of Ricoh's continued restructuring of its operations, the Ricoh distributor agreement was terminated and as a result, our product revenue model with Ricoh was discontinued. The Company does not expect to have inventory following the termination of this agreement.

The IBM Credit Facility was subsequently terminated in connection with the termination of the Ricoh distributor agreement. As a result, the lender waived all compliance requirements with restrictive covenants for the quarter ended March 31, 2022.

Product revenue decreased to \$3.2 million for the three months ended March 31, 2022 and was not a substantial part of the Company's business following several years of product revenue and associated profitability declines.

Debt and Finance Lease Obligations

Master Lease Agreements. We have various agreements that provide for leasing or financing transactions of equipment and other assets and will continue to enter into such arrangements as needed to finance the purchasing or leasing of certain equipment or other assets. Borrowings under these agreements, which generally have terms of three to five years, are generally secured by the related equipment, and in certain cases, by a Company guarantee.

Other than our finance and operating lease commitments, we do not have any other material financial commitments, although future client contracts may require capital expenditures and lease commitments to support the services provided to such clients.

ITEM 3. Quantitative and Qualitative Disclosure about Market Risk

Not applicable.

ITEM 4. Controls and Procedures**(a) Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO” and together with the CEO, the “Certifying Officers”), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Based upon this evaluation, and the above criteria, our CEO and CFO concluded that the Company’s disclosure controls and procedures were not effective as of March 31, 2022 due to our untimely filing of our Form 10-Q for the quarter ended March 31, 2022.

Notwithstanding the previously identified material weaknesses described below, our management, including our CEO and CFO, concluded that the consolidated financial statements in this Quarterly Report on Form 10-Q for the three months ended March 31, 2022 fairly present, in all material respects, the Company’s financial condition, results of operations and cash flows for the periods presented, in conformity with U.S. GAAP. However, because the material weaknesses create a reasonable possibility that a material misstatement to our consolidated financial statements may not have been prevented or detected on a timely basis, the Company’s management concluded that at March 31, 2022, the Company’s internal control over financial reporting was ineffective.

Previously Reported Material Weakness in Internal Control over Financial Reporting

As previously described in Part II—Item 9A – Controls and Procedures of our Annual Report on Form 10-K for the year ended December 31, 2021,

- our management concluded that the Company did not design, implement, and operate effective process-level control activities related to our order-to-cash process (specifically controls over revenue recognition pertaining to client invoicing) resulting in deficiencies in our process-level control activities.
- we identified a material weakness in our internal control over financial reporting relating to accounting for unusual transactions. Specifically, deficiencies were identified relating to the financial reporting requirements triggered by the LiveArea Transaction, including the required financial statement presentation of discontinued operations.
- we identified deficiencies in various aspects of our income tax controls related to the preparation and review of our income tax provision, including the tax complexities triggered by the disposition of LiveArea in multiple jurisdictions as part of the LiveArea Transaction, which management concluded such deficiencies aggregated to a material weakness.
- we identified a material weakness in internal control over financial reporting related to ineffective information technology general controls (“ITGCs”) in the areas of user access and segregation of duties related to administration of certain information technology (“IT”) systems that support the Company’s financial reporting processes. These control deficiencies were a result of inadequate risk-assessment processes to identify and assess user access and change management controls in certain IT systems.

We have not remediated the material weaknesses described above as of the date of this Quarterly Report on Form 10-Q for the three months ended March 31, 2022.

Management’s Plan for Remediation

In response to these material weaknesses, management, with oversight of the Audit Committee of the Board of Directors, has identified and begun to implement steps to remediate the material weaknesses. Specifically:

- The Company has prepared training documentation and held training meetings with invoice preparers and reviewers and designed certain mitigating controls which include monthly analytical review procedures to ensure accuracy of client invoices. Management believes significant progress has been made and the implemented mitigating controls will remediate this material weakness in 2022.

- The Company has hired additional accounting personnel (including temporary personnel with requisite accounting and reporting experience) to fill needed roles and assist in our accounting and financial reporting. The Company has augmented its accounting and reporting resources, improved controls over financial reporting related to unusual transactions and significantly reduced the untimeliness of its reports filed with the SEC. Management believes this material weakness will be remediated in 2022.
- The Company has engaged a third-party advisory accounting firm and hired additional temporary resources with requisite tax experience to fill needed roles and assist in proper accounting and financial reporting for income taxes. Management believes the Company has made significant progress improving controls related to preparation and review of our income tax provision, and with passage of adequate time will remediate the material weakness in 2022.
- Regarding the ITCG deficiencies, the Company has identified and implemented certain mitigating controls in 2021. Our remediation plan with respect to the ITGC deficiencies includes training of personnel tasked with reviewing IT system user access and segregation of duties risks. In addition, the Company will work with its third-party advisory firm to strengthen the design, execution and documentation of certain controls over user access and segregation of duties of certain IT systems. Management believes this material weakness will be remediated in 2022.

The Company continues to implement certain remediation actions and continues to test and evaluate the elements of the remediation plan. Other potential remediation activities that may be considered include further training of employees and the design and implementation of additional mitigating controls.

We are committed to ensuring that our internal controls over financial reporting are designed and operating effectively. The material weaknesses will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Other than discussed above, during the three months ended March 31, 2022, there was no change in internal control over financial reporting (as defined in Rule 13a-15(f) or Rule 15d-15(f) under the Exchange Act) that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

None.

ITEM 1A. Risk Factors

There have been no material changes from the risk factors disclosed in Part I, Item 1A. of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

ITEM 3. Defaults Upon Senior Securities

None.

ITEM 4. Mine Safety Disclosures

None.

ITEM 5. Other Information

None.

ITEM 6. Exhibits

a) Exhibits:

Exhibit No.	Description of Exhibits
2.1	<u>Stock Purchase Agreement, dated as of July 2, 2021, by and among PFSweb, Inc., Priority Fulfillment Services, Inc., RevTech Solutions India Private Limited, Merkle, Inc. and Dentsu Aegis Network India Private Limited.</u>
2.1.1	<u>Amendment to Stock Purchase Agreement, dated as of August 26, 2021, by and among PFSweb, Inc., Priority Fulfillment Services, Inc., RevTech Solutions India Private Limited, Merkle, Inc. and Dentsu Aegis Network India Private Limited.</u>
3.1	<u>Amended and Restated Certificate of Incorporation of PFSweb, Inc.</u>
3.1.1	<u>Certificate of Amendment of Certificate of Incorporation of PFSweb, Inc.</u>
3.1.2	<u>Certificate of Amendment to Certificate of Incorporation of PFSweb, Inc.</u>
3.1.3	<u>Certificate of Amendment to Certificate of Incorporation of PFSweb, Inc.</u>
3.1.4	<u>Certificate of Amendment to Amended and Restated Certificate of Incorporation of PFSweb, Inc.</u>
3.2	<u>Amended and Restated By-Laws.</u>
4.1	<u>Rights Agreement, dated as of June 8, 2000, between the Company and ChaseMellon Shareholder Services, LLC.</u>
4.1.8	<u>Amendment No. 8 to Rights Agreement, dated as of August 24, 2021 between the Company and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC,) as successor to ChaseMellon Shareholder Services, LLC., as rights agent.</u>
4.2	<u>Description of Registrant's securities.</u>
10.5	<u>Industrial Lease Agreement between Shelby Drive Corporation and Priority Fulfillment Services, Inc. dated as of August 31, 1999</u>
10.5.1	<u>Modification, Ratification and Extension of Lease between Shelby Drive Corporation and Priority Fulfillment Services, Inc. dated as of December 19, 2003</u>
10.5.2**	<u>Second Modification, Ratification and Extension of Lease between TIAA Realty, Inc. (successor to Shelby Drive Corporation) and Priority Fulfillment Services, Inc. dated June 3, 2008</u>
10.5.3	<u>Third Modification, Ratification and Extension of Lease dated February 28, 2014 between Southpark Distribution Center Inc. (successor-in-interest to TIAA Realty and Shelby Drive Corporation) and Priority Fulfillment Services, Inc.</u>
10.7*	<u>Form of Change of Control Agreement between the Company and certain of its executive officers.</u>
10.8	<u>Agreement for Inventory Financing by and among Business Supplies Distributors Holdings, LLC, Supplies Distributors, Inc., Priority Fulfillment Services, Inc., PFSweb, Inc., Inventory Financing Partners, LLC and IBM Credit Corporation.</u>
10.11	<u>Subordinated Demand Note by and between Supplies Distributors, Inc. and Priority Fulfillment Services, Inc.</u>
10.12*	<u>Form of Executive Severance Agreement between the Company and certain of its executive officers.</u>
10.12.1*	<u>Form of Amendment of Executive Severance Agreement.</u>
10.12.2*	<u>Form of Amendment to Change in Control Severance Agreement.</u>
10.12.3	<u>Change in Control Severance Agreement</u>
10.44	<u>Lease Agreement dated December 8, 2011, between CCI-Millennium, L.P. and Priority Fulfillment Services, Inc.</u>
10.44.1**	<u>First Amendment to Lease Agreement between CCI-Millennium, LP and Priority Fulfillment Services, Inc. dated as of May 1, 2015</u>
10.45	<u>Guaranty of PFSweb, Inc. to CCI-Millennium, L.P.</u>
10.48	<u>Agreement, dated as of May 15, 2013, by and among PFSweb, Inc. and Privet Fund LP, Privet Fund Management LLC, Ryan Levenson and Benjamin Rosenzweig.</u>
10.61	<u>Guaranty dated March 21, 2016 by PFSweb, Inc., in favor of Stateline J, LLC.</u>
10.63	<u>Industrial Lease agreement dated June 30, 2016 by and between US Industrial Reit III – Midwest and Priority Fulfillment Services, Inc.</u>
10.63.1**	<u>First Amendment to Lease by and between GPT Stateline Road Owner LLC (successor in interest to US Industrial REIT III-Midwest) and Priority Fulfillment Services, Inc. dated September 12, 2017</u>

10.63.2** [Second Amendment to Industrial Lease Agreement by and between GPT Stateline Road Owner LLC \(successor in interest to US Industrial REIT III-Midwest\) and Priority Fulfillment Services, Inc. dated August 2, 2021.](#)

10.82 [Industrial Lease agreement dated March 18, 2016 by and between Stateline J, LLC and Priority Fulfillment Services, Inc.](#)

10.82.1** [First Amendment to Industrial Lease agreement dated June 1, 2016 by and between Stateline J, LLC and Priority Fulfillment Services, Inc.](#)

10.82.2** [Second Amendment to Industrial Lease agreement dated October 20, 2016 by and between Stateline J, LLC and Priority Fulfillment Services, Inc.](#)

10.86* [Employment Agreement by and between PFSweb, Inc. and James Butler, dated as of June 11, 2019.](#)

10.87* [Employment Agreement by and between Priority Fulfillment Services, Inc., a Delaware corporation and Zach Thomann, dated as of May 17, 2020](#)

10.88 [Logistics Warehouse Lease Agreement between Weerts Logistic Park III NV and Supplies Distributors SA](#)

10.89 [Warehouse Lease Agreement between ProLogis Texas II \(2\) LLC and Priority Fulfillment Services, Inc.](#)

10.89.1** [First Amendment to Lease Agreement between ProLogis Texas II \(2\) LLC and Priority Fulfillment Services, Inc. dated as of May 3, 2021.](#)

10.90 [Warehouse Lease Agreement between Matter Cheyenne Logistics, LLC and Priority Fulfillment Services, Inc.](#)

10.91* [2020 Stock and Incentive Plan.](#)

10.92* [Form of 2019 STI Company Performance Based Share Award.](#)

10.93* [Form of Amended and Restated 2019 LTI Performance Based Restricted Stock Unit Award.](#)

10.94* [Form of Amended and Restated 2019 LTI Time Based Restricted Stock Unit Award.](#)

10.95* [Form of Amended and Restated 2019 LTI TSR Performance Share Award Agreement.](#)

10.96* [Form of 2020 STI Company Performance Based Cash Award.](#)

10.97* [Form of 2020 STI Company Performance Based Share Award.](#)

10.98* [Form of Amended and Restated 2020 LTI Performance Based Restricted Stock Unit Award.](#)

10.99* [Form of Amended and Restated 2020 LTI Time Based Restricted Stock Unit Award.](#)

10.100* [Form of Amended and Restated 2020 LTI TSR Performance Share Award Agreement.](#)

10.101* [Transaction Bonus Agreement by and between PFSweb, Inc., Priority Fulfillment Services, Inc. and James Butler, dated as of August 25, 2021.](#)

10.102* [Transaction Bonus Agreement by and between PFSweb, Inc., Priority Fulfillment Services, Inc. and Michael Willoughby, dated as of May 13, 2022.](#)

10.103* [Transaction Retention Bonus Agreement by and between Zach Thomann and Priority Fulfillment Services, Inc. dated as of January 18, 2022.](#)

10.105* [Form of STI 2021 Company Performance Based Cash Award](#)

10.106* [Form of STI 2021 Company Performance Based Share Award](#)

10.107* [Form of LTI 2021 Performance Based Restricted Stock Unit Award](#)

10.108* [Form of LTI 2021 Time Based Restricted Stock Unit Award](#)

10.109* [Form of LTI 2021 TSR Performance Share Award](#)

10.110* [Deferred Stock Unit Award Agreement dated March 14, 2022](#)

10.111** [Agreement for Lease between Mountpark Logistics EU 2017 23 S.A.R.L., Conexus Limited \(now known as PFS Global Services UK Limited\) and PFSweb, Inc., as Guarantor dated October 15, 2018](#)

10.112** [Lease between Mountpark Logistics EU 2017 23 S.A.R.L., Conexus Limited \(now known as PFS Global Services UK Limited\) and PFSweb, Inc., as Guarantor dated November 9, 2018](#)

10.113** [Industrial Building Lease between Priority Fulfillment Services, Inc. and Cheyenne Clayton DRI, LLC dated as of December 13, 2021](#)

31.1** [Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

- 31.2** [Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1** [Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101** The following unaudited financial statements from the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, formatted in Inline XBRL: (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Loss, (iii) Condensed Consolidated Statements of Shareholders' Equity, (iv) Condensed Consolidated Statements of Cash Flows, and (v) Notes to Condensed Consolidated Financial Statements.
- 104** Cover Page Interactive Data file, formatted in Inline XBRL (included as Exhibit 101).

* Denotes management or compensatory agreements

** Filed herewith

SIGNATURES

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

Date: June 13, 2022

PFSweb, Inc.

By: /s/ Thomas J. Madden
Thomas J. Madden
Chief Financial Officer
Executive Vice President

DATED 15 October 2018

- (1) MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L
- (2) CONEXUS LIMITED
- (3) PFSWEB, INC.

AGREEMENT FOR LEASE
UNIT 7, MOUNTPARK SOUTHAMPTON, WIDE LANE,
SOUTHAMPTON, SO18 2NQ

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DATE

15 October

2018

PARTIES

- (1) **MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L.** a Luxembourg private limited liability company (*société à responsabilité limitée*) with its registered office at 18, rue Robert Stumper, L-2557 Luxembourg, being registered with the Luxembourg Register of Commerce and Companies (*Registre de commerce et des sociétés*) under number 0218933 and with a share capital of £12,000 (the **Landlord**);
- (2) **CONEXUS LIMITED** incorporated and registered in England and Wales with company number 03616118 with its registered office at Eastlands One, London Road, Basingstoke, Hampshire RG21 4FB (the **Tenant**); and
- (3) **PFSWEB, INC.** incorporated and registered in the State of Delaware in the United States of America with file number 3062550, whose registered office in Delaware is 251 Little Falls Drive, Wilmington, DE 19808 and address is at 505 Millennium Drive, Allen, Texas TX75013 USA (the **Guarantor**).

IT IS AGREED

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this agreement, including the schedules, the following definitions shall apply unless the context otherwise requires:

Access Date

the date the Tenant takes access to or occupies the Property;

Actual Completion

actual completion of the grant of the Lease and **Date of Actual Completion** is to be interpreted accordingly;

Adjoining Property

the property developed and being developed by the Landlord known as Mountpark Southampton, Wide Lane, Southampton, SO18 2NQ shown for identification purposes only edged blue on the plan attached to the Lease;

Applicable Law

any one or more of the following:

- (a) any Acts of Parliament, European legislation and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from any Act of Parliament or European legislation; and
- (b) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Landlord's Works;

Approved Planning Permission

the planning permission for the Landlord's Works including approval of use, whether or not reserving approval for landscaping and materials;

Architect

Michael Sparks trading as Michael Sparks Associates of 11 Plato Place, St Dionis Road, London SW6 4TU or such other architect appointed by the Landlord or the Building Contractor;

Basic Rent

the sum per annum calculated by multiplying the Internal Area by £9.25;

Building

the building to be constructed on the Property as part of the Landlord's Works;

Building Contract

the building contract for carrying out the Landlord's Works to be entered into by the Landlord and the Building Contractor in the form of the JCT Design and Build Contract 2016 edition together with such amendments or variations as the Landlord may reasonably require;

Building Contractor

Wirvic Construction Limited (Company number 04135363) whose registered office is at Brampton House, 19 Tenter Road, Moulton Park, Northampton, NN3 6PZ or such other building contractor as the Landlord appoints as the building contractor for the purposes of the Landlord's Works;

CDM Regulations

the Construction (Design and Management) Regulations 2015;

Civil and Structural Engineer

Complete Design Partnership Limited (company number 03866200) whose registered office is at Charford Lodge, Rock Hill, Bromsgrove, Worcestershire B61 7LH or such other structural engineer appointed by the Landlord or the Building Contractor;

Contract Rate

4% per annum above the base lending rate from time to time of Barclays Bank Plc;

Contribution

the sum payable by the Landlord pursuant to clause 2.10;

Date of Practical Completion

the date of Practical Completion as certified in the Statement of Practical Completion;

Defects

any defects, shrinkages or other faults in the Landlord's Works due to materials or workmanship not being in accordance with the terms of the Building Contract or this agreement;

Deleterious Materials

materials specified for use other than in accordance with the guidelines contained in the edition of "Good Practice in the Selection of Construction Materials " (British Council for Offices) current at the date of use or any products, substances or materials or any combination of them which are themselves or which incorporate substances which at the time of use:

- (a) do not conform with current British or applicable European Standards or codes of practice; and
- (b) are generally known in the construction industry to be deleterious to health and safety or to the durability of buildings and/or other structures and/or plant and machinery in the particular circumstances in which they are specified to be used or are used;

Design Sub-Contractors

the sub-contractors appointed or to be appointed by the Building Contractor who have a material design responsibility for the Landlord's Works including for the carrying out of the following elements of the Landlord's Works:

- (a) lift;
- (b) structural steelwork and roof structure;
- (c) pre-cast concrete;
- (d) profiled metal cladding or curtain walling;
- (e) cladding and roofing;

- (f) mechanical and electrical installation;
- (g) ground floor slab; and
- (h) syphonic drainage;

Encumbrances

the agreements, covenants, declarations, exceptions, provisions, reservations and other matters, if any, set out in Schedule 1;

Energy Performance Certificate

a certificate which complies with the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118) or regulation 29 Building Regulations 2010;

Employer's Agent

KAM Projects Consultants Limited (company number 08638566) whose registered office is at The White House, Middle Lane, Leckhampstead, Buckingham MK18 5NS or such other employer's agent as the Landlord appoints in connection with the Landlord's Works under the Building Contract;

Expert

has the meaning given to it in paragraph 1 Schedule 3;

Initial Property

has the same meaning as the definition of Initial Property under the Lease;

Internal Area

the gross internal area of the Building measured in square feet in accordance with Part 3 of the RICS Property Measurement 6th edition, May 2015 and on the basis that:

- (a) all such relevant measurements within the warehouse of the Building will be taken to the internal face of the cladding rails; and
- (b) all plant platforms, plant decks and plant floor areas will be excluded from such calculations;

Insolvent

if a person is a company:

- (a) it enters into a voluntary arrangement under Part I Insolvency Act 1986 or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;
- (b) an administrator is appointed under Part II Insolvency Act 1986;
- (c) a receiver or manager, including an administrative receiver, is appointed whether under Part III Insolvency Act 1986, under the Law of Property Act 1925 or otherwise;
- (d) a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV Insolvency Act 1986 unless the purpose of a solvent amalgamation or reconstruction of the company;
- (e) a scheme of arrangement is made under Part 26 Companies Act 2006;
- (f) it changes its status from unlimited to limited; or
- (g) it is struck off the register of companies or otherwise ceases to exist;

if a person is an individual:

- (a) an interim order or voluntary arrangement is made under Part VIII Insolvency Act 1986;
- (b) a trustee in bankruptcy is appointed or the individual is otherwise made bankrupt;
- (c) the individual enters into a deed of arrangement or composition with his or her creditors;
- (d) a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his or her affairs; or
- (e) the individual dies;

if two or more people are in partnership and:

- (a) they enter into a voluntary arrangement under Part II Insolvency Partnerships Order 1994;
- (b) an administration order is made under Part III Insolvent Partnerships Order 1994; or
- (c) a winding-up order is made under Parts IV or V Insolvent Partnerships Order 1994; or
- (d) a person is incorporated or resident in a jurisdiction outside England and Wales and any event or circumstance occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the above events;

Justifiable Delay Events

any one or more of the following:

- (a) delay by an electricity undertaking in pursuance of its statutory obligations or failure by such an undertaking to carry out such work;
- (b) loss or damage by any one or more of the Insured Risks;
- (c) act of God;
- (d) any act or omission of the Tenant;

Landlord's Solicitors

Gateley Pic of One Eleven Edmund Street, Birmingham B3 2HJ (ref: RXP/CS/125230 002) or such other solicitors as the Landlord appoints in relation to this agreement and notifies to the Tenant's Solicitors in writing);

Landlord's Works

the works in relation to the Property and the Off Site Works (if any) detailed in the Specification;

Lease

a lease to be granted by the Landlord to the Tenant at the request of the Guarantor in the form attached to this agreement at Appendix 3 incorporating the details to be included under clause 5.2;

Lease Completion Date

five Working Days after the Date of Practical Completion;

Licence to Carry Out Works

a licence to carry out works to be granted by the Landlord to the Tenant in the form attached to this agreement at Appendix 3 in respect of the Tenant's Works;

Licence Period

the period from and including the date of this agreement to and including the Lease Completion Date;

Long Stop Date

29 January 2019 as to which time is of the essence;

Notice of Completion of Making Good

the notice, statement or certificate to be issued under the Building Contract certifying that all Defects which appear during the Rectification Period and which are the responsibility of the Building Contractor have been made good in accordance with the terms of the Building Contract;

Off Site Works

any works that must be completed other than on the Adjoining Property (whether pursuant to the Planning Permission or any Statutory Agreement or otherwise) as part of the Landlord's Works so as to afford proper and reasonable access to the Property;

Opinion Letter Guarantor

an opinion letter in the form annexed at Appendix 5 given by a reputable firm of lawyers practising in the jurisdiction in which the Guarantor is incorporated;

Opinion Letter Landlord

an opinion letter in the form annexed at 6 given by a reputable firm of lawyers practising in the jurisdiction in which the Landlord is incorporated;

Practical Completion

completion of the Landlord's Works in accordance with the provisions of the Building Contract but disregarding any minor defects that are the subject of a snagging list to be attached to the Statement of Practical Completion in accordance with the provisions of the Building Contract;

President

the President for the time being of the Royal Institution of Chartered Surveyors or any person authorised to act on his behalf;

Professional Team

the following professionals:

- (a) the Architect;
- (b) the Employer's Agent;
- (c) the Civil and Structural Engineer;

Property

the industrial premises known as Unit 7 Mountpark Southampton, Wide Lane, Southampton SO18 2NQ forming part of the Title Number intended to be let to the Tenant as shown edged red on the plan attached to the Lease;

Recommendation Report

the recommendation report required by regulation 9 Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118), including a report issued by an Energy Assessor for the purposes of regulation 29(5) Building Regulations 2010 (SI 2010/2214) or regulation 20(1) Building (Approved Inspectors etc.) Regulations 2010 (SI 2010/2215);

Rectification Period

the defects liability period or rectification period under the Building Contract;

Rent Commencement Date

1 December 2019 provided that if the date of Practical Completion occurs after 29 November 2018 then the rent commencement date shall be postponed by the number of days that the Date of Practical Completion occurs after 29 November 2018;

GPCC

Requisite Consents

all agreements, approvals (including approval of reserved matters), consents, permissions and licences required from any local or other competent authority under any statute, by-law or regulation which are necessary to enable the Landlord lawfully to carry out and complete the Landlord's Works or to reinstate them if they are damaged or destroyed;

Review Date

the date calculated as the 5th anniversary of the Term Commencement Date;

Specification

the specification and plans detailing the Landlord's Works as attached at Appendix 4 and includes any changes to them made under the terms of this agreement or otherwise agreed in writing between the Landlord and the Tenant;

Standard Conditions

the Standard Commercial Property Conditions (2nd Edition) and **Standard Condition** shall be interpreted accordingly;

Statement of Practical Completion

the sectional completion statement of the Landlord's Works to be issued in accordance with the Building Contract certifying that Practical Completion has taken place;

Statutory Agreement

an agreement or undertaking in respect of and affecting the Property or the Adjoining Property in relation to the Landlord's Works (whether or not also affecting other property) pursuant to:

- (a) section 106 Town and Country Planning Act 1990;
- (b) section 111 Local Government Act 1972;
- (c) section 33 Local Government (Miscellaneous Provisions) Act 1982;
- (d) section 104 Water Industry Act 1991 or any other provision of similar intent within the meaning of the Water Act 1989 with an appropriate authority for the supply of water or the drainage of surface or foul water from the Property or the Adjoining Property; or
- (e) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them;
- (f) any highways agreement.

Target Area

107,392 square feet of Internal Area;

Target Date of Practical Completion

29 October 2018 subject to any changes made in accordance with paragraph 3 of Schedule 2;

Tenant's Representative

JLL Limited of 30 Warwick Street London W1B 5NH (ref:Simon Nicholls) or such member of the Royal Institution of Chartered Surveyors appointed by the Tenant and notice of whose appointment has been given in writing to the Landlord;

Tenant's Solicitors

VLAW Limited of 9 Savoy Street London WC2E 7EG (ref DB/PFS001/006) or such other solicitors as the Tenant appoints in relation to this agreement and notifies the Landlord's Solicitors in writing;

Tenant's Works

the fitting-out works to warehouse, ground floor and first floor office at the Property to be carried out by the Tenant briefly described in the Licence to Carry Out Works and includes any changes to them agreed in writing between the Landlord and the Tenant;

Term Commencement Date

the Lease Completion Date;

Title Number

HP810602;

Utilities

electricity, gas, water, surface water, foul drainage, heating, air conditioning, ventilation, telecommunications, satellite and data communications and any other services or supplies;

Utility Agreements

any agreements or deeds (including leases or agreements for the grant of rights, easements, wayleaves and connection agreements) with statutory undertakers or other utility providers which relate to the provision of Utilities to the Property or the Adjoining Property and which are reasonably required as part of or to facilitate the carrying out of the Landlord's Works;

VAT

value added tax chargeable under the Value Added Tax 1994 and any similar replacement tax and any similar additional tax;

Warranties

the warranties to be provided by the Building Contractor and the Professional Team in the forms annexed at Appendix 1;

Sub-contractor Warranties

the warranties to be provided by the Design-Sub Contractors in the forms annexed at Appendix 7;

Working Day

any day except Saturday, Sunday and bank or other public holidays in England.

1.2 In this agreement, unless the context otherwise requires:

- 1.2.1 the clause headings are for reference only and do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this agreement and references in a schedule to a paragraph are to a paragraph of that schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
 - (b) any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any

orders, regulations, instruments or other subordinate legislation made under that statute;

- 1.2.4 references to the Property, the Building and the Adjoining Property include any part of them;
- 1.2.5 the words **other, include, including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible;
- 1.2.6 **indemnify** means to indemnify against all actions, claims, demands and proceedings taken or made against a party and all costs, damages, expenses, liabilities and losses incurred by the party;
- 1.2.7 if there is more than one person as a party to this agreement, the obligations that they undertake can be enforced against them all jointly or against each individually;
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the agreement shall be unaffected;
- 1.2.9 as between the Landlord and the Tenant until informed in writing to the contrary by the Tenant the Landlord shall be entitled to rely on any written confirmations, approvals, agreements or consents of the Tenant's Representative alone as being binding and given on behalf of the Tenant in relation to any matter contained in this agreement and any information which the Tenant is bound to provide under this agreement shall be properly provided if so provided by the Tenant's Representative alone; and
- 1.2.10 if there is any conflict between the Specification and the terms of this agreement the latter shall prevail.

2. AGREEMENT FOR LEASE

- 2.1 The Landlord and the Tenant shall comply with their obligations in respect of the Landlord's Works as set out in Schedule 2.
- 2.2 The Landlord agrees to grant or procure the grant of and the Tenant agrees to accept the grant of the Lease and to enter into the Licence to Carry Out Works on the Lease Completion Date. No purchase price, premium, or deposit is payable.
- 2.3 On the Date of Actual Completion the Guarantor shall provide to the Landlord an opinion letter in respect of the Guarantor relating to the Lease in the form of the Opinion Letter Guarantor with such amendments as may be approved by the Landlord (such approval not to be unreasonably withheld).
- 2.4 Upon completion of the Licence to Carry Out Works the Guarantor shall provide to the Landlord an opinion letter in respect of the Guarantor relating to the Licence to Carry Out Works in the form of the Opinion Letter Guarantor with such amendments as may be approved by the Landlord (such approval not to be unreasonably withheld).
- 2.5 On the Date of Actual Completion the Landlord shall provide to the Tenant and the Guarantor an opinion letter in respect of the Landlord relating to the Lease in the form of the Opinion Letter Landlord with such amendments as may be approved by the Tenant (such approval not to be unreasonably withheld).
- 2.6 Upon completion of the Licence to Carry Out Works the Landlord shall provide to the Tenant and the Guarantor an opinion letter in respect of the Landlord relating to the Licence to Carry Out Works in the form (mutatis mutandis) of the Opinion Letter Landlord with such amendments as may be approved by the Tenant (such approval not to be unreasonably withheld).
- 2.7 During the Licence Period the Tenant shall be permitted to occupy the Initial Property on the terms of Schedule 4 but shall not otherwise be entitled to occupation or possession of the Property until the Lease has been completed. The Landlord shall procure that an electricity

power supply for the Property in accordance with the Specification is maintained and available for use by the Tenant free of charge throughout the Licence Period. The Landlord shall as necessary provide such power by means of mobile generation plant.

- 2.8 On or before the Date of Actual Completion the Landlord shall deliver to the Tenant's Solicitors copies of the documents listed in Schedule 5 and, where possible, duly certified by the Landlord's Solicitors to be complete and true copies of the originals.
- 2.9 On or before the Date of Actual Completion the Landlord shall deliver to the Tenant's Solicitors the Warranties duly executed and completed and the Tenant shall not be obliged to accept the Lease in the absence of any of the Warranties.
- 2.10 The Landlord shall pay the Contribution to the Tenant in respect of the proper costs incurred by the Tenant in fitting out of the ground floor offices in the Building as part of the Tenant's Works, such payment shall:
- 2.10.1 be made without deduction or set off by the Landlord in amounts equal to the sums invoiced by the Tenant's fitting out contractor as evidenced in the invoice referred to at clause 2.10.2;
- 2.10.2 be made within 15 Working Days of receipt by the Landlord of a copy of each such valid invoice addressed to the Tenant from the Tenant's fitting out contractor or contractors in respect of the carrying out of such fitting out works or an element of the fitting out works; and
- 2.10.3 not exceed a total maximum sum of £140,000.

3. **TITLE**

- 3.1 Title to the Property having been investigated by (or on behalf of) the Tenant before the date of this agreement, the Tenant shall be deemed to have accepted such title and shall not be entitled to raise any objection, enquiry or requisition to the title except in respect of:
- 3.1.1 any matters registered against the Title Number(s) after 29 May 2018 at 11:40:58 that relate to matters that the Landlord has not previously disclosed to the Tenant; and
- 3.1.2 any financial charges registered against the Title Number(s).
- 3.2 The Landlord lets with full title guarantee but the implied covenants for title are modified so that:
- 3.2.1 the covenant set out in section 2(1)(b) Law of Property (Miscellaneous Provisions) Act 1994 (LP(MP)A 1994) shall not extend to costs arising from the Tenant's failure to:
- (a) make proper searches; or
- (b) raise requisitions on title or on the results of the Tenant's searches before the date of this agreement; and
- 3.2.2 the covenant set out in section 3(3) LP(MP)A 1994 shall extend only to charges or encumbrances created by the Landlord.
- 3.3 This agreement is executory only and shall not operate or be deemed to operate as a demise of the Property until Actual Completion.
- 3.4 Vacant possession of the Property will be given to the Tenant upon Actual Completion.

STANDARD CONDITIONS

- 3.5 This agreement incorporates the Standard Conditions in so far as they apply to the grant of a lease and are not varied by or inconsistent with the provisions of this agreement (which shall prevail in the case of a conflict).
- 3.6 For the purposes of the Standard Conditions, references to "the seller" and "the buyer" shall be deemed to be references to the Landlord and the Tenant respectively.
- 3.7 The conditions set out in Part 1 of the Standard Conditions shall be varied as follows:
- 3.7.1 in Standard Condition 1.1.1(c) insert at the end "or its successors in title";

- 3.7.2 in Standard Condition 1.1.1(e) the contract rate shall be the Contract Rate specified in this agreement;
- 3.7.3 in Standard Condition 1.1.3(b) all the words after "secured on the property" shall be deleted and there shall be added the words "and (c) in the case of the seller notwithstanding that the seller does not at the completion date have the legal estate vested in it";
- 3.7.4 Standard Condition 1.1.4(a) shall not apply;
- 3.7.5 Standard Condition 3.3 shall be replaced in its entirety with: "The buyer shall have no rights of light or air or other rights over any land which the seller will be retaining near the property other than any expressly granted or reserved in the transfer or lease of the property to the buyer";
- 3.7.6 in Standard Condition 4.2.4 insert "or if earlier the date two working days prior to the date on which the seller is to take the step in such proceedings" after "ten working days" and also at the end of 4.2.7(b)(ii);
- 3.7.7 Standard Condition 8.8.2 shall be varied to read: "The parties are to complete the contract before 2.00pm on the tenth working day following the giving of the notice to complete, excluding the day on which the notice is given. For this purpose, time is of the essence of the contract";
- 3.7.8 in Standard Condition 9.1.2 the word "represented" shall be deleted and the words "expressly stated in the contract" shall be substituted in its place.
- 3.8 Part 2 of the Standard Conditions shall not apply to this agreement.
4. **ENCUMBRANCES**
- 4.1 The Property is let subject to the Encumbrances so far as they are still subsisting and affect the Property.
- 4.2 The Tenant is to be treated as accepting the grant of the Lease with full knowledge of any Encumbrances and will not raise any requisition or objection to them.
- 4.3 The Property is let subject to such of the following as affect the Property and are still subsisting:
- 4.3.1 all matters contained or referred to in the Lease;
- 4.3.2 the matters contained or referred to in Standard Condition 3.1.2;
- 4.3.3 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;
- 4.3.4 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;
- 4.3.5 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Property and to any orders or regulations made under that or any other legislation;
- 4.3.6 all rates, charges and other outgoings which affect or are charged on the Property except for any mortgage or legal charge relating to money secured on the Property;
- 4.3.7 any unregistered interest that overrides the disposition effected pursuant to this agreement under Schedules 1, 3 or 12 Land Registration Act 2002 or which would override the disposition if the Lease were subject to first registration;
- 4.3.8 any Statutory Agreement;
- 4.3.9 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Property and other like matters

and the Landlord shall not be required to give any evidence or information as to the existence or otherwise of any such matters; and

- 4.3.10 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance, and the Landlord shall not be required to give any evidence or information as to the existence or otherwise of any such matters;

5. THE LEASE

- 5.1 The Lease and its counterpart and the Licence to Carry Out Works and its counterpart shall be prepared by the Landlord's Solicitors.
- 5.2 The following details shall be inserted in the Lease and its counterpart when they are engrossed or, if this is not possible, inserted in manuscript and initialled by or on behalf of the parties on the Date of Actual Completion:
- 5.2.1 the Term Commencement Date;
 - 5.2.2 the Rent Commencement Date;
 - 5.2.3 the Basic Rent;
 - 5.2.4 the Review Date;
 - 5.2.5 any amendment to the Lease, as referred to in paragraph 1.3 Schedule 2.
- 5.3 The liability to pay the contribution towards the insurance premiums under the Lease shall commence on the Term Commencement Date and the liability to pay the contribution towards the service charge under the Lease shall commence on the Term Commencement Date.
- 5.4 The Landlord may make such minor additions or modifications to the form of the Plan as may be reasonably required properly to describe the Property or the Building as eventually designed and constructed in accordance with this agreement or to describe the Property or the Building as named.
- 5.5 As soon as reasonably practicable after the Date of Actual Completion the Tenant shall use all reasonable endeavours to register the Lease and remove any notice in respect of this agreement at the Land Registry and, on completion of that registration, shall provide the Landlord with official copies of the title to the Lease showing the Tenant registered as proprietor together with any title plan produced or updated by the Land Registry as part of that registration.

6. MEASUREMENT OF THE INTERNAL AREA

- 6.1 The Landlord and the Tenant shall co-operate to ensure that the Building is measured for the purposes of agreeing the Internal Area as soon as the Internal Area can be accurately determined, whether before, on or after the Date of Practical Completion.
- 6.2 The Landlord shall give the Tenant not less than three Working Days' prior written notice of the date and time, being a Working Day, when the Employer's Agent and/or the Building Contractor will measure the Building for the purposes of determining the Internal Area.
- 6.3 If the Employer's Agent and the Tenant's Representative are unable to agree the Internal Area within five Working Days of the measurement of the Building, either the Landlord or the Tenant may apply for the matter to be determined in accordance with Schedule 3.
- 6.4 The Basic Rent shall be calculated upon the agreement or determination of the Internal Area.
- 6.5 Notwithstanding that the Internal Area of the Building may not have been agreed, the Landlord and Tenant shall complete the Lease on the Lease Completion Date and in such circumstances the Basic Rent shall be the sum of £993,376.00 per annum and in the event that following the agreement or determination of the Internal Area the Basic Rent is greater or lesser than the above figure then any difference shall either be paid by the Tenant within 10 Working Days of such determination or agreement or if relevant credited for the Tenant's benefit in the next rental demand issued following the agreement or determination of the

Internal Area and the parties shall as soon as reasonably practicable enter into a deed of variation of the Lease recording the change in the Basic Rent.

7. CONFIDENTIALITY

7.1 Each of the parties to this agreement agrees that it shall take all reasonable steps to keep confidential and shall not (without the prior written approval of the other party such approval not to be unreasonably withheld or delayed) seek to publicise to any other person the existence of and the terms of this agreement (but not so as to restrict the parties in any way in the performance of their obligations under this agreement) PROVIDED that no consent shall be required where disclosure is required by law or under the rules binding on the party concerned of a stock exchange or to any professional or other advisor of the party concerned provided that the party concerned requires that the advisor to whom the information is disclosed keeps it confidential.

7.2 The Tenant agrees with the Landlord not to protect this agreement (or any rights created by it) on the register of the Landlord's title except by way of unilateral notice and not to produce a copy or extract of this agreement to the Land Registry (except where the Tenant is making an application for first registration of the Lease or an application to note rights granted in the Lease after completion).

8. GUARANTEE

8.1 This agreement has been entered into by the Tenant with the consent of and at the request of the Guarantor and in consideration of the Landlord agreeing to let the Property to the Tenant.

8.2 The Guarantor covenants with and guarantees to the Landlord and (without the need for any express assignment) with the Landlord's successors in title by way of primary obligation, that the Tenant will comply with the terms of this agreement.

8.3 As an independent obligation, the Guarantor agrees with the Landlord to comply with the terms of this agreement if the Tenant does not do so and to indemnify the Landlord against any breach of those terms.

8.4 The Guarantor agrees that the Landlord may make a claim under this guarantee and indemnity without first making a claim against the Tenant.

8.5 The Guarantor shall pay all sums due to the Landlord under this guarantee and indemnity without any legal or equitable set-off, counterclaim or deduction.

8.6 If the Tenant fails to complete the Lease the Guarantor will on written demand of the Landlord enter into a lease with the Landlord in the same terms as the Lease save with the Guarantor as the Tenant and excluding the Guarantor's separate guarantee covenant and the Guarantor will pay the Landlord's reasonable legal costs (including VAT) in connection with such lease.

8.7 The obligations of the Guarantor shall not be released by:

8.7.1 any delay or neglect by the Landlord in enforcing the terms of this agreement or any time allowed by the Landlord for their performance;

8.7.2 any variation of the terms of this agreement;

8.7.3 the Landlord or the Tenant giving consent to any matter under this agreement;

8.7.4 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Tenant, whether or not known to the Landlord; or

8.7.5 anything else which would have released the Guarantor whether by the variation of the obligations guaranteed or by the conduct of the parties.

8.8 If any liquidator or trustee in bankruptcy of the Tenant shall disclaim this agreement the Guarantor will on written demand by the Landlord within three months of such disclaimer enter into an agreement with the Landlord in the same terms as this agreement save with the Guarantor as tenant and excluding the Guarantor's separate guarantee obligation. The Guarantor will also pay the Landlord's reasonable legal costs (including VAT) in connection with such agreement.

8.9 The Guarantor shall be party to the Lease and the Licence to Carry Out Works to give the guarantees to the Landlord contained in them.

9. TERMINATION

9.1 The Landlord will be entitled to end this agreement by serving written notice on the Tenant if:

9.1.1 the Tenant does not pay any monies within 14 days after they become due under this agreement;

9.1.2 the Tenant or the Guarantor breaches the terms of this agreement and either;
(a) that breach is incapable of remedy; or
(b) that breach is capable of remedy and the Tenant or the Guarantor does not remedy the breach within 14 days of a written notice from the Landlord requiring the breach to be remedied;

9.1.3 the Tenant or the Guarantor becomes Insolvent; or

9.1.4 anything occurs in relation to the Tenant or the Guarantor which, had the Lease been granted, would entitle the Landlord to exercise its right of re-entry under the Lease.

9.2 The Tenant will be entitled to end this agreement by serving notice on the Landlord if:

9.2.1 the Landlord breaches the terms of this agreement and either;
(a) that breach is incapable of remedy; or
(b) that breach is capable of remedy and the Landlord does not remedy the breach within 21 days of receipt of a written notice from the Tenant requiring the breach to be remedied;

9.2.2 the Landlord becomes Insolvent; or

9.2.3 the Statement of Practical Completion has not been issued on or before the Long Stop Date whether or not the failure to issue the same is due to any event or the act or default of any person other than the Tenant or the Guarantor; or

9.2.4 the Building or the means of access to the Property is destroyed or so damaged after the date of this agreement but before the Date of Practical Completion so as to render the Property or the Building (as appropriate) incapable of use or occupation or inaccessible and such destruction or damage cannot be made good before the Long Stop Date.

10. EFFECT OF TERMINATION

If this agreement comes to an end before the grant of the Lease:

10.1 it will not prejudice the rights of the parties in respect of any breach of this agreement outstanding at the date this agreement ends;

10.2 the Tenant will immediately procure the cancellation of any land charges registered at the Land Charges Registry or any notice registered at the Land Registry in respect of this agreement and provide written evidence to the Landlord both of the application for cancellation and any acknowledgment of the cancellation; and

10.3 except in relation to this clause 10, neither the Landlord nor the Tenant will be under any future liability to the other under this agreement and the Guarantor will be released from any future liability under clause 8.

11. LANDLORD'S LIABILITY

11.1 The Landlord's obligations and duties in respect of the carrying out and completion of the Landlord's Works and generally in relation to the Property are exclusively limited to the contractual obligations and duties contained in this agreement.

11.2 The obligations of the Landlord contained in Schedule 2 will not be enforceable against any successor in title to the Landlord's interest in the Property once the Notice of Making Good has been issued.

12. **NON-ASSIGNMENT**

- 12.1 Subject to clause 12.2, the Tenant shall not assign or deal with its interest in this agreement or any part of it before the grant of the Lease and shall take up occupation of the Property and accept the grant of the Lease itself.
- 12.2 If the Lease has not been completed by the date six months after the Date of Practical Completion through no default or omission of the Tenant, the Tenant may assign the benefit of this agreement with the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed, to a person who would be a permitted assignee under the Lease.
- 12.3 The Landlord is not under any obligation to grant the Lease to anyone other than the Tenant named in this agreement or to a permitted assignee under clause 12.2.
- 12.4 The Tenant shall not mortgage or charge or in any way pledge as security its interest under this agreement.

13. **ENTIRE AGREEMENT**

- 13.1 This agreement and the documents annexed to it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 13.2 The Tenant acknowledges that:
- 13.2.1 in entering into this agreement, the Tenant has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than:
- (a) as expressly set out in this agreement or the documents annexed to it; or
 - (b) in any written replies which the Landlord's Solicitors have given to any written enquiries raised by the Tenant's Solicitors before the date of this agreement;
- 13.2.2 no representation or warranty is given or is to be implied by:
- (a) the Landlord entering into this agreement; or
 - (b) any step taken by or on behalf of the Landlord in connection with this agreement;
- as to the suitability of the Property for the Tenant or the Tenant's use; and
- 13.2.3 nothing in this clause 13.2 shall limit or exclude any liability for fraud;
- 13.3 Standard Condition 9.1.1 is varied to read "If any plan or statement in the contract or in written replies which the seller's conveyancer has given to any written enquiries raised by the buyer's conveyancer before the date of this contract is or was misleading or inaccurate due to any error or omission, the remedies available are as follows."
- 13.4 This agreement may be signed in any number of duplicate parts all of which taken together will on exchange constitute one agreement.

14. **NON-MERGER**

Insofar as they remain to be performed or observed, the terms and conditions of this agreement shall remain in full force and effect notwithstanding the grant of the Lease to the Tenant.

15. **VAT**

- 15.1 Standard Conditions 1.4.1 and 1.4.2 shall not apply.
- 15.2 Save as otherwise stated, the amount of any payment or the value of any supply as expressed in this agreement is exclusive of VAT. Where any payment or taxable supply falls to be made pursuant to this agreement any VAT properly chargeable thereon shall, against provision of a VAT invoice for it, be paid in addition by the recipient of the supply for which the payment (if any) is or is deemed to be consideration.

- 15.3 If any payment under this agreement (not being a supply to which clause 15.2 applies) shall be in reimbursement of any expenditure made by or on behalf of the Landlord on which the Landlord has paid VAT or shall otherwise be subject to VAT, the Tenant or the Guarantor (as the case may be) shall in addition to such payment reimburse or pay (as appropriate) such VAT except to the extent that the Landlord is able to recover that VAT except to the extent that the Landlord is able to recover that VAT.
- 15.4 The Tenant declares that it has no intention of using the Property or any part of it or allowing it to be used whether by sub-letting or otherwise in such a way as to give rise to the disapplication of any option to tax made by the Landlord.
- 15.5 The Tenant shall indemnify and keep indemnified the Landlord against all VAT which the Landlord has to repay to HM Revenue & Customs including any under the Capital Goods Scheme and against all VAT which is irrecoverable by the Landlord (together in each case with interest, penalties and costs) due to the disapplication of any election to waive exemption to tax made by the Landlord arising in any way from the Tenant's use of the Property or part or parts of it for an exempt purpose.
16. **NOTICES**
- 16.1 Any notice given under this agreement must be in writing and signed by or on behalf of the party giving it.
- 16.2 Any notice or document to be given or delivered under this agreement must be given by delivering it personally or sending it by pre-paid first class post or recorded delivery, to the addresses stated below:
- Landlord: Mountpark Logistics EU 2017 23 SARL care of Mountpark Properties Ltd, 22-23 Old Burlington Street, London W1S 2JJ marked for the attention of Philip O'Callaghan and a copy sent to 18 rue Robert Stumper, L-2557, Luxembourg.
- Tenant or Guarantor: Eastlands One, London Road, Basingstoke RG21 4FB
- 16.3 Any such notice or document will be deemed to have been received:
- 16.3.1 if delivered personally, at the time of delivery provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day; and
- 16.3.2 in the case of pre-paid first class or recorded delivery post, at 9.00am on the second Working Day after posting.
- 16.4 In proving delivery, it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class or recorded delivery letter.
- 16.5 A notice or document delivered under this agreement shall not be validly given or delivered if sent by e-mail or fax.
17. **INTEREST**
- If either party to this agreement shall fail to pay to the other party any sums within 14 days of the date such sums are due to such party pursuant to any of the provisions of this agreement, the party in default shall in addition to such sum pay interest at the Contract Rate from and including the date upon which the sum should have been paid up to and including the date of actual payment.
18. **MONEY LAUNDERING**
- No party to this agreement nor their solicitor is obliged to accept any monies payable under this agreement from or drawn on an institution which does not carry on activities of the nature listed in regulation 3(1) Money Laundering Regulations 2007 (SI 2007/2157) and any such payment shall not be treated as a payment made in accordance with the terms of this agreement.

19. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as expressly provided none of the provisions of this agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named a party to the agreement.

20. **JURISDICTION**

20.1 This agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales to the exclusive jurisdiction of whose courts the parties shall be deemed (to the extent necessary) irrevocably to have submitted.

20.2 The Guarantor irrevocable authorises and appoints the Tenant to accept service of all legal process arising out of or connected with this agreement and service on the Tenant shall be treated as service on the Guarantor provided that a copy of the notice shall also have been sent to the Guarantor at its registered office set out at the beginning of this agreement.

THE PARTIES have signed this agreement on the date first set out above.

SCHEDULE 1

Title

The following matters contained or referred to in the registers of title of the Title Number(s) in so far as they relate to affect or fail to be complied with in respect of the Property:-

1. Deed dated 8 May 2018 between (1) Inchcape Estates Limited and (2) Mountpark Logistics EU 2014 05 SARL.
2. Transfer dated 18 May 2018 between (1) Mountpark Logistics EU 2014 05 S.A.R.L. and (2) Mountpark Logistics EU 2017 23 S.A.R.L.
3. Transfer dated 18 August 2017 between (1) Balmoral Land Limited and (2) Ford Motor Company Limited.
4. Lease dated 21 September 2018 between (1) Mountpark Logistics EU 2017 23 S.A.R.L. and (2) Energetics Electricity Limited.

SCHEDULE 2

Landlord's Works Obligations

1. **LANDLORD'S CONSENTS**
 - 1.1 If it has not already obtained them, the Landlord shall use all reasonable endeavours to obtain the Requisite Consents at its own cost and expense as soon as reasonably practicable after the date of this agreement.
 - 1.2 The Landlord will be at liberty to grant such easements or wayleaves or other rights over the Property as may be requisite for the supply of Utilities to the Property or the Adjoining Property provided that there will be no material interference with the Tenant's use and occupation of the Property.
 - 1.3 Within ten Working Days of being called upon to do so by the Landlord, the Tenant shall enter into any Utility Agreements in such form as the relevant statutory undertakers or utility provider shall require or, if such statutory undertaker or utility provider require, the Tenant shall consent to any such Utility Agreements. If the Landlord enters into any Utility Agreements before the Date of Actual Completion, then whether or not the Tenant is also required to enter into them, details of the relevant Utility Agreements shall be added to Schedule 6 of the Lease before Actual Completion as matters to which the Lease shall be subject.
2. **CARRYING OUT THE WORKS**
 - 2.1 Subject to obtaining the Requisite Consents, the Landlord shall procure that the Building Contractor proceeds diligently with and carries out and completes the Landlord's Works:
 - 2.1.1 in a proper and workmanlike manner;
 - 2.1.2 using good quality and suitable materials to the extent not otherwise specified in the Specification;
 - 2.1.3 in accordance with:
 - (a) the Specification;
 - (b) the terms of the Building Contract;
 - (c) the Approved Planning Permission;
 - (d) the Requisite Consents;
 - (e) all Applicable Law, including the CDM Regulations;
 - (f) British standards and any applicable codes of building practice; and
 - 2.1.4 without using or specifying the use of any Deleterious Materials.
 - 2.2 Without prejudice to paragraph 2.1, the Landlord shall use its all reasonable endeavours to ensure that the whole of the Landlord's Works are carried out and completed by the Target Date of Practical Completion.
 - 2.3 In carrying out the Landlord's Works, the Landlord shall procure that all conditions attached to and requirements of the Requisite Consents relating to the Landlord's Works and within the Landlord's control are discharged or complied with before the Date of Actual Completion and shall use all reasonable endeavours to procure that all other conditions outside the control of the Landlord are discharged or complied with before the Date of Actual Completion but compliance with all post-occupation conditions relating to the Property shall be the responsibility of the Tenant (excluding any conditions which require the payment of money or financial contributions directly to the local authority).
3. **EXTENSIONS OF TIME**
 - 3.1 The Target Date of Practical Completion is to be put back by a period of time equal to any extension of time allowed to the Building Contractor under the Building Contract that does not result from the act, omission or default of the Landlord or that arises from a Justifiable Delay Event.
 - 3.2 If there is any delay in completing the Landlord's Works arising from:

- 3.2.1 a Justifiable Delay Event;
- 3.2.2 any default of the Building Contractor under the terms of the Building Contract; or
- 3.2.3 the Insolvency of the Building Contractor or any member of the Professional Team;

the Target Date of Practical Completion is to be changed to such date as the Employer's Agent certifies as being reasonable and proper in the light of the reasons for the delay.

4. CDM REGULATIONS

The Landlord as client shall comply with its duties under the CDM Regulations and shall procure that the Building Contractor as the principal contractor for the Landlord's Works shall comply with their duties under the CDM Regulations and that the Employer's Agent as the principal designer for the Landlord's Works shall comply with its duties under the CDM Regulations.

5. LANDLORD'S VARIATIONS

5.1 If any of the materials, plant or equipment required for the Landlord's Works cannot be obtained within a reasonable time or at a reasonable cost the Landlord may substitute alternative materials, plant or equipment of no lesser quality than the materials, plant or equipment which they replace.

5.2 The Landlord may make changes to the Specification:

5.2.1 which are required in order to comply with the terms of the Approved Planning Permission, any Requisite Consents or Applicable Law; or

5.2.2 which the Landlord, the Employer's Agent or the Building Contractor reasonably considers necessary.

5.3 The Landlord will provide at Actual Completion full details of all changes and/or variations to the Building Contract and the Specification.

6. APPOINTMENT OF THE BUILDING CONTRACTOR AND PROFESSIONAL TEAM

6.1 The Landlord shall appoint the Building Contractor and the Professional Team.

6.2 The Landlord shall use all reasonable endeavours to ensure that the Building Contractor:

6.2.1 complies with its obligations in the Building Contract; and

6.2.2 enforces the obligations of the members of the Professional Team under their appointments; and

6.2.3 enforces the obligations of the Design Sub-Contractors under their sub-contracts.

6.3 The Landlord shall use all reasonable endeavours to ensure that each member of the Professional Team complies with the terms of their appointments.

7. WARRANTIES

7.1 The Warranties shall be in the form of the draft warranties attached to this agreement at Appendix 1.

7.2 The Sub-contractor Warranties shall be in the form of the draft warranties attached to this agreement at Appendix 7.

8. STATEMENT OF PRACTICAL COMPLETION

8.1 The Landlord shall ensure that the Employer's Agent inspects the Landlord's Works with a view to the issue of the Statement of Practical Completion and is to instruct the Employer's Agent to give the Tenant not less than three Working Days' prior written notice of the date and time, being a working day, when the Employer's Agent will do so.

8.2 The Tenant and the Tenant's Representative will be entitled to accompany the Employer's Agent on the inspection of the Landlord's Works and to make representations on the proposal to issue the Statement of Practical Completion. The Employer's Agent will have

due regard to any such representations made but the Employer's Agent will be at liberty to issue the Statement of Practical Completion as in its opinion it thinks it ought to be issued under the terms of the Building Contract.

8.3 If the Employer's Agent does not believe that the Statement of Practical Completion can be issued the Employer's Agent shall give notice to the Tenant or the Tenant's Representative, which may be oral notice given during the inspection, of when it is intended to re-inspect the Landlord's Works for the purpose of issuing the Statement of Practical Completion and the procedure in this paragraph 8 will then be repeated as often as necessary until the Statement of Practical Completion is issued.

8.4 Subject to Practical Completion having taken place, the Landlord shall procure that the Employer's Agent shall serve a copy of the Statement of Practical Completion on the Tenant and the Tenant's Representative forthwith after issue.

8.5 The issue of the Statement of Practical Completion shall be conclusive evidence binding on the parties that the Landlord's Works have been completed in accordance with the terms of this agreement, subject to the Landlord's obligations during the Rectification Period.

8.6 The Landlord and the Tenant acknowledge that the presence of minor Defects in the Landlord's Works at the time of any inspection relating to the issue of the Statement of Practical Completion or the deferment of any work of planting or landscaping until the proper season will not be a ground for delaying the issue of the Statement of Practical Completion and such minor Defects and deferred planting or landscaping will be the subject of a snagging list to the Statement of Practical Completion.

9. CONTINUING DEVELOPMENT OF ADJOINING PROPERTY

The Tenant:

9.1 acknowledges and accepts that the Landlord is intending to develop the whole of the Adjoining Property and that works at the Adjoining Property may continue after the Date of Practical Completion; and

9.2 waives any right against the Landlord under the Lease or otherwise to claim damages, compensation or any other remedy arising from the disturbance, nuisance or inconvenience caused by such continuing works.

10. FOLLOWING PRACTICAL COMPLETION

The Landlord shall forthwith after issue of the Statement of Practical Completion:

10.1 prepare and provide the Tenant with copies of:

10.1.1 the commissioning reports, test certificates and operating manuals for all plant and machinery installed as part of the Landlord's Works;

10.1.2 a complete set of the as-built plans, drawings and specifications of the Landlord's Works; and

10.1.3 the health and safety file for the Property;

10.2 leave the Property in a good and clean condition, cleared of all unused building materials, plant and equipment used in the carrying out of the Landlord's Works and temporary structures.

11. DEFECTS

11.1 The Landlord will at its own expense make good or procure that the Building Contractor makes good all minor Defects which have been identified in the snagging list to the Statement of Practical Completion as soon as reasonably practicable after the Date of Practical Completion.

11.2 The Landlord will at its own expense make good or procure that all Defects for which the Building Contractor is responsible under the Building Contract that arise within the Rectification Period are made good to the reasonable satisfaction of the Tenant in accordance with the terms of the Building Contract.

- 11.3 Not less than one month before the end of the Rectification Period, the Landlord shall inspect the Landlord's Works and prepare a schedule of Defects.
- 11.4 The Landlord shall:
- 11.4.1 serve a copy of the schedule of Defects on the Tenant within ten (10) Working Days after the inspection under paragraph 11.3;
 - 11.4.2 include in the schedule of Defects any additional Defects notified in writing by the Tenant or the Tenant's Representative within five Working Days of the service of the schedule of Defects under paragraph 11.4.1;
 - 11.4.3 deliver the schedule of Defects to the Building Contractor within the time limits required under the Building Contract; and
 - 11.4.4 ensure that a copy of the Notice of Completion of Making Good is provided to the Tenant as soon as reasonably practicable after the Building Contractor has made good the Defects.
- 11.5 The Tenant shall allow access to the Property at all reasonable times to enable the schedule of Defects to be prepared and any works required under this paragraph 11 to be carried out and completed. If the Tenant assigns the Lease before the Landlord has complied with its obligations under this paragraph 11, it shall procure that its assignee allows the Landlord access to the Property to comply with its obligations under this paragraph 11.
- 11.6 Except in relation to minor defects contained in the snagging list for the Statement of Practical Completion or properly notified to the Landlord in accordance with this paragraph 11, the Landlord will not be liable to the Tenant in respect of any defects in the Landlord's Works.
- 11.7 Following the issue of the Notice of Completion Making Good the Landlord will have no further liability whatsoever to the Tenant in connection with the construction of the Landlord's Works whether under this agreement under statute in contract in tort or otherwise save in respect of disputes or breaches of this agreement, if any, notified to the Landlord on or before the date of issue of the Notice of Completion Making Good.
12. **DISPUTES**
- 12.1 If any dispute arises under this Schedule 2 which cannot be resolved between the Landlord and the Tenant either the Landlord or the Tenant may require that the dispute be resolved by an Expert in accordance with Schedule 3.
- 12.2 Unless otherwise specified in this Schedule:
- 12.2.1 a dispute may be referred in accordance with Schedule 3 only if it cannot be resolved between the Landlord and the Tenant within 14 days of the dispute arising; and
 - 12.2.2 time will not be of the essence for referring the dispute.

SCHEDULE 3

Expert Determination

1. APPOINTMENT OF EXPERT

1.1 The Expert shall be:

1.1.1 in relation to any dispute under Schedule 2:

- (a) if the dispute relates to the issue of the Statement of Practical Completion, an independent architect of not less than ten years' standing who is experienced in the construction of developments of a similar size and nature to the Landlord's Works who is a member of the Royal Institute of British Architects;
- (b) if the dispute relates to a question of costs payable, an independent quantity surveyor of not less than ten years' qualification who is experienced in the construction of developments of a similar nature and size to the Landlord's Works who is a member of the Royal Institution of Chartered Surveyors; and
- (c) in relation to any other dispute, an independent chartered surveyor of not less than ten years' qualification who is experienced in the construction of developments of a similar nature and size to the Landlord's Works who is a member of the Royal Institution of Chartered Surveyors; or

1.1.2 in relation to any other dispute, any person agreed upon the Landlord and the Tenant or in the absence of agreement such person nominated by the President on the application of either party pursuant to the provisions of this schedule such person being an independent suitably qualified professional person (including but not limited to a solicitor or a surveyor or planning counsel) having regard to the subject matter of the dispute with at least ten years post qualification experience in commercial property matters similar to the subject matter of the dispute.

1.2 The Landlord and the Tenant will use reasonable endeavours to agree the identity of the Expert to determine the dispute.

1.3 Unless the Landlord and the Tenant agree the identity of the Expert within two weeks of a request to do so, the Expert shall be appointed at the written request of the Landlord or the Tenant by the President if the Expert is to be a surveyor or by the president or other most senior officer of the Royal Institute of British Architects if the Expert is an architect.

1.4 The reference to an Expert shall be made to him as an expert unless paragraph 1.5 applies or the Landlord and the Tenant agree at the time of his appointment that he should act as an arbitrator.

1.5 If any dispute raises or relates to the same or parallel issues as those which have been or are being submitted to independent determination under the Building Contract, the Landlord and the Tenant will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract and to have the dispute proceedings under this agreement and the Building Contract consolidated.

2. CONDUCT OF THE DISPUTE

2.1 Where the Expert is to act as an expert:

2.1.1 the Landlord and the Tenant may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

2.1.2 the Landlord and the Tenant shall have a further ten Working Days to make written comments on each other's representations and will copy the written comments to the other party;

-
- 2.1.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 2.1.4 the Expert shall not take oral representations from the Landlord or the Tenant without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - 2.1.5 the Expert shall have regard to all representations and evidence before him or her when making his or her decision, which shall be in writing, and will contain reasons for his decision;
 - 2.1.6 the Expert shall use reasonable endeavours to publish his decision within 30 Working Days of his appointment; and
 - 2.1.7 the Expert shall act impartially and in good faith between the parties;
- 2.2 Where the Expert is to act as an arbitrator:
- 2.2.1 all submissions made or evidence supplied to him shall be in writing unless the parties agree within ten Working Days of his appointment that this requirement does not apply;
 - 2.2.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Landlord and the Tenant or the latest date if there is more than one;
 - 2.2.3 he will not be entitled to order the rectification, setting aside or cancellation of this agreement or any other deed or document;
 - 2.2.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
 - 2.2.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration;
- 2.3 Responsibility for the costs of referring a dispute to an Expert under this Schedule including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert or, in the absence of any such decision, borne equally between the parties.

SCHEDULE 4
Early Access Licence

1. **RIGHT TO OCCUPY THE PROPERTY**
 - 1.1 During the Licence Period the Tenant will be permitted to occupy the Initial Property as a licensee only and the Tenant does not have, nor is entitled to any, estate right or interest in the Initial Property either as completed or in the course of construction, or in any materials (apart from those materials deposited by the Tenant on the Initial Property in connection with the Tenant's Works).
 - 1.2 During the Licence Period, the Tenant shall comply with the Tenant's obligations in the Lease, so far as they are applicable to the occupation of the Initial Property as a licensee, as if the Lease had been granted on the Access Date (including the provisions relating to alterations and planning permissions in so far as they relate to the Tenant's Works).
2. **USE OF THE PROPERTY**
 - 2.1 The Tenant shall not use the Initial Property during the Licence Period for any purpose other than carrying out the Tenant's Works and for receiving deliveries of and storing goods and materials for the purposes of carrying on its business.
 - 2.2 If the Tenant carries out the Tenant's Works before the Licence to Carry Out Works is granted, it shall do so on the terms of the Licence to Carry Out Works as if it had been granted to the Tenant on the Access Date.
 - 2.3 The Tenant may not assign or underlet to or hold its right to occupy the Initial Property under this agreement on trust for any other person.
 - 2.4 The Tenant must not breach the conditions of the Approved Planning Permission if it occupies and/or uses the Property during the Licence Period and the Tenant shall indemnify the Landlord against all liabilities, expenses, costs, claims and losses suffered or incurred by the Landlord arising out of or in connection with any such breach by the Tenant.
3. **CONCURRENT WORKS**
 - 3.1 If the Tenant enters onto the Initial Property to carry out the Tenant's Works before the Date of Practical Completion the Tenant and its contractors will:
 - 3.1.1 co-operate with the Landlord and the Building Contractor to ensure that any remaining Landlord's Works, including making good defects, and the Tenant's Works can be carried out simultaneously;
 - 3.1.2 comply with the proper and reasonable directions of the Building Contractor;
 - 3.1.3 ensure that no material interruption or delay in the completion of the Landlord's Works is caused by the carrying out of the Tenant's Works; and
 - 3.1.4 indemnify the Landlord in respect of any material interruption or delay in the Landlord's Works arising from any breach of the Tenant's obligations in this paragraph 3.1 and any infringement of the terms of any Landlord's consent by the carrying out of the Tenant's Works;
 - 3.2 Before entering on the Initial Property the Tenant shall submit a method statement to the Landlord for approval (such approval not to be unreasonably withheld or delayed) setting out the proposed working methods for the carrying out of the Tenant's Works. The method statement shall contain:
 - 3.2.1 details of the consultants' and contractors' proposals for the design and carrying out of each part of the Tenant's Works;
 - 3.2.2 proposals for regular liaison, co-ordination and co-operation of the Tenant, its consultants and contractors with the Landlord and the Building Contractor with the intention of avoiding hindering or endangering the Landlord's Works;
 - 3.2.3 details of the order and timing of the Tenant's Works, including proposals for:

- (a) means and timing of access to the Initial Property;
- (b) the frequency of delivery to the Initial Property of materials and equipment for incorporation or use in the Tenant's Works;
- (c) the protection of the Landlord's Works and the storage of materials, plant and equipment.

4. **ENDING OF THE LICENCE PERIOD**

The Licence Period will end on the grant of the Lease or, if earlier, if this agreement comes to an end.

5. **CDM REGULATIONS**

If the CDM Regulations apply to the Tenant's Works, the Tenant shall:

- 5.1 agree in writing with the Landlord that the Tenant is to be treated as the only client in respect of the Tenant's Works for the purposes of the CDM Regulations and the parties agree that this paragraph is such an agreement;
- 5.2 comply with its obligations as a client for the purposes of the CDM Regulations;
- 5.3 ensure that the principal designer and the principal contractor that it appoints in relation to the Tenant's Works comply with their respective obligations under the CDM Regulations;
- 5.4 ensure that all relevant documents relating to the Tenant's Works are placed in the health and safety file for the Property by the principal designer or principal contractor in accordance with the CDM Regulations and otherwise comply with its obligations in the Lease relating to those documents and the file.

SCHEDULE 5

Documents to be supplied on Actual Completion

Date	Document	Parties
5/12/2017	S 106 agreement	Southampton City Council (1) Mountpark Logistics EU 2014 05 SARL (2)
9/8/2017	s.278 agreement	Southampton City Council (1)) Mountpark Logistics EU 2014 05 SARL (2) Winvic Construction Limited (3) and Euler Hermes S.A. (N.V.) (4)
19/12/2017	Architect appointment	(1) Mountpark Logistics EU 2014 05 SARL (2) Michael Sparks Associates LLP
2/1/2018	Novation agreement - architect	(1) Mountpark Logistics EU 2014 05 SARL (2) Michael Sparks Associates LLP (3) Winvic Construction Limited
19/12/2017	Engineer appointment	(1) Mountpark Logistics EU 2014 05 SARL (2) Complete Design Partnership Limited
2/1/2018	Novation agreement - engineer	(1) Mountpark Logistics EU 2014 05 SARL (2) Complete Design Partnership Limited (3) Winvic Construction Limited
19/12/2017	Appointment employer's agent	(1) Mountpark Logistics EU 2014 05 SARL (2) KAM Project Consultants Limited
18/5/2018	Novation agreement	(1) KAM Project Consultants Limited (2) Mountpark Logistics EU 2014 05 SARL (3) Mountpark Logistics EU 2017 23 SARL
19/12/2017	Building contract	(1) Mountpark Logistics EU 2014 05 SARL (2) Winvic Construction Limited
	Variations to Building Contract issued by the Employer's Agent	(1) Mountpark Logistics EU 2014 05 SARL (2) Winvic Construction Limited
18/5/2018	Novation agreement building contract	(1) Winvic Construction Limited (2) Mountpark Logistics EU 2014 05 SARL (3) Mountpark Logistics EU 2017 23 SARL
24/5/2018	Agreement (steel frame)	(1) Winvic Construction Limited (2) Caunton Engineering Ltd
24/5/2018	Agreement (concrete works)	(1) Winvic Construction Limited (2) Concast Building Limited
24/5/2018	Agreement (M & E)	(1) Winvic Construction Limited (2) HWM Building Services Ltd
24/5/2018	Agreement (cladding)	(1) Winvic Construction Limited (2) IRC Carocelle Ltd
24/5/2018	Agreement (syphonic drainage)	(1) Winvic Construction Limited (2) Sapoflow Ltd
24/5/2018	Agreement (lifts)	(1) Winvic Construction Limited (2) Schindler Ltd
24/5/2018	Agreement (windows and curtain walling)	(1) Winvic Construction Limited (2) Speedclad Ltd

24/5/2018	Agreement (structural slab)	(1) Winvic Construction Limited (2) Stanfords Industrial Concrete Flooring Ltd
24/5/2018	Agreement (dock doors etc)	(1) Winvic Construction Limited (2) Steril UK Ltd
14/8/2018	Agreement	(1) Winvic Construction Limited (2) G&H Sustainability Limited
11/4/2018	Agreement	(1) Stanford Industrial Concrete Flooring Limited (2) Face Consultants Limited

Signed for and on behalf of the Landlord

.....Mana

Manager

Signed for and on behalf of the Tenant

.....
Director

Signed for and on behalf of the Guarantor

.....
Duly authorised

DATED 9 November 2018

- (1) MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L
- (2) CONEXUS LIMITED
- (3) PFSWEB, INC.

LEASE
UNIT 7, MOUNTPARK SOUTHAMPTON, WIDE LANE,
SOUTHAMPTON, SO18 2NQ

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LAND REGISTRY PRESCRIBED CLAUSES	
LR1. Date of lease	9 November 2018
LR2. Title number(s)	<p>LR2.1 Landlord's title number(s) HP810602</p> <p>LR2.2 Other title numbers None</p>
LR3. Parties to this lease	<p>Landlord MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L. a Luxembourg private limited liability company (<i>societe a responsabilite limitee</i>) with its registered office at 18, rue Robert Stumper, L-2557 Luxembourg, being registered with the Luxembourg Register of Commerce and Companies (<i>registre de commerce et des societes</i>) under number B218933 and with a share capital of £12,500.</p> <p>Tenant CONEXUS LIMITED incorporated and registered in England and Wales with company number 03616118 with its registered office at Eastlands One, London Road, Basingstoke, Hampshire RG21 4FB.</p> <p>Guarantor PFSWEB, INC. incorporated and registered in the State of Delaware in the United States of America with file number 3062550, whose registered office in Delaware is 251 Little Falls Drive, Wilmington, DE 19808 and whose address is at 505 Millennium Drive, Allen, TX75013 USA</p>
LR4. Property	<p>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</p> <p>The property described in schedule 1.</p>
LR5. Prescribed statements etc.	None required for this Lease
LR6. Term for which the Property is leased	<p>The term is as follows:</p> <p>Ten years from and including the 5 day of November 2018 and ending on and including the 4 day of November 2028</p> <p style="text-align: right;">G PLC</p>
LR7. Premium	None
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions
LR9. Rights of acquisition etc.	LR9.1 Tenant's contractual rights to renew this lease,

	<p>to acquire the reversion or another lease of the Property, or to acquire an interest in other land</p> <p>None</p> <p>LR9.2 Tenant's covenant to (or offer to) surrender this lease</p> <p>None</p> <p>LR9.3 Landlord's contractual rights to acquire this lease</p> <p>None</p>
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	<p>LR11.1 Easements granted by this lease for the benefit of the Property</p> <p>See schedule 2.</p> <p>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</p> <p>See schedule 3.</p>
LR12. Estate rentcharge burdening the Property	None
LR13. Application for standard form of restriction	None
LR14. Declaration of trust where there is more than one person comprising the Tenant	None

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Lease, including the schedules, the following definitions shall apply unless the context requires otherwise:

Additional Rent

such rates, taxes, Insurance Rent, Service Charge and any other costs, expenses or liabilities for which the Landlord is responsible or which are payable by it (whether at the time of demand have been paid by or demanded of the Landlord or not) relating to or arising from the Deferred Part for the period from the date hereof until and including 30 June 2019;

Advisory Report

has the meaning given in the EPB Regulations;

Asset Rating

has the meaning given in the EPB Regulations;

Authorised Guarantee Agreement

an authorised guarantee agreement within the meaning of section 16 of the 1995 Act;

Basic Rent

~~£100,000~~ per annum subject to the provisions for review contained in clause 7;

992,044

GPLC

Common Parts:

all roads, footpaths, paved and service areas, accessways, Conducting Media, landscaped areas, gates, boundary walls and fences or other areas or amenities within or pertaining to the Estate which are not demised or intended to be demised to any tenant;

Conducting Media

drains, sewers, conduits, flues, gutters, gullies, channels, ducts, shafts, watercourses, pipes, cables, wires, fibres and any other medium for the passage or transmission of soil, water, gas, electricity, air, smoke, light, information or other matters and includes where relevant all ancillary equipment and structures;

Customer

any company or organisation with whom the tenant has a customer supplier relationship from time to time;

Deferred Part

means the ground floor area shown coloured pink on Plan [1] and all of the internal air space vertically above the same bounded by and within the walls doors and roof of the building containing the same;

Encumbrances

the matters brief particulars of which are set out in schedule 6;

Energy Assessor

an individual who is a member of an accreditation scheme approved by the Secretary of State in accordance with Regulation 25 of the EPB Regulations;

Environmental Law

all treaties, directives, common laws, statutes, statutory instruments, bye-laws, regulations and orders from time to time enacted or in force in any jurisdiction and all codes of practice, circulars and guidance notes of or issued by a regulatory authority and applicable from time to time in any jurisdiction (whether or not having the force of law) which relate in any way to human health, workplace conditions, hazardous substances and the protection of the environment;

EPB Regulations

the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118) and any subsequent legislation;

EPC

an Energy Performance Certificate as defined in the EPB Regulations;

Estate

all the land and buildings known as Mountpark Southampton, Wide Lane, Southampton SO18 2NQ shown for the purpose of identification only edged blue on the Plan;

Event of Incapacity

has the meaning set out in clause 4.1;

Guarantor

any person who has guaranteed the tenant covenants of this Lease including any person who has entered into an Authorised Guarantee Agreement and in the case of an individual the expression includes his personal representatives;

Insurance Rent

the monies payable by the Tenant under clause 6.2.1;

Insured Risks

fire, storm, tempest, lightning, explosion, flood, earthquake, aircraft and other aerial devices and articles dropped therefrom (in time of peace), impact by road vehicles, riot, civil commotion, malicious damage, terrorism, bursting and overflowing of water tanks, apparatus and pipes (except always such of those risks as cannot reasonably be insured against by the Landlord on satisfactory terms or as the Landlord's insurers or underwriters have refused to insure against) and such other risks against which the Property is required to or which may from time to time be insured under the provisions of this Lease subject to any excesses, exclusions, limitations or conditions as may be imposed by the insurers or underwriters with whom such insurance is placed;

Initial Property

the property briefly described in clause LR4 and more fully described in schedule 1 and refers to each and every part thereof and includes all Landlord's fixtures and fittings therein and all Conducting Media and plant and machinery within and exclusively serving the Property and all alterations and additions thereto but excluding the Deferred Part;

Interest

interest at the rate of 4 per centum per annum over the base rate of Barclays Bank plc for the time being and from time to time prevailing (as well after as before any judgment) or such other comparable clearing bank base rate as the Landlord may reasonably designate if the base rate of Barclays Bank plc shall cease to be published;

Internal Area

the gross internal area of a building measured in square feet in accordance with Part 3 of the RICS Property Measurement 6th edition, May 2015 and on the basis that:

- (a) all such relevant measurements within the warehouse of the building will be taken to the internal face of the cladding rails; and
- (b) all plant platforms plant decks and plant floor areas of the building will be excluded from such calculations;

Landlord

the person described in clause LR3 as the Landlord which expression includes the person or persons from time to time entitled to the reversion immediately expectant upon the determination of the Term;

Landlord's Surveyor

any person appointed by the Landlord from time to time to perform the function of a surveyor for any purposes of this Lease (who may be an employee of the Landlord or an associated company of the Landlord);

Land Registry Prescribed Clauses

clauses LR1 to LR14 appearing at the front of this Lease;

Lease

this Lease and includes any document supplemental to it;

Licence to Alter

the licence to carry out alterations dated 9 November 2018 between (1) the Landlord and (2) the Tenant;

Logistics Provider

a company or organisation which provides logistics services to the Tenant in connection with the Tenant's business and occupies the Property solely in connection with providing logistics services to the Tenant;

1954 Act

the Landlord and Tenant Act 1954;

1995 Act

the Landlord and Tenant (Covenants) Act 1995;

2002 Act

the Land Registration Act 2002;

Outgoings

all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever whether parliamentary, municipal, parochial or otherwise and whether or not of a capital or non-recurring nature which are now or may at any time in the future be payable charged or assessed on property or the owner or occupier of property;

Permitted Use

the use of the Property for any use falling within Classes B1(c) and/or B2 and/or B8 with ancillary offices of the Schedule to the Town and Country Planning (Use Classes) Order 1987;

Plan

the plan annexed hereto;

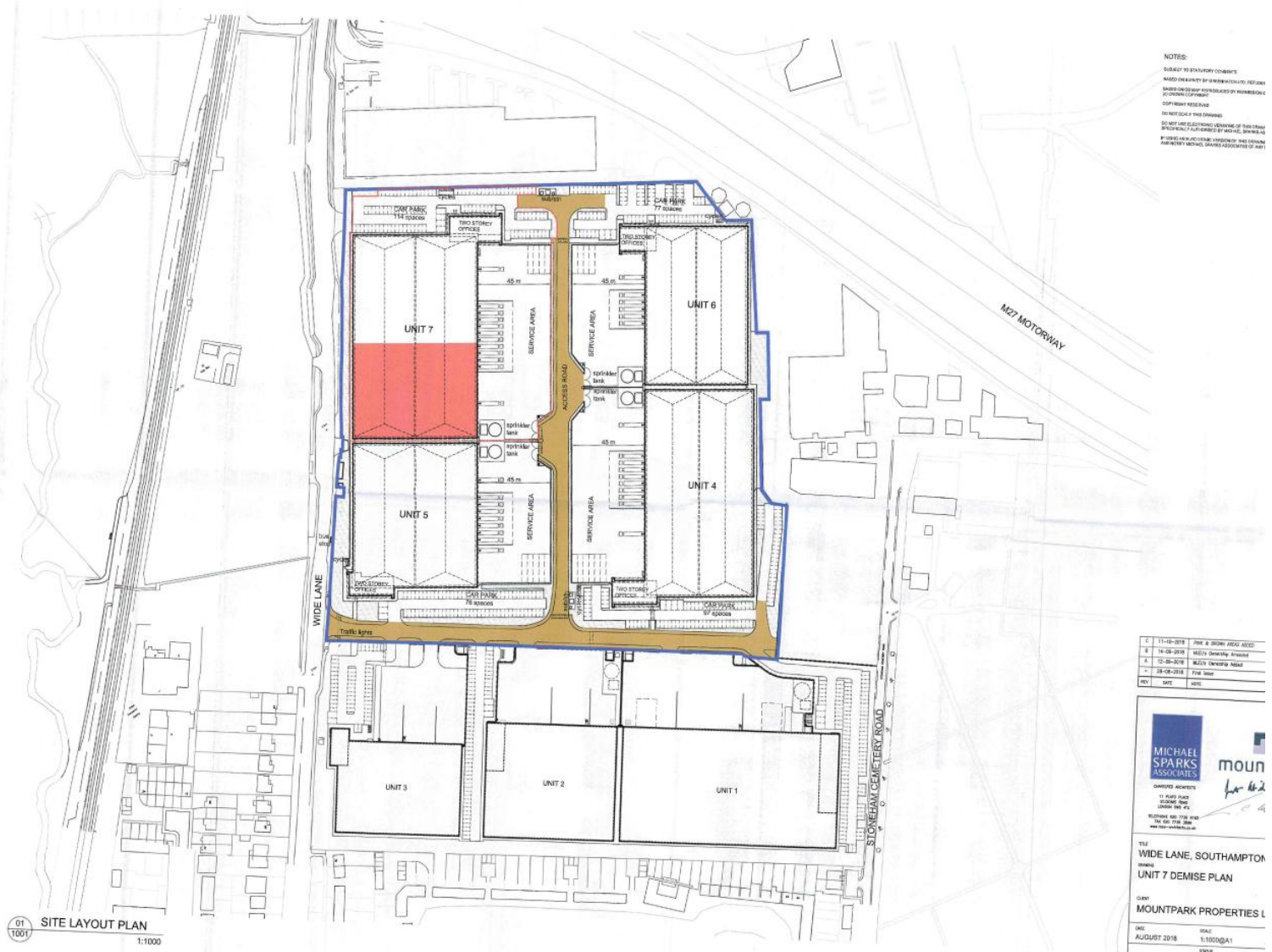
Planning Acts

the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Local Government Planning and Land Act 1980, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004;

Plant

all the electrical, mechanical and other plant, machinery, equipment, fixtures and fittings of ornament or utility in use for common benefit from time to time on in or at the Estate including without prejudice to the generality of the foregoing equipment cleaning equipment, public address systems, fire precaution equipment, fire and burglar alarm systems, closed circuit television, refuse compactors and all other such equipment including stand-by and emergency systems;

NOTES:
 SUBJECT TO EXISTING CONDITIONS
 ALL DIMENSIONS BY ARCHITECTURAL RECORD
 DIMENSIONS SHOWN ARE APPROXIMATED BY MEASUREMENT
 OF EXISTING CONDITIONS
 COPYRIGHT RESERVED
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 OR ANY INFORMATION THEREIN OR THEREON
 SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS
 WITHOUT THE WRITTEN PERMISSION OF MICHAEL SPARKS ASSOCIATES



01 SITE LAYOUT PLAN
 1:1000

1	11-02-2018	REV. B (FORM ARCHD ARCHD)
2	14-02-2018	REV. C (REVISED ARCHD)
3	12-02-2018	REV. D (REVISED ARCHD)
4	18-02-2018	REV. E (REVISED ARCHD)
5	18-02-2018	REV. F (REVISED ARCHD)
6	18-02-2018	REV. G (REVISED ARCHD)
7	18-02-2018	REV. H (REVISED ARCHD)
8	18-02-2018	REV. I (REVISED ARCHD)
9	18-02-2018	REV. J (REVISED ARCHD)
10	18-02-2018	REV. K (REVISED ARCHD)
11	18-02-2018	REV. L (REVISED ARCHD)
12	18-02-2018	REV. M (REVISED ARCHD)
13	18-02-2018	REV. N (REVISED ARCHD)
14	18-02-2018	REV. O (REVISED ARCHD)
15	18-02-2018	REV. P (REVISED ARCHD)
16	18-02-2018	REV. Q (REVISED ARCHD)
17	18-02-2018	REV. R (REVISED ARCHD)
18	18-02-2018	REV. S (REVISED ARCHD)
19	18-02-2018	REV. T (REVISED ARCHD)
20	18-02-2018	REV. U (REVISED ARCHD)
21	18-02-2018	REV. V (REVISED ARCHD)
22	18-02-2018	REV. W (REVISED ARCHD)
23	18-02-2018	REV. X (REVISED ARCHD)
24	18-02-2018	REV. Y (REVISED ARCHD)
25	18-02-2018	REV. Z (REVISED ARCHD)

MICHAEL SPARKS ASSOCIATES
 11 KINGS PLACE
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moun
 for 4/2

TEL: WIDE LANE, SOUTHAMPTON
 DRAWING: UNIT 7 DEMISE PLAN
 CLIENT: MOUNTPARK PROPERTIES L
 DATE: AUGUST 2018
 SCALE: 1:1000/0A1
 DRAWN: LEGAL
 DRAWING NUMBER: 30985-LE-1001 C

Property

the property briefly described in clause LR4 and more fully described in schedule 1 and refers to each and every part thereof and includes all Landlord's fixtures and fittings therein and all Conducting Media and plant and machinery within and exclusively serving the Property and all alterations and additions thereto;

Recommendation Report

has the meaning given in the EPB Regulations;

Rent Commencement Date

1 December 2019

Rent Review Date

5 November 2023;

GPLC

Rents

all sums reserved as rent by this Lease;

Section 106 Agreement

the section 106 agreement dated 5 December 2017 between (1) Southampton City Council and (2) Mountpark Logistics EU 2014 05 S.A.R.L. relating to the Estate;

Service Charge

has the meaning set out in schedule 5;

Services

has the meaning set out in schedule 5;

Superior Landlord

the holder of a reversion whether immediate or not to the lease under which the Landlord holds its interest in the Property;

Superior Lease

any lease under which the Landlord holds its interest in the Property and includes any leasehold reversion whether immediate or not to such lease;

Tenant

the person described in clause LR3 as the Tenant which expression includes its successors in title and assigns in whom this Lease shall for the time being be vested;

Term

the terms of years granted by this Lease and any period of holding over or continuation or extension thereof whether by statute or common law;

Term Commencement Date

5 November 2018;

Second Commencement Date

1 July 2019;

GPLC

VAT

value added tax or any tax of a similar nature that may be substituted for it or levied in addition to it;

Working Day

any day (other than a Saturday, Sunday or public holiday) during which banks in London are open for normal business.

1.2 In this Lease where the context so admits:

- 1.2.1 in any case where the Tenant is placed under a restriction by reason of the covenants and conditions contained in this Lease the restriction shall be deemed to include an obligation on the Tenant not to permit or allow the infringement of the restriction by any person claiming rights to use enjoy or visit the Property through under or in trust for the Tenant;
- 1.2.2 the clause, schedule and paragraph headings in this Lease are for ease of reference only and shall not be taken into account in the construction or interpretation of any covenant, condition or proviso to which they refer;
- 1.2.3 references in this Lease to a clause, schedule or paragraph are references where the context so admits to a clause, schedule or paragraph in this Lease and references in a schedule to a paragraph are (unless the context otherwise requires) references to a paragraph of that schedule;
- 1.2.4 words in this Lease importing the singular meaning shall include the plural meaning and vice versa;
- 1.2.5 words in this Lease importing the masculine gender shall include the feminine and neuter genders and vice versa;
- 1.2.6 words denoting natural persons shall include corporations and vice versa and any reference in this Lease to a company shall include a limited liability partnership;
- 1.2.7 references in this Lease to any Act of Parliament or statutory instrument shall include any modification or re-enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, permissions, consents and directions for the time being made issued or given thereunder or deriving validity therefrom (save that any reference in this Lease to the Town and Country Planning (Use Classes) Order 1987 shall mean that order as it is in force as at the date of this Lease);
- 1.2.8 where the Landlord or the Tenant or the Guarantor for the time being consists of two or more individuals or companies or any combination thereof the expressions "the Landlord" or "the Tenant" or "the Guarantor" shall include the plural number and covenants expressed to be made by or with such party shall be deemed to be made by or with such individuals or companies jointly or severally;
- 1.2.9 references to any period in the last year of the Term shall include any period in the last year thereof if the same shall determine otherwise than by effluxion of time;
- 1.2.10 references to any right of the Landlord to have access to the Property shall be construed as extending to any mortgagee of the Landlord and any Superior Landlord and to all persons authorised by the Landlord and any mortgagee of the Landlord and any Superior Landlord (including agents, professional advisers, contractors, workmen and others);
- 1.2.11 when an Event of Incapacity is expressed to take place in relation to an individual or a company then whenever either the Tenant or the Guarantor consists of more than one individual or company or any combination thereof an Event of Incapacity shall be deemed to have been suffered by the Tenant or the Guarantor (as the case may be) whenever an Event of Incapacity takes place in relation to any one such individual or company;
- 1.2.12 whenever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act (**section 25**) then:
- (a) such provision is to take effect only insofar as it may do so without contravening section 25;
 - (b) where such provision is incapable of having an effect without contravening section 25 this Lease is to be construed and interpreted as if such provision were deleted; and

(c) the legality validity and enforceability of any of the remaining provisions of this Lease are not in any way to be affected or impaired as a result;

1.2.13 the Land Registry Prescribed Clauses are included in and form part of this Lease;

1.2.14 except to the extent provided in clause LR4 where there is an inconsistency between a provision contained in the Land Registry Prescribed Clauses and a provision contained in the rest of the Lease, the latter provision is to prevail over the former;

1.2.15 the expression "Property" shall be construed to mean the Initial Part and the Deferred Part as soon as the demise of the Deferred Part takes effect and until then to include only the Initial Part.

2. DEMISE

In consideration of the Rents and the Tenant's covenants reserved by and contained in this Lease the Landlord **DEMISES** to the Tenant with full title guarantee **FIRST ALL THAT** the Initial Property for the **TERM** of years specified in clause LR6 **AND** the Landlord **DEMISES** to the Tenant with full title guarantee **SECONDLY ALL THAT** the Deferred Part for the **TERM** of years commencing on the Second Commencement Date and ending at the same time as the foregoing demise of the Initial Property **TO HOLD** the same unto the Tenant

TOGETHER WITH (but to the exclusion of all other liberties, easements, rights or advantages) the rights set out in schedule 2 **EXCEPT AND RESERVING** to the Landlord and all other persons entitled thereto as stated in schedule 3 **SUBJECT** to the Encumbrances **YIELDING AND PAYING** therefor during the Term yearly and proportionately for any fraction of a year by way of rent:

2.1 the Basic Rent which shall be paid by equal quarterly payments in advance on the usual quarter days in every year the first of such payments (or a proportionate part) in respect of the period commencing on the Rent Commencement Date and ending on the day preceding the quarter day next following to be made on the Rent Commencement Date;

2.2 the Service Charge which shall be paid as stated in Part 1 schedule 5 as from the Term Commencement Date;

2.3 the Insurance Rent which shall be paid as stated in clause 6.2.1 as from the Term Commencement Date; and

2.4 any other sums (including VAT) which may become due from the Tenant to the Landlord under the provisions of this Lease which shall be payable as from the Term Commencement Date.

3. TENANT'S COVENANTS

The Tenant **COVENANTS** with the Landlord during the Term as follows:

3.1 Rent

3.1.1 to pay the Rents at the times and in the manner required by this Lease without any deduction and not to exercise or seek to exercise any right or claim to withhold any Rents or any right or claim to legal or equitable set-off;

3.1.2 to pay the Basic Rent by banker's standing order;

3.1.3 to pay the Additional Rent to the Landlord within 14 days of written demand provided that the Landlord shall not issue such demand any earlier than 1 July 2019;

3.1.4 without prejudice to any other rights or remedies of the Landlord if the whole or any part of the Rents shall remain unpaid seven days after becoming due (in the case of the Basic Rent whether formally demanded or not) or if the Landlord shall refuse to accept the tender of the whole or any part of the Rents because of a breach of covenant on the part of the Tenant then to pay Interest on the sum in question from the date on which it became due until the date of actual payment such Interest to be recoverable as rent;

3.2 Outgoings

- 3.2.1 to pay and discharge all Outgoings in respect of the Property (other than taxes imposed on the Landlord in respect of the Basic Rent or relating to any dealing with the reversion of this Lease);
- 3.2.2 to pay for all gas, water and electricity consumed on the Property and all charges for meters and all standing charges including any taxes levied thereon;

3.3 Service Charge

to pay to the Landlord the Service Charge and to observe and perform the obligations relating to the Service Charge as set out in schedule 5;

3.4 Repair

- 3.4.1 well and substantially to repair and clean the Property and to keep the Property in good and substantial repair and condition and from time to time when necessary to rebuild, reinstate or replace the same together with all improvements and additions to the Property and all Landlord's fixtures fittings and appurtenances of whatever nature affixed or fastened to the Property (damage by the Insured Risks excepted unless and to the extent that the policies of insurance in respect of the Insured Risks effected by the Landlord are vitiated or the policy monies are withheld by reason of any act, omission, neglect or default of the Tenant or any sub-tenant or their respective employees, agents, licensees or invitees);
- 3.4.2 to clean the inside and outside of all windows in the Property as often as shall be reasonably necessary;
- 3.4.3 to ensure that all areas comprised in the Property which are unbuilt upon are kept clean and tidy and that all grassed areas are kept mown and free from weeds and overgrowth;

3.5 Decoration

- 3.5.1 subject to clauses 3.5.3 and 3.5.4, as often as reasonably necessary during the Term and also in the last six months of the Term howsoever determined to decorate the inside of the Property with two coats of good quality paint and with paper for those parts normally papered or other suitable and appropriate materials of good quality in a workmanlike manner provided that the colour of the paint and the materials used in the last six months of the Term shall be subject to the prior written approval of the Landlord;
- 3.5.2 subject to clauses 3.5.3 and 3.5.4, as often as reasonably necessary during the Term and also in the last six months of the Term howsoever determined to decorate the exterior of the Property with three coats of good quality paint or other suitable and appropriate materials of good quality in a proper and workmanlike manner provided that the colour of the paint and the materials used in the last six months of the Term shall be subject to the prior written approval of the Landlord;
- 3.5.3 notwithstanding clauses 3.5.1 and 3.5.2, the Tenant shall not be obliged to redecorate in the last six months of the Term if redecoration has been carried out in the last two years of the Term;
- 3.5.4 the Tenant shall not be obliged to repaint the steel frame of the unit on the Property except in respect of such part or parts where the paint is in disrepair or is damaged;

3.6 Entry

- 3.6.1 subject always to clause 6.6, to permit the Landlord and its agents and all persons authorised by them with or without workmen, appliances and equipment at all reasonable times to enter upon the Property for any of the following purposes:

- (a) to ascertain whether or not the covenants and conditions of this Lease have been observed and performed;
- (b) to examine the state of repair and condition of the Property and (where necessary in order to do so) to open up floors and other parts of the Property;
- (c) to take a schedule of the Landlord's fixtures and fittings and any Plant in the Property;
- (d) to repair and maintain and execute any work upon the Property or any part thereof and Landlord's fixtures and fittings and any Plant therein (including where reasonable to do so the installation of additional or the extension of existing Plant therein) or to cleanse, empty, repair or renew any Conducting Media or for the provision of any of the Services;
- (e) to estimate the current value of the Property for insurance purposes;
- (f) for any other reasonable purpose (including measurement for rent review or relating to any pending or intended step under the 1954 Act) connected with the interest of the Landlord in the Property where there is no reasonable alternative to such entry;
- (g) to exercise any of the rights herein excepted and reserved;

without payment of compensation for any nuisance, annoyance, inconvenience or damage caused to the Tenant;

3.6.2 if any breach of covenant, defects, disrepair, removal of fixtures or unauthorised alterations or additions shall be found upon such inspection for which the Tenant is liable then upon notice by the Landlord to the Tenant to execute all repairs works, replacements or removals required within two months (or sooner if necessary) after service of such notice to the reasonable satisfaction of the Landlord or the Landlord's Surveyor and in case of default by the Tenant it shall be lawful for the Landlord with all necessary workmen, appliances and equipment to enter upon the Property and execute such repairs works replacements or removals and all expenses so incurred by the Landlord shall be repayable by the Tenant to the Landlord forthwith on demand with Interest from the date of expenditure until the date they are paid by the Tenant to the Landlord (such expenses and Interest to be recoverable as if they were rent in arrear);

3.7 Alterations

3.7.1 not to make any alterations or additions that substantially change the external appearance of the Property;

3.7.2 not to make any other alterations or additions to the Property except:

- (a) with the prior written consent of the Landlord which shall not be unreasonably withheld or delayed;
- (b) subject to such terms and conditions (including provision for reinstatement at the Tenant's cost at the expiration or earlier determination of the Term) as the Landlord may reasonably require;
- (c) in accordance with drawings and specifications previously submitted in triplicate to and approved in writing by the Landlord such approval not to be unreasonably withheld or delayed;

provided that the Tenant may without the Landlord's prior approval, subject to the remaining provisions of this clause 3.7, install alter and remove internal demountable partitioning and install alter and remove internal cabling and wiring (including any necessary drilling of holes that do not affect structural stability) within the buildings on the Property;

3.7.3 unless otherwise agreed by the Landlord in writing at least 6 months prior to the determination of the Term, at the expiration or earlier determination of the Term

if and to the extent required by the Landlord to reinstate the Property to the same condition as it was in prior to the alterations or at the grant of this Lease such reinstatement to be carried out under the supervision (such supervision to be at no cost to the Tenant) and to the reasonable satisfaction of the Landlord or the Landlord's Surveyor;

3.7.4 to procure that any alterations or additions to the Property permitted by the Landlord under this clause shall be carried out only by a contractor approved by the Landlord in writing provided that the Landlord may only withhold its consent if:

- (a) the Landlord believes acting reasonably that the competence of the proposed contractor may in the context of the proposed works adversely affect or invalidate any warranties, guarantees or insurance in respect of the Property; or
- (b) the proposed contractor is not of sufficient financial standing and/or does not have professional indemnity cover for an appropriate amount taking into account the nature of the proposed works and the potential impact upon the Property and the Building and upon the value of the Property;

provided that if the Landlord does not respond to a request for approval of a contractor within 10 Working Days of receipt of the request then the Landlord's approval shall be deemed to be given;

3.7.5 in relation to all works at the Property to which the Construction (Design and Management) Regulations 2015 (the Regulations) apply and which are undertaken by or on behalf of the Tenant or any person deriving title or authority from the Tenant:

- (a) prior to commencement of any such works to make and serve a declaration to the Health and Safety Executive to the effect that the Tenant shall act as the sole client in respect of such works for the purpose of the Regulations (and to supply a copy of the same to the Landlord);
- (b) to act as the sole client in respect of such works for the purposes of the Regulations and to comply with all the obligations imposed upon the client by the Regulations;
- (c) to procure that the Tenant's CDM principal designer (appointed from time to time under the Regulations) and the Tenant's contractors and designers shall comply in all respects with the Regulations;
- (d) on completion of such works to supply to the Landlord for retention by the Landlord a full and complete copy of the health and safety file for the works prepared in accordance with the Regulations and any code of practice or other guidance issued by any competent authority together with a royalty free irrevocable and non-exclusive copyright licence or licences to use and reproduce the same for any purposes relating to the Property or any part thereof (which licences shall carry the right to grant sub-licences and shall be transferable to third parties);

3.7.6 not to make any alterations or additions to the Property which have an adverse effect on the asset rating in any EPC commissioned in respect of the Property;

3.7.7 before giving consent under clause 3.7.6 the Landlord may require the Tenant to submit sufficient information to enable the Landlord to assess the impact of the proposed alterations on the Asset Rating of the Property;

3.7.8 on completion of any works of alteration and if required by the EPB Regulations

3.7.9 to obtain a valid EPC for the Property from an Energy Assessor approved by the Landlord (such approval not to be unreasonably withheld or delayed) and deliver a copy to the Landlord together with details of the reference number of such EPC (if not apparent from the copy);

3.7.10 if any alterations made by the Tenant invalidate a valid EPC for the Property or materially adversely affect any such EPC the Tenant will obtain a new EPC for the Property from an Energy Assessor approved by the Landlord (such approval not to be unreasonably withheld or delayed) and provide a copy to the Landlord;

3.7.11 the Tenant may without any consent of the Landlord:

- (a) install alter and remove internal non-structural partitions racking and other fittings and install alter and remove internal cabling and wiring (including any necessary drilling of holes that does not adversely affect structural stability);
- (b) make minor non-structural alterations to fitting out works previously approved by the Landlord (including without limitation operational machinery and equipment heating lighting racking sprinklers and mezzanine floors);

PROVIDED that the Tenant shall in any such case inform the Landlord at least ten Working Days before undertaking any such works and shall notify the Landlord of completion of the same within 5 Working Days afterwards;

3.8 **Alienation**

3.8.1 not to assign, or charge part only of the Property;

3.8.2 not to part with possession or share occupation of or allow any other person to occupy the whole or any part of the Property except by way of a permitted assignment or underletting and not to hold the whole or any part of the Property on trust for another;

3.8.3 not to charge the whole of the Property without the prior written consent of the Landlord which shall not be unreasonably withheld or delayed provided that if the Landlord does not respond to a request for approval of charging within 10 Working Days of receipt of the request then the Landlord's approval shall be deemed to be given;

3.8.4 not to assign the whole of the Property without the prior written consent of the Landlord which shall not be unreasonably withheld or delayed provided that the Landlord shall be entitled:

- (a) to withhold its consent in any of the circumstances set out in clause 3.8.6;
- (b) to impose all or any of the matters set out in clause 3.8.7 as a condition of its consent;

3.8.5 the provisos to clause 3.8.3 shall operate without prejudice to the right of the Landlord to withhold such consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where the imposition of such condition or conditions would be reasonable;

3.8.6 if any of the following circumstances which are specified for the purposes of section 19(1A) Landlord and Tenant Act 1927 apply either at the date when application for consent to assign is made to the Landlord or after that date but before the Landlord's consent is given the Landlord may withhold its consent and if after the Landlord's consent has been given but before the assignment has taken place any such circumstances apply the Landlord may revoke its consent whether its consent is expressly subject to a condition as referred to in clause 3.8.7 or not. The circumstances are:

- (a) where any sum due (and demanded in the case of Insurance Rent and Service Charge) from the Tenant under this Lease remains unpaid;
- (b) where there is a material outstanding breach of any of the Tenant's covenants in this Lease which is not the subject of a bona fide dispute;

- (c) where in the reasonable opinion of the Landlord the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants in this Lease;
- (d) where the proposed assignee is a member of the same group of companies (within the meaning of section 42 of the 1954 Act) as the person who is the Tenant at the time of the relevant application (or any former tenant who by virtue of section 11 of the 1995 Act has not been released) and in the Landlord's reasonable opinion the proposed assignee is less likely to be able to comply with the Tenant's covenants in this Lease than that person;
- (e) where the proposed assignee or any guarantor other than any guarantor under an Authorised Guarantee Agreement is a corporation registered or otherwise resident in a jurisdiction in which the order of a court obtained in England and Wales will not necessarily be enforced against the proposed assignee or guarantor without any consideration of the merits of the case;
- (f) where the proposed assignment will result in the Landlord ceasing to have the right to charge VAT on supplies made by it in respect of the Property or to recover VAT on supplies made to it in respect of the Property;

3.8.7 the Landlord may impose any or all of the following conditions which are specified for the purposes of section 19(1A) Landlord and Tenant Act 1927 on giving any consent to an assignment by the Tenant:

- (a) that the Tenant who is to assign this Lease enters into an Authorised Guarantee Agreement with the Landlord in the form set out in schedule 4 with such modifications as the Landlord reasonably requires;
- (b) that all sums due from the Tenant under this Lease are paid prior to completion of the proposed assignment;
- (c) that the proposed assignee covenants with the Landlord that as from the date of the deed of assignment to it of this Lease until it assigns this Lease with the Landlord's consent it will pay the rent and observe and perform all the Tenant's covenants and obligations in this Lease;
- (d) that if at any time before the proposed assignment any of the circumstances specified in clause 3.8.6 apply the Landlord may revoke the consent by written notice to the Tenant;
- (e) if reasonably required by the Landlord the execution and delivery to the Landlord prior to the proposed assignment of a valid rent deposit deed for such sum as the Landlord may reasonably determine (but not in any event exceeding six months' Basic Rent) and in such form as the Landlord may reasonably require together with the payment by way of cleared funds of the sum specified in the said rent deposit deed;
- (f) that if reasonably required by the Landlord such persons as the Landlord may approve (such approval not to be unreasonably withheld or delayed) act as guarantors for the proposed assignee who shall covenant by way of indemnity and guarantee (and if more than one jointly and severally) with the Landlord in such terms as the Landlord may reasonably require;
- (g) that if reasonably required by the Landlord any guarantor (other than a person who has entered into an Authorised Guarantee Agreement or who has guaranteed an Authorised Guarantee Agreement) whose guarantee is subsisting immediately before the proposed assignment enters into a guarantee with the Landlord in such form as the Landlord may reasonably require in respect of the obligations undertaken in the Authorised Guarantee Agreement referred to in clause 3.8.7(a) ;

3.8.8 not to underlet the Property;

- (a) without the prior written consent of the Landlord which shall not be unreasonably withheld or delayed;
- (b) unless the property to be underlet falls wholly within the Property and does not include any property or right over any property which is not demised by this Lease;
- (c) unless in the case of an underletting of part of the Property the underlease contains a lawful agreement excluding in relation to the tenancy to be created by the underlease the provisions of sections 24 to 28 (inclusive) of the 1954 Act; and
- (d) if in the case of an underletting of part of the Property more than two underlettings of part of the Property would subsist.

3.8.9 upon the grant of any underlease to obtain covenants on the part of the sub-tenant directly with the Landlord in such form as the Landlord shall reasonably require that the sub-tenant will:

- (a) not assign, underlet or charge part only of the underlet premises;
- (b) not underlet the whole of the underlet premises nor part with or share possession or occupation of the whole or any part thereof nor grant to third parties rights over them otherwise than by a permitted assignment of the whole of the same;
- (c) not assign or charge the whole of the underlet premises without obtaining the previous consent of the Landlord under this Lease which shall not be unreasonably withheld or delayed;
- (d) observe and perform in respect of the underlet premises the Tenant's covenants and obligations in this Lease (except the covenant to pay rent);

3.8.10 upon the grant of any underlease:

- (a) where necessary to include provisions for the revision of the rent reserved by the underlease in an upward only direction to correspond in time and effect with the provisions for the review of the Basic Rent contained in this Lease;
- (b) not to grant give reserve or take a premium or fine;
- (c) to reserve the open market rent of the underlet premises as at the date of the underlease PROVIDED always that such inducements may be granted as are in line with those prevailing in the market;
- (d) to include provisions not to underlet the whole or any part of the underlet premises;
- (e) to include such covenants on the part of the sub-tenant as shall secure the due performance and observance of the covenants on the part of the Tenant contained in this Lease;
- (f) to include a condition for re-entry on breach of any covenant by the sub-tenant;
- (g) to procure that such persons as the Landlord may reasonably require act as guarantors for the sub-tenant who shall covenant by way of indemnity and guarantee (and if more than one jointly and severally) with the Landlord to guarantee the observance and performance by the sub-tenant of its covenants with the Landlord mentioned in clause 3.8.9;
- (h) to obtain the written approval of the Landlord to the form of the underlease such approval not to be unreasonably withheld or delayed;

3.8.11 notwithstanding clause 3.8.2 and subject to the Tenant giving prior written notice to the Landlord of the identity of the company and of the part of the Property affected (if less than the whole) the Tenant may without the Landlord's

consent share occupation of the Property with a company within the same group of companies (within the meaning of section 42 of the 1954 Act) as the Tenant:

- (a) for so long only as such company shall remain within such group;
- (b) on terms whereby such company is not given exclusive occupation of the Property or any part thereof and no relationship of landlord and tenant is created; and
- (c) subject to the Tenant promptly notifying the Landlord in writing of the date upon which such sharing of occupation ends;

3.8.12 notwithstanding clause 3.8.2 and subject to the Tenant giving prior written notice to the Landlord of the identity of each such Customer (if more than one) and of the part of the Property affected (if less than the whole) the Tenant may without the Landlord's consent share occupation of the Property with a Customer of the Tenant:

- (a) for so long as that Customer remains a Customer of the Tenant;
- (b) on terms whereby such Customer is not given exclusive occupation of the Property or any part thereof and no relationship of landlord and tenant is created and;
- (c) subject to the Tenant promptly notifying the Landlord in writing of the date upon which such sharing of occupation ends;

3.8.13 notwithstanding clause 3.8.2 and subject to the Tenant giving prior written notice to the Landlord of the identity of each such Logistics Provider (if more than one) and of the part of the Property affected (if less than the whole) the Tenant may without the Landlord's consent share occupation of the Property with a Logistics Provider to the Tenant or its business:

- (a) for so long as that Logistics Provider is a Logistics Provider of the Tenant;
- (b) on terms whereby such Logistics Provider is not given exclusive occupation of the Property or any part thereof and no relationship of landlord and tenant is created and;
- (c) subject to the Tenant promptly notifying the Landlord in writing of the date upon which such sharing of occupation ends;

3.9 Enforcement of underleases

3.9.1 not without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) to vary the terms or waive the benefit of any covenant on the part of a sub-tenant or any condition contained in an underlease of the Property;

3.9.2 diligently to enforce the covenants on the part of the sub-tenant and the conditions contained in an underlease of the Property and (if reasonably so required by the Landlord) to exercise by way of enforcement the powers of re-entry contained in such underlease;

3.9.3 not without the consent of the Landlord to accept any sum or payment in kind by way of commutation of the rent payable by a sub-tenant of the Property;

3.9.4 not to accept the payment of rent from a sub-tenant of the Property otherwise than by regular quarterly (or more frequent) payments in advance;

3.9.5 duly and punctually to exercise all rights to review the rent reserved by an underlease of the Property and not to agree with a sub-tenant a reviewed rent without the approval of the Landlord (such approval not to be unreasonably withheld or delayed);

3.9.6 not to permit an assignment of any underlease without obtaining from the person who is assigning the underlease an Authorised Guarantee Agreement with the Landlord in the form set out in this lease at schedule 4.

3.10 **Registration/supply of information**

- 3.10.1 if the Lease should be registered at the Land Registry under the 2002 Act:
- (a) to use its best endeavours to procure that the Tenant is registered at the Land Registry as proprietor of the Lease as soon as reasonably possible;
 - (b) to use its best endeavours to procure that all rights granted or reserved by the Lease are properly noted against the affected titles; and
 - (c) to deliver to the Landlord, within ten days of registration, official copies of the registered title evidencing that the Tenant is the registered proprietor of the Lease;
- 3.10.2 within one month after the execution of any disposition of this Lease or the Property whether by assignment, charge, transfer or underlease or assignment or surrender of any underlease or upon any transmission by reason of a death or otherwise affecting the Property to produce to and leave with the solicitors for the time being of the Landlord:
- (a) a certified copy of the deed instrument or other document of disposition and on each occasion to pay to such solicitors a reasonable registration fee (not being less than £50 plus VAT) and also any registration fees payable to the Superior Landlord;
 - (b) a copy of any EPC and Recommendation Report;
- 3.10.3 to supply the Landlord with any details required by the Landlord pursuant to section 40 of the 1954 Act and to supply the Landlord with full details of any notices given pursuant to section 25 of the 1954 Act by the Tenant and any sub-tenant and full details of any notices received by the Tenant from any sub-tenant pursuant to section 26 or section 27 of the 1954 Act;

3.11 **User**

- 3.11.1 not to use the Property otherwise than for the Permitted Use;
- 3.11.2 to observe and perform or cause to be observed and performed any rules and regulations from time to time reasonably made by the Landlord in connection with the conduct management or security of the Estate;

3.12 **Restrictions affecting use**

not to:

- 3.12.1 erect or install in the Property any engine, furnace or machinery whether driven by steam, oil or electric energy or otherwise which causes noise, fumes or vibration which can be heard, smelled or felt outside the Property;
- 3.12.2 use the Property for any noxious, noisy or offensive trade or business nor for any illegal or immoral act or purpose and not to do in or upon the Property anything which may be or grow to be a legal nuisance or disturbance or cause damage to the Landlord or to the owners, tenants and occupiers of any adjoining and neighbouring property;
- 3.12.3 hold any sales by auction on the Property or use or permit the same to be used for residential purposes or permit livestock of any kind to be kept on the Property;
- 3.12.4 hold in or on the Property any exhibition, public meeting or public entertainment or permit any vocal or instrumental music in the Property so that it can be heard outside the Property;
- 3.12.5 do or permit or suffer or bring in or upon the Property anything which in the Landlord's reasonable opinion may impose on the floors, ceilings or walls of the Property any excessive weight or strain and not to overload any lifts, electrical installations or Conducting Media in the Property;

- 3.12.6 place in any Common Parts any goods, trade empties, rubbish or other obstruction;
- 3.12.7 place leave or install any articles, merchandise, goods or other things in front of or elsewhere outside the Property;
- 3.12.8 permit the drains to be obstructed by oil, grease or other deleterious matter and in the event of any such obstruction forthwith to make good any damage to the satisfaction of the Landlord's Surveyor;
- 3.12.9 use any part of the accessways or service areas on the Estate for the parking of vehicles otherwise than during the course of loading and unloading nor to carry out any repairs or maintenance to vehicles on any such accessways or service areas;
- 3.12.10 load or unload vehicles except in the service areas on the Estate provided for such purpose and in the course of such loading or unloading to comply with any regulations of the Landlord and the requirements of the local highway authority and not to cause any avoidable obstruction;

3.13 **Advertisements and signs**

3.13.1 not to place or display on the exterior of the Property or on the windows or inside the Property so as to be visible from the exterior of the Property any name, writing, notice, sign, illuminated sign, display of lights, placard, poster, sticker or advertisement other than:

- (a) a suitable sign of a size and kind first approved by the Landlord or the Landlord's Surveyor showing the Tenant's name and trade such approval not to be unreasonably withheld or delayed;
- (b) such notices as the Landlord may approve such approval not to be unreasonably withheld or delayed;

Provided That for so long as the Tenant under this lease is Conexus Limited (company number 03616118) the Landlord's approval is not required for any signage installed pursuant to this clause which is in line with the Tenant's nationally adopted signage policy from time to time;

3.13.2 if any name, writing, notice, sign, placard, poster, sticker or advertisement shall be placed or displayed in breach of these provisions to permit the Landlord to enter the Property and remove such name, writing, notice, sign, placard, poster, sticker or advertisement and to pay to the Landlord on demand the expense of so doing;

3.14 **Acts of Parliament**

3.14.1 at all times during the Term at the Tenant's expense to observe and comply with and do or execute or cause to be done or executed all such works and do all such things as under or by virtue of any Act of Parliament are or shall be directed or necessary to be observed complied with done or executed upon or in respect of the Property or any part thereof or in respect of the user thereof or the employment therein of any person whether by the owner or any occupier;

3.14.2 not to do or permit to be done any act or thing by reason of which the Landlord may under any Act of Parliament incur or have imposed upon it or become liable to pay any penalty, damages, compensation, costs, charges or expenses;

3.15 **Planning/environmental matters**

3.15.1 at all times to comply with the provisions and requirements of the Planning Acts and of Environmental Law and not at any time to do or omit anything which would result in a contravention of them;

3.15.2 not without the consent in writing of the Landlord (such consent not to be unreasonably withheld or delayed) to make any application under the Planning Acts to any local planning authority for permission to develop (including change of use of) the Property provided that the Tenant shall not be required to

reimburse any professional fees or other costs which the Landlord incurs in considering any such application for its consent under this subclause and provided further that if the Landlord does not respond to a request for approval under this subclause within 10 Working Days of receipt of the request then the Landlord's approval shall be deemed to be given;

3.15.3 forthwith to give to the Landlord full particulars in writing of the grant of any planning permission in respect of the Property and not to implement any planning permission if the Landlord shall make reasonable objection to any of the conditions subject to which it has been granted;

3.15.4 to be responsible for and indemnify the Landlord against any liability for contamination and/or pollution of the environment or damage to property or harm to human health caused to the Property (**Contamination**), or any substance on it caused or arising as result of the acts or omissions of the Tenant, any undertenant or occupier of the Property or their occupation or use of the Property;

3.16 Notices

within seven days of receipt of notice of the same to give full particulars to the Landlord of any notice, order, requisition, direction or any other thing whatsoever given made or issued under or by virtue of any statute or regulation relating to planning or otherwise during the Term by a competent authority affecting the Property or any part thereof and also without delay to take all reasonable steps to comply with any such notice, order, requisition, direction or other thing and also to make or join in making such objections or representations in respect thereof as the Landlord may reasonably require or deem expedient;

3.17 General indemnity

3.17.1 to indemnify the Landlord against all losses, costs, expenses, damages, claims, proceedings, demands and liabilities incurred or sustained by the Landlord as a consequence (whether directly or indirectly) of any breach, non-observance or non-performance of any of the Tenant's covenants herein or of any act, neglect or default of the Tenant its sub-tenants or their respective employees, agents, licensees or invitees;

3.17.2 the provisions of clause 3.17.1 and all other provisions in this Lease whereby the Tenant or the Guarantor covenants to indemnify the Landlord shall apply subject to:

- (a) the Landlord using its reasonable endeavours to mitigate its loss;
- (b) before claiming the Landlord shall serve notice on the Tenant or the Guarantor (as the case may be) specifying the breach in question and giving a reasonable period in which to remedy it;
- (c) no third party claims as to which the Landlord is seeking an indemnity shall be settled without the prior written consent of the Tenant or Guarantor (as the case may be) such consent not to be unreasonably withheld or delayed;
- (d) the Tenant or the Guarantor (as the case may be) shall not be liable to indemnify the Landlord in respect of any matter arising as a result of the act, neglect or default of the Landlord or the Superior Landlord;

3.18 Costs

to pay to the Landlord within seven days of written demand the reasonable costs, expenses, losses and liabilities properly incurred by the Landlord as a result of or in connection with:

3.18.1 any breach by the Tenant of its covenants or obligations in this Lease and/or the enforcement or attempted enforcement of those covenants and obligations by the Landlord;

3.18.2 the preparation and service of a notice under section 146 Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or

147 of that Act notwithstanding in any such case that forfeiture is avoided otherwise than by relief granted by the Court;

3.18.3 any application for any consent or approval made under this Lease whether or not such consent or approval shall be granted or lawfully refused or the application is withdrawn;

3.18.4 the preparation, negotiation and service of all schedules relating to wants of repair to the Property and whether served during or after the expiration or sooner determination of the Term (but relating in all cases to such wants of repair which accrued not later than the expiration or sooner determination of the Term) and agreeing such schedules with the Tenant;

3.19 **Obstruction**

3.19.1 not to stop up, darken or obstruct any window or lights belonging to the Property or any other buildings belonging to the Landlord nor permit any new window, light, opening, doorway, path, passage, drain or other restriction, encroachment or easement to be made or acquired over against out of or upon the Property;

3.19.2 where any such window, light, opening, doorway, path, passage, drain or other restriction, encroachment or easement shall be made or attempted to be made or acquired forthwith to give notice of the circumstances to the Landlord and at the request and cost of the Landlord to adopt such course as may be reasonably required or deemed proper by the Landlord for preventing any such restriction or encroachment or the acquisition of any such easement;

3.19.3 not to assert any claim to light or air over any adjacent or neighbouring land or building;

3.19.4 not to obstruct any means of access to the Property or the Estate;

3.20 **Telecommunications**

3.20.1 not to erect or permit the erection of any pole or mast or any television or radio aerials on the exterior of any part of the Property or in or upon the Property without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed);

3.20.2 not to install within the Property or anywhere else in or upon the Property any telecommunications apparatus (within the meaning specified in Schedule 2 to the Telecommunications Act 1984) of a kind in respect of which the Landlord's rights to require removal of the apparatus is restricted by virtue of paragraph 21 of the Telecommunications Code (as set out in Schedule 2 to the Telecommunications Act 1984);

3.21 **To pay VAT**

Where by virtue of any of the provisions of this Lease the Tenant is required to pay repay or reimburse to the Landlord or any person or persons any rent, premium, cost, fee, charge, insurance premium, expense or other sum or amount whatsoever in respect of the supply of any goods and/or services by the Landlord or any other person or persons to the Tenant in accordance with the provisions of this Lease to pay in addition by way of additional rent or (as the case may be) to keep the Landlord indemnified against:

3.21.1 the amount of any VAT as and when charged in respect of such supply to the Tenant;

3.21.2 the amount of VAT as and when charged on any other person (or charged to the Landlord in the case of supplies which the Landlord is deemed to make itself) in respect of supplies the cost of which is included in the calculation of the sums which the Tenant is required to pay repay or reimburse to the Landlord save to the extent that such VAT is recoverable by the Landlord;

and for the avoidance of doubt the Landlord shall not be under a duty to exercise or not exercise any option or right conferred on it by the legislation relating to VAT so as to reduce or avoid any liability to VAT as referred to above;

3.22 Notice boards

- 3.22.1 to allow the Landlord or its agents to enter upon the Property at any time:
- (a) during the six months immediately preceding the determination of the Term to fix upon any part of the Property a notice board for reletting the Property;
 - (b) during the Term to fix on any part of the Property a notice board for the sale of the Landlord's reversionary interest;
- and not to remove or obscure any such notice board;
- 3.22.2 subject always to clause 6.6 to permit all persons authorised by the Landlord or its agents to view the Property on prior appointment at reasonable hours without interruption in connection with any such reletting or sale;

3.23 Yield up

at the expiration or earlier determination of the Term or at such later time as the Landlord recovers possession of the Property from the Tenant:

- 3.23.1 quietly to yield up the Property (together with all additions and improvements to the Property and all fixtures which during the Term may be fixed or fastened to or upon the Property other than tenant's fixtures removable by the Tenant) decorated, repaired, cleaned and kept in accordance with the Tenant's covenants contained in this Lease;
- 3.23.2 if so requested by the Landlord to remove from the Property all the Tenant's belongings that is to say trade fixtures and fittings and all notices, notice boards and signs bearing the name of or otherwise relating to the Tenant (including in this context any persons deriving title to the Property under the Tenant) or its business and to make good to the satisfaction of the Landlord all damage to the Property resulting from such removal;
- 3.23.3 at the expiration or earlier determination of the Term:
- (a) to execute such document as the Landlord shall reasonably require in order to cancel any entry or title relating to the Lease at the Land Registry;
 - (b) a copy of any EPC and Recommendation Report DEC and Advisory Report;

3.24 New Guarantor

- 3.24.1 to notify the Landlord within 28 days of any of the following events:
- (a) if any Guarantor being an individual (or if individuals any one of them) shall be made bankrupt or shall make any assignment for the benefit of or enter into any arrangement with its creditors either by composition or otherwise or suffer execution to be levied on its goods or have a receiver appointed under the Mental Health Act 1983;
 - (b) if any Guarantor being an individual (or if individuals any one of them) shall die;
 - (c) if any Guarantor being a body corporate (or if bodies corporate any one of them) has a winding up order made in respect of it other than a members' voluntary winding up of a solvent company for the purposes of amalgamation or reconstruction approved by the Landlord (such approval not to be unreasonably withheld or delayed) or has a receiver, administrator or an administrative receiver appointed of it or any of its assets or suffers execution to be levied on its goods or is dissolved or struck off the Register of Companies or (being a body corporate incorporated outside England and Wales) is dissolved or ceases to exist under the laws of its country or state of incorporation;

and if the Landlord reasonably so requires then at the Tenant's expense within 28 days of such requirement to procure that some other person or persons or body or bodies corporate reasonably acceptable to the Landlord shall execute a guarantee in the terms of clause 8 with such amendments as the Landlord shall reasonably require in the circumstances;

3.24.2 the expression "Guarantor" in the immediately preceding subclause shall not include any person who has entered into an Authorised Guarantee Agreement or who has guaranteed an Authorised Guarantee Agreement provided that the Tenant shall notify the Landlord within 28 days of becoming aware of any of the events set out in clauses 3.24.1 (a) – (c) occurring in respect of any such guarantor;

3.25 Encumbrances

to observe and perform the matters contained in the Encumbrances so far as they relate to affect and fall to be performed upon the Property;

3.26 Energy Performance Certificates

3.26.1 to allow the Landlord and/or any person authorised by it to have such access to the Property and to all documentation, data and information in the Tenant's possession or under its control reasonably required in order to:

- (a) prepare an EPC or Recommendation Report for the Property;
- (b) undertake an air-conditioning inspection; and
- (c) comply with any duty imposed upon the Landlord under the EPB Regulations and the Tenant will co-operate with the Landlord and any persons so authorised so far as is reasonably necessary to enable them to carry out such functions;

3.26.2 to use reasonable endeavours to procure that the terms of appointment of any Energy Assessor engaged by it to issue an EPC and/or Recommendation Report for the Property provide that:

- (a) the Energy Assessor must carry out the energy assessment for the Property with reasonable care and skill;
- (b) the matters referred to in clauses 3.26.1 and 3.26.2 are expressed to be in addition to the statutory duty of care contained in Regulation 27 of the EPB Regulations; and
- (c) the duty referred to in clause 3.26.1 is owed to the Landlord;

3.26.3 not to commission an EPC for the Property without the Landlord's consent (such consent not to be unreasonably withheld). If a valid EPC for the Property is held by the Landlord at the written request of the Tenant the Landlord shall provide the Tenant with a copy of any EPC held by the Landlord free of charge;

3.26.4 if the Landlord confirms that it does not hold a valid EPC for the Property the Tenant may obtain a new EPC for the Property at its own cost;

3.26.5 if an EPC obtained by the Tenant invalidates or materially adversely affects a valid EPC for the Property held by the Landlord of which the Tenant has notice, the Tenant will repay to the Landlord the reasonable cost of procuring a replacement EPC;

3.26.6 either party will provide the other with a copy of any EPC obtained pursuant to clause 3.26 together with details of the reference number (if not apparent from the copy) within seven days of the later of its receipt of the copy EPC and payment of any costs due under clause 3.26.

3.27 Management Company

3.27.1 to act reasonably in relation to any subsequent formation of a management company by the Landlord to undertake all or any of its obligations in relation to the Estate; and

3.27.2 if the Landlord forms such management company it shall do so free of any expense to the Tenant and the Tenant will if requested to do so by the Landlord:

- (a) free of expense to the Tenant apply to such management company in accordance with its articles of association to become a member of such management company;
- (b) not withdraw from membership of the management company or dispose of any of the rights attaching to the membership of the management company while it remains the Tenant;

3.28 **Section 106 Agreement**

to comply with clause 15.1.2, paragraph 4.2 of schedule 1 and paragraph 3 of schedule 2 of the Section 106 Agreement in so far as the obligations relate to the Property provided that the Tenant shall have no liability or obligation to make any payments to the local authority under nor contribute financially towards any matter within the section 106 agreement;

3.29 **Deferred Part**

3.29.1 not until such time as the demise of the Deferred Part takes effect to:

- (a) enter into all or any part of the Deferred Part except in the case of emergency irrespective of whether or not there is any physical barrier separating the Deferred Part from the Initial Part;
- (b) to place, store or in any other way utilise or use all or any part of the Deferred Part;

3.29.2 in the event of any damage to or destruction of all or any part of the Deferred Part prior to the same forming part of the Property which arises directly or indirectly as a result of the Tenant's or any third party at the Property breach of the foregoing covenant to indemnify the Landlord for all or any costs, losses, expenses or liabilities which the Landlord may incur or suffer as a result except in so far as such damage or destruction is caused by an Insured Risk save to the extent that the insurance policy shall have been vitiated by any act, neglect, default or omission of the Tenant or any sub-tenant or their respective employees, agents, licensees or invitees;

4. **PROVISOS**

The parties **AGREE** to the following provisos:

4.1 **Event of Incapacity**

for the purposes of this Lease an Event of Incapacity means (by reference to the Insolvency Act 1986 (the **1986 Act**) and the Insolvent Partnerships Order 1994 (the **1994 Order**):

4.1.1 in relation to a company that:

- (a) it is unable or admits its inability to pay its debts when they become due (whether within the circumstances specified in section 123 of the 1986 Act or otherwise); or
- (b) it summons a meeting of its creditors or a proposal is made for a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debts; or
- (c) an application for an administration order is made or notice of appointment of an administrator is filed at court; or
- (d) a receiver or manager (including an administrative receiver) is appointed whether under Part III of the 1986 Act or under the Law of Property Act 1925 or otherwise; or

- (e) a resolution or determination to wind-up is passed or made or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act (save that in the case of a voluntary winding-up solely for the purpose of amalgamation or reconstruction if the Tenant can first demonstrate to the satisfaction of the Landlord that the covenant of the company will be as strong after as it was before the reconstruction or amalgamation then provided that such turns out to be the case no Event of Incapacity will have taken place); or
- (f) a proposal is made for a scheme of arrangement under Part 26 Companies Act 2006; or
- (g) it is the subject of a successful notice issued to strike-off the Register at Companies House;

4.1.2 in relation to an individual that:

- (a) an application is made for an interim order or a proposal is made for a voluntary arrangement under Part VIII of the 1986 Act; or
- (b) a bankruptcy petition is presented to the court or the circumstances of the individual are such that a bankruptcy petition could be presented under Part IX of the 1986 Act or the individual applies for an adjudication that he be made bankrupt; or
- (c) the individual enters into a deed of arrangement or composition with his creditors; or
- (d) a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his affairs; or
- (e) the individual dies;

4.1.3 in relation to a partnership that:

- (a) it enters into a voluntary arrangement under Part II of the 1994 Order; or
- (b) an application for an administration order is made or notice of appointment of an administrator is filed at court; or
- (c) a petition is presented for winding-up as an unregistered company under Parts IV or V of the 1994 Order;

4.2 **Re-entry**

the Landlord may re-enter the Property (or any part in the name of the whole) at any time in any of the following circumstances:

- 4.2.1 the whole or any part of the Rents shall be unpaid for 21 days after becoming due (whether or not formally demanded); or
- 4.2.2 there is a breach by the Tenant or the Guarantor of any of the provisions of this Lease; or
- 4.2.3 either the Tenant or the Guarantor suffers an Event of Incapacity; or
- 4.2.4 the Tenant suffers execution to be levied on its goods;

and upon such entry the Term shall absolutely cease and determine but without prejudice to any right of action of the Landlord in respect of any antecedent breach of any of the covenants herein contained PROVIDED that the expression "Guarantor" in this subclause shall not include a person who has entered into an Authorised Guarantee Agreement or who has guaranteed an Authorised Guarantee Agreement;

4.3 **Disputes**

if any dispute or disagreement shall at any time arise between the Tenant and the tenants and occupiers of the Estate or any adjoining or contiguous premises belonging to the Landlord relating to the Conducting Media serving the Property or any adjoining or

contiguous premises or any easements or privileges whatsoever affecting or relating to the Property or any adjoining or contiguous premises the dispute or disagreement shall from time to time be settled and determined by the Landlord or the Landlord's Surveyor to which determination the Tenant shall from time to time submit;

4.4 Exclusion of liability

4.4.1 the Landlord shall not be liable for:

- (a) any loss, damage, nuisance, annoyance or inconvenience which may at any time during the Term be caused or be done to the Tenant, its employees or visitors or to the Property or to any goods or property of the Tenant, its employees or visitors in or about the Property or the Estate by reason of any act, neglect or default of any other lessee or occupier of the Estate or by reason of any permanent, temporary or partial breakdown, failure, malfunction or suspension in any of the Services or any Plant connected with the same or forming part of the Common Parts or for any interruption in the Services caused by strikes, lockouts, labour disputes, shortages of materials or other matters beyond the Landlord's control or necessary repair, maintenance or overhaul of any installations or apparatus provided that the Landlord shall use its reasonable endeavours to procure the remedying of any such breakdown, failure, malfunction, suspension or interruption in the supply of the Services as soon as reasonably practicable;
- (b) any breach of any obligation on its part for repair and maintenance of any part of the Property or the Estate which can be discovered only by entry upon the relevant premises until it shall have written notice of such repairs being necessary and then subject to its being able to obtain any necessary consent of any local or other authority and to the availability of labour and materials;

4.4.2 the Landlord shall not be liable in respect of any breach of a landlord covenant of this Lease occurring at a time when the Landlord is not entitled to the reversion immediately expectant upon the determination of the Term;

4.5 Compensation

except where any statutory provision prohibits the Tenant's right to compensation being reduced or excluded by agreement the Tenant shall not be entitled on quitting the Property to claim from the Landlord any compensation under section 37 of the 1954 Act or under any corresponding provision in any statute amending or replacing the same;

4.6 Tenant's effects

if at such time as the Tenant has vacated the Property after the determination of the Term any property of the Tenant shall remain in or on the Property and the Tenant shall fail to remove the same within 14 days after being requested by the Landlord so to do by a notice to that effect then the Landlord may as the agent of the Tenant sell such property and shall then hold the proceeds of sale after deducting the costs and expenses of removal, storage and sale reasonably and properly incurred by it to the order of the Tenant provided that the Tenant hereby indemnifies the Landlord against any liability incurred by it to any third party whose property shall have been sold by the Landlord in the bona fide mistaken belief (which shall be presumed unless the contrary be proved) that such property belonged to the Tenant and was liable to be dealt with as such pursuant to this clause 4.6;

4.7 Notices

4.7.1 any notice given under this Lease shall be in writing signed by, or on behalf of, the person giving the notice. Any notice shall be delivered by hand, or by commercial courier, or by first class post or prepaid recorded delivery first class post or other next Working Day delivery service to a party at its registered office address for the time being if the party is a company or a limited liability partnership or in the case of the Guarantor and in any other case, to a party's

last known address and in the case of the Landlord (but only while the Landlord is Mountpark Logistics EU 2017 23 S.A.R.L. Luxembourg company number B218933 party to this Lease) a copy shall also be sent to Mountpark Properties Limited (English company number 07739703) at its registered office marked for the attention of Philip O'Callaghan;

4.7.2 in the absence of evidence of earlier receipt and subject to clause 4.7.3, a notice served in accordance with clause 4.7.1 shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery to the address referred to in clause 4.7.1; or
- (b) if delivered by commercial courier, on the date and at the time (if given) that the courier's delivery receipt is signed; or
- (c) if delivered by first class post or prepaid recorded delivery first class post or other next Working Day delivery service, at 9.00 a.m. on the second Working Day after posting;

4.7.3 if deemed receipt under clause 4.7.2 occurs on a day which is not a Working Day or after 5.00 p.m. on a Working Day, the notice shall be deemed to have been received at 9.00 a.m. on the next Working Day;

4.7.4 for the avoidance of doubt, notice given under this Lease shall not be validly served if sent by fax or e-mail;

4.7.5 if the Tenant comprises more than one person, the service of any notice on any one of those persons shall constitute good service on all of them;

4.8 **Waiver**

the demand for and/or acceptance of rent by the Landlord or its agents shall not constitute a waiver of any breach of the covenants on the part of the Tenant herein contained or of the Landlord's remedies for the non-performance or non-observance thereof;

4.9 **No warranty**

nothing herein contained or implied shall be taken to be a warranty or representation as to the purpose for which the Property may lawfully be used;

4.10 **Governing law; Jurisdiction; Service of Process**

4.10.1 this Lease is and shall be governed by and construed in all respects in accordance with the laws of England;

4.10.2 the parties irrevocably submit to the jurisdiction of the English courts;

4.10.3 the Guarantor irrevocably authorises and appoints the Tenant to accept service of all legal process arising out of or connected with this Lease and service on the Tenant shall be treated as service on the Guarantor provided that a copy of the notice shall also have been sent to the Guarantor at its registered office set out at the beginning of this Lease;

4.11 **Third parties**

save as expressly provided, none of the provisions of this Lease are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Lease;

4.12 **Declaration**

this Lease does not operate to create or convey any easements rights or privileges over any adjacent or neighbouring land or buildings other than those expressly set out in schedule 2;

4.13 **Party walls**

any walls dividing the Property from any adjoining buildings or premises shall be deemed to be party walls and shall be repaired and maintained accordingly;

4.14 **Superior Interests:**

4.14.1 the powers, rights, matters and discretions granted and reserved to the Landlord under this Lease shall also be granted and reserved to or exercisable by any Superior Landlord and its employees to the extent required under the Superior Lease;

4.14.2 if the Tenant shall do or propose to do any matter or thing for which the consent of the Superior Landlord shall be required the Tenant shall bear and indemnify the Landlord against the reasonable cost of obtaining such consent together with all incidental surveyors' professional or other fees and disbursements;

4.14.3 the Landlord shall be entitled to withhold the Landlord's consent in any matter where the Superior Landlord's consent or the consent of any mortgagee is required and the Landlord is unable to obtain it or them.

4.15 **Deferred Part**

If required by the Landlord after the demise of the Deferred Part has become effective, the Tenant and the Guarantor shall execute any additional documentation as may be reasonably required by the Landlord to procure and ensure that the provisions of this Lease including the Guarantor's covenants apply to the Deferred Part and the Initial Property until the end of the Term.

5. **LANDLORD'S COVENANTS**

The Landlord COVENANTS with the Tenant that the Tenant paying the Rents and performing the Tenant's covenants reserved by and contained in this Lease may lawfully and peaceably enjoy the Property throughout the Term without any lawful suit eviction or interruption by the Landlord or by any person lawfully claiming through under or in trust for the Landlord.

6. **INSURANCE**

6.1 **Landlord's obligations**

The Landlord COVENANTS with the Tenant as follows:

6.1.1 save to the extent that any insurance shall be vitiated by any act, neglect, default or omission of the Tenant or any sub-tenant or their respective employees, agents, licensees or invitees to insure or cause to be insured:

- (a) the Estate against loss or damage by the Insured Risks and such other risks against which the Landlord may from time to time reasonably deem appropriate to insure in a sum equal to the likely cost of completely rebuilding, reinstating and replacing the same (taking into account estimated increases in building costs) including the cost of demolition, shoring, removal of debris and other expenses and a proper provision for professional fees in respect of rebuilding and reinstating together in each case with VAT;
- (b) the loss of Basic Rent from time to time (having regard to any review of the Basic Rent which may become due under this Lease) for three years;
- (c) the public liability of the Landlord arising out of or in connection with any matter involving or relating to the Estate;

6.1.2 as soon as reasonably practicable after any material change occurring to the insurance and at other times at the request of the Tenant and free of expense to the Tenant to produce evidence of the terms and conditions of every insurance policy effected by the Landlord pursuant to this Lease and whether or not

requested by the Tenant evidence each year of the payment of the current premium;

6.1.3 when lawful to do so to expend all monies received (other than in respect of rent) by virtue of any such insurance towards reinstating so far as practicable the Property and (as the case may be) the Common Parts after the destruction thereof or any damage thereto;

6.1.4 to use the Landlord's reasonable endeavours to procure that the names of the Tenant and all lawful under tenants of the Property are noted by the insurers whether specifically or generically.

6.2 **Tenant's obligations**

The Tenant **COVENANTS** with the Landlord as follows:

6.2.1 to pay to the Landlord on demand:

- (a) a fair and proper proportion attributable to the Property (as determined by the Landlord's Surveyor) of the premiums from time to time paid by the Landlord for insuring the Estate against loss or damage by the Insured Risks and insuring the public liability of the Landlord in accordance with clauses 6.1.1(a) and 6.1.1(c), such premiums to be reasonable and competitive in the London insurance market;
- (b) all premiums from time to time paid by the Landlord for insuring the loss of the Basic Rent under clause 6.1.1(b);
- (c) a fair and proper proportion attributable to the Property (as determined by the Landlord's Surveyor) of any excess deducted by insurers in respect of any claim relating to the Estate;
- (d) a fair and proper proportion attributable to the Property (as determined by the Landlord's Surveyor) of the cost of any professional valuation of the Estate which may at any time be required by the Landlord in connection with the insurance of the Estate;

6.2.2 not to effect any separate insurance of the Property against loss or damage by any of the Insured Risks but if the Tenant shall become entitled to the benefit of any insurance on the Property then the Tenant shall apply all monies received by virtue of such insurance in making good the loss or damage in respect of which the same shall have been received;

6.2.3 not to carry on upon the Property any trade or business or occupation in any manner nor do any other thing which in the reasonable opinion of the Landlord may make void or voidable any policy for the insurance of the Property or any adjoining or neighbouring property on the Estate against any risk for the time being required by the Landlord to be covered or render any increased or extra premium to be payable for such insurance (without in the latter event first having paid every such increase or extra premium) and to pay to the Landlord on demand any increased premium payable in respect of the Property or any adjoining or neighbouring premises on the Estate arising by reason of the Property being unoccupied;

6.2.4 to comply with the requirements of the Landlord's insurers in respect of the Property;

6.2.5 in the event of the Property or any part thereof being destroyed or damaged by any peril whatsoever to give notice thereof to the Landlord as soon as such destruction or damage shall come to the notice of the Tenant stating whether and to what extent such destruction or damage was brought about directly or indirectly by any of the Insured Risks;

6.2.6 in the event of the Estate or the Property or any part thereof or any adjoining or neighbouring property of the Landlord or any part thereof being destroyed or damaged by any of the Insured Risks and the insurance money under any such insurance against the same effected thereon by the Landlord being wholly or

partly irrecoverable by reason solely or in part of any act or default of the Tenant or any sub-tenant or their respective employees, agents, licensees or invitees then and in every such case to pay forthwith to the Landlord the whole or (as the case may be) the irrecoverable portion of the cost (including professional and other fees and VAT) of completely rebuilding and reinstating the same;

6.2.7 to keep the Property supplied with such fire fighting equipment as the insurers and/or the competent fire authority may require and to maintain such equipment to the satisfaction of all such persons;

6.2.8 not to store inflammable or explosive substances or goods at the Property (except for goods and products stored or used in the usual course of business of the Tenant and/or any undertenant) or obstruct the access to any fire equipment or the means of escape from or over the Property and in the event of anything happening which might affect any insurance policy relating to the Property give notice forthwith to the Landlord.

6.3 Rent suspension

If the Property or any part thereof or of the Estate shall be destroyed or damaged by any Insured Risk so as to render the Property unfit for occupation or use or inaccessible then save to the extent that the insurance of the Estate shall have been vitiated by any act, neglect, default or omission of the Tenant or any sub-tenant or their respective employees, agents, licensees or invitees the Basic Rent or a fair proportion thereof according to the nature and extent of the damage sustained shall be suspended until the Property shall have been made fit for occupation and use and accessible or (if earlier) until the money received by the Landlord in respect of loss of rent insurance shall have been exhausted and any dispute with reference to this proviso shall be referred to a single arbitrator to be appointed in default of agreement upon the application of either the Landlord or the Tenant by the President for the time being of the Royal Institution of Chartered Surveyors under the Arbitration Act 1996 and the Landlord shall within 20 Working Days of receipt of any monies by the Landlord in respect of loss of rent insurance repay to the Tenant any Basic Rent paid by the Tenant in respect of the period starting on the date of such destruction or damage and ending on the next usual quarter day.

6.4 Commissions

All monies paid by the Tenant under clause 6.2.1 shall be paid without deduction of any agency or other commission paid or allowed to the Landlord in respect thereof or otherwise which the Landlord shall be entitled to retain for the Landlord's own benefit free of any obligation to bring the same into account under this Lease.

6.5 Termination of Lease

If at any time during the Term the Property or any part of the Estate shall be destroyed or damaged so as to render the Property unfit for occupation or use or inaccessible and if reinstatement shall not have been completed so as to render the Property fit for occupation and use or accessible after the expiration of two years and nine months from the date of such destruction or damage then either the Landlord or the Tenant may at any time after the expiration of such period give to the other three months' written notice of termination and on the expiry of such notice (provided that the Property is still not fit for occupation and use or accessible) this Lease will determine without prejudice to the rights of the parties under this Lease in respect of any antecedent breach of any of the covenants and conditions herein contained and any obligation on the Landlord to reinstate the Property shall cease and all insurance monies under any insurance effected pursuant to clause 6.1 shall belong and be paid to the Landlord absolutely.

6.6 Entry on the Property

if the Landlord or any other person enters on to or over the Property whether pursuant to the Tenant's covenants or of the rights reserved by this Lease then;

- 6.6.1 any person so entering shall complete such inspection works or other task for which entry was made as quickly and efficiently as reasonably possible causing as little damage destruction and inconvenience as reasonably possible and making good any physical damage caused in the exercise of such right to the Property as soon as reasonably possible free of expense to the Tenant to the reasonable satisfaction of the Tenant;
- 6.6.2 any person so entering shall comply with the reasonable security requirements of the Tenant and any other occupiers of the Property; and
- 6.6.3 such rights may be exercised for works to be carried out only to the extent that such works cannot otherwise reasonably and economically be carried out without entry on to the Property.

7. **RENT REVIEW**

7.1 **Definitions**

In this clause 7 the following expressions shall have the following meanings:

Market Rent

the annual open market rent at which the Property would reasonably be expected to be let at the Rent Review Date upon a letting for a term of ten years at the rate applicable after the expiry of a rent-free period or reduced rent period (if any) of such length (or payment of an equivalent sum of money) as would be negotiated in the open market in respect of fitting out works which would be carried out by the willing tenant on the assumptions that:

- (a) all parts of the Property are fit for immediate occupation and use by a willing tenant and the Estate is capable of being used for the rights granted;
- (b) the Property is to be let as a whole by a willing landlord to a willing tenant by a single lease without payment of a fine or premium and with vacant possession and subject to the provisions of this Lease (other than the amount of the Basic Rent but including these provisions for review of the Basic Rent);
- (c) the unit on the Property has been constructed in accordance with the Specification (as defined in and attached to the Licence to Alter) together with the formation of the ground floor offices within the unit on the Property as part of the Works (as defined in the Licence to Alter) carried out by the Tenant pursuant to the Licence to Alter;
- (d) the Internal Area of the unit on the Property is ~~107,392~~ square feet, 6000
107,248
- (e) the covenants contained in this Lease on the part of the Landlord and the Tenant have been fully performed and observed;
- (f) the Property may be lawfully let to and used by any person for the purposes permitted under this Lease as varied or extended by any licence or deed entered into at the request of the Tenant;
- (g) no work has been carried out on or about the Property by the Tenant, its sub-tenants or their respective predecessors in title which has reduced the lettable floor area of the Property or diminished the rental value of the Property and that in case the Property has been destroyed or damaged it has been fully restored;
- (h) no reduction is to be made to take account of any rent-free period or payment or other concession which on a new letting with vacant possession might be granted to an incoming tenant in respect of the carrying out by such incoming tenant of fitting out works to the Property;
- (i) the willing tenant is a taxable person for the purposes of the legislation relating to VAT and is able to recover all input tax paid by it as a credit against output tax or otherwise;

but disregarding any effect on rental value of:

- (a) the fact that the Tenant, its sub-tenants or their respective predecessors in title have been in occupation of the Property;
- (b) any goodwill attached to the Property by reason of the carrying on at the Property of any business by the Tenant or its sub-tenants or their respective predecessors in title in their respective businesses;
- (c) the existence at the Rent Review Date of any improvement to the Property or any part thereof carried out with consent where required otherwise than in pursuance of an obligation to the Landlord or its predecessors in title (except obligations requiring compliance with statutes or directions of local authorities or other bodies exercising powers under statute or by royal charter) by and at the sole cost of the Tenant its sub-tenants or their respective predecessors in title during the Term or during any period of occupation prior thereto arising out of an agreement to grant this Lease;
- (d) any obligation on the part of the Tenant or its sub-tenants or their respective predecessors in title to remove any alterations or to restore or reinstate the Property whether under this Lease or otherwise;

President

the President (or if he is unable so to act the Vice-President or other duly authorised officer) for the time being of the Royal Institution of Chartered Surveyors;

7.2 Amount of rent

The Basic Rent shall be reviewed on the Rent Review Date and shall from the Rent Review Date be a rent equal to the Basic Rent payable under this Lease immediately preceding the Rent Review Date (ignoring any cesser of rent or rent abatement) or the Market Rent as at the Rent Review Date as may be ascertained as herein provided whichever be the greater.

7.3 Provisions for review

The Landlord and the Tenant may endeavour to agree the Market Rent at any time not being earlier than six months before the Relevant Review Date but if (for whatever reason) the Market Rent shall not have been unconditionally agreed by the date being three months before the Relevant Review Date then either the Landlord or the Tenant may at any time thereafter by notice in writing to the other require that the Market Rent be determined by a valuer who shall be appointed by the Landlord and the Tenant or in default of agreement appointed on the request of either the Landlord or the Tenant by the President provided that:

- 7.3.1 the valuer shall be a chartered surveyor who shall have not less than ten years' experience in valuing and letting property similar to the Property and who shall be a partner or director of a reputable firm or company of chartered surveyors;
- 7.3.2 the valuer shall act as an arbitrator;
- 7.3.3 in the case of an arbitration:
 - (a) the arbitration shall be conducted in accordance with the Arbitration Act 1996;
 - (b) if the arbitrator shall die or decline to act the President may on the application of either the Landlord or the Tenant by writing discharge the arbitrator and appoint another in his place.

7.4 Payment of rent

If the Market Rent has not been agreed or determined in accordance with this clause 7 by the Rent Review Date then the Basic Rent payable immediately prior to the Rent Review Date shall continue to be payable until such agreement or determination and within seven days after such agreement or determination the Tenant shall pay the balance due (being the shortfall between the Basic Rent actually paid from the Rent Review Date and the Market

Rent as agreed or determined payable from that Rent Review Date up to and including the day preceding the next ensuing quarter day) together with interest at 4% below Interest calculated on a daily basis on each part of such shortfall from the date such part was payable until the date of agreement or determination of the Market Rent provided that in the event of such balance of rent or interest being outstanding at the expiration of the period of ten days after the agreement or determination of the Market Rent then Interest will be forthwith payable thereon with effect from expiry of such ten day period.

7.5 **Statutory rent restrictions**

If at the Rent Review Date the Landlord is required to comply with any enactment which restricts or modifies the Landlord's right herein to revise the Basic Rent or which shall restrict the Landlord's right to demand or accept payment of the full amount of the Basic Rent for the time being payable under this Lease then on each occasion that any such enactment is removed relaxed or modified the Landlord may on giving written notice to the Tenant call for a review of the Basic Rent as from the date of such notice (or such later date as may be specified therein) and the Basic Rent from such date shall be determined in accordance with this clause 7 as though the date of such notice (or such later date as may be specified therein) were the Rent Review Date.

7.6 **Rent review memorandum**

Any variation of the Basic Rent pursuant to this clause 7 shall when agreed or determined be recorded by a memorandum endorsed upon or annexed to this Lease and the counterpart hereof signed on behalf of the Landlord and the Tenant and each party shall bear its own costs in respect thereof.

7.7 **Time not of the essence**

Any delay in seeking the appointment of a valuer shall in no way prejudice the right to review the Basic Rent and time shall not be of the essence in respect of any dates or periods mentioned in this clause 7.

7.8 **Payment of costs**

If either the Landlord or the Tenant shall fail to pay any costs awarded against it in an arbitration within 21 days of the same being demanded by the arbitrator the other shall be entitled to pay the same and the amount so paid shall be repaid by the party chargeable on demand together with Interest.

8. **GUARANTOR PROVISIONS**

8.1 **Guarantee**

The Guarantor covenants with and guarantees to the Landlord as principal debtor that the Tenant will pay the Rents and perform and observe all the covenants and obligations on the Tenant's part contained in this Lease (the **Tenant's Obligations**) and that the Guarantor will pay and make good to the Landlord on demand all losses, costs and expenses sustained by the Landlord through the default of the Tenant in observing or performing the Tenant's Obligations.

8.2 **No release of liability**

The liability of the Guarantor will continue notwithstanding (and will not be discharged in whole or in part by):

8.2.1 any forbearance by the Landlord to enforce against the Tenant the tenant's covenants in this Lease;

8.2.2 the giving of time or other concessions or the taking or holding of or varying realising releasing or not enforcing any other security for the liabilities of the Tenant or any refusal by the Landlord to accept any Rents tendered by or on behalf of the Tenant at a time when the Landlord is entitled (or will after the

service of a notice under section 146 of the Law of Property Act 1925 be entitled) to re-enter the Property;

- 8.2.3 any legal limitation or incapacity relating to the Tenant;
- 8.2.4 the invalidity or unenforceability of any of the obligations of the Tenant;
- 8.2.5 the Tenant ceasing to exist;
- 8.2.6 the giving and subsequent withdrawal of any notice to determine this Lease;
- 8.2.7 any increase or reduction in the extent of the Property or in the rent payable under this Lease or any other variation to this Lease;
- 8.2.8 the surrender of part of the Property in which event the liability of the Guarantor under this Lease is to continue in respect of the part of the Property not surrendered after making any necessary apportionments under section 140 Law of Property Act 1925;
- 8.2.9 the disclaimer of this Lease;
- 8.2.10 any other act or omission of the Landlord or any other circumstances which but for this clause 8.2 would discharge the Guarantor.

8.3 Guarantor to accept new lease

8.3.1 The Guarantor shall if required by the Landlord in writing within the period beginning on the day of:

- (a) a disclaimer of this Lease; or
- (b) a forfeiture of this Lease;

and expiring three months after the Landlord has been notified in writing by the Tenant or the Guarantor of the disclaimer or forfeiture accept a lease of the Property for the residue of the contractual term unexpired at and with effect from the date of the disclaimer or forfeiture at the same yearly rent as then reserved by this Lease (reviewable at the same times as the yearly rent would have been reviewable under this Lease had there been no disclaimer or forfeiture) and subject to all of the other terms of this Lease.

8.3.2 The Guarantor will on execution of the new lease pay the Rents for the period from the date of the disclaimer or forfeiture to the quarter day following the date of the new lease and the reasonable legal costs of and incidental to the new lease and will execute and deliver to the Landlord a counterpart of it.

8.3.3 If the Guarantor is not required by the Landlord to accept a lease under subclause 8.3.1 the Guarantor may, by serving written notice within one month following the expiry of the three month period referred to in clause 8.3.1, request that it is granted a new lease of the Property for the residue of the contractual term unexpired at and with effect from the date of the disclaimer or forfeiture at the same yearly rent as then reserved by this Lease (reviewable at the same times as the yearly rent would have been reviewable under this Lease had there been no disclaimer or forfeiture) and subject to all of the other terms of this Lease.

8.4 Security taken by Guarantor

8.4.1 Until the Tenant's Obligations have been paid and performed in full the Guarantor shall not without the Landlord's prior written consent exercise any rights:

- (a) of subrogation or indemnity in respect of the Tenant's Obligations;
- (b) to take the benefit of share in or enforce any security or other guarantee or indemnity for the Tenant's Obligations;
- (c) to prove in the bankruptcy or liquidation of the Tenant in competition with the Landlord.

8.4.2 The Guarantor covenants that it has not taken any security from the Tenant and will not do so.

8.4.3 Any security taken by the Guarantor in breach of clause 8.4.2 and all money at any time received in respect of it shall be held in trust for the Landlord as security for the liability of the Guarantor under this Lease.

8.5 **Guarantee of the tenant's liabilities under an Authorised Guarantee Agreement**

If at any time whilst the Tenant is bound by an Authorised Guarantee Agreement the Tenant defaults in its obligations under that Agreement the Guarantor (being a Guarantor who has guaranteed the tenant covenants of this Lease) shall make good to the Landlord on demand and indemnify the Landlord against all losses resulting from that default notwithstanding:

8.5.1 any time or indulgence granted by the Landlord to the Tenant or any neglect or forbearance of the Landlord in enforcing the payment of any sum or the observance or performance of the covenants or other terms of the Authorised Guarantee; or

8.5.2 that the terms of the Authorised Guarantee Agreement may have been varied by agreement between the Landlord and the Tenant provided that no variation is to bind the Guarantor to the extent that it is materially prejudicial to it; or

8.5.3 anything else which but for this clause the Guarantor would be released.

8.6 **Deferred Part**

For the avoidance of doubt, the Guarantor hereby:

8.6.1 consents to the Deferred Part forming part of the Property from 1 July 2019; and

8.6.2 agrees that its guarantee in this clause 8 and other obligations under this Lease shall remain fully effective and:

(a) to the extent that the inclusion of the Deferred Part in the demise of the Property varies this Lease, shall apply to the Lease as varied; and

(b) shall not be released or diminished by the inclusion of the Deferred Part in the Property demised by this Lease;

(c) extend and apply to the covenants given by, and the obligations on the part of the Tenant under this Lease in respect of the Deferred Part.

THE PARTIES have executed this Lease as a deed and delivered it on the date first set out above.

SCHEDULE 1

Description of the Property

The Property comprises Unit 7, Mountpark Southampton, Wide Lane, Southampton SO18 2NQ shown edged red on the Plan including the northern boundary fence excluding any Conducting Media in, on, under or over the same (whether in existence at the date of this lease or installed in the future) that are used by the Initial Property or the Deferred Part in common with any other part of the Estate or are not used by the Initial Property and the Deferred Part PROVIDED that the fence or other boundary marker with another unit on the Estate leased or intended to be leased for business use shall be a party structure and maintained accordingly and PROVIDED further that the Deferred Part is excluded until the demise of it takes effect.

SCHEDULE 2

Rights Granted

The following rights are granted to the Tenant its undertenants and occupiers of the Property in common with the Landlord and any other person authorised by the Landlord:

1. the right of free passage and running of water, soil, gas, electricity, telephone and other services in and through all Conducting Media now or at any time during the Term in or over passing through or under the Estate and serving the Property so far as necessary for the enjoyment of the Property and in common with the Landlord and all others so authorised by the Landlord and all other persons entitled thereto;
2. the right of way at all times of the day and night with or without vehicles and in common as aforesaid over and along all roads forming part of the Common Parts (including without limitation the roads shown coloured brown on the Plan) for all purposes in connection with the use and enjoyment of the Property;
3. the right of way at all times of the day and night on foot only and in common as aforesaid over and along all footpaths forming part of the Common Parts for all purposes in connection with the use and enjoyment of the Property;
4. the right of support shelter and protection for the Property from any other part of the Estate;
5. the right at all times and from time to time upon reasonable notice (save in case of emergency) to enter into and upon any adjacent or neighbouring land on the Estate for the purposes of inspecting and executing repairs or alterations to or upon the Property to the extent that the Landlord is able to grant the Tenant such right; and
6. the right in the case of emergency and periodically practising emergency escape procedures only for the Tenant its undertenants and employees, customers and visitors to pass over such parts of any adjacent land on the Estate as are reasonably necessary for the purposes of escape;

Provided that the Tenant shall exercise the rights granted by this Lease only in connection with its use of the Property for the Permitted Use and in accordance with any reasonable management regulations made by the Landlord and provided that in exercising the rights granted by this Lease the Tenant shall cause as little damage to the Estate and the other tenants and occupiers of the Estate as is reasonably practicable and shall promptly make good (to the reasonable satisfaction of the Landlord) any damage caused to the Estate by reason of the Tenant exercising such rights.

SCHEDULE 3

Rights Reserved

The following rights are excepted and reserved from this Lease to the Landlord for the benefit of the Estate and for all persons authorised by the Landlord to:

1. The free passage and running of water, soil, gas, electricity, telephone and other services coming from or passing to any other land or building in and through all Conducting Media now or at any time during the Term in or over passing through or under the Property or serving the same and the right to maintain alter or divert the same and to connect thereto.
2. The right for the Landlord and the Landlord's Surveyor and the Landlord's agents, workmen and others and the tenants and occupiers of any adjacent or neighbouring land or building at all times and from time to time upon reasonable notice (save in case of emergency) to enter into and upon the Property and all parts thereof for the purposes of inspecting and executing repairs or alterations to or upon the Property or any adjacent or neighbouring land or building.
3. The right of support and shelter and all rights of light, air and other easements and rights now or hereafter belonging to or enjoyed by any adjacent or neighbouring land or building from or over the Property.
4. The right to build or rebuild or alter or permit or suffer to be built or rebuilt or altered any adjacent or neighbouring land or building in any manner whatsoever and to let the same for any purposes or otherwise deal therewith notwithstanding that the light or air to the Property is in any such case thereby diminished or (save in so far as the same are hereby expressly granted or covenanted to be provided) any other liberty, easement, right or advantage belonging to the Tenant is thereby diminished or prejudicially affected.
5. The right for the Landlord and those authorised by the Landlord to enter upon the Property for the purposes and in the manner mentioned in this Lease.
6. The right for the Landlord and those authorised by the Landlord to enter the Property to carry out any assessment or inspection necessary for the preparation or production of an EPC and/or air-conditioning report in relation to the Property or any part thereof.
7. The right in the case of emergency and periodically practising emergency escape procedures only for the owner of any adjacent land on the Estate and its employees, customers and visitors to pass over such parts of the Property as are reasonably necessary for the purposes of escape.
8. The right until the demise of the Deferred Part takes effect for the Landlord and the Landlord's Surveyor and anyone authorised by them to enter upon the Property in order to inspect the same and to carry out such works of repair or maintenance as are reasonably necessary in relation to the Deferred Part.

SCHEDULE 4
Authorised Guarantee Agreement

DATE 20[●]

PARTIES

- (1) [●] Company number [●] whose registered office is at [●] (the **Former Tenant**) and;
- (2) [●] Company number [●] whose registered office is at [●] (the **Landlord**);
- (3) [●] Company number [●] whose registered office is at [●] (the **Guarantor**); and

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement the following definitions shall apply unless the context otherwise requires:

Assignee

[The proposed assignee] and (where there is an assignment of the Lease to which section 11 of the 1995 Act applies) its successors-in-title;

Property

the premises demised by and more particularly described in the Lease;

Lease

a lease of the Property dated [●] and made between (1) [●] and (2) [●] and includes any deed of variation licence consent or other document supplemental to or associated with the Lease by which the Tenant is bound whether presently existing or not;

1995 Act

the Landlord and Tenant (Covenants) Act 1995;

Secured Obligations

the obligation to pay all sums from time to time due or expressed to be due to the Landlord from the Assignee under the Lease and to perform all other obligations which from time to time are or are expressed to be obligations of the Assignee under the Lease;

Term

the term granted by the Lease and any period of holding over or continuation or extension thereof whether by statute or common law.

1.2 In this deed unless the context otherwise requires:

1.2.1 references to the singular include the plural and vice versa any reference to a person includes a reference to a body corporate and words importing any gender include every gender;

1.2.2 references to numbered clauses are references to the relevant clause in this deed.

1.3 The clause headings do not form part of this deed and are not to be taken into account when construing it.

2. GUARANTEE

2.1 This guarantee is given pursuant to a provision in the Lease requiring it to be given and is an authorised guarantee agreement for the purposes of section 16 of the 1995 Act.

2.2 The Former Tenant unconditionally and irrevocably covenants with and guarantees to the Landlord that the Assignee will throughout the Term and until the Assignee lawfully assigns the Lease pay and perform the Secured Obligations on the dates and in the manner required by the Lease.

2.3 The Former Tenant shall upon being requested to do so by the Landlord enter into any deed of variation licence consent or other document to which in each case the Assignee is a party

and which is in each case supplemental to the Lease for the purpose of acknowledging that the Former Tenant's liabilities under this deed extend to it.

2.4 The guarantee and covenant contained in clause 2.2 shall impose on the Former Tenant the same liability as if the Former Tenant were the principal debtor in respect of the Assignee's obligations under the Lease and that liability shall continue notwithstanding (and will not be discharged in whole or in part by):

2.4.1 any forbearance by the Landlord to enforce against the Assignee the tenant's covenants in the Lease;

2.4.2 the giving of time or other concessions or the taking or holding of or varying realising releasing or not enforcing any other security for the liabilities of the Assignee or any refusal by the Landlord to accept any rents tendered by or on behalf of the Assignee at a time when the Landlord is entitled (or will after the service of a notice under section 146 Law of Property Act 1925 be entitled) to re-enter the Property;

2.4.3 any legal limitation or incapacity relating to the Assignee;

2.4.4 the invalidity or unenforceability of any of the obligations of the Assignee;

2.4.5 the Assignee ceasing to exist;

2.4.6 the giving and subsequent withdrawal of any notice to determine the Lease;

2.4.7 any increase or reduction in the extent of the Property or in the rent payable under the Lease or any other variation to the Lease;

2.4.8 the surrender of part of the Property in which event the liability of the Former Tenant under this deed is to continue in respect of the part of the Property not surrendered after making any necessary apportionments under section 140 Law of Property Act 1925;

2.4.9 the disclaimer of the Lease;

2.4.10 any other act or omission of the Landlord or any other circumstances which but for this clause 2.4 would discharge the Former Tenant;

and for the purposes of this clause 2 the Assignee shall be deemed liable to continue to pay and perform the Secured Obligations notwithstanding any of the above matters and any money expressed to be payable by the Assignee which may not be recoverable for any such reason shall be recoverable by the Landlord from the Former Tenant as principal debtor.

3. NEW LEASE

3.1 The Former Tenant shall if required by the Landlord in writing within the period beginning on the day of:

3.1.1 a disclaimer of the Lease; or

3.1.2 a forfeiture of the Lease;

and expiring three months after the Landlord has been notified in writing by the Former Tenant or the Assignee of the disclaimer or forfeiture accept a lease of the Property for the residue of the contractual term unexpired at and with effect from the date of the disclaimer or forfeiture at the same yearly rent as then reserved by the Lease (reviewable at the same times as the yearly rent would have been reviewable under the Lease had there been no disclaimer or forfeiture) and subject to all of the other terms of the Lease.

3.2 The Former Tenant will on execution of the new lease pay rent and other sums payable under the Lease for the period from the date of the disclaimer or forfeiture to the quarter day following the date of the new lease and the costs of and incidental to the new lease and will execute and deliver to the Landlord a counterpart of it.

3.3 If the Landlord requires more than one person to take a new lease those persons shall take that new lease as joint tenants.

3.4 The Former Tenant will indemnify and keep indemnified the Landlord on a full indemnity basis against all solicitors' costs and disbursements and also surveyors' fees incurred by the Landlord in connection with the grant of such lease.

3.5 If the Former Tenant is not required by the Landlord to accept a lease under subclause 3.1 the Former Tenant's liability under this deed shall cease upon expiry of the three month period mentioned in clause 3.1 but without prejudice to any antecedent rights or claims that may have arisen.

4. SECURITY TAKEN BY FORMER TENANT

4.1 Until the Secured Obligations have been paid and performed in full the Former Tenant shall not without the Landlord's prior written consent exercise any rights:

4.1.1 of subrogation or indemnity in respect of the Secured Obligations;

4.1.2 to take the benefit of share in or enforce any security or other guarantee or indemnity for the Secured Obligations;

4.1.3 to prove in the bankruptcy or liquidation of the Assignee in competition with the Landlord.

4.2 The Former Tenant covenants that it has not taken any security from the Assignee and will not do so.

4.3 Any security taken by the Former Tenant in breach of clause 4.2 and all money at any time received in respect of it shall be held in trust for the Landlord as security for the liability of the Former Tenant under this deed.

5. LIMITATION ON FORMER TENANT'S LIABILITY

To the extent that this deed purports to impose on the Former Tenant any liability for anything in respect of which the Assignee is released from liability by the provisions of the 1995 Act the relevant provision of this deed shall (to that extent only) be void but without prejudice to:

5.1 the enforceability of that provision except to that extent; or

5.2 the enforceability of any other provision of this deed.

6. JOINT AND SEVERAL GUARANTORS

6.1 The liability of the Former Tenant under this deed shall be the joint and several liability of all parties who have executed this deed as Former Tenant and all other parties who from time to time guarantee the Assignee's obligations to the Landlord and any demand for payment by the Landlord on any one or more of such persons jointly and severally liable shall be deemed to be a demand made on all such persons.

6.2 Each person who has executed this deed as Former Tenant or on whose behalf this deed has been so executed agrees to be bound by this deed notwithstanding that the other person intended to execute or be bound by this deed may not do so or may not be effectually bound and notwithstanding that this deed may be determined or become invalid or unenforceable against any other person whether or not the deficiency is known to the Landlord.

7. GUARANTOR'S COVENANTS.

7.1 The Guarantor covenants with the Landlord throughout the Term and until the Assignee lawfully assigns the Lease that:

7.1.1 the Former Tenant will observe all obligations undertaken on its part in this deed and that in case of default by the Former Tenant the Guarantor will pay and make good to the Landlord on written demand all losses, damages, costs and expenses thereby arising or incurred by the Landlord.

7.1.2 if the Former Tenant is required as a result of disclaimer or forfeiture to accept from the Landlord a new lease of the Premises then the Guarantor will join in such lease and will enter into the same covenants mutatis mutandis as are contained in clause 8 of the Lease.

7.1.3 in any of the circumstances set out in clause 3.1 the Landlord may within a period expiring three months after the Landlord has been notified in writing by the Guarantor the Former Tenant or the Assignee of the disclaimer or forfeiture require the Guarantor to accept a lease of the Property for the residue of the contractual term unexpired at and with effect from the date of the disclaimer or forfeiture at the same yearly rent as reserved by the Lease (reviewable at the same times as the yearly rent would have been reviewable under the Lease had there been no disclaimer or forfeiture) and subject to all of the other terms of the Lease and the Guarantor on execution of the new lease will pay rent for the period from the date of the disclaimer or forfeiture to the quarter day following the date of the new lease and the costs of and incidental to the new lease and will execute and deliver to the Landlord a counterpart of it.

7.2 It is agreed that any neglect or forbearance by or on the part of the Landlord in endeavouring to enforce the Secured Obligations any other indulgence which may be given to the Former Tenant and/or the Assignee by the Landlord or any variation of the terms of the Lease agreed between the Landlord and Assignee will not release or exonerate or in any way reduce or affect the liability of the Guarantor under the provisions of this deed.

THE PARTIES have executed this agreement as a deed and delivered it on the date first set out above.

from the Tenant but if it shall be less the amount of the overpayment shall be credited to the Tenant against the next quarterly payment of Service Charge or (if the Term shall have come to an end) shall be repaid to the Tenant.

5.3 The provisions of this paragraph 5 shall continue to apply notwithstanding the expiry or earlier determination of this Lease in respect of any Service Charge Period then current.

5.4 The Tenant shall be entitled to inspect the records and vouchers relating to the Service Costs at such location as the Landlord may reasonably appoint for the purpose during normal working hours on weekdays and at the Tenant's expense take copies of them.

6. EXCEPTIONAL EXPENDITURE

6.1 If the Landlord is required during any Service Charge Period to incur heavy or exceptional expenditure which forms part of the Service Costs the Landlord shall be entitled to recover from the Tenant the Service Charge representing the whole of that expenditure on the quarter day next following.

6.2 If funds collected by way of advance payments of Service Costs prove insufficient to meet any immediate liability (and there is no reserve fund available or which may be applied to meet the liability and the circumstances arose otherwise than as mentioned in paragraph 7.1) the Landlord shall be entitled to borrow monies for the purpose from reputable banks at commercially competitive rates of interest and the interest payable on the borrowing shall be recoverable as an item of the Service Costs.

7. SINKING FUND AND RESERVES

7.1 With a view to securing so far as may reasonably be practicable that the Service Costs shall be progressive and cumulative rather than irregular and that tenants for the time being shall bear a proper part of accumulating liabilities which accrue in the future the Landlord shall be entitled to include in the Service Costs for any Service Charge Period an amount which the Landlord reasonably determines is appropriate to build up and maintain a sinking fund and a reserve fund in accordance with the principles of good estate management.

7.2 Any such sinking fund shall be established and maintained on normal commercial principles for the renewal and replacement of Plant.

7.3 Any such reserve fund shall be established and maintained to cover prospective and contingent costs of carrying out repairs, decoration, maintenance and renewals and of complying with statutes, bye-laws and regulations of all competent authorities and of the insurers in relation to the use occupation and enjoyment of the Estate.

8. LANDLORD'S PROTECTION PROVISIONS

The Tenant shall not be entitled to object to the Service Charge (or any item comprised in the Service Costs) or otherwise on any of the following grounds:

8.1 the inclusion in a subsequent Service Charge Period of any item of expenditure or liability omitted from the Service Costs for any preceding Service Charge Period;

8.2 that any item of Service Costs might have been provided or performed at a lower cost;

8.3 disagreement with any estimate of future expenditure for which the Landlord requires to make provision so long as the Landlord acts reasonably and in good faith and in the absence of manifest error;

8.4 the manner in which the Landlord exercises its discretion in providing the Services so long as the Landlord acts in good faith and in accordance with the principles of good estate management;

8.5 the employment of managing agents or contractors to carry out and provide on the Landlord's behalf the Services in accordance with this schedule.

9. SERVICE COSTS TO EXCLUDE CERTAIN COSTS

There shall be excluded from the Service Costs

- 9.1 any liability or expense for which the Tenant or other tenants or occupiers of the Estate shall individually be responsible under the terms of the tenancy or other arrangement by which it or they use or occupy any part of the Estate;
- 9.2 costs arising from any damage or destruction caused by an Insured Risk;
- 9.3 capital costs of the construction alteration redevelopment or extension of the Common Parts other than capital costs incurred in repair or replacement thereof;
- 9.4 the costs of the initial provision of any Plant prior to the date of this Lease and the costs of the initial provision of any Plant after the date of this Lease in so far as such Plant was part of the original design of the Estate and was not provided in the original construction works;
- 9.5 enforcement of covenants to pay rent and other monies payable under an occupier's lease;
- 9.6 unpaid costs due from the tenant of another part of the Estate;
- 9.7 costs arising from any chancel repair liability;
- 9.8 costs incurred in dealing with the Landlord's interest in the Estate including the costs of advertising or publicity activities;
- 9.9 costs relating to any unit upon the Estate which is capable of being let but which is not let.
- 10. **THE LANDLORD'S OBLIGATIONS**
- 10.1 If the Tenant pays the Service Charge and observes its obligations under this Lease the Landlord shall use all reasonable endeavours to provide the Services provided always that the Landlord may add to withhold or vary the Services if it considers the addition withholding or variation to be necessary or desirable even if it increases the Service Costs or if required to do so by any competent authority.
- 10.2 The Landlord shall comply at all times with the edition of the Code of Practice for Service Charges in Commercial Property issued by the Royal Institution of Chartered Surveyors from time to time.

Part 2

- 1. The repair, maintenance, redecoration, rebuilding, renewal, cleaning and lighting of the Common Parts.
- 2. The operation, repair, maintenance and, if beyond reasonable economic repair, the renewal and replacement of all Plant.
- 3. The provision of any Plant that the Landlord acting reasonably considers necessary or desirable or that is required by law or by any government department or local public or regulatory or other authority or court to be supplied and maintained and including the cost of replacement of any machinery, articles and materials for (for example) refuse collection and fire fighting that may become beyond reasonable economic repair.
- 4. The placing and running of maintenance contracts for the Estate.
- 5. The collection, packaging, treatment and disposal of refuse from the Estate (but excluding trade waste arising from any occupier's particular trade or business).
- 6. The supply, maintenance, servicing, renewal and replacement of all fixtures fittings, bins, receptacles, tools, appliances, equipment and other things the Landlord may reasonably consider desirable for performing the Services or for the appearance and upkeep of the Common Parts.
- 7. The provision, maintenance, replacement and renewal of any notice boards, notices, directional or other signs on the Estate as the Landlord acting reasonably from time to time considers appropriate.
- 8. The payment of all Outgoings in respect of the Common Parts including those for water, electricity, fuel, telephone and public and other statutory utilities consumed on the Common Parts and the payment of all Outgoings in connection with the provision of any of the Services.

9. The provision and maintenance (at the Landlord's absolute discretion) of plants, shrubs and landscaped areas on the Estate and keeping the same properly maintained and cultivated.
10. The payment of any sums which the Landlord may be liable to pay as a contribution towards the expense of making, repairing, maintaining, rebuilding and cleaning any roads, pavements, Conducting Media, party walls, party structures or other things appurtenant to the Estate or used for the Estate in common with any adjoining property.
11. (Save insofar as insured under other provisions of this Lease) the insurance of the Plant and the insurance of the Landlord against property owners liability in respect of the Estate and such other risks as the Landlord in its absolute discretion shall from time to time deem necessary or expedient.
12. The taking of any steps as the Landlord acting reasonably from time to time considers appropriate for complying with making representations against or otherwise contesting or dealing with any legislation, order, regulation, notice or statutory requirement relating to or affecting the whole or any part of the Estate compliance with which is not the direct liability of the Tenant or any tenant of any part of the Estate.
13. The cost of pursuing and enforcing any claim and taking or defending any proceedings which the Landlord may reasonably make take or defend for the purpose of establishing, preserving or defending any rights, amenities or facilities used or enjoyed by the tenants and occupiers of the Estate or any part of it or to which they may be entitled.
14. The employment of such persons as the Landlord acting reasonably considers necessary or desirable from time to time in connection with providing any of the Services and all incidental expenditure including remuneration, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payments which the Landlord acting reasonably considers desirable or necessary and the provision of uniforms, work or protective clothing.
15. The reasonable cost of employing managing agents for the administration and management of the Estate and the carrying out and provision of the Services or if the Landlord does not employ managing agents a reasonable management fee for itself PROVIDED that any cost under this paragraph shall not in any year exceed 10% of the costs arising under paragraph 1 of this part of this schedule.
16. The reasonable cost of employing accountants surveyors or other professional advisers for certifying any matter or thing requiring to be certified for the purpose of any of the provisions of this schedule.
17. The provision of all additional and substitute services that the Landlord provides pursuant to paragraph 10 of Part 1 of this schedule.
18. The policing of the Estate the controlling of the traffic and pedestrians and the provision of such security staff as the Landlord acting reasonably from time to time considers fit and proper and the provision, maintenance, replacement and renewal of security equipment on the Estate.
19. The payment of interest on any loan or overdraft obtained by the Landlord acting reasonably on normal commercial terms from a United Kingdom clearing bank for the purpose of defraying the Service Costs.

SCHEDULE 6

Encumbrances

1. Deed dated 8 May 2018 between (1) Inchcape Estates Limited and (2) Mountpark Logistics EU 2014 05 SARL.
2. Transfer dated 18 May 2018 between (1) Mountpark Logistics EU 2014 05 S.A.R.L. and (2) Mountpark Logistics EU 2017 23 S.A.R.L.
3. Transfer dated 18 August 2017 between (1) Balmoral Land Limited and (2) Ford Motor Company Limited.
4. Lease dated 21 September 2018 between (1) Mountpark Logistics EU 2017 23 S.A.R.L. and (2) Energetics Electricity Limited.

EXECUTED and DELIVERED as a DEED
by **MOUNTPARK LOGISTICS EU 2017 23**
S.A.R.L a company incorporated in
Luxembourg by

] Manager

and

] Manager

being persons who, in accordance with the
laws of that territory, are acting under the
authority of the company

EXECUTED and DELIVERED as a DEED)
by **CONEXUS LIMITED** acting by a director)
in the presence of:)

Director

Witness Signature

Witness Name

Address

Occupation

EXECUTED and DELIVERED as a DEED
by **PFSWEB, INC.** acting by an authorised
signatory in the presence of:

Authorised Signatory

Witness Signature

Witness Name

Address

Occupation

DATED 9 November 2018

- (1) MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L
- (2) CONEXUS LIMITED
- (3) PFSWEB, INC.

LICENCE TO CARRY OUT WORKS

relating to

**Unit 7, Mountpark Southampton, Wide Lane, Southampton
SO18 2NQ**

DATE

9 November

2018

PARTIES

- (1) **MOUNTPARK LOGISTICS EU 2017 23 S.A.R.L.** a Luxembourg private limited liability company (*société à responsabilité limitée*) with its registered office at 18, rue Robert Stumper, L-2557 Luxembourg, being registered with the Luxembourg Register of Commerce and Companies (*Registre de commerce et des sociétés*) under number 021893 and with a share capital of EUR 12,500 (the **Landlord**); and
- (2) **CONEXUS LIMITED** incorporated and registered in England and Wales with company number 03616118 with its registered office at Eastlands One, London Road, Basingstoke, Hampshire RG21 4FB (the **Tenant**); and
- (3) **PFSWEB, INC.** incorporated and registered in the State of Delaware in the United States of America with file number 3062550, whose registered office in Delaware is 251 Little Falls Drive, Wilmington, DE 19808 and whose address is at 505 Millennium Drive, Allen, TX75013 USA (the **Guarantor**).

IT IS AGREED

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this licence the following definitions shall apply unless the context otherwise requires:

Base Specification

the specification and plans set out in Appendix 2;

CDM Regulations

the Construction (Design and Management) Regulations 2015;

Ground Floor Office Works

the fitting out and other works to the ground floor of the office area of the Property forming part of the Works;

Lease

a lease of the Property dated 9 November 2018 between (1) Landlord and (2) Tenant and all documents supplemental or collateral to that lease;

Property

Unit 7, Mountpark Southampton, Wide Lane, Southampton SO18 2NQ as more particularly described in and demised by the Lease;

Works

the Tenant's fitting out works as shown on the plans and specification attached to this licence in the Appendix 1.

- 1.2 References to the Landlord include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the Tenant include a reference to its successors in title and assigns.
- 1.3 References to the end of the Term are to the end of the Term however it ends.
- 1.4 The expression tenant covenants has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.5 Clause headings shall not affect the interpretation of this licence.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 Words in the singular shall include the plural and vice versa.
- 1.8 A reference to one gender shall include a reference to the other genders.
- 1.9 Unless otherwise specified, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any

amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this licence) at any time.
- 1.13 Except where a contrary intention appears, references to clauses are to the clauses of this licence.
- 1.14 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **CONSENT TO CARRY OUT THE WORKS**

- 2.1 In consideration of the obligations on the Tenant in this licence, the Landlord consents to the Tenant carrying out the Works on the terms set out in this licence.
- 2.2 This consent will cease to be valid if the Works have not been started (in accordance with the terms of this licence) within three months from (and including) the date of this licence. If the consent ceases to be valid, all the terms of this licence other than clause 2.1 will remain in force.
- 2.3 Nothing in this licence will place the Tenant under an obligation to the Landlord to carry out the Works, but if it does carry them out, it must do so on the terms of this licence.
- 2.4 This consent does not obviate the need for the consent or licence of any person other than the Landlord that may be required to carry out the Works.
- 2.5 The Works are not improvements for the purposes of Part I Landlord and Tenant Act 1927.

3. **CARRYING OUT AND COMPLETING THE WORKS**

- 3.1 The Tenant shall not start the Works until it has obtained all other licences and consents that may be required to carry them out.
- 3.2 The Tenant must carry out the Works:
 - 3.2.1 using good quality, new materials which are fit for the purpose for which they will be used;
 - 3.2.2 in a good and workmanlike manner and in accordance with good building and other relevant practices, codes and guidance; and
 - 3.2.3 to the reasonable satisfaction of the Landlord.
- 3.3 In carrying out the Works the Tenant must comply with all laws and the terms of all other licences and consents and must cause as little disturbance as reasonably possible to the Landlord and the owners and occupiers of the estate of which the Property forms part and of any neighbouring land.
- 3.4 The Tenant must immediately make good, to the reasonable satisfaction of the Landlord, any damage (including decorative damage) to any land or building, plant or machinery (other than the Property) which is caused by carrying out the Works.
- 3.5 Once commenced, the Tenant must complete the Works, and any works required by clause 3.4, within one year after the date of this licence.
- 3.6 The Tenant must notify the Landlord as soon as the Works have been completed, and send the Landlord three copies of plans showing the Property as altered by the Works.
- 3.7 If required, the Tenant must produce to the Landlord on demand copies of all letters, notices, applications, consents or other documents sent, served, received or made by or granted to the Tenant in connection with any works permitted or required under this licence and must supply to the Landlord on demand any information or evidence the Landlord

reasonably requires in order to satisfy itself that the provisions of this licence have been complied with.

4. THE CDM REGULATIONS

4.1 The Tenant shall comply with its obligations under the CDM Regulations, including (without limitation) all requirements in relation to the provision and maintenance of a health and safety file.

4.2 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.

5. FURTHER PROVISIONS RELATING TO THE WORKS

5.1 The Landlord will only be obliged to insure the Works if they form part of the Property and only after they have been completed in accordance with this licence and for the amount for which the Tenant has notified the Landlord that they should be insured and otherwise in accordance with the terms of the Lease.

5.2 Before the end of the term of the Lease (however it may end) the Tenant must, if the Landlord reasonably so requires and gives the Tenant reasonable prior notice of not less than 6 months of that requirement, remove the Works and reinstate the Property in order that it accords with the Base Specification and make good any damage (including decorative damage) caused to the Property or any land or building, plant or machinery other than the Property by such removal and reinstatement PROVIDED that the Tenant shall not in any circumstances be required under this subclause or any provision of the Lease to remove the Ground Floor Office Works or any part thereof.

5.3 Any effect on the rental value of the Property arising in connection with the Works will be disregarded on any rent review under the Lease.

5.4 The tenant covenants in the Lease will extend to the Works and apply to the Property as altered by the Works.

6. NO WARRANTY BY THE LANDLORD

6.1 No representation or warranty is given or is to be implied by the Landlord entering into this licence or by any step taken by or on behalf of the Landlord in connection with it as to:

6.1.1 the suitability of the Property or the estate of which it forms part for the Works; or

6.1.2 whether the Works or any removal or reinstatement of them may be lawfully carried out.

6.2 The Tenant acknowledges that it is not relying on, and will have no remedy in respect of, any representation that may have been made by or on behalf of the Landlord before the date of this licence as to any of the matters mentioned in clause 6.1.

6.3 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

7. COSTS

The Tenant must pay on demand any properly incurred reasonable costs (plus value added tax) and proper disbursements of the Landlord, its solicitors, surveyors and managing agents incurred in connection with any removal of the Works and reinstatement of the Property or in making good any damage to any land or building, plant or machinery (other than the Property) which is caused by the carrying out of the Works or by the removal of them or the reinstatement of the Property.

8. THE RIGHT OF RE-ENTRY IN THE LEASE

The right of re-entry in the Lease will be exercisable if any covenant or condition of this licence is breached, as well as if any of the events stated in the provision for re-entry in the Lease occurs.

9. **INDEMNITY**

The Tenant must indemnify the Landlord against all costs and claims arising from any breach of the terms of this licence.

10. **NOTICES**

The provisions as to notices in the Lease shall apply to this Licence

11. **LIABILITY**

11.1 The obligations of the Tenant in this licence are owed to the Landlord and are made in consideration of the consent granted by clause 2.1.

11.2 At any time when the Tenant is more than one person, then those persons will be jointly and severally liable for the Tenant's obligations arising by virtue of this licence. The Landlord may take action against, or release or compromise the liability of any one of those persons, or grant any time, or concession or other indulgence without affecting the liability of any other of those persons.

12. **THIRD PARTY RIGHTS**

A person who is not a party to this licence shall not have any rights under or in connection with it.

13. **JURISDICTION**

13.1 This licence shall be governed by and construed in all respects in accordance with the laws of England and Wales to the exclusive jurisdiction of whose courts the parties shall be deemed (to the extent necessary) irrevocably to have submitted.

13.2 The Guarantor irrevocably authorises and appoints the Tenant to accept service of all legal process arising out of or connected with this licence and service on the Tenant shall be treated as service on the Guarantor provided that a copy of the notice shall also have been sent to the Guarantor at its registered office set out at the beginning of this licence.

THE PARTIES have executed this licence as a deed and delivered it on the date first set out above

EXECUTED and DELIVERED as a DEED
on behalf of **MOUNTPARK LOGISTICS EU**
2017 23 S.A.R.L. a company incorporated in
Luxembourg by

and

] Manager

being persons who, in accordance with the
laws of that territory, are acting under the
authority of the company

EXECUTED and DELIVERED as a DEED)
by **CONEXUS LIMITED** acting by a director)
in the presence of:)

.....

Director

Witness Signature

Witness Name

Address

Occupation

EXECUTED and DELIVERED as a DEED)
by **PFSWEB, INC.** acting by an authorised)
signatory in the presence of:)

.....

Authorised Signatory

Witness Signature

Witness Name

Address

Occupation

INDUSTRIAL BUILDING LEASE

between

**CHEYENNE CLAYTON DRI, LLC
as Landlord**

and

**PRIORITY FULFILLMENT SERVICES, INC.
as Tenant**

December 13 _____, 20 21

126965.00088.126059897.11

INDUSTRIAL BUILDING LEASE

THIS LEASE (the "Lease"), dated the 13th day of December, 2021 ("Date of Lease") is entered into by and between PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("Tenant"), and CHEYENNE CLAYTON DRI, LLC, a Delaware limited liability company ("Landlord").

I. BASIC LEASE PROVISIONS

1.1 Premises. Approximately 170,314 Rentable Square Feet of space to be known as Building 2 at SunPoint West, as outlined on **Exhibit A** attached hereto and made a part hereof and located at the Building, including exclusive use of the parking area attributable to the Building (containing approximately 114 spaces in locations depicted on **Exhibit A**), which shall be reserved for Tenant's use.

1.2 Building. The building, currently identified as Building 2, located at 2255 West Cheyenne Avenue, North Las Vegas, Nevada 89032.

1.3 Land. The parcel of land upon which the Buildings are located and all rights, easements and appurtenances thereunto belonging or pertaining.

1.4 Project. The development known as SunPoint West, consisting of the Land, the Building and five (5) adjacent buildings (the "Buildings") and all other improvements built on the Land, containing an aggregate total of approximately 730,771 Rentable Square Feet within the Buildings.

1.5 Rentable Square Feet (Foot) or Rentable Area. The rentable area within the Premises and/or the Project are deemed to be the amounts set forth in this **Article I**. The measurement of the Rentable Square Feet has been calculated by an architect engaged by Landlord using accepted BOMA Standards based upon "drip line" methodology. The Rentable Square Feet in the Building and in the other Buildings allocates the Common Area in each building to all tenant space therein on a prorata basis. Tenant agrees that the rentable area of the Premises and Basic Rent may be recalculated by Landlord using the standard set forth above in the event that Landlord elects, in its sole discretion, to re-measure the Premises within the first six (6) months following the Commencement Date, and it is determined that the total number of Rentable Square Feet of the Premises differs from that set forth herein. In the event Landlord elects to so re-measure the Premises, Landlord shall deliver to Tenant a certification from Landlord's architect engaged for such purpose describing the method used to measure the Premises and its calculations of such re-measurement. If the re-measured Rentable Area of the Premises is more or less than the area set forth in this Lease, the annual Basic Rent shall be recalculated by multiplying the then applicable annual Basic Rent per Rentable Square Foot by the re-measured square footage of the Premises. However, in no event, and notwithstanding any such re-measurement, shall the Basic Rent or Tenant's Proportionate Share be increased by more than one percent (1.0%) over the amounts set forth in this Lease. The Basic Rent to be paid monthly shall be then calculated by dividing the recalculated annual Basic Rent by twelve (12), subject to such cap. In addition, Tenant's Proportionate Share of the Basic Costs (as hereinafter defined) shall be recalculated by Landlord in the event the rentable area of the Premises and/or the rentable area at the Project differ from those set forth herein, subject to such cap. At such time, the parties shall enter into an amendment to this Lease setting forth the re-measured square footage in the Premises, the adjusted annual and monthly Basic Rent under this Lease, and the adjusted Tenant's Proportionate Share of Basic Costs. If Landlord does not elect to undertake any such re-measurement, the Rentable Area shall be deemed to be as set forth herein.

1.6 Term. Sixty-Four (64) months, beginning on the Commencement Date and expiring on the Expiration Date.

1.7 Commencement Date. The later of (a) April 1, 2022 or (b) thirty (30) days after receipt by Tenant of Landlord's written notice of the Substantial Completion of the Landlord Work (as hereinafter defined). The Commencement Date is estimated to be April 1, 2022.

1.8 Expiration Date. The Expiration Date is estimated to be July 31, 2027.

1.9 Lease Year. Each consecutive twelve-month period elapsing after: (i) the Commencement Date if the Commencement Date occurs on the first day of a month; or (ii) the first day of the month following the Commencement Date if the Commencement Date does not occur on the first day of a month. Notwithstanding the foregoing, the first Lease Year shall include the additional days, if any, between the Commencement Date and the first day of the month following the Commencement Date, in the event the Commencement Date does not occur on the first day of a month.

1.10 Calendar Year. For the purpose of this Lease, Calendar Year shall be a period of twelve (12) months commencing on each January 1 during the Term, except that the first Calendar Year shall be that period from and including the Commencement Date through December 31 of that same year, and the last Calendar Year shall be that period from and including the last January 1 of the Term through the earlier of the Expiration Date or date of Lease termination.

1.11 Basic Rent. The amount set forth in the following schedule, subject to adjustment as specified in **Article IV**.

Period	Approximate Annual Basic Rent	Monthly Basic Rent
Months 1 - 4 (Abated)*	\$1,328,449.20	\$110,704.10
Months 5 - 12	\$1,328,449.20	\$110,704.10
Months 13 - 24	\$1,368,302.68	\$114,025.22
Months 25 - 36	\$1,409,351.76	\$117,445.98
Months 37 - 48	\$1,451,632.31	\$120,969.36
Months 49 - 60	\$1,495,181.28	\$124,598.44
Months 61 - 64	\$1,540,036.72	\$128,336.39

*Provided that no Event of Default (as defined in **Section 21.1** of this Lease) occurs under this Lease and extends beyond the applicable notice and cure period, Basic Rent shall be abated for a period of four (4) months from and after the Commencement Date (the "Abatement Period"). All other terms and conditions of this Lease, including, without limitation, the obligation to pay Additional Rent, shall remain in full force and effect during the Abatement Period. If any Event of Default (which extends beyond the applicable notice and cure period) occurs under this Lease, the Abatement Period shall immediately terminate, and all Basic Rent which has then previously been abated shall immediately become due and payable.

1.12 Security Deposit. \$128,336.39

1.13 Interest Rate. The per annum interest rate listed as the base rate on corporate loans at large U.S. money center commercial banks as published from time to time under "Money Rates" in the Wall Street Journal plus 3%, but in no event greater than the maximum rate permitted by law. In the event the Wall Street Journal ceases to publish such rates, Landlord shall choose, at Landlord's reasonable discretion, a similarly published rate.

1.14 Tenant's Proportionate Share. Tenant's Proportionate Share of the Project is 23.31% (determined by dividing the Rentable Square Feet of the Premises by the Rentable Square Feet of the Project and multiplying the resulting quotient by one hundred and rounding to the second decimal place).

1.15	<u>Broker(s)</u>	<u>Landlord's</u>	<u>Tenant's</u>
		Chris Lane Colliers International	Jason Simon, SIOR Jones Lang LaSalle
1.16	<u>Guarantor</u>	N/A	
1.17	<u>Landlord's Notice Address</u>		CHEYENNE CLAYTON DRI, LLC c/o SunCap Property Group 6101 Carnegie Boulevard, Suite 180 Charlotte, NC 28209 Attention: Jason Bria
1.18	<u>Tenant's Notice Address</u>	505 Millennium Drive	PRIORITY FULFILLMENT SERVICES, INC. Allen, Texas 75013 Attention: Contracts and Zach Thomann

1.19 Agents. Officers, partners, directors, employees, agents, licensees, contractors, customers and invitees; to the extent customers and invitees are under the principal's control or direction.

1.20 Common Area. All areas from time to time designated by Landlord for the general and nonexclusive common use or benefit of Tenant, other tenants of the Project, and Landlord, including, without limitation, roadways, entrances and exits, loading areas, landscaped areas, open areas, park areas, service drives, walkways, common mail areas, common trash areas, common pipes, conduits, wires and appurtenant equipment within the Project, common maintenance and utility rooms and closets (if any), exterior lighting not connected to any specific Building's electrical system, exterior utility lines before entering any Building, and non-exclusive parking facilities (as determined by Landlord from time to time in accordance with the Lease or any other lease).

II. PREMISES AND TERM

2.1 Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon and subject to the terms, covenants, provisions and conditions of this Lease.

2.2 Term. The Term shall commence on the Commencement Date and expire at midnight on the Expiration Date, such dates being specified in the Basic Lease Provisions, as the same shall be confirmed or revised pursuant to the Acceptance Letter and Commencement Date Agreement substantially in the form of **Exhibit F** at the request of either party.

2.3 Early Possession. If Tenant takes possession of the Premises before the Commencement Date for the purposes of commencing a substantial portion of its normal business operations therein, such possession shall be subject to the terms and conditions of this Lease and Tenant shall pay Rent (as defined in **Article III**) to Landlord for each day of possession before the Commencement Date (which shall not affect the stated abatement under this Lease which commences from and after the Commencement Date. Notwithstanding the foregoing and provided that Tenant has delivered to Landlord its insurance certificates pursuant to **Section 11.4**, paid the Initial Payment (as set forth in Section 3.1, below, Landlord, in its sole discretion, agrees to allow Tenant to enter the Premises thirty (30) days prior to the Commencement Date, for the sole purposes of installing furniture, equipment or other personal property and for the receipt of customer inventory (as permitted by applicable law), and except for the cost of services requested by Tenant, Tenant shall not be required to pay Rent for any days of possession prior to the Commencement Date during which Tenant is in possession of the Premises for such purposes; provided, however, that during such period of early entry by Tenant, Landlord shall have no liability for any costs, damages or losses suffered by Tenant, its members, managers, employees, agents or contractors. Tenant's occupancy of the

Premises prior to the Commencement Date for any purpose shall be subject to all other terms and conditions of this Lease, including without limitation, **Articles X, XI, XVIII and XXIV**. During any period of occupancy prior to the Commencement Date, Tenant and its Agents shall not unreasonably interfere with Landlord's performance of the Landlord Work or any other work conducted by Landlord, if any, pursuant to **Article VI**, and any delay caused by such interference shall be a Tenant delay as provided in **Section 4(d)** of **Exhibit C**.

III. BASIC RENT AND SECURITY DEPOSIT

3.1 Types of Rental Payments. "Rent" shall be and consist of (a) Basic Rent payable in monthly installments as set forth in **Section 1.11**, in advance, on the first day of each and every calendar month during the Term of this Lease; and (b) Additional Rent as defined in **Section 4.1**. Rent shall be paid by check or electronically via automatic debit, ACH credit, or wire transfer to such account as Landlord designates in writing to Tenant or at an address designated by Landlord for payment in lawful U.S. Dollars. **Concurrent with the execution and delivery of this Lease, Tenant shall deliver to Landlord the "Initial Payment", which shall include the Additional Rent for the first full calendar month of the Term, plus the Security Deposit (as set forth in Section 1.12) (collectively, the "Initial Payment"). The Initial Payment shall be calculated as follows:**

Initial Payment	
Security Deposit (as set forth in Section 1.12)	\$128,336.39
Additional Rent (as set forth in Section 4.1)	\$20,437.68
Total	\$148,774.07

Until Landlord provides further written notice to Tenant, all Rent shall be paid as follows:

If by check, to the following address: 6001 Carnegie Boulevard Suite 180 Charlotte, NC 28209 Attn: Accounts Receivable – Sunpoint West	
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3.2 Covenants Concerning Rental Payments. Tenant shall pay the Basic Rent and the Additional Rent promptly when due, without notice or demand therefor, and without any abatement, deduction or setoff for any reason whatsoever, except as may be expressly provided in this Lease. No payment by Tenant, or receipt or acceptance by Landlord, of a lesser amount than the correct Basic Rent and/or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy in this Lease or at law. In addition, any such late Rent payment shall bear interest from the date such Rent became due and payable to the date of payment thereof by Tenant at the Interest Rate. Such interest shall be due and payable within ten (10) days after written demand from Landlord.

3.3 Triple Net Lease. It is intended that the Rent provided for in this Lease shall be an absolutely net return to Landlord for the Term of this Lease and any renewals or extensions thereof, free of any and all expenses or charges with respect to the Premises except for those obligations of Landlord expressly set forth herein.

3.4 Security Deposit. Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord a Security Deposit in the amount set forth in **Section 1.12**, in immediately available funds,

which Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of its obligations under this Lease. The Security Deposit is not advance payment of Basic Rent or Additional Rent or a measure or limit of Landlord's damages upon an uncured Event of Default (as such term is defined in **Section 21.1** of this Lease). Landlord shall be entitled to commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time and without prejudice to any other remedy, use all or part of the Security Deposit to perform any obligation which Tenant was obligated, but failed prior to the end of the applicable cure period, to perform hereunder, and Landlord shall upon written request by Tenant notify Tenant, in writing, of any purpose for which the Security Deposit has been used and the amounts withdrawn therefrom. **Tenant waives the provisions of any law, now or hereafter enforced, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage caused by the acts or omissions of Tenant or anyone acting by, through or under Tenant.** Following any such application of the Security Deposit, Tenant shall pay to Landlord within twenty (20) days of such application of the Security Deposit on demand the amount so applied in order to restore the Security Deposit to its original amount. Within thirty (30) days after the Term ends, provided Tenant has performed all of its obligations hereunder, Landlord shall return to Tenant the balance of the Security Deposit not applied to satisfy Tenant's obligations. If Landlord transfers its interest in the Premises, then Landlord shall assign that portion of the Security Deposit not previously applied by Landlord and existing at the time of such transfer to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit; provided, however, that any such transferee shall assume the obligations set forth in this **Section 3.4**.

IV. ADDITIONAL RENT

4.1 Additional Rent. In addition to paying the monthly Basic Rent, Tenant shall pay as "Additional Rent" the amounts determined pursuant to this **Article IV** and all other amounts payable by Tenant under this Lease. The first installment of Additional Rent for the first month after the Commencement Date, which is due and payable upon execution of this Lease, is estimated to be \$20,437.86. Without limitation on the other obligations of Tenant which shall survive the expiration or earlier termination of this Lease, the obligations of Tenant to pay the Rent incurred during the Term of this Lease shall survive the expiration or earlier termination of this Lease. For any partial Calendar Year, Tenant shall be obligated to pay only a pro rata share of the Additional Rent, equal to Additional Rent for such entire Calendar Year divided by 360, such quotient multiplied by the number of days of the Term falling within such Calendar Year.

4.2 Definitions. As used herein, the following terms shall have the following meanings:

(a) "Basic Costs" shall mean all expenses, costs and disbursements which Landlord shall pay or become obligated to pay because of, or in connection with, the normal commercial operation, maintenance and repair of the Project, including but not limited to (i) wages, salaries and fees of all personnel directly engaged in operating, maintaining or securing the Project, including taxes, insurance and benefits for all employees at or below the title of Property Manager relating thereto; (ii) a management fee payable to Landlord or the company or companies managing the Project not to exceed four percent (4%) of Landlord's gross rental receipts; (iii) all supplies, tools, equipment and materials used directly in the operation and maintenance of the Project, including any lease payments therefor; (iv) cost of reasonable repairs and general maintenance, including but not limited to the parking lot, roof repairs, fire sprinklers and fire protection systems, landscaping and snow removal (excluding repairs and general maintenance paid by proceeds of insurance or by Tenant or other parties, and alterations attributable solely to specific tenants of the Project based on the percentage of actual RSF); (v) reasonable legal expenses and accounting expenses incurred with respect to the Project; (vi) Taxes with the exception of Landlord's income taxes; (vii) cost of all maintenance and service agreements for the Project, and any equipment related thereto, including window cleaning and snow removal; (viii) premiums and market-reasonable deductibles paid for insurance relating to the Project, including, without limitation, fire and extended coverage, boiler, earthquake, windstorm, rental loss, and commercial general liability insurance; (ix) costs

incurred to implement, monitor and enforce Conservation Standards; (x) including, without limitation, all costs with respect to any Common Areas, such as the costs of the common mechanical electric room and all utilities for the Common Areas and (xi) capital improvements, except that Basic Costs for capital improvements shall be limited to the cost of any capital improvement which is (A) reasonably intended to reduce any component cost included within Basic Costs or to achieve energy conservation or environmental sustainability with respect to the Project, (B) necessary to keep the Project or any part thereof in compliance with all governmental rules and regulations applicable thereto from time to time, or (C) intended to achieve energy conservation or environmental sustainability with respect to the Project. Any capital improvement costs shall be reasonably amortized with interest on the unamortized amount at the Interest Rate and shall only be included in Basic Costs to the extent such costs are attributable, on a straight-line amortization (based on the useful life of the improvement for federal tax purposes), to the remaining portion of the Term of this Lease and any renewal or extension thereof. Notwithstanding anything contained herein to the contrary, Tenant's Proportionate Share of the Basic Costs for items other than the Non-Controllable Costs (the "Controllable Costs") shall be capped as provided in this Section (the "Cap"). Such Cap on Controllable Costs shall, for each Calendar Year, increase by six percent (6%) on a cumulative and compounded basis over the Cap for the prior Calendar Year, commencing with the third (3rd) full Calendar Year following the Commencement Date. For purposes of such calculation, the Cap for the year in which the Commencement Date occurs shall be deemed to be the actual Controllable Costs for said Calendar Year. As used herein, the term "Non-Controllable Costs" shall mean all Basic Costs which are beyond the control of Landlord, as reasonably determined by Landlord, such as, but not limited to, Taxes, insurance costs, utilities costs, and security costs.

(b) Exclusions from Basic Costs. The following items are specifically excluded from the definition of Basic Costs: (i) interest (except as otherwise allowed herein); (ii) depreciation; (iii) penalties and fines; (iv) marketing expenses and commissions; (v) costs of services or labor provided solely and directly to specific tenants at the Project, including, but not limited to tenant improvement costs; (vi) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (vii) general or special assessments levied against the owner of the Project for public improvements which are not currently due; and (viii) capital improvements except as set forth in subparagraph (a) above.

(c) "Taxes" shall be defined as (i) all real property taxes and assessments levied by any public authority against the Project; (ii) all personal property taxes levied by any public authority on personal property of Landlord used in the management, operation, maintenance and repair of the Project, such personal property being located at the Project, or if such personal property is used at multiple properties, the prorata portion attributable to the Project (i.e. if the personal property is used at four (4) properties, the prorata portion of the tax attributable to the Project shall be 25% of the total tax assessed thereon); (iii) all taxes, assessments and reassessments of every kind and nature whatsoever levied or assessed in lieu of or in substitution for existing or additional real or personal property taxes and assessments on the Project, or (iv) amounts necessary to be expended because of governmental orders, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits or any other purposes which are assessed, levied, confirmed, imposed or become a lien upon the Premises or Project or become payable during the Term. Further, for the purposes of this **Article IV**, Taxes shall include the reasonable and actual expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in challenging or obtaining or attempting to obtain a reduction of such Taxes, regardless of the outcome of such challenge, and any costs incurred by Landlord for compliance, review and appeal of tax liabilities; provided, that Landlord shall document such expenses, if any, and provide reasonable evidence of the same to Tenant as part of the annual reconciliation and/or audit requested pursuant to **Section 4.3** below. Notwithstanding the foregoing, Landlord shall have no obligation to challenge Taxes. If as a result of any such challenge, a tax refund is made to Landlord, then provided no Event of Default exists under this Lease, beyond any/all applicable cure periods the amount of such refund less the expenses of the challenge shall be deducted from Taxes due in the Calendar Year such refund is received. In the case of any Taxes

which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or cause such assessment to be paid in installments over the maximum period permitted by law. **Nothing contained in this Lease shall require Tenant to pay any gift, estate, inheritance, income, or succession transfer tax of Landlord; provided, that no such tax is a substitution for, or replacement of, the Taxes in effect on the Commencement Date. Tenant hereby knowingly, voluntarily and intentionally waives any right, whether created by law or otherwise, to (a) file or otherwise protest before any taxing authority any tax rate or value determination with respect to the Premises, the Building or the Project, even though Landlord may elect not to file any such protest, and (b) appeal any order of a taxing authority regarding the Project.**

4.3 Expense Adjustment. Commencing on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay to Landlord as Additional Rent, on the first day of each calendar month, an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the total amount of the Basic Costs incurred with respect to each Calendar Year in the Term of this Lease (the total amount paid by the Tenant in each Calendar Year being referred to herein as the "Expense Adjustment Amount"). The Expense Adjustment Amount for each Calendar Year shall be estimated from time to time by Landlord and communicated by written notice to Tenant not more frequently than quarterly. Landlord shall cause to be kept books and records showing Basic Costs in accordance with generally accepted accounting principals and industry standard account practices consistently maintained. Following the close of each Calendar Year, Landlord shall cause the amount of the Expense Adjustment Amount which should have been paid by Tenant for such Calendar Year (the "Final Expense Amount") to be computed on the basis of the actual Basic Costs for each Calendar Year, and Landlord shall deliver to Tenant a statement of such Final Expense Amount. If the Final Expense Amount exceeds the Expense Adjustment Amount, Tenant shall pay such deficiency within thirty (30) days after receipt of such Final Expense Statement. If the Expense Adjustment Amount exceeds the Final Expense Amount, then at Landlord's option such excess shall be either credited against payments of Additional Rent next due or refunded by Landlord, provided no Tenant Event of Default exists hereunder which extends beyond the applicable notice and cure period. Delay in computation of the Final Expense Amount or any Expense Adjustment Amount shall not be deemed a default hereunder or a waiver of Landlord's right to collect the Final Expense Amount or Expense Adjustment Amount, as the case may be.

4.4 Sales or Excise Taxes. Tenant shall pay to Landlord, as Additional Rent, concurrently with payment of Basic Rent all taxes, including, but not limited to any and all sales, rent or excise taxes (but specifically excluding income taxes calculated upon the net income of Landlord) on Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, as levied or assessed by any governmental or political body or subdivision thereof against Landlord on account of such Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, or any portion thereof.

4.5 Tenant's Right to Audit. Tenant shall have a right, at Tenant's sole cost and expense, to audit Landlord's Final Expense Amount upon the following terms and conditions. Tenant's right to conduct an audit hereunder shall be expressly conditioned on (i) Tenant having paid in full the Final Expense Amount for the Calendar Year which is the subject of the audit, as set forth in Landlord's statement thereof, prior to or simultaneously with Tenant's delivery of the Audit Notice (as herein defined) and (ii) there being no Event of Default existing under this Lease beyond the applicable notice and cure period. Tenant shall deliver written notice to Landlord of its intent to audit (an "Audit Notice") within ninety (90) days following receipt of Landlord's statement of the Final Expense Amount, such Audit Notice identifying the general scope of the intended audit, inclusive of the Tenant determining the accuracy of its share of the Final Expenses Tenant shall have no right to audit prior Calendar Years for which an Audit Notice was not timely given (in accordance with the previous sentence) and Tenant shall have no right to audit a Calendar Year more than once. The audit shall take place at Landlord's regional offices or the Project or as mutually agreed between the parties, at a time mutually convenient to Landlord and Tenant, but not later than sixty (60) days after Landlord's receipt of the Audit Notice. At such audit, Landlord shall make all pertinent books and records available for review that are necessary for Tenant (or its agent) to conduct its review of the varying costs and expenses included in or making up a portion of the Final Expenses. Except as Landlord may consent in writing, the audit shall be completed within forty-five (45) days after commencement. No copying of

Landlord's books or records will be allowed without the express consent of the Landlord. The audit may be accomplished by either Tenant's own employees with accounting experience reasonably sufficient to conduct such review, or a nationally or regionally recognized public accounting firm mutually acceptable to Landlord and Tenant that is engaged on either a fixed price or hourly basis. The records reviewed by Tenant shall be treated as confidential and prior to commencing the audit, Tenant and any other person which may perform such audit for Tenant, shall execute a confidentiality agreement in a form reasonably acceptable to Landlord. A copy of the results of the audit shall be delivered to Landlord within thirty (30) days after the completion of the audit. If the results of the audit determine that the Final Expense Amount for the Calendar Year is less than reported, Landlord shall give Tenant a credit in the amount of the overpayment toward Tenant's next monthly payment of Basic Costs, or, in the event the Lease has expired or terminated and no Event of Default exists beyond the applicable notice and cure period, Landlord shall pay Tenant the total amount of such overpayment within thirty (30) days. If Landlord and Tenant determine that the Final Expense Amount for the Calendar Year is more than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days. Failure by Tenant to timely deliver an Audit Notice, is deemed a waiver of the applicable audit right and any right to contest the Final Expense Amount for the applicable Calendar Year and is deemed acceptance of the Final Expense Amount for the applicable Calendar Year. Any audit review by Tenant shall not postpone or alter the liability and obligation of Tenant to timely pay any Rent due under the terms of the Lease. No assignee or subtenant shall have any right to conduct an audit except for a permitted assignee or sublessee under **Article IX** of the Lease occupying the entire Premises and no assignee or sublessee shall conduct an audit for any period during which such assignee or sublessee was not in possession of the Premises or for any period in which Tenant has conducted an audit.

V. USE

5.1 Use of Premises. In accordance with the terms, covenants and conditions set forth in this Lease, and applicable governmental regulations, restrictions and permitting (without the necessity of obtaining any zoning changes, conditional use permits or other special use permits), Tenant shall use the Premises solely for warehouse and general business office purposes and uses incidental thereto, but for no other purpose. Notwithstanding the foregoing, Tenant shall not use the Premises or any portion of the Project for those Prohibited Uses identified on **Exhibit F**, which is attached hereto and incorporated herein by this reference. Tenant shall have the right to reasonably enforce its right to park in those spaces which are dedicated for Tenant's exclusive use pursuant to this Lease; provided, however, that (i) Tenant shall have no right to gate, fence, or otherwise physically restrict access to any Common Areas (including, but not limited to, any interior drive aisles, roadways, sidewalks, etc.), (ii) any enforcement actions taken by Tenant shall comply with the applicable state, federal, and local laws, and (iii) Tenant shall indemnify, defend, and hold Landlord (and its Agents) harmless from any and all damages, claims, demands, causes of action, fines, penalties, liabilities, judgments, and expenses, including, without limitation, reasonable attorneys' fees and court costs) arising as a result of Tenant's (or its Agents') enforcement of its exclusive parking right, as set forth in this **Section 5.1**.

5.2 Operation of Tenant's Business. If any governmental license or permit, other than a Certificate of Occupancy (if any is issued or required), shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant shall first provide Landlord with prior written notice and obtain Landlord's consent thereto, which will not be unreasonably withheld or delayed. Thereafter, at its expense, Tenant shall procure such license prior to the first day of the Term, and thereafter maintain and renew such license or permit. Tenant shall, at all times, comply with the terms and conditions of each such license or permit. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner which may (a) violate any Certificate of Occupancy for the Premises or for the Building; (b) cause, or be liable to cause injury to the Building or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any federal, state or local public authority or the requirements of insurance bodies; (d) impair or tend to impair the character, reputation or appearance of the Project or the Building; (e) impair or tend to impair the proper and economic maintenance, operation, and repair of the Project and the Building and/or its equipment, facilities or systems; and (f) annoy or inconvenience other tenants or users of the Building and the Project, if any. Tenant shall take all actions necessary to comply with all applicable federal,

state or local statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Premises, including without limitation, the Occupational Safety and Health Act, and regulating Hazardous Materials (as such term is herein defined in **Section 24.2**). If the nature of Tenant's use or occupancy of the Premises causes any increase in Landlord's insurance premiums over and above those chargeable for the least hazardous type of occupancy legally permitted in the Premises, the Landlord will promptly give written notice of such increase to Tenant (which such notice shall include supporting documents evidencing such premium increase) and if Tenant fails to limit its use so as to negate such premium increase within thirty (30) days from the date of such notice from Landlord, Tenant will thereafter pay the resulting increase within ten (10) days after receipt of a statement from Landlord setting forth the amount thereof.

5.3 **Use of Common Areas.** Tenant and its employees and visitors shall have the non-exclusive right to use any Common Areas of the Project as constituted from time to time, subject to such reasonable rules and regulations governing the use as Landlord from time to time may prescribe. Notwithstanding anything contained herein to the contrary, Landlord shall have the right to designate certain portions of the Common Areas not including those parking areas which are reserved for Tenant's use (including, but not limited to, areas adjacent to a tenant's premises and/or trailer parking areas located throughout the Project) for the exclusive use of one or more tenants, so long as, in Landlord's determination, such designation does not materially adversely impact the rights of any other tenant within the Project.

VI. CONDITION AND DELIVERY OF PREMISES

Tenant hereby covenants and agrees that Tenant is familiar with the condition of the Project and the Premises and that, subject to the completion of the Landlord Work and the inspection and punch-list provisions set forth in Section 4(b) of **Exhibit C**, Tenant is accepting the Premises on an "AS-IS," "WHERE-IS" basis, and that Landlord is making absolutely no repairs, replacements or improvements of any kind or nature to the Premises or the Project in connection with, or in consideration of, this Lease, except as provided under this Lease, including those forming part of the Basic Costs, and that Landlord shall (i) deliver the Premises with the electrical, plumbing, fire, and mechanical systems in good working order for the intended use and purpose of the Premises as of the Commencement Date and continuing for the first six months of the Lease Term, and (ii) perform the "Landlord Work" pursuant to **Exhibit C** attached hereto. Landlord agrees to enforce, upon Tenant's request, all manufacturer's or contractor's warranties given in connection with Landlord Work.

VII. SUBORDINATION; NOTICE TO SUPERIOR LESSORS AND MORTGAGEES; ATTORNMENT

This Lease is subject and subordinate to any and all ground or underlying leases and to any and all mortgages, deeds of trust, security interests, or title retentions interest now or hereafter affecting the Land, Building, or Project (the "Mortgage") and to all renewals, amendments, restatements, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative; however, in confirmation thereof, Tenant shall, within ten (10) business days of receipt of the Landlord's request, execute a Subordination, Non-Disturbance and Attornment Agreement (SNDA) that Landlord or any holder of any note or obligation secured by a Mortgage (the "Mortgagee") may request confirming such subordination. So long as there exists no uncured Event of Default, such SNDA shall not interfere with, hinder or reduce the right of Tenant to continue to occupy the Premises and to conduct its business therein in accordance with the covenants, conditions, provisions, terms and agreements set forth in this Lease. Notwithstanding the foregoing, before any foreclosure sale under a Mortgage, the Mortgagee shall have the right to subordinate the Mortgage to this Lease, and, in the event of a foreclosure, at the Mortgagee's option this Lease shall continue in full force and effect per the SNDA and Tenant shall attorn to and recognize as its landlord the purchaser of Landlord's interest under this Lease. Tenant shall, upon the request of a Mortgagee or purchaser at foreclosure, further execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of the lien of any Mortgage to this Lease or Tenant's attornment to such purchaser, subject to the SNDA for the benefit of Tenant. In the event of the enforcement by the Mortgagee or beneficiary under any such Mortgage or deed of trust of the remedies provided for by law or by such Mortgage or deed of trust, Tenant will, at the option of any person or party succeeding to the interest of Landlord as a result of such enforcement, attorn to and automatically become

the Tenant of such Mortgagee, beneficiary or successor-in-interest without change in the terms or other provisions of this Lease; provided, however, that such Mortgagee, beneficiary or successor in interest shall not be bound by, liable for, or subject to (a) any payment of Basic Rent or Additional Rent for more than one (1) month in advance, except advance rental payments expressly provided for in this Lease and the Security Deposit; (b) any act or omission of Landlord; or (c) any offset or defense arising prior to the date such successor-in interest acquired title to the Land, Building, or Project.

VIII. QUIET ENJOYMENT

So long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or molestation by Landlord, or any other person lawfully claiming through or under Landlord, subject, nevertheless, to the provisions of this Lease and to those of a Mortgage and to all laws, ordinances, orders, rules and regulations of any governmental authority. Landlord shall not be responsible for the acts or omissions of any other persons or third parties (except any Agents of Landlord), that may interfere with Tenant's use and enjoyment of the Premises.

IX. ASSIGNMENT, SUBLETTING AND MORTGAGING

9.1 Landlord's Consent.

(a) Except as provided herein, Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or rent (or permit a third party to occupy or use) the Premises, or any part thereof, nor shall any assignment or transfer of this Lease or the right of occupancy hereunder be effected by operation of law or otherwise, without the prior written consent of Landlord, such consent not to be unreasonably withheld, delayed, or conditioned. A transfer at any one time or from time to time of a majority interest in Tenant (whether stock, partnership interest or other form of ownership or control) shall be deemed to be an assignment of this Lease, unless at the time of such assignment and/or transfer Tenant is an entity whose outstanding stock is listed on a recognized security exchange. If Tenant is listed on a recognized security exchange a sale shall not require the consent of the Landlord. Within thirty (30) days following Landlord's receipt of Tenant's request for Landlord's consent to a proposed assignment, sublease, or other encumbrance, together with all information required to be delivered by Tenant pursuant to the provisions of this **Section 9.1**, Landlord shall: (i) consent to such proposed transaction; (ii) refuse such consent; or (iii) elect to terminate this Lease in the event of an assignment, or in the case of a sublease, terminate this Lease as to the portion of the Premises proposed to be sublet in accordance with the provisions of **Section 9.2**. Any assignment, sublease or other encumbrance without Landlord's written consent as required under this Article 9 shall be voidable by Landlord and, at Landlord's election, constitute an Event of Default hereunder. Landlord and Tenant acknowledge that Landlord may withhold consent (a) if an Event of Default exists beyond the applicable notice and cure period; or (b) if the proposed assignee or sublessee is: a governmental entity; a person or entity with whom Landlord has negotiated for space in the Project during the prior six (6) months and with whom Landlord has not ended such negotiations; a present tenant in the Project; a person or entity whose tenancy in the Project would violate any exclusivity arrangement which Landlord has with any other tenant (of which Landlord has previously informed Tenant); an entity that does not have the same or better (x) credit rating than Tenant and (y) net worth of Tenant as of the date of such assignment; or a person or entity of a character or reputation or engaged in a business which is not consistent with the quality of the Project. If Tenant requests Landlord's consent to a specific assignment or subletting, Tenant will submit in writing to Landlord: (1) the name and address of the proposed assignee or subtenant; (2) a counterpart of the proposed agreement of assignment or sublease; (3) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or subtenant, and as to the nature of its proposed use of the space; (4) banking, financial or other credit information reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed assignee or subtenant; (5) executed estoppel certificates from Tenant containing such information as provided in **Article XXIII**; and (6) any other information reasonably requested by Landlord.

(b) Notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, the following shall apply:

(i) In the event of an assignment, contemporaneously with the granting of Landlord's aforesaid consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties, and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant.

(ii) All terms and provisions of the Lease shall continue to apply after any such assignment or sublease in accordance with the terms of this Lease.

(iii) In any case where Landlord consents to an assignment, transfer, encumbrance or subletting, the undersigned Tenant and any guarantor shall nevertheless remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder (including, without limitation, the obligation to pay all Rent and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this instrument against the undersigned Tenant, any guarantor and/or any assignee without demand upon or proceeding in any way against any other person. Neither the consent by Landlord to any assignment, transfer, encumbrance or subletting nor the collection or acceptance by Landlord of rent from any assignee, subtenant or occupant shall be construed as a waiver or release of the initial Tenant or any guarantor from the terms and conditions of this Lease or relieve Tenant or any subtenant, assignee or other party from obtaining the consent in writing of Landlord to any further assignment, transfer, encumbrance or subletting.

(iv) Subject to Section 9.3, Tenant hereby assigns to Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to Landlord; provided however, that until the occurrence of an Event of Default, Tenant shall have the license to continue collecting such rent and other sums. Notwithstanding the foregoing, in the event that the rent due and payable by a sublessee under any such permitted sublease (or a combination of the rent payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided Rent payable under this Lease, or if with respect to a permitted assignment, permitted license, or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee, or other transferee exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord such excess rent and other excess consideration in accordance with Section 9.3 within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee, or other transferee, as the case may be.

(v) Tenant shall pay Landlord a fee not to exceed \$1,000.00 to reimburse Landlord for all its expenses under this Article IX, including, without limitation, reasonable attorneys' fees.

9.2 Landlord's Option to Recapture Premises. If Tenant proposes to assign this Lease, Landlord may, at its option, upon written notice to Tenant given within fifteen (15) business days after its receipt of Tenant's notice of proposed assignment, together with all other necessary information, elect to recapture the Premises and terminate this Lease. If Tenant proposes to sublease all or part of the Premises, Landlord may, at its option upon written notice to Tenant given within fifteen (15) business days after its receipt of Tenant's notice of proposed subletting, together with all other necessary information, elect to recapture such portion of the Premises as Tenant proposes to sublease and upon such election by Landlord, this Lease shall terminate as to the portion of the Premises recaptured. If a portion of the Premises is recaptured, the Rent payable under this Lease shall be proportionately reduced based on the square footage of the Rentable Square Feet retained by Tenant and the square footage of the Rentable Square Feet leased by Tenant immediately prior to such recapture and termination, and Landlord and Tenant shall thereupon execute an amendment to this Lease in accordance therewith. Landlord may thereafter, without limitation, lease the recaptured portion of the Premises to the proposed assignee or subtenant without liability to Tenant. Upon any such termination, Landlord and Tenant shall have no further obligations or liabilities to each other under this Lease with respect to the recaptured portion of the Premises, except with respect to obligations or liabilities which accrue or have accrued hereunder as of the date of such

termination (in the same manner as if the date of such termination were the date originally fixed for the expiration of the Term).

9.3 Distribution of Net Profits. In the event that Tenant assigns this Lease or sublets all or any portion of the Premises during the Term to any entity, Landlord shall receive 50% of any "Net Profits" (as hereinafter defined) and Tenant shall receive 50% of any Net Profits received by Tenant from any such assignment or subletting. The term "Net Profits" as used herein shall mean such portion of the Rent payable by such assignee or subtenant in excess of the Rent payable by Tenant under this Lease (or pro rata portion thereof in the event of a subletting) for the corresponding period, after deducting from such excess Rent all of Tenant's documented reasonable third party costs associated with such assignment or subletting, including, without limitation, broker commissions, attorney fees and any costs incurred or market customary third party costs, abatements, and concessions, granted by Tenant at no cost to Landlord, to prepare or alter the Premises, or portion thereof, for the assignee or sublessee.

9.4 Transfers to Related Entities. Notwithstanding anything in this **Article IX** to the contrary, provided no Event of Default exists under this Lease beyond the applicable notice and cure period, Tenant may, without Landlord's consent, but after providing written notice to Landlord and subject to the provisions of **Section 9.1(b)(i-iii)**, assign this Lease or sublet all or any portion of the Premises to any Related Entity (as hereinafter defined) provided that (i) such Related Entity is not a governmental entity or agency; and (ii) such Related Entity's use of the Premises would not cause Landlord to be in violation of any exclusivity agreement within the Project. "Related Entity" shall be defined as any parent company, subsidiary, affiliate or related corporate entity of Tenant that controls, is controlled by, or is under common control with Tenant, or any successor-in-interest resulting from a merger, acquisition, the sale of all, or substantially all, of Tenant's assets; provided that such successor-in-interest has a net worth equal to, or greater than, the value of the Tenant on (a) the Date of Lease or (b) the date of such transfer, whichever is greater.

X. COMPLIANCE WITH LAWS

10.1 General Compliance. Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any governmental or administrative authority with respect to the Premises or the use or occupation thereof. Tenant shall, at Tenant's expense, comply with all laws and requirements of any federal, state or local governmental or administrative authorities which shall impose any violation, order or duty on Landlord or Tenant arising from (a) Tenant's particular use of the Premises; (b) the manner or conduct of Tenant's business or operation of its installations, equipment or other property therein; (c) any cause or condition created by or caused by Tenant; (d) breach of any of Tenant's obligations under this Lease, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen; and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord by reason or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this **Article X**. Nothing in this **Article X** shall make Tenant responsible for any structural repairs or improvements that are not specifically necessitated solely by the causes set forth in **Clauses (a), (b), (c) or (d)** of the immediately preceding sentence.

10.2 ADA Compliance. Notwithstanding any other statement in this Lease, the following provisions shall govern the parties' compliance with the Americans With Disabilities Act of 1990, as amended from time to time, Public Law 101-336; 42 U.S.C. §§12101, et seq. (the foregoing, together with any similar state statute governing access for the disabled or handicapped collectively referred to as the "ADA"):

(a) To the extent governmentally required as of the Commencement Date of this Lease, Landlord shall be responsible for the cost of compliance with Title III of the ADA, and such reasonable cost shall not be included in Basic Costs, with respect to any repairs, replacements or alterations to the Common Areas. To the extent governmentally required subsequent to the Commencement Date of this Lease as a result of an amendment to Title III of the ADA or any regulation thereunder enacted subsequent to the Commencement Date of this Lease, Landlord shall be responsible for compliance with Title III of the ADA with respect to any repairs, replacements or alterations to the Common Areas, and such reasonable expense shall be included

in Basic Costs. **Landlord shall indemnify, defend and hold harmless Tenant and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Landlord's failure to comply with Title III of the ADA as required above.**

(b) To the extent governmentally required, Tenant shall be responsible for compliance, at its expense, with Titles I and III of the ADA with respect to the Premises. **Tenant shall indemnify, defend and hold harmless Landlord and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Tenant's failure to comply with Titles I and III of the ADA as required above.**

10.3 Conservation Standards. If and to the extent required by federal, state, or local laws, Tenant shall implement commercially reasonable measures to regulate energy and water usage and reduce the production of waste and carbon emissions at and from the Premises, and Tenant shall comply with those written initiatives, practices and procedures for the Project implemented by Landlord (in response to any applicable governmental requirement) from time to time for such purposes (collectively, the "Conservation Standards"). To Landlord's actual knowledge, as of the Date of Lease, there are no existing Conservation Standards to which the Premises are subject. Landlord shall have the right to condition its approval of the scope of and/or plans for Alterations or other improvements to be made by or on behalf of Tenant, including, without limitation, any improvements described on **Exhibit C** attached hereto, on compliance with Landlord's then-current Conservation Standards. The Conservation Standards include, but are not limited to, the following:

(a) Water Management. Tenant shall use commercially reasonable efforts to implement water reduction measures in its business activities conducted at the Project. Any plumbing fixtures or accessories installed at the Premises by or on behalf of Tenant shall bear the Environmental Protection Agency's WaterSense label. Landlord shall have the right to establish water consumption reduction targets for the Project, and Tenant shall use its commercially reasonable efforts to meet or exceed such targets as are provided to Tenant in writing.

(b) Waste Management. Tenant shall, at its sole cost and expense, (i) arrange for paper, glass, plastics, cardboard/OCC, metals, batteries, fluorescent light bulbs, bulk garbage and electronic waste generated by Tenant and its Agents at the Project to be sorted, stored and collected for recycling as and to the extent such services are provided by the municipality (or otherwise for disposal in the manner prescribed by the municipality); and (ii) comply with any recycling policy for the Project established as part of the Conservation Standards. Tenant shall participate in any composting program provided by the municipality to the extent applicable to it use of the Premises.

(c) Indoor Air Quality. Tenant shall use commercially reasonable efforts to minimize the generation and accumulation of indoor pollutants within the Premises and maximize indoor air quality, including, without limitation, by adhering to proper maintenance of the HVAC system, including filters and ductwork, and ensuring adequate air flow and ventilation within the Premises.

(d) Energy Efficiency. Tenant shall use commercially reasonable efforts to implement energy efficiency measures in its business activities conducted at the Project, including, without limitation, energy-efficient bulbs for task lighting, lighting controls, daylighting, and turning off lights and equipment when not in use. To the extent commercially reasonable and practicable, all electrical equipment and appliances installed at the Premises by or on behalf of Tenant or used by Tenant therein, including but not limited to lighting, office equipment, kitchen equipment, vending machines, and ice machines, shall be ENERGY STAR® certified.

(e) Sustainability Certifications. Tenant shall cooperate in all respects with Landlord's efforts to achieve ENERGY STAR® Labels, LEED Certifications and other sustainability certifications with respect to the Project although Tenant shall not be obligated to construct the Premises to LEED standards. Without limitation of the foregoing, Tenant agrees to deliver to Landlord, within fifteen (15) days after Landlord's request, such factual information and/or written reports regarding Tenant's use and occupancy of the Premises as may be relevant to such certifications.

(f) Utility Reporting. Tenant shall use commercially reasonable efforts to provide to Landlord, within ten (10) business days after Landlord's request therefor, such information as Landlord may specify in its request as necessary to monitor and document the consumption and usage of utilities within the Premises, including, without limitation, copies of utility bills for those utilities that are separately metered or sub-metered to the Premises. Tenant hereby authorizes Landlord and its property manager to contact Tenant's utility providers when and as needed to obtain detailed current and historical usage data and billing information in connection with Tenant's account and/or the applicable meter or sub-meter for the Premises, and Tenant shall cooperate with Landlord in its efforts to obtain such information from the provider. Without limitation of the foregoing, Tenant agrees to execute and deliver to Landlord, within ten (10) business days after Landlord's request, such form of release or authorization as the particular utility provider may require to authorize Landlord to obtain information regarding Tenant's utility usage from such provider. Tenant consents to Landlord's disclosure of information concerning Tenant's utility usage to third parties in connection with its implementation of the Conservation Standards and to prospective purchasers and Mortgagees of the Project and acknowledges that Landlord shall not be required to further notify Tenant of any such disclosure.

XI. INSURANCE

11.1 Certain Insurance Risks. Tenant will not do or permit to be done any act or thing upon the Premises or the Project which would: (i) jeopardize or be in conflict with fire insurance policies covering the Project, and fixtures and property in the Project; or (ii) increase the rate of fire insurance applicable to the Project to an amount higher than it otherwise would be for general business office and warehouse use of the Project; or (iii) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being conducted within the Project.

11.2 Landlord's Insurance. At all times during the Term, Landlord will carry and maintain:

(a) Property insurance coverage at least equal to ISO Special Form causes of loss with respect to the Project, its equipment and common area furnishings, and leasehold improvements in the Premises to the extent of any initial build out of the Premises by the Landlord;

(b) Bodily injury and property damage insurance; and

(c) Such other insurance that Landlord chooses and, provided, that such insurance is customary in form and amount, in the Las Vegas market area.

(d) The insurance coverages and amounts in this Section 11.2 will be determined by Landlord in an exercise of its reasonable discretion. Landlord shall provide Tenant with a certificate of insurance naming Tenant as an additional insured.

11.3 Tenant's Insurance. At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the following insurance for the Premises, in the amounts specified below on forms satisfactory to:

(a) Commercial general liability insurance written on an occurrence basis including without limitation personal injury, bodily injury, broad form property damage, operations hazard, , contractual liability, with a cross liability clause and a severability of interests clause to cover

Tenant's indemnity obligations in this Lease, and products and completed operations liability, in limits not less than \$1,000,000 inclusive per occurrence and \$2,000,000 per location annual aggregate;

(b) Insurance covering (1) Tenant's interest in the Premises, including, all of Tenant's furniture and fixtures, machinery, equipment, stock and any other personal property owned and used in Tenant's business and found in, on or about the Project, and any leasehold improvements to the Premises in excess of any initial build-out of the Premises by the Landlord and Alterations, in an amount not less than the applicable replacement cost, and (2) all work incorporated in the Building and all materials and equipment in or about the Premises as a result of Tenant's performance of any repairs or Alterations at or to the Premises, it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft of or loss or damage to any uninsured or inadequately insured property. Insurance forms will provide coverage on an open perils basis insuring against "all risks of direct physical loss." All policy proceeds will be used for the repair or replacement of the Premises, or the property damaged or destroyed, however, if this Lease ceases under the provisions of **Article XIX**, Tenant will be entitled to any proceeds resulting from damage to Tenant's furniture and fixtures, machinery and equipment, stock and any other personal property;

(c) Worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state in which the Premises are located, including employer's liability insurance in the limit of \$1,000,000 each accident; \$1,000,000 each employee; \$1,000,000 aggregate. Such insurance shall include waiver of subrogation rights in favor of Landlord and Landlord's management company;

(d) If Tenant operates owned, hired, or non-owned vehicles on the Project, commercial automobile liability will be carried at a limit of liability not less than \$1,000,000 combined for bodily injury and property damage;

(e) Umbrella liability insurance in excess of and not more restrictive than the underlying coverage listed in paragraphs (a), (c) and (d) above, with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate;

(f) Loss of income and extra expense insurance in amounts as will reimburse Tenant for direct or indirect loss of earning attributable to all perils insured against under the ISO Causes of Loss – Special Form Coverage, or attributable to prevention of access to the Premises as a result of such perils, providing for an extended period of indemnity to be not less than twelve (12) months;

(g) Any other form for forms of insurance or any changes or endorsements to the insurance required herein as Landlord, or any Mortgagee may reasonably require; provided, however, that such additional insurance shall then be customary in the Las Vegas market area.

All insurance required under this **Article XI** shall be issued by such good and reputable insurance companies qualified to do and doing business in the state in which the Premises are located and having a rating not less than A:VIII as rated in the most current copy of Best's Insurance Report in the form customary to this locality.

11.4 **Forms of the Policies.** Landlord, Landlord's management company and such other parties as Landlord shall designate to Tenant who have an insurable interest in the Premises or Project shall be (i) named as additional insured with respect to the coverages provided for under **Section 11.3(a), 11.3(d) and 11.3(e)**, and (ii) as loss payees as their interest may appear with respect to the coverage provided under **Section 11.3(b), 11.3(f) and 11.3(g)**. Certificates of insurance together with copies of any endorsements naming Landlord, Landlord's management company, and any others specified by Landlord as additional insureds or loss payee (as the case may be) will be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days prior to the expiration of the term or reduction in coverage of each such policy. With respect to each insurance policy required hereunder Tenant will notify

Landlord and Landlord's Mortgagee with at least thirty (30) days prior written notice of the termination of any such insurance policy. All policies required to be maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. In the event Tenant fails to purchase and maintain any of the insurance required hereunder, Landlord reserves the right, but not the obligation, to purchase such insurance on behalf of Tenant, and at Tenant's expense, with any expenses incurred by Landlord in connection therewith being reimbursed to Landlord by Tenant within thirty (30) days of written demand thereof.

11.5 Waiver of Subrogation. Landlord and Tenant each waive and shall cause their respective insurance carriers to waive any and all rights to recover against the other or against the Agents of such other party for any loss or damage to such waiving party (including deductible amounts) arising from any cause required to be insured by such party pursuant to this Article XI. Tenant will cause its respective insurers to issue appropriate waiver of subrogation rights endorsements to all of Tenant's insurance policies carried in connection with the Project or the Premises. Tenant agrees to cause all other occupants of the Premises claiming by, under or through Tenant, to execute and deliver to Landlord and Landlord's management company such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

11.6 Adequacy of Coverage. Landlord and its Agents make no representation that the limits of liability specified to be carried by Tenant pursuant to this Article XI are adequate to protect Tenant. Landlord shall not be required to carry insurance of any kind on Tenant's property or Tenant's interest in the Premises, and Tenant agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If Tenant believes that any of such insurance coverage is inadequate, Tenant will obtain such additional insurance coverage as Tenant deems adequate, at Tenant's sole expense. Furthermore, in no way does the insurance required herein limit the liability of Tenant assumed elsewhere in the Lease.

XII. ALTERATIONS

12.1 Procedural Requirements. Tenant may, from time to time, at its expense, make such alterations, additions, or improvements (hereinafter collectively referred to as "Alterations") in and to the Premises as Tenant may reasonably consider necessary for the conduct of its business in the Premises; provided, however, that the written consent of the Landlord is first obtained with respect to any Alteration, the cost of which exceeds \$50,000. Landlord's consent shall not be required for Alterations, the cost of which are less than or equal to \$50,000; provided that: (a) the exterior of the Building shall not be affected; (b) the Alterations are non-structural and the structural integrity of the Building shall not be affected; (c) the Alterations are to the interior of the Premises and no part of the Building (including the roof) outside of the Premises shall be affected; (d) the proper functioning of the mechanical, electrical, sanitary and other service systems of the Building shall not be affected and the usage of such systems by Tenant shall not be increased; (e) the contractor performing the Alterations carries Commercial General Liability, Auto liability, Worker's Compensation and Employer's Liability insurance satisfying industry standards and requirements for such contractor related to the nature of the services being provided, as evidenced by a certificate of insurance provided to Landlord; (f) the Alterations do not require the issuance of a building permit and (g) before proceeding with any Alterations, Tenant shall submit to Landlord for Landlord's approval, plans and specifications for the work to be done and Tenant shall not proceed with such work until Tenant has received said approval. Tenant shall obtain and deliver to Landlord (if so requested) either (i) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in the state in which the Project is located) each in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of the Alterations and in form satisfactory to Landlord, or (ii) such other security as shall be reasonably satisfactory to Landlord; provided, that Landlord shall consider Tenant's reputation and financial capabilities in determining what is reasonable hereunder.

12.2 Performance of Alterations. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for the final approval thereof upon completion, and shall cause the Alterations to be performed in compliance therewith and in compliance with all applicable laws and requirements of public authorities, including without limitation, Titles

I and III of the ADA, the OSHA General Industry Standard (29 C.F.R. Section 1910.1001, et seq.) and the OSHA Construction Standard (29 C.F.R. Section 1926.1001, et seq.), all entities holding Mortgages on the Building and with Landlord's rules and regulations or any other reasonable restrictions Landlord may impose on the Alterations. Tenant shall not commence any Alterations without having first demonstrated, to Landlord's satisfaction, that all such permits and certificates have been obtained. The Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Building established by Landlord. Alterations shall be performed by contractors first approved by Landlord, which approval shall not be unreasonably withheld, and Tenant's Agents shall work in harmony, and not interfere with, Landlord and its Agents or with any other tenants or occupants of the Building. **Tenant shall, and hereby does, to the fullest extent allowed by law, indemnify, defend, and hold Landlord harmless from any and all third party claims, damages or losses, of any nature (including reasonable fees of attorneys of Landlord's choosing), suffered by Landlord, whether directly or indirectly, as a result of, or due to, or arising from, the performance of any Alterations by, or on behalf of, Tenant.** Alterations shall be performed in such manner so as to not unreasonably interfere with or delay and so as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operation of the Building; and if any such expense is incurred by Landlord, Tenant shall pay the same upon demand. Tenant acknowledges that if any Alterations commenced or performed in violation of any provision of this **Article XII** shall cause Landlord irreparable injury, Landlord shall have the right to enjoin any such violations by injunction or other equitable relief.

12.3 Lien Prohibition. Tenant shall not permit any mechanics' or materialmen's liens to attach to the Premises, the Building, or the Project, Tenant's leasehold estate or any of them. **Tenant shall and hereby does defend, indemnify, and hold Landlord harmless from and against any and all mechanics' and other liens and encumbrances filed in connection with Alterations or any other work, labor, services, or materials done for or supplied to Tenant, or any person claiming through or under Tenant, including, without limitation, security interests in any materials, fixtures or articles installed in and constituting a part of the Premises and against all costs, expenses, and liabilities (including reasonable fees of attorneys of Landlord's choosing) incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon.** Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within thirty (30) days after receipt of written notice of the filing thereof. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord for all costs and expenses incurred in connection therewith, together with interest thereon at the Interest Rate set forth in **Section 1.13** above, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises, the Building, or the Project, Tenant's leasehold estate or any of them.

XIII. LANDLORD'S AND TENANT'S PROPERTY

13.1 Landlord's Property. All fixtures, machinery, equipment, improvements and appurtenances affixed or attached to the Premises after the Commencement Date, whether or not placed there by, or at the expense of, Tenant, and without the approval of Landlord, shall be and remain a part of the Premises and shall be deemed the property of Landlord (the "Landlord's Property"), without compensation or credit to Tenant. Landlord's Property shall not be removed by Tenant, unless otherwise agreed upon by the parties prior to expiration of this Lease or pursuant to Article 12. Tenant shall, on or before the Expiration Date or earlier termination of this Lease, remove any items designated for removal, if any, repair any damage to the Premises or Building as a result of such installation or removal, and restore the Premises to the condition existing as of the Commencement Date, normal wear and tear excepted. Further, any personal property of Landlord in the Premises on the Commencement Date, unless installed and paid for by Tenant, shall be and shall remain the property of the Landlord and shall not be removed by Tenant. Any flooring in the Premises during the Term shall be and remain the property of Landlord and shall not be removed or replaced without the prior written consent and approval by Landlord.

13.2 Tenant's Property. All business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to, or built into, the Premises, which are installed in the Premises by, or for the account of, Tenant without expense to Landlord and which

can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises shall be and shall remain the property of Tenant (the "Tenant's Property") and may be removed by Tenant at any time during the Term, provided no Tenant Event of Default exists hereunder beyond the applicable notice and cure period. In the event Tenant's Property is so removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from the installation and/or removal thereof and restore the Premises to the condition existing as of the Commencement Date, normal wear and tear expected. For the purpose of this Lease and for clarity between the parties, Landlord shall not permit any liens or encumbrances to attach to the personal property, inventory or assets of the clients of Tenant which may be stored in or upon the Premises, the Building, or the Project and Landlord shall have no right or interest therein.

13.3 Removal of Tenant's Property. At or before the Expiration Date, or the date of any earlier termination hereof, Tenant, at its expense, shall remove from the Premises all of Tenant's Property, and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property and restore the Premises to the condition existing as of the Commencement Date, normal wear and tear expected. Any items of Tenant's Property which shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense..

XIV. REPAIRS AND MAINTENANCE

14.1 Tenant Repairs and Maintenance. Except with respect to Landlord's obligations set forth in **Section 14.2** below, Tenant, at its sole cost and expense, throughout the Term of this Lease, shall take good care of the Premises, including, without limitation, all areas, improvements and systems exclusively serving the Premises, including, without limitation, dock and loading areas, truck doors, plumbing, water and sewer lines up to points of common connection, entries, doors, ceilings, windows, interior walls, and interior side of demising walls, and HVAC systems, and shall keep the same in good, working order as received, condition and repair, and shall make and perform all routine maintenance thereof, including janitorial maintenance, and all necessary repairs, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. All repairs made by Tenant shall be at least the quality and cost of the original work and shall be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore and hereafter enacted. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction and class as the Premises, provided that Tenant shall in any event make all repairs necessary to avoid any damage or injury to the improvements. Throughout the Term of this Lease, Tenant will maintain (a) a maintenance contract for servicing of the HVAC system with a servicer reasonably acceptable to Landlord, and (b) maintenance logs on site and will cause the maintenance contractor engaged in the maintenance of the Premises (at the time maintenance contractor performs such maintenance) to make timely and detailed entries in those logs so that the logs at all times accurately reflect the maintenance activity performed with respect to the Premises and its Building systems. Landlord's representatives may inspect and copy those logs at any reasonable time after reasonable notice has been given to Tenant. Landlord will have the right to cause the maintenance of the Premises to be reviewed and the Premises inspected annually (or more frequently if Landlord determines that it is prudent to do so) by a qualified engineer or property manager consultant of Landlord's choosing, to determine whether Tenant is maintaining the Premises in accordance with this **Section 14.1** and, if it is determined that Tenant has not maintained the Premises as herein required, Tenant will reimburse Landlord for the cost of repairing the Premises and for the fees and expenses of such engineer or consultant within thirty (30) days after Landlord's demand. Tenant will cooperate with the engineer or consultant in its performance of such review and inspection. Except with respect to the maintenance contract for the servicing of the HVAC system, Tenant may fulfill its maintenance and repair obligations under this **Section 14.1** at its option either through the use of its employees or through the use of Agents. Notwithstanding the above, Landlord may enter into a master service agreement for HVAC maintenance with respect to the Project and Tenant shall pay its Proportionate Share of such cost in accordance with the provisions of **Article IV**.

14.2 Landlord Repairs. Landlord shall keep in good repair (i) the structural portions of the foundation and exterior and load-bearing walls (exclusive of all glass and all exterior doors) of the Building; (ii) the roof of the Building; and (iii) the Common Areas of the Project (including mechanical rooms), including the parking lots, landscaping and underground utility and sewer pipes outside the exterior walls of the Building, if any. All such repairs shall be at Landlord's sole cost and expense, except that the reasonable cost of such items shall be a Basic Cost to the extent permitted by the provisions of Article IV. Notwithstanding the foregoing, the cost of repairs referenced in this Section 14.2 rendered necessary by the negligence or willful misconduct of Tenant or Tenant's Agents or as a result of Tenant's failure to use the Premises in accordance with the terms of Article V of this Lease (which shall be reasonably evidenced and documented), shall be reimbursed by Tenant to Landlord within thirty (30) days of Landlord's written demand, resulting from such failure to repair or maintain as provided hereunder or due to a defect. Notwithstanding the foregoing, the reasonable cost of repairs referenced in this Section 14.2 and Section 14.1, which are paid by Tenant and are the result of the negligence or willful misconduct of Landlord or Landlord's Agents, shall be reimbursed by Landlord to Tenant within thirty (30) days of Tenant's written demand therefor (together with invoices or such other reasonable evidence of costs incurred).

If Landlord fails to timely satisfy any obligation of Landlord under this Lease, to repair and maintain the Property as required under this Lease, Tenant shall notify Landlord in writing thereof and Landlord shall commence such repair and/or maintenance work within thirty (30) days after receipt of such written notice, diligently pursue the same, and complete the same within sixty (60) days after receipt of such written notice, except in cases where there is an immediate threat of material and substantial property damage or immediate threat of bodily injury, in which case the notice and cure period of time shall be immediate or as is reasonable under the circumstances. If Landlord fails to timely commence, diligently pursue, and complete the same (as set forth in the prior sentence), subject to delays resulting from events of Force Majeure, then Tenant, at its election, may undertake such repair or maintenance work on Landlord's behalf and is hereby granted such access rights as are reasonably necessary to conduct such work and in no event shall Tenant be limited in taking all actions necessary in the event of an emergency which threatens life or where there is imminent danger to any property whether that of the Premises, Landlord Property, Tenant Property or client property of the Tenant. In any such event, Landlord agrees to pay Tenant, within thirty (30) days of receipt of Tenant's invoice accompanied by copies of receipts or other evidence of such costs, all reasonable, actual costs incurred by Tenant in performing such work on Landlord's behalf, including interest thereon at a rate equal to ten percent (10%) per annum (the "Lease Interest Rate"). If Landlord does not timely and fully reimburse Tenant, then Tenant shall have the option, at its sole discretion, of offsetting up to fifty percent (50%) of Tenant's monthly Basic Rent, until such time as Tenant has been completely reimbursed for the invoiced costs, plus interest thereon at the Lease Interest Rate. If Landlord disputes any offsets reasonably asserted by Tenant, then Landlord shall have the right to bring an equitable action enjoining such offset, requiring payment or otherwise, but the reasonable exercise of such offset rights by Tenant shall not by itself, constitute a default. Tenant's right to perform repair and maintenance work pursuant to this Section 9.1.3 shall not be deemed to create any obligation on the part of Tenant to do so, and shall not in any way limit Tenant's remedies under this Lease. Tenant shall indemnify and defend the Landlord from and against all claims in connection with or arising out of Tenant's negligence or willful misconduct in the cure of or attempt to cure any failure of Landlord to repair or maintain the Property as provided herein.

14.3 Tenant Equipment. Tenant shall not place a load upon any floor of the Premises which exceeds four thousand pounds per square inch (4,000 lbs/sq.in.) or which is allowed by law. Tenant will use the Premises in a careful, safe and proper manner, in compliance with all laws and will not commit waste, overload the floor or structure of the Premises beyond the capabilities and specifications existing for the Building (including the Slab Specifications set forth in Exhibit C, Attachment 1), or subject the Premises to use that damage the Premises, normal wear and tear, insured casualty and condemnation excepted. Business machines and mechanical equipment belonging to Tenant which cause noise or vibrations that may be transmitted to the structure of the Building or to the Premises to such a degree as to be objectionable to Landlord shall, at the Tenant's expense, be placed and maintained by Tenant in settings of cork, rubber or spring-type vibration eliminators sufficient to eliminate such noise or vibration.

XV. UTILITIES

15.1 Utilities. Tenant shall, as part of the Additional Rent, pay Tenant's Proportionate Share of all utility charges including, but not limited to, gas, propane, electricity, and water and sewer used and consumed by Tenant, its employees, agents, servants, customers, and other invitees in the Premises that were not originally separately metered for the Premises or are not subsequently separately metered as hereinafter provided. Landlord shall have the right to direct Tenant, at Tenant's sole and reasonable cost and expense, to cause a meter or sub-meter to be installed with respect to any utility service provided to the Premises upon a determination by Landlord that Tenant is using an extraordinary amount of such utility. For any utility service provided to the Premises, which is separately metered or sub-metered, Tenant shall pay all costs for such utility service directly from the utility or municipality providing such service and pay for such service when payment therefor is due and Tenant shall be solely responsible for the repair and maintenance of any such meters or sub-meters. Tenant shall also provide for cleaning and extermination services, and shall pay for such services when payments therefor are due.

15.2 Use of Electrical Energy by Tenant. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of (i) any of the electrical conductors and equipment in or otherwise serving the Premises; or (ii) the Building's HVAC system. In order to ensure that such capacity is not exceeded and to avert possible adverse effects upon the Building's electric service, Tenant shall not, without Landlord's prior written consent in each instance, make any material alteration or addition to the electrical system of the Premises existing as of the Commencement Date.

XVI. INVOLUNTARY CESSATION OF SERVICES

Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of the heating, air conditioning, electric, sanitary, elevator, or other Building systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord in good faith deems necessary, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord shall have no liability or responsibility for a cessation of services to the Premises or in the Building which occurs as a result of causes beyond Landlord's control. No such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease including the obligation to pay Rent. Notwithstanding the foregoing, if Tenant is prevented from using, and does not use, the Premises or a substantial portion thereof as a result of any negligent failure by Landlord to provide utility services to the Premises which Landlord is obligated to provide pursuant to this Lease, and such failure was not caused directly or indirectly by the negligence or willful misconduct of Tenant, its employees, agents or visitors, guests, invitees or licensees (an "Abatement Event"), then Tenant shall give written notice of such Abatement Event to Landlord. If the Abatement Event continues for five (5) consecutive business days (the "Abatement Period") after Landlord's receipt of Tenant's written notice of the Abatement Event, then Basic Rent shall be abated on a day-for-day bases after expiration of the Abatement Period, for such time following expiration of the Abatement Period that Tenant continues (as a result of the Abatement Event) to be so prevented from using, and does not use, the Premises or a substantial portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises.

XVII. LANDLORD'S RIGHTS OF ACCESS

Landlord and its Agents shall have the right to enter and/or pass through the Premises at any time or times, upon no less than two (2) business days' prior Notice in accordance with Section 26.2 (or without notice in case of an emergency) and provided that Landlord shall use commercially reasonable efforts not to materially adversely impact Tenant's business and operation at the Premises or as otherwise set forth herein: (a) to examine the Premises and to show them to actual and prospective Mortgagees, or prospective purchasers or Mortgagees of the Building; and (b) to make such repairs, alterations, additions and improvements in or to the Premises and/or in or to the Building or its facilities and equipment as Landlord

is required or desires to make. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection therewith, without any reduction of Tenant's covenants and obligations hereunder; provided, that Landlord (and its agents) shall use commercially reasonable efforts not to materially adversely impact Tenant's business and operation (and the parties shall cooperate in good faith to identify, in advance, the time period during which Landlord will conduct such scheduled maintenance and/or repairs. Landlord shall be liable for the acts or omission of its agents, including any damage caused by such agents and/or any resulting personal injury thereof or therefrom. During the period of twelve (12) months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises), Landlord and its Agents may exhibit the Premises to prospective tenants upon not less than two (2) business days prior notice. Notwithstanding any provision set forth herein to the contrary, Landlord shall have the right to provide notice pursuant to this **Article XVII** by email.

XVIII. LIABILITY AND INDEMNIFICATION OF LANDLORD

18.1 **Indemnification.** Except to the extent caused by the gross negligence or willful misconduct of Landlord or its Agents, Tenant will neither hold nor attempt to hold Landlord, its Agents or Mortgagee liable for, and Tenant will, to the fullest extent allowed by law, indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord, its Agents and Mortgagee, from and against any damage to property and any injury to or death of persons (and any and all resulting or related demands, claims, causes of action, fines, penalties, liabilities, judgments, and expenses, including, without limitation, reasonable attorneys' fees and court costs) occurring inside the Premises, or occurring in or about the Premises or Project in connection with or arising from (i) the use or occupancy or manner of use or occupancy of the Premises by Tenant or its Agents; (ii) any activity, work or thing done, permitted or suffered by Tenant or its Agents in or about the Premises or the Project; (iii) any acts, omissions or negligence of Tenant or its Agents; and (iv) any breach, violation or nonperformance by Tenant or its Agents of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement of any kind.

18.2 **Waiver and Release.** Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant, to the fullest extent allowed by law, covenants and agrees that Landlord, its Agents and Mortgagee will not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage (including consequential damages) to persons, property or Tenant's business occasioned by (i) any acts or omissions, including theft, of or by any other tenant, occupant or visitor of the Project; or (iii) any injury or damage to persons or property resulting from any casualty, unknown fire, explosion, falling plaster or other masonry or glass, steam, gas, electricity, electrical or electronic emanations or disturbance, water, snow or rain which may leak from any part of the Building or any other portion of the Project or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, or resulting from dampness.

18.3 **Survival.** The covenants, agreements and indemnification obligations under this Article XVIII will survive the expiration or earlier termination of this Lease until fully paid and/or performed by Tenant. Interest on surviving payment obligations will continue to accrue at the rates states herein until fully paid. Tenant's covenants, agreements and indemnification obligations are not intended to and will not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

XIX. DAMAGE OR DESTRUCTION

19.1 **Damage to the Premises.** If the Premises or the Building shall be damaged by fire or other insured cause, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effect a satisfactory settlement with any insurance company involved) repair such damage that is Landlord's responsibility to repair at the expense of Landlord; provided, however, that Landlord's obligation to repair such damage shall not exceed the proceeds of insurance available to Landlord (reduced by any proceeds retained pursuant to the rights of Mortgagee). Notwithstanding the foregoing, if the Premises or the Building are damaged by fire or other insured cause to such an extent that,

in Landlord's experienced contractor's reasonable judgment, the damage cannot be substantially repaired within two hundred seventy (270) days after the date of such damage, or if the Premises are substantially damaged during the last Lease Year, then: (i) Landlord may terminate this Lease as of the date of such damage by written notice to Tenant; or (ii) Tenant may terminate this Lease as of the date of such damage by written notice to Landlord within ten (10) days after (a) Landlord's delivery of a notice that the repairs cannot be made within such 270-day period (Landlord shall use reasonable efforts to deliver to Tenant such notice within sixty (60) days of the date of such damage or casualty); or (b) the date of damage, in the event the damage occurs during the last year of the Lease. If Landlord commences repairs in accordance with this **Section 19.1** and, despite its commercially reasonable efforts, is unable to substantially complete such repairs for any reason other than as a result of Tenant's actions or other force majeure delays, within two hundred seventy (270) days after commencement of such work, then either party shall have the right, upon ten (10) days written notice to the other party, to terminate this Lease as of the date of such damage. Rent shall be apportioned and paid to the date of such damage. During the period that Tenant is deprived of the use of the damaged portion of the Premises, Basic Rent and Tenant's Proportionate Share shall be reduced by the ratio that the Rentable Square Footage of the Premises damaged bears to the total Rentable Square Footage of the Premises before such damage. All injury or damage to the Premises or the Building resulting from the gross negligence or willful misconduct of Tenant or its Agents shall be repaired by Landlord, at Tenant's expense, and Rent shall not abate nor shall Tenant be entitled to terminate the Lease. Notwithstanding anything herein to the contrary, Landlord shall not be required to rebuild, replace, or repair any Alterations, Tenant's Property or other specialized Tenant improvements as reasonably determined by Landlord.

19.2 **Condemnation.** If any of the Premises, 20% or more of the Building or 30% or more of the Land shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), then the Term shall cease and terminate as of the date when title vests in such governmental or quasi-governmental authority, and Rent shall be prorated to the date when title vests in such governmental or quasi-governmental authority. If less than (20%) of the Building (none of which is within the Premises) and less than 30% of the Land is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), this Lease shall continue to the extent that such taking or quasi-taking does not materially adversely interfere or impair Tenant's use of the Premises, and subject to the Basic Rent and Tenant's Proportionate Share of the Additional Rent, payable hereunder during the remainder of the Term shall be proportionately reduced. Tenant shall have no claim against Landlord (or otherwise) as a result of such taking, and Tenant hereby agrees to make no claim against the condemning authority for any portion of the amount that may be awarded as compensation or damages as a result of such taking; provided, however, that Tenant may, to the extent allowed by law, claim an award for moving expenses and for the taking of any of Tenant's Property (other than its leasehold interest in the Premises) which does not, under the terms of this Lease, become the property of Landlord at the termination hereof, as long as such claim is separate and distinct from any claim of Landlord and does not diminish Landlord's award. Tenant hereby assigns to Landlord any right and interest it may have in any award for its leasehold interest in the Premises.

XX. SURRENDER AND HOLDOVER

On the Expiration Date, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises as allowed under the terms of the Lease, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and Tenant shall remove all of the Tenant's Property therefrom, except as otherwise expressly provided in this Lease. In the event that Tenant shall not immediately surrender the Premises to Landlord on the Expiration Date or earlier termination of this Lease, Tenant shall be deemed to be a tenant-at-sufferance pursuant to the terms and provisions of this Lease, except the daily Basic Rent shall be one hundred fifty percent (150%) the daily Basic Rent in effect on the Expiration Date or earlier termination of this Lease (computed on the basis of a thirty (30) day month). Notwithstanding the foregoing, if Tenant shall hold over after the Expiration Date or earlier termination of this Lease, and Landlord shall desire to regain possession of the Premises, then Landlord may forthwith re-enter and take possession of the Premises without process, or

by any legal process provided under applicable state law. **If Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, special or consequential damages, that Landlord suffers from the holdover; provided, however, that, upon request of Tenant, Landlord agrees to notify Tenant if Landlord is in negotiations with a new tenant for all or a portion of the Premises.**

XXI. DEFAULT OF TENANT

21.1 Events of Default. Each of the following shall constitute an Event of Default: (i) Tenant fails to pay Rent within three (3) days after notice from Landlord; provided that no such notice shall be required if at least two such notices shall have been given during the previous twelve (12) months; (ii) Tenant fails to observe or perform any other term, condition or covenant herein binding upon or obligating Tenant within ten (10) days after notice from Landlord; provided, however, that if such failure cannot reasonably be cured within said ten (10)-day period, then the period to cure the default shall be extended for up to an additional twenty (20) days; provided Tenant has commenced to cure the default within the ten (10)-day period and diligently pursues such cure to completion (notwithstanding the foregoing, if Landlord provides Tenant with notice of Tenant's failure to observe or perform any term, condition or covenant under this **Subsection (ii)** on two (2) or more occasions during any twelve (12) month period, then Tenant's subsequent violation shall, at Landlord's option, be deemed an Event of Default immediately upon the occurrence of such failure, regardless of whether Landlord provides Tenant notice, or Tenant has commenced the cure of the same); (iii) Tenant fails to execute and return a subordination and non-disturbance agreement or estoppel within the time periods provided for in **Article VII** or **Article XXIII**; (iv) Tenant or any Guarantor makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises for all or substantially all of Tenant's or Guarantor's assets is appointed, or Tenant or Guarantor hereafter files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any bankruptcy or insolvency proceeding is filed against Tenant or Guarantor and is not discharged by Tenant or Guarantor within sixty (60) days; or (v) Tenant fails to immediately remedy or discontinue any hazardous conditions which Tenant has created or permitted in violation of law or of this Lease. Any notice periods provided for under this **Section 21.1** shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

21.2 Landlord's Remedies. Subject to Section 21.3, upon the occurrence of an Event of Default and expiration of the applicable notice and cure period, Landlord, at its option, without further notice or demand to Tenant, may, in addition to all other rights and remedies provided in this Lease, at law or in equity, elect one or more of the following remedies:

(a) Terminate this Lease, or terminate Tenant's right of possession to the Premises without terminating this Lease, and with or without reentering and repossessing the Premises. Upon any termination of this Lease, or upon any termination of Tenant's right of possession without termination of this Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord. If Tenant fails to surrender possession and vacate the Premises, Landlord and its Agents shall have full and free license to enter into and upon the Premises with or without process of law for the purpose of repossessing the Premises, removing Tenant and removing, storing or disposing of any and all Alterations, signs, personal property, equipment and other property therefrom. Landlord may take these actions without (i) being deemed guilty of trespass, eviction or forcible entry or detainer, (ii) incurring any liability for any damage resulting therefrom, (iii) terminating this Lease (unless Landlord intends to do so), (iv) releasing Tenant or any guarantor, in whole or in part, from any obligation under this Lease or any guaranty thereof, including, without limitation, the obligation to pay Rent or Damages (as defined herein) or (v) relinquishing any other right given to Landlord hereunder or by operation of law;

(b) Recover unpaid Rent, whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of **Article XX**, Rental Deficiency (as defined herein) and/or any Damages (as defined herein). "Rental

Deficiency" is defined as a contractual measure of damages for Tenant's non-payment of Rent measured by either the (i) "Actual Rental Deficiency", which means the difference (never less than zero) between (A) the Basic Rent due for, and other Rent allocable under this Lease to, each calendar month beginning with the first month with respect to which Landlord receives rent from reletting the Premises and (B) the proceeds, if any, that Landlord actually collects from any substitute tenant for any part of the Premises in each corresponding month in which the Term and the term of the substitute tenant's lease overlap; or (ii) "Market Rental Deficiency", which is the present value (determined using a discount rate of seven percent [7%] per annum) of the difference (never less than zero) between (A) the total Rent which would have accrued to Landlord under this Lease for the remainder of the Term of this Lease (or such portion of the Term in which Landlord elects to recover this damage measure), if the terms of this Lease had been fully complied with by Tenant, and (B) the total fair market rental value of the Premises for the remainder of the Term of the Lease (or such portion of the Term in which Landlord elects to recover this damage measure). In determining the Market Rental Deficiency, the total fair market rental value will be the prevailing market rate for full service Basic Rent for tenants of comparable quality for leases in buildings of comparable size, age, use location and quality in the marketplace in which the Project is located, taking into consideration the extent of the availability of space as large or small as the Premises in the marketplace. "Damages" shall mean all incurred actual, incidental, and consequential damages, court costs, interest and reasonable attorneys' fees arising from Tenant's breach of the Lease, including, without limitation, (i) reletting costs, including, without limitation, the cost of restoring the Premises to the original condition at the time of lease, normal wear and tear excepted (including, without limitation, cleaning, repair and remodeling costs), brokerage fees, reasonable legal fees, advertising costs and the like); (ii) Landlord's cost of recovering possession of the Premises; (iii) the cost of removing and, storing and disposing of any of Tenant's or other occupant's property left on the Premises after reentry; (iv) any increase in insurance premiums caused by the vacancy of the Premises (subject to reletting), (v) the amount of any unamortized improvements to the Premises in connection with this Lease paid for by Landlord, (vi) the amount of any unamortized brokerage commission paid by Landlord in connection with the leasing of the Premises to Tenant; (vii) costs incurred in connection with collecting any money owed by Tenant or a substitute tenant, (viii) any other sum of money or damages owed by Tenant to Landlord or incurred by Landlord as a result of or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach, (ix) any contractual or liquidated type or measures of damages specified in this Lease (if any) and (x) any other type of measure of damages recoverable for any particular breach under applicable law statute, ordinance or governmental rule or regulation. Landlord may file suit to recover any sums falling due under the terms of this **Section 21.2(b)** from time to time. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(c) If Landlord elects to terminate Tenant's right to possession of the Premises without terminating this Lease, Tenant shall continue to be liable for all Rent and all other Damages, except to the extent otherwise provided under **Section 21.3**, inclusive of the offset of any reletting of the Premises or portion thereof by Landlord, and Landlord may relet the Premises, or any part thereof, to a substitute tenant or tenants, for a period of time equal to or lesser or greater than the remainder of the Term of this Lease on whatever reasonable terms and conditions Landlord, at Landlord's sole discretion, deems advisable. Notwithstanding any provision in this **Section 21.2(c)** to the contrary, Landlord may at (i) any time after reletting the Premises elect to exercise its rights under **Section 21.2(b)** for such previous breach against the Tenant; and (ii) upon the default of any substitute tenant or upon the expiration of the lease term of such substitute tenant before the expiration of the Term of this Lease, either relet to still another substitute tenant or exercise its rights under **Section 21.2(b)**. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations or additions in or to the Premises that may be necessary.

(d) Take any lawful self-help or judicial action, including using a master or duplicate key or changing or picking the locks and security devices, without having any civil or criminal liability therefor to (i) reenter the Premises, repossess the Premises and permanently exclude Tenant and other occupants from the Premises, and/or (ii) make such payment or do such act as Landlord determines is necessary (without obligation to do so) to cure the Event of Default or otherwise satisfy Tenant's obligations under the terms of this Lease. Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in connection with the foregoing actions, which expenses shall bear interest until paid at the Interest Rate, and that Landlord shall not be liable for any damages resulting to Tenant from such actions.

(e) Withhold or suspend payment that this Lease would otherwise require Landlord to make.

(f) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity.

21.3 Mitigation of Damages. Tenant agrees that if Landlord markets the Premises in a manner substantially similar to the manner in which Landlord markets other space in the Building, then Landlord shall be deemed to have used commercially reasonable efforts to mitigate damages. Tenant shall continue to be liable for all Rent (whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of **Article XX** above) and Damages, except to the extent that Tenant receives any credit against unpaid Rent under **Section 21.2(b)** or pleads and proves by clear and convincing evidence that Landlord fails to exercise commercially reasonable efforts to mitigate damages to the extent required under this **Section 21.3** and that Landlord's failure caused an avoidable and quantifiable increase in Landlord's damages for unpaid Rent. Without limitation to the foregoing, Landlord shall not be deemed to have failed to mitigate damages, or use efforts required by law to do so, because: (i) Landlord leases other space in the Building which is vacant prior to re-letting the Premises; (ii) Landlord refuses to relet the Premises to any Related Entity of Tenant, or any principal of Tenant, or any Related Entity of such principal; (iii) Landlord refuses to relet the Premises to any person or entity whose creditworthiness is not the same or better than Tenant; (iv) Landlord refuses to relet the Premises to any person or entity because the use proposed to be made of the Premises by such prospective tenant is not warehouse or general business office use of a type and nature consistent with that of the other tenants in the Building leased or held for lease for warehouse and general business office purposes as of the date Tenant defaults under this Lease (by way of illustration, but not limitation, manufacturing facilities, government offices, consular offices, doctor's offices or medical or dental clinics or laboratories, or schools would not be uses consistent with that of other tenants in the Building), or such use would, in Landlord's reasonable judgment, impose unreasonable or excessive demands upon the Building systems, equipment or facilities; (v) Landlord refuses to relet the Premises to any person or entity, or any affiliate of such person or entity, who has been engaged in litigation with Landlord or any of its affiliates; (vi) Landlord refuses to relet the Premises because the tenant or the terms and provisions of the proposed lease are not approved by the holders of any liens or security interests in the Building, or would cause Landlord to be in default of, or to be unable to perform any of its covenants or obligations under, any agreements between Landlord and any third party; (vii) Landlord refuses to relet the Premises because the proposed tenant is unwilling to execute and deliver Landlord's standard lease form with market customary adjustments or such tenant requires improvements to the Premises to be paid at Landlord's cost and expense; (viii) Landlord refuses to relet the Premises to a person or entity whose character or reputation, or the nature of such prospective tenant's business, would not be acceptable to Landlord in its reasonable discretion; or (ix) Landlord refuses to expend any material sums of money to market the Premises in excess of the sums Landlord typically expends in connection with the marketing of other space in the Building.

21.4 No Waiver. If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any other covenant, condition or agreement herein contained, nor of any of Landlord's rights hereunder unless expressly stated in such settlement. No waiver by Landlord of any breach shall operate as a waiver of such covenant, condition or agreement itself, or of any subsequent breach thereof. No payment of Rent by Tenant or acceptance of Rent by Landlord shall operate as a waiver of any breach or default by Tenant under this Lease unless otherwise agreed by both parties. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent herein stipulated shall be deemed to be other than a payment on account of the earliest unpaid Rent, nor shall any endorsement or statement on any check or communication accompanying a check for the payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease. No act, omission, reletting or re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of the Lease, shall be construed as an actual or constructive eviction of Tenant, or an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord.

21.5 Late Payment. If Tenant fails to pay any Rent within five (5) days after such Rent becomes due and payable more than twice in a given calendar year, Tenant shall pay to Landlord a late charge of 10% of the amount of such overdue Rent. Such late charge shall be deemed Rent and shall be due and payable within two (2) days after written demand from Landlord. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is not readily ascertainable. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises and/or Project. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amounts, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

21.6 Waiver of Redemption. **Intentionally deleted.**

21.7 Landlord's Lien. **Intentionally deleted.**

XXII. BROKER

Landlord recognizes Broker(s) as the sole broker(s) procuring this Lease and shall pay Broker(s) a commission therefor pursuant to a separate agreement between Broker(s) and Landlord. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker, agent, finder or other person other than Broker(s) relating to this Lease.. **Landlord shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Landlord harmless, from and against any and all loss, costs, damages or expenses (including, without limitation, all attorneys' fees and disbursements) by reason of any claim of liability to or from any broker or person arising from or out of any breach of the indemnitor's representation and warranty.**

XXIII. ESTOPPEL CERTIFICATES

Tenant agrees, at any time and from time to time, as requested by Landlord, to execute and deliver to Landlord (and to any existing or prospective mortgage lender, ground lessor, or purchaser designated by Landlord), within ten (10) business days after the request therefor, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); certifying the dates to which the Rent has been paid; stating whether or not Landlord is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default; and stating whether or not any event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event. Any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by Landlord and by others with whom such party may be dealing, regardless of independent investigation. Tenant also shall include in any such statements such other information concerning this

Lease as Landlord may reasonably request including, but not limited to, the amount of Basic Rent and Additional Rent under this Lease, and whether Landlord has completed all improvements to the Premises required under this Lease. If Tenant fails to execute, acknowledge or deliver any such statement within ten (10) business days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as its attorney-in-fact (which appointment is agreed to be coupled with an interest), to execute and deliver any such statements for and on behalf of Tenant.

XXIV. ENVIRONMENTAL

24.1 Hazardous Material. Except for Hazardous Materials (i) in typical amounts necessary for Tenant's ordinary business operations, and which are stored, maintained, and used in accordance with manufacturer's instructions and all applicable Environmental Requirements, (ii) which are hazardous liquids that do not exceed fifty-five (55) gallons at any given time, excluding petroleum products intended solely for Tenant's consumptive use, or (iii) which are chlorinated solvents that do not exceed one (1) gallon in aggregate quantity, Tenant shall not, nor shall it permit or cause its Agents or any other party to, bring any Hazardous Materials upon the Project and/or Premises or transport, store, use, generate, manufacture, dispose, or release any Hazardous Materials on or from the Project and/or Premises without Landlord's prior written consent. Any Hazardous Material permitted on the Project and/or Premises as provided herein, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all Environmental Requirements. Title to Hazardous Materials will remain and be stored or disposed of solely in Tenant's name. Tenant shall not release, discharge, leak or emit or permit to be released, discharged, leaked or emitted, any material into the atmosphere, ground, ground water, surface water, storm or sanitary sewer system or any body of water, any Hazardous Material or any other material (as is reasonably determined by Landlord or any governmental authority) which may pollute or contaminate the same or may adversely affect (a) the health, welfare or safety of persons, or (b) the condition, use or enjoyment of the Project and/or Premises, or any other real or personal property. Tenant shall complete and certify in disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture, or release of Hazardous Materials on the Project and/or Premises, but no more than once per Lease Year, as required by law, or unless Landlord has reasonable grounds for such request based on a legitimate concern. Landlord hereby represents and warrants to Tenant that, as of the Date of Lease, to Landlord's knowledge there are no Hazardous Materials within the Premises and Landlord has received no notices of any violations of the Environmental Requirements. Simultaneously with execution of this Lease, Tenant shall execute and deliver to Landlord the Hazardous Materials Survey attached hereto as Exhibit G, which is attached hereto and incorporated herein by this reference.

24.2 Definition. As used herein, "Environmental Requirement" means all federal, state, and local laws, ordinances, rules and regulations, court orders, governmental directives, governmental orders and all interpretations of the foregoing, and all restrictive covenants affecting the Project and/or Premises regulating or relating to health, safety, or environmental conditions at, on, in, under, or about the Project and/or Premises or the environment or natural resources, including the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including nuisance or trespass. As used herein, "Hazardous Material" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder (or any state counterpart to the foregoing statute); (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder (or any state counterpart to the foregoing statute); (c) any oil, petroleum products and their by-products; (d) asbestos; (e) polychlorinated biphenyls ("PCBs"); and (f) any substance that is or becomes regulated by any Environmental Requirement.

24.3 Tenant's Liability. Tenant hereby agrees that it shall be fully liable for all costs and expense related to the use, storage and disposal of Hazardous Material kept on the Project and/or Premises, and Tenant shall give immediate notice to Landlord of any violation or potential violation of the provisions of Section 24.1 above. **Tenant shall defend, indemnify and hold Landlord and its Agents harmless from and against any third party claims, demands, penalties, fines, liabilities, settlements, damages,**

costs or expenses incurred (including without limitation, reasonable attorneys' and consultants' fees, court costs and litigation expense) of whatever kind or nature, known or unknown contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any such Hazardous Material that is on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise located on or around the Premises; (b) any personal injury (including wrongful death), property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; (d) any violation of any laws applicable thereto; (e) a decrease in value of the Project and/or Premises, (f) damages caused by loss or restriction of rentable or usable space; and (g) damages caused by adverse impact on marketing of the space. Without limitation of the foregoing, if the Tenant causes or permits the presence of any Hazardous Materials on the Project and/or Premises which results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Project and/or Premises to the condition existing prior to the presence of any such Hazardous Material on the Project and/or Premises. Tenant shall first obtain Landlord's approval for any such remedial action. If Tenant fails to perform such work within the time period specified by Landlord or before Tenant's right to possession terminates or expires (whichever is earlier), Landlord may at its discretion perform such work at Tenant's cost. Tenant shall pay all reasonable costs incurred by Landlord in performing such work within ten (10) days after Landlord's request therefor. Such work performed by Landlord is on behalf of Tenant and Tenant remains the owner, generator, operator, transporter, and/or arranger of the Hazardous Materials under Environmental Requirements. Tenant agrees not to enter into any agreement with any person, including any governmental authority, regarding the removal of Hazardous Materials that have been disposed of or otherwise released onto or from the Project and/or Premises without the written approval of the Landlord. The provisions of this **Section 24.3** shall be in addition to any other obligations and liabilities Tenant may have to Landlord under this Lease or at law or in equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

24.4 **Landlord's Liability.** Landlord shall indemnify, defend and hold harmless Tenant from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities, losses and reasonable attorney's fees to the extent caused by Landlord or its Agents and (i) arising out of or in connection with the existence of Hazardous Materials on the Project or Premises; or (ii) relating to any clean-up or remediation of the Project or Premises required under any applicable environmental laws. The obligations of Landlord under this **Section 24.4** shall survive the Term of this Lease.

24.5 **Inspections and Tests.** Landlord shall have access to, and a right to perform inspections and tests of, the Project and Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this **Article XXIV**, or the environmental condition of the Project and/or Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant. Tenant shall promptly notify Landlord of any communication or report that Tenant makes to any governmental authority regarding any possible violation of Environmental Requirement or release or threat of release of any Hazardous Materials onto or from the Project and/or Premises. Tenant shall, within five (5) days of receipt thereof, provide Landlord with a copy of any documents or correspondence received from any governmental agency or other party relating to a possible violation of Environmental Requirements or claim or liability associated with the release or threat of release of any Hazardous Materials onto or from the Project and/or Premises. Upon request, Tenant shall provide Landlord with an inventory of Hazardous Materials located at, on or in the Project and/or Premises and copies of any Material Safety Data Sheet in Tenant's possession required by any Environmental Requirement or related to any Hazardous Material.

XXV. SIGNAGE

Except as expressly provided for in this **Article XXV**, no sign, advertisement or notice shall be inscribed, painted, affixed, placed or otherwise displayed by Tenant on any part of the Project or the outside or the inside of the Building to the extent visible from the exterior of the Premises, Building or Project. If any prohibited sign, advertisement or notice is nevertheless exhibited by Tenant, Landlord shall have the right to remove the same, and Tenant shall pay upon demand any and all reasonable expenses incurred by Landlord in such removal, together with interest thereon at the Interest Rate from the demand date. Subject to applicable governmental regulations, restrictions and permitting, including applicable sign ordinances, and recorded restrictions affecting the Project, Tenant shall have the right, at its sole cost and expense, to install and maintain one (1) sign on the exterior of the Premises, consistent with the signage attached hereto as **Exhibit E**, provided, however, that the specifications for such signage (including, without limitation, the exact size and proposed location thereof) shall be submitted to Landlord for approval prior to the installation thereof, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord's approval of Tenant's proposed signage shall not constitute a representation or warranty by Landlord that such signage complies with applicable law or restrictions, and compliance therewith shall remain Tenant's sole responsibility. At or before the Expiration Date, or the date of any earlier termination of this Lease, Tenant shall remove such signage and repair any damage to the Building resulting from Tenant's installation or removal thereof, restoring the exterior of the Building where the signage was located to the condition existing as of the Commencement Date.

XXVI. MISCELLANEOUS

26.1 **Merger.** Each party hereby expressly acknowledges and agrees that it has not made and is not making, and the other party, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises, or statements, except to the extent that the same are expressly set forth in this Lease. All prior understandings and agreements between the parties are merged in this Lease (which includes the Exhibits attached hereto and made a part hereof), which alone fully and completely express the agreement of the parties. No agreement shall be effective to change, amend, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought, and any Mortgagee (to the extent the Premises is then subject to a Mortgage).

26.2 **Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, if sent by Federal Express (with a copy provided by email) or other comparable delivery service, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address set forth in **Section 1.18 or 1.19** above, as applicable, or to such other address as Landlord or Tenant may designate to each other from time to time by written notice, and shall be deemed to have been received upon the earlier of receipt or, if mailed by certified mail, three (3) days after such mailing.

26.3 **Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

26.4 **Parties Bound.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. However, the obligations of Landlord shall not be binding upon Landlord herein named with respect to any period subsequent to the conveyance and transfer of its entire interest in the Building, as owner thereof, and in the event of such conveyance and transfer, said obligations shall thereafter be binding upon each transferee, Tenant will look to such transferee so long and Landlord has turned over the Security Deposit, or the remainder thereof, to such transferee, and **Tenant waives all rights and causes of action Tenant may then have, as against the Landlord herein named.** Submission of this instrument by Landlord to Tenant for examination shall not bind Landlord or Tenant in any manner, and no lease, option, agreement

to lease or other obligation of Landlord or Tenant shall arise until the instrument is signed by, and delivered to, both Landlord and Tenant. Notwithstanding anything to the contrary in this Lease, the liability of Landlord hereunder and any recourse by Tenant against Landlord shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Project, and neither Landlord, nor any of its constituent partners, shall have any personal liability therefor.

26.5 Recordation of Lease. Tenant shall not record or file this Lease in the public records of any county or state.

26.6 Survival of Obligations. Upon the Expiration Date or other termination of this Lease, neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease, may be, performed after such expiration or other termination; and, in any event, unless otherwise expressly provided in this Lease, any liability for any payment hereunder which shall have accrued to, or with respect to, any period ending at the time of expiration or other termination of this Lease shall survive the Expiration Date or other termination of this Lease.

26.7 Prorations. Any apportionments or prorations of Rent to be made under this Lease shall be computed on the basis of a year containing three hundred sixty (360) days, consisting of twelve (12) months of thirty (30) days each.

26.8 Governing Law; Construction. This Lease shall be governed by and construed in accordance with the laws of the state in which the Project is located. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

26.9 Time. Time is of the essence of this Lease and in the performance of all obligations hereunder. If the time for performance hereunder falls on a Saturday, Sunday or a day which is recognized as a holiday in the state in which the Project is located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in the state in which the Project is located.

26.10 Authority of Tenant.

(a) If Tenant signs as a corporation, the person executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and validly existing corporation, in good standing, qualified to do business in the state in which the Project is located, that the corporation has full power and authority to enter into this Lease and that he or she is authorized to execute this Lease on behalf of the corporation.

(b) If Tenant signs as a partnership or limited liability company, the person executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed, validly existing partnership or limited liability company, as applicable, qualified to do business in the applicable state, that the partnership or limited liability company, as applicable, has full power and authority to enter into this Lease, and that he or she is authorized to execute this Lease on behalf of the partnership or limited liability company, as applicable. Tenant further agrees that it shall provide Landlord with an authorization from the partnership or limited liability company, as applicable, certifying as to the above in a form acceptable to Landlord.

26.11 Security. **Landlord makes no representation or warranty regarding security at the Building or the Project.** If Tenant requests security services and Landlord approves such services, which approval shall not be unreasonably withheld, Tenant shall pay the cost of all such security services.

26.12 Financial Reports. Prior to the execution of this Lease by Tenant and thereafter not to exceed one submission within a given calendar year within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant, or, failing those, Tenant's internally prepared financial statements, certified by Tenant; provided, however, that Tenant shall be deemed to have satisfied the obligations contained in this Section 26.12, if Tenant is a publically traded company, and such audited financial statements are publically available, at no cost to Landlord, through the U.S. Securities and Exchange Commission.

26.13 Rules and Regulations. Tenant and its Agents shall at all times abide by and observe the Rules and Regulations set forth in **Exhibit B** and any amendments thereto that may reasonably be promulgated from time to time by Landlord for the operation and maintenance of the Project and the Rules and Regulations shall be deemed to be covenants of the Lease to be performed and/or observed by Tenant. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations, or the terms or provisions contained in any other lease, against any other tenant of the Project, so long as such failure to enforce the Rules and Regulations does not materially adversely affect Tenant. Landlord shall not be liable to Tenant for any violation by any party of the Rules and Regulations or the terms of any other Project lease. If there is any inconsistency between this Lease (other than **Exhibit B**) and the then current Rules and Regulations, this Lease shall govern.

26.14 Force Majeure. The obligations of Tenant hereunder shall not be affected, impaired or excused, and Landlord shall have no liability whatsoever to Tenant, with respect to any act, event or circumstances arising out of (a) Landlord failing to fulfill, or delaying in fulfilling any of its obligations under this Lease by reason of fire; earthquake; explosion; flood; hurricane; the elements; acts of God or the public enemy; actions, restrictions, governmental authorities (permitting or inspection), governmental regulation of the sale of materials or supplies or the transportation thereof; war; invasion; insurrection; rebellion; riots; strikes or lockouts, inability to obtain necessary materials, goods, equipment, services, utilities or labor; or any other cause whether similar or dissimilar to the foregoing; or (b) any failure or defect in the supply, quantity or character of electricity, gas, steam or water furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Project, beyond Landlord's reasonable control. Tenant shall not hold Landlord liable for any latent defect in the Premises or the Building nor shall Landlord be liable for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, which may leak or flow from any part of the Building, or from the pipes, appliances or plumbing work of the same. Tenant agrees that under no circumstances shall Landlord be liable to Tenant or any third party for any loss of, destruction of, damage to or shortage of any property; including, by way of illustration and not limitation, equipment, goods or merchandise, including Tenant's Property placed on the Premises or suffered to be placed thereon by Tenant, it being the intention of the parties hereto that the risk of any and all such loss, destruction, damage or shortage shall be borne by Tenant.

26.15 Waiver of Jury Trial. **Landlord and Tenant each waive trial by jury in connection with proceedings or counterclaims brought by either of the parties against the other with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises.**

26.16 Attorneys' Fees. If Tenant fails to pay any Rent or other sum due and owing under this Lease, and such sum is thereafter collected by or through an attorney at law, then, in addition to such sums, Tenant shall also pay Landlord's reasonable attorneys' fees incurred in such collection. If either Landlord or Tenant commences or engages in any legal action or proceeding against the other party (including, without limitation, litigation or arbitration) arising out of or in connection with the Lease, the Premises, or

the Project (including, without limitation (a) the enforcement or interpretation of either party's rights or obligations under this Lease (whether in contract, tort, or both) or (b) the declaration of any rights or obligations under this Lease), the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, together with any costs and expenses, incurred in any such action or proceeding, including any reasonable attorneys' fees, costs, and expenses incurred on collection and on appeal.

26.17 Landlord's Fees. Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for all of Landlord's reasonable and actual costs incurred in reviewing the proposed action or consent, including, without limitation, attorneys', engineers' or architects' fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

26.18 Light, Air or View Rights. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building and Project shall not affect this Lease, abate any payment owed by Tenant hereunder or otherwise impose any liability on Landlord.

26.19 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

26.20 Nondisclosure of Lease Terms. Except as required by applicable laws or regulations, and only to the extent necessary to satisfy such requirement, Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its Agents shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building, the Premises or the Project, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

26.21 Joint and Several Obligations. If more than one person or entity executes this Lease as Tenant, their execution of this Lease will constitute their covenant and agreement that: (i) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (ii) the term "Tenant" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to the exercise of any options hereunder, will be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted.

26.22 Anti-Terrorism. Tenant represents and warrants to and covenants with Landlord that (i) neither Tenant nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the "Anti-Terrorism Laws"), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Persons (SDN's OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act"); (ii) neither Tenant nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a "**Prohibited Person**" which is defined as follows: (1) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of, any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or at any replacement website or other replacement official publication of such list, and (2) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to

regulations promulgated in connection with the USA Patriot Act; and (iii) Tenant has taken appropriate steps to understand its legal obligations under the Anti-Terrorism Laws and has implemented appropriate procedures to assure its continued compliance with such laws. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord, its officers, directors, agents and employees, from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants. At any time and from time-to-time during the term, Tenant shall deliver to Landlord within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant's compliance with this paragraph.

XXVII. OPTION TO EXTEND

27.1 **Grant of Option and General Terms.** Provided that (i) no material adverse change has occurred in Tenant's financial condition, (ii) this Lease is in full force and effect, and (iii) no Event of Default shall exist under this Lease beyond the applicable notice and cure period, either on the date Tenant exercises its Renewal Option (as hereinafter defined) or as of the effective date of the Renewal Term (as hereinafter defined), or would exist but for the pendency of any cure periods provided under **Section 21.1** herein, Tenant shall have the option to extend the term of this Lease with respect to the entire Premises for one (1) additional period (the "**Renewal Option**") of five (5) years (the "**Renewal Term**"). The Renewal Option shall be subject to all of the terms and conditions contained in this Lease except that (iv) Basic Rent payable in the first Lease Year of the Renewal Term shall be at the Market Rate, as determined pursuant to the provisions of this **Article XXVII** and shall increase by not less than 3% annually in each Lease Year of the Renewal Term; (v) Landlord shall have no obligation to improve the Premises; and (vi) there shall be no further option to extend the term of the Lease beyond the expiration of the Renewal Term.

27.2 **Determination of Market Rate.** Tenant shall send Landlord a preliminary expression of Tenant's willingness to renew this Lease no earlier than three hundred sixty-five (365) days prior to the Expiration Date of this Lease and no later than two hundred seventy (270) days prior to the Expiration Date of this Lease (the "**Renewal Notice**").

(a) If Tenant timely delivers the Renewal Notice, Landlord and Tenant shall negotiate in good faith to determine and mutually agree upon the Market Rate for the first Lease Year of the Renewal Term. If Landlord and Tenant are unable to agree upon the Market Rate within thirty (30) days following Tenant's delivery of the Renewal Notice (the "**Negotiation Period**"), as evidenced by an amendment to the Lease executed by both Landlord and Tenant, then within five (5) business days after the last day of the Negotiation Period, Tenant may, by written notice to Landlord (the "**Notice of Exercise**"), elect to exercise such Renewal Option by delivering the Notice of Exercise to Landlord stating that Tenant is exercising its right to extend the Term pursuant hereto. If Tenant shall fail to deliver the Notice of Exercise on or before five (5) business days after the last day of the Negotiation Period, then Tenant shall have waived any right to exercise the Renewal Option and the Lease shall expire upon the Expiration Date.

(b) If Tenant timely delivers the Notice of Exercise to Landlord, Landlord and Tenant shall each simultaneously present to the other party their final determinations of the Market Rate for the Renewal Term (the "**Final Offers**") within ten (10) business days thereafter. If the Market Rate stated in the lower of the two (2) proposed Final Offers is not more than ten percent (10%) below the Market Rate stated in higher, then the Market Rate shall be determined by averaging the two (2) Final Offers. If the difference between the lower of the two (2) proposed Final Offers is more than ten percent (10%) below the higher, then the Market Rate shall be determined in accordance with the procedure set forth below.

27.3 Within twenty (20) days after Landlord's receipt of Tenant's Notice of Exercise, Tenant and Landlord shall each select a third party broker licensed in the State of Nevada with at least five (5) years of experience with industrial leasing in the Las Vegas market area, and the brokers selected by Landlord and Tenant shall mutually select a third broker, similarly qualified and who was not previously engaged by either Landlord or Tenant in connection with this Lease or the negotiation of Market Rate for the Renewal Term,

within five (5) days thereafter (the "Third Broker"). The Third Broker shall, after due consideration of the factors to be taken into account under the definition of Market Rate set forth above and hearing whatever evidence the Third Broker deems appropriate from Landlord and Tenant, and obtaining any other information the Third Broker deems necessary, in good faith, make its own determination of the Market Rate for the Premises as of the commencement of the Renewal Term (the "Broker's Determination") and thereafter select either Landlord's Final Offer or the Tenant's Final Offer, but no other, whichever is closest to the Broker's Determination (the "Final Determination"), such Final Determination to be made within fifteen (15) days after the appointment of the Third Broker. The Broker's Determination, Final Determination and the market information upon which such determinations are based shall be in writing and counterparts thereof shall be delivered to Landlord and Tenant within said fifteen (15) day period. The Third Broker shall have no right or ability to determine the Market Rate in any other manner. The costs and fees of the Third Broker shall be paid by Landlord if the Final Determination shall be Tenant's Final Offer or by Tenant if the Final Determination shall be Landlord's Final Offer. Notwithstanding anything to the contrary contained herein, either Landlord or Tenant may, within ten (10) days after receipt of the Final Determination, elect to reject the Final Determination, in which case Tenant's exercise of the Renewal Option shall be deemed null and void and this Lease shall expire on the Expiration Date stated herein. If any date referenced in this Article XXVII falls on a day other than a business day, such date shall be deemed to be the next following business day. Notwithstanding anything contained herein to the contrary, the Final Offers, or the Broker's Determination, the Market Rate for the first Lease Year of the Renewal Term shall not be less than 103% of the Basic Rent in the last month of the initial term of this Lease.

27.4 **Personal Option.** This Renewal Option is personal with respect to the Tenant named in this Lease and shall automatically terminate upon any assignment of this Lease or subletting of the Premises, other than an assignment to a Related Entity made in accordance with Section 9.4.

Signature Page Immediately Follows.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

CHEYENNE CLAYTON DRI, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Authorized Signatory _____

TENANT:

PRIORITY FULFILLMENT SERVICES, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

SECOND MODIFICATION, RATIFICATION AND EXTENSION OF LEASE

THIS SECOND MODIFICATION, RATIFICATION AND EXTENSION OF LEASE ("MRE") is made as of the 5th day of June, 2008, by and between TIAA Realty, Inc., a Delaware corporation, as successor to Shelby Drive Corporation ("Landlord"), and Priority Fulfillment Services, Inc., a Delaware corporation ("Tenant").

WHEREAS, Landlord and Tenant did enter into that certain Industrial Lease Agreement dated August 31, 1999, as modified, ratified and extended by Modification, Ratification and Extension of Lease dated December 19, 2003 (the "ILA"), regarding the leasing by Landlord to Tenant of approximately 442,184 square feet comprising all of the building space located at 4650 Shelby Drive, Memphis, Tennessee, also known as Southpark Building N (the "Premises"); and

WHEREAS, Landlord and Tenant now desire to further modify, ratify and extend the ILA on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree to modify, ratify and extend the ILA as follows:

1. Extension of Term. The Term of the ILA is hereby extended from December 31, 2008 to February 28, 2014. Tenant has no rights to further extend or renew the Term.

2. Modification of Base Rent. Commencing on January 1, 2009 (the "Renewal Date"), the annual Base Rent shall be Two Dollars and 40/100 Dollars (\$2.40) per square foot. Accordingly, the annual Base Rent for the Premises during the extended Lease Term shall be One Million Sixty-One Thousand Two Hundred Forty-One and 60/100 Dollars (\$1,061,240.60), payable in monthly Base Rent installments of Eighty-Eight Thousand Four Hundred Thirty-Six and 80/100 Dollars (\$88,436.80) each, payable in advance and due on the first day of each month during the extended ILA Term. Notwithstanding the foregoing, provided that no Event of Default exists under the ILA as of the Renewal Date, Tenant shall owe no Base Rent for the months of January and February, 2009, and payments of Base Rent shall commence on March 1, 2009.

3. Cancellation Notice. Tenant shall have a one-time option to cancel the ILA, such cancellation to be effective on February 29, 2012 so long as (i) Tenant has provided Landlord written notice of cancellation (the "Cancellation Notice") and paid Landlord the Cancellation Fee, defined below, on or before September 1, 2011, time being of the essence, and (ii) no default or Event of Default by Tenant exists under the ILA either as of the date of delivery of the Cancellation Notice or as of February 29, 2012. Tenant shall pay to Landlord simultaneously with its delivery of the Cancellation Notice (and as a condition precedent to the effectiveness of the Cancellation Notice) by wire transfer in accordance with wire transfer instructions to be provided by Landlord a cancellation fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Cancellation Fee"). Notwithstanding Tenant's election to cancel this Lease by sending the Cancellation Notice and paying the Cancellation Fee, Tenant shall remain fully liable for all Tenant's payment and performance obligations arising under the ILA on or before February 29,

ORIGINAL

2012, as well as any obligations of Tenant which expressly survive termination or expiration of the ILA.

4. Landlord's Work. Provided that no Event of Default by Tenant then exists under the ILA, Landlord agrees to perform (or cause to be performed) at Landlord's sole expense, without reimbursement from Tenant, the following work in a good and workmanlike manner as promptly as practicable following the date hereof:

(a) Landlord shall have a new roof installed on the entire Building in which the Premises are located. The roofing material shall be either 45 mil EPDM or TPO, as determined by Landlord.

(b) Landlord shall replace all 400 watt metal halide lights (193 Light fixtures) with high output fluorescent (T-5 or T-8) lights in the warehouse area of the Premises.

(c) Landlord shall add five (5) new light fixtures and relocate battery chargers in the warehouse area, in each case to mutually acceptable locations in the Premises.

(d) Landlord shall expand the employee parking area located along the east side of the Building to include 100 additional parking spaces, including adequate lighting, drainage and landscaping for such expanded parking area. Landlord shall provide Tenant with a copy of its plans and specifications for such parking lot expansion prior to commencing same, and Tenant shall have five (5) business days from its receipt thereof to notify Landlord in writing of any reasonable objections that Tenant has to such plans and specifications. If not timely objected to within said 5 business day period, then Landlord's submission shall be deemed approved. If Tenant does make timely objections, then Landlord and Tenant shall thereafter use good faith efforts to resolve any such reasonable objections within an additional five (5) business days after Landlord's receipt of Tenant's written objection notice.

5. Tenant's Work. Tenant may refurbish its existing offices at the Premises, including recarpeting, repainting and other improvements, if any, as are set forth in plans and specifications that have been approved by Landlord as set forth on Exhibit A attached hereto and incorporated herein by reference (all of the foregoing are collectively referred to as the "Improvements"). Landlord shall provide and disburse an allowance of up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for such refurbishment and construction of Improvements, all as more particularly set forth on Exhibit A.

6. Notices. Notices in accordance with Section 27 of the ILA to Landlord and Tenant shall be delivered to the addresses set forth opposite their respective signatures below.

7. Full Force and Effect; Defined Terms. Except as expressly modified hereby, the ILA is and shall remain in full force and effect in accordance with its original terms and conditions. All capitalized terms used but not otherwise defined in this MRE shall have the definitions set forth in the ILA.

8. Binding Effect. This MRE shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this MRE (or caused it to be executed by their respective duly authorized officers) to be effective on the date and year first above written.

Address for Notices:

TIAA-CREF Global Real Estate
4500 Andrew Carnegie Blvd
C-3-08
Charlotte, NC 28262
Attn: Asset Management

TIAA Realty, Inc.

By: _____

Title: _____

Priority Fulfillment Services, Inc.

By: _____

Title: _____

EXHIBIT A

TENANT'S WORK

A. Improvements by Tenant

- (a) Tenant may construct or cause to be constructed that Improvements subject to Landlord's prior written approval of the plans and specifications therefor, and any subsequent amendment thereto, which shall not be unreasonably withheld, conditioned or delayed and will be provided within five (5) business days of submission to Landlord (the plans and specifications as so approved being referred to here as the "Approved Plans", Exhibit B, to be attached hereto and incorporated here in at a later date). If not timely approved or objected to within said five (5) business days, then Tenant's submission shall be deemed approved. Tenant shall submit such plans for approval no later than December 1, 2008.

The Improvements shall be constructed in a good and workmanlike manner in compliance with all building codes and other statutes, ordinances, and regulations of all governmental authorities. All Improvements (including without limitation finishes) shall be of quality at least equal to the quality of similar components and finishes of other offices in the Premises. Landlord agrees that all Improvements shall be constructed by Tenant's General Contractor and that Tenant's General Contractor shall be pre-approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant further agrees that, if applicable, it will provide Landlord with complete, detailed mechanical and electrical plans for its review and approval, and such approval shall not be unreasonably withheld, conditioned or delayed.

- (b) Prior to the commencement of construction of the Improvements (and in addition to any other insurance required under the ILA), Tenant shall submit to Landlord: (i) a copy of the construction contract (including warranty obligations); (ii) a Builder's Risk insurance policy with extended coverage insuring the Improvements in the amount of full replacement cost thereof naming Landlord as the insured and Landlord's lender, if any, as the mortgagee; and (iii) Commercial General Liability insurance policy naming the General Contractor, Landlord and Tenant as insureds having a combined single limit of coverage per occurrence in the amount of not less than \$2,000,000.00 and Workmen's Compensation insurance policy.
- (c) Tenant agrees that the construction of the Improvements shall be carried out so as to reasonably minimize interference and disruption of the business of other tenants in the Project. Tenant agrees to cause its General Contractor to keep the construction site in a neat and orderly condition and to take reasonably appropriate steps to prevent wash and other construction debris from littering the Project.
- (d) Notwithstanding anything to the contrary contained herein, Tenant agrees to indemnify and hold Landlord harmless from and against any and all liability, property damages, cost and expense, including without limitation reasonable attorney's fees, actually incurred by
-

Landlord and arising out of any construction activities conducted on the Premises by or on behalf of Tenant.

- (e) Landlord does not consent to, and Tenant shall not allow, the filing of any materialmen's or mechanic's liens against the Premises, Building or Project. Tenant shall indemnify and hold Landlord harmless from and against any and all mechanic's or materialmen's liens recorded against the Premises, Building or Project of which they are a part arising out of construction of the Improvements.
- (f) It is mutually understood and agreed that the cost of any Improvements to the Premises required by local codes shall be included in the Improvement Allowance specified in B below. Any cost or expenses for Improvements in excess of the Leasehold Improvement Allowance shall be paid by Tenant and not reimbursed by Landlord.

B. Improvement Allowance by Landlord

Landlord agrees to pay to Tenant or Tenant's designee an Improvement allowance of \$250,000.00 (the "Improvement Allowance"). Tenant agrees that the Improvement Allowance shall be used in connection with Improvements to the Premises, and which shall remain a part of the Premises, and no other use will be made of the Improvement Allowance. Any portion of the Improvement Allowance not used in connection with the Improvements shall inure to the benefit of and be retained by Landlord. All Improvements must be constructed, and the Improvement Allowance disbursed, in accordance herewith no later than March 31, 2009, time being of the essence.

The Improvement Allowance shall be disbursed as follows:

- (1) The Improvement Allowance shall be requested and disbursed in no more than two (2) payments. Tenant or Tenant's representative shall submit, and Landlord shall have received, a request for payment containing an itemized statement for all expenditures of Tenant for completion of the Improvements completed to the date of the requested disbursement, including, but not limited to, the following:
 - (a) invoices for materials received whether already paid by Tenant or to be paid;
 - (b) requisitions received from contractors for work performed;
 - (c) such other data substantiating Tenant's right to payment as Landlord may reasonably request, including contractor's lien waivers for invoices provided and an architect's approval of the contractor's invoices or applications for payment; and
 - (d) appropriate verification that the work to the date of payment is substantially complete.

- (2) Provided Tenant has fully complied with the conditions of B(1) above, Landlord shall pay the first request for payment within fifteen (15) business days of receipt thereof.

The second and final payment shall be fully paid on or before thirty (30) days following the last to occur of all the following:

- (a) the substantial completion of the Improvements; and
- (b) the receipt by Landlord of recordable waiver of lien affidavits from all of Tenant's contractors in form and substance satisfactory to Landlord, along with a written representation from Tenant that all bills for labor and materials with respect to Tenant's Improvement work have been paid in full.

Any Improvements or work done or authorized by Tenant or performed for Tenant's account, the cost of which remains unpaid from a previous request at the time that the Improvement Allowance is otherwise payable and which is not subject to a bona fide dispute will be deducted from the subsequent disbursement from the Improvement Allowance and the Landlord may hold such sum as security against any liens arising therefrom until such liens are released or otherwise rendered ineffective or Landlord may pay such unpaid and undisputed sums for and on behalf of Tenant, provided Landlord has not paid the full Improvement Allowance to Tenant.

All provisions of the ILA shall apply while the Improvements are being constructed.

EXHIBIT B

APPROVED PLANS FOR IMPROVEMENTS

(To be attached)

6801958.3

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**") is made and entered into effective as of May 1, 2015 ("**Effective Date**") by and between CCI-MILLENNIUM, L.P., a Delaware limited partnership ("**Landlord**"), and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("**Tenant**").

Recitals

- A. Landlord and Tenant heretofore entered into that certain Lease Agreement dated December 8, 2011 ("**Lease**") pursuant to the terms of which Landlord leased to Tenant, and Tenant leased from Landlord, certain premises containing approximately 75,000 square feet of Net Rentable Area (the "**Initial Premises**") in that certain Building located at 505 Millennium in Allen, Texas ("**Building**") containing approximately 97,496 square feet of Net Rentable Area. Pursuant to the terms of the Lease, Tenant was obligated to lease the remaining 22,496 square feet of Net Rentable Area ("**Must-Take Space**") of the Building on or before March 1, 2015 ("**Original Must-Take Space Rent Commencement Date**"). The Initial Premises, together with the Must-Take Space is sometimes hereinafter collectively referred to as the "**Premises**". Unless otherwise defined in this First Amendment, the terms used in this First Amendment shall have the same meanings as given to such terms in the Lease.
- B. Landlord and Tenant now desire to amend the Lease in order to adjust the date on which Tenant will be obligated to commence paying Base Rental on the Must-Take Space, extend the Term, modify the rent, provide Tenant certain rights and set forth certain other provisions as more fully described below.

Agreements

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

1. The Original Must-Take Space Rent Commencement Date, with regard to the payment of Base Rental less the \$5.00 Expense Stop portion thereof ("**Base Rental Abatement Amount**") only, is hereby extended for a period of fourteen (14) months from March 1, 2015 to May 1, 2016. The \$67,075.58 Base Rental which Tenant has paid with regard to the Must-Take Space for the months of March and April 2015 shall be credited against the Base Rental payment for the month of May, 2015. Notwithstanding the foregoing abatement of the payment of the Base Rental Abatement Amount, during the period from May 1, 2015 through April 30, 2016, all of the other terms and conditions of the Lease shall be applicable to the Must-Take Space including, but not limited to, Tenant's obligation to pay Tenant's Share of Operating Cost (*i.e.*, one hundred percent [100%] thereof including the Expense Stop amount) and Tenant's Share of Electrical Costs attributable to the Must-Take Space during such period of time. For purposes of clarification, from and after March 1, 2015, the term "**Tenant's Share**" shall mean one hundred percent (100%).
2. Section 1.3 of the Lease is hereby amended to change the Annual Base Rental and Monthly Base Rental amounts for the months 37-49 so that that the Annual Base Rental amount for such months

shall be \$1,341,750.00 and the Monthly Base Rental amount for such months shall be \$111,812.50.

3. The Term is hereby extended for a period of twenty-four (24) months, commencing on August 1, 2022 ("**Extended Commencement Date**") and expiring on July 31, 2024 ("**Expiration Date**"). Tenant shall have no further right to extend the Term, except as provided in **Exhibit "K"** of the Lease.
4. The Lease is further amended to provide that, from and after the Extended Commencement Date, the monthly Rent under the Lease for the Premises shall be as follows:
 - (a) The monthly Base Rental shall be the following amounts for the following periods:

<u>Months</u>	<u>Rate/SF/Year</u>	<u>Annual Base Rental</u>	<u>Monthly Base Rental</u>
1-24	\$20.44	\$1,992,818.20	\$166,068.18
 - (b) Tenant shall continue to pay Tenant's Share of Annual Operating Cost pursuant to the terms of Paragraph 5.1 of the Lease.
 - (c) Tenant shall continue to pay Tenant's Share of the Electrical Costs pursuant to Paragraph 5.2 of the Lease.
5. Tenant shall be entitled to the Tenant Improvement Allowance for the Must-Take Space in the amount of \$25.00 per square foot of Net Rentable Area in the Must-Take Space as set forth in Paragraph 5 of **Exhibit "C"** to the Lease. Construction of the Work in the Must-Take Space shall be performed in accordance with the terms of **Exhibit "C"** of the Lease and must be completed on or before June 30, 2016, or Tenant shall forfeit its right to any unused portion of the Tenant Improvement Allowance. Tenant shall not be entitled to a Space Planning Allowance with regard to the Must-Take Space.
6. Section 44.1 of the Lease entitled "Termination Option" is hereby deleted from the Lease in its entirety and is no longer of any force or effect.
7. Section 37.1 of the Lease entitled "Parking" is hereby deleted in its entirety and in its place is inserted the following:

"37.1 Tenant shall have the exclusive right to use all of the parking spaces in the Complex. Upon written request from Tenant, Landlord, at Landlord's sole cost and expense, agrees to provide Tenant with up to sixty (60) additional parking spaces at the Complex in the location reflected on **Exhibit "A"** attached hereto and made a part hereof for all purposes. In the event Tenant desires more than sixty (60) additional parking spaces, then Landlord shall use its best efforts to provide such additional parking spaces at Tenant's sole cost and expense or Tenant may elect to have Landlord pay for such additional parking spaces, but in such event, the cost thereof shall be repaid by Tenant in monthly installments over the remaining Term of the Lease, together with interest on the unpaid balance thereof at the rate of nine percent (9%) per annum, and paid to Landlord as additional Base Rental at the same times as Base Rental is paid to Landlord under the provisions of Section 3.1 and Section 3.2 of the Lease. Tenant will abide by all Laws governing the use of all such parking spaces at the Complex."

8. Guarantor, PFSWEB, INC., a Delaware corporation ("**Guarantor**"), the guarantor of Tenant's obligations under the Lease pursuant to a certain Guaranty dated December 8, 2011, hereby executes this First Amendment for the purposes ratifying and confirming all of the terms and provisions hereof.
9. Landlord and Tenant acknowledge that there are no real estate brokers that represented the parties herein and that no commissions or fees are due to any brokers whatsoever, other than Peloton Commercial Real Estate representing the Landlord and Cushman & Wakefield of Texas, Inc. representing the Tenant. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all other brokers who claim commissions or fees are owed to them in connection with this First Amendment as a result of the act of the indemnifying party.
10. Tenant represents and warrants to Landlord that as of the Effective Date, Tenant has no claims, defenses (personal or otherwise) or rights of set off whatsoever with respect to the Lease. Each party represents to the other that, as of the Effective Date, neither it, nor to its knowledge, the other party hereto, is in default, nor has any event occurred or any condition exist which would constitute a default by it, or to its knowledge, the other party hereto, under the Lease either with or without the giving of notice or the passage of time or both.
11. Landlord and Tenant both agree to keep this First Amendment and its terms, covenants, obligations and conditions strictly confidential, and not to disclose such matters to any other landlord, tenant, prospective tenant or broker, other than the brokers identified herein, or as otherwise required by law.
12. Except as modified by this First Amendment, the Lease remains unchanged and in full force and effect and by their execution hereby, Landlord and Tenant ratify and confirm all of the provisions thereof.
13. To facilitate execution of this First Amendment, this First Amendment may be executed in multiple counterparts, each of which, when assembled to include an original signature of each party contemplated to sign this First Amendment, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

*[Remainder of Page Intentionally Left Blank;
Signature Page Follows]*

EXECUTED as of the Effective Date.

LANDLORD:

By:

Title:

Date of Execution:

TENANT:

Title:

Date of Execution:

GUARANTOR:

PFSWEB, INC.,
a Delaware corporation

By:

Title:

Date of Execution:

EXHIBIT "A"

LOCATION OF ADDITIONAL PARKING SPACES

See Attached

PARKING EXHIBIT

PFSweb Lease - 500 Millennium Drive, Allen TX



SECOND AMENDMENT TO INDUSTRIAL LEASE AGREEMENT

THIS SECOND AMENDMENT TO INDUSTRIAL LEASE AGREEMENT (this "Amendment") is entered into as of August 2, 2021 (the "Amendment Effective Date"), by and between GPT STATELINE ROAD OWNER LLC, a Delaware limited liability company ("Landlord"), and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("Tenant").

BACKGROUND:

A. Landlord and Tenant are parties to that certain Industrial Lease Agreement dated June 30, 2016 (the "Original Lease"), as amended by that certain First Amendment to Lease dated September 12, 2017 (the "First Amendment"; collectively with the Original Lease, as amended, collectively, the "Lease"), for the lease of approximately 373,644 rentable square feet (the "Demised Premises") known as of Suite 100 in that certain building located at 1560 E. Stateline Road, Southaven, Mississippi 38671, all as more particularly described in the Lease.

B. Landlord and Tenant desire to enter into this Amendment to extend the Term of the Lease and amend the Lease as hereinafter provided.

AGREEMENT

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and of the mutual covenants, agreements and undertakings herein set forth and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Defined Terms. The defined terms used in this Amendment, as indicated by the initial capitalization thereof, shall have the same meanings ascribed to such terms in the Lease, unless otherwise specifically defined herein.

2. Extension of Lease Term. The Term for the Existing Premises (as such term is defined in the First Amendment) is currently set to expire on September 30, 2021, and the Term for the Expansion Premises (as such term is defined in the First Amendment) is currently set to expire on December 14, 2022. Accordingly, the Term for the entire Demised Premises is hereby extended (the "Amendment Extension Term") such that it shall expire on January 31, 2027 (i.e., the Term for the Existing Premises and the Expansion Premises shall be coterminous), unless earlier terminated pursuant to any provision in the Lease. Tenant shall have no right to extend the Term of the Lease beyond the expiration of the Amendment Extension Term.

3. Rent.

(a) Base Rent for Demised Premises. Nothing herein shall alter the Base Rent and other charges payable by Tenant under the Lease prior to October 1, 2021 (the "Amendment Commencement Date"). Notwithstanding anything in the Lease to the contrary, from and after the Amendment Commencement Date, the Base Rent payable by Tenant shall be as set forth in the table below.

<u>Time Period*</u>	<u>Base Rent Per Square Foot Per Annum*</u>	<u>Base Rent for Time Period*</u>	<u>Monthly Base Rent</u>
10/01/2021 – 09/30/2022	\$3.65	\$1,363,800.60	\$113,650.05

10/01/2022 – 09/30/2023	\$3.74	\$1,397,895.62	\$116,491.30
10/01/2023 – 09/30/2024	\$3.83	\$1,432,843.01	\$119,403.58
10/01/2024 – 09/30/2025	\$3.93	\$1,468,664.08	\$122,388.67
10/01/2025 – 09/30/2026	\$4.03	\$1,505,380.68	\$125,448.39
10/01/2026 – 1/31/2027	\$4.13	\$128,584.60	\$128,584.60

* Subject to subsection (b) below regarding the Abatement Period.

(b) Rent Abatement. Notwithstanding anything to the contrary set forth herein, Landlord will abate the obligation of Tenant to pay Base Rent relative to the Demised Premises for the first full calendar month following the Amendment Commencement Date (the "Abatement Period") for a total rent abatement of \$113,650.05 (the "Abated Payment"). The foregoing agreement by Landlord has been made relying on Tenant's agreement to perform all its obligations under the Lease as and when required hereby. As a result, if following the Amendment Commencement Date a monetary default by Tenant occurs under the Lease and continues beyond all applicable notice and cure periods, in addition to Landlord's other remedies which may be available to Landlord under the Lease or applicable law, Tenant shall reimburse Landlord an amount equal to the Unamortized Amount (as defined below) within ten (10) days following Tenant's receipt of a written invoice therefor. The term "Unamortized Amount" refers to the result obtained by multiplying the Abated Payment by a fraction, the numerator of which shall be the number of months that remain or would have remained during the Amendment Extension Term following the date of the default, the denominator of which shall be sixty (60).

(c) Additional Rent. Nothing herein shall alter Tenant's obligation to pay Additional Rent (including, without limitation, Tenant's Operating Expense Percentage of Operating Expenses) before and after the Amendment Commencement Date; provided, however, notwithstanding anything in the Lease to the contrary, Tenant's Operating Expense Percentage shall remain 100% during the entire Amendment Extension Term.

4. Condition of the Demised Premises. Except as expressly provided in this Amendment, no improvement allowance or similar allowance shall be payable or otherwise available to Tenant, and Landlord shall have no obligation to perform any upfit or other improvement work to the Demised Premises in connection with this Amendment. Tenant hereby acknowledges that it currently occupies the Demised Premises and, as of the Amendment Effective Date, accepts the Demised Premises in "AS IS" without representation or warranty by Landlord of any kind. Except as otherwise provided in this Amendment, Tenant certifies that Landlord has completed all work that it is required to complete under the Lease and that Landlord has paid to Tenant, and Tenant has received, all tenant improvement allowances and other concessions referenced in the Lease. Tenant hereby confirms that there are no outstanding credits for rent or allowances that Tenant has not received from the Landlord, and Tenant is not entitled to any credits for rent or allowances in connection with the Lease or otherwise except as expressly set forth in this Amendment.

5. Notices. The notice address for Landlord, as set forth in the Lease, is hereby deleted and replaced with the following:

Landlord: GPT Stateline Road Owner LLC

c/o Link Logistics Real Estate
602 W Office Center Drive, Suite 200 Fort Washington, PA 19034 Attention: Lease Administration

With a required copy to:

GPT Stateline Road Owner LLC c/o Link Logistics Real Estate 90 Park Avenue, 32nd Floor New York, New York 10016 Attention:
General Counsel

6. No Remaining Options. Landlord and Tenant acknowledge that Tenant has no remaining options under the Lease, including, but not limited to, rights of first refusal or of first offer, extension options, expansion options, or options to purchase.

7. Brokerage. Landlord and Tenant each warrants that it has had no dealings with any broker or agent in connection with this Amendment other than Colliers International ("**Landlord's Broker**") and Jones Lang LaSalle Brokerage, Inc. ("**Tenant's Broker**") and covenants to pay, hold harmless and indemnify the other party from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any other broker or agent with respect to this Amendment or the negotiation thereof, except Landlord's Broker and Tenant's Broker. Landlord shall pay Landlord's Broker pursuant to a separate agreement and Landlord's Broker shall be responsible for ensuring that Tenant's Broker has reached agreement for receipt of any and all payments owed to Tenant's Broker. Tenant's Broker shall be duly licensed in Mississippi, and Tenant agrees that Tenant's Broker shall have no right to receive any payments in connection with this Amendment if Tenant's Broker is not so duly licensed in Mississippi.

8. Ratification. Tenant hereby confirms that it is the "Tenant" under the Lease. All terms and conditions of the Lease, as amended hereby, are hereby ratified and shall remain in full force and effect. To the extent there is a conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control. Tenant represents that it is not aware of any default by Landlord or Tenant under the terms of the Lease. Landlord and Tenant represent that (i) the individuals executing this Amendment on behalf of Landlord and Tenant, respectively, have full authority and power to execute and deliver this Amendment, and (ii) this Amendment constitutes a valid and binding obligation on the parties hereto. This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose.

9. Counterparts: Electronic Signatures. This Amendment may be executed in two (2) or more counterparts, all of which together shall constitute one and the same original instrument. Furthermore, the parties agree that (i) this Amendment may be transmitted between them by electronic mail and (ii) electronic signatures and electronic copies of manual signatures shall have the effect of original signatures relative to this Amendment.

10. Confidentiality. Tenant shall hold strictly confidential the information contained in this Amendment.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the Amendment Effective Date by persons duly empowered to bind the parties to perform their respective obligations hereunder.

LANDLORD:

GPT STATELINE ROAD OWNER LLC, a Delaware
limited liability company

By: __ Name: ____ Title: ____

TENANT:

PRIORITY FULFILMENT SERVICES, INC., a
Delaware corporation

By: __ Name: _____

Title: _____

[Signature Page to Second Amendment to Industrial Lease]

Property: Stateline Road (40193)

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made and entered into as of the 12 day of September, 2017 (the "Effective Date") by and between GPT STATELINE ROAD OWNER LLC, a Delaware limited liability company ("Landlord") and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("Tenant").

BACKGROUND

A. Landlord and Tenant are parties to that certain Industrial Lease Agreement dated as of June 30, 2016, as supplemented by that certain Notice of Lease Term Dates dated July 7, 2016 (the "Lease"), whereby Landlord leases to Tenant approximately 198,162 square feet (the "Existing Premises") in the building ("Building") located at 1560 E. Stateline Road, Suite 101, Southaven, Mississippi 38671, as more particularly described in the Lease.

B. Tenant has exercised its right of first refusal in Section 1 of Exhibit C of the Lease to lease the remaining 175,482 square feet of space in the Building.

C. Accordingly, Landlord and Tenant desire to amend the Lease to expand the Existing Premises and amend the Lease, subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, each intending to be legally bound hereby, agree to amend, and do hereby further amend, the Lease as follows:

1. Capitalized Terms. Except as specifically defined in this First Amendment, capitalized terms shall have the same meanings given to such terms in the Lease.

2. Primary Term. The initial Term of the Expansion Premises (as defined below) shall expire on December 14, 2022. For the avoidance of doubt, the Primary Term of the Existing Premises has not been modified and shall expire on September 30, 2021.

3. Demised Premises.

a. Commencing as of September 15, 2017 (the "First Expansion Date") and continuing through December 14, 2022 (the "Expansion Premises Expiration Date"), Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, an additional 80,000 square feet of space in the Building, as more particularly shown on Exhibit A attached hereto (the "First Expansion Premises").

b. Commencing as of December 15, 2017 (the "Second Expansion Date") and continuing through the Expansion Premises Expiration Date, Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, the remaining 95,482 square feet of space in the Building (the "Second Expansion Premises") for a total of 175,482 square feet of space in the Building, as more particularly shown on Exhibit A attached hereto (the First Expansion Premises and Second Expansion Premises are collectively referred to as the "Expansion Premises").

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c. Except as expressly modified by this First Amendment, (i) all of Landlord's and Tenant's rights, obligations and covenants with respect to the Existing Premises under the Lease shall apply to and exist in full force and effect with regard to the Expansion Premises, (ii) effective as of the First Expansion Date with respect to the First Expansion Premises and as of the Second Expansion Date with respect to the entire Expansion Premises, (A) any and all references to the "Demised Premises" in the Lease shall be deemed to include both the Existing Premises and the First Expansion Premises or Expansion Premises, as applicable, and (B) any and all references to the "Term" in the Lease shall be deemed to refer to both the Term of the Existing Premises and the Term of the Expansion Premises, provided however, the Term of the Existing Premises shall expire on September 30, 2021 and the Term of the Expansion Premises shall expire on December 14, 2022, and (iii) the Demised Premises (including both the Existing Premises and the Expansion Premises) shall be approximately 373,644 square feet in the aggregate.

4. Base Rent for the Expansion Premises. Commencing (i) as of the First Expansion Date, Tenant shall pay to Landlord the Base Rent for the First Expansion Premises, and (ii) as of the Second Expansion Date, Tenant shall pay to Landlord the Base Rent for the entire Expansion Premises, all as set forth below in accordance with Section 4 of the Lease, which Base Rent shall be payable by Tenant (a) in twelve (12) equal monthly installments in advance on or before the First Expansion Date and on or before the first (1st) day of each succeeding calendar month during the Lease Term, and (b) shall be payable together with each monthly installment of Base Rent for the Existing Premises.

Time Period	SF	Per RSF Annual Base Rent	Base Rent (monthly installments)
9/15/2017 – 12/14/2017	80,000	\$3.35	\$22,333.33
12/15/2017 – 12/31/2018	175,482	\$3.35	\$48,988.73
1/1/2019 – 12/31/2019	175,482	\$3.42	\$49,968.50
1/1/2020 – 12/31/2020	175,482	\$3.49	\$50,967.87
1/1/2021 – 12/31/2021	175,482	\$3.56	\$51,987.23
1/1/2022 – 12/14/2022	175,482	\$3.63	\$53,026.97

From and after the First Expansion Date, all references to "Base Rent" in the Lease, other than Section 1(e), shall include the Base Rent for the Expansion Premises set forth above.

5. Operating Expenses.

a. Effective as of the First Expansion Date, Tenant's Operating Expense Percentage set forth in Section 1(j) of the Lease deleted as replaced with the following:

Time Period	Tenant's Operating Expense Percentage
First Expansion Date – 12/14/2017	74.44%
Second Expansion Date – 9/30/2021	100.00%
10/1/2021 – 12/14/2022	46.9%

b. Notwithstanding anything in the Lease to the contrary, for purposes of determining the effect of the cap on Controllable Operating Expenses as set forth in Section 6(b) of the Lease, the "first full calendar year" as referred to therein shall be deemed to be the first full calendar year

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following the First Expansion Date, i.e., the first full calendar year for purposes of Section 6(b) of the Lease shall be September 15, 2017 through September 30, 2018.

6. Condition of the Premises. Except as expressly provided for in Section 7 below, Tenant accepts the Existing Premises and Expansion Premises in their "as-is" and "where-is" condition, with any and all faults as of the Effective Date and Landlord shall not be required to perform any tenant finish or other work to the Demised Premises nor to provide Tenant any tenant finish allowance or other allowance or inducement with respect to the Demised Premises in connection with the execution of this First Amendment.

7. Landlord's Work. Landlord shall, at Landlord's sole cost and expense, complete the improvements to the Expansion Premises as shown on the plans and specifications attached hereto as Exhibit B and made a part hereof (the "Landlord's Work") in accordance with good workmanship and materials and all applicable building codes and regulations. Landlord shall also, at its sole cost and expense (and such expense shall not be included in Operating Expenses), perform maintenance and repairs to the HVAC systems, dock equipment (doors, levelers and dock locks), and facility lighting of the Expansion Premises (the "Repair Work") to insure that all are in good working order as of the First Expansion Date for the First Expansion Premises and the Second Expansion Date for the Second Expansion Premises. Tenant acknowledges and agrees that (i) Landlord shall not be liable to Tenant for any inconveniences Tenant may experience during the performance, construction or installation of the Landlord's Work and the Repair Work which are beyond Landlord's control or for any delays in Landlord's completion of the Landlord's Work and the Repair Work (regardless of the length of any such delays); (ii) Landlord shall not be obligated to perform the Landlord's Work and the Repair Work at any time other than during normal business hours on regular business days; (iii) Tenant shall ensure that neither Tenant, nor any of Tenant's agents, sublessees, employees, representatives, contractors, subcontractors, suppliers, customers and invitees, interfere with or impede the performance and completion of the Landlord's Work and the Repair Work (regardless of whether such Landlord's Work and Repair Work is performed by Landlord or any of Landlord's agents, employees, contractors, or subcontractors); (iv) Landlord shall have access to the Expansion Premises (and the Existing Premises with reasonable notice during normal business hours) for the purpose of performing the Landlord's Work and the Repair Work; and (v) Tenant shall reasonably cooperate with Landlord during the performance, construction and installation of the Landlord's Work and the Repair Work and Tenant shall be responsible, at no cost to Landlord, for the moving of any and all furniture, trade fixtures, equipment and/or personal property that is reasonably necessary for Landlord to complete (or cause the completion of) the Landlord's Work and the Repair Work. Notwithstanding the foregoing, Landlord and Tenant shall cooperate to schedule a mutually agreeable time for Landlord to perform the Landlord's Work and the Repair Work in order to minimize disruption to Lessee. Landlord hereby warrants and that the HVAC system serving the Expansion Premises shall be in good working condition for a period of three (3) months following the First Expansion Date. Landlord shall perform any and all maintenance, repairs and replacement of such HVAC system serving the Expansion Premises during such three (3) month period, at Landlord's sole cost and expense, and such expense shall not be included in Operating Expenses. Upon termination of the Primary Term of the Existing Premises, Landlord shall, at its sole cost and expense (and such expense shall not be included in Operating Expenses), remove and seal the doors included in the description of Landlord's Work, but shall not be required to perform any additional demising work to separately demise the Expansion Premises from the Existing Premises.

8. Early Access. Subject to the provisions below, from and after the Effective Date, Tenant shall have the right to enter the Expansion Premises in order to generally prepare the Expansion Premises for occupancy including the storage of product, but not to conduct normal business operations ("Early Access"). Other than in connection with Landlord's Work, the Repair Work or any emergency relating to the Expansion Premises, Landlord shall not grant access to the Expansion Premises to any party between

the Effective Date and the First Expansion Date and the Second Expansion Date, as applicable. Tenant's right to Early Access to the Expansion Premises is subject to, and conditioned upon, the following:

- a. Early Access is only permitted if, and to the extent, permitted by applicable Governmental Requirements.
- b. Tenant shall comply with all the terms and conditions of this Lease during any Early Access, other than the obligation to pay Base Rent and its share of Operating Expenses with respect to the Expansion Premises. Nothing herein shall relieve Tenant from its obligations under the Lease with respect to the Existing Premises.
- c. Tenant shall not unreasonably interfere with Landlord's completion of the Landlord's Work;
- d. Tenant will provide written notice to Landlord prior to any Early Access and Landlord shall have the right to have a representative present during such access so long as Landlord does not delay Tenant's Early Access to the Expansion Premises.
- e. Tenant shall not begin its normal business operations from the Expansion Premises until the First Expansion Date with respect to the First Expansion Premises or the Second Expansion Date with respect to the Second Expansion Premises, as the case may be.
- f. Notwithstanding anything to the contrary contained herein, Tenant does hereby expressly acknowledge and agree that the storage and installation of fixtures and Tenant's personal property (including equipment) in the Expansion Premises shall be at Tenant's sole risk, cost and expense, and that Landlord shall not be liable for and Tenant hereby releases Landlord from any and all liability for any damage thereto occasioned by any act of God or by any acts, omissions or negligence of any persons; provided, however, that Landlord shall be responsible for its gross negligence or willful misconduct and the gross negligence or willful misconduct of its employees, officers, directors, agents, contractors, and subcontractors. Tenant does hereby further agree to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless Landlord and its employees, officers, directors, agents and contractors from and against any and all claims, liabilities, losses, actions, causes of action, demands, costs and expenses (including, without limitation, attorneys' fees at the trial and appellate levels) of any and every nature arising out of or in any way relating to Tenant's Early Access; provided, however, that Tenant shall not indemnify Landlord for any matter arising from Landlord's gross negligence or willful misconduct or the gross negligence or willful misconduct of its employees, officers, directors, agents, contractors, and subcontractors.

9. Parking. Notwithstanding anything to the contrary set forth in Section 14 of the Lease, commencing as of the First Expansion Date, Tenant shall have the exclusive right to use all of the parking spaces located within the Project, provided however Landlord shall the right to use such parking spaces as reasonably required in order to exercise its rights or perform its obligations under the terms of the Lease.

10. Notices. Landlord's Notice Address, as defined in the Face Page of the Lease, is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

GPT Stateline Road Owner LP
c/o Gramercy Property Trust
550 Blair Mill Road, Suite 120
Horsham, PA 19044
Attn: Lease Administration

With a required copy to:

GPT Stateline Road Owner LP
c/o Gramercy Property Trust
90 Park Avenue, 32nd Floor

New York, NY 10016
Attn: General Counsel

11. Broker Indemnification. The parties hereto represent and warrant to one another that no broker or agent engaged or contacted by Landlord or Tenant either negotiated or was instrumental in negotiating or consummating this First Amendment except for Jones Lang LaSalle ("Tenant's Broker") and Cushman & Wakefield ("Landlord's Broker"), Landlord and Tenant each hereby agree to indemnify one another against any loss, expense (including reasonable attorneys' fees and costs), cost or liability incurred by a party as a result of a claim by any broker or finder claiming by or through such indemnifying party that such broker or finder was instrumental in negotiating this First Amendment and is due and owing a commission, fee or other payment as a direct result thereof. Tenant's Broker shall be paid by Tenant pursuant to and in accordance with a separate written agreement between Tenant and Tenant's Broker. Landlord's Broker shall be paid by Landlord pursuant to and in accordance with a separate written agreement between Landlord and Landlord's Broker.

12. Entire Agreement. This First Amendment sets forth all covenants, agreements and understandings between Landlord and Tenant with respect to the subject matter hereof, and there are no other covenants, conditions or understandings, either written or oral, between the parties hereto except as set forth in the Lease, as further modified by this First Amendment.

13. Full Force and Effect. Except as expressly amended hereby, all other terms and provisions of the Lease remain unchanged and continue to be in full force and effect.

14. Compliance with Warranties, No Default. The representations and warranties set forth in the Lease as amended hereby shall be true and correct with the same effect as if made on the date of this First Amendment, and no uncured default under the Lease has occurred or is continuing on the date of this First Amendment.

15. Conflicts. The terms of this First Amendment shall control over any conflict between the terms of the Lease and the terms of this First Amendment.

16. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17. Counterparts. This First Amendment may be executed in multiple counterparts, and each counterpart when fully executed and delivered shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument. Facsimile copies or copies transmitted by electronic mail shall be treated as originals.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant cause this First Amendment to be duly executed as of the date and year first above written.

LANDLORD:

GPT STATELINE ROAD OWNER LLC,
a Delaware limited liability company

By: _____
Name:
Title:

TENANT:

PRIORITY FULFILLMENT SERVICES, INC.,
a Delaware corporation

SECOND AMENDMENT TO INDUSTRIAL LEASE

THIS AMENDMENT is made as of the Amendment Date (as hereinafter defined) by and between STATELINE J, LLC, a Delaware limited liability company (**“Landlord”**) and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation (**“Tenant”**).

RECITALS

Landlord and Tenant have previously entered into that certain Industrial Lease Agreement dated March 18, 2016, as amended by First Amendment to Industrial Lease (the **“First Amendment”**) (as amended, the **“Lease”**) for the lease of space at 1620 Stateline Road (Suite 101), Southaven, Mississippi 38671 (the **“Premises”**) located within Stateline Business Park, DeSoto County, Mississippi.

Landlord and Tenant desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms used herein but undefined shall have the meaning as defined in the Lease.

2. **Early Expansion.** Tenant has elected to cause the Early Expansion (defined in Special Stipulation Number 3 of the original Lease, the **“Early Expansion Stipulation”**) with respect to the entire 129,600 square foot Expansion Space. The effective date of the Early Expansion shall be September 5, 2016 (the **“Early Expansion Effective Date”**).

4. **Confirmation of Dates.** Landlord and Tenant hereby confirm that the Lease Commencement Date occurred on May 11, 2016 and the Base Rent Commencement Date is August 11, 2016. The First Lease Year runs from May 11, 2016 through May 31, 2017.

5. **Base Rent.** Pursuant to the Early Expansion Stipulation, in order to account for the Early Expansion, Annual Base Rent is to increase by an amount equal to \$426,384.00 (\$3.29 x 129,600 sf) during the period between September 5, 2016 (the Early Expansion Effective Date) and June 1, 2017 (the first day of the second Lease Year, the date on which the Expansion would have occurred if not for the Early Expansion). Therefore, Monthly Base Rent installments for the First Lease Year are hereby modified to be the following (and Section 1(d) and (e) of the original Lease and First Amendment are so modified):

Period	Monthly Base Rent
5/11/2016 – 8/10/2016:	\$0.00
8/11/2016 – 9/4/2016:	\$39,973.50 (plus the prorated amount for any Fractional Month)
9/5/2016 – 5/31/2017:	\$76,679.50

The Base Rent amounts for periods following the First Lease Year remain unmodified from the amounts set forth in the rent schedule provided in the First Amendment.

6. **Brokers.**

(a) **Representation/Warranty.** Landlord and Tenant each represents and warrants to the other that neither party has engaged or had any conversations or negotiations with any broker, finder or other third party concerning the matters set forth in this Amendment who would be entitled to any commission or fee based on the execution of this Amendment.

(b) **Indemnity.** Landlord and Tenant each hereby indemnifies the other against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing.

(c) **Survival.** The indemnity set forth in subsection (b) above shall survive the termination of the Lease for any reason.

7. **No Further Concessions.** Except as expressly provided herein, no free rent, moving allowances, tenant improvement allowances or other such financial concessions contained in the Lease shall apply to the Term as extended hereby.

8. **Amendment Date.** For purposes of this Amendment, the term "**Amendment Date**" shall mean the date upon which this Amendment is signed by Landlord or Tenant, whichever is later.

9. **Ratification of Lease.** Except as amended hereby, the Lease shall be and remain in full force and effect and unchanged. As amended hereby, the Lease is hereby ratified and confirmed by Landlord and Tenant.

10. **Inconsistencies.** To the extent the terms hereof are inconsistent with the terms of the Lease, the terms hereof shall control.

11. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken

together, shall constitute one and the same instrument. Delivery of a pdf or other electronic counterpart of this Amendment executed by a party hereto shall be deemed to constitute delivery of an original hereof executed by such party.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and sealed as of the Amendment Date.

Date: _____

LANDLORD:

STATELINE J, LLC, a Delaware limited liability

By: _____

Name:

Title:

Date:

TENANT:

PRIORITY FULFILLMENT SERVICES, INC.,
a Delaware corporation

Name:

Title:

[GUARANTOR]

The capitalized terms of this Consent shall have the meaning as defined in the Amendment to which this Consent is attached (the "**Second Amendment**"), unless otherwise defined. The undersigned, being the Guarantor of the Lease under that certain Guaranty dated March 21, 2016 from Guarantor to Stateline J, LLC, hereby consents to the Second Amendment, and acknowledges and reaffirms that the Guaranty is in full force and effect as it relates to the Lease, as amended by the Second Amendment.

Date: 10-20-16

GUARANTOR:

PFSW corporation

By:

[CORPORATE SEAL]

FIRST AMENDMENT TO INDUSTRIAL LEASE AGREEMENT

THIS AMENDMENT is made as of the Amendment Date (as hereinafter defined) by and between STATELINE J, LLC, a Delaware limited liability company ("**Landlord**") and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("**Tenant**").

RECITALS

Landlord and Tenant have previously entered into that certain Industrial Lease Agreement dated March 18, 2016 (the "**Lease**") for the lease of space at 1620 Stateline Road (Suite 101), Southaven, Mississippi 38671 (the "**Premises**") located within Stateline Business Park, DeSoto County, Mississippi.

Landlord and Tenant desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms used herein but undefined shall have the meaning as defined in the Lease.

2. **Allowance.** Special Stipulation Number 2 of EXHIBIT C of the Lease (the "**Allowance Stip**") is hereby amended to increase the Tenant Allowance to an amount equal to equal \$429,000.00. Accordingly, the Allowance Stip is modified to delete the words "\$70.00 per square foot thereof (not to exceed \$350,000.00 in the aggregate)" and inserting "\$429,000.00" in lieu thereof.

3. **Annual Base Rent.** Section 1(d) of the Lease is hereby deleted in its entirety and the following is substituted therefor:

(d) Annual Base Rent (as may be adjusted pursuant to the Expansion Stip):

Period	Annual Base Rent
Lease Year 1	\$493,770.00 (plus the prorated amount for any Fractional Month per Section 3 hereof, if applicable)(annualized, where applicable)
Lease Year 2	\$936,933.00
Lease Year 3	\$955,389.96

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Lease Year 4	\$974,215.92
Lease Year 5	\$993,418.44
Lease Year 6	\$1,013,005.08
Lease Year 7	\$1,032,983.40
Lease Year 8	\$1,053,361.32
Lease Year 9	\$1,074,146.88
Lease Year 10	\$1,095,348.00

4. **Monthly Base Rent Installments.** Section 1(e) of the Lease is hereby deleted in its entirety and the following is substituted therefor:

(e) Monthly Base Rent Installments (as may be adjusted pursuant to the Expansion Stip):

Period	Annual Base Rent
Lease Year 1	\$0.00 (months 1-3) \$41,147.50 (months 4-12) (plus the prorated amount for any Fractional Month per Section 3 hereof, if applicable)
Lease Year 2	\$78,077.75
Lease Year 3	\$79,615.83
Lease Year 4	\$81,184.66
Lease Year 5	\$82,784.87
Lease Year 6	\$84,417.09
Lease Year 7	\$86,081.95
Lease Year 8	\$87,780.11
Lease Year 9	\$89,512.24
Lease Year 10	\$91,279.00

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5. **Early Termination Option Payment Amounts. Special Stipulation** Number 1 of EXHIBIT C (the "**Termination Stip**") is hereby amended to increase the termination payment amounts as follows:

(a) **Seventy Fifth Month Termination Payment.** The Seventy Fifth Month Termination Payment is hereby increased to an amount equal to \$731,134.37 (increased by \$44,700.37).

(b) **Ninety Sixth Month Termination Payment.** The Ninety Sixth Month Termination Payment is hereby increased to an amount equal to \$386,467.27 (increased by \$25,699.27).

(c) **Other provisions.** The other terms and conditions set forth in the Termination Stip remain unmodified.

6. **Exhibit A. EXHIBIT A** of the Lease is attached to this Amendment.

7. **Exhibit B. EXHIBIT B** of the Lease is hereby amended to add the following additions items to the list of Phase 1 Improvements:

7. Add (30 ea.) 4 lamp fixtures due to unanticipated racking in South 9 bays. Original Budget pricing was based on 50% racked. South 9 bays now fully racked (\$7,862.00).

8. Add sidewalk 5' x 15' concrete sidewalk and canopy to existing man door (\$4,427.00).

8. **Amendment Date.** For purposes of this Amendment, the term "**Amendment Date**" shall mean the date upon which this Amendment is signed by Landlord or Tenant, whichever is later.

9. **Ratification of Lease.** Except as amended hereby, the Lease shall be and remain in full force and effect and unchanged. As amended hereby, the Lease is hereby ratified and confirmed by Landlord and Tenant.

10. **Inconsistencies.** To the extent the terms hereof are inconsistent with the terms of the Lease, the terms hereof shall control.

11. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of a pdf or other electronic counterpart of this Amendment executed by a party hereto shall be deemed to constitute delivery of an original hereof executed by such party.

12. **Offer Provisions.**

- (a) No Offer by Landlord. The submission of this Amendment to Tenant for examination or consideration does not constitute an offer to amend the Lease, and this Amendment shall become effective only upon the execution and delivery thereof by Landlord and Tenant.
- (b) Offer by Tenant. Execution and delivery of this Amendment by Tenant to Landlord constitutes an offer to amend the Lease on the terms contained herein.
- (c) Term of Offer by Tenant. The offer by Tenant will be irrevocable until 6:00 p.m. Eastern time for 15 days after the date of execution of this Amendment by Tenant and delivery to Landlord.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and sealed as of the Amendment Date.

Date: 6/1/16

LANDLORD:

STATELINE J, LLC, a Delaware limited liability company

Date: 6-1-16

TENANT:

PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation

By: _____

[GUARANTOR]

The capitalized terms of this Consent shall have the meaning as defined in the Amendment to which this Consent is attached (the "Amendment"), unless otherwise defined. The undersigned, being the Guarantor of the Lease under that certain Guaranty dated March 21, 2016 from Guarantor to Stateline J, LLC, hereby consents to the Amendment, and acknowledges and reaffirms that the Guaranty is in full force and effect as it relates to the Lease, as amended by the Amendment.

Date: 6-1-16

GUARANTOR:

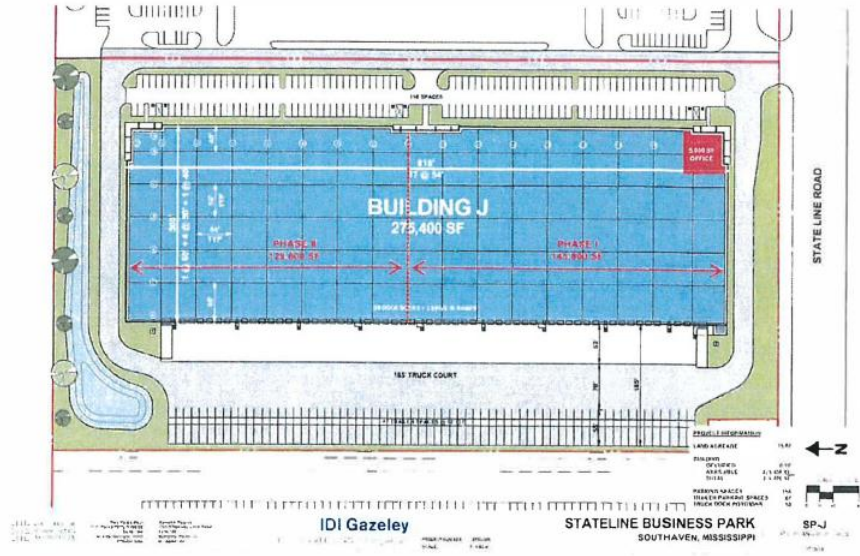
PFSWEB, INC., a Delaware corporation

By:

Name:

Title:

EXHIBIT A



FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is entered into as of May 3, 2021 (the "Effective Date"), by and between ProLogis Texas II (2) LLC, a Delaware limited liability company ("Landlord"), and Priority Fulfillment Services, Inc., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Lease dated July 17, 2020, pursuant to which Landlord leased to Tenant certain premises consisting of approximately 57,400 square feet located at 9250 N. Royal Lane, Irving, TX 75063 (the "Original Premises"), such lease, as heretofore modified, being herein referred to as the "Lease".

WHEREAS, Landlord and Tenant desire to modify the Lease on the terms and conditions set forth below.

AGREEMENT:

NOW THEREFORE, in consideration of the Premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Effective on May 1, 2021 (the "First Expansion Commencement Date"), the Premises under the Lease shall be amended to include that portion of the Building containing approximately 28,700 rentable square feet as shown on Exhibit A attached hereto (the "First Expansion Premises") such that thereafter, subject to the provisions herein, the Premises under the Lease shall consist of a total of approximately 86,100 rentable square feet. Except for and subject to Substantial Completion of those First Amendment Improvements applicable to the First Expansion Premises described in Exhibit B attached hereto and made a part hereof, Tenant shall accept the First Expansion Premises in its "as-is" condition as of the First Expansion Commencement Date. All of the terms and conditions of the Lease shall apply to the First Expansion Premises effective on the First Expansion Commencement Date. Effective on the First Expansion Commencement Date, Tenant's Proportionate Share of Taxes shall be automatically amended to 75.00%.
 2. Effective on June 1, 2021 (the "Second Expansion Commencement Date"), the Premises under the Lease shall be amended to include that portion of the Building containing approximately 28,700 rentable square feet as shown on Exhibit A attached hereto (the "Second Expansion Premises") such that thereafter, subject to the provisions herein, the Premises under the Lease shall consist of a total of approximately 114,800 rentable square feet. Except for and subject to Substantial Completion of those First Amendment Improvements applicable to the Second Expansion Premises defined in Exhibit B below, Tenant shall accept the Second Expansion Premises in its "as-is" condition as of the Second Expansion Commencement Date. All of the terms and conditions of the Lease shall apply to the Second Expansion Premises effective on the Second Expansion Commencement Date. Effective on the Second Expansion Commencement Date, Tenant's Proportionate Share of Taxes shall be automatically amended to 100.00%.
 3. Tenant acknowledges that as of the date of this Amendment, the Second Expansion Premises
-

are occupied by an existing tenant (the "Existing Tenant"). Tenant acknowledges and agrees that Landlord shall not deliver possession of the Second Expansion Premises to Tenant until Landlord has obtained lawful possession of the Second Expansion Premises from the Existing Tenant. In the event the Existing Tenant does not vacate the Second Expansion Premises before the Second Expansion Commencement Date, then the Second Expansion Commencement Date of this Amendment shall be delayed one day for every day of delay beyond the Commencement Date until such date as Landlord obtains lawful possession of the Second Expansion Premises from the Existing Tenant and has completed the First Amendment Improvements defined in Exhibit B.

4. Effective on the First Expansion Commencement Date or the Second Expansion Commencement Date, as applicable, the Monthly Base Rent, Monthly Fixed Operating Expenses ("Monthly FOE"), Annual Fixed Operating Expenses Increase ("Annual FOE Increase"), and Estimated Monthly Taxes for the Premises shall be as follows through the Lease Term:

Monthly Base Rent for the Premises:

Period			Original Premises Monthly Base Rent	First Expansion Premises Monthly Base Rent	Second Expansion Premises Monthly Base Rent	Total Premises Monthly Base Rent (less abated amounts)
05/01/2021	through	05/31/2021	USD\$31,091.67	*USD\$15,545.84	N/A	USD\$31,091.67
06/01/2021	through	07/31/2021	USD\$31,091.67	*USD\$15,545.84	*USD\$15,545.84	USD\$31,091.67
08/01/2021	through	09/30/2021	USD\$31,091.67	USD\$15,545.84	USD\$15,545.84	USD\$62,183.35
10/01/2021	through	09/30/2022	USD\$32,024.42	USD\$16,012.21	USD\$16,012.21	USD\$64,048.84
10/01/2022	through	09/30/2023	USD\$32,985.15	USD\$16,492.58	USD\$16,492.58	USD\$65,970.31
10/01/2023	through	09/30/2024	USD\$33,974.70	USD\$16,987.35	USD\$16,987.35	USD\$67,949.40
10/01/2024	through	09/30/2025	USD\$34,993.94	USD\$17,496.97	USD\$17,496.97	USD\$69,987.88
10/01/2025	through	12/31/2025	USD\$36,043.76	USD\$18,021.88	USD\$18,021.88	USD\$72,087.52

*Monthly Base Rent for the respective Expansion Premises is abated during these periods. Monthly FOE and Taxes will be due as provided in the Lease during these periods.

Monthly FOE for the Premises:

	Original Premises Monthly FOE	First Expansion Premises Monthly FOE	Second Expansion Premises Monthly FOE	Total Premises Monthly FOE
Operating Expenses:	USD\$4,964.14	USD\$2,573.83	USD\$2,637.33	USD\$10,175.30
Capital Repairs/Replacements:	USD\$717.50	USD\$334.83	USD\$382.66	USD\$1,434.99
Total Monthly FOE:	USD\$5,681.64	USD\$2,908.66	USD\$3,019.99	USD\$11,610.29

Estimated Monthly Taxes for the Premises:

	<u>Original Premises Estimated Monthly Taxes</u>	<u>First Expansion Premises Estimated Monthly Taxes</u>	<u>Second Expansion Premises Estimated Monthly Taxes</u>	<u>Total Premises Estimated Monthly Taxes</u>
Estimated Monthly Taxes:	USD\$6,665.00	USD\$3,332.50	USD\$3,332.50	USD\$13,330.00

Annual FOE Increase: 2.40%

5. Except as otherwise expressly provided herein, all defined terms used in this Amendment shall have the same respective meanings as are provided for such defined terms in the Lease. Tenant shall pay Taxes, Monthly FOE, and other reimbursable costs as provided in the Lease during the Lease Term.
6. Landlord shall provide Construction for the First Amendment Improvements as outlined in Exhibit B attached hereto and made a part hereof.
7. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than JLL, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.
8. Insofar as the specific terms and provisions of this Amendment purport to amend or modify or are in conflict with the specific terms, provisions and exhibits of the Lease, the terms and provisions of this Amendment shall govern and control; in all other respects, the terms, provisions and exhibits of the Lease shall remain unmodified and in full force and effect.
9. Landlord and Tenant hereby agree that (i) this Amendment is incorporated into and made a part of the Lease, (ii) any and all references to the Lease hereinafter shall include this Amendment, and (iii) the Lease and all terms, conditions and provisions of the Lease are in full force and effect as of the date hereof, except as expressly modified and amended hereinabove.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have signed this Amendment as of the day and year first above written.

TENANT:

Priority Fulfillment Services, Inc.
a Delaware corporation

By: _____

Name:

Title:

LANDLORD:

PROLOGIS TEXAS II (2) LLC
a Delaware limited liability company

By: Authorized Person

By: _____

Name:

Title:

EXHIBIT A: FIRST & SECOND EXPANSION PREMISES SITE PLAN



**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350**

I, Michael Willoughby, certify that:

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

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the periods covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
- d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 13, 2022

By: /s/ MICHAEL WILLOUGHBY
Chief Executive Officer

**CERTIFICATIONS OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350**

I, Thomas Madden, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PFSweb, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the periods covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 13, 2022

By: /s/ THOMAS J. MADDEN
Chief Financial Officer

CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), each of the undersigned officers of PFSweb, Inc. (the "Company"), does hereby certify that:

The Quarterly Report on Form 10-Q for the period ended March 31, 2022 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Form 10-Q.

June 13, 2022

/s/ Michael Willoughby

Michael Willoughby
Chief Executive Officer

June 13, 2022

/s/ Thomas J. Madden

Thomas J. Madden
Chief Financial Officer

The foregoing certification is being furnished as an exhibit to the Form 10-Q pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and, accordingly, is not being filed as part of the Form 10-Q for purposes of Section 18 of the Securities Exchange Act of 1934, as whether made before or after the date hereof, regardless of any general incorporation language in such filing.

A signed original of this written statement required by Section 906 has been provided to PFSweb, Inc. and will be retained by PFSweb, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.