

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2019

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to
Commission File Number: 001-36383

Five9, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

94-3394123
(I.R.S. Employer
Identification No.)

Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, CA 94583
(Address of Principal Executive Offices) (Zip Code)

(925) 201-2000
(Registrant's Telephone Number, Including Area Code)

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 check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 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	<input checked="" type="radio"/>	Accelerated Filer	<input type="radio"/>
Non-accelerated filer	<input type="radio"/> (Do not check if a smaller reporting Company)	Smaller Reporting Company	<input type="radio"/>
		Emerging Growth Company	<input type="radio"/>

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. Yes: No:

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

As of April 26, 2019, there were 59,676,850 shares of the Registrant's common stock, par value \$0.001 per share, outstanding.

FIVE9, INC.

FORM 10-Q

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, which involve substantial risks and uncertainties. These statements reflect the current views of our senior management with respect to future events and our financial performance. These forward-looking statements include statements with respect to our business, expenses, strategies, losses, growth plans, product and client initiatives, market growth projections, and our industry. Statements that include the words “expect,” “intend,” “plan,” “believe,” “project,” “forecast,” “estimate,” “may,” “should,” “anticipate” and similar statements of a future or forward-looking nature identify forward-looking statements for purposes of the federal securities laws or otherwise.

Forward-looking statements address matters that involve risks and uncertainties. Accordingly, there are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. These factors include the information set forth in Part 1, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, which we encourage you to carefully read, and include the following:

- our quarterly and annual results may fluctuate significantly, including as a result of the timing and success of new product and feature introductions by us, may not fully reflect the underlying performance of our business and may result in decreases in the price of our common stock;
- if we are unable to attract new clients or sell additional services and functionality to our existing clients, our revenue and revenue growth will be harmed;
- our recent rapid growth may not be indicative of our future growth, and even if we continue to grow rapidly, we may fail to manage our growth effectively;
- failure to adequately expand our sales force could impede our growth;
- if we fail to manage our technical operations infrastructure, our existing clients may experience service outages, our new clients may experience delays in the deployment of our solution and we could be subject to, among other things, claims for credits or damages;
- security breaches and improper access to or disclosure of our data or our clients’ data, or other cyber attacks on our systems, could result in litigation and regulatory risk, harm our reputation and adversely affect our business;
- the markets in which we participate involve numerous competitors and are highly competitive, and if we do not compete effectively, our operating results could be harmed;
- if our existing clients terminate their subscriptions or reduce their subscriptions and related usage, our revenues and gross margins will be harmed and we will be required to spend more money to grow our client base;
- our growth depends in part on the success of our strategic relationships with third parties and our failure to successfully grow and manage these relationships could harm our business;
- we have established, and are continuing to increase, our network of master agents and resellers to sell our solution; our failure to effectively develop, manage, and maintain this network could materially harm our revenues;
- we sell our solution to larger organizations that require longer sales and implementation cycles and often demand more configuration and integration services or customized features and functions that we may not offer, any of which could delay or prevent these sales and harm our growth rates, business and operating results;
- because a significant percentage of our revenue is derived from existing clients, downturns or upturns in new sales will not be immediately reflected in our operating results and may be difficult to discern;
- we rely on third-party telecommunications and internet service providers to provide our clients and their customers with telecommunication services and connectivity to our cloud contact center software and any failure by these service providers to provide reliable services could cause us to lose clients and subject us to claims for credits or damages, among other things;
- we have a history of losses and we may be unable to achieve or sustain profitability;
- the contact center software solutions market is subject to rapid technological change, and we must develop and sell incremental and new products in order to maintain and grow our business;

- we may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs;
- failure to comply with laws and regulations could harm our business and our reputation; and
- we may not have sufficient cash to service our convertible senior notes and repay such notes, if required.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this report. If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, our actual results may differ materially from what we anticipate. You should not place undue reliance on our forward-looking statements. Any forward-looking statements you read in this report reflect our views only as of the date of this report with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We undertake no obligation to update any forward-looking statements made in this report to reflect events or circumstances after the date of this report or to reflect new information or the occurrence of unanticipated events, except as required by law.

PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

FIVE9, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except per share data)

	March 31, 2019	December 31, 2018
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 93,492	\$ 81,912
Marketable investments	205,450	209,907
Accounts receivable, net	25,840	24,797
Prepaid expenses and other current assets	9,719	8,014
Deferred contract acquisition costs	10,095	9,372
Total current assets	344,596	334,002
Property and equipment, net	27,496	25,885
Operating lease right-of-use assets	6,735	—
Intangible assets, net	543	631
Goodwill	11,798	11,798
Other assets	936	836
Deferred contract acquisition costs — less current portion	23,262	21,514
Total assets	\$ 415,366	\$ 394,666
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 7,233	\$ 7,010
Accrued and other current liabilities	17,965	13,771
Operating lease liabilities	4,322	—
Accrued federal fees	1,348	1,434
Sales tax liabilities	1,404	1,741
Finance lease liabilities	6,208	6,647
Deferred revenue	17,853	17,391
Total current liabilities	56,333	47,994
Convertible senior notes	199,842	196,763
Sales tax liabilities — less current portion	839	841
Operating lease liabilities — less current portion	3,012	—
Finance lease liabilities — less current portion	3,316	4,509
Other long-term liabilities	1,358	1,811
Total liabilities	264,700	251,918
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Common stock	60	59
Additional paid-in capital	303,946	294,279
Accumulated other comprehensive income (loss)	81	(93)
Accumulated deficit	(153,421)	(151,497)
Total stockholders' equity	150,666	142,748
Total liabilities and stockholders' equity	\$ 415,366	\$ 394,666

See accompanying notes to the unaudited condensed consolidated financial statements.

FIVE9, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE LOSS

(Unaudited, in thousands, except per share data)

	Three Months Ended	
	March 31, 2019	March 31, 2018
Revenue	\$ 74,538	\$ 58,905
Cost of revenue	30,851	24,702
Gross profit	43,687	34,203
Operating expenses:		
Research and development	10,546	7,772
Sales and marketing	21,701	17,478
General and administrative	11,762	9,103
Total operating expenses	44,009	34,353
Loss from operations	(322)	(150)
Other income (expense), net:		
Interest expense	(3,396)	(810)
Interest income and other	1,745	398
Total other income (expense), net	(1,651)	(412)
Loss before income taxes	(1,973)	(562)
Provision for (benefit from) income taxes	(49)	45
Net loss	\$ (1,924)	\$ (607)
Net loss per share:		
Basic and diluted	\$ (0.03)	\$ (0.01)
Shares used in computing net loss per share:		
Basic and diluted	59,367	56,399
Comprehensive Loss:		
Net loss	\$ (1,924)	\$ (607)
Other comprehensive income	\$ 174	\$ 5
Comprehensive loss	\$ (1,750)	\$ (602)

See accompanying notes to the unaudited condensed consolidated financial statements.

FIVE9, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance as of December 31, 2017	56,632	\$ 57	\$ 222,202	\$ —	\$ (175,421)	\$ 46,838
Net reduction to opening accumulated deficit due to adoption of ASC 606	—	—	—	—	24,145	24,145
Issuance of common stock upon exercise of stock options	786	1	4,745	—	—	4,746
Issuance of common stock upon vesting of restricted stock units	236	—	—	—	—	—
Stock-based compensation	—	—	5,325	—	—	5,325
Other comprehensive income	—	—	—	5	—	5
Net loss	—	—	—	—	(607)	(607)
Balance as of March 31, 2018	<u>57,654</u>	<u>\$ 58</u>	<u>\$ 232,272</u>	<u>\$ 5</u>	<u>\$ (151,883)</u>	<u>\$ 80,452</u>
Balance as of December 31, 2018	59,210	\$ 59	\$ 294,279	\$ (93)	\$ (151,497)	\$ 142,748
Issuance of common stock upon exercise of stock options	216	1	981	—	—	982
Issuance of common stock upon vesting of restricted stock units	211	—	—	—	—	—
Stock-based compensation	—	—	8,686	—	—	8,686
Other comprehensive income	—	—	—	174	—	174
Net loss	—	—	—	—	(1,924)	(1,924)
Balance as of March 31, 2019	<u>59,637</u>	<u>\$ 60</u>	<u>\$ 303,946</u>	<u>\$ 81</u>	<u>\$ (153,421)</u>	<u>\$ 150,666</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

FIVE9, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, in thousands)

	Three Months Ended	
	March 31, 2019	March 31, 2018
Cash flows from operating activities:		
Net loss	\$ (1,924)	\$ (607)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	3,192	2,320
Amortization of operating lease right-of-use asset	1,010	—
Amortization of premium on marketable investments	(421)	—
Provision for doubtful accounts	14	48
Stock-based compensation	8,686	5,325
Gain on sale of convertible note held for investment	(217)	(312)
Amortization of discount and issuance costs on convertible senior notes	3,079	—
Others	(17)	(14)
Changes in operating assets and liabilities:		
Accounts receivable	(1,046)	519
Prepaid expenses and other current assets	(1,721)	(1,833)
Deferred contract acquisition costs	(2,471)	(1,662)
Other assets	(7,845)	(90)
Accounts payable	552	1,181
Accrued and other current liabilities	7,724	2,791
Accrued federal fees and sales tax liability	(425)	(115)
Deferred revenue	416	121
Other liabilities	2,604	325
Net cash provided by operating activities	11,190	7,997
Cash flows from investing activities:		
Purchases of marketable investments	(34,427)	—
Proceeds from maturities of marketable investments	39,497	—
Purchases of property and equipment	(3,985)	(433)
Proceeds from sale of convertible note held for investment	217	1,923
Net cash provided by investing activities	1,302	1,490
Cash flows from financing activities:		
Proceeds from exercise of common stock options	982	4,751
Payments of notes payable	—	(157)
Payments of finance leases	(1,894)	(2,352)
Net cash (used in) provided by financing activities	(912)	2,242
Net increase in cash and cash equivalents	11,580	11,729
Cash and cash equivalents:		
Beginning of period	81,912	68,947
End of period	\$ 93,492	\$ 80,676
Supplemental disclosures of cash flow data:		
Cash paid for interest	\$ 235	\$ 765
Cash paid for income taxes	\$ 42	\$ 33
Non-cash investing and financing activities:		
Equipment obtained under capital lease	\$ —	\$ 2,635
Equipment purchased and unpaid at period-end	\$ 1,875	\$ 281

See accompanying notes to the unaudited condensed consolidated financial statements.

FIVE9, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)****1. Description of Business and Summary of Significant Accounting Policies**

Five9, Inc. and its wholly-owned subsidiaries (the “Company”) is a provider of cloud software for contact centers. The Company was incorporated in Delaware in 2001 and is headquartered in San Ramon, California. The Company has offices in Europe and Asia, which primarily provide research, development, sales, marketing, and client support services.

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018. In the opinion of management, the condensed consolidated financial statements reflect all adjustments, which are normal and recurring in nature, necessary for fair financial statement presentation. All intercompany transactions and balances have been eliminated in consolidation.

Certain prior period amounts included in the condensed consolidated financial statements have been reclassified to conform to the current period presentation.

Use of Estimates

The preparation of condensed consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. The significant estimates made by management affect revenue and related reserves. Management periodically evaluates such estimates and they are adjusted prospectively based upon such periodic evaluation. Actual results could differ from those estimates.

Significant Accounting Policies

The Company’s significant accounting policies are disclosed in its Annual Report on Form 10-K for the year ended December 31, 2018. Other than the accounting policies discussed in Note 12 related to the adoption of Accounting Standards Codification (“ASC”) 842, *Leases*, there has been no material change to the Company’s significant accounting policies during the three months ended March 31, 2019. See Note 12 for the updated accounting policies.

Recently Adopted Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) No. 2016-02, *Leases (Topic 842)* and issued subsequent amendments to the initial guidance in 2017, 2018 and 2019 (collectively “ASC 842”). Under the new guidance, a lessee is required to recognize assets and liabilities for both finance, previously known as capital, and operating leases with lease terms of more than 12 months. The ASU also requires disclosures to help investors and other financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. Lessor accounting remained largely unchanged from current GAAP. In transition, the Company was required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach that included a number of optional practical expedients that the Company elected to apply. The Company adopted ASC 842 using the modified retrospective method on January 1, 2019. See Note 12 for disclosure on the impact of adopting this standard.

In August 2018, the FASB issued ASU 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* (ASU 2018-15), which clarifies the accounting for implementation costs in cloud computing arrangements. The Company early adopted ASU 2018-15 prospectively effective January 1, 2019, to align the requirements for capitalizing implementation costs in a hosting arrangement that is a service contract with

the requirements for capitalization costs incurred to develop or obtain internal-use software and hosting arrangements that include an internal-use software license. The adoption of ASU 2018-15 did not have a material impact on the Company's consolidated financial position, operating results or cash flows.

Recent Accounting Pronouncements Not Yet Effective

The Company has reviewed or is in the process of evaluating all other issued, but not yet effective, accounting pronouncements and does not believe the future adoption of any such accounting pronouncements will cause a material impact on its consolidated financial position, operating results or cash flows.

2. Revenue

Contract Balances

The following table provides information about accounts receivable, net, deferred contract acquisition costs, contract assets and contract liabilities from contracts with customers (in thousands):

	March 31, 2019	December 31, 2018
Accounts receivable, net	\$ 25,840	\$ 24,797
Deferred contract acquisition costs:		
Current	\$ 10,095	\$ 9,372
Non-current	23,262	21,514
Total deferred contract acquisition costs	\$ 33,357	\$ 30,886
Contract assets and contract liabilities:		
Contract assets (included in prepaid expenses and other current assets)	\$ 427	\$ 330
Contract liabilities (deferred revenue)	17,853	17,391
Net contract assets (liabilities)	\$ (17,426)	\$ (17,061)

The Company receives payments from customers based upon billing cycles. Invoice payment terms are usually 30 days or less. Accounts receivable are recorded when the right to consideration becomes unconditional.

Deferred contract acquisition costs are recorded when incurred and are amortized over a customer benefit period of five years.

The Company's contract assets consist of unbilled amounts typically resulting from professional services revenue recognition when it exceeds the total amounts billed to the customer. The Company's contract liabilities consist of advance payments and billings in excess of revenue recognized.

In the three months ended March 31, 2019, the Company recognized revenue of \$11.3 million related to its contract liabilities at January 1, 2019.

Remaining Performance Obligations

As of March 31, 2019, the aggregate amount of the total transaction price allocated in contracts with original duration of greater than one year to the remaining performance obligations was \$105.6 million. The Company expects to recognize revenue on approximately three-fourths of the remaining performance obligation over the next 24 months, with the balance recognized thereafter. The Company has elected the optional exemption, which allows for the exclusion of the amounts for remaining performance obligations that are part of contracts with an original expected duration of one year or less. Such remaining performance obligations represent unsatisfied or partially unsatisfied performance obligations pursuant to ASC 606.

3. Investments and Fair Value Measurements

Marketable Investments

The Company's marketable investments have been classified and accounted for as available-for-sale. The Company's marketable investments as of March 31, 2019 and December 31, 2018 were as follows (in thousands):

	March 31, 2019			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Certificates of deposit	\$ 3,083	\$ —	\$ —	\$ 3,083
U.S. treasury	7,290	3	—	7,293
U.S. agency securities and government sponsored securities	129,630	12	(7)	129,635
Commercial paper	11,296	—	—	11,296
Municipal bonds	5,989	—	—	5,989
Corporate bonds	48,144	11	(1)	48,154
Total	\$ 205,432	\$ 26	\$ (8)	\$ 205,450

	December 31, 2018			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Certificates of deposit	\$ 4,259	\$ —	\$ —	\$ 4,259
U.S. treasury	637	—	—	637
U.S. agency securities and government sponsored securities	154,314	1	(111)	154,204
Commercial paper	3,475	—	—	3,475
Municipal bonds	6,090	—	(4)	6,086
Corporate bonds	41,307	—	(61)	41,246
Total	\$ 210,082	\$ 1	\$ (176)	\$ 209,907

The following table presents the gross unrealized losses and the fair value for those marketable investments that were in an unrealized loss position for less than 12 months as of March 31, 2019 and December 31, 2018 (in thousands):

	March 31, 2019		December 31, 2018	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
U.S. treasury	\$ —	\$ 140	\$ —	\$ 637
U.S. agency securities and government sponsored securities	(7)	83,007	(111)	153,212
Municipal bonds	—	5,989	(4)	6,086
Corporate bonds	(1)	12,307	(61)	41,246
Total	\$ (8)	\$ 101,443	\$ (176)	\$ 201,181

The contractual maturities of the Company's marketable investments as of March 31, 2019 and December 31, 2018 were less than one year.

Fair Value Measurements

The Company carries cash equivalents and marketable investments at fair value. Fair value is based on the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 — Observable inputs, which include unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs other than Level 1 inputs, such as quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are based on management's assumptions, including fair value measurements determined by using pricing models, discounted cash flow methodologies or similar techniques.

The Company determined the fair value of its Level 1 financial instruments, which are traded in active markets, using quoted market prices for identical instruments.

Marketable investments classified within Level 2 of the fair value hierarchy are valued based on other observable inputs, including broker or dealer quotations or alternative pricing sources. When quoted prices in active markets for identical assets or liabilities are not available, the Company relies on non-binding quotes from its investment managers, which are based on proprietary valuation models of independent pricing services. These models generally use inputs such as observable market data, quoted market prices for similar instruments, historical pricing trends of a security as relative to its peers. To validate the fair value determination provided by its investment managers, the Company reviews the pricing movement in the context of overall market trends and trading information from its investment managers. The Company performs routine procedures such as comparing prices obtained from independent source to ensure that appropriate fair values are recorded.

The following table sets forth the Company's assets measured at fair value by level within the fair value hierarchy (in thousands):

	March 31, 2019			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents				
Money market funds	\$ 26,140	\$ —	\$ —	\$ 26,140
U.S. treasury	8,979	—	—	8,979
Commercial paper	—	2,793	—	2,793
Total cash equivalents	<u>\$ 35,119</u>	<u>\$ 2,793</u>	<u>\$ —</u>	<u>\$ 37,912</u>
Marketable investments				
Certificates of deposit	\$ —	\$ 3,083	\$ —	\$ 3,083
U.S. treasury	7,293	—	—	7,293
U.S. agency securities and government sponsored securities	—	129,635	—	129,635
Commercial paper	—	11,296	—	11,296
Municipal bonds	—	5,989	—	5,989
Corporate bonds	—	48,154	—	48,154
Total marketable investments	<u>\$ 7,293</u>	<u>\$ 198,157</u>	<u>\$ —</u>	<u>\$ 205,450</u>

	December 31, 2018			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents				
Money market funds	\$ 10,833	\$ —	\$ —	\$ 10,833
U.S. treasury	638	—	—	638
U.S. agency securities	—	50	—	50
Commercial paper	—	498	—	498
Total cash equivalents	<u>\$ 11,471</u>	<u>\$ 548</u>	<u>\$ —</u>	<u>\$ 12,019</u>
Marketable investments				
Certificates of deposit	\$ —	\$ 4,259	\$ —	\$ 4,259
U.S. treasury	637	—	—	637
U.S. agency securities and government sponsored securities	—	154,204	—	154,204
Commercial paper	—	3,475	—	3,475
Municipal bonds	—	6,086	—	6,086
Corporate bonds	—	41,246	—	41,246
Total marketable investments	<u>\$ 637</u>	<u>\$ 209,270</u>	<u>\$ —</u>	<u>\$ 209,907</u>

As of March 31, 2019 and December 31, 2018, the estimated fair value of the Company's outstanding 0.125% convertible senior notes due 2023 was \$363.7 million and \$316.1 million, respectively. The fair value was determined based on the quoted price of the convertible senior notes in an inactive market on the last trading day of the reporting period and has been classified as Level 2 in the fair value hierarchy. See Note 6 for further information on the Company's 0.125% convertible senior notes due 2023.

There were no assets or liabilities measured at fair value on a non-recurring basis as of March 31, 2019 and December 31, 2018.

4. Financial Statement Components

Cash and cash equivalents consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Cash	\$ 55,580	\$ 69,893
Money market funds	26,140	10,833
U.S. treasury	8,979	638
U.S. agency securities	—	50
Commercial paper	2,793	498
Total cash and cash equivalents	<u>\$ 93,492</u>	<u>\$ 81,912</u>

Accounts receivable, net consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Trade accounts receivable	\$ 23,729	\$ 23,068
Unbilled trade accounts receivable, net of advance client deposits	2,122	1,741
Allowance for doubtful accounts	(11)	(12)
Accounts receivable, net	<u>\$ 25,840</u>	<u>\$ 24,797</u>

Prepaid expenses and other current assets consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Prepaid expenses	\$ 5,741	\$ 5,005
Other current assets	3,551	2,679
Contract assets	427	330
Prepaid expenses and other current assets	<u>\$ 9,719</u>	<u>\$ 8,014</u>

Property and equipment, net consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Computer and network equipment	\$ 57,302	\$ 54,452
Computer software	11,241	10,064
Internal-use software development costs	500	500
Furniture and fixtures	1,889	1,491
Leasehold improvements	894	855
Property and equipment	71,826	67,362
Accumulated depreciation and amortization	(44,330)	(41,477)
Property and equipment, net	<u>\$ 27,496</u>	<u>\$ 25,885</u>

Depreciation and amortization expense associated with property and equipment was \$3.1 million and \$2.2 million for the three months ended March 31, 2019 and 2018, respectively.

Property and equipment capitalized under finance lease obligations consists primarily of computer and network equipment and was as follows (in thousands):

	March 31, 2019	December 31, 2018
Gross	\$ 47,114	\$ 47,383
Less: accumulated depreciation and amortization	(35,002)	(33,547)
Total	<u>\$ 12,112</u>	<u>\$ 13,836</u>

Accrued and other current liabilities consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Accrued compensation and benefits	\$ 13,901	\$ 10,277
Accrued expenses	4,064	3,494
Accrued and other current liabilities	<u>\$ 17,965</u>	<u>\$ 13,771</u>

5. Intangible Assets

The component of intangible assets was as follows (in thousands):

	March 31, 2019			December 31, 2018		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 2,460	\$ (1,917)	\$ 543	\$ 2,460	\$ (1,829)	\$ 631

Amortization expense for intangible assets was \$88 thousand and \$116 thousand for the three months ended March 31, 2019 and 2018, respectively.

As of March 31, 2019, the expected future amortization expense for intangible assets was as follows (in thousands):

Period	Expected Future Amortization Expense
2019	263
2020	280
Total	<u>\$ 543</u>

6. Debt

0.125% Convertible Senior Notes and Capped Call

In May 2018, the Company issued \$258.8 million aggregate principal amount of 0.125% convertible senior notes (“Notes”) due May 1, 2023 in a private offering. The Notes are the Company’s senior unsecured obligations and bear interest at a fixed rate of 0.125% per annum, payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2018. The total net proceeds from the offering, after deducting initial purchase discounts and estimated debt issuance costs, were approximately \$250.7 million.

Each \$1,000 principal amount of the Notes is initially convertible into 24.4978 shares of the Company’s common stock (the “Conversion Option”), which is equivalent to an initial conversion price of approximately \$40.82 per share of common stock, subject to adjustment upon the occurrence of specified events. The Notes are initially convertible, in multiples of \$1,000 principal amount, at the option of the holders at any time prior to the close of business on the business day immediately preceding November 1, 2022, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ended on September 30, 2018 (and only during such calendar quarter), if the last reported sale price of the Company’s common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the initial conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the “Measurement Period”) in which the trading price (as defined in the indenture governing the Notes) per \$1,000 principal amount of Notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price of the Company’s common stock and the conversion rate in effect on each such trading day; (3) if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events. On or after November 1, 2022 until the close of business on the second scheduled trading day immediately

preceding the maturity date, holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. If the Company undergoes a fundamental change (as defined in the indenture governing the Notes), subject to certain conditions, holders may require the Company to repurchase for cash all or any portion of their Notes, in principal amounts of \$1,000 or a multiple thereof, at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. In addition, following certain corporate events that occur prior to the maturity date or if the Company issues a notice of redemption, it will, under certain circumstances, increase the conversion rate for holders who elect to convert their Notes in connection with such corporate event or during the relevant redemption period.

The closing market price of the Company's common stock of \$52.83 per share as of March 29, 2019, the last trading day, during the three months ended March 31, 2019, was below \$53.07 per share, which represents 130% of the initial conversion price of \$40.82 per share. Additionally, the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day, March 29, 2019, was not greater than or equal to 130% of the initial conversion price on each applicable trading day. As such, during the three months ended March 31, 2019, the conditions allowing holders of the Notes to convert were not met. The Notes were therefore not convertible during the three months ended March 31, 2019 and were classified as long-term debt.

The Company may not redeem the Notes prior to May 5, 2021. The Company may redeem for cash all or any portion of the Notes, at its option, on or after May 5, 2021 if the last reported sale price of its common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending not more than two trading days immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date. No sinking fund is provided for the Notes.

The Notes are the Company's senior unsecured obligations and will rank senior in right of payment to any of the Company's indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to any of the Company's unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) of the Company's subsidiaries.

In accounting for the transaction, the Notes were separated into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar debt instrument that does not have an associated conversion feature. The carrying amount of the equity component representing the conversion option was \$63.8 million and was determined by deducting the fair value of the liability component from the par value of the Notes. The equity component was recorded in additional paid-in-capital and is not remeasured as long as it continues to meet the conditions for equity classification. The excess of the principal amount of the liability component over its carrying amount (the "Debt Discount") is being amortized to interest expense over the contractual term of the Notes at an effective interest rate of 6.39%.

In accounting for the debt issuance cost of \$8.1 million related to the Notes, the Company allocated the total amount incurred to the liability and equity components of the Notes based on their relative values. Issuance costs attributable to the liability component were \$6.1 million and are being amortized to interest expense using the effective interest method over the contractual term of the Notes. Issuance costs attributable to the equity component were netted with the equity component in additional paid-in-capital.

The net carrying amount of the liability component of the Notes was as follows (in thousands):

	March 31, 2019	December 31, 2018
Principal	\$ 258,750	\$ 258,750
Unamortized debt discount	(53,755)	(56,564)
Unamortized issuance costs	(5,153)	(5,423)
Net carrying amount	<u>\$ 199,842</u>	<u>\$ 196,763</u>

There was no change to net carrying amount of the equity component of the Notes since it continued to meet the conditions for equity classification as presented below (in thousands):

	March 31, 2019	December 31, 2018
Debt discount for conversion option	\$ 63,756	\$ 63,756
Issuance costs	(1,998)	(1,998)
Net carrying amount	<u>\$ 61,758</u>	<u>\$ 61,758</u>

Interest expense related to the Notes was as follows (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Contractual interest expense	\$ 81	\$ —
Amortization of debt discount	2,810	—
Amortization of issuance costs	269	—
Total interest expense	<u>\$ 3,160</u>	<u>\$ —</u>

In connection with the pricing of the Notes, the Company entered into privately negotiated capped call transactions (the “Capped Call Transactions”) with certain financial institutions. The Capped Call Transactions are expected generally to reduce the potential dilution to the Company’s common stock upon any conversion of the Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The initial cap price of the Capped Call Transactions is \$62.80 per share, and is subject to certain adjustments under the terms of the Capped Call Transactions. The Capped Call Transactions cover, subject to anti-dilution adjustments, approximately 6.3 million shares of the Company’s common stock. For accounting purposes, the Capped Call Transactions are separate transactions, and not part of the terms of the Notes. As these transactions meet certain accounting criteria, the Capped Call Transactions are recorded in stockholders’ equity and are not accounted for as derivatives. The cost of \$31.4 million incurred in connection with the Capped Call Transactions was recorded as a reduction to additional paid-in capital.

The net impact to the Company’s stockholders’ equity, included in additional paid-in capital, relating to the issuance of the Notes in May 2018 was as follows (in thousands):

	March 31, 2019	December 31, 2018
Conversion option	\$ —	\$ 63,756
Payments for capped call transactions	—	(31,412)
Issuance costs	—	(1,998)
Total	<u>\$ —</u>	<u>\$ 30,346</u>

Maturity of the Company’s outstanding debt as of March 31, 2019 was as follows (in thousands):

Period	Amount to Mature
2023	\$ 258,750
Total	<u>\$ 258,750</u>

7. Stockholders’ Equity

Capital Structure

Common Stock

The Company is authorized to issue 450,000,000 shares of common stock with a par value of \$0.001 per share. As of March 31, 2019 and December 31, 2018, the Company had 59,636,995 and 59,210,496 shares of common stock issued and outstanding, respectively.

Preferred Stock

The Company is also authorized to designate and issue up to 5,000,000 shares of preferred stock with a par value of \$0.001 per share in one or more series without stockholder approval and to fix the rights, preferences, privileges and restrictions thereof. As of March 31, 2019 and December 31, 2018, the Company had no shares of preferred stock issued and outstanding.

Common Stock Reserved for Future Issuance

Shares of common stock reserved for future issuance related to outstanding equity awards and employee equity incentive plans were as follows (in thousands):

	March 31, 2019
Stock options outstanding	3,123
Restricted stock units outstanding	2,969
Shares available for future grant under 2014 Plan	10,332
Shares available for future issuance under ESPP	2,283
Total shares of common stock reserved	18,707

Stock Options

A summary of the Company's stock option activity during the three months ended March 31, 2019 is as follows (in thousands, except years and per share data):

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2018	3,122	\$ 12.52		
Options granted (weighted average grant date fair value of \$23.91 per share)	223	50.38		
Options exercised	(216)	4.55		
Options forfeited or expired	(6)	33.77		
Outstanding as of March 31, 2019	3,123	\$ 15.73	6.3	\$ 115,907

The aggregate intrinsic value disclosed in the above table is computed based on the difference between the exercise price of the stock options and the fair market value of the Company's common stock of \$52.83 per share as of March 31, 2019 for all in-the-money stock options outstanding.

Restricted Stock Units

A summary of the Company's restricted stock unit or RSU activity during the three months ended March 31, 2019 is as follows (in thousands, except per share data):

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Outstanding as of December 31, 2018	2,325	\$ 25.36
RSUs granted	904	52.19
RSUs vested and released	(211)	16.93
RSUs forfeited	(49)	31.28
Outstanding as of March 31, 2019	2,969	\$ 34.03

Stock-Based Compensation

Stock-based compensation expenses were as follows (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Cost of revenue	\$ 1,229	\$ 678
Research and development	1,470	877
Sales and marketing	2,249	1,362
General and administrative	3,738	2,408
Total stock-based compensation	\$ 8,686	\$ 5,325

As of March 31, 2019, unrecognized stock-based compensation expense by award type and their expected weighted-average recognition periods are summarized in the following table (in thousands, except years).

	Stock Option	RSU	ESPP
Unrecognized stock-based compensation expense	\$ 15,240	\$ 90,804	\$ 339
Weighted-average amortization period	3.1 years	3.3 years	0.1 years

The weighted-average assumptions used to value stock options granted during the periods presented were as follows:

	Three Months Ended	
	March 31, 2019	March 31, 2018
Expected term (years)	6.0	6.0
Volatility	46%	45%
Risk-free interest rate	2.5%	2.7%
Dividend yield ⁽¹⁾	—	—

(1) The Company has not paid, and does not anticipate paying, cash dividends on its shares of common stock. Accordingly, the expected dividend yield is zero.

8. Net Loss Per Share

Basic net loss per share is calculated by dividing net loss by the weighted average number of shares of common stock outstanding during the period, and excludes any dilutive effects of employee stock-based awards and warrants. Diluted net loss per share is computed giving effect to all potentially dilutive shares of common stock, including common stock issuable upon exercise of stock options and warrants, vesting of restricted stock units and shares of common stock issuable upon conversion of convertible senior notes.

The following table presents the calculation of basic and diluted net loss per share (in thousands, except per share data):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Net loss	\$ (1,924)	\$ (607)
Weighted-average shares of common stock outstanding	59,367	56,399
Basic and diluted net loss per share	\$ (0.03)	\$ (0.01)

The following securities were excluded from the calculation of diluted net loss per share because their effect would have been anti-dilutive (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Stock options	3,123	3,491
Restricted stock units	2,969	2,427
Convertible senior notes	1,249	—
Common stock warrants	—	13
Total	7,341	5,931

The Company expects to settle the principal amount of its Notes outstanding at March 31, 2019 in cash, and therefore, uses the treasury stock method for calculating any potential dilutive effect of the conversion spread. The conversion spread had a dilutive impact during the three months ended March 31, 2019, since the average market price of the Company's common stock during the period exceeded the initial conversion price of \$40.82 per share for the Notes. However, the potential shares of common stock from Notes were excluded from the calculation of diluted net loss per share because their effect would have been anti-dilutive.

9. Income Taxes

The provision for (benefit from) income taxes for the three months ended March 31, 2019 and 2018 was approximately \$(49) thousand and \$45 thousand, respectively. The provision for income taxes consisted primarily of foreign income taxes, as well as a benefit for a true-up to foreign income taxes.

For the three months ended March 31, 2019 and 2018, the provision for income taxes differed from the statutory amount primarily due to the Company realizing no benefit for current year losses due to maintaining a full valuation allowance against its domestic net deferred tax assets.

The realization of tax benefits of deferred tax assets is dependent upon future levels of taxable income, of an appropriate character, in the periods the items are expected to be deductible or taxable. Based on the available objective evidence, the Company does not believe it is more likely than not that the net deferred tax assets will be realizable. Accordingly, the Company has provided a full valuation allowance against the domestic net deferred tax assets as of March 31, 2019 and December 31, 2018. The Company intends to maintain the remaining valuation allowance until sufficient positive evidence exists to support a reversal of, or decrease in, the valuation allowance. During the three months ended March 31, 2019, there were no material changes to the total amount of unrecognized tax benefits.

10. Commitments and Contingencies

Commitments

The Company's principal commitments consist of future payment obligations under finance leases to finance data centers and other computer and networking equipment purchases, debt (see Note 6), operating leases agreements for office space, and agreements with third parties to provide co-location hosting, telecommunication usage and equipment maintenance services. These commitments as of December 31, 2018 are disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2018, and did not change materially during the three months ended March 31, 2019, except for certain hosting and telecommunications agreements.

As of March 31, 2019, \$258.8 million of the Notes were outstanding. The Notes are due May 1, 2023. For more information concerning the Notes, see Note 6.

As of March 31, 2019, the Company's commitment under various hosting and telecommunications agreements totaled \$7.9 million for terms of 12 to 36 months. These agreements require the Company to make monthly payments over the service term in exchange for certain network services.

Legal Matters

The Company is involved in various legal and regulatory matters arising in the normal course of business. In management's opinion, resolution of these matters is not expected to have a material impact on the Company's consolidated results of operations, cash flows, or its financial position. However, due to the uncertain nature of legal matters, an unfavorable resolution of a matter could materially affect the Company's future consolidated results of operations, cash flows or financial position in a particular period. The Company expenses legal fees as incurred.

Indemnification Agreements

In the ordinary course of business, the Company enters into agreements of varying scope and terms pursuant to which it agrees to indemnify clients, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with its directors, officers and certain employees that will require it, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. Other than as described below, there are no claims that it is aware of that could have a material effect on the consolidated balance sheet, consolidated statement of operations and comprehensive loss, or consolidated statements of cash flows.

On October 27, 2016, the Company received notice from Lance Fried, a former officer and director of Face It, Corp., of his claim for indemnification by the Company (as successor in interest to Face It), and for advancement of all legal fees and expenses he incurs in connection with the defense of the lawsuit captioned *Melcher, et al. v. Five9, Inc., et al.*, No. 16-cv-02440, in the U.S. District Court for the Southern District of California. In the lawsuit, plaintiff Carl Melcher, a purported former stockholder of Face It, and his related investment entity, Melcher Family Limited Partnership, allege that Face It repurchased the plaintiffs' stock in September 2013 before the Company acquired Face It, and that in connection with the repurchase, Fried made material misstatements or omissions to Melcher by failing to disclose that Face It allegedly was in concurrent discussions about a potential sale of its company to the Company. The lawsuit alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, as well as various claims under state law and common law. On January 9, 2018, Mr. Fried initiated an arbitration against the Company in which he alleged that the Company breached advancement obligations to him. On June 11, 2018, the arbitrator ordered the Company to advance the fees Mr. Fried incurs (and has already incurred) in connection with the defense of the Melcher litigation. The Company has incurred approximately \$1.0 million in fees and expenses, which are included in general and administrative expenses, on behalf of Mr. Fried through March 31, 2019.

Regardless of the arbitrator's order, Mr. Fried is required to reimburse the Company for any amounts advanced to him if it is ultimately determined that Mr. Fried is not entitled to indemnification in connection with the Melcher litigation. In addition, the Company believes that it has indemnification rights against the former stockholders of Face It (including Mr. Fried) for all losses that are incurred by the Company in connection with the Melcher litigation, including without limitation, amounts incurred to indemnify or advance the legal fees and expenses of Mr. Fried pursuant to his indemnification claim against the Company. The Company has asserted claims in arbitration against both Mr. Fried and the representative of the former Face It stockholders to recoup these losses. These claims are stayed pending the resolution of the Melcher litigation.

11. Geographical Information

The following table is a summary of revenues by geographic region based on client billing address and has been estimated based on the amounts billed to clients during the periods (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
United States	\$ 68,883	\$ 55,171
International	5,655	3,734
Total revenue	\$ 74,538	\$ 58,905

The following table summarizes total property and equipment, net in the respective locations (in thousands):

	March 31, 2019	December 31, 2018
United States	\$ 25,663	\$ 23,931
International	1,833	1,954
Property and equipment, net	<u>\$ 27,496</u>	<u>\$ 25,885</u>

12. ASC 842 Adoption Impact

The Company has leases for offices, data centers and other computer and networking equipment that expire at various dates through 2021. The Company's leases have remaining terms of one to three years, some of the leases include a Company option to extend the leases for up to three to five years, and some of the leases include the option to terminate the leases upon 30-days notice.

The Company adopted ASC 842 using the modified retrospective method on January 1, 2019. The Company elected the available practical expedients, implemented internal controls, and a lease accounting system to enable the preparation of financial information upon adoption. The most significant impact of the adoption of ASC 842 was the recognition of right-of-use, or ROU, assets and lease liabilities for operating leases of \$8.4 million and \$8.4 million, respectively, and a reversal of deferred rent of \$0.6 million on January 1, 2019. The Company's accounting for finance leases remained substantially unchanged. The adoption of ASC 842 did not have any impact on the Company's operating results or cash flows.

The components of lease expenses were as follows (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Operating lease cost	\$ 1,103	\$ —
Finance lease cost:		
Amortization of right-of-use assets	\$ 1,455	\$ 1,822
Interest on lease liabilities	236	354
Total finance lease cost	<u>\$ 1,691</u>	<u>\$ 2,176</u>

Supplemental cash flow information related to leases was as follows (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash used in operating leases	\$ (1,144)	\$ —
Financing cash used in finance leases	(1,894)	(2,352)
Right of use assets obtained in exchange for lease obligations:		
Finance leases	—	3,151

Supplemental balance sheet information related to leases was as follows (in thousands):

	March 31, 2019	December 31, 2018
Operating leases		
Operating lease right-of-use assets	\$ 6,735	\$ —
Operating lease liabilities	\$ 4,322	\$ —
Operating lease liabilities — less current portion	3,012	—
Total operating lease liabilities	\$ 7,334	\$ —
Finance leases		
Property and equipment, gross	\$ 47,114	\$ 47,383
Less: accumulated depreciation and amortization	(35,002)	(33,547)
Property and equipment, net	\$ 12,112	\$ 13,836
Finance leases	\$ 6,208	\$ 6,647
Finance lease liabilities — less current portion	3,316	4,509
Total finance lease liabilities	\$ 9,524	\$ 11,156

Weighted average remaining terms were as follows (in years):

	March 31, 2019	December 31, 2018
Weighted average remaining lease term		
Operating leases	1.7	2.0
Finance leases	2.3	2.6

Weighted average discount rates were as follows:

	March 31, 2019	December 31, 2018
Weighted average discount rate		
Operating leases	4.8%	—%
Finance leases	9.0%	9.0%

Maturities of lease liabilities were as follows:

Year Ending December 31,	Operating Leases	Finance Leases
2019	\$ 4,570	\$ 5,335
2020	3,075	4,284
2021	—	704
Total lease payments	7,645	10,323
Less: imputed interest	(311)	(799)
Total	\$ 7,334	\$ 9,524

As of March 31, 2019, the Company had additional operating leases for office space, that have not yet commenced of \$4.1 million. These operating leases are expected to commence during 2019 with lease terms of two to six years.

Impact on Condensed Consolidated Balance Sheet

The impact of the adoption of ASC 842 on select condensed consolidated balance sheet line items, was as follows:

(in thousands)	March 31, 2019		
	As Reported	Balances without adoption of ASC 842	Effect of Change Higher (Lower)
Assets:			
Operating lease right-of-use-assets	\$ 6,735	\$ —	\$ 6,735
Liabilities:			
Operating lease liabilities	4,322	—	4,322
Operating lease liabilities — less current portion	3,012	—	3,012

Change in Accounting Policy

Leases

The Company determines if an arrangement is or contains a lease at inception. Operating leases are included in operating lease ROU assets and operating lease liabilities in the Company's condensed consolidated balance sheets. Finance leases are included in property and equipment, and finance lease liabilities in the Company's condensed consolidated balance sheets.

ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at the commencement date based on an amount equal to the present value of lease payments over the lease term. As most of the Company's leases do not provide an implicit rate, the Company uses an incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The Company uses the implicit rate when it is readily determinable. The operating lease ROU asset also includes any lease payments made and excludes lease incentives. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Operating lease expense for lease payments is recognized on a straight-line basis over the lease term. The Company has lease agreements with lease and non-lease components, which are generally accounted for separately.

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

You should read the following discussion in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2018.

Overview

We are a pioneer and leading provider of cloud software for contact centers, facilitating more than five billion call minutes between our more than 2,000 clients and their customers per year. We believe we achieved this leadership position through our expertise and technology, which has empowered us to help organizations of all sizes transition from legacy on-premise contact center systems to our cloud solution. Our solution, which is comprised of our Virtual Contact Center, or VCC, cloud platform and applications, allows simultaneous management and optimization of customer interactions across voice, chat, email, web, social media and mobile channels, either directly or through our application programming interfaces, or APIs. Our VCC cloud platform matches each customer interaction with an appropriate agent resource and delivers relevant customer data to the agent in real-time through integrations with adjacent enterprise applications, such as customer relationship management, or CRM, software, to optimize the customer experience and improve agent productivity. Unlike legacy on-premise contact center systems, our solution requires minimal up-front investment, can be rapidly deployed and adjusted depending on our client's requirements.

Since founding our business in 2001, we have focused exclusively on delivering cloud contact center software. We initially targeted smaller contact center opportunities with our telesales team and, over time, invested in expanding the breadth and depth of the functionality of our cloud platform to meet the evolving requirements of our clients. In 2009, we made a strategic decision to expand our market opportunity to include larger contact centers. This decision drove further investments in research and development and the establishment of our field sales team to meet the requirements of these larger contact centers. We believe this shift has helped us diversify our client base, while significantly enhancing our opportunity for future revenue growth. To complement these efforts, we have also focused on building client awareness and driving adoption of our solution through marketing activities, which include internet advertising, digital marketing campaigns, social media, trade shows, industry events and telemarketing.

We provide our solution through a SaaS business model with recurring subscriptions. We offer a comprehensive suite of applications delivered on our VCC cloud platform that are designed to enable our clients to manage and optimize interactions across inbound and outbound contact centers. We primarily generate revenue by selling subscriptions and related usage of our VCC cloud platform. We charge our clients monthly subscription fees for access to our solution, primarily based on the number of agent seats, as well as the specific functionalities and applications our clients deploy. We define agent seats as the maximum number of named agents allowed to concurrently access our solution. Our clients typically have more named agents than agent seats, and multiple named agents may use an agent seat, though not simultaneously. Substantially all of our clients purchase both subscriptions and related telephony usage from us. A small percentage of our clients subscribe to our platform but purchase telephony usage directly from wholesale telecommunications service providers. We do not sell telephony usage on a stand-alone basis to any client. The related usage fees are generally based on the volume of minutes for inbound and outbound interactions. We also offer bundled plans, generally for smaller deployments, where the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. We offer monthly, annual and multiple-year contracts to our clients, generally with 30 days' notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days' notice. Our larger clients typically choose annual contracts, which generally include an implementation and ramp period of several months. Fixed subscription fees, including bundled plans, are generally billed monthly in advance, while related usage fees are billed in arrears. For the three months ended March 31, 2019 and 2018, subscription and related usage fees accounted for 93% and 92% of our revenue, respectively. The remainder was comprised of professional services revenue from the implementation and optimization of our solution.

Key GAAP Operating Results

Our revenue increased to \$74.5 million for the three months ended March 31, 2019 from \$58.9 million for the three months ended March 31, 2018. Revenue growth has primarily been driven by our larger clients increasing their

number of agent seats. For each of the three months ended March 31, 2019 and 2018, no single client accounted for more than 10% of our total revenue. As of March 31, 2019, we had over 2,000 clients across multiple industries. Our clients' subscriptions generally range in size from fewer than 10 agent seats to approximately 3,000 agent seats. We had a net loss of \$1.9 million in the three months ended March 31, 2019 compared to a net loss of \$0.6 million in the three months ended March 31, 2018.

We have continued to make significant expenditures and investments, including in sales and marketing, research and development and infrastructure. We primarily evaluate the success of our business based on revenue growth and the efficiency and effectiveness of our investments. The growth of our business and our future success depend on many factors, including our ability to continue to expand our client base to include larger opportunities, grow revenue from our existing client base, innovate and expand internationally. While these areas represent significant opportunities for us, they also pose risks and challenges that we must successfully address in order to sustain the growth of our business and improve our operating results. In order to pursue these opportunities, we anticipate that we will continue to expand our operations and headcount in the near term.

Due to our continuing investments to grow our business, increase our sales and marketing efforts, pursue new opportunities, enhance our solution and build our technology, we expect our cost of revenue and operating expenses to increase in absolute dollars in future periods. However, we expect these expenses to decrease as a percentage of revenue as we grow our revenue and gain economies of scale by increasing our client base without direct incremental development costs and by utilizing more of the capacity of our data centers.

Key Operating and Non-GAAP Financial Performance Metrics

In addition to measures of financial performance presented in our condensed consolidated financial statements, we monitor the key metrics set forth below to help us evaluate growth trends, establish budgets, measure the effectiveness of our sales and marketing efforts and assess operational efficiencies.

Annual Dollar-Based Retention Rate

We believe that our Annual Dollar-Based Retention Rate provides insight into our ability to retain and grow revenue from our clients, and is a measure of the long-term value of our client relationships. Our Annual Dollar-Based Retention Rate is calculated by dividing our Retained Net Invoicing by our Retention Base Net Invoicing on a monthly basis, which we then average using the rates for the trailing twelve months for the period being presented. We define Retention Base Net Invoicing as recurring net invoicing from all clients in the comparable prior year period, and we define Retained Net Invoicing as recurring net invoicing from that same group of clients in the current period. We define recurring net invoicing as subscription and related usage revenue excluding the impact of service credits, reserves and deferrals. Historically, the difference between recurring net invoicing and our subscription and related usage revenue has been within 10%.

The following table shows our Annual Dollar-Based Retention Rate for the periods presented:

	Twelve Months Ended	
	March 31, 2019	March 31, 2018
Annual Dollar-Based Retention Rate	107%	98%

Our Dollar-Based Retention Rate improved year over year primarily due to our larger clients increasing their number of agent seats.

Adjusted EBITDA

We monitor adjusted EBITDA, a non-GAAP financial measure, to analyze our financial results and believe that it is useful to investors, as a supplement to U.S. GAAP measures, in evaluating our ongoing operational performance and enhancing an overall understanding of our past financial performance. We believe that adjusted EBITDA helps illustrate underlying trends in our business that could otherwise be masked by the effect of the income or expenses that we exclude from adjusted EBITDA. Furthermore, we use this measure to establish budgets and operational goals for managing our business and evaluating our performance. We also believe that adjusted EBITDA provides an additional tool for investors to use in comparing our recurring core business operating results over multiple periods with other companies in our industry.

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with U.S. GAAP, and our calculation of adjusted EBITDA may differ from that of other companies in our industry. We compensate for the inherent limitations associated with using adjusted EBITDA through disclosure of these limitations, presentation of our financial statements in accordance with U.S. GAAP and reconciliation of adjusted EBITDA to the most directly comparable U.S. GAAP measure, net loss. We calculate adjusted EBITDA as net loss before (1) depreciation and amortization, (2) stock-based compensation, (3) interest income, expense and other, (4) provision for income taxes, and (5) other items that do not directly affect what we consider to be our core operating performance.

The following table shows a reconciliation of net loss to adjusted EBITDA for the periods presented (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Net loss	\$ (1,924)	\$ (607)
Non-GAAP adjustments:		
Depreciation and amortization ⁽¹⁾	3,192	2,320
Stock-based compensation ⁽²⁾	8,686	5,325
Interest expense	3,396	810
Interest income and other	(1,745)	(398)
Legal and indemnification fees related to settlement ⁽³⁾	292	—
Provision for (benefit from) income taxes	(49)	45
Adjusted EBITDA	<u>\$ 11,848</u>	<u>\$ 7,495</u>

(1) Depreciation and amortization expenses included in our results of operations are as follows (in thousands):

	Three Months Ended	
	March 31, 2019	March 31, 2018
Cost of revenue	\$ 2,366	\$ 1,794
Research and development	440	194
Sales and marketing	1	29
General and administrative	385	303
Total depreciation and amortization	<u>\$ 3,192</u>	<u>\$ 2,320</u>

(2) See Note 7 to the condensed consolidated financial statements for stock-based compensation expense included in our results of operations for the periods presented.

(3) Represents legal and indemnification fees related to the Melcher litigation.

Key Components of Our Results of Operations

Revenue

Our revenue consists of subscription and related usage as well as professional services. We consider our subscription and related usage to be recurring revenue. This recurring revenue includes fixed subscription fees for the delivery and support of our VCC cloud platform, as well as related usage fees. The related usage fees are generally based on the volume of minutes for inbound and outbound client interactions. We also offer bundled plans, generally for smaller deployments, where the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. We offer monthly, annual and multiple-year contracts for our clients, generally with 30 days' notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days' notice.

Fixed subscription fees, including plans with bundled usage, are generally billed monthly in advance, while variable usage fees are billed in arrears. Fixed subscription fees are recognized on a straight-line basis over the

applicable term, predominantly the monthly contractual billing period. Support activities include technical assistance for our solution and upgrades and enhancements on a when and if available basis, which are not billed separately. Variable subscription related usage fees for non-bundled plans are billed in arrears based on client-specific per minute rate plans and are recognized as actual usage occurs. We generally require advance deposits from clients based on estimated usage. All fees, except usage deposits, are non-refundable.

In addition, we generate professional services revenue from assisting clients in implementing our solution and optimizing use. These services include application configuration, system integration and education and training services. Professional services are primarily billed on a fixed-fee basis and are typically performed by us directly. In limited cases, our clients choose to perform these services themselves or engage their own third-party service providers to perform such services. Professional services are recognized as the services are performed using the proportional performance method, with performance measured based on labor hours, provided all other criteria for revenue recognition are met.

Cost of Revenue

Our cost of revenue consists primarily of personnel costs, including stock-based compensation, fees that we pay to telecommunications providers for usage, USF contributions and other regulatory costs, depreciation and related expenses of the servers and equipment, costs to build out and maintain co-location data centers, and allocated office and facility costs and amortization of acquired technology. Cost of revenue can fluctuate based on a number of factors, including the fees we pay to telecommunications providers, which vary depending on our clients' usage of our VCC cloud platform, the timing of capital expenditures and related depreciation charges and changes in headcount. We expect to continue investing in our network infrastructure and operations and client support function to maintain high quality and availability of service, resulting in absolute dollar increases in cost of revenue. As our business grows, we expect to realize economies of scale in network infrastructure, personnel and client support.

Operating Expenses

We classify our operating expenses as research and development, sales and marketing, and general and administrative expenses.

Research and Development. Our research and development expenses consist primarily of salary and related expenses, including stock-based compensation, for personnel related to the development of improvements and expanded features for our services, as well as quality assurance, testing, product management and allocated overhead. We expense research and development expenses as they are incurred except for internal use software development costs that qualify for capitalization. We believe that continued investment in our solution is important for our future growth, and we expect our research and development expenses to increase at a faster rate in 2019 than in the past, and to increase as a percentage of revenue.

Sales and Marketing. Sales and marketing expenses consist primarily of salaries and related expenses, including stock-based compensation, for personnel in sales and marketing, sales commissions, as well as advertising, marketing, corporate communications, travel costs and allocated overhead. We believe it is important to continue investing in sales and marketing to continue to generate revenue growth, and we expect sales and marketing expenses to increase in absolute dollars and fluctuate as a percentage of revenue as we continue to support our growth initiatives.

General and Administrative. General and administrative expenses consist primarily of salary and related expenses, including stock-based compensation, for management, finance and accounting, legal, information systems and human resources personnel, professional fees, compliance costs, other corporate expenses and allocated overhead. We expect that general and administrative expenses will fluctuate in absolute dollars from period to period, but decline as a percentage of revenue over time.

Results of Operations for the Three Months Ended March 31, 2019 and 2018

Based on the condensed consolidated statements of operations and comprehensive loss set forth in this Quarterly Report on Form 10-Q, the following table sets forth our operating results as a percentage of revenue for the periods indicated:

	Three Months Ended	
	March 31, 2019	March 31, 2018
Revenue	100 %	100 %
Cost of revenue	41 %	42 %
Gross profit	59 %	58 %
Operating expenses:		
Research and development	14 %	13 %
Sales and marketing	29 %	30 %
General and administrative	16 %	15 %
Total operating expenses	59 %	58 %
Loss from operations	— %	— %
Other income (expense), net:		
Interest expense	(5)%	(1)%
Interest income and other	2 %	— %
Total other income (expense), net	(3)%	(1)%
Loss before income taxes	(3)%	(1)%
Provision for (benefit from) income taxes	— %	— %
Net loss	(3)%	(1)%

Revenue

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Revenue	\$ 74,538	\$ 58,905	\$ 15,633	27%

The increase in revenue for the three months ended March 31, 2019 compared to the same period of 2018 was primarily attributable to our larger clients, driven by an increase in our sales and marketing activities and our improved brand awareness.

Cost of Revenue

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Cost of revenue	\$ 30,851	\$ 24,702	\$ 6,149	25%
% of Revenue	41%	42%		

The increase in cost of revenue for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to a \$2.5 million increase in personnel costs including stock-based compensation costs, driven mainly by increased headcount and a higher fair value of employee equity awards due primarily to our increased stock price, a \$1.0 million increase in third party hosted software costs driven by increased client activities, a \$0.8 million increase in facilities and related costs, a \$0.6 million increase in USF contributions and other federal telecommunication service fees due primarily to increased client usage, and a \$0.5 million increase in depreciation and

data center costs, driven by increased capital expenditures to support our growing capacity needs and continuing expansion of our existing data center facilities.

Gross Profit

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Gross profit	\$ 43,687	\$ 34,203	\$ 9,484	28%
% of Revenue	59%	58%		

The increase in gross profit for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to increases in subscription and usage revenues. The increase in gross margin for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to improved efficiencies in usage, economies of scale for subscriptions and improved efficiencies in professional services.

Operating Expenses

Research and Development

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Research and development	\$ 10,546	\$ 7,772	\$ 2,774	36%
% of Revenue	14%	13%		

The increase in research and development expenses for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to a \$2.3 million increase in personnel costs including stock-based compensation costs, driven mainly by increased headcount and a higher fair value of employee equity awards due primarily to our increased stock price.

Sales and Marketing

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Sales and marketing	\$ 21,701	\$ 17,478	\$ 4,223	24%
% of Revenue	29%	30%		

The increase in sales and marketing expenses for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to a \$2.4 million increase in personnel-related costs including stock-based compensation costs, driven mainly by increased headcount and higher fair value equity awards due primarily to our increased stock price, and a \$0.6 million increase in commissions paid to sales personnel driven by the growth in sales and bookings of our solution. The remainder net increase in sales and marketing expenses were primarily due to the execution of our growth strategy to acquire new clients, increase the number of agent seats within our existing client base, and establish increased brand awareness.

General and Administrative

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
General and administrative	\$ 11,762	\$ 9,103	\$ 2,659	29%
% of Revenue	16%	15%		

The increase in general and administrative expenses for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to a \$2.2 million increase in personnel costs including stock-based compensation costs, driven mainly by increased headcount, an equity award to an executive officer in May 2018 and a higher fair value of employee equity awards, driven by our increased stock price, and a \$0.3 million increase in legal and indemnification costs.

Other Income (Expense), Net

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
(in thousands, except percentages)				
Interest expense	\$ (3,396)	\$ (810)	\$ (2,586)	(319)%
Interest income and other	1,745	398	1,347	338 %
Total other income (expense), net	\$ (1,651)	\$ (412)	\$ (1,239)	(301)%
% of Revenue	(3)%	(1)%		

The unfavorable change of \$(1.2) million in other income (expense), net for the three months ended March 31, 2019 compared to the same period of 2018 was primarily due to \$3.2 million in interest expense related to our convertible senior notes issued in May 2018, offset in part by higher interest income on our marketable investments and a \$0.2 million gain from the sale of our convertible note held for investment.

Liquidity and Capital Resources

To date, we have financed our operations primarily through sales of our solutions, lease facilities and net proceeds from our equity and debt financings including the issuance of our 0.125% convertible senior notes in May 2018. As of March 31, 2019, we had \$288.3 million in working capital, which included \$93.5 million in cash and cash equivalents and \$205.5 million in marketable investments.

In May 2018, we issued \$258.8 million aggregate principal amount of our 0.125% convertible senior notes, or Notes, due May 1, 2023 in a private offering. The Notes are our senior unsecured obligations and bear interest at a fixed rate of 0.125% per annum, payable semiannually in arrears on May 1 and November 1 of each year, beginning November 1, 2018. The total net proceeds from the offering, after deducting the initial purchasers' discounts and estimated debt issuance costs, were approximately \$250.7 million. For additional information regarding the Notes, see Note 6 to the condensed consolidated financial statements included in this report.

In August 2016, we entered into a loan agreement, which we refer to as the 2016 Loan and Security Agreement, with two lenders for a revolving credit facility of up to \$50.0 million. The revolving credit facility bore a variable annual interest rate of the prime rate plus 0.50%, subject to a 0.25% increase if our adjusted EBITDA was negative at the end of any fiscal quarter. In May 2018, we paid off the then outstanding principal balance of the revolving line of credit, and in July 2018, we terminated the 2016 Loan and Security Agreement.

We believe our existing cash and cash equivalents will be sufficient to meet our working capital and capital expenditure needs for at least the next 12 months. Our future capital requirements will depend on many factors including our growth rate, continuing market acceptance of our solutions, client retention, our ability to gain new clients, the timing and extent of spending to support research and development efforts, the outcome of any pending or future litigation or other claims by third parties or governmental entities, the expansion of sales and marketing activities and the introduction of new and enhanced offerings. We may also acquire or invest in complementary businesses, technologies and intellectual property rights, which may increase our future capital requirements, both to

pay acquisition costs and to support our combined operations. We may raise additional equity or debt financing at any time. We may not be able to raise additional equity or debt financing on terms acceptable to us or at all. If we are unable to raise additional capital when desired or required, our business, operating results, and financial condition would be harmed. In addition, if our operating performance during the next twelve months is below our expectations, our liquidity and ability to operate our business could be harmed.

If we raise additional funds by issuing equity or equity-linked securities, the ownership of our existing stockholders will be diluted. If we raise additional funds through the incurrence of additional indebtedness, we will be subject to increased debt service obligations and could also be subject to restrictive covenants and other operating restrictions that could harm our ability to conduct our business.

Cash Flows

The following table summarizes our cash flows for the periods presented (in thousands, except percentages):

	Three Months Ended			
	March 31, 2019	March 31, 2018	\$ Change	% Change
Net cash provided by operating activities	\$ 11,190	\$ 7,997	\$ 3,193	40 %
Net cash provided by investing activities	1,302	1,490	(188)	(13)%
Net cash (used in) provided by financing activities	(912)	2,242	(3,154)	(141)%
Net increase in cash and cash equivalents	<u>\$ 11,580</u>	<u>\$ 11,729</u>	<u>\$ (149)</u>	<u>(1)%</u>

Cash Flows from Operating Activities

Cash provided by operating activities is primarily influenced by our personnel-related expenditures, data center and telecommunications carrier costs, office and facility related costs, USF contributions and other regulatory costs and the amount and timing of client payments. If we continue to improve our financial results, we expect net cash provided by operating activities to increase. Our largest source of operating cash inflows is cash collections from our clients for subscription and related usage services. Payments from clients for these services are typically received monthly.

Net cash provided by operating activities was \$11.2 million during the three months ended March 31, 2019. Net cash provided by operating activities resulted from net loss of \$1.9 million adjusted for non-cash items of \$15.3 million, primarily consisting of \$8.7 million of stock-based compensation, \$3.2 million of depreciation and amortization and \$3.1 million of amortization of discount and issuance costs on convertible senior notes, offset by use of cash for operating assets and liabilities of \$2.2 million primarily due the timing of cash payments to vendors and cash receipts from customers.

Net cash provided by operating activities was \$8.0 million during the three months ended March 31, 2018. Net cash provided by operating activities resulted from net loss of \$0.6 million adjusted for non-cash items of \$7.4 million, primarily consisting of \$5.3 million of stock-based compensation, \$2.3 million of depreciation and amortization, and cash provided by operating assets and liabilities of \$1.2 million primarily due the timing of cash receipts from customers and the timing of cash payments to vendors.

Cash Flows from Investing Activities

Net cash provided by investing activities in the three months ended March 31, 2019 was \$1.3 million compared to \$1.5 million in the three months ended March 31, 2018.

Net cash provided by investing activities in the three months ended March 31, 2019 was comprised of \$39.5 million of cash proceeds from maturities of marketable investments and the \$0.2 million cash proceeds related to gain from the sale of convertible notes held for investment, offset by \$34.4 million related to purchases of marketable investments and \$4.0 million in capital expenditures.

Cash Flows from Financing Activities

Net cash used in financing activities in the three months ended March 31, 2019 was \$0.9 million, compared to net cash provided by financing activities of \$2.2 million in the three months ended March 31, 2018.

Net cash used in financing activities of \$0.9 million in the three months ended March 31, 2019 related to payments of finance leases of \$1.9 million, offset by cash proceeds of \$1.0 million from exercises of stock options.

Critical Accounting Policies and Estimates

Our condensed consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. On an ongoing basis, we evaluate our estimates and assumptions. Our actual results may differ from these estimates under different assumptions or conditions.

We believe our critical accounting policies involve the greatest degree of judgment and complexity and have the greatest potential impact on our condensed consolidated financial statements.

Revenue Recognition

Revenue is recognized when control of the promised services are transferred to customers, in an amount that reflects the consideration that we expect to receive in exchange for those services. We generate all of our revenue from contracts with customers. In contracts with multiple performance obligations, we identify each performance obligation and evaluate whether the performance obligations are distinct within the context of the contract at contract inception. Performance obligations that are not distinct at contract inception are combined. We allocate the transaction price to each distinct performance obligation proportionately based on the estimated standalone selling price for each performance obligation. We then look to how services are transferred to the customer in order to determine the timing of revenue recognition. Most services provided under our agreements result in the transfer of control over time.

Our revenue consists of subscription services and related usage as well as professional services. We charge clients subscription fees, usually billed on a monthly basis, for access to our VCC solution. The subscription fees are primarily based on the number of agent seats, as well as the specific VCC functionalities and applications deployed by the client. Agent seats are defined as the maximum number of named agents allowed to concurrently access our VCC cloud platform. Clients typically have more named agents than agent seats. Multiple named agents may use an agent seat, though not simultaneously. Substantially all of our clients purchase both subscriptions and related telephony usage. A small percentage of our clients subscribe to our platform but purchase telephony usage directly from a wholesale telecommunications service provider. We do not sell telephony usage on a stand-alone basis to any client. The related usage fees are based on the volume of minutes used for inbound and outbound client interactions. We also offer bundled plans, generally for smaller deployments, whereby the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. Professional services revenue is derived primarily from VCC implementations, including application configuration, system integration, optimization, education and training services. Clients are not permitted to take possession of our software.

We offer monthly, annual and multiple-year contracts to our clients, generally with 30 days' notice required for changes in the number of agent seats and sometimes with a minimum number of agent seats required. Larger clients typically choose annual contracts, which generally include an implementation and ramp period of several months. Fixed subscription fees (including bundled plans) are generally billed monthly in advance, while related usage fees are billed in arrears. Support activities include technical assistance for our solution and upgrades and enhancements to our VCC cloud platform on a when-and-if-available basis, which are not billed separately.

Professional services are primarily billed on a fixed-fee basis and are performed by us directly or, alternatively, clients may also choose to perform these services themselves or engage their own third-party service providers. Revenue for professional services is recognized over time, as services are performed.

The estimation of variable consideration for each performance obligation requires us to make subjective judgments. In the early stages of our larger contracts, in order to allocate the overall transaction fee on a relative stand-alone selling price basis to our multiple performance obligations, we estimate variable consideration to be included in the transaction fee to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. This requires the estimate of unit quantities, especially during the initial ramp period of the contract, during which we bill under an 'actual usage' model for subscription-related services.

We recognize revenue on fixed fee professional services performance obligations based on the proportion of labor hours expended compared to the total hours expected to complete the related performance obligation.

The revenue recognition standards include guidance relating to any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added and excise taxes. We record USF contributions and other regulatory costs on a gross basis in our condensed consolidated statements of operations and comprehensive loss and record surcharges and sales, use and excise taxes billed to our clients on a net basis. The cost of gross USF contributions payable to the USAC and suppliers is presented as a cost of revenue in the condensed consolidated statements of operations and comprehensive loss.

Recent Accounting Pronouncements

Refer to Note 1 of the notes to condensed consolidated financial statements included in this report.

Off-Balance Sheet Arrangements

As of March 31, 2019, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

Contractual Obligations

Our principal contractual obligations consist of future payment obligations under finance leases to finance data centers and other computer and networking equipment, debt (see Note 6 to the condensed consolidated financial statements included in this report), operating leases agreements for office space, research and development, and sales and marketing facilities, and agreements with third parties to provide co-location hosting, telecommunication usage and equipment maintenance services.

These commitments as of December 31, 2018 are disclosed in our Annual Report on Form 10-K for the year ended December 31, 2018, and did not change materially during the three months ended March 31, 2019 except for certain hosting and telecommunications agreements.

As of March 31, 2019, \$258.8 million of convertible senior notes were outstanding. The convertible senior notes are due May 1, 2023. For additional information regarding the convertible senior notes, see Note 6 to the condensed consolidated financial statements included in this report.

As of March 31, 2019, our commitment under various hosting and telecommunications agreements for terms of 12 to 36 months totaled \$7.9 million. These agreements require us to make monthly payments over the service term in exchange for certain network services.

ITEM 3. Quantitative and Qualitative Disclosure about Market Risk

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates. We do not hold or issue financial instruments for trading purposes. For a discussion of market risk, see “Quantitative and Qualitative Disclosure about Market Risk” in Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018. Our exposure to market risk has not changed materially since December 31, 2018.

We had cash and cash equivalents, and marketable securities totaling \$298.9 million as of March 31, 2019. Cash equivalents and marketable securities were invested primarily in U.S. agency securities and government sponsored securities, U.S. treasury, municipal bonds, corporate bonds, commercial paper, certificates of deposit and money market funds. Our investment policy is focused on the preservation of capital and supporting our liquidity needs. Under the policy, we invest in highly rated securities, while limiting the amount of credit exposure to any one issuer other than the U.S. government. We do not invest in financial instruments for trading or speculative purposes, nor do we use leveraged financial instruments. We utilize external investment managers who adhere to the guidelines of our investment policy. A hypothetical 100 basis point change in interest rates would not have a material impact on the value of our cash and cash equivalents or marketable investments.

In May 2018, we issued \$258.8 million aggregate principal amount of convertible senior notes. The fair value of the convertible senior notes is subject to interest rate risk, market risk and other factors due to the conversion feature. The fair value of the convertible senior notes will generally increase as our common stock price increases and will generally decrease as our common stock price declines. The interest and market value changes affect the fair value of the convertible senior notes but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligation. Additionally, we carry the convertible senior notes at face value less unamortized discount on our condensed consolidated balance sheets, and we present the fair value for required disclosure purposes only.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of March 31, 2019.

Based on management’s evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of March 31, 2019, our disclosure controls and procedures were designed, and were effective, to provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management as appropriate to allow timely decisions regarding required disclosures.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Changes in Internal Control over Financial Reporting

Beginning January 1, 2019, we implemented ASC 842, *Leases*. We implemented new software to account for our operating leases under ASC 842, changes to our processes and control activities related to recognizing operating lease right-of-use assets and operating lease liabilities for operating leases with lease terms of more than 12 months. The new standard did not have any impact on our finance leases. The new process and control activities implemented include review of contracts to determine if an arrangement is a lease at inception and to appropriately identify and account for operating lease right-of-use assets, operating lease liabilities and related disclosures.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

Information with respect to this Item may be found under the heading “Legal Matters” in Note 10 to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q, which information is incorporated herein by reference.

ITEM 1A. Risk Factors

There have been no material changes from the Risk Factors previously disclosed in Part 1, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018. In addition to the other information set forth in this report, you should carefully consider the Risk Factors discussed in our Annual Report on Form 10-K as they could materially affect our business, financial condition and future results.

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

Not applicable.

ITEM 3. Defaults Upon Senior Securities

None.

ITEM 4. Mine Safety Disclosures

Not applicable.

ITEM 5. Other Information

None.

ITEM 6. Exhibits

Exhibit Number	Description
10.1 *	Office Lease for Bishop Ranch Building, dated December 16, 2011, between the Registrant and Alexander Properties Company and First Lease Addendum dated October 24, 2012, Second Lease Addendum dated January 23, 2014, Third Lease Addendum dated April 3, 2017, Fourth Lease Addendum dated June 30, 2017, Fifth Lease Addendum dated January 3, 2018, Sixth Lease Addendum dated July 1, 2018 and Seventh Lease Addendum dated February 27, 2019.
10.2 ∅+	Five9, Inc. 2019 Key Employee Severance Benefit Plan (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on April 9, 2019 (File No. 001-36383) and incorporated by reference herein).
31.1 *	Certification of Chief Executive Officer of Five9, Inc. Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2 *	Certification of Chief Financial Officer of Five9, Inc. Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1 **	Certification of Chief Executive Officer and Chief Financial Officer of Five9, Inc. Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Schema Linkbase Document
101.CAL*	XBRL Taxonomy Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Definition Linkbase Document
101.LAB*	XBRL Taxonomy Labels Linkbase Document
101.PRE*	XBRL Taxonomy Presentation Linkbase Document

* Filed herewith.

** Furnished herewith.

+ Indicates management contract.

∅ Previously filed.

FIVE9, INC.BISHOP RANCH—BUILDING LEASETABLE OF CONTENT

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BISHOP RANCH

BUILDING LEASE

This Lease is made and entered into this 16th day of December, 2011, by and between **Alexander Properties Company, a California limited partnership**, (hereinafter "Landlord") and **five9, Inc., a Delaware corporation** (hereinafter "Tenant"). For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. **PREMISES**

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises (the "Premises") crosshatched on Exhibit A containing **46,414** rentable square feet known as **Suite 400**, located on the fourth floor of **4000 Executive Parkway**, Building P (including all tenant improvements thereto, the "Building"), located at San Ramon, California 94583. The Building is part of a Complex containing the Building and **two (2)** other buildings (the "Complex"). The Complex, which contains **631,578 rentable** square feet, the land on which the Complex is situated (the "Land"), the common areas of the Complex, any other improvements in the Complex and the personal property used by Landlord in the operation of the Complex (the "Personal Property") are herein collectively called the "Project." Landlord shall pay the cost of "Suite Improvements" (as such term is defined in the work letter attached hereto as Exhibit B, the "Work Letter") and as shown on the attached Exhibit C.

Please Initial
Tenant (MB)
Landlord (JC)

2. TERM

2.1 Term. The term of this Lease shall commence on the "Commencement Date" hereinafter defined to be the earlier of the date Landlord delivers possession of the Premises to Tenant with all of the Suite Improvements Substantially Completed, as defined in Exhibit B, or the date Landlord would have completed the Premises and tendered the Premises to Tenant if Substantial Completion had not been delayed by the number of days specified in any and all Tenant Delay Notices given by Landlord as described in Exhibit B. The term of this Lease shall end on the date (the "Expiration Date") that is the sixth (6th) year anniversary of the Commencement Date, unless sooner terminated pursuant to this Lease.

2.2 Delay in Commencement. The Commencement Date is scheduled to occur on **March 1, 2012** (the "Scheduled Commencement Date"), but if there are "Scheduled Commencement Adjustment Days" (referred to in Paragraph 25.9 of this Lease and Exhibit B), then the Scheduled Commencement Date shall be that date which is the same number of days after **March 1, 2012** as the sum of the Scheduled Commencement Adjustment Days. If for any reason the Commencement Date does not occur on or before the Scheduled Commencement Date, except as otherwise provided in this Lease, Landlord shall not be liable for any damage thereby nor shall such inability affect the validity of this Lease or the obligations of Tenant hereunder. If the Commencement Date has not occurred within sixty (60) days after the Scheduled Commencement Date, Tenant at its option, to be exercised by giving Landlord written notice within thirty (30) days after the end of such sixty (60) day period, may terminate this Lease and, upon Landlord's return of any monies previously deposited by Tenant, the parties shall have no further rights or liabilities toward each other.

2.3 Acknowledgment of Commencement Date. Upon determination of the Commencement Date, Landlord and Tenant shall execute a written acknowledgment of the Commencement Date and Expiration Date in the form attached hereto as Exhibit G.

Please Initial
Tenant (MB)
Landlord (JC)

3. RENT

3.1 Base Rent. Except as otherwise provided in this Lease, Tenant shall pay to Landlord monthly as base rent (“Base Rent”) for the Premises in advance on the Commencement Date and on the first day of each calendar month thereafter during the term of this Lease without deduction, offset, prior notice or demand, in lawful money of the United States of America, the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS (\$100,563.67)**. For any prorations of Base Rent due to changes in the Premises on a day other than the first or last day of the month, the portion of Base Rent on a square foot basis associated with an increase or decrease in the size of the Premises shall be calculated by multiplying the number of days that the space was part of the Premises by the daily Base Rent defined to be the monthly Base Rent per square foot for said space divided by thirty (30). **Notwithstanding the foregoing, Base Rent shall be abated for the initial twelve (12) full calendar months of the term of this Lease.**

On or before the date that is three (3) business days after the date this Lease is fully executed by Landlord and Tenant, Tenant shall pay to Landlord the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS (\$100,563.67)** to be applied against Base Rent when it becomes due.

3.2 Adjustments to Base Rent. Intentionally Deleted

3.3 Amounts Constituting Rent. All amounts payable or reimbursable by Tenant under this Lease, including late charges and interest, “Operating Cost Payments” (as defined in Paragraph 5), and amounts payable or reimbursable under the Work Letter and the other Exhibits hereto, shall constitute “Rent” and be payable and recoverable as such. Base Rent is due and payable as provided in Paragraph 3.1—“Base Rent”, Operating Cost Payments are due and payable as provided in Paragraph 5.3—“Notice and Payment”, and all other Rent payable to Landlord on demand under the terms of this Lease, unless otherwise set forth herein, shall be payable within thirty (30) days after written notice from Landlord of the amounts due. Except as otherwise provided in this Lease, all Rent shall be paid to Landlord without deduction or offset in lawful money of the United States of America at the address for notices or at such other place as Landlord may from time to time designate in writing.

4. SECURITY DEPOSIT

Concurrently with Tenant’s execution of this Lease, Tenant shall pursuant to the terms and conditions of Paragraph 25.20, provide Landlord with a Letter of Credit in the amount of **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$700,000.00)** as Security. At such time that Tenant is relieved of its obligation to post the Letter of Credit Tenant shall deposit with Landlord the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS (\$100,563.67)** as a Security Deposit (the “Security Deposit”). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including the provisions relating to the payment of any Rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit to cure such default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant’s default. If any portion of said deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant’s failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord’s option, to the last assignee of Tenant’s interest hereunder) upon the expiration of the Lease term and Tenant’s vacating the Premises; provided, however, that Landlord may elect in its reasonable discretion to retain a portion of the Security Deposit in an amount composed of any or all of the following: (i) any unpaid amounts owed to Landlord pursuant to this Lease, (ii) the cost of any damage (excluding normal wear and tear or damage resulting from the approved installation of wall hangings by Landlord) to the Premises, (iii) the costs of removing any personal property refuse or debris left in the Premises at the expiration of the Lease, and (iv) any sums underpaid by Tenant with respect to Operating Costs for the calendar year in which the Lease ends under Paragraph 5 if Landlord determines there will be an increase in Operating Expenses for said calendar year. In the event of termination of Landlord’s interest in this Lease, Landlord shall transfer the Security Deposit to Landlord’s successor-in-interest and

Please Initial
Tenant (MB)
Landlord (JC)

provided that such successor-in-interest agrees in writing to assume the obligations of Landlord under this Lease, Landlord shall be released from liability for the return of the Security Deposit or the accounting therefor. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of any Regulations, now or hereafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

5. TAX AND OPERATING COST INCREASES

5.1 Definitions. For purposes of this paragraph, the following terms are herein defined:

(a) Base Year: The calendar year in which this Lease commences.

(b) Operating Costs: Operating Costs shall include all actual costs and expenses of ownership, management, operation, repair and maintenance of the Project (excluding depreciation of the improvements in the Project and all amounts paid on loans of Landlord) applicable to the term of the Lease computed in accordance with "tax basis accounting" (as defined below) principles consistently applied, including by way of illustration but not limited to: real property taxes, taxes assessed on the Personal Property, any other governmental impositions imposed on or by reason of the ownership, operation or use of the Project, and any tax in addition to or in lieu thereof, including taxes covered by Paragraph 5.4, if any, whether assessed against Landlord or Tenant or both; parts; equipment; supplies; insurance premiums; license, permit and inspection fees; cost of services and materials (including property management fees); cost of compensation (including employment taxes and benefits) of all persons who perform duties connected with the management, operation, maintenance and repair of the Project; costs of providing utilities and services, including water, gas, electricity, sewage disposal, rubbish removal, janitorial, gardening, security, parking, window washing, supplies and materials, and signing (but excluding services not uniformly available to substantially all of the Project tenants); costs of capital improvements (i) required to cause the Project to comply with all laws, statutes, ordinances, regulations, rules and requirements of any governmental or public authority, including, without limitation, the Americans with Disabilities Act of 1990 (the "ADA") (collectively, "Legal Requirements") which become effective after the Commencement Date, or (ii) which reduce Operating Costs, such costs, together with interest on the unamortized balance at the rate of eight percent (8%) per annum, to be amortized over the useful life or payback period whichever is shorter provided that such amortized costs of capital improvements shall only be included in Operating Costs to the extent of the reduction in Operating Costs; costs of maintenance and replacement of landscaping; legal, accounting and other professional services incurred in connection with the operation of the Project and the calculation of Operating Costs; and rental expense or a reasonable allowance for depreciation of the Personal Property. If the Project is not at least ninety-five (95%) percent occupied for any calendar year during the term of this Lease, Operating Costs that vary with occupancy shall be adjusted to the amount which would have been incurred if the Project had been at least ninety-five (95%) percent occupied for the year. "**Tax basis** accounting" is defined to mean accounting in accordance with the Internal Revenue Code and related rules, regulations, rulings, and applicable case law applied by Landlord on a consistent basis in reporting income and expense, including the capitalization of costs and related depreciation, to the Internal Revenue Service.

Notwithstanding the foregoing, Operating Costs shall not include the following:

- (1) Depreciation and amortization, except as provided for above.
- (2) Costs of capital improvements except as provided for above.
- (3) Costs to acquire or install sculpture, paintings or other objects of art.
- (4) Costs incurred in connection with upgrading the Building or Project to comply with disability, life, fire, safety codes, ordinances, statutes, or other laws or Legal Requirements in effect on or prior to the Commencement Date including, without limitation, the ADA, and penalties or damages incurred due to such non-compliance.
- (5) Advertising and promotional expenses.

Please Initial
Tenant (MB)
Landlord (JC)

(6) Real estate broker's or other leasing commissions, attorneys' fees, architects' fees and other costs incurred in connection with negotiations or disputes with tenants or prospective tenants of the Building or Project, other than disputes as to the common areas.

(7) Costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants or other occupants in the Project or vacant space in the Project.

(8) Repairs or other work occasioned by fire, windstorm, or other casualty and public liability claims, to the extent such are covered by insurance proceeds, the cost of which is included in Operating Costs, and costs incurred by Landlord in connection with or made necessary by the actual or threatened exercise by governmental authorities (or other entities with power of eminent domain) of the power of eminent domain.

(9) Costs, other than Operating Costs, specially billed to Tenant or any other specific tenants, such as (but not limited to) janitor service, or electrical usage or other services or benefits provided to certain tenants but not to tenants of the Project generally.

(10) Costs incurred to remedy or monitor any Hazardous Materials condition except if caused by Tenant.

(11) Interest or penalties or other costs resulting from (a) late payment of any operating expense by Landlord (unless Landlord in good faith disputes a charge and subsequently loses or settles that dispute); or (b) any amount payable by Landlord to any tenant resulting from Landlord's default in its obligations to that tenant.

(12) Costs incurred in installing, operating and maintaining any commercial concession or specialty service that is not necessary for Landlord's provision, management, maintenance and repair of the Project. The following are examples of these specialty services: observatory; broadcasting facilities (other than the life-support and security system for the Project); luncheon club, cafeteria, or other dining facility; newsstand; flower services; shoeshine service; carwash; and athletic or recreational club.

(13) Any compensation paid to clerks, attendants, or other persons in commercial concessions in the Project that are operated by Landlord.

(14) Debt service, interest, payment of principal on mortgages or other financing costs or expenses.

(15) Rental payments to any ground lessor.

(16) Expenses incurred in enforcing obligations of other tenants of the Building or Project;

(17) Salaries and other compensation of executive officers of the managing agent of the Building or Project above the grade of senior Project manager;

(18) Costs of any service provided to any one tenant of the Project but not to tenants of the Project generally;

(19) Fines or penalties due to violations by Landlord of Legal Requirements.

(20) Costs, fees and compensation paid to Landlord, or to Landlord's subsidiaries or affiliates, for services to the Building or Project (including but not limited to management services) in excess of the cost for the same scope of services using union labor and rendered by an unaffiliated third party of comparable skill, competence, stature and reputation for a Class A office Project of similar size.

Please Initial
Tenant (MB)
Landlord (JC)

- (21) Landlord's general corporate or partnership overhead and general administrative expenses.
- (22) Fees or dues for trade associations.
- (23) Entertainment, dining or travel expenses for any purpose.
- (24) Rentals for equipment ordinarily considered to be of a capital nature (such as elevators and HVAC systems).
- (25) All additions to Building or Project reserves including bad debts and rent loss reserves.
- (26) The cost of repairing any latent defects in the original construction of the Building or Project.
- (27) The cost of any political or charitable donations;
- (28) Repair costs resulting from the negligence of Landlord or others.
- (29) Costs incurred in connection with making any additions to, or building additional stories on, the Buildings in the Project or their plazas, or adding buildings or other structures to the Project.
- (30) Landlord's gross receipts taxes for the Building or Project, personal and corporate income taxes, inheritance and estate taxes, franchise, gift and transfer taxes, and any real estate taxes payable or assessed for any period outside the term of the Lease.
- (31) Special assessments or special taxes initiated as a means of financing improvements to the Building or Project and the surrounding areas thereof.
- (32) Any annual increase in Controllable Operating Costs (as defined below) over the base year in excess of four percent (4%), on a cumulative basis, over the cost of such Controllable Operating Costs for the prior year. "Controllable Operating Costs" include only the following costs: Cost incurred in property management fees, security and landscaping.

5.2 Tenant's Share. If Operating Costs during any calendar year following the Base Year exceed the rentable square footage of the Complex multiplied by **\$11.80** (the "Expense Stop"), Tenant shall pay to Landlord a sum which is equal to "Tenant's Share" of such excess ("Operating Cost Payment"). "Tenant's Share" means **7.35%**, which is calculated by dividing the rentable square footage of the Premises by the rentable square footage of the Complex as such rentable square footages are set forth in Paragraph 1, and multiplying such number by 100.

5.3 Notice and Payment. Landlord shall, at or as soon as practicable after the start of each calendar year subsequent to the Base Year (but no later than April 30th), provide Tenant with a Statement (the "Statement") of the amount of the Operating Cost Payment for the preceding calendar year, and the amount of any payment due from Tenant to Landlord or from Landlord to Tenant, taking into account any payments made by Tenant for such preceding calendar year Operating Cost Payment. In addition, Statement shall include an amount which Landlord estimates will be Tenant's Operating Cost Payment for the current calendar year, and one-twelfth (1/12th) of the amount thereof shall be added to the monthly Base Rent payments required to be made by Tenant in such year. If the amounts Tenant has paid during the year towards the current year's Operating Cost Payment is less than or exceeds the amount required using said one-twelfth (1/12th) addition to Base Rent starting with the first month of the calendar year covered by such statement, then within thirty (30) days after receipt of the Statement, Tenant shall pay in cash any sums owed Landlord or, if applicable, Tenant shall receive a credit against any rent next accruing for any sum owed Tenant.

In no event will Tenant be entitled to receive the benefit of a reduction in Operating Costs below the Expense Stop costs.

For any partial calendar year at the termination of this Lease, Tenant's Share of any increases in Operating Costs for such year over the Expense Stop shall be prorated on the basis of a 365-day year by computing Tenant's Share of the increases in Operating Costs for the entire year and then prorating such amount for the number of days this Lease was in effect during such year. Notwithstanding the expiration or termination of this Lease, and within thirty (30) days after Tenant's receipt of Landlord's statement regarding the determination of increases in Operating Costs for the calendar year in which this Lease expires or terminates, Tenant shall pay to Landlord or Landlord shall pay to Tenant, as the case may be, an amount equal to the difference between Tenant's Share of the increases in Operating Costs for such year (as prorated) and the amount previously paid by Tenant toward such increases. This provision shall survive the expiration or sooner termination of this Lease provided that Landlord shall have no right to collect any deficiency in Tenant's Operating Cost Payment more than three hundred sixty-five (365) days following the expiration or sooner termination of this Lease.

5.4 Additional Taxes. Tenant shall pay as a component of Operating Costs, Tenant's Share of any and all taxes payable by Landlord, whether or not now customary or within the contemplation of the parties hereto (i) upon, allocable to or measured by the area of the Building, (ii) upon all or any portion of the Rent payable hereunder and under other leases of space in the Building, including any gross receipts tax or excise tax levied with respect to the receipt of such Rent, or (iii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Building or an portion thereof; provided that such taxes are applicable to the term of this Lease and not otherwise excluded from Operating Costs.

5.5 Tenant's Right to Audit. The annual Statement of Operating Costs for the preceding year shall be provided by Landlord on or before April 30th of each calendar year after the Base Year of the Lease term. Within ninety (90) days after receipt of the Statement, Tenant shall be entitled, upon ten (10) days prior written notice ("Inspection Notice") and during normal business hours, at Landlord's office or such other place as Landlord shall reasonably designate, to inspect and examine those books and records of Landlord relating to the determination of Operating Costs for only the immediately preceding calendar year. Any third party engaged by Tenant to inspect or examine the books and records shall be a certified public accountant from a nationally or regionally recognized accounting firm and such accountant shall not be compensated on a contingency fee or similar basis. Should Tenant elect to inspect such records, Tenant's inspection shall be completed and the results thereof submitted to Landlord no later than two (2) months after Tenant's notification to Landlord of its intent to inspect Landlord's books and records. Tenant shall be deemed to have waived its right to inspect Landlord's books and records if Tenant fails to timely deliver the Inspection Notice, or fails to timely complete the inspection (unless Landlord was the cause of the delay). If, after inspection and examination of such books and records, Tenant disputes the amounts of Operating Costs charged by Landlord, Tenant may, by written notice to Landlord, request an independent audit of such books and records. The independent audit of the books and records shall be conducted by a certified public accountant ("CPA") acceptable to both Landlord and Tenant. If, within thirty (30) days after Landlord's receipt of Tenant's notice requesting an audit, Landlord and Tenant are unable to agree on the CPA to conduct such audit, then Landlord may designate a nationally recognized accounting firm not then employed by Landlord or Tenant to conduct such audit. The audit shall be limited to the determination of the amount of Operating Costs for the subject calendar year. If the audit discloses that the amount of Operating Costs billed to Tenant was incorrect, the appropriate party shall pay to the other party the deficiency or overpayment, as applicable. All costs and expenses of the audit shall be paid by Tenant unless the audit shows that Landlord overstated Operating Costs for the subject calendar year by more than five percent (5%), in which case Landlord shall pay all costs and expenses of the audit (not to exceed \$10,000.00). Tenant and Tenant's representatives shall keep any information gained from such audit confidential and shall not disclose it to any other party. The exercise by Tenant of its audit rights hereunder shall not relieve Tenant of its obligation to timely pay all sums due hereunder, including, without limitation, the disputed Operating Costs.

6. USE

6.1 Use. The Premises shall be used and occupied by Tenant for general and executive office purposes and for no other purpose without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

Please Initial
Tenant (MB)
Landlord (JC)

6.2 Suitability. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the Building or with respect to the suitability of either for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in the Work Letter. Except with respect to the latent defects in the Suite Improvements (as defined in Exhibit B), the taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in satisfactory condition unless within ten (10) days after such date Tenant shall give Landlord written notice specifying in reasonable detail the respects in which the Premises or the Building were not in satisfactory condition.

6.3 Access. Tenant shall have access to the Premises and the parking granted hereunder twenty-four (24) hours a day, seven (7) days a week.

6.4 Uses Prohibited.

(a) Tenant shall not do nor permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy covering said Building or any part thereof or any of its contents, nor shall Tenant sell or permit to be kept, used or sold in or about said Premises any articles which may be prohibited by a standard form policy of fire insurance.

(b) Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall not bring onto the Premises any apparatus, equipment or supplies that may overload the Premises or the Building or any utility or elevator systems or jeopardize the structural integrity of the Building or any part thereof.

(c) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with, and at its sole cost and expense shall promptly comply with, any Legal Requirement now in force or which may hereafter be enacted or promulgated relating to the condition, use or occupancy of the Premises, excluding structural changes not relating to or affecting the condition, use or occupancy of the Premises or Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Legal Requirement, shall be conclusive of the fact as between Landlord and Tenant.

7. SERVICE AND UTILITIES

7.1 Landlord's Obligations. Provided Tenant is not in default hereunder, Landlord shall furnish to the Premises during reasonable hours of generally recognized business days, to be determined by Landlord, and subject to the rules and regulations of the Building, water, gas and electricity suitable for the intended use of the Premises, heat and air conditioning required in Landlord's reasonable judgment for the comfortable use and occupancy of the Premises, scavenger, janitorial services as described in Exhibit E attached hereto, window washing service and elevator service customary in similar Class A office buildings in the competing geographical areas. Landlord shall also maintain and keep lighted the common lobbies, hallways, stairs and toilet rooms in the Building.

(a) Landlord's current hours of operation in Bishop Ranch (hereinafter "Hours of Operation") are 7 a.m. to 7 p.m., Monday through Friday, excepting holidays (New Year's Day, President's Day, Memorial Day, July 4th (Independence Day), Labor Day, Thanksgiving, and Christmas Day). In the event the holiday falls on a weekend, the business day closest to the holiday will be considered to be the holiday. The building and its services are available to Tenant 24 hours a day, seven (7) days a week, 365 days a year. The after hours rate for air conditioning and heating service after Landlord's Hours of Operation is currently \$75.00 per hour, per floor. This rate is subject to adjustment based upon the decrease or increase in utilities as charged by Landlord's utility provider.

7.2 Tenant's Obligation. Tenant shall pay for, prior to delinquency, all telephone and all other materials and services, not expressly required to be paid by Landlord, which may be furnished to or used in, on or about the Premises during the term of this Lease.

7.3 Tenant's Additional Requirements

(a) Tenant shall pay for heat and air-conditioning furnished at Tenant's request during non-business hours and/or on non-business days on an hourly basis at a reasonable rate established by Landlord. Tenant shall not use in excess of reasonable amounts for a like tenant of the Project (as reasonably determined by Landlord) ("Building Standard Amounts") of electricity, water or any other utility without Landlord's prior written consent, which consent Landlord may refuse. If Landlord reasonably determines that Tenant is using water, electricity, or other utilities (excluding those used in server rooms or data centers) in excess of "Building Standard Amounts", the Landlord may cause a water meter or electric current meter to be installed in the Premises so as to measure the amount of water and electric current consumed for any such excess use. The cost of such meters and of installation, maintenance and repair thereof shall be paid by Tenant and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the city in which the Building is located or by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed to measure any such excess use, Landlord shall have the right to reasonably estimate the amount of such use through qualified personnel. In addition, Landlord may impose a reasonable charge for the use of any additional or unusual janitorial services required by Tenant because of any Suite Improvements different from or above Building Standard Amounts, carelessness of Tenant or the nature of Tenant's business (including hours of operation). Notwithstanding the foregoing, any equipment that runs twenty-four (24) hours per day, seven (7) days per week or HVAC units that are installed in Tenant's server room or for Tenant's special equipment shall be sub-metered.

(b) If any lights other than those designated as Building Standard Materials on Exhibit B are used in the Premises which increase the cost of sustaining the temperature otherwise maintained by the air conditioning system, Landlord may install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. In addition, if any lights other than those designated as Building Standard Materials on Exhibit B are used in the Premises, Tenant shall pay the cost to replace any worn or dead bulbs or tubes.

(c) In no event shall Tenant (i) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet or (ii) maintain at any time an electrical demand load in excess of four (4) watts per square foot of usable area of the Premises.

7.4 Nonliability. Except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of Rent, by reason of Landlord's failure to furnish any of the foregoing when due to "Force Majeure Events" (as defined in Paragraph 25.9). If failure to furnish the foregoing is within Landlord's reasonable control and Tenant is unable to occupy all or any portion of the Premises due to such failure, Tenant shall be entitled to an abatement of Base Rent commencing with the fifth (5th) consecutive day of such failure or the fifth (5th) day of such failure in any thirty (30) day period, unless prior thereto Landlord commences to cure such failure and thereafter diligently proceeds with such cure not to exceed sixty (60) days. Any failure to furnish any of the foregoing shall not constitute an eviction of Tenant, constructive or otherwise and, notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not be entitled to terminate this Lease on account of such failure. Landlord shall not be liable under any circumstances for consequential damages, however occurring, through or in connection with failure to furnish any of the foregoing.

8. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS

8.1 Maintenance and Repairs

(a) Landlord's Obligations. Landlord shall maintain in good order, condition and repair the structural and common areas of the Building, and the basic heating, ventilating, air conditioning, electrical, plumbing,

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Landlord (JC)

fire protection, life safety, security and mechanical systems of the Building (the “Building Systems”), and shall cause the common areas of the Building to comply with all Legal Requirements (including, without limitation, the ADA), provided that any maintenance and repair caused by the acts or omissions of Tenant or Tenant’s agents, employees, invitees, visitors (collectively “Tenant’s Representatives”) shall be paid for by Tenant. Notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not have the right to make repairs at Landlord’s expense or to terminate this Lease because of Landlord’s failure to keep the foregoing in good order, condition and repair, nor shall Landlord be liable under any circumstances for any consequential damages or loss of business, however occurring, through or in connection with any such failure.

(b) Tenant’s Obligations

(i) Tenant, at Tenant’s sole cost and expense, except for services furnished by Landlord pursuant to Paragraph 7 hereof, shall maintain the Premises in good order, condition and repair including the interior surfaces of the ceilings, walls and floors, all doors, interior windows, and all plumbing pipes, electrical wiring, switches, fixtures, lights which are not those designated as Building Standard Materials on Exhibit B, and equipment installed for the use of the Premises, and shall cause the Premises to comply with all Legal Requirements (including, without limitation, the ADA) which become effective after the Commencement Date. Notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not have the right to terminate this Lease because of Landlord’s failure to keep the Premises in good order, condition and repair.

(ii) In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such work and diligently prosecute it to completion and after the notice and cure periods set out in Paragraph 18.1(e), Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest from the date expended by Landlord until paid by Tenant at the “Default Rate,” as defined below. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work. As used in this Lease, “Default Rate” shall mean the lesser of twelve percent per annum (12%) or the maximum rate permitted by law.

(c) Compliance with Law. Landlord and Tenant shall each do all acts required to comply with all applicable Legal Requirements relating to their respective maintenance and repair obligations as set forth herein.

8.2 Alterations and Additions

(a) Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without obtaining the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed.

(b) Landlord may impose as a condition to the aforesaid consent such requirements as Landlord may deem necessary in its reasonable discretion, including without limitation thereto, performing the work itself, specifying the manner in which the work is done, and selecting the contractor by whom the work is to be performed and the times during which it is to be accomplished. Tenant shall pay to Landlord upon demand an amount equal to the reasonable costs and expenses for time spent by Landlord’s employees or contractors in supervising, approving and administering such alterations.

(c) All such alterations, additions or improvements, all other Above-Standard Improvements (as defined in Paragraph 25.19), and all work performed under the Work Letter shall be the property of Landlord and shall remain upon and be surrendered with the Premises, unless Landlord upon Landlord’s consent to the installation of same, Landlord provides written notice to Tenant that Tenant shall remove all or any part of same.

(d) All articles of personal property and all business and trade fixtures, machinery and equipment, cabinetwork, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the Lease term when Tenant is not in default hereunder.

9. ENTRY BY LANDLORD

Landlord and Landlord's agents shall upon twenty-four (24) hours notice (except in the case of an emergency, in which case, as soon as practicable) have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers and, as permitted under this Lease, to alter, improve or repair the Premises and any portion of the Building (and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing the entrance to the Premises shall not be blocked thereby). Upon twenty-four (24) hours prior notice during the last six (6) months of the Lease term, Landlord or Landlord's agents may access the Premises to show it to prospective tenants and post "for lease" signs. Landlord shall conduct its activities under this Paragraph 9 in a manner that will minimize inconvenience to Tenant without incurring additional expense to Landlord. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord and Landlord's agents shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord or Landlord's agents by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof. Tenant shall not be released from its obligations under this Lease nor be entitled to any abatement of Rent on account of Landlord's entry under this Paragraph, and Tenant hereby waives any minor inconvenience occasioned thereby. Upon any entry on the Premises by Landlord or Landlord's agents, such entrants shall comply with Tenant's reasonable security requirements provided to Landlord in writing from time to time, and Tenant shall be permitted to have a representative present at all times.

10. LIENS

Tenant shall keep the Premises and the Building free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed, materials furnished or obligations incurred by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand with interest at the Default Rate until paid. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least three (3) business days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Premises.

11. INDEMNITY

11.1 Indemnity.

(a) Subject to Paragraph 12.4, Tenant shall protect, indemnify, defend and hold Landlord, its partners, members, officers, shareholders, directors, employees, agents and property managers harmless from and against any and all losses, damages, costs, claims, attorneys' fees, expenses, liability, fines, and penalties arising from (i) any default or breach by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease by Tenant or (ii) any gross negligence or willful misconduct of Tenant or Tenant Representative in, on, or about the Premises, or any part of the Project, either during or prior to occupancy or during the term of this Lease. Notwithstanding the foregoing, in no event shall Tenant be liable for indirect or consequential damages of Landlord (including lost profits) however occurring.

(b) Subject to Paragraph 12.4, Landlord shall protect, indemnify, defend and hold Tenant, its partners, members, officers, shareholders, directors and employees harmless from and against any and all losses, damages, costs, claims, attorneys' fees, expenses, liability, fines, and penalties arising from (i) any default or breach by Landlord in the observance or performance of any of the terms, covenants or conditions of this Lease by Landlord or (ii) any gross

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Landlord (JC)

negligence or willful misconduct of Landlord or Landlord Representative in, on, or about the Premises, or any part of the Project, either during or prior to occupancy or during the term of this Lease. Notwithstanding the foregoing, in no event shall Landlord be liable for indirect or consequential damages of Tenant (including lost profits) however occurring.

11.2 Exemption of Landlord from Liability. Except in the event of Landlord's gross negligence or willful misconduct, Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, telephone cabling or wiring, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Building, nor shall Landlord be liable for consequential damages however occurring.

12. INSURANCE

12.1 Coverage. Tenant shall, at all times during the term of this Lease, and at its own cost and expense, procure and continue in force the following insurance coverage:

(a) Commercial General Liability Insurance with a combined single limit for personal or bodily injury and property damage of not less than **\$3,000,000** or such other level of coverage that Landlord may require in its reasonable judgment.

(b) Fire and Extended Coverage Insurance, including vandalism and malicious mischief coverage, covering and in an amount equal to the full replacement value of all fixtures, furniture and improvements installed in the Premises by or at the expense of Tenant.

12.2 Insurance Policies. The aforementioned minimum limits of policies shall in no event limit the liability of Tenant hereunder. The aforesaid insurance shall name Landlord and its partners, property manager, and mortgagees as an additional insured. Said insurance shall be with companies having a rating of not less than A-, XI in "Best's Insurance Guide". Tenant shall furnish from the insurance companies or cause the insurance companies to furnish certificates of coverage. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Landlord may carry. Tenant shall, at least twenty (20) days prior to the expiration of such policies, furnish Landlord with evidence of renewals or binders. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge Tenant the premiums together with a reasonable handling charge and Default Interest from the date paid by Landlord, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by Tenant, provided such blanket policies expressly afford coverage to the Premises and to Tenant as required by this Lease.

12.3 Landlord's Insurance. During the term of this Lease Landlord shall maintain in effect insurance on the Building against fire, extended coverage perils and vandalism and malicious mischief (to the extent such coverages are available), with responsible insurers licensed to do business in California, insuring the Building in an amount equal to at least ninety-five percent (95%) of the replacement cost thereof, excluding foundations, footings and underground installations. Landlord may, but shall not be obligated to, carry additional commercially reasonable insurance against additional perils and/or in greater amounts.

12.4 Waiver of Subrogation. Tenant and Landlord hereby waive and release any and all right of recovery, whether arising in contract or tort, against the other, including employees and agents, arising during the term of this Lease for any and all loss or damage to any property located within or constituting a part of the Building or Complex, which loss or damage arises from the perils that could be insured against under the ISO Causes of Loss-Special Form Coverage including any deductible thereunder (whether or not the party suffering the loss or damage actually carries such insurance, recovers under such insurance or self insures the loss or damage) or which right of recovery arises from loss of earnings or rents resulting from loss or damage caused by such a peril. This mutual waiver is in addition to any other waiver

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Landlord (JC)

or release contained in this Lease. Landlord and Tenant shall each have their insurance policies issued in such form as to waive any right of subrogation which might otherwise exist.

13. DAMAGE OR DESTRUCTION.

13.1 Landlord's Duty to Repair. If all or a substantial part of the Premises are rendered untenantable or inaccessible by damage to all or any part of the Project from fire or other casualty then, unless either party elects to terminate this Lease pursuant to Paragraphs 13.2 or 13.3, Landlord shall, at its expense, use its commercially reasonable efforts to repair and restore the Premises and/or access thereto, as the case may be, to substantially their former condition to the extent permitted by the then applicable codes, laws and regulations; provided, however, that Tenant rather than Landlord shall be obligated at Tenant's expense to repair or replace Tenant's personal property, trade fixtures and any items or improvements that are required to be covered by Tenant's insurance under Paragraph 12.1(b).

If Landlord is required or elects to repair damage to the Premises and/or access thereto, this Lease shall continue in effect but Tenant's Base Rent and Operating Cost Payments from the date of the casualty through the date of substantial completion of the repair shall be abated by a proportionate amount based on the portion of the Premises that Tenant is prevented from using by reason of such damage or its repair; provided, however, that if the casualty is the result of the willful misconduct or negligence of Tenant or Tenant's Representatives, there will be no such rental abatement. In no event shall Landlord be liable to Tenant by reason of any injury to or interference with Tenant's business or property arising from fire or other casualty or by reason of any repairs to any part of the Project made necessary by such casualty.

13.2 Landlord's Right to Terminate. In the event of a casualty to the Project, Landlord may elect to terminate this Lease, effective as of the last day of the calendar month in which such election is made, under the following circumstances:

(a) Where, in the reasonable judgment of Landlord, the damage cannot be substantially repaired and restored under applicable laws and governmental regulations within one (1) year after the date of the casualty;

(b) Where, in the reasonable judgment of Landlord, adequate proceeds are not, for any reason, made available to Landlord from Landlord's insurance policies to make the required repairs;

(c) Where the Project is damaged or destroyed to the extent that the cost to repair and restore the Project exceeds twenty-five percent (25%) of the full replacement cost of the Project, whether or not the Premises are damaged or destroyed; or

(d) Where the damage occurs within the last twelve (12) months of the term of the Lease.

If any of the circumstances described in this Paragraph 13.2 arise, Landlord must notify Tenant in writing of that fact within ninety (90) days of the date of the casualty and in such notice Landlord must also advise Tenant whether Landlord has elected to terminate the Lease.

13.3 Tenant's Right to Terminate. Tenant shall have the right to terminate this Lease if all or a substantial part of the Premises are rendered untenantable or inaccessible by damage to all or any part of the Project from fire or other casualty, provided that such casualty is not the result of the willful misconduct or negligence of Tenant or Tenant's Representatives, but only under the following circumstances:

(a) Tenant may elect to terminate this Lease if Landlord had the right under Paragraph 13.2 to terminate this Lease but did not elect to so terminate and Landlord failed to commence the required repair within ninety (90) days after the date it received proceeds to commence such repair. In such event, Tenant may terminate this Lease as of the date of the casualty by notice to Landlord given before the earlier of the date on which Landlord commences such repair or ten (10) days after the expiration of such ninety (90)-day period; or

(b) Tenant may elect to terminate this Lease in the circumstance described in Subparagraph 13.2(a). In such event, Tenant may terminate this Lease as of the date of the casualty by notice to Landlord given within thirty (30) days after Landlord's notice to Tenant pursuant to Paragraph 13.2.

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Tenant (MB)
Landlord (JC)

13.4 Exclusive Rights. Landlord and Tenant each hereby agree that, notwithstanding any law to the contrary that may now or hereafter exist, neither party shall have any right to terminate this Lease in the event of any damage or destruction under any circumstances other than as provided in Paragraphs 13.2 and 13.3.

14. CONDEMNATION

If all or a material portion of the Premises shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right at its option, exercisable within thirty (30) days of receipt of notice of such taking, to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of the Premises. If any part of the Building other than the Premises shall be so taken or appropriated, Landlord shall have the right at its option to terminate this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for Tenant's unamortized cost of leasehold improvements, so long as such award to Tenant does not decrease the value of the award that would otherwise be made to Landlord in such taking or condemnation. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of Premises so made unusable bears to the rented area of the Premises immediately prior to the taking, and Landlord, at Landlord's cost, shall restore the Premises remaining to an architectural whole with the Base Rent reduced in proportion to what the area taken bears to the Premises prior to the taking. No temporary taking of the Premises and/or of Tenant's rights therein or under this Lease shall give Tenant the right to terminate this Lease or to any abatement of Rent thereunder. Any award made to Tenant by reason of any such temporary taking where Landlord does not terminate this Lease shall belong entirely to Tenant so long as said award does not diminish Landlord's award

15. ASSIGNMENT AND SUBLETTING

15.1 Landlord's Consent Required. Except as provided in Paragraph 15.10, Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (each a "Transfer"), and shall not sublet the Premises or any part thereof, without the prior written consent of Landlord and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease.

15.2 Reasonable Consent.

(a) If Tenant complies with the following conditions, Landlord shall not unreasonably withhold its consent to the subletting of the Premises or any portion thereof or the assignment of this Lease. Tenant shall submit in writing to Landlord (i) the name and legal composition of the proposed subtenant or assignee; (ii) the nature of the business proposed to be carried on in the Premises; (iii) the terms and provisions of the proposed sublease; (iv) such reasonable financial information as Landlord may request concerning the proposed subtenant or assignee; and (v) the form of the proposed sublease or assignment. Within ten (10) business days after Landlord receives all such information it shall notify Tenant whether it approves such assignment or subletting or if it elects to proceed under Paragraph 15.8 below.

(b) The parties hereto agree and acknowledge that, among other circumstances for which Landlord could reasonably withhold its consent to a sublease or assignment, it shall be reasonable for Landlord to withhold its consent where (i) the assignee or subtenant (a "Transferee") does not itself occupy the entire portion of the Premises assigned or sublet, (ii) Landlord reasonably disapproves of the Transferee's reputation or the character of the business to be conducted by the Transferee at the Premises, (iii) the Transferee's business entails the operation of a call center, or (iv) the assignment or subletting would materially increase the burden on the Building services or the number of people occupying the Premises.

15.3 Excess Consideration. If Landlord consents to the assignment or sublease, Landlord shall be entitled to receive as additional Rent hereunder fifty percent (50%) of any consideration paid by the Transferee for the

assignment or sublease and, in the case of a sublease, fifty percent (50%) of the excess of the rent and other consideration payable by the subtenant over the amount of Base Rent and Operating Cost Payments payable hereunder applicable to the subleased space.

15.4 No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting, and the Transferee shall be jointly and severally liable with Tenant for the payment of Rent (or that portion applicable to the subleased space in the case of a sublease) and for the performance of all other terms and provisions of the Lease. The consent by Landlord to any assignment or subletting shall not relieve Tenant and any such Transferee from the obligation to obtain Landlord's express written consent to any subsequent assignment or subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

15.5 Attorneys' Fees. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with reviewing any proposed assignment or sublease (not to exceed \$3,000.00).

15.6 Transfer of Ownership Interest. Intentionally Deleted

15.7 Effectiveness of Transfer. No permitted assignment by Tenant shall be effective until Landlord has received a counterpart of the assignment and an instrument in which the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of assignment. The voluntary, involuntary or other surrender of this Lease by Tenant, or a mutual cancellation by Landlord and Tenant, shall not work a merger, and any such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any or all of such subleases.

15.8 Landlord's Right to Space. Notwithstanding any of the above provisions of this Paragraph 15 to the contrary, if Tenant notifies Landlord that it desires to assign this Lease or sublet all or any part of the Premises, Landlord, in lieu of consenting to such assignment or sublease, may elect to terminate this Lease (in the case of an assignment or a sublease of the entire Premises), or to terminate this Lease as it relates to the space proposed to be subleased by Tenant (in the case of a sublease of less than the entire Premises). In such event, this Lease (or portion thereof) will terminate on the date the assignment or sublease was to be effective, and Landlord may lease such space to any party, including the prospective Transferee identified by Tenant.

15.9 No Net Profits Leases. Intentionally Deleted

15.10 Permitted Assignment or Sublease. Notwithstanding any provision to the contrary in Paragraph 15, Tenant, so long as Tenant notifies Landlord in writing at least thirty (30) days prior to any such sublease or assignment and so long as Tenant provides Landlord with a fully executed copy of any such sublease or assignment, shall not be required to obtain Landlord's consent to an assignment of the Lease or sublease of the Premises to an entity which controls, is controlled by or is under common control with Tenant or which succeeds to substantially all of Tenant's assets and business by merger, reorganization or purchase. All other such subparagraphs of Paragraph 15 shall apply to this Paragraph 15.10 and shall remain in effect.

16. SUBORDINATION

16.1 Subordination. Tenant agrees that upon execution and delivery of a Subordination and Non-Disturbance Agreement in a form reasonably acceptable to Tenant and executed by any mortgagee or holder of a first deed of trust or ground lessor of the Complex this Lease, at Landlord's option, shall be subject and subordinate to all ground or underlying leases which may hereafter be executed affecting all or any part of the Project, and to the lien of any first mortgages or first deeds of trust (each a "First Mortgage") in any amount or amounts whatsoever now or hereafter placed on or against the Land or Building, Landlord's interest or estate therein, or any ground or underlying lease, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. Notwithstanding the foregoing, if any mortgagee or trustee of a First Mortgage or ground lessor shall elect to have this Lease prior to the lien of its First Mortgage or ground lease, and shall give written notice thereof to Tenant, this Lease shall

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Landlord (JC)

be deemed prior to such First Mortgage or ground lease, whether this Lease is dated prior to or subsequent to the date of said First Mortgage or ground lease or the date of the recording thereof.

16.2 Junior Liens. Tenant hereby agrees that this Lease shall be superior to the lien of any present or future mortgages or deeds of trust that are junior to any First Mortgage.

16.3 Subordination Agreements. Not more than once in any twelve (12) month period during the Lease term, if this Lease is subordinate to a First Mortgage or a ground lease, Tenant will execute and deliver to Landlord within ten (10) days of written demand from Landlord and without charge therefor, such further commercially reasonable instruments evidencing the subordination of this Lease to any First Mortgage or ground lease, or the subordination of any First Mortgage or ground lease to such Lease, pursuant to Paragraph 16.1, as the case may be, as may be required by Landlord.

16.4 Attornment. If this Project is transferred to any purchaser pursuant to or in lieu of proceedings to enforce any mortgage, deed of trust or ground lease (collectively, "Encumbrance"), and this Lease is either prior to such Encumbrance or the mortgagee or trustee of a First Mortgage or ground lessor of the Project elects to have this Lease survive such transfer, Tenant shall attorn to such purchaser and recognize such purchaser as the landlord under this Lease, and this Lease shall continue as a direct lease between such purchaser and Tenant.

17. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and performing its other covenants and conditions under this Lease, Tenant shall have the quiet possession of the Premises for the term of this Lease as against any persons or entities lawfully claiming by, through or under Landlord, subject, however, to the terms of this Lease and of any Encumbrance.

18. DEFAULT; REMEDIES

18.1 Default. The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

- (a) Tenant fails to pay Rent when due and such failure continues for five (5) days after Landlord's written notice that the same is due;
- (b) Tenant fails to deliver any subordination agreement requested by Landlord within the period described in Paragraph 16 and such failure continues for five (5) days after Landlord's second written notice that the same is due;
- (c) Tenant fails to deliver any estoppel certificate requested by Landlord within the period described in Paragraph 22 and such failure continues for five (5) days after Landlord's second written notice that the same is due;
- (d) Tenant Transfers or attempts to Transfer this Lease without complying with the provisions of Paragraph 15;
- (e) Tenant fails to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for twenty (20) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said twenty (20) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion;
- (f) Tenant abandons the Premises and fails to pay Rent; or
- (g) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition seeking relief under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver

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Tenant (MB)
Landlord (JC)

to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

18.2 Remedies. Upon the occurrence of an Event of Default, Landlord may, at any time thereafter exercise the following remedies, which shall be in addition to any other rights or remedies now or hereafter available to Landlord at law or in equity:

(a) Maintain this Lease in full force and effect and recover Rent as it becomes due, without terminating Tenant's right to possession irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to relet the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such reletting occurs, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting and other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's personal property, trade fixtures, alterations and leasehold improvements; (ii) second, to the payment of Rent then due and payable; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the Rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

(b) Terminate Tenant's right to possession of the Premises at any time by written notice to Tenant, in which case Tenant shall immediately surrender possession of the Premises to Landlord. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's personal property and trade fixtures, its acceptance of keys to the Premises from Tenant or its exercise of any other rights and remedies under this Paragraph 18.2, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises. If Landlord terminates Tenant's right to possession in writing, Landlord shall be entitled to recover from Tenant all damages as provided in California Civil Code Section 1951.2 or any other applicable existing or future law, ordinance or regulation providing for recovery of damages for such breach, including but not limited to the following:

(1) The reasonable cost of recovering the Premises; plus

(2) The reasonable cost of removing Tenant's alterations, trade fixtures and Above-Standard Improvements; plus

(3) All unpaid Rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in subparagraph (a) above, together with interest at the Default Rate, on such sums from the date such Rent is due and payable until the date of the award of damages; plus

(4) The amount by which the Rent which would be payable by Tenant hereunder, including Operating Cost Payments as reasonably estimated by Landlord, from the date of termination until the date of the award of damages exceeds the amount of such rental loss Tenant proves could have been reasonably avoided, together with interest at the Default Rate on such sums from the date such Rent is due and payable until the date of the award of damages; plus

Please Initial
Tenant (MB)
Landlord (JC)

(5) The amount by which the Rent which would be payable by Tenant hereunder, including Operating Cost Payments, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve Bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(6) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

(c) During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's personal property, and trade fixtures from the Premises. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any Rent then due, after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord in its sole discretion deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, preparation for and conducting such sale, and attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in subparagraph (a) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's reentering and taking possession of the Premises or removing and storing Tenant's personal property pursuant to this Paragraph, and Tenant shall hold Landlord harmless from and against any loss, cost or damage resulting from any such act. No reentry by Landlord shall constitute or be construed as a forcible entry by Landlord.

(d) Landlord may cure the Event of Default at Tenant's expense. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Default Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant.

18.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of Base Rent or Operating Costs Payments is not received by Landlord or Landlord's designee within five (5) days of the date such amount shall be due, or if any installment of other Rent is not received by Landlord or Landlord's designee on or before the date such amount shall be due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

18.4 Interest. In addition to the late charges referred to above which are intended to defray Landlord's costs resulting from late payments, any late payment of Rent shall, at Landlord's option, bear interest from the due date of any such payment to the date the same is paid at the Default Rate, provided, however, that if Landlord imposes a late charge on any overdue payment, such overdue payment shall not begin to bear interest under this Paragraph 18.4 until thirty (30) days after the due date thereof.

18.5 Default by Landlord.

(a) Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to any mortgagee, trustee or ground lessor of the Project (each a "Holder") provided that the name and address has been furnished to Tenant in accordance with Paragraph 25.14, specifying that Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion ("Landlord Default").

Please Initial
Tenant (MB)
Landlord (JC)

(b) In the event of a Landlord Default, Tenant, at its option, without further notice or demand, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein:

- (1) to pursue the remedy of specific performance; and
- (2) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease.

(c) Nothing in Paragraph 18.5(b) shall relieve Landlord from its obligations hereunder, nor shall Paragraph 18.5(b) be construed to obligate Tenant to perform Landlord's repair obligations. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately, Tenant may immediately undertake such repairs and Landlord shall reimburse Tenant for its actual costs within thirty (30) days from receipt of invoices for any such repair.

19. PARKING

Tenant and Tenant's employees, invitees and customers shall have the right to use the parking areas of the Building at a ratio of three (3) spaces per 1,000 square feet of the Premises and subject to such regulations and charges as Landlord shall reasonably adopt from time to time, and subject to the right of Landlord to restrict the use by Tenant and Tenant's Representatives when in the reasonable judgment of Landlord such use is excessive for the parking area in relationship to the reasonable use required by other Tenants. If Landlord becomes obligated under applicable laws or regulations or any other directive of any governmental or quasi-governmental authority to pay or assess fees or charges for parking in the Building's parking area, Tenant shall pay such amounts to Landlord as additional Rent.

20. RELOCATION OF PREMISES, Intentionally Deleted

21. MORTGAGEE PROTECTION

Tenant agrees to give any Holder, by registered mail, a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing (by way of written notice delivered to Tenant in accordance with Paragraph 25.14) of the address of such Holder. If Landlord shall have failed to cure such default within the time period set forth in Paragraph 18.5 the Holder shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be reasonably necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Encumbrance, if necessary to effect such cure), and this Lease shall not be terminated so long as such remedies are being diligently pursued.

22. ESTOPPEL CERTIFICATES

(a) Upon ten (10) days' written notice from Landlord, Tenant shall execute and deliver to Landlord, in form provided by or satisfactory to Landlord, a commercially reasonable certificate stating that this Lease is in full force and effect, describing any amendments or modifications hereto, acknowledging that this Lease is subordinate or prior, as the case may be, to any Encumbrance and stating any other information Landlord may reasonably request, including the term of this Lease, the monthly Base Rent, the estimated Operating Cost Payments, the date to which Rent has been paid, the amount of any security deposit or prepaid Rent, whether either party hereto is in default under the terms of the Lease, whether Landlord has completed its construction obligations hereunder and any other information reasonably requested by Landlord. Any person or entity purchasing, acquiring an interest in or extending financing with respect to the Project shall be entitled to rely upon any such certificate.

(b) If Landlord desires to finance or refinance the Building, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender unless Tenant's financial statements are publically available. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord and its agents and lenders in confidence and shall be used only for the purposes herein set forth. Notwithstanding anything to the contrary in this Lease, upon ten (10) days' written notice from Tenant, Landlord shall provide to Tenant a commercially reasonable

certificate containing reasonably requested factual statements executed by Landlord in favor of Tenant or any party extending credit to Tenant.

23. SURRENDER, HOLDING OVER

23.1 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in its condition on the Commencement Date, except for reasonable wear and tear and damage from casualty or condemnation; provided, however, that prior to the expiration or termination of this Lease Tenant shall remove from the Premises all Tenant’s personal property, trade fixtures, alterations and other Above-Standard Improvements that Tenant has the right or is required by Landlord to remove under the provisions of this Lease. To the extent installed by Tenant, Tenant shall also be responsible for removal of all telephone cables and wires, CRT, data and telephone equipment, and any other form of cabling in the Premises. If any of such removal is not completed at the expiration or termination of this Lease, Landlord may remove the same at Tenant’s expense. Any damage to the Premises or the Building caused by such removal shall be repaired promptly by Tenant or, if Tenant fails to do so, Landlord may do so at Tenant’s expense, in which event Tenant shall immediately reimburse Landlord for such expenses together with interest at the Default rate until so paid. Tenant’s obligations under this Paragraph 23.1 shall survive the expiration or termination of this Lease. Upon expiration or termination of this Lease or of Tenant’s possession, Tenant shall surrender all keys to the Premises or any other part of the Building and shall make known to Landlord the combination of locks on all safes, cabinets and vaults that may be located in the Premises.

23.2 Holding Over. If Tenant remains in possession of the Premises after the expiration or termination of this Lease, Tenant’s continued possession shall be on the basis of a tenancy at the sufferance of Landlord, and Tenant shall continue to comply with or perform all the terms and obligations of the Tenant under this Lease, except that the Base Rent during Tenant’s holding over shall be one hundred fifty percent (150%) of the monthly Base Rent payable in the last month prior to the termination or expiration hereof. Tenant shall indemnify and hold Landlord harmless from and against all claims, liability, damages, costs or expenses, including reasonable attorneys fees and costs of defending the same, incurred by Landlord and arising directly from Tenant’s failure to timely surrender the Premises, including Landlord’s damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises by reason of such failure to timely surrender the Premises; but in no event shall Tenant be liable for indirect or consequential damages.

24. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of Hazardous Materials (as defined below) in violation of any Legal Requirements. Tenant shall not allow the storage or use of such substances or materials in violation of any Legal Requirement the storage and use of such substances or materials, nor allow to be brought into the Project any such materials or substances except to use in the ordinary course of Tenant’s business, and then only after written notice is given to Landlord of the identity of such substances or materials. “Hazardous Materials” means any substances, materials or wastes currently or in the future deemed defined in any Legal Requirement as “hazardous substance”, “toxic substances”, “contaminants”, “pollutants” or words of similar import. For the avoidance of doubt, Hazardous Materials shall include those described in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever notify Tenant that such lender or governmental agency requires testing to ascertain whether or not there has been any release of Hazardous Materials on account of Tenant’s use or occupancy of the Premises, then Tenant shall promptly notify Landlord of the same, and the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to the Premises. Landlord shall have the right, but not the obligation, to enter the Premises at any reasonable time to perform any required testing, to confirm Tenant’s compliance with the provisions of this Paragraph, and to perform Tenant’s obligations under this Paragraph if Tenant has failed to do so. In addition, Tenant shall execute affidavits, representations and the like from time to time (but not more often than once every twelve (12) months) at Landlord’s request concerning Tenant’s actual knowledge regarding the presence of Hazardous Materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of Hazardous Materials on the Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the lease term. Notwithstanding the foregoing, Tenant shall be permitted to use Hazardous Materials customarily used in the ordinary course of office work.

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Tenant (MB)
Landlord (JC)

24.1 Landlord's Warranty/Hazardous Materials. Landlord represents and warrants to Tenant that Landlord has no knowledge and has received no notice of any Hazardous Materials; neither the Premises, the Common Areas, the Building or the Complex is contaminated with or contains any Hazardous Materials or materials as of the Commencement Date. Landlord shall indemnify, defend, protect and hold Tenant harmless from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs of expenses (including reasonable attorney's fees) arising as a result of any Hazardous Materials which exist within the Complex, Common Areas, Building or Premises before or after the Commencement Date which are not brought onto the Premises, Building or Complex by Tenant.

25. MISCELLANEOUS

25.1 Attornment. Upon any transfer by Landlord of Landlord's interest in the Premises or the Building (other than a transfer for security purposes only), Tenant agrees to attorn to any transferee or assignee of Landlord, provided that such transferee assumes in writing the obligations of Landlord under this Lease.

25.2 Captions; Attachments; Defined Terms

(a) The captions of the paragraphs of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any paragraph of this Lease. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. When required by the contents of this Lease, the singular includes the plural. Wherever the term "including" is used in this Lease, it shall be interpreted as meaning "including, but not limited to," the matter or matters thereafter enumerated.

(b) Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed to constitute part of this Lease and are incorporated herein.

(c) The words "Landlord" and "Tenant" as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. The obligations of this Lease as to a Tenant which consists of husband and wife shall extend individually to their sole and separate property as well as community property.

25.3 Entire Agreement. This Lease along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises, and this Lease and the exhibits and attachments may be altered, amended or revoked only by instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

25.4 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

25.5 Costs of Suit

(a) If Tenant or Landlord brings any action for the enforcement or interpretation of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees. The "prevailing party" will be determined by the court before whom the action was brought based upon an assessment of which party's major arguments or positions taken in the suit or proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision.

(b) Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or material furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant

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Tenant (MB)
Landlord (JC)

covenants to save and hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof, and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in or in connection with such litigation.

25.6 Time; Joint and Several Liability. Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or in equity.

25.7 Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by Tenant, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

25.8 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

25.9 Force Majeure. In the event Landlord or Tenant is delayed, interrupted or prevented from performing any of its obligations under this Lease (except the obligation to pay money to the other party hereto), including Landlord's obligations under the Work Letter, and such delay, interruption or prevention is due to fire, act of God, governmental act, strike, labor dispute, unavailability of materials or any other cause outside the reasonable control of Landlord or Tenant, as applicable (each a "Force Majeure Event"), then the time for performance of the affected obligations of Landlord or Tenant, as applicable, shall be extended for a period equivalent to the period of such delay, interruption or prevention. With respect to obligations of Landlord or Tenant required to be performed prior to the Commencement Date, each day of delay under this Paragraph 25.9 shall result in one (1) Scheduled Commencement Adjustment Day.

25.10 Landlord's Liability. The term "Landlord", as used in this Lease, shall mean only the owner or owners of the Project at the time in question. Notwithstanding any other term or provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord's interest in the Project as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord or against Landlord's stockholders, directors, officers or partners on account of any of Landlord's obligations or actions under this Lease. In addition, in the event of any conveyance of title to the Building or the Project, then from and after the date of such conveyance, Landlord shall be relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance. Upon any conveyance of title to the Building or the Project, the grantee or transferee, by accepting such conveyance, shall be deemed to have assumed Landlord's obligations to be performed under this Lease from and after the date of transfer, subject to the limitations on liability set forth above in this Paragraph 25.10. In no event will Landlord or Tenant be liable under this Lease for consequential or indirect damages or loss of profits.

25.11 Consents and Approvals. Wherever the consent, approval, judgment or determination of Landlord is required or permitted under this Lease, Landlord may exercise its good faith business judgment in granting or withholding such consent or approval or in making such judgment or determination without reference to any extrinsic standard of reasonableness, unless the provision providing for such consent, approval, judgment or determination specifies that Landlord's consent or approval is not to be unreasonably withheld, or that such judgment or determination is to be reasonable, or otherwise specifies the standards under which Landlord may withhold its consent.

The review and/or approval by Landlord of any item to be reviewed or approved by Landlord under the terms of this Lease or any Exhibits hereto shall not impose upon Landlord any liability for accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use. Any such review or approval

is for the sole purpose of protecting Landlord's interest in the Project under this Lease, and no third parties, including Tenant or Tenant's Representatives or any person or entity claiming by, through or under Tenant, shall have any rights hereunder.

25.12 Signs. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Building, any signs, notices, drapes, shutters, blinds or displays of any type without the prior consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall include Tenant in the Building directories located in the Building. In addition Tenant shall have signage rights equivalent to similarly situated tenants of the Building on the Building monument sign and the entry doors of the Premises. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof, exterior of the Building, and in any area of the Building not leased to Tenant such signs, notices, displays and similar items as Landlord deems appropriate in the proper operation of the Building and consistent with the operation of a Class A office building.

25.13 Rules and Regulations. Tenant and Tenant's Representatives shall observe and comply fully and faithfully with all reasonable and nondiscriminatory rules and regulations adopted by Landlord for the care, protection, cleanliness and operation of the Building and its tenants including those annexed to this Lease as Exhibit D and any reasonable and nondiscriminatory modification or addition thereto adopted by Landlord, provided Landlord shall give written notice thereof to Tenant. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Building of any of said rules and regulations. In the event of any conflict between the rules and regulations (whether annexed hereto as Exhibit D or later adopted) and this Lease, this Lease shall prevail.

25.14 Notices. All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be personally delivered, sent in the United States mail, certified or registered, postage prepaid, or sent by private messenger, addressed to the Landlord or Tenant respectively at the addresses set forth below:

Landlord:
Alexander Properties Company
One Annabel Lane, Suite 201
San Ramon, CA 94583

Tenant:
five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

or such other address as shall be established by notice to the other pursuant to this paragraph. Notices personally delivered or delivered by private messenger shall be deemed delivered when received at the address for such party designated pursuant to this paragraph. Notices sent by mail shall be deemed delivered on the earlier of the third business day following deposit thereof with the United States Postal Service or the delivery date shown on the return receipt prepared in connection therewith. Notwithstanding the foregoing, Landlord shall have the right, upon notice to Tenant thereof, to eliminate personal delivery as an effective means of notice hereunder.

25.15 Authority. Tenant represents and warrants that (i) it is a duly organized corporation and validly existing entity, (ii) the persons signing on behalf of such corporation are duly authorized to execute and deliver this Lease on behalf of Tenant and (iii) this Lease is binding upon Tenant in accordance with its terms. Landlord represents and warrants that (i) it is a duly organized partnership and validly existing entity, (ii) the persons signing on behalf of such partnership are duly authorized to execute and deliver this Lease on behalf of Landlord and (iii) this Lease is binding upon Landlord in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the board of directors of said corporation authorizing or ratifying the execution of this Lease.

25.16 Lease Guaranty. Intentionally Deleted

25.17 Brokers. Tenant and Landlord warrant and represent to each other that in the negotiating or making of this Lease neither the representing party nor anyone acting on its behalf has dealt with any real estate broker or finder who might be entitled to a fee or commission for this Lease other than Colliers International, whose commission is to be paid by Landlord pursuant to a separate agreement. Tenant and Landlord agree to indemnify and hold each other

harmless from any claim or claims, including costs, expenses and attorney's fees incurred by indemnified party asserted by any other broker or finder for a fee or commission based upon any dealings with or statements made by the indemnifying party or its agents, employees or representatives.

25.18 Reserved Rights. Landlord retains and shall have the rights set forth below, exercisable without liability to Tenant for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set-off or abatement of Rent, to reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, layout and nature of the common areas and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of common areas. Notwithstanding the foregoing, in the exercise of the aforesaid reserved rights, Landlord (i) shall not at anytime unreasonably interfere with Tenant's use, occupancy or access to the Premises or parking rights granted hereunder; (ii) shall not materially reduce Tenant's rights under this Lease; (iii) shall not reduce the level of any service provided by Landlord hereunder; (iv) shall provide Tenant reasonable advance written notice thereof; and (v) shall not increase Tenant's obligations hereunder (including any obligation to pay rent).

25.19 Tenant's Taxes. Tenant shall pay before delinquency (whether levied on Landlord or Tenant), any and all taxes assessed upon or measured by (i) Tenant's equipment, furniture, fixtures and other personal property located in the Premises, (ii) any improvements or alterations made to the Premises prior to or during the term of this Lease paid for by Tenant ("Above-Standard Improvements"), or (iii) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. For the purpose of determining said amounts, figures supplied by the County Assessor as to the amount so assessed shall be conclusive. Tenant shall comply with the provisions of any law, ordinance or rule of the taxing authorities which require Tenant to file a report of Tenant's property located in the Premises.

25.20 Letter of Credit.

(a) Upon the execution of this Lease, Tenant shall deliver to Landlord a standby, at sight, clean, irrevocable, non-documentary and unconditional Letter of Credit issued by and drawable upon a money-center bank (a bank which accepts deposits, maintains accounts, has a local San Francisco Bay Area office and which will negotiate a letter of credit) (hereinafter referred to as the "Issuing Bank"), and has combined capital, surplus and undivided profits of not less than **FIVE HUNDRED MILLION AND NO/100 DOLLARS (\$500,000,000.00)**, which Letter of Credit (i) shall name Landlord as beneficiary, (ii) be in the amount of **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$700,000.00)**, (iii) have a term of not less than three (3) years, (iv) permit multiple drawings, (v) be fully transferable by Landlord without the payment of any fees or charges, (vi) require that any draw on the Letter of Credit be made only upon receipt by the issuing Bank of a written letter from landlord certifying that an Event of Default has occurred and is then continuing, and (vii) provide that it is governed by the uniform Customs and Practice for Documentary Credits (1993 revisions), and otherwise be in form and content reasonably satisfactory to Landlord. The Letter of Credit shall have a term expiration date or be renewed annually for a period of three (3) years from the Commencement Date. If upon any transfer, any fees or charges shall be so imposed, then such fees or charges shall be payable solely by Tenant and the Letter of Credit shall so specify. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter, unless the Issuing Bank sends notice (the "Non-Renewal Notice") to Landlord by certified mail, return receipt requested, not less than forty-five (45) days next preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. Landlord shall have the right, after its receipt of the Non-Renewal Notice and until the expiration of the Letter of Credit to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall hold the proceeds of the Letter of Credit pursuant to the terms of this Paragraph 25.20 as cash security deposit.

(b) If an Event of Default in respect of any of the terms, covenants or conditions of this Lease, including the payment of rent, Landlord may apply or retain the whole or any part of the cash security so deposited or may notify the Issuing Bank and thereupon receive all or a portion of the monies represented by the Letter of Credit and hold such proceeds pursuant to the terms of this Paragraph 25.20 as a cash security deposit. The Landlord may use or apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any Monthly Base Rent or any other sums due as a result of the Event of Default including (a) any sum which Landlord may expend or may be required to expend by reason of Tenant's Event of Default in respect of any of the terms, covenants or conditions of this Lease, and/or (b) and damages or deficiency in the reletting of the Premises, whether such damages

Please Initial
Tenant (MB)
Landlord (JC)

or deficiency accrue or accrues before or after summary proceedings or other reentry by Landlord. Drawing upon the Letter of Credit shall be conditioned upon the presentation to the Issuing Bank of a certified statement executed by an authorized member, officer or general partner of Landlord that an Event of Default has occurred and is continuing under the Lease and Landlord is exercising its right to draw upon the Letter of Credit. If it is necessary for Landlord to apply or retain any part of the Letter of Credit, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$700,000.00)** on hand at all times until (but not including) the **thirty-seventh (37th)** full calendar month of the term of this Lease. If Tenant shall fully and faithfully comply with all of the material terms, covenants and conditions of this Lease, the Letter of Credit, shall be returned to Tenant on the first (1st) day of the thirty-seventh (37th) full calendar month of the Lease. In the event of a sale of the real property or the Building or a master leasing of the Building, Landlord shall have the right to transfer the Letter of Credit, and within five (5) business days after notice of such sale or leasing, Tenant, at its sole cost, shall arrange for the transfer of the Letter of Credit to the new landlord, as designated by Landlord in the foregoing notice or have the Letter of Credit reissued in the name of the new landlord and Landlord shall thereupon be released by Tenant from all liability for the return of such security, provided that the new landlord assumes thereupon in writing the obligations of Landlord hereunder. Upon such assumption by new landlord, Tenant shall look solely to the new landlord for the return of the Letter of Credit and the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord. Tenant further covenants and agrees that it shall not assign or encumber or attempt to assign or encumber the Letter of Credit designated herein as security and that neither Landlord nor its successors or assignees shall be bound by any such agreement, encumbrances, attempted assignment or attempted encumbrance.

25.21 Right to Terminate. Landlord hereby grants Tenant with a one (1) time right to terminate this Lease (the “Right to Terminate”) effective on the last day of the forty-eighth (48th) full calendar month of the term of this Lease (the “Termination Effective Date”). In the event Tenant elects to exercise this Right to Terminate, Tenant shall notify Landlord in writing no sooner than **thirteen (13)** months and no later than **twelve (12)** months prior to the Termination Effective Date. In the event of such notification Tenant shall pay Landlord a Termination Fee equal to \$25.00 per rentable square foot of the Premises, with such fee being due and payable in full concurrently with the delivery of Tenant’s notice that it is exercising its Right to Terminate. If said payment is not made within this time frame, Tenant’s notice hereunder shall be deemed void.

25.22 Right of First Refusal. Landlord hereby grants Tenant a right of first refusal to lease (the “Right of First Refusal”) any space in excess of 5,000 rentable square feet that is available as of the date this Lease has been fully executed or becomes available during the term of this Lease, the “Refusal Space”. If and at such time as Landlord has received an expression of interest by a third party in leasing the Refusal Space, Landlord shall notify Tenant in writing of such interest, stating the location, the rentable area, and the basic business terms under which Landlord proposes to lease the Refusal Space”, each a “First Refusal Notice”. Tenant shall have seven (7) days after receipt of a Refusal Notice to deliver to Landlord, in writing, its notice that it is exercising its rights hereunder, the “Exercise Notice” on the terms set forth in the First Refusal Notice. Notwithstanding the foregoing, in the event Tenant delivers an Exercise Notice, and Tenant has at least four (4) years remaining on the term of this Lease, then notwithstanding the terms of the First Refusal Notice, Landlord shall provide Tenant with suite improvements comparable to those delivered to Tenant as of the Commencement Date (e.g. similar carpet, quantities on a pro rata basis of walls, doors, hardware, lighting, electrical outlets and finishes), the rate of Base Rent shall be \$26.00 per rentable square foot per annum, there shall be no free rent and the expiration date for the Refusal Space shall be coterminous with the expiration date of this Lease. In the event Tenant delivers an Exercise Notice and there is less than four (4) years remaining on the term of this Lease then all of the terms and conditions in the First Refusal Notice shall be applicable on any Exercise Notice delivered by Tenant.

If Tenant does not timely deliver an Exercise Notice, then Landlord shall be free to lease the Refusal Space to another party, provided, however, if Landlord fails to lease the Refusal Space within six (6) months of the delivery of the First Refusal Notice to Tenant or the economic terms stated in the First Refusal Notice improve by a value of seven percent (7%) or more in favor of the proposed tenant, then Landlord shall reoffer the Refusal Space to Tenant by sending another First Refusal Notice to Tenant stating the then-current terms.

Landlord and Tenant have executed this Lease on the date and year set forth at the beginning of this Lease.

Landlord:
Alexander Properties Company,
a California limited partnership

By: /s/ Jim Clancy

Title: CFO

By: /s/ Steve Barale

Title: Controller

Tenant:
five9, Inc.
a Delaware corporation

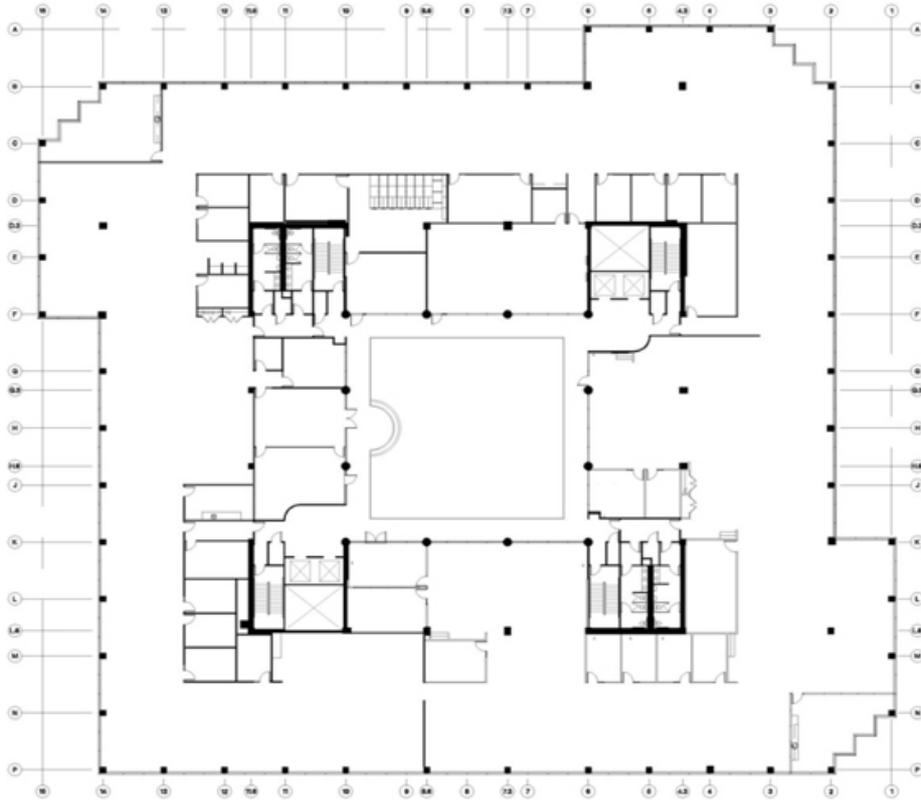
By: /s/ Michael Burkland

Title: CEO

By: _____

Title: _____

EXHIBIT A



46,414 RSF
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

Please Initial
Tenant (MB)
Landlord (JC)

EXHIBIT B

WORK LETTER

ATTACHED TO AND FORMING A PART OF
LEASE AGREEMENT

DATED AS OF **DECEMBER 16, 2011**

BETWEEN

ALEXANDER PROPERTIES COMPANY, AS LANDLORD,

AND

FIVE9, AS TENANT ("LEASE")

2. Suite Improvements. Landlord shall in a good and workmanlike manner and in compliance with all then-current Legal Requirements construct and install in the Premises the improvements and fixtures described in this Exhibit B and as shown on Exhibit C (the "Suite Improvements"). Improvements consisting of the type and materials (or alternates approved by Landlord), which approval shall not be unreasonably withheld, described on Schedule 1 attached hereto as Exhibit B are referred to herein as "Building Standard Materials". All Suite Improvements other than (a) "Building Shell" (as described in Schedule 1) or (b) those that utilize materials in addition to, substitution for or modification of the Building Standard Materials are called herein "Above-Standard Suite Improvements".

2.1 Plans.

(a) On or before **December 14, 2011**, Tenant will submit to Landlord a plan showing details and specifications sufficient to permit Landlord's contractor and subcontractors to price and construct the Suite Improvements. Such plans shall hereinafter be referred to as the Construction Drawings.

2.2 Construction. Upon Landlord's receipt of the Construction Drawings, approved by Tenant, Landlord shall proceed with reasonable diligence to cause the Suite Improvements to be Substantially Completed on or prior to the Scheduled Commencement Date. The Suite Improvements shall be deemed to be "Substantially Completed" when they have been completed in accordance with the Final Construction Drawings except for finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list". (The definition of Substantially Completed shall also define the terms "Substantial Completion" and "Substantially Complete.") Punch list items shall be corrected by Landlord within thirty (30) days of Tenant's occupancy.

Please Initial

Tenant (MB)

Landlord (JC)

2.3 Cost of Suite Improvements. See Paragraph 1 of the Lease entitled PREMISES.

2.4 Landlord's Profit and Overhead. Intentionally Deleted

2.5 Tenant Delays.

Tenant shall be responsible for, and shall pay to Landlord, any and all costs and expenses incurred by Landlord in connection with any delay in the commencement or completion of any Suite Improvements and any increase in the cost of Suite Improvements (whether or not Above-Standard Suite Improvements) caused by (i) Tenant's failure to deliver the items described above within the time periods required above, (ii) any changes or modifications in the work requested by Tenant following approval of the Construction Drawings, or (iii) any other delay requested or caused by Tenant (collectively, "Tenant Delays"). Notwithstanding the foregoing, no Tenant Delay shall be deemed to have occurred unless and until Landlord gives written notice to Tenant specifying the action, inaction or occurrence constituting the Tenant Delay and the number of days of such Tenant Delay ("Tenant Delay Notice"). Notwithstanding anything to the contrary, each day of Tenant Delay will result in one (1) Scheduled Commencement Adjustment Day. In the event of a Tenant Delay, Landlord's obligation to deliver Substantial Completion may, at Landlord's option, be extended by one (1) day for each day of a Tenant Delay and Rent shall commence on the scheduled Commencement Date or as the case may be Free Rent will be reduced on a day for day basis for each day of Tenant Delay.

3. Commencement of Term. Upon Substantial Completion of the Suite Improvements, Landlord shall deliver possession of the Premises to Tenant. The Commencement Date will be the earlier of Substantial Completion of the Suite Improvements or the date Landlord would have completed the Premises and tendered the Premises to Tenant if Substantial Completion had not been delayed by the number of days specified in any and all Tenant Delay Notices given by Landlord as described in Paragraph 1.5.

4. Access to Premises. Landlord, at its reasonable discretion, shall allow Tenant or Tenant's Representatives to enter the Premises prior to the Substantial Completion to permit Tenant to make the Premises ready for its use and occupancy; provided, however, that prior to such entry of the Premises, Tenant shall provide evidence reasonably satisfactory to Landlord that Tenant's insurance, as described in Paragraph 12 of the Lease, shall be in effect as of the time of such entry. Such permission may be revoked at any time upon twenty-four (24) hours written notice, and Tenant or its Representatives shall not unreasonably interfere with Landlord or Landlord's contractor in completing the Building or the Suite Improvements. Tenant agrees that Landlord shall not be liable in any way for any injury, loss or damage which may occur to any of Tenant's property placed upon or installed in the Premises prior to the Commencement Date, the same being at Tenant's sole risk, and Tenant shall be liable for all injury, loss or damage to persons or property arising as a result of such entry of the Premises by Tenant or its Representatives.

Please Initial

Tenant (MB)
Landlord (JC)

5. Ownership of Suite Improvements. All Suite Improvements, whether or not Above-Standard Suite Improvements, and whether installed by Landlord or Tenant, shall become a part of the Premises, shall be the Property of Landlord and, unless Landlord elects otherwise as provided in the Lease, shall be surrendered by Tenant with the Premises, without any compensation to Tenant, at the expiration or termination of the Lease.

Please Initial

Tenant (MB)

Landlord (JC)

SCHEDULE 1 TO EXHIBIT B

BUILDING SHELL

- All core areas, elevator lobbies and restrooms complete.
- Main HVAC loop in place ready to receive mixing boxes for zoning.
- Main fire sprinkler risers and grid in place ready for drop down.
- After receipt of Tenant's approved Construction Drawings, all perimeter walls sheetrocked and ready for finish.
- Tenant side of core partitions are to be fire taped.
- Board over window heads to be finish taped.
- Column Furring at exterior columns is to be finish taped.
- Electrical service to closets on floor.
- Telephone sleeve to closets on floor.

BUILDING STANDARD MATERIALS

Electrical and Lighting

- Prismatic fixtures with dual switches.
- Indirect lighting is an alternate and must be approved by Landlord.

HVAC — (Typical installation per Tenant's Plan)

- One zone per 800 usable square feet.
- Individual pneumatic thermostats per 800 usable square feet.

Please Initial

Tenant (MB)

Landlord (JC)

Fire Sprinklers -- (Typical installation per Tenant's Plan)

- One 165 degree rate, semi-recessed sprinkler head per 144 usable square feet.

Partitions and Doors

- 5/8-inch drywall on 2-1/2 inch steel studs with smooth finish.
- Solid core oak doors 36" x 96".
- Aluminum door jambs.
- Schlage "D" locks and latchsets.

Paint

- Kelly Moore or equal.

Ceiling Assembly

- USG: Aurora Reveal Tile.

Grid

- Donn DXL

Carpet, Tile and Base

- Carpet: 38 oz. Bigelow or carpet tile of equal cost.
- Armstrong Imperial Modern Excelon Tile or equal.
- 3/8 inch nylon composition pad.
- 4 inch rubber top set base or equal.

Window Covering

- Mini Blinds.

Please Initial

Tenant (MB)

Landlord (JC)

EXHIBIT C

SPACE PLAN

TO BE PROVIDED

Please Initial

Tenant (MB)

Landlord (JC)

EXHIBIT D

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed, affixed or otherwise displayed by Tenant on or to any part of the outside or inside of the Building or the Premises without the prior written consent of Landlord and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises; provided, however that Tenant may request Landlord to furnish and install a building standard window covering at all exterior windows at Tenant's cost. Tenant shall not install any radio or television antenna, loud speaker, or other device on or about the roof area or exterior walls of the Building.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. The halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to the common areas by persons with whom Tenant normally deals in the ordinary course of its business unless such persons are engaged in illegal activities. In no event may Tenant go upon the roof of the Building.

3. Landlord will furnish Tenant with 50 keys to the Premises, free of charge. Additional keys shall be obtained only from Landlord and Landlord may make a reasonable charge for such additional keys. No additional locking devices shall be installed in the Premises by Tenant, nor shall any locking devices be changed or altered in any respect without the prior written consent of Landlord. All locks installed in the Premises excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to Landlord), shall be keyed to the Building master key system. Landlord may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Premises.

4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be deposited therein and Tenant shall bear the expense of any breakage, stoppage or damage resulting from its violation of this rule.

5. Tenant shall not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings or installation of wallpaper or paint shall be permitted except with the prior written consent of the Landlord and as the Landlord may direct.

6. Tenant may use the freight elevators in accordance with such reasonable scheduling as Landlord shall deem appropriate. Tenant shall schedule with Landlord, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Building which moving shall occur after 5:30 p.m. or on weekend days if required by Landlord; and Tenant shall reimburse Landlord upon demand for any additional security or other charges incurred by Landlord as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Building must be acceptable to Landlord. The floors, corners and walls of elevators and corridors used for moving of equipment or other items in or out of the Project must be adequately covered, padded and protected and, Landlord may provide such padding and protection at Tenant's expense if Landlord determines that such measures undertaken by Tenant or Tenant's movers are inadequate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment or furnishings brought into the Building and also the times and manner of moving the same in or out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant. There shall not be used in any space, or in the public halls of the Building, either by any Tenant or others, any hand trucks except those equipped with rubber tires and side guards.

7. Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall in no way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitor or any other employee or any other person. Janitor service will not be furnished on nights when rooms are occupied after 9:30 p.m. Window cleaning shall be done only by Landlord.

8. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or flammable, combustible or noxious fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring Buildings or premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way.

9. The Premises shall not be used for the storage of merchandise except as such storage may be incidental to the use of the Premises for general office purposes. Tenant shall not occupy or permit any portion of the Premises to be occupied for the manufacture or sale of liquor, narcotics, or tobacco in any form. The Premises shall not be used for

lodging or sleeping or for any illegal purposes. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory approved portable equipment for brewing coffee, tea and similar beverages and of microwave ovens approved by Landlord shall be permitted provided that such use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

10. Landlord will direct electricians as to where and how telephone wires and any other cables or wires are to be installed. No boring or cutting for cables or wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

11. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by the Landlord. Tenant shall bear the expense of repairing any damage resulting from a violation of this rule or removal of any floor covering.

12. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Landlord. In its use of such, Tenant shall not obstruct or permit the obstruction of walkways, ingress and egress to the Building and tenant spaces and at no time shall Tenant park vehicles which will create traffic and safety hazards or create other obstructions.

13. On Saturdays, Sundays and legal holidays all day, and on other days between the hours of 7:00 p.m. and 7:00 a.m. the following day, access to the Building or to the halls, corridors, elevators, or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage. In case of invasion, mob, riot, public excitement, or other commotion, the Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the Tenants and protection of property in the Building and the Building. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays and legal holidays all day, and on other days between the hours of 7:00 p.m. and 7:00 a.m. and during such further hours as Landlord may deem advisable for the adequate protection of said Building and the property of its tenants, and to implement such additional security measures as Landlord deems appropriate for such purposes. The cost of such additional security measures, as reasonably allocated by Landlord to Tenant, shall be reimbursed by Tenant within thirty (30) days after receipt of Landlord's demand therefor.

14. Tenant shall see that the doors of the Premises are closed and securely locked before leaving the Building and must observe strict care and caution that all water faucets, water apparatus and utilities are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity shall likewise be carefully shut off, so as to prevent waste or damage and for any default or carelessness Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors, all tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules and orders of the fire department with respect to ingress and egress.

15. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

16. Landlord shall attend to the requests of Tenant after notice thereof from Tenant by telephone, in writing or in person at the Office of the Landlord. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from the Landlord.

17. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.

18. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Landlord and Tenant also shall provide Landlord with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations.

19. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of those Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Project.

20. Canvassing, soliciting, peddling or distribution of handbills or other written material in the Building and Project is prohibited and Tenant shall cooperate to prevent same.

21. Landlord reserves the right to (i) select the name of the Project and Building and to make such change or changes of name, street address or suite numbers as it may deem appropriate from time to time, (ii) grant to anyone the exclusive right to conduct any business or render any service in or to the Building and its tenants, provided such exclusive right shall not operate to require Tenant to use or patronize such business or service or to exclude Tenant from its use of the Premises expressly permitted in the Lease, and (iii) reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, layout and nature of the common areas and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of common areas. Tenant shall not refer to the Project by any name other than the name as selected by Landlord (as same may be changed from time to time), or the postal address, approved by the United States Post Office. Without the written consent of Landlord, Tenant shall not use the name of the Building or Bishop Ranch in connection with or in promoting or advertising the business of Tenant or in any respect except as Tenant's address.

22. Tenant shall store all its trash and garbage within the Premises until removal of same to such location in the Project as may be designated from time to time by Landlord. No material shall be placed in the Project trash boxes or receptacle if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Ramon without being in violation of any law or ordinance governing such disposal.

23. Landlord shall furnish heating and air conditioning during the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, except for holidays. In the event Tenant requires heating and air conditioning during off hours, Saturdays, Sundays or holidays, Landlord shall on notice provide such services at the rate established by Landlord from time-to-time. Landlord shall have the right to control and operate the public portions of the Building and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Tenants, in such manner as it deems best for the benefit of the Tenants generally.

24. The directory of the Building will be provided for the display of the name and location of tenants and Landlord reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by Landlord and, if so approved, a charge will be made for each such name.

25. Except with the prior written consent of Landlord, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or common area adjacent to the Premises for the sale of newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.

26. The word "Tenant" occurring in these Rules and Regulations shall mean Tenant and Tenant's Representatives. The word "Landlord" occurring in these Rules and Regulations shall mean Landlord's assigns, agents, clerks, employees and visitors.

ACKNOWLEDGED AND ACCEPTED:

Landlord:
By: /s/ Jim Clancy
Date: 12/16/11

Tenant:
By: /s/ Michael Burkland
Date: _____

EXHIBIT E

JANITORIAL SPECIFICATIONS

The following specific janitorial services will be provided in accordance with provisions of Paragraph 7.1, Landlord's Obligations:

OFFICE AREAS (DAILY)

1. Empty all waste baskets and disposal cans, if liners used, replace as necessary.
2. Spot dust desks, chairs, file cabinets, counters and furniture.
3. Spot vacuum all carpets and walk-off mats; spot as necessary.
4. Sweep all hard surface floors with treated dust mop.

OFFICE AREAS (WEEKLY)

1. Vacuum carpets completely, including around base boards, etc.
2. Perform low dusting of furniture.
3. Dust window sills and ledges.

OFFICE AREAS (QUARTERLY)

1. Perform all high dusting of doors, sashes, moldings, etc.
2. Dust mini blinds as needed.

OFFICE AREA CORRIDORS AND LOBBIES (DAILY SERVICE)

1. Vacuum carpets and dust mop any hard floors.
2. Spot clean carpets of all spillage.
3. Clean all thresholds.

OFFICE AREA CORRIDORS AND LOBBIES (WEEKLY)

1. Perform all high dusting of doors, sashes, moldings, etc.
2. Vacuum and clean all ceiling vents.
3. Polish any metal railings, placards, etc.

Please Initial
Tenant (MB)
Landlord (MC)

STAIRWAYS (DAILY)

1. Sweep all hard surface steps.
2. Dust banisters.

STAIRWAYS (WEEKLY)

1. Sweep all hard surfaces.
2. Spot mop all spills as needed.

RESTROOMS COMMON AREA (DAILY SERVICE)

1. Empty all waste containers and replace liners as needed.
2. Clean all metal, mirrors, and fixtures.
3. Sinks, toilet bowls and urinals are to be kept free of scale.
4. Clean all lavatory fixtures using disinfectant cleaners.
5. Wash and disinfect underside and tops of toilet seats.
6. Wipe down walls around urinals.
7. Refill soap, towel, and tissue dispensers.
8. Wet mop tile floors with disinfectant solution.
9. Refill sanitary napkin machines as necessary.

RESTROOMS COMMON AREA (WEEKLY)

1. Perform high dusting and vacuum vents.
2. Use germicidal solution in urinal traps, lavatory traps, and floor drains.

RESTROOMS COMMON AREA (MONTHLY)

1. Scrub floors with power machine.
2. Wash down all ceramic tile and toilet compartments.

ELEVATORS (DAILY)

1. Vacuum floors.
2. Clean thresholds.
3. Spot walls and polish surfaces.

GENERAL

All glass entry doors to offices, corridors, or lunch rooms are to be cleaned as necessary.

EXHIBIT F

DOOR SIGN, DIRECTORY STRIP AND MAIL BOX REQUEST

1. I, the undersigned hereby authorize Landlord to order one glass door sign. The business name on it shall read: (All lettering must be left justified, no logos.)

(17 characters max)

(17 characters max)

(17 characters max)

2. The lobby directory strip shall read:

(23 characters max)

3. The floor directory strip shall read:

(23 characters max)



Arrow Direction? (Circle one)

4. The mail box strip shall read

5. Daily Contact Name:

Phone: _____ Fax: _____

Email: _____

Signed _____ Date: _____

Street Address: 4000 Executive Parkway
Suite No: 400
Building: P
Complex: Bishop Ranch 8

EXHIBIT G

COMMENCEMENT OF LEASE

It is hereby agreed to that

- (a) the "Commencement Date" under that certain Lease dated _____, 2011 and between **Alexander Properties Company** as Landlord and **five9** as Tenant, covering Premises located at 4000 Executive Parkway, **Suite 400**, is _____, 2012,
- (b) the "Expiration Date" thereof is **5:00 P.M.** on _____, 2018, and
- (c) Landlord has completed all of its construction obligations under the Work Letter, except for the following punch list items, which shall be completed by Landlord in accordance with the Lease and the Work Letter attached thereto.

ACKNOWLEDGED AND ACCEPTED:

Landlord:
By: _____
Date: _____

Tenant:
By: /s/ Michael Burkland
Title CEO

FIRST LEASE ADDENDUM

THIS FIRST LEASE ADDENDUM IS MADE AND ENTERED INTO THIS 24 DAY OF **October**, 2012, BY AND BETWEEN **ALEXANDER PROPERTIES COMPANY, A CALIFORNIA LIMITED PARTNERSHIP** (HEREINAFTER REFERRED TO AS "LANDLORD") AND **FIVE9, INC., A DELAWARE CORPORATION** (HEREINAFTER REFERRED TO AS "TENANT").

IT IS AGREED BETWEEN LANDLORD AND TENANT TO MODIFY THE LEASE DATED **DECEMBER 16, 2011** (HEREINAFTER REFERRED TO AS "LEASE") IN THE FOLLOWING MANNER:

Section 1. PREMISES

Subsection 1.1 Description. The size of the Premises is hereby increased by **16,063 rentable square feet**, located on the fifth floor of Building **P, 4000 Executive Parkway, Suite 520** (hereinafter referred to as "**Expansion Space A**") for a new total of **62,477 rentable square feet** as shown on the attached Exhibit A, effective the earlier of **February 1, 2013** or upon the occupancy of Expansion Space A as evidenced by the execution of Exhibit G attached (hereinafter referred to as the "**Effective Date**"). Notwithstanding the foregoing in the event Landlord's work described in Subsection 1.2 below is not substantially completed by **February 1, 2013** then in such event the Effective Date will be the date Landlord delivers substantial completion of the improvements shown on Exhibit C.

Subsection 1.2 Work of Improvement. Landlord agrees to provide and install at its expense the improvements shown on the attached Exhibit C. Any changes to Exhibit C which have been approved by Tenant that increase the cost of the work shall be paid for by Tenant prior to the commencement of construction. Tenant shall be solely responsible for the installation and cost of its phone and data cabling.

Section 3. RENT

Subsection 3.1 Rent. The Base Rent shall hereby increase from **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS (\$100,563.67)** per month to **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS (\$138,713.30)** per month effective on the Effective Date. The Rental Rate for Expansion Space A is \$28.50 per rentable square foot per annum. Notwithstanding the foregoing Tenant on or before **January 1, 2013** shall pay to Landlord the sum of **TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00)** which shall be applied against Rent when due.

Please Initial

Tenant (MB)
Landlord (JC)

Section 4. SECURITY DEPOSIT.

The amount in the second sentence of this Section 4 is hereby increased from **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS (\$100,563.67)** to **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS (\$138,713.30).**

Section 5. TAX AND OPERATING COST INCREASES

Subsection 5.2 Tenant's Share. On the Effective Date Tenant's Share of Operating Costs shall be increased from 7.35% to 9.89%.

Section 25. MISCELLANEOUS

Subsection 25.21 Right to Terminate. The following sentence is added to the end of this Section:

The above referenced Right to Terminate shall not apply to Expansion Space A or any additional space that Tenant may lease on the fifth (5th) floor of the Building.

Subsection 25.22 Right of First Refusal. This Section 25.22 is hereby amended to add the following paragraph to the end of this Section:

Landlord represents that the existing leases for Suites 500, 514 and each contain a relocation provision and that the existing lease for Suite 525 does not contain a relocation provision. Tenant may request in writing that Landlord exercise its right to relocate any one or all of the tenants in Suites 500, 514 and 515. In the event Landlord relocates an existing fifth floor tenant and Tenant leases the additional fifth floor premises the terms and conditions for the additional premises shall be as follows:

- a) The Base Rental Rate shall be \$28.50 per rentable square foot per annum
- b) The suite improvements shall be the same as those Landlord provided Tenant in Expansion Space A
- c) The Term from the Commencement Date for the additional premises leased on the fifth (5th) floor shall be for a minimum of five (5) years from the commencement date of the additional expansion space.

Please Initial

Tenant (MB)
Landlord (JC)

With the exception of the modifications set out above, all other terms, covenants and agreements of the Lease shall remain in full force and effect.

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: /s/ Jim Clancy

Title: CFO

By: /s/ Steve Barale

Title: Controller

Date: 10/26/12

Tenant:

**Five9, Inc.,
a Delaware corporation**

By: /s/ Michael Burkland

Title: CEO

By: _____

Title: _____

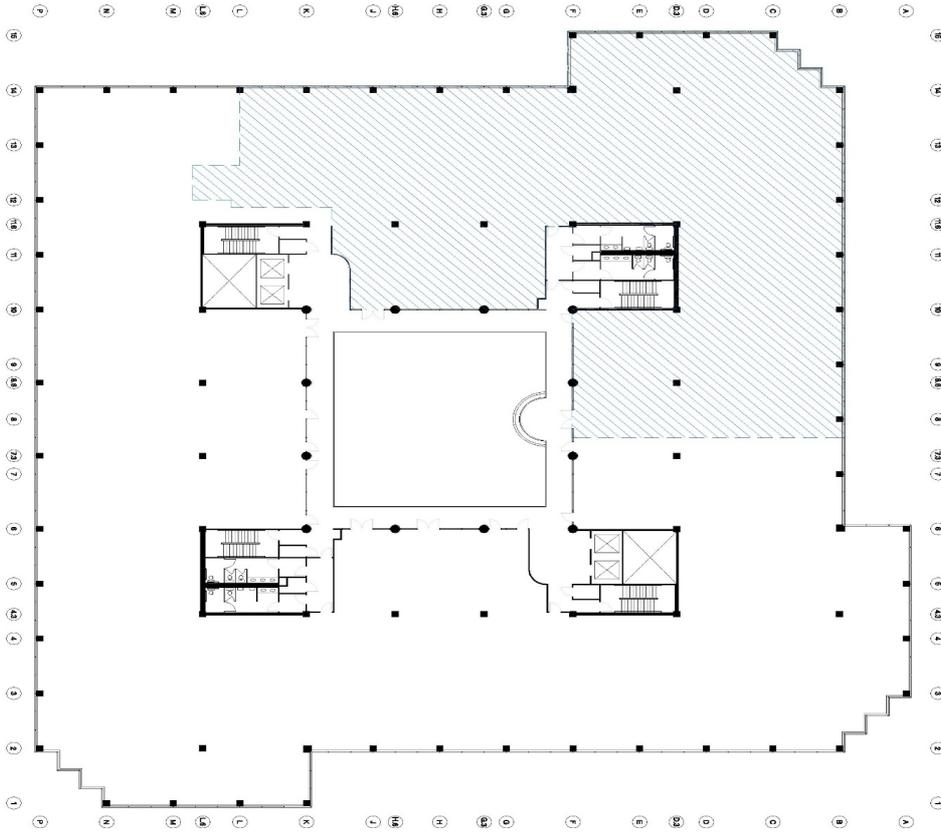
Date: 10/24/2012

Regarding:

Expansion Space A:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 520
San Ramon, CA 94583

EXHIBIT A
FLOOR PLAN



16,063 RSF
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 520
San Ramon, CA 94583

Please Initial
Tenant (MB)
Landlord (JC)

SECOND LEASE ADDENDUM

THIS SECOND LEASE ADDENDUM IS MADE AND ENTERED INTO THIS 23 DAY OF **January**, 2014, BY AND BETWEEN **ALEXANDER PROPERTIES COMPANY, A CALIFORNIA LIMITED PARTNERSHIP** (HEREINAFTER REFERRED TO AS "LANDLORD") AND **FIVE9, INC., A DELAWARE CORPORATION** (HEREINAFTER REFERRED TO AS "TENANT").

IT IS AGREED BETWEEN LANDLORD AND TENANT TO MODIFY THE LEASE DATED **DECEMBER 16, 2011** AND THE FIRST LEASE ADDENDUM DATED **OCTOBER 24, 2012** (HEREINAFTER REFERRED TO AS "LEASE") IN THE FOLLOWING MANNER:

Section 1. PREMISES

Subsection 1.1 Description. The size of the Premises is hereby increased by **5,510 rentable square feet**, located on the fifth floor of Building **P, 4000 Executive Parkway, Suite 515** (hereinafter referred to as "**Expansion Space B**") for a new total of **67,987 rentable square feet** as shown on the attached Exhibit A, effective upon substantial completion of Expansion Space B as evidenced by the execution of Exhibit G attached (hereinafter referred to as the "**Effective Date**"). On the Effective Date **Suite 515** will hereinafter become a part of **Suite 520**.

Subsection 1.2 Work of Improvement. Landlord agrees at its cost and expense to provide and install the improvements shown on the attached Exhibit C. Any changes to Exhibit C which have been approved by Tenant that increase the cost of the work shall be paid for by Tenant prior to the commencement of construction. Tenant shall be solely responsible for the installation and cost of its phone and data cabling.

Section 3. RENT

Subsection 3.1 Rent. The Base Rent shall hereby increase from **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS (\$138,713.30)** per month to **ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-NINE AND 55/100 DOLLARS (\$151,799.55)** per month effective on the Effective Date. The Rental Rate for Expansion Space B is \$28.50 per rentable square foot per annum.

Please Initial

Tenant (MB)

Landlord (JC)

Section 4. SECURITY DEPOSIT.

The amount in the second sentence of this Section 4 is hereby increased from **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS (\$138,713.30)** per month to **ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-NINE AND 55/100 DOLLARS (\$151,799.55).**

Section 5. TAX AND OPERATING COST INCREASES

Subsection 5.2 Tenant's Share. On the Effective Date Tenant's Share of Operating Costs shall be increased from **9.89%** to **10.76%**.

Section 25 MISCELLANEOUS

Subsection 25.21 Right to Terminate. It is expressly understood and agreed that Tenant's Right To Terminate hereunder shall not apply to Expansion Space A and B, and that the Lease Expiration Date for Expansion Space A and B is **February 28, 2018.**

Please Initial

Tenant ()

Landlord (JC)

With the exception of the modifications set out above, all other terms, covenants and agreements of the Lease shall remain in full force and effect.

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: /s/ Jim Clancy

Title: CFO

By: /s/ Steve Barale

Title: Controller

Date: 1/24/14

Tenant:

**Five9, Inc.,
a Delaware corporation**

By: /s/ Michael Burkland

Title: _____

By: _____

Title: _____

Date: _____

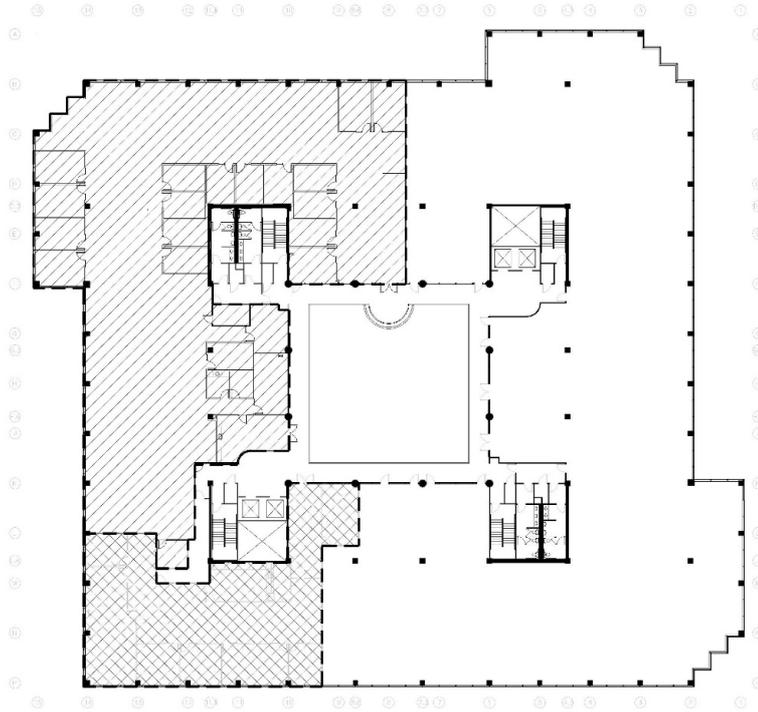
Expansion Space B:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 515
San Ramon, CA 94583

Existing Premises:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suites 400/520
San Ramon, CA 94583

EXHIBIT A
FLOOR PLAN



Bishop Ranch 8 Building P Fifth Floor
4000 Executive Parkway San Ramon, California



5,510 RSF
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 515
San Ramon, CA 94583

Please Initial
Tenant ()
Landlord ()

EXHIBIT C

SPACE PLAN

TO BE PROVIDED

EXHIBIT G

COMMENCEMENT OF SECOND LEASE ADDENDUM

It is hereby agreed to that as of , **Expansion Space B** located at **4000 Executive Parkway, Suite 515**, described in the Second Lease Addendum dated , by and between **ALEXANDER PROPERTIES COMPANY** as Landlord and **FIVE9, INC.** as Tenant, was occupied by Tenant and that said Second Lease Addendum is in full force and effect.

ACKNOWLEDGED AND ACCEPTED:

Landlord:
By: _____
Date: _____

Tenant:
By: _____
Title _____

THIRD LEASE ADDENDUM

This Third Lease Addendum ("Addendum") is made and entered into as of April 3rd, 2017, by and between **Alexander Properties Company, LLC**, a California limited liability company as successor-in-interest to Alexander Properties Company, a California limited partnership ("Landlord") and **five9, Inc.**, a Delaware corporation ("Tenant").

It is agreed between Landlord and Tenant to modify the Lease dated December 16, 2011, as amended by that certain First Lease Addendum dated October 24, 2012 and as further amended by that certain Second Lease Addendum dated January 23, 2014 (collectively, the "Lease") pursuant to which Landlord leases to Tenant, and Tenant leases from Landlord, **Suites 400 and 520** (collectively, the "Premises") in the building commonly known as **Bishop Ranch 8** located at **4000 Executive Parkway**, San Ramon, California 94583.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Subsection 1.1 of the Lease is hereby amended to include the following:

Premises. The size of the Premises have been re-measured to ANSI/BOMA Z65.1-2010 Office Building Standard ("Method B"). As a result, effective **March 1, 2018** (the "Commencement Date of this 3rd Addendum") the rentable square footage of the Premises is increased by 5,106 rentable square feet for a new total of **73,093 rentable square feet**. Additionally, the Complex was also re-measured in accordance with ANSI/BOMA Z65.1-2010 Office Building Standard ("Method B") and as a result, the rentable square footage for the Complex is increased by 46,142 rentable square feet for a new total of **677,720 rentable square feet**.

2. Subsection 2.1 of the Lease is amended to include the following:

Term. The Expiration Date per the Lease is hereby changed from **February 28, 2018** to **March 31, 2021**, and with such change the term is extended.

3. Subsection 2.4 is added to the Lease as follows:

Option to Extend. Landlord hereby grants Tenant one (1) option to extend the Term for a period of three (3) years (an "Option Term", and such option, an "Option to Extend"). Tenant's notice of its election to exercise an Option to Extend (an "Option Exercise Notice") must be given to Landlord in writing no sooner than fifteen (15) months and no later than twelve (12) months prior to the expiration date of the then-current Term. If any such written notice is not delivered to Landlord within the required period, Tenant shall be deemed to have waived that and any future Option to Extend. Anything herein contained to the contrary (i) Tenant shall have no right to exercise an Option to Extend if any person or entity other than Tenant or its Permitted Transferees (as defined below) is then physically or legally occupying any portion of the Premises; (ii) Tenant shall have no right to exercise an Option to Extend if (A) Tenant is in material non-monetary or monetary default on the date of giving the Option Exercise Notice ("Notice Date") or (B) Landlord has delivered to Tenant two (2) or more notices of material monetary default during the 2-year period immediately preceding Landlord's receipt of the Option Exercise Notice (regardless of whether such defaults were cured within any applicable cure period provided herein); and (iii) if Tenant is in material non-monetary or monetary default on the date an Option Term is to commence, then, at Landlord's election, the Option Term shall not commence and this Lease shall expire at the end of the then-current term.

- (a) **Rent.** Base Rent for the subject Option Term shall be set at Fair Market Value as described in (b) below.

(b) Fair Market Value. The term “Fair Market Value” used in this Lease shall mean the annual rental rate being charged in the San Ramon, Dublin, Pleasanton area for space in like size buildings and comparable to the space for which Fair Market Value is to be determined, taking into consideration use, location and floor level within the applicable building, the location, size of tenancy, quality and age of the building, the definition of rentable area or net rentable area, as the case may be, rental concessions and improvements, the date the particular rate under consideration became effective, the term of the lease under consideration, the extent of services provided thereunder, applicable distinctions between "gross" leases and "net" leases, operating costs for escalation purposes, and other adjustments to base rental, with respect to which such rental rates are computed for non-renewal tenants.

(c) Landlord Notification of Fair Market Value. Within thirty (30) days following Tenant's notice to Landlord exercising the applicable Option to Extend, Landlord shall notify Tenant of Landlord's determination of Fair Market Value. Tenant shall have thirty (30) days following receipt of Landlord's notice in which to either accept such determination or elect to have such determination made by arbitration as described below. If Tenant fails to deliver notice to Landlord making the foregoing election within such thirty (30)-day period following receipt of Landlord's notice, Tenant shall be deemed to have accepted Landlord's determination of the Fair Market Value for the Premises for the Option Term.

(i) Within ten (10) days after Landlord receives Tenant's notice of its election to have the determination of Fair Market Value made by arbitration, Landlord and Tenant shall meet and attempt to agree on the Fair Market Value. If Landlord and Tenant are unable to agree, then within ten (10) days thereafter, each party shall place in a separate sealed envelope their final proposal as to Fair Market Value, and Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate appraiser who shall have been active for the five (5)-year period ending on the date of such appointment in the determination of Fair Market Value at comparable commercial properties in the vicinity of the Project. Neither Landlord nor Tenant shall consult with such appraiser directly or indirectly as to his or her opinion as to Fair Market Value prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Value for the Premises is the closer to the actual Fair Market Value for the Premises as determined by the arbitrator, taking into account the requirements of this Section 2.4. Accordingly, the arbitrator shall have no right to compromise or select any middle ground as the Fair Market Value.

(ii) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to which of Landlord's or Tenant's submitted Fair Market Value is closer to arbitrator's determination of Fair Market Value.

(iii) The decision of the arbitrator shall be binding upon Landlord and Tenant and shall constitute the Base Rent for the subject option period.

(iv) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court of Contra Costa County, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(v) The cost of arbitration shall be paid by Landlord and Tenant equally.

(d) Option is Personal. Any Option to Extend is personal to the Tenant executing this Lease and any transferee pursuant to an assignment permitted to a permitted Transfer (as defined in Section 15.10 of the Lease) and is otherwise not assignable or transferable.

3. Subsection 3.1 of the Lease is amended to include the following:

Effective upon the Commencement Date of this 3rd Addendum, Tenant shall pay to Landlord monthly Base Rent as follows:

Base Rent.

Period in Months	Annual Rate per Rentable Square Foot	Monthly Base Rent
3/1/2018 – 2/28/2019*	\$30.60	\$186,387.15
3/1/2019 – 2/29/2020	\$31.52	\$191,978.76
3/1/2020 – 2/28/2021	\$32.46	\$197,738.13
3/1/2021 – 3/31/2021	\$33.44	\$203,670.27

* Subject to abatement for a certain month pursuant to Section 3.4 of this Addendum.

4. Subsection 3.4 of the Lease is added to the Lease as follows:

Rent Abatement. Tenant shall be entitled to an abatement of Base Rent for the calendar month of March 2018 and after such month Base Rent shall thereafter be due and payable in accordance with Section 3 of the Lease.

5. Subsection 5.1(a) of the Lease is amended as follows:

(a) **Base Year:** The calendar year for which the Taxes and Operating Costs are calculated for the Premises shall be 2018.

6. Subsection 5.2 of the Lease is amended in its entirety to read as follows:

Tenant's Share. On the Commencement Date of this 3rd Addendum, if any Operating Costs during any calendar year following the Base Year exceed the Operating Costs of the Base Year, Tenant shall pay to Landlord "**Tenant's Share**" multiplied by such excess ("**Operating Cost Payment**"). "**Tenant's Share**" means **10.79%**, which is calculated by dividing the rentable square footage of the Premises by the rentable square footage of the Complex as such rentable square footages are set forth in Section 1 of this Addendum and multiplying such number by 100.

7. Subsection 8.1(d) is added to the Lease as follows:

Disclosure Regarding Certified Access Specialist. Tenant acknowledges that the Premises have not been inspected by a Certified Access Specialist ("**CASp**") for purposes of California Civil Code Section 1938. A CASp can inspect the Premises and determine whether the Premises comply with said Section 1938. Tenant shall not conduct or arrange for any CASp inspection without first obtaining Landlord's written consent to the scope of any inspection or report to be issued. Tenant agrees to be solely responsible for the cost of such CASp inspection and to not disclose the results thereof without the written consent of Landlord.

8. Subsection 8.2 is supplemented with the following:

(e) **Refurbishment Allowance.** Tenant shall be entitled to a one-time allowance (the "**Refurbishment Allowance**") in the amount of Seven and 50/100 Dollars (\$7.50) per rentable square foot of the Premises to be used within a twelve (12) month period after March 1, 2018. Such Refurbishment Allowance shall be used for any construction or modification of interior improvements within the Premises. Landlord's affiliate, Sunset Development Company ("**SDC**") or its designated contractor, shall perform any construction or modification of interior improvements. Landlord will pay SDC (or Landlord's designated contractor) for such work and upon Tenant's request, shall provide to Tenant evidence of such expenditures. In no event shall Landlord be obligated to make disbursements or incur costs in connection with the construction or modification of interior improvements to the Premises in an amount which exceeds the Refurbishment Allowance.

(f) No Rent Abatement. Tenant shall continue to occupy the Premises during the making of the Alterations, without abatement of Rent. Tenant shall reasonably cooperate with Landlord to relocate its employees, and furniture, fixtures and equipment as necessary to allow the Alterations to be completed without undue delay.

9. Subsection 25.12 is amended and restated as follows:

Signs.

General. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Building or the Complex, any signs, notices, drapes, shutters, blinds or displays of any type without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

(a) Main Lobby Directory and Suite Plaque Signage. To the extent not already existing, at Landlord's cost, Landlord shall include Tenant in the main lobby directory located in the Building and provide suite plaque signage (including additional suite plaque signage resulting from Tenant's occupancy of any additional suite pursuant to Tenant's exercise of the Right of First Refusal set forth in Section 25.22 of the Lease). Any modifications or changes made thereafter, at Tenant's request, to the main lobby directory or the suite plaque signage provided by Landlord, shall be at Tenant's sole cost.

(b) Building Top Signage. Tenant shall have the non-exclusive right to install one (1) "building-top" sign located on the exterior façade of the Building. The specific location and specifications of the building-top sign shall be as depicted on Exhibit A, attached to

this Addendum, and shall be subject to the approval of the City of San Ramon. Tenant shall be solely responsible for all costs associated with the design, fabrication, installation, maintenance and removal of the building-top sign.

(c) Monument Signage. Tenant shall have the non-exclusive right to install signage on the exterior monument signage located at the entrance to the Complex. The specific location of the monument sign shall be determined by Landlord and shall comply with the building signage standards, and shall be subject to the approval necessary from the City of San Ramon. Tenant shall be solely responsible for all costs associated with any changes to the monument signage.

The design, including the exact type, size, coloring, materials and lighting for all of the signage, and the details of fabrication and installation of all such signage shall be subject to Landlord's review and approval. All such signage rights shall be personal to Tenant. Anything herein to the contrary notwithstanding, Landlord reserves the right in Landlord's sole discretion to place and locate on the roof, exterior of the Building, and in any area of the Building not leased to Tenant such signs, notices, displays and similar items as Landlord desires.

10. Section 25.14 of the Lease is amended to include the following updated Notice addresses for Landlord and Tenant:

Landlord:

Alexander Properties Company, LLC
2600 Camino Ramon, Suite 201
San Ramon, CA 94583
Attention: General Counsel

Tenant:

five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

11. Section 25.17 of the Lease is supplemented as follows:

Brokers. Tenant warrants and represents to Landlord that no real estate broker or agent represented Tenant in the negotiation of this Addendum other than Colliers International ("Tenant's Broker"). Landlord shall pay the commission owing to Tenant's Broker in connection with this Addendum pursuant to the provisions of a separate written agreement between Landlord and Tenant's Broker.

12. Section 25.21 of the Lease is amended and replaced with the following:

Right to Terminate. As of the Commencement Date of this 3rd Addendum, Tenant's Right to Terminate, as set forth in in Section 25.21, shall be rescinded and no longer available to Tenant.

13. Subsection 25.22 of the Lease is amended as follows:

Right of First Refusal. Landlord hereby grants Tenant a one-time right of first refusal to lease (the "Right of First Refusal") any space in excess of five thousand (5,000) rentable square feet located on the third (3rd) and/or fifth (5th) floor of the Building that is available as of the date this Lease has been fully executed or becomes available during the term of this Lease, the "Refusal Space". If and at such time as Landlord has received an expression of interest by a third party in leasing the Refusal Space, Landlord shall notify Tenant in writing of such interest, stating the location, the rentable area, and the basic business terms under which Landlord proposes to lease the Refusal Space", each a "First Refusal Notice". Tenant shall have seven (7) days after receipt of a Refusal Notice to deliver to Landlord, in writing, its notice that it is exercising its rights hereunder, the "Exercise Notice" on the terms set forth in the First Refusal Notice.

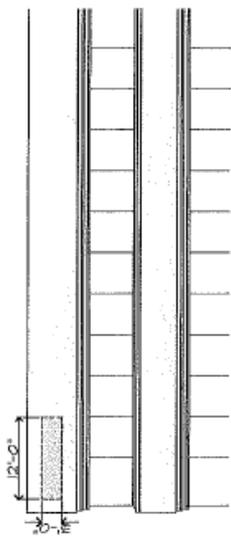
If Tenant does not timely deliver an Exercise Notice, then Landlord shall be free to lease the Refusal Space to another party, provided, however, if Landlord fails to lease the Refusal Space within six (6) months of the delivery of the First Refusal Notice to Tenant or the economic terms stated in the First Refusal Notice improve by a value of seven percent (7%) or more in favor of the proposed tenant, then Landlord shall reoffer the Refusal Space to Tenant by sending another First Refusal Notice to Tenant stating the then-current terms.

14. **Definitions.** All capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Lease. The Lease, as amended by this Addendum, is referred to herein as the "Lease." Unless otherwise specifically provided herein, all provisions of this Addendum shall be effective as of the later of the dates on which Landlord and Tenant execute this Addendum.

15. **Miscellaneous.** To the extent the provisions of this Addendum and the Lease are inconsistent, the provisions of this Addendum shall govern.

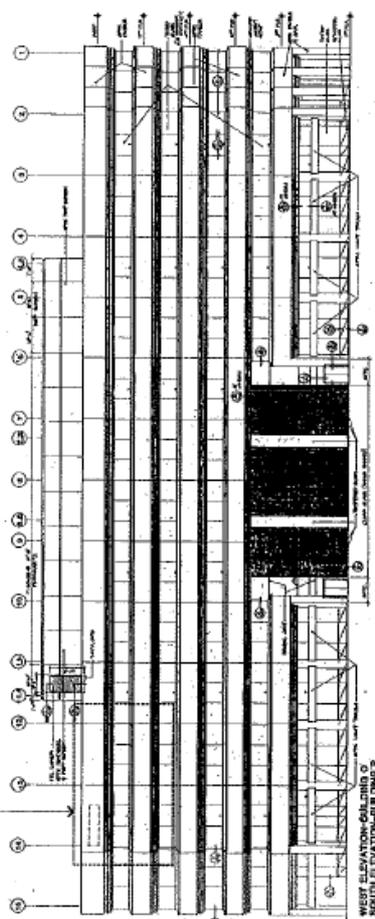
EXHIBIT A
BUILDING TOP SIGNAGE

EXHIBIT A



① Detail Elevation
Scale: 1/8" = 1'-0"

Location of proposed signage



② South Elevation
Scale: 1/8" = 1'-0"

PROPOSED TENANT IMPROVEMENTS:
Five9 Exterior Building Signage
Bishop Ranch 8 Building P

BR
BISHOP RANCH
A COMMUNITY DEVELOPMENT PROJECT
4000 Borealis Parkway | 2201 Canyon Boulevard, Suite 200
San Ramon, CA 94583 | 925.326.1141

REVISIONS

NO.	DATE	DESCRIPTION

SHEET TITLE
Building Elevation
A Notes
SHEET NUMBER
A-1
1 of 1

FOURTH LEASE ADDENDUM

This Fourth Lease Addendum ("Addendum") is made and entered into as of June 30, 2017, by and between **Alexander Properties Company, LLC**, a California limited liability company ("Landlord") and **five9, Inc.**, a Delaware corporation ("Tenant").

It is agreed between Landlord and Tenant to modify the Lease dated December 16, 2011, as amended by that certain First Lease Addendum dated October 24, 2012 and as further amended by that certain Second Lease Addendum dated January 23, 2014, as amended by that certain Third Lease Addendum dated April 3, 2017 (the "3rd Addendum") (collectively, the "Lease") pursuant to which Landlord leases to Tenant, and Tenant leases from Landlord, **Suites 400 and 520** containing **67,987 rentable square feet** (collectively, the "Existing Premises") in the building commonly known as **Bishop Ranch 8** located at **4000 Executive Parkway**, San Ramon, California 94583 (the "Building").

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Subsection 1.1 of the Lease is hereby amended to include the following:

Tenant desires to expand the size of the Existing Premises by **6,483 rentable square feet** located on the fifth (5th) floor of the Building in **Suite 514** ("Expansion Space C") as shown on the attached **Exhibit A** in the Complex commonly known as Bishop Ranch 8 located at **4000 Executive Parkway**, San Ramon, California. Such Complex contains 677,720 rentable square feet.

The Commencement Date of Expansion Space C shall be the earlier of (i) **September 1, 2017**, or (ii) Substantial Completion (the "Expansion Space Commencement Date"). Substantial Completion is defined in Work Letter attached hereto as Exhibit B. The Existing Premises and Expansion Space C are collectively referred to as the Premises.

(a) Upon the Expansion Space Commencement Date and through February 28, 2018, the Premises shall contain **74,470 rentable square feet**.

(b) Effective March 1, 2018, the Premises is increased by 5,106 rentable square feet (as set forth in the 3rd Addendum) and shall contain **79,576 rentable square feet**.

The rentable square feet set forth in this Section 1.1 are measured to ANSI/BOMA Z65.1-2010 Office Building Standard ("Method "B").

2. Section 1.3 is added to the Lease as follows:

Expansion Space C Suite Improvement Allowance. Landlord shall provide Tenant with an improvement allowance of \$17.65 per square foot of Expansion Space C (the Suite Improvement Allowance"). The Suite Improvements for Expansion Space C shall be performed in the manner described in the work letter attached hereto as **Exhibit B** (the "Work Letter").

Tenant accepts the Expansion Space C in its present "As Is" condition provided the Suite Improvements are completed and provided Landlord complies with its obligations set forth in the Work Letter, and acknowledges that (i) neither Landlord nor any of its employees or agents has made any representations regarding Expansion Space C or the condition thereof; and (ii) except for the Suite Improvements for Expansion Space C (and any other obligations of Landlord set

forth in the Work Letter), Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare Expansion Space C for Tenant's occupancy.

3. Subsection 2.1 of the Lease is amended to include the following:

Term. The Expiration Date of Expansion Space C shall be **March 31, 2021**. Such Expiration Date is coterminous with the Existing Premises.

4. Subsection 3.1 of the Lease is amended to include the following:

Effective upon the Expansion Space Commencement Date, Tenant shall pay to Landlord Base Rent for Expansion Space C as follows:

Base Rent.

Period in Months	Annual Rate per Rentable Square Foot	Monthly Base Rent
9/1/2017 – 8/31/2018	\$30.60	\$16,531.65
9/1/2018 – 8/31/2019	\$31.52	\$17,027.60
9/1/2019 – 8/31/2020	\$32.46	\$17,538.43
9/1/2020 – 3/31/2021	\$33.44	\$18,064.58

5. Section 4 of the Lease is amended as follows:

Security Deposit. Concurrently with Tenant's execution of this Addendum, Tenant shall deposit with Landlord the sum of **Eighteen Thousand Sixty-Four and 58/100 Dollars (\$18,064.58)** representing an increase in the Security Deposit from One Hundred Fifty-One Thousand Seven Hundred Ninety-Nine and 55/100 Dollars (\$151,799.55) to **One Hundred Sixty-Nine Thousand Eight Hundred Sixty-Four and 13/100 Dollars (\$169,864.13)**.

6. Subsection 5.1(a) of the Lease is supplemented as follows:

(a) Base Year: The calendar year for which the Taxes and Operating Costs are calculated for Expansion Space C shall be 2017.

7. Subsection 5.2 of the Lease is amended in its entirety to read as follows:

Tenant's Share. On the Expansion Space Commencement Date, if any Operating Costs for Expansion Space C during any calendar year following the Base Year exceed the Operating Costs of the Base Year, Tenant shall pay to Landlord "**Tenant's Share**" multiplied by such excess ("Operating Cost Payment"). "**Tenant's Share**" means **0.96%**, which is calculated by dividing the rentable square footage of the Expansion Space C by the rentable square footage of the Complex as such rentable square footages are set forth in Section 1 of this Addendum and multiplying such number by 100.

8. Section 25.17 of the Lease is supplemented as follows:

Brokers. Tenant warrants and represents to Landlord that no real estate broker or agent represented Tenant in the negotiation of this Addendum other than Colliers International ("Tenant's Broker"). Landlord shall pay the commission owing to Tenant's Broker in connection with this Addendum pursuant to the provisions of a separate written agreement between Landlord and Tenant's Broker.

9. Rules and Regulations.

The Rules and Regulations set forth on Exhibit D of the Lease are amended to include the following:

Paragraph 8 of the Rules and Regulations is deleted and replaced with the following:

"8. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or flammable, combustible or noxious fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals (other than service dogs), birds or fish be brought in or kept in or about the Premises or the Building. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring Buildings or premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way."

Paragraphs 27 and 28 are added to the Rules and Regulations as follows:

"27. Neither Tenant nor its employees, agents, contractors, licensees, or invitees (other than law enforcement personnel) shall bring any firearm, whether loaded or unloaded, into the Premises or the Building at any time.

28. Without limiting the foregoing, Tenant agrees that: (1) the Premises shall not be used to grow, harvest, process, produce, store (short or long term), distribute, transport, sell, or in any way use or ingest, marijuana plants, products, or derivatives therefrom in whatever form ("Cannabis"), or any product or substance containing Cannabis, and (2) Tenant shall not, and shall not authorize, permit, or suffer any of its officers, employees, agents, servants, licensees, subtenants, concessionaires, contractors, or invitees to, bring any form of Cannabis, or any substance or container containing Cannabis, onto the Premises or any associated facility, including but not limited to parking lots and storage areas. The foregoing prohibitions apply to all Cannabis forms and usages, including but not limited to those intended for medical use, regardless of whether lawful for any purpose under any state or federal law or regulation."

10. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Lease. The Lease, as amended by this Addendum, is referred to herein as the "Lease." Unless otherwise specifically provided herein, all provisions of this Addendum shall be effective as of the later of the dates on which Landlord and Tenant execute this Addendum.

11. Miscellaneous. To the extent the provisions of this Addendum and the Lease are inconsistent, the provisions of this Addendum shall govern.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Addendum as of the date first set forth above.

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: _____ /s/ James L. Clancy
Authorized Signatory

By: _____ /s/ David M. Fields
Authorized Signatory

Tenant:

**five9, Inc.,
a Delaware corporation**

By: _____ /s/ David Hill

Title: _____ VP Finance

Regarding:

Existing Premises:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suites 400 & 520
San Ramon, CA 94583

Expansion Space C:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 514
San Ramon, CA 94583

EXHIBIT A
FLOOR PLAN

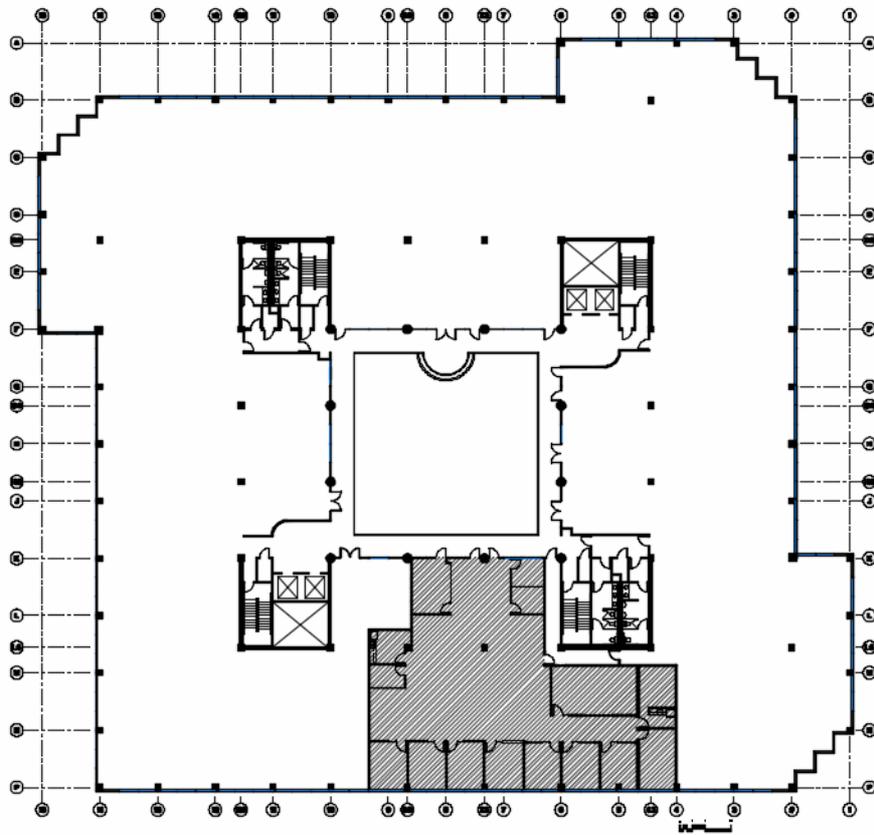


EXHIBIT A

EXHIBIT B

WORK LETTER

This work letter (“Work Letter”) sets forth the terms and conditions relating to the construction of the suite improvements in the Premises. All capitalized terms used but not defined herein shall have the respective meanings given such terms in the Lease.

SECTION I. SUITE IMPROVEMENTS

1.1 Suite Improvements. Landlord shall cause the General Contractor (as defined in Section 3.2 below) to construct and install in the Premises with reasonable diligence the improvements and fixtures provided for in this Work Letter (“Suite Improvements”). All Suite Improvements shall be performed in a first-class workmanlike manner in strict conformance with the Approved Construction Drawings (as hereinbelow defined), and in accordance with all Legal Requirements.

1.2 Selection of Architect. Tenant shall cause Landlord to select and retain the architect/space planner (the “Architect”) to prepare the Design Development Plan (as defined in Section 2.2 below) and the Construction Drawings (as defined in Section 2.3 below).

SECTION II. CONSTRUCTION DRAWINGS

2. Plans.

2.1 Initial Design Information. Tenant shall deliver to Landlord, in writing, all information that will be required by Landlord to prepare the Design Development Plan. Such information shall, include, without limitation, layout and designation of all offices, rooms and other partitioning their intended use and equipment to be contained therein, electrical requirements, the number and sizes of workstations, number and size of kitchen, copy, reception and storage areas and any specialty items (collectively, the “Initial Design Information”). The Initial Design Information shall be consistent with Landlord’s requirements regarding the design and function of the Building (“Landlord Requirements”) and shall be otherwise subject to Landlord’s approval. Landlord shall provide Tenant with notice approving or disapproving the Initial Design Information within five (5) business days after Landlord’s receipt thereof. If Landlord disapproves the Initial Design Information, Tenant shall revise the Initial Design Information to Landlord’s comments and resubmit it for Landlord’s approval within three (3) days of Tenant’s receipt of Landlord’s comments. Once Landlord has approved the Initial Design Information, such approved Initial Design Information shall be referred to as the “Approved Initial Design Information.”

2.2 Design Development Plan. After approving the Initial Design Information, Landlord will cause the Architect to prepare and deliver to Tenant for Tenant’s review a “Design Development Plan” for the Premises that conforms to the Approved Initial Design Information. Such preparation and delivery shall occur within fifteen (15) days after the Landlord’s approval of the Initial Design Information. Tenant shall approve or disapprove the Design Development Plan by written notice to Landlord given within five (5) days after Tenant’s receipt of the Design Development Plan. If Tenant disapproves the Design Development Plan, Tenant shall specify any revisions Tenant desires to the Design Development Plan. Landlord shall cause the Architect to revise the Design Development Plan and resubmit it to Tenant; provided, however, that Landlord shall not be required to cause the Architect to make any revision to the Design Development Plan that are inconsistent with the Landlord Requirements or that Landlord otherwise reasonably disapproves. Such revision and resubmission shall occur within ____ (___) days after Landlord’s receipt of Tenant’s notice of disapproval. Once Landlord has approved the Design Development Plan, such approved Design Development Plan shall be referred to as the “Approved Design Development Plan.”

2.3 Construction Drawings. Landlord shall cause the Architect to prepare and deliver to Tenant working drawings (“Construction Drawings”) that will enable the General Contractor (as defined in Section 3.2 below) to construct the Suite Improvements. The Construction Drawings shall conform to the Approved Design Development Plan.

The Architect's preparation and delivery of the Construction Drawings shall occur within twenty-one (21) days after Landlord's approval of the Design Development Plan. Tenant shall approve or disapprove the Construction Drawings by written notice to Landlord given within five (5) days after Tenant's receipt of the Construction Drawings. If Tenant disapproves the Construction Drawings, Tenant shall specify any revisions Tenant desires to the Construction Drawings. Landlord shall cause the Architect to revise the Construction Drawings and resubmit it to Tenant; provided, however, that Landlord shall not be required to cause the Architect to make any revision to the Construction Drawings that are inconsistent with the Landlord Requirements or that Landlord otherwise reasonably disapproves. Such revision and resubmission shall occur within seven (7) days after Landlord's receipt of Tenant's notice of disapproval. Once Landlord has approved the Construction Drawings, such approved Construction Drawings shall be referred to as the "Approved Construction Drawings."

2.3.1 Landlord Cost Proposal. Within twenty-one (21) days following such approval of the Construction Drawings, Landlord will provide to Tenant the price to complete the work as shown on the Construction Drawings (the "Cost Proposal"). Landlord agrees that each trade estimated to exceed Fifteen Thousand Dollars (\$15,000) shall be put out to two (2) bidders.

2.3.2 Tenant Response to Cost Proposal. Tenant shall have seven (7) days following Landlord's delivery of the Cost Proposal to Tenant to review same, and to either approve same by written notice to Landlord or to submit to Landlord revised Construction Drawings. If Tenant fails to timely respond, Tenant will be deemed to have approved the Cost Proposal as provided by Landlord.

2.3.3 Landlord's Revised Cost Proposal. If Tenant timely submits revised Construction Drawings, Landlord will submit a revised Cost Proposal and to Tenant within fourteen (14) days after receipt of the revised Construction Drawings. Tenant will notify Landlord of Tenant's approval or disapproval of the revised Cost Proposal within five (5) days following receipt of same, and this process will continue (with Tenant responding within five (5) days in each case) until Tenant has approved the Cost Proposal for the Suite Improvements; provided, however, that if Tenant disapproves the proposed Cost Proposal two (2) times, any delay in construction resulting from further disapproval will constitute a Tenant Delay.

2.4 Approved Construction Drawings; Permits. Upon approval (or deemed approval) of the Cost Proposal, the Construction Drawings on which the approved Cost Proposal were based shall constitute the "Approved Construction Drawings". Promptly following Tenant's approval (or deemed approval) of the Cost Proposal, Landlord shall submit the Approved Construction Drawings to the appropriate municipal authorities for the purpose of securing the applicable building permits necessary to allow the General Contractor to commence and complete the construction of the Suite Improvements (the "Permits").

2.5 Change Orders. Tenant may request changes, additions or alterations to the Approved Construction Drawings in accordance with this Section 2.4 (individually and collectively, "Change Order"). Tenant shall notify Landlord of any Change Order and Landlord shall have five (5) days to provide Tenant notice of (i) the incremental length of time Landlord estimates it will take to construct such change, addition or alteration; (ii) the cost of such Change Order; and (iii) whether any delay in the completion of the Suite Improvements is anticipated as a result thereof and the estimated length of such delay. Tenant will thereafter have three (3) days to approve or withdraw its request for such Change Order. If Tenant fails to respond within such three (3) day period, Tenant will be deemed to have withdrawn its request for such Change Order.

2.6 Time Deadlines. Tenant shall use good faith efforts and all due diligence to cooperate with Landlord to complete all phases of the Construction Drawings, the Cost Proposal process and the permitting process as soon as possible after the execution of the Lease. Tenant shall meet with Landlord on a scheduled basis, to be determined by Landlord, to discuss the progress thereof.

2.7 Landlord's Approval. Landlord's approval of any matter pursuant to this Work Letter may be withheld if Landlord reasonably determines that the same would violate any provision of the Lease or this Work Letter, would directly or indirectly delay the Substantial Completion (as defined below) of the Suite Improvements or would adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building.

EXHIBIT B

SECTION III. CONSTRUCTION OF THE SUITE IMPROVEMENTS

3.1 **Construction.** Upon Landlord's receipt of the Approved Construction Drawings and the Permits, Landlord shall proceed with reasonable diligence to cause the Suite Improvements to be "Substantially Completed" in accordance with all terms and conditions set forth in this Work Letter on or before the "Substantial Completion Date" (as such terms are defined in Section V below).

3.2 **General Contractor.** Landlord will engage SDC or another general contractor (SDC or such other general contractor being herein the "General Contractor") to construct the Suite Improvements.

SECTION IV. COST OF THE SUITE IMPROVEMENTS

4.1 **Allowance.** Tenant shall be entitled to a one-time allowance (the "Suite Improvement Allowance") in the amount of up to, but not exceeding, Seventeen and 65/100 Dollars (\$17.65) per rentable square foot of the Premises for costs relating to the initial design and construction of the Suite Improvements in accordance with the Approved Construction Drawings. In no event shall Landlord be obligated to make disbursements or incur costs pursuant to this Work Letter in an amount which exceeds the Suite Improvement Allowance. Any unused portion of the Suite Improvement Allowance, up to Five Dollars (\$5.00) per rentable square foot, may, at Tenant's option, be used as a credit against Rent when due. Notwithstanding anything to the contrary contained in this Lease, if Tenant fails to use the Suite Improvement Allowance within one (1) year following the Expansion Space Commencement Date, the unused amount shall revert to Landlord and Tenant shall have no further rights with respect thereto.

4.2 **Disbursement of the Suite Improvement Allowance.** Landlord shall, subject to the provisions of Section 4.3 of this Work Letter, pay:

- (i) the actual construction costs of the Suite Improvements, including materials and labor ("Construction Costs");
- (ii) the General Contractor's profit and overhead not to exceed, as a percentage of the Construction Costs, 8% for overhead and 4% for profit ("Profit and Overhead"); and
- (iii) a review and supervision fee to SDC equal to two percent (2%) of the Construction Costs ("Construction Management Fee").

The Construction Costs, the Profit and Overhead and the Construction Management Fee are herein collectively, the "Allowance Items".

4.3 **Over-Allowance Amount.** Any excess of (i) the amount of the Allowance Items over (ii) the amount of the Suite Improvement Allowance, is herein referred to as the "Over-Allowance Amount". Tenant shall pay the Over-Allowance Amount to Landlord as follows: (i) fifty percent (50%) of the Over-Allowance Amount prior to the date Landlord commences work on the Suite Improvements and (ii) any remaining unpaid portion of the Over-Allowance Amount within thirty (30) days following Substantial Completion of the Suite Improvements. Tenant hereby acknowledges and agrees that Tenant shall be responsible for all costs associated with the Suite Improvements to the extent the same exceed the Suite Improvement Allowance.

SECTION V. SUBSTANTIAL COMPLETION OF THE SUITE IMPROVEMENTS

5.1 **Substantial Completion.** The Suite Improvements shall be deemed to be "Substantially Completed" at such time as (i) Landlord shall certify in writing to Tenant that the Suite Improvements have been fully completed in accordance with the provision of this Work Letter, except for finishing details, decorative items, minor omissions,

EXHIBIT B

mechanical adjustments, and similar items of the type customarily found on an architectural punchlist, the correction or completion of which items collectively will not substantially interfere with Tenant's occupancy and use of the Premises ("Punchlist Items"), and (ii) Tenant is legally permitted to occupy the Premises (as evidenced by a temporary or final certificate of occupancy, or final inspection and sign-off on the job card for the Suite Improvements). The date on which the Suite Improvements are Substantially Completed is herein referred to as the "Substantial Completion Date". Landlord shall notify Tenant of its belief that Substantial Completion has occurred and provide Tenant reasonable documents and information regarding the satisfaction of the requirements thereof. Promptly thereafter, Landlord and Tenant shall set a mutually convenient time for Tenant, Landlord and the General Contractor to inspect the Suite Improvements during which they shall confirm the occurrence of the Substantial Completion Date and develop a mutually agreeable list of Punchlist Items. Authorized representatives for Landlord and Tenant shall execute the list of Punchlist Items to indicate their approval thereof.

5.2 Punchlist. The Punchlist Items shall not act to suspend or delay the Commencement Date, but Landlord shall within thirty (30) days following the Substantial Completion Date complete said Punchlist Items. In addition, Landlord shall within thirty (30) days following notice from Tenant cause General Contractor to repair any other construction defects discovered by Tenant and reported to Landlord in writing within thirty (30) days following the Commencement Date.

5.3 Delay in Substantial Completion.

5.3.1 Tenant Delay. For purposes of the Lease and this Work Letter, the term "Tenant Delay" shall mean any actual delay in construction of the Suite Improvements which is due to any act of omission of Tenant (wrongful, negligent or otherwise), its agents, contractors, or vendors, including, but not limited to, delays resulting from:

(a) Tenant's failure to act within any time periods specified in this Work Letter except to the extent caused by Landlord's failure to act within any time periods set forth in this Work Letter (provided, however, that Tenant has provided written notice to Landlord of any action or omission of Landlord that Tenant believes constitutes such failure to act);

(b) Tenant's failure to pay the Over-Allowance Amount as required under Section 4.3 of this Work Letter;

(c) Any default by Tenant beyond applicable notice and cure periods (i) with respect to the payment of Base Rent or the Over-Allowance Amount, or (ii) under this Work Letter;

(d) Change Orders requested by Tenant;

(e) The failure of Tenant or its employees or agents to respond within one (1) business day to any reasonable request from the General Contractor pertaining to the construction of the Suite Improvements after construction has commenced;

(f) Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time; or

(g) Any other matter specified in this Work Letter to constitute a Tenant Delay.

The term "Tenant Delay" shall not include any Force Majeure Delays. As used in this Lease, "Force Majeure Delays" means delays caused by strikes, fire, unusually severe and adverse weather conditions, unanticipated shortages of necessary labor or materials or for other reasons beyond the reasonable control of Landlord. If a Tenant Delay results in a delay in Substantial Completion of the Suite Improvements, then, notwithstanding anything to the contrary set forth in this Work Letter and regardless of the actual date of the Substantial Completion of the Suite Improvements, the date of the Substantial Completion of the Suite Improvements shall be deemed to be the date the Substantial Completion of the Suite Improvements would have occurred if no Tenant Delay had occurred.

EXHIBIT B

SECTION VI. MISCELLANEOUS

6.1 Contractor's Guaranty. If, within one (1) year after the Substantial Completion Date, any of the Suite Improvements are found not to be substantially in accordance with the Approved Construction Drawings or to be defective in any way, Landlord, at no expense to Tenant, shall cause such defect to be promptly corrected after Landlord's receipt of written notice from Tenant to do so. Notwithstanding the foregoing, Landlord shall not be obligated to correct damage or defects caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear.

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

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

6.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if a default by Tenant under the Lease (including, without limitation, any default by Tenant under this Work Letter) beyond applicable notice and cure periods has occurred at any time on or before the Substantial Completion of the Suite Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Suite Improvement Allowance and/or Landlord may cause General Contractor to cease the construction of the Suite Improvements, and (ii) all other obligations of Landlord under the terms of this Work Letter shall be suspended until such time as such default is cured pursuant to the terms of the Lease. Any delay in the Substantial Completion of the Suite Improvements caused by the exercise of Landlord's rights pursuant to this Section 6.4 shall constitute a Tenant Delay.

6.5 No Right of Termination. The parties acknowledge that once the Lease is fully executed, Tenant shall have no right to terminate the Lease due to the fact that the Cost Proposal exceeds (i) the Suite Improvement Allowance or (ii) the anticipated cost of the Allowance Items.

6.6 Intentionally Deleted.

6.7 Ownership of Suite Improvements. All Suite Improvements whether installed by Landlord or Tenant, shall become a part of the Premises, shall be the property of Landlord and, except as provided for in Section 24.1 of the Lease, shall be surrendered by Tenant with the Premises, without any compensation to Tenant, at the expiration or termination of the Lease.

EXHIBIT B

EXHIBIT G

COMMENCEMENT OF FOURTH LEASE ADDENDUM

Please refer to that certain Fourth Lease Addendum dated _____, 2017 by and between Alexander Properties Company, LLC, as Landlord, and five9, Inc. as Tenant, covering Expansion Space C located at 4000 Executive Parkway, Suite 514, San Ramon, California 94583. All capitalized terms herein shall have the respective meanings given to them in the Fourth Lease Addendum.

It is hereby agreed to that:

- (a) The "Expansion Space Commencement Date" under the Fourth Lease Addendum is _____;
- (b) The "Expiration Date" thereof is 11:59 p.m. on _____;
- (c) intentionally deleted; and
- (d) The "Rent Commencement Date" for Expansion Space C under the Fourth Lease Addendum is _____.

ACKNOWLEDGED AND ACCEPTED:

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: _____
Authorized Signatory

Date: _____

Tenant:

**five9, Inc.
a Delaware corporation**

By: _____

Title: _____

Date: _____

FIFTH LEASE ADDENDUM

This Fifth Lease Addendum ("Addendum") is made as of January 3, 2018, by and between **Alexander Properties Company, LLC**, a California limited liability company ("Landlord") and **five9, Inc.**, a Delaware corporation ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to that certain Bishop Ranch Building Lease dated December 16, 2011, as amended by that certain First Lease Addendum dated October 24, 2012 and as further amended by that certain Second Lease Addendum dated January 23, 2014, as amended by that certain Third Lease Addendum dated April 3, 2017 (the "3rd Addendum"), as amended by that certain Fourth Lease Addendum dated June 30, 2017 (the "4th Addendum") (collectively, the "Lease"), pursuant to which Landlord leases to Tenant, and Tenant leases from Landlord **Suites 400, 514 and 520** collectively containing **74,470 rentable square feet** (the "Premises") located at **4000 Executive Parkway**, San Ramon, California. Pursuant to the 3rd Addendum, effective **March 1, 2018**, the size of the Premises shall increase to **79,576 rentable square feet**.
- B. The Term of the Lease is scheduled to expire on **March 31, 2021**.
- C. The parties desire to amend the Lease to make certain other modifications to the Lease as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. Refurbishment Allowance. In connection with the Suite Improvements to Expansion Space C, as described in the 4th Addendum, Landlord hereby agrees that Tenant may apply a portion of the Refurbishment Allowance set forth in the 3rd Addendum, in an amount not to exceed Fifty Thousand Dollars (\$50,000.00), to the construction of the Suite Improvements for Expansion Space C. The remainder of the Refurbishment Allowance shall be subject to the terms and conditions set forth in the 3rd Addendum.
- 2. Brokers. Tenant warrants and represents to Landlord that in the negotiating or making of this Addendum neither Tenant nor anyone acting on its behalf has dealt with any real estate broker or finder who might be entitled to a fee or commission for this Addendum. Tenant shall indemnify and hold Landlord harmless from any claim or claims, including costs, expenses and attorney's fees incurred by Landlord as a result of any other broker or finder asserting a claim for a fee or commission based upon any dealings with or statements made by Tenant or its agents, employees and representatives.
- 3. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Lease. The Lease, as amended by this Addendum, is referred to herein as the "Lease." Unless otherwise specifically provided herein, all provisions of this Addendum shall be effective as of the later of the dates on which Landlord and Tenant execute this Addendum.
- 4. Miscellaneous. To the extent the provisions of this Addendum and the Lease are inconsistent, the provisions of this Addendum shall govern.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Addendum as of the date first set forth above.

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: _____ /s/ James L. Clancy
Authorized Signatory

By: _____ /s/ David M. Fields
Authorized Signatory

Tenant:

**Five9, Inc.,
a Delaware corporation**

By: _____ /s/ David Hill

Title: _____ Vice President, Finance

Regarding:

Existing Premises

Bishop Ranch 8, Building P
4000 Executive Parkway, Suites 400 & 520
San Ramon, CA 94583

Expansion Space C:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 514
San Ramon, CA 94583

SIXTH LEASE ADDENDUM

This Sixth Lease Addendum ("Addendum") is made as of July 1, 2018, by and between **Alexander Properties Company, LLC**, a California limited liability company ("Landlord") and **five9, Inc.**, a Delaware corporation ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to that certain Bishop Ranch Building Lease dated December 16, 2011, as amended by that certain First Lease Addendum dated October 24, 2012 and as further amended by that certain Second Lease Addendum dated January 23, 2014, as amended by that certain Third Lease Addendum dated April 3, 2017 (the "3rd Addendum"), as amended by that certain Fourth Lease Addendum dated June 30, 2017 (the "4th Addendum"), that certain Fifth Lease Addendum dated January 3, 2018 (collectively, the "Lease"), pursuant to which Landlord leases to Tenant, and Tenant leases from Landlord **Suites 400, 514 and 520** collectively containing **74,470 rentable square feet** (the "Premises") located at **4000 Executive Parkway**, San Ramon, California. Pursuant to the 3rd Addendum, effective **March 1, 2018**, the size of the Premises shall increase to **79,576 rentable square feet**.
- B. The Term of the Lease is scheduled to expire on **March 31, 2021**.
- C. The parties desire to amend the Lease to make certain other modifications to the Lease as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. Refurbishment Allowance. In connection with the Refurbishment Allowance, as described in the 3rd Addendum and modified in the 4th Addendum, Landlord hereby agrees that Tenant may apply an amount not to exceed Two Dollars (\$2.00) per rentable square foot of the Premises, as described in the 3rd Addendum, of any remaining balance of the Refurbishment Allowance towards Tenant's trade fixtures, equipment, furniture, telephone and data equipment and architectural services. Any unused portion of the Refurbishment Allowance shall expire on February 28, 2020.
- 2. Brokers. Tenant warrants and represents to Landlord that in the negotiating or making of this Addendum neither Tenant nor anyone acting on its behalf has dealt with any real estate broker or finder who might be entitled to a fee or commission for this Addendum. Tenant shall indemnify and hold Landlord harmless from any claim or claims, including costs, expenses and attorney's fees incurred by Landlord as a result of any other broker or finder asserting a claim for a fee or commission based upon any dealings with or statements made by Tenant or its agents, employees and representatives.
- 3. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Lease. The Lease, as amended by this Addendum, is referred to herein as the "Lease." Unless otherwise specifically provided herein, all provisions of this Addendum shall be effective as of the later of the dates on which Landlord and Tenant execute this Addendum.
- 4. Miscellaneous. To the extent the provisions of this Addendum and the Lease are inconsistent, the provisions of this Addendum shall govern.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Addendum as of the date first set forth above.

Landlord:

**Alexander Properties Company, LLC,
a California limited liability company**

By: _____ /s/ James L. Clancy
Authorized Signatory

By: _____ /s/ David M. Fields
Authorized Signatory

Tenant:

**Five9, Inc.,
a Delaware corporation**

By: _____ /s/ David Hill

Title: _____ Vice President, Finance

SEVENTH LEASE AMENDMENT

THIS SEVENTH LEASE AMENDMENT (this "**Amendment**") is dated as of February 27, 2019, by and between **ALEXANDER PROPERTIES COMPANY, LLC**, a California limited liability company, as successor-in-interest to Alexander Properties Company, a California limited partnership ("**Landlord**"), and **FIVE9, INC.**, a Delaware corporation ("**Tenant**").

RECITALS

A. Pursuant to that certain Bishop Ranch Building Lease, dated as of December 16, 2011 (the "**Original Lease**"), as amended by (i) that certain First Lease Addendum dated October 24, 2012, (ii) that certain Second Lease Addendum dated January 23, 2014, (iii) that certain Third Lease Addendum dated April 3, 2017, (iv) that certain Fourth Lease Addendum dated June 30, 2017, (v) that certain Fifth Lease Addendum dated January 3, 2018, and (vi) that certain Sixth Lease Addendum dated July 1, 2018 (collectively, the "**Existing Lease**"), Tenant leases certain premises containing approximately 79,576 rentable square feet commonly known as Suites 400, 514 and 520 (collectively, the "**Existing Premises**") in the building located at Bishop Ranch 8, 4000 Executive Parkway, San Ramon, California (the "**Building**"). The "Expiration Date" under the Existing Lease is March 31, 2021 (the "**Expiration Date**").

B. Landlord and Tenant desire to (i) add to the Existing Premises that certain space in the Building commonly known as Suite 525, which consists of approximately 10,476 rentable square feet (the "**Expansion Space**"), as more particularly shown on **Exhibit A** attached hereto, and (ii) make certain other amendments to the Existing Lease, all subject to, and on the basis of, the terms, covenants and conditions hereinafter set forth. The Existing Lease, as amended by this Amendment, is referred to as the "**Lease**."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Use of Defined Terms; Recitals; Effective Date.

1.1 Definitions; Recitals. Unless otherwise defined herein or unless the context clearly requires otherwise, all capitalized terms used herein shall have the defined meanings ascribed to them in the Existing Lease. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this Amendment shall be effective as of the date first written above.

2. Expansion Space.

2.1 Commencement Date. For purposes of this Amendment, the "Expansion Space Commencement Date" means the Substantial Completion Date (as defined in the Work Letter attached hereto as **Exhibit B** (the "**Work Letter**")), which the parties anticipate will occur on or before May 1, 2019 (the "**Target Expansion Space Commencement Date**"). The period from the Expansion Space Commencement Date through the Expiration Date is sometimes referred to herein as the "**Expansion Term**". As of the Expansion Space Commencement Date, all terms and provisions of the Lease shall be applicable to the Expansion Space. If, for any reason, the Substantial Completion Date does not occur on or before the Target Expansion Space Commencement Date, this Amendment shall not be void or voidable, nor shall Landlord, or Landlord's agents, advisors, employees, partners, shareholders, directors, invitees, independent contractors or Landlord's manager be liable to Tenant for any loss or damage resulting therefrom. However, Tenant shall not be liable for Base Rent for the Expansion Space pursuant to Section 4.4(a) below or Operating Cost Payments with respect to the Expansion Space pursuant to Section 4.6(a) below until the Substantial Completion Date.

2.2 Expiration Date. The expiration date for the lease of the Expansion Space shall be the Expiration Date (i.e., March 31, 2021).

2.3 Condition. Landlord is leasing the Expansion Space to Tenant "as is", provided the Suite Improvements are completed in accordance with the Work Letter, and Tenant acknowledges that (a) neither Landlord nor any of its employees or agents has made any representations regarding the Expansion Space or the condition thereof; and (b) except for the Suite Improvements, Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare the Expansion Space for Tenant's occupancy.

2.4 Use. Tenant shall use the Expansion Space only for general office use as more specifically set forth in the Existing Lease. Landlord and Landlord's agents have made no representations or warranties with respect to the Expansion Space or the Building or the suitability of either for the conduct of Tenant's business, except as expressly set forth herein, and Tenant acknowledges and agrees that, subject to the completion of the Suite Improvements, the Expansion Space is suited for the use intended by Tenant, and is in good and satisfactory condition. Tenant represents and warrants to Landlord that, prior to executing this Amendment, Tenant made such investigations as it deemed appropriate with respect to the suitability of the Expansion Space for its intended use, and determined that, subject to the completion of the Suite Improvements, the same is suitable for such intended use.

3. Amendments to Lease.

3.1 Premises. Effective as of the Expansion Space Commencement Date, all terms and provisions of the Lease shall become applicable to the Expansion Space, the Premises shall include and mean both the Existing Premises and the Expansion Space, and, except to the extent inconsistent with the terms of this Amendment, all references in the Lease to the "**Premises**" shall be construed to refer to both the Existing Premises and the Expansion Space.

Accordingly, effective as of the Expansion Space Commencement Date, Section 1 (PREMISES) of the Lease shall be deleted in its entirety and replaced by the following:

"Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises (the "**Premises**") containing 90,052 rentable square feet known as Suites 400, 514, 520 and 525, as shown on Exhibit A attached hereto, all located at 4000 Executive Parkway, Building P, San Ramon, California 94583 (including all tenant improvements thereto, the "**Building**"). The Building is part of a complex containing the Building and two (2) other buildings (the "**Complex**"). The Complex, which contains 677,720 rentable square feet, the land on which the Complex is situated (the "**Land**"), the common areas of the Complex, any other improvements in the Complex and the personal property used by Landlord in the operation of the Complex (the "**Personal Property**") are herein collectively called the "**Project**"."

3.2 Exhibit A. Exhibit A to the Lease is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

3.3 Base Rent.

(a) Expansion Space. Effective as of the Expansion Space Commencement Date, Tenant shall pay to Landlord monthly Base Rent for the Expansion Space as follows:

Period	Annual Rate per Rentable Square Foot (rounded to the nearest 100th of a dollar)	Monthly Rate per Rentable Square Foot (rounded to the nearest 100th of a dollar)	Monthly Base Rent
Expansion Space Commencement Date - 12th Full Calendar Month of Expansion Term*	\$35.40	\$2.95	\$30,904.20
13th Full Calendar Month of Expansion Term - Expiration Date	\$36.46	\$3.04	\$31,831.33

* Base Rent for any partial month at the beginning of the Expansion Term shall be prorated using the actual number of days in the month.

(b) Manner of Payment. The Base Rent payable by Tenant pursuant to the foregoing shall be paid in accordance with the terms of the Existing Lease.

3.4 Intentionally Omitted.

3.5 Operating Cost Increases. Effective as of the Expansion Space Commencement Date:

(a) The following shall be added as the second paragraph of Section 5.1(a) of the Lease:

"Expansion Space Base Year: 2019."

(b) The following shall be added as the second paragraph of Section 5.2 of the Lease:

"If Operating Costs during any calendar year following the Expansion Space Base Year exceed the Operating Costs for the Expansion Space Base Year, Tenant shall pay Tenant's Expansion Space Share (as defined below) of such excess to Landlord in accordance with Section 5.3 below. For purposes hereof, "**Tenant's Expansion Space Share**" means 1.55%, which is calculated by dividing the rentable square footage of the Expansion Space (10,476 rsf) by the rentable square footage of the Complex (677,720 rsf)."

(c) The definition of "**Operating Cost Payment**" shall mean the amount payable by Tenant pursuant to this Section 3.5 with respect to the Expansion Space, together with the amounts payable by Tenant pursuant to the Existing Lease with respect to the Existing Premises.

3.6 Right of First Refusal. Section 25.22 (Right of First Refusal) of the Existing Lease is hereby deleted in its entirety and replaced with the following:

"25.22 **Right of First Refusal.** Landlord hereby grants Tenant a one-time right of first refusal to lease (the "Right of First Refusal") any space in excess of five thousand (5,000) rentable square feet located on the third (3rd) and/or fifth (5th) floor of the Building that is available as of the date this Lease has been fully executed or becomes available during the term of this Lease, the "Refusal Space". If and at such time as Landlord has received an expression of interest by a third party in leasing the Refusal

Space, Landlord shall notify Tenant in writing of such interest, stating the location, the rentable area, and the basic business terms under which Landlord proposes to lease the Refusal Space, each a "First Refusal Notice". Tenant shall have seven (7) days after receipt of a Refusal Notice to deliver to Landlord, in writing, its notice that it is exercising its rights hereunder, the "Exercise Notice" on the terms set forth in the First Refusal Notice.

"If Tenant does not timely deliver an Exercise Notice, then Landlord shall be free to lease the Refusal Space to another party, provided, however, if Landlord fails to lease the Refusal Space

within six (6) months of the delivery of the First Refusal Notice to Tenant or the economic terms stated in the First Refusal Notice improve by a value of seven percent (7%) or more in favor of the proposed tenant, then Landlord shall reoffer the Refusal Space to Tenant by sending another First Refusal Notice to Tenant stating the then-current terms."

3.7 Disclosure Regarding Certified Access Specialist. Tenant acknowledges that the Premises have not been inspected by a Certified Access Specialist ("CASp") for purposes of California Civil Code Section 1938 and in accordance with said Section 1938, Landlord hereby discloses as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Tenant shall not conduct or arrange for any CASp inspection without first obtaining Landlord's written consent to the scope of any inspection or report to be issued. Tenant agrees not to disclose the results of the CASp inspection without the written consent of Landlord, and, further, Tenant agrees to be solely responsible for the cost of such CASp inspection and for the cost of any required alterations, additions or improvements disclosed by the CASp inspection (the "**Access Improvements**"). Any such Access Improvements may, at Landlord's option, be performed in whole or in part by Landlord at Tenant's expense, payable as additional rent within ten (10) days following Landlord's demand.

4. Tenant's Certification. Tenant hereby certifies to Landlord that, as of the execution and delivery of this Amendment by Tenant to Landlord, there are no existing defenses against the enforcement of any of the obligations of Tenant under the Lease, and Landlord is not in default under the Lease by reason of its failure to perform any obligations thereunder, and there is no circumstance, event, condition or state of facts which, by the passage of time or the giving of notice, or both, could entitle Tenant to any such defenses or constitute or result in such a default.

5. Real Estate Brokers. Tenant represents and warrants that Tenant has not had any dealings with any broker other than Brian Lagomarsino of Colliers International ("Tenant's Broker") in connection with the negotiation or execution of this Amendment, and Tenant agrees to indemnify Landlord and hold Landlord harmless from any and all costs (including attorneys' fees), expenses or liability for commissions or other compensation claimed by any broker or agent claiming to have had dealings with Tenant in connection with this Amendment.

6. Miscellaneous.

6.1 Except as modified by this Amendment, all of the terms, conditions and provisions of the Existing Lease shall remain in full force and effect and are hereby ratified and confirmed.

6.2 To the extent the terms of the Existing Lease and this Amendment are inconsistent, the terms of this Amendment shall control.

6.3 The submission of this Amendment to Tenant for examination or execution does not create an option or constitute an offer to Tenant to amend the Existing Lease on the terms and conditions contained herein, and this Amendment shall not become effective as an amendment to the Existing Lease unless and until it has been executed and delivered by both Landlord and Tenant.

6.4 This Amendment contains the entire agreement of Landlord and Tenant with respect to the subject matter hereof. It is understood that there are no oral agreements between Landlord and Tenant affecting the Existing Lease as hereby amended, and this Amendment supersedes and cancels any and all previous negotiations, representations, agreements and understandings, if any, between Landlord and Tenant and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Lease. Tenant acknowledges that all prior communications from Landlord or its agents are not and were not, and shall not be construed to be, representations or warranties of Landlord or its agents as to the matters communicated, and have not and will not be relied upon by Tenant.

6.5 This Amendment may be executed in two counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same agreement. This Amendment may be executed by a party's signature transmitted by facsimile ("fax") or by electronic mail in portable document format ("pdf"), and copies of this Amendment executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. Any party executing and delivering this Amendment by fax or pdf shall promptly thereafter deliver a counterpart of this Amendment containing said party's original signature. All parties hereto agree that a faxed or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Amendment as if it were an original signature page.

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EXHIBIT A

PREMISES

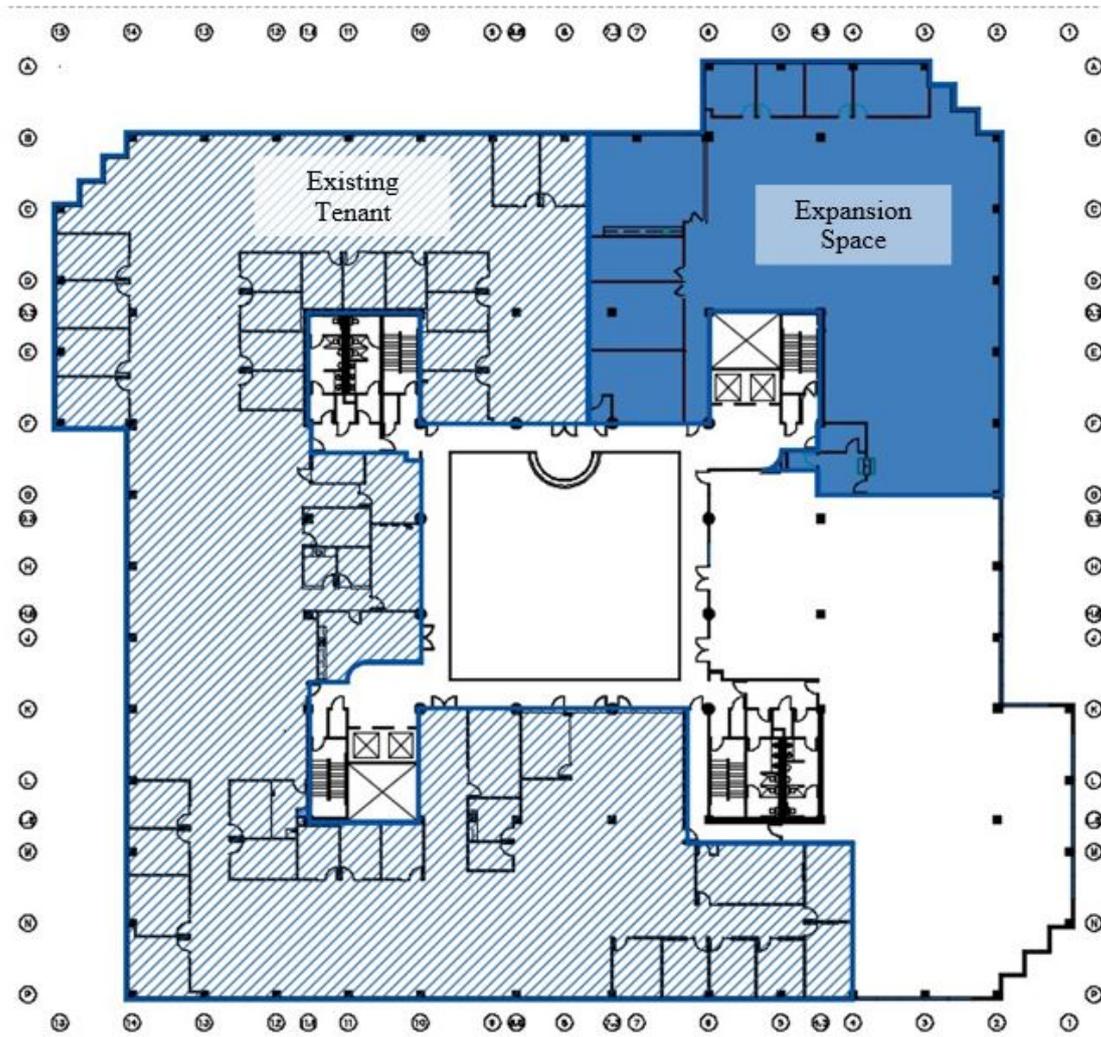


Exhibit A-1

EXHIBIT B

WORK LETTER

This work letter (“**Work Letter**”) sets forth the terms and conditions relating to the construction of the initial improvements in the Expansion Space (as defined in the Seventh Lease Amendment (the “**Lease Amendment**”) to which this Work Letter is attached). All capitalized terms used but not defined herein shall have the respective meanings given such terms in the Lease Amendment.

SECTION I

SUITE IMPROVEMENTS

1.1 Suite Improvements. Landlord shall cause SDC or another general contractor (SDC or such other general contractor being herein the “**General Contractor**”) to construct and install in the Expansion Space with reasonable diligence the improvements and fixtures provided for in this Work Letter (“**Suite Improvements**”). All Suite Improvements shall be performed in a first-class workmanlike manner in accordance with the Final Working Drawings (as hereinbelow defined). By execution of the Lease Amendment, Landlord and Tenant hereby approve that certain Space Plan and Specifications for the Suite Improvements attached hereto as Exhibit B-1 (“**Approved Design Development Plan**”).

1.2 Final Working Drawings. Following execution of the Lease Amendment, Landlord shall cause to be prepared, at its sole cost and expense, and delivered to Tenant final working drawings for the Suite Improvements (the “**Final Working Drawings**”). The Suite Improvements shown on the Final Working Drawings shall be substantially consistent with those initially identified on the Approved Design Development Plan, and Landlord shall cause the Suite Improvements to be performed (a) substantially as shown on the Final Working Drawings, excepting only minor variations (*i.e.*, variations which are not inconsistent with the intent of the Final Working Drawings) as Landlord may deem advisable, and any Change Orders (as defined below) approved by Landlord; and (b) in compliance with all Legal Requirements; provided, however, that the issuance of a temporary or permanent certificate of occupancy or final sign off on the job card upon Substantial Completion (as defined below) of the Suite Improvements shall be deemed conclusive evidence of the compliance of the Suite Improvements with applicable Legal Requirements.

1.3 Change Orders. If, prior to the Substantial Completion Date, Tenant shall request improvements or changes to the Expansion Space in addition to, revision of or substitution for the Suite Improvements identified on the Approved Design Development Plan or Final Working Drawings, including any request for above-Building standard finishes or other detailed specifications (individually or collectively, a “**Change Order**”), Tenant shall deliver to Landlord for its approval plans and specifications for such Change Order. If Landlord does not approve of the plans for such Change Order, Landlord shall, if applicable, advise Tenant of the revisions required to obtain Landlord’s approval. Tenant shall revise and redeliver the plans and specifications to Landlord within five (5) days of Landlord’s advice or Tenant shall be deemed to have abandoned its request for such Change Order. If Landlord approves the plans for any Change Order, Landlord shall have five (5) days to provide Tenant notice of (a) the cost of such Change Order; and (b) whether any delay in the completion of the Suite Improvements is anticipated as a result thereof and, if so, the estimated length of such delay. Tenant will thereafter have three (3) days to approve or withdraw its request for such Change Order. If Tenant fails to respond within such three (3) day period, Tenant will be deemed to have withdrawn its request for such Change Order. Tenant shall pay for all preparations and revisions of plans and specifications, and any increase in the cost of construction, resulting from all Change Orders.

SECTION II

SUITE IMPROVEMENT COSTS

Landlord shall bear the cost of construction of the Suite Improvements, except for the following, which shall be Tenant's responsibility: (a) any increase in the cost of construction resulting from Change Orders, and (b) any increase in the cost of construction resulting from Tenant Delays (as defined in Section III below). If Landlord and Tenant agree on any Change Orders as provided in Section 1.3 above, Landlord shall furnish Tenant with an invoice specifying the

estimated increase in the cost of the Suite Improvements resulting therefrom, and Tenant shall pay such estimated increase to Landlord within three (3) days thereafter. Tenant acknowledges and agrees that any such invoice shall be based solely on an estimate of the incremental increase in the cost of the Suite Improvements, and shall not be binding on Landlord or Landlord's contractor, nor shall Tenant's payment on account of such estimate limit Tenant's obligation hereunder to pay the amount specified in clauses (a) and (b) above.

SECTION III **SUBSTANTIAL COMPLETION OF THE SUITE IMPROVEMENTS**

3.1 **Substantial Completion.** The Suite Improvements shall be deemed to be “**Substantially Completed**” at such time as Landlord shall certify in writing to Tenant that the Suite Improvements have been fully completed in accordance with this Work Letter (as reasonably determined by Landlord), except for finishing details, decorative items, minor omissions, mechanical adjustments, and similar items of the type customarily found on an architectural punchlist, the correction or completion of which items, collectively, will not substantially interfere with Tenant’s occupancy and use of the Expansion Space (“**Punchlist Items**”). The date on which the Suite Improvements are Substantially Completed and Landlord delivers possession of the Expansion Space to Tenant is herein referred to as the “**Substantial Completion Date**”.

3.2 **Punchlist.** The Punchlist Items shall not act to suspend or delay the Expansion Space Commencement Date, but Landlord shall use commercially reasonable efforts to complete the Punchlist Items within thirty (30) days following the Substantial Completion Date.

3.3 **Tenant Cooperation.** Tenant shall use its best efforts and all due diligence to cooperate with Landlord to complete the Final Working Drawings as soon as possible after the execution of the Lease Amendment. Tenant shall meet with Landlord on a scheduled basis, to be determined by Landlord, to discuss the progress thereof. Without limiting the foregoing, if

(a) the Suite Improvements include the installation of electrical connections for furniture stations to be installed by Tenant, and (b) any electrical or other portions of such furniture stations must

be installed in order for Landlord to obtain any governmental approval required for occupancy of the Expansion Space, then (i) Tenant, upon five (5) business days’ notice from Landlord, shall promptly install such portions of such furniture stations in accordance with Section 8 of the Lease, and (ii) during the period of Tenant’s entry into the Expansion Space for the purpose of performing such installation, all of Tenant’s obligations under the Lease relating to the Expansion Space shall apply, except for the obligation to pay Base Rent for the Expansion Space. Any delay in the Substantial Completion Date attributable to a delay in Tenant’s installation of such portions of the furniture stations shall constitute a Tenant Delay.

3.4 **Delay in Substantial Completion.**

3.4.1 **Tenant Delay.** For purposes of the Lease and this Work Letter, the term “**Tenant Delay**” shall mean any actual delay in construction of the Suite Improvements that is due to any act of omission of Tenant (wrongful, negligent or otherwise), its agents, contractors, or vendors, including, but not limited to, delays resulting from any Change Order requested by Tenant.

3.4.2 **Deemed Substantial Completion.** The term “Tenant Delay” shall not include any delays caused by Force Majeure Events. Notwithstanding the provisions of Section 3.1 above, (a) if Landlord is delayed in completing the Suite Improvements or in delivering possession of the Expansion Space to Tenant as a result of any Tenant Delay, then the Substantial Completion Date shall be the date that the Suite Improvements would have been Substantially Completed in the absence of such Tenant Delay, as reasonably determined by Landlord or Landlord’s architect; and (b) if Tenant takes possession and commences business operations in any portion of the Expansion Space prior to the date that the Suite Improvements are Substantially Completed, then the Substantial Completion Date shall be the date Tenant commences business operations in the Expansion Space. Tenant shall be responsible for and shall pay any costs and expenses incurred by Landlord in connection with, or as a consequence of, any Tenant Delay. Notwithstanding the foregoing, Landlord shall not be required to tender possession of the Expansion Space to Tenant

before the Suite Improvements have been Substantially Completed, as determined without giving effect to the preceding sentence.

SECTION IV MISCELLANEOUS.

4.1 Contractor's Guaranty. If, within one (1) year after the Substantial Completion Date, any of the Suite Improvements are found not to be substantially in accordance with the Approved Construction Drawings or to be defective in any way, Landlord, at no expense to Tenant, shall cause such defect to be promptly corrected after Landlord's receipt of written notice from Tenant to do so. Notwithstanding the foregoing, Landlord shall not be obligated to correct damage or defects caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear.

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

4.3 Landlord's Representative. Landlord has designated Josh Hitchcock and Scott Bergstrom its sole representatives with respect to the matters set forth in this Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter.

4.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if a default by Tenant under the Lease (including, without limitation, any default by Tenant under this Work Letter) beyond applicable notice and cure periods has occurred at any time on or before the Substantial Completion of the Suite Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord may cause General Contractor to cease the construction of the Suite Improvements, and (ii) all other obligations of Landlord under the terms of this Work Letter shall be suspended until such time as such default is cured pursuant to the terms of the Lease.

4.5 Ownership of Suite Improvements. All Suite Improvements whether installed by Landlord or Tenant, shall become a part of the Premises, shall be the property of Landlord and, unless Landlord otherwise requests in writing, shall be surrendered by Tenant with the Premises, without any compensation to Tenant, at the expiration or termination of the Lease.

EXHIBIT B-1

APPROVED DESIGN DEVELOPMENT PLAN

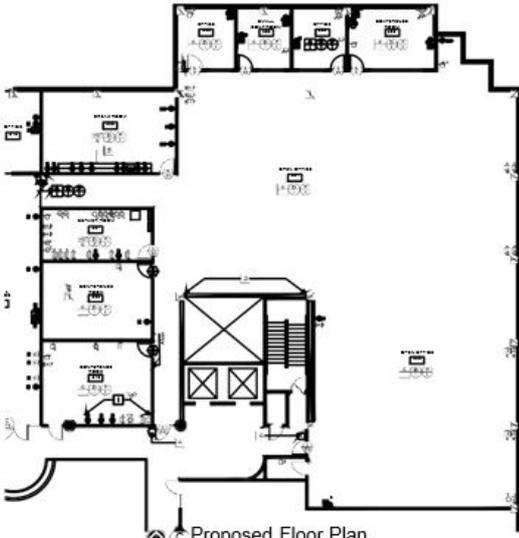
[See attached]

Exhibit B-1-1

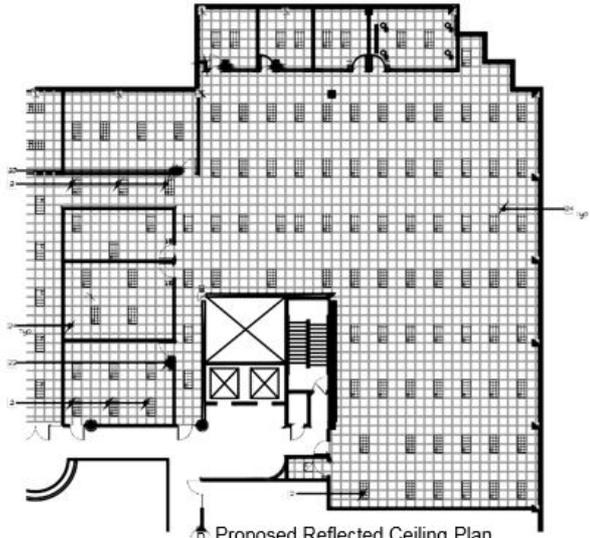
PLEASE INITIAL
 REVIEW BY _____
 ISSUED FOR
Pricing

NO.	DATE	REVISIONS

SHEET TITLE
**Proposed Floor Plan,
 Proposed Reflected Ceiling Plan**
 SHEET NUMBER



Proposed Floor Plan



Proposed Reflected Ceiling Plan

- Keynotes:** Proposed Floor Plan
- 1. Replace receptacles with max 4 wires to be used typical throughout suite.
 - 2. Provide low voltage of wires that existing conduit will contain.
 - 3. Relocated ceiling and eht. Connect wires into to existing plenum line.
 - 4. Provide J-box for pull string for card readers. Connect directly under to provide wiring and termination.

- Keynotes:** Proposed Reflected Ceiling Plan
- 12. Replace existing and relocated light fixtures as required per proposed new room configuration.
 - 22. New existing standard light fixture location.
 - 28. Relocated light fixture location.
 - 34. Glass or door in HVAC register as required to sign.

- Plan Legend:**
- EXISTING WALL
 - NEW CEILING-HIGHT WALL
 - NEW EXTERIOR WALL

- Door Schedule:**
- 1. EXISTING 6'0" x 8'0" STD. DOOR TO REHAB
 - 2. EXISTING 6'0" x 8'0" STANDARD L.A. GLASS
 - 3. EXISTING 6'0" x 8'0" STANDARD LVP-SET
 - 4. EXISTING 6'0" x 8'0" STD. HARDWARE TO REHAB

- Finish Legend:**
- 1. WALLBOARD 5/8" TYPE X GP 15' x 8' MIN. JOINTS 1/4" GAP. DIT-24 MIN. JOINTS. GROUT, WEG. FEL. To meet & comply with existing in adjacent fire & smoke.
 - 2. WALL BOARD 5/8" TYPE X GP EXISTING OR REHAB
 - 3. PAINT. KeyStone Blue for open GP. To match existing in adjacent fire & smoke.
 - 4. WALL BOARD & Gypsum Joints. Gypsum Joints. 1/4" GAP. DIT-24 MIN. JOINTS. GROUT, WEG. FEL. To meet & comply with existing in adjacent fire & smoke.
 - 5. WALL BOARD & Gypsum Joints. Gypsum Joints. 1/4" GAP. DIT-24 MIN. JOINTS. GROUT, WEG. FEL. To meet & comply with existing in adjacent fire & smoke.

- Electrical Legend:**
- 1. EXISTING
 - 2. RELOCATED
 - 3. DEDICATED
 - 4. NEW DUPLEX OUTLET
 - 5. NEW POWER-EX OUTLET
 - 6. NEW TELEPHONE OUTLET
 - 7. NEW TSB DATA OUTLET
 - 8. GAPPED OUTLET

- Ceiling Legend:**
- 1. EXISTING
 - 2. RELOCATED
 - 3. NEW 2' X 4' FLUORESCENT FIXTURE WITH PARACANAL LENS
 - 4. NEW 2' X 2' FLUORESCENT FIXTURE WITH PARACANAL LENS
 - 5. Existing Ultra High-CAD Toggle Switch
 - 6. SWITCH
 - 7. SWITCH WITH OCCUPANCY SENSOR

* PROVIDE MAX 4 WIRE 14-2 TO 120V-100V DEVELOPMENT FOR APPROVAL

