**Exhibit B**

**RealAccess ALLIANCE**

Building Owners and Managers Association International

Institute of Real Estate Management

International Council of Shopping Centers

Manufactured Housing Institute

National Apartment Association

National Association of Home Builders

National Association of Industrial and Office Properties

National Association of Real Estate Investment Trusts

National Association of Realtors

National Multi Housing Council

The Real Estate Roundtable

September 6, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No 99-217 & CC Docket No. 96-98

Dear Chairman Kennard:

The Real Access Alliance writes on behalf of the following national real estate associations and leading private and publicly held real estate companies to set out our strategy for implementing a number of the key elements of the building access commitments outlined in our letter to you dated July 13, 2000.

The Alliance, whose member associations represent over 1,000,000 owners and operators of real estate nationwide, consists of the following:

Building Owners and Managers Association International
Institute of Real Estate Management
International Council of Shopping Centers
Manufactured Housing Institute
National Apartment Association
National Association of Home Builders
National Association of Industrial and Office Properties
National Association of Real Estate Investment Trusts
National Association of Realtors
National Multi Housing Council
The Real Estate Roundtable

The initial group of building owners publicly committing to the best practices outlined in this letter and who collectively own or operate over 250 million square feet of office space include the following: Arden Realty, Inc., Birmingham Realty, Boston Properties, Inc., Burnham Real Estate Services, CarrAmerica Realty Corporation, Catellus Development Corporation, Charles E. Smith Commercial Realty, Equity Office Properties Trust, Rudin Management Company, Inc., Spieker Properties, Inc., TIAA-CREF, and Tishman Speyer Properties.

Specifically, as detailed below, we are prepared to operationalize our speed of processing commitment to tenants. The above-listed real estate companies are committing to reflect that commitment in lease terms offered to new office tenants in the their buildings, and the undersigned trade associations are committing to promote the use of such lease terms among their members. Additionally these policies will be reflected in the BOMA standard lease, a widely-used form.

1420 New York Ave., NW
Suite 1100
Washington, DC 20005
(202) 639-8400
www.realaccess.org

We made the July 13, 2000 commitments voluntarily and with the expectation that you would consider them as responsive to the broad policy objectives outlined in the docket referenced above. We took those steps notwithstanding our position that these matters raise constitutional questions and lie outside the jurisdiction of the Federal Communications Commission (FCC). Our commitments concern a range of matters associated with telecommunications services in multi-tenanted office, residential, industrial and retail real estate and in multi-tenanted manufactured housing communities. They include the development of model contracts and best practices aimed at improving the speed of processing tenant and provider generated requests for access to those types of buildings.

The overriding objective of this implementation plan is the same as that of our basic commitments — responsiveness to the needs of tenants in multi-tenanted buildings. Because the access issues discussed in this docket relate primarily to office building access, we have focused on those issues first. Nonetheless, we remain committed to developing model agreements and best practices aimed at benefiting tenants in other multi-tenanted buildings. We also are not setting these ideas out as a comprehensive list of office-related best practices. As our experience with the specific issues relevant to that market increases, we expect to review the effectiveness of these commitments and, if warranted, to add additional best practices.

The specific implementation details of these best practices are as follows:

- Non Exclusivity in Office Building Contracts

Real estate companies will reject telecommunications provider requests for exclusive contracts to serve office buildings. "Exclusive" contracts will be understood in the practical sense of that term, including contracts that are exclusive by their explicit terms and those that, as a practical matter, would necessarily require the owner to treat one telecommunications provider as having certain exclusive rights to serve tenants in the building.

- Quantitative Study

We welcome any objective, fact-finding studies of the marketplace, as we continue to believe that the market for building access is thriving. We, therefore, believe that a disciplined, quantitative study of the development of competition in the office building market, periodically conducted under the auspices of the FCC, will support this view, and would serve the public interest. The annual video competition or wireless competition report could provide a model. The Alliance members will work with the FCC to provide objective data to be gathered by an independent source for use by the Commission and others to assess the status of the marketplace.

- Clearinghouse for Information and Complaints

The Alliance is prepared to establish an independent clearinghouse to which tenants, real estate companies and/or telecom providers can submit allegations of behavior inconsistent with the industry commitments set out in the July 13 letter. While such a clearinghouse would not exist to dictate the resolution of specific complaints, it

would function on the model of a "better business bureau." It might also allow a more transparent process for determining the state of the market for building access.

- Speed of Processing

As reflected in our contributions to the record in this proceeding, we continue to believe that the market is working to ensure that tenants are not experiencing significant problems with the speed with which requests for providers' access to buildings are being processed by real estate owners. Nonetheless, *any* such problems could adversely affect tenants by delaying their access to competitive telecommunications providers. Ameliorating any difficulties that tenants may experience is the paramount reason for speed of processing improvements and commitments.

Today, we are committed — as an industry and as individual companies — to establishing and promoting a practice of timely responses to tenant-generated requests for service from providers not yet serving a particular office building. Specifically, building owners will respond within 30 days with a yes or no answer to any written request for access that is generated by an office building tenant. Office building owners will proceed, in good faith, to accommodate the tenant requests. To that end, the building owner will work expeditiously and in good faith with the service provider to resolve any outstanding contract terms and to facilitate prompt tenant service. Building owners will offer this faster track speed of processing in any instance where,

- there is appropriate, uncommitted space available to accommodate the telecom provider (the tenant requesting service would have a reasonable opportunity to verify, with the assistance of the requested telecommunications provider, if the tenant desires, whether there is such space available), and
- the telecommunications provider indicates its intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry, including the provider's agreement to furnish service to any tenant in the building within a reasonable period of time. While those agreements are being developed, a telecom provider's willingness to abide by an interim model agreement or sample contract developed from among typical contracts already signed between building owners and competitive telecommunications providers would be an acceptable way to meet this requirement.

The sole reason for legitimate public policy interest in the area of building access is to ensure that tenants have a meaningful array of choices among telecommunications service providers and the services they offer. Accordingly, the Alliance contemplates that in buildings where there are multiple competitive providers already serving the building, the tenant should be informed of the availability of the existing alternatives. The tenant, in turn, will indicate to the building owner whether there are material advantages offered by another provider whose services the tenant is seeking. Such advantages might include better price, better customer service, higher bandwidth, and/or better billing services. This dialogue will provide tenants with information about their existing choices and educate the building owner about the opportunities presented by a new service provider. It would also ensure that letters of authorization purporting to assert a tenant's choice are bona fide requests from the tenant and not provider-generated

requests. Provider-generated requests for access to buildings where they do not yet have any customers, or where master contracts for multiple buildings are sought ("pre-provisioning requests") will be addressed somewhat differently as indicated below.

- Policies to be Reflected in New Leases

As reflected in our contributions to the record, the Alliance remains committed to the view that the FCC's assertion of provisional or other jurisdiction over building access disputes would be unnecessary and, in some instances, even counterproductive to advancing *tenants'* interests in access to competitive telecom services. Nonetheless, individual building owners that commit to abide by the particulars set out in the preceding "Speed of Processing" paragraph, including those already identified in this letter, will reflect that commitment in terms offered in new leases with office tenants. Notice of the commitments set forth above reinforcing tenants' access to competitive telecom service providers will be furnished to existing leaseholders. Additionally these policies will be reflected in offered terms in the BOMA standard lease, a widely-used form.

- Clearer, More Predictable Process for Handling Provider-Generated Requests

Tenant-generated requests are appropriately the concern of consumer-oriented public policy. Provider-generated requests, by contrast, chiefly reflect the individual business plan objectives of specific commercial providers. Nonetheless, building owners are currently negotiating a wide range of access agreements with a wide variety of telecom providers even before any specific tenant indicates an interest in (or need for) their particular products or services. In fact, some of these agreements address the access rights of certain providers to a large number of buildings and, in some instances, may help tenants get shorter "hook-up" times for services that are different or cheaper than those already available in the building.

Some telecom providers have complained that their requests for "pre-provisioning" access are handled in a confusing and often slow manner by building owners/managers. Since tenants can benefit from a clear and predictable line of communication between building owners and telecom providers, the Alliance has determined that it is appropriate to develop a clearer and more predictable process for responding to these pre-provisioning requests. Such a process will include a commitment that real estate owners will respond within 30 days of receiving any written provider-generated request for space with clear guidance as to their individual policies (including specific approval criteria) regarding such requests for space. Such guidance would also include a specific timetable governing their decisions to respond to such requests for space.

This commitment regarding provider-generated requests will be extended to any provider that indicates an intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry, including an agreement to actually make the provider's service available to the tenants of the building. In other words, the provider's continuing access and use of space in the building(s) would be conditioned on their deploying their equipment and/or serving tenants at the building(s) by the dates negotiated by the parties to that contract.

*Conclusion*

This strategy is being implemented as an integral alternative to a federal regulatory approach for addressing building access issues. Should there be federal regulations issued in this area, this approach would need to be revised accordingly. Similarly, it remains to be seen how best to implement the July 13 commitments in states that purport to have legally enforceable building access regulations. That issue will require further consideration and deliberation.

Most importantly, this strategy will require a reasonable amount of time and a concerted and focused effort by both building owners and their trade associations on the one hand and by competitive telecommunications providers on the other hand to be implemented successfully. It cannot prosper in an environment in which it is perceived that policymakers are imminently poised to change the landscape of the marketplace through wide-ranging regulatory proposals. In fact, it will be important for the FCC and other regulatory agencies at the state and federal level to encourage our partners in the telecommunications industry to be full partners in this important project. In the end, this is intended to be a win-win-win for tenants, owners and telecom providers.

We submit two copies of this letter for the record.

Very truly yours,

The Members of the Real Access Alliance

cc: Chairman Kennard
Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
Kathryn Brown
Diane Cornell
Adam Krinsky
Clint Odom
Mark Schneider
Thomas Sugrue
Joel Taubenblatt
Peter Tenhula
Lauren Van Wazer
Helgi Walker
Chris Wright

**Exhibit C**

**RealAccess ALLIANCE**

Building Owners and Managers Association International

Institute of Real Estate Management

International Council of Shopping Centers

Manufactured Housing Institute

National Apartment Association

National Association of Home Builders

National Association of Industrial and Office Properties

National Association of Real Estate Investment Trusts

National Association of Realtors

National Multi Housing Council

The Real Estate Roundtable

# Summary of Real Estate Industry Commitments to Consumer Access to Competitive Telecommunications Services

The real estate industry, as represented by 11 national trade associations and 12 of the leading public and privately held real estate companies in the country, has committed to consumer access to, and choice in telecommunications services. More specifically, the industry has committed to

(I) Advancing tenant choice of telecom providers in commercial office buildings;

(II) Facilitating the expeditious build-out of the nation's telecommunications network; and

(III) Helping sustain continued progress in the expansion of the market for competitive telecommunications services in multi-tenanted buildings.

An outline of those commitments follows:

- Advancing *tenant choice* of telecom providers in commercial office buildings by
  - rejecting carrier requests for exclusive rights of access to any individual office building; and
  - responding, within thirty (30) days of written requests from office building tenants, with a good faith effort to begin accommodating the telecommunications provider of *their* choice, where
    - Tenant has been advised of existing choices;
    - Building owner has been advised of the material advantages offered by the new provider;
    - Appropriate space is available; and
    - The provider will execute a model access agreement (in a form currently being developed by the real estate industry in consultation with the telecommunications industry);
  - reflecting in new leases — and notifying existing tenants of — the building owners commitment (set forth above) to respond expeditiously and in good faith to tenant requests for competitive services
- Facilitating the expeditious build-out of our nation's telecommunications infrastructure by
  - Developing best practices and model agreements that will expedite infrastructure construction in multi-tenanted office, retail, and residential properties to serve tenants in those buildings.
  - Offering, within thirty (30) days of a telecom carrier's request, guidance regarding the owner's policies for granting access requests, where the prospective provider agrees to
    - Deploy its equipment and/or provide service to tenants by a date certain; and
    - Execute a model access agreement.
- Helping sustain continued progress regarding the expansion of the market for competitive telecommunications services in multi-tenanted buildings by
  - Establishing a clearinghouse for complaints of behavior inconsistent with the "best practices" contemplated by the commitments; and
  - Supporting a periodic, quantitative study of the market for competitive telecommunications services in multi-tenanted buildings.

**1420 New York Ave., NW**
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**Washington, DC 20005**
**(202) 639-8400**
**www.realaccess.org**

# DRAFT

## TELECOMMUNICATIONS LICENSE AGREEMENT
## (MULTI-TENANT OFFICE BUILDING)

TRANSACTION-SPECIFIC TERMS AND CONDITIONS

This Telecommunications License Agreement (together with all Exhibits or other attachments hereto, this "***Agreement***") is made as of the Effective Date by and between Licensor and Licensee. Licensee desires access to and use of portions of Licensor's Building for the purpose of providing the Services to Tenants. In consideration of the mutual covenants herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

***Article 1—Term Sheet.*** The parties agree that the following terms have the precise meanings ascribed to them below whenever used in this Agreement and that each party shall perform as required hereunder. Defined terms used herein include the plural as well as the singular as the context requires. Any defined terms set forth below that are not applicable to a particular transaction should be stricken.

*1.1* "***Effective Date***": _____

*1.2* "***Licensor***": _____

a(n) _____

Notice Address: _____
City, State, Zip _____
Telephone: _____
Facsimile: _____
e-mail: _____

*1.3* "***Licensee***": _____

a(n) _____

Notice Address: _____
City, State, Zip _____
Telephone: _____
Facsimile: _____
email: _____

*1.4* "***Building***": The land and improvements located at and commonly known as

_____
_____
_____

*1.5* "***Building Manager***": _____

*1.6* ***"Initial Term"***: _____ months/years from and after the Effective Date

*1.7* ***"Commencement Date"***: _____ days after the Effective Date, or upon completion of installation of the Equipment, whichever event comes first

*1.8* ***"Extension Term"***:

_____ additional ____ ( ) year period(s) after the expiration of the Initial Term

*1.9* ***"License Fees"***: Licensee shall pay Licensor the License Fees as follows: _____

*1.10* ***"Annual Increase"***: _____ percent (_____%)

*1.11* ***"Default Rate"***: _____ percent (_____%)

above the prime rate published in the Wall Street Journal from time to time (or a reasonably comparable rate should the prime rate no longer be published), but under no circumstances higher than the legal rate of interest

*1.12* ***"Payments"***: [STRIKE OR MODIFY AS APPLICABLE] Throughout the Term, from and after the Commencement Date, Licensee must pay Licensor the License Fees in equal monthly installments on the first day of each calendar month in the Term (and a prorated amount for any partial calendar months). The License Fees increase annually during the Term and any Extension Term, effective as of each anniversary of the Commencement Date, by an amount equal to: (a) the Annual Increase; multiplied by (b) the License Fees for the prior calendar year (including the accumulation of prior Annual Increases). Licensee must pay the License Fees to Licensor in advance without demand, offset, abatement, diminution or reduction. If any payment of the License Fees becomes more than ___ ( ) days overdue, then the amount overdue will accrue interest at the Default Rate until paid.

*1.13* ***"Other Financial Provisions"***: See attached Rider, if any.

*1.14* ***"Due Diligence Period"***: [STRIKE IF INAPPLICABLE] From the Effective Date through the Commencement Date (the "***Due Diligence Period***"), Licensee and its agents and other representatives may enter the Building and Premises at all reasonable times approved by Licensor in its reasonable, and upon reasonable prior notice to Licensor, to perform such inspections and to do those things that are reasonably necessary to determine the suitability of the Building and Premises for the Services, all at Licensee's sole expense. Licensee must promptly repair any damage caused by any such inspection and restore the Building and Premises to their condition prior to such inspection. Prior to its entry into the Building and Premises, Licensee must provide Licensor with an insurance certificate, with limits of coverage in the amounts set forth in Section 12 of the General Terms and Conditions, and from an insurer licensed to do business in the state in which the Building is located and reasonably satisfactory to Licensor, naming as additional insureds the Licensor and the additional parties specified in Section 12(b) of the General Terms and Conditions. If the Building or the Premises are not suitable for the Services in Licensee's good faith opinion, then

Licensee may terminate this Agreement by sending written notice of termination to Licensor at any time prior to the expiration of the Due Diligence Period. If Licensee so terminates this Agreement prior to the expiration of the Due Diligence Period, then neither Licensor nor Licensee will have any further obligation or liability to the other under this Agreement (except those which expressly survive any such termination). If Licensee does not so terminate this Agreement prior to the expiration of the Due Diligence Period, then Licensee will be deemed to have waived the right to terminate this Agreement pursuant to this **Section 1.14** and to have accepted the condition of the Premises and Building in their "AS IS" condition as of the Effective Date. Licensee is solely responsible for determining all aspects as to the suitability of the Building and Premises for the Services. Licensee will indemnify the Licensor Parties and hold them harmless from all Claims arising from any activities on the Premises by Licensee and its agents and other representatives during the Due Diligence Period. This indemnification will survive any termination of this Agreement.

***1.15 "Term":*** This Agreement remains effective for a period of time equal to the Initial Term plus any properly exercised Extension Term, if any, unless sooner terminated pursuant to an express provision hereof (such period of time being referred to as the "***Term***"). Any Extension Term indicated in **Section 1.8** above will be properly exercised only by delivery of written notice to Licensor, at least _____ (__) days prior to the expiration of the then-existing Term, of Licensee's election to extend the Term for the applicable Extension Term. Licensee will be deemed to have waived the right to extend the Term for any Extension Term if Licensee is in default under this Agreement, either at the time of exercise or at the commencement of the Extension Term.

***1.16 "Other Terms and Conditions":*** The attached Telecommunications License Agreement General Terms and Conditions, and Riders, Schedules and Exhibits thereto, are a part of this Agreement.

***1.17 "Counterparts":*** This Agreement may be executed in counterparts and each executed counterpart will be construed to be an original.

**[Intentionally Blank]**

**TELECOMMUNICATIONS LICENSE AGREEMENT**
**(MULTI-TENANT OFFICE BUILDING)**

SIGNATURE PAGE

**IN WITNESS WHEREOF** Licensor and Licensee have caused this Agreement to be signed by their authorized representatives, in multiple original counterparts, as of the day and year first above written.

| **LICENSOR:** | **LICENSEE:** |
|---|---|
| _____ | _____ |
| a(n)_____ | a(n)_____ |
| By:_____ | By:_____ |
| Print Name:_____ | Print Name:_____ |
| Title:_____ | Title:_____ |

## General Terms and Conditions

## Table of Contents


| | | Page |
|---|---|---|
| 1. | Definitions. | 1 |
| 2. | License Grant. | 1 |
| 3. | Use. | 2 |
| 4. | Service to Tenants | 3 |
| 5. | Licensee's Financial and Technical Capacity | 3 |
| 6. | Compliance With Law | 3 |
| 7. | Construction. | 4 |
| 8. | Maintenance Obligations | 6 |
| 9. | Access. | 6 |
| 10. | Removal of the Equipment Upon Termination. | 7 |
| 11. | Cable Distribution System. | 8 |
| 12. | Insurance, Release and Indemnity. | 9 |
| 13. | Waiver of Subrogation Rights. | 10 |
| 14. | Subordination. | 10 |
| 15. | Estoppel Certificate | 11 |
| 16. | Event of Default. | 11 |
| 17. | Utilities | 13 |
| 18. | Mechanics Liens | 13 |
| 19. | Casualty | 14 |
| 20. | Condemnation. | 14 |
| 21. | Notices. | 15 |
| 22. | Assignment by Licensee. | 15 |
| 23. | Assignment by Licensor | 16 |

24. Successors and Assigns ..... 16

25. Hazardous Materials. ..... 16

26. Non-Recourse ..... 17

27. Rules and Regulations ..... 17

28. Non-Waiver ..... 17

29. Taxes ..... 17

30. License Only ..... 18

31. Governing Law ..... 18

32. Entire Agreement ..... 18

33. Survival. ..... 18

34. Force Majeure ..... 18

35. Severability ..... 18

36. No Third Party Beneficiaries ..... 18

37. Publicity ..... 18

38. Confidentiality ..... 19

39. Licensee's REIT Representations, Warranties and Covenants ..... 20

40. Miscellaneous. ..... 20

Exhibits

Exhibit A: Definitions
Exhibit B: Communications Spaces and Pathways
Exhibit C: Equipment
Exhibit D: Equipment Room Plan
Exhibit E: Rooftop Space
Exhibit F: Services
Exhibit G: Technical Specifications
Exhibit H: Licensee's Financial and Technical Capacity
Exhibit I: Work Plan
Exhibit J: Access Request Form
Exhibit K: CDS Fee
Exhibit L: REIT Representations, Warranties and Covenants
Exhibit M: Building Rules and Regulations

## TELECOMMUNICATIONS LICENSE AGREEMENT

## GENERAL TERMS AND CONDITIONS

1. Definitions. All capitalized terms in this Agreement shall have the meaning ascribed to them in Exhibit A, unless expressly defined elsewhere in this Agreement.

2. License Grant

(a) Subject to the terms and conditions of this Agreement, and any covenants, conditions and restrictions recorded against the Building, and in consideration of the duties, covenants and obligations of Licensee hereunder, Licensor hereby grants to Licensee a non-exclusive license to install, operate, maintain and remove, at Licensee's sole expense and risk, the Equipment in the Equipment Room, on the Rooftop Space of the Building, and in the Communications Spaces and Pathways, all for the limited purpose of providing the Services to the Tenants (the "**Permitted Use**"); provided, however, that Licensee shall be responsible for obtaining access to any and all Tenants' premises except to the extent Licensor has right of access to Tenant premises for purposes of installation. The Equipment Room, Rooftop Space and Communications Spaces and Pathways are hereinafter collectively referred to as the "**Premises**". Licensee shall have the exclusive right to use the Rooftop Space.

(b) Licensor shall have the right to limit the type, size and location of the Equipment located in or on the Building and the Premises. Subject to Licensor's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned, Licensee shall have access to the Communications Spaces and Pathways, for the purpose of installing and maintaining Licensee's cabling and wiring necessary to provide Services to the Tenants.

(c) Licensor, upon _____ ( ) days notice to Licensee, may require that Licensee permanently relocate any or all of the Equipment to another comparable space in or on the Building, or reduce the amount of Rooftop Space available to Licensee if Licensee is not using a portion of the Rooftop Space, provided that such relocation or modification does not substantially change the operation of the Equipment or materially degrade the quality of transmission of the Equipment, and only if Licensor pays any actual, out-of-pocket costs or expenses paid by Licensee to third parties in connection with such relocation or modification. Licensor will permit Licensee to perform a standard cut-over procedure, if required by any relocation of Equipment, which will ensure that the relocated Equipment is operational for Services prior to discontinuing service from the old location. Licensor shall not be responsible for damage to the Equipment or for theft, misappropriation or loss thereof resulting from such relocation.

(d) If, during the License Term, Licensor needs to perform maintenance work to Licensor's Equipment, or repair or replace the Premises ("Premises Work"), Licensee agrees to cooperate and work with Licensor to achieve said Premises Work. Licensor agrees to provide at least _____ ( ) days notice to Licensee of its intention to perform said work; except in the case of emergency Premises Work in which case Licensor shall give as much notice as possible under the circumstances. Such plan may require the relocation of Equipment at Licensee's cost and expense or Licensee's installation of temporary equipment. Moreover, if a temporary relocation of Equipment is required to accommodate the Premises Work, the parties shall determine the most technically suitable alternative location which will not impede the Premises Work. Notwithstanding the foregoing, Licensee shall move the Equipment back to its original location after the Premises Work is completed unless the parties agree to utilize the relocated area permanently.

(e) Licensor makes no warranty or representation that the Building or the Premises are suitable for Licensee's use, it being assumed that Licensee has investigated the feasibility of the Building and Premises for Licensee's business operations and use. Licensee has inspected the Premises and the Building and accepts the same "as is" (or has assumed the risk for failure to investigate) and agrees that Licensor is under no obligation to perform any work or provide any materials to prepare

the Premises or the Building for Licensee. Licensor shall have no responsibility for, or obligation or liability with respect to: (i) the reliability or continued operation of the Equipment or any other equipment installed in the Building in connection with this Agreement; or (ii) the suitability, sufficiency or compatibility of heating, ventilation, air conditioning, plumbing, electrical, fire protection, life, safety, security, public utility or other systems in the Building (whether as initially installed or as modified or replaced from time to time by Licensor in its sole discretion) for or with any components installed by Licensee pursuant to this Agreement or the use or operation thereof or the delivery of any Services by Licensee. Notwithstanding the foregoing, if the provisions of Section 1.14 of the Transaction-Specific Terms and Conditions of this Agreement are not stricken, the terms of such Section 1.14 shall supersede those in this Section 2(e).

(f) Licensor and Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing shall be construed to constitute the parties as employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

(g) Licensor reserves the right to permit Tenants and other occupants of the Building to locate and operate telecommunications equipment in or on the Building, on behalf of itself or third parties.

(h) Except as may be otherwise set forth herein, absent Licensor's prior written consent, Licensee is expressly prohibited from using the Equipment to (i) provide Services to a tenant, occupant or licensee of another building or to any other third party including, but not limited to, the general public, (ii) program or control the operations of any other equipment of Licensee located other than at the Building without the prior written consent of Licensor, or (iii) provide co-location or interconnection services to third parties using the Premises or Equipment other than as necessary for Licensee to provide Services to Tenants.

3. Use

(a) Licensee shall not use the Premises for any purpose other than the Permitted Use.

(b) Licensee shall not use the Premises in any way that interferes with the use and enjoyment of the Building by: (i) Licensor, (ii) Tenants, or (iii) Existing Licensees. The operation of the Licensee's Equipment shall not interfere with the maintenance or operation of the Building, including but not limited to the roof, MATV, CATV or other video systems, HVAC systems, electronically controlled elevator systems, computers, telephone systems, or any other system serving the Premises and/or its occupants, or the operation of any radio or telecommunication equipment installed by or on behalf of Licensor, Existing Licensees and Tenants. Upon notice of any such interference, Licensee shall immediately cooperate with Licensor to identify the source of such interference and shall, within twenty-four (24) hours, cease all operations (except for testing as approved by Licensor) until the interference has been corrected to the satisfaction of the Licensor. Licensee shall be responsible for all costs associated with any tests deemed reasonably necessary to resolve any and all interference as set forth in this Agreement. If such interference has not been corrected within _____ ( ) days, Licensor may (i) require Licensee to remove the specific items from the Equipment causing such interference, or (ii) eliminate the interference at Licensee's expense. Licensee shall indemnify Licensor and hold Licensor harmless from all Claims arising from any interference.

(c) If the equipment of any Future Licensee causes interference, Licensor will direct the interfering party to take all steps necessary to correct and eliminate the interference. If Licensor or any of Licensor's Tenants or licensees or future tenants or licensees should cause irresolvable interference with the Equipment, Licensee may relocate the Equipment at its sole cost and expense or, subject to Licensor's approval not to be unreasonably withheld, delayed or conditioned, terminate this Agreement without further liability to Licensor. To the extent that Licensee's operations are not within the parameters of its FCC license, this protection from interference will not apply, and Licensee shall indemnify and defend Licensor from all Claims arising out of such unlicensed operations. In no

event shall Licensor have any liability or responsibility for any interference with Licensee's operations, except to the extent resulting from Licensor's intentional misconduct in violation of the covenant set forth above in this Section 3(c).

(d) Notwithstanding the foregoing, if an emergency situation exists which Licensor reasonably determines, in its sole discretion, to be attributable to the Equipment, upon written or verbal notice Licensee shall act diligently and expeditiously to remedy the emergency situation. Should Licensee fail to so remedy the emergency situation or should Licensor reasonably determine that the response time by Licensee is not adequate given the nature of the emergency, Licensor may then shut down the Equipment and Licensee shall have no recourse against Licensor as a result of such action.

(e) Licensee shall not allow any excessive or objectionable levels of noise to be generated by the Equipment during normal operations. Unless the Licensor gives written approval otherwise, all activities of Licensee at the Building, including, without limitation, construction and installation activities, which are noisy or otherwise disruptive to the operations of the Building or any Tenant, as determined by Licensor in its sole discretion, shall be conducted outside of Normal Business Hours.

4. Service to Tenants

(a) Licensee shall provide Services to Tenants pursuant to a service agreement, which shall contain (i) provisions for mandatory expiration/termination at the end of the term of this Agreement, and (ii) provisions reasonably acceptable to Licensor whereby Tenant acknowledges that (1) Licensor is not a party to such agreement and Tenant waives and releases Licensor from any obligation or liability relating thereto, and (2) that any cessation or interruption in the provision of Services by Licensee does not constitute a default or constructive eviction by Licensor under the property lease between Tenant and Licensor. If Licensee provides Service to any Tenants, then, upon the expiration or earlier termination of this Agreement or of the service agreement between Licensee and any applicable Tenant, such Tenant shall be entitled to number portability and Licensee shall release and assign to such Tenant such Tenant's telephone number(s). Licensee shall cooperate reasonably at no cost to Licensee in the Tenant's efforts to successfully transfer the telephone numbers.

(b) Licensee shall not place or maintain any sign in or on the Building without Licensor's prior consent.

5. Licensee's Financial and Technical Capacity. Licensee represents and warrants that upon execution of this Agreement and during the term of this Agreement, Licensee shall have and maintain the financial and technical capacity and standards to perform its obligations under this Agreement as set forth in Exhibit H. Licensor may require Licensee to furnish current information demonstrating its financial and technical capacity from time to time, but no more than _____ during the License Term.

6. Compliance With Law

(a) Licensee agrees to comply with all Applicable Laws, Work Plans, Building Rules and other contractual obligations with respect to the installation and operation of the Equipment, the Licensee's provision of Services, and the Building. Licensee shall obtain and keep in effect all required licenses, permits and other authorizations necessary to conduct Licensee's provision of Services (the "Permits") and deliver copies thereof to Licensor upon request. Upon request, Licensor agrees to cooperate with Licensee in obtaining any required Permits. Licensee shall also pay promptly when due all royalties or other fees due in connection with the operation of any of the Equipment. If compliance with this Section requires modifications or alterations of any Equipment, no modification or alteration shall be made without Licensor's prior written consent, which consent shall not be unreasonably withheld and may be granted on such reasonable terms and conditions as Licensor may determine.

(b) Licensee shall cooperate generally with Licensor and other carriers to permit the Building's rooftop to be and remain in compliance with all FCC and OSHA rules and regulations

relating to radio frequency emission levels and maximum permissible exposure, including but not limited to the rules and regulations adopted in FCC document OET 65 (which rules and regulations have also been adopted by OSHA). Licensee shall (A) reimburse Licensor for Licensee's pro rata share of the cost of conducting an annual survey to ensure that the Building's rooftop is in compliance with all applicable FCC and OSHA rules and regulations (a "**Rooftop Survey**"), and (B) to the extent Licensee's Equipment or the operation thereof directly or indirectly causes the Building's rooftop (or any section thereof) to not be in compliance with such rules and regulations, promptly remedy any such non-compliance in accordance with Licensor's directions and at Licensee's sole cost and expense. In the event that Licensee (x) relocates or makes any change to the Equipment located in the Rooftop /Space or (y) makes any change to any Equipment or operation thereof which directly or indirectly affects the operation of Licensee's Equipment located in the Rooftop Space, Licensor may, at its option, require that a new Rooftop Survey be conducted at Licensee's sole cost and expense by an EME firm approved by Licensor in its reasonable discretion (in addition to the annual Rooftop Survey described above). In the event Licensee believes that any of the Equipment in the Rooftop Space is excluded from coverage under FCC and OSHA rules and regulations, Licensee shall demonstrate to Licensor's reasonable satisfaction that any such Equipment is so excluded.

7. Construction.

(a) Licensee shall not install, alter, improve, maintain, or repair any Equipment in or on the Building unless and until such work is depicted in a work plan containing detailed specifications and drawings and any additional information required by Licensor, the form of which is attached hereto as Exhibit I (such work plan referred to hereinafter as a "Work Plan"), submitted to, and approved in writing by, Licensor (each such approved Work Plan, an "Approved Work Plan"); provided, however, that (i) Licensor shall not disapprove any Work Plan on the basis of any work depicted in Exhibits A, B, C or D; and (ii) routine maintenance and repairs, which do not involve connections to or work on, or otherwise adversely affect, equipment, cables, or other property of or at the Building, or of Tenants or other third parties, shall not require Licensor's prior approval of a Work Plan (although Licensee shall deliver to Licensor a revised Work Plan within _____ ( ) days after completion of such work to reflect any modifications to the previously effective Approved Work Plan necessitated by such maintenance and repairs).

(b) Licensor's approval of Work Plans for the installation, alteration, maintenance, improvement or repair of Equipment shall not be unreasonably withheld or delayed; provided, however, that (i) Licensor shall have the right to approve, in its sole discretion, Work Plans depicting the size, location, method of installation and configuration of Equipment and Work Plans for improvements or alterations to the Rooftop Space, if applicable, and may require screening at Licensee's expense, and (ii) the terms and conditions of the installation, alteration, maintenance, improvement or repair of any generator shall be set forth in a separate rider to this License, the form of which is attached hereto as Schedule B (the "Emergency Generator Rider") and any generator approved by Licensor, which approval may be granted, withheld or conditioned in Licensor's sole discretion, and may also be subject to payment of additional Fees with respect to any such generator, as determined by Licensor in its sole discretion and as set forth in the Generator Rider, and (iii) Licensor may condition its approval of any Work Plan relating to construction of Communications Spaces and Pathways on Licensee's agreement to core one or more core vertical paths (which may be greater than the size of the Communications Spaces and Pathways that Licensee may be entitled to use under this License).

(c) Licensor's failure to provide a written consent pursuant to this Section 7 shall under no circumstance be deemed to constitute an approval. Licensor's approval of any Work Plan or work performed pursuant thereto is not a representation that such installation of the Equipment is in compliance with all Applicable Laws or that it will not cause interference with other communications operations in the Building.

(d) If the parties execute the Work Plan Rider attached hereto as Schedule C, the terms of such Rider shall supersede the foregoing paragraphs (a)-(c).

(e) Licensee will notify Licensor at least _____ ( ) days prior to commencing Licensee's installation, and perform all work at times approved by Licensor in its reasonable discretion. Within _____ ( ) days after the complete execution of this Agreement, and in any event prior to the commencement of work, Licensee will, at its own cost and expense, deliver to Licensor a certificate confirming that any insurance required under this Agreement has been obtained and is in full force and effect.

(f) Licensee understands and agrees that the structural integrity of the load bearing capability of the roof of the Building, the moisture resistance of the building membrane, and the ability of Licensor to use all parts of the roof of the Building are of critical importance to Licensor. Licensee, therefore, agrees that Licensee shall not penetrate the roof membrane and that the specifications and plans that it will provide shall be of sufficient specificity to ensure that these concerns are protected.

(g) All installation and other work to be performed by Licensee hereunder will be done in such a manner as to minimize disruption of use of the Building by Licensor and Tenants and not to block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, the sidewalks around the Building, or any entrance ways thereto, or interfere materially with, delay, or impose any additional expense upon Licensor in maintaining the Building. If such conditions shall occur, Licensee shall take immediate corrective action. Licensee agrees that installation and construction shall be performed in a safe, neat, professional and workmanlike manner, using generally accepted construction standards, consistent with such other reasonable requirements as may be imposed by Licensor. Licensee shall, at its sole cost and expense, repair any portion of the Building (including the surface of the Building) that is damaged by or during the installation, repair, removal, operation or replacement of the Equipment and caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors or invitees. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor for all costs and expenses incurred in such repair or refinishing.

(h) Licensee shall bear all costs to run, maintain, repair and operate conduit through the Building to access Tenants from the Equipment, and to provide Services. Licensee shall, prior to connecting any of its customers to the Equipment, install a riser cabling system (the "Riser System") exclusively for its customers, if such a system is not already in place. Licensor may disapprove, in its sole and absolute discretion, any of Licensee's plans that indicate Licensee's intent to wire to Tenants on an individual basis without the use of a single Riser System.

(i) Licensee shall ensure that all Equipment, including cables, is identified with permanently marked, weather proof labels in each telephone closet through which cables pass, each antenna bracket, at the transmission line building entry point, at the interior wall feed-through or any other transmission line exit point, and at any transmitter combiner, duplexer or multifeed receive port, with Licensee's name, type of line, circuit number, and floor where cable originates and terminates, and other information as may be reasonably required by Licensor. Licensee shall, upon Licensor's written request, promptly provide Licensor a site diagram depicting Licensee's distributions system to all Tenants.

(j) Licensor shall have the right to approve all outside contractors performing any work relating to the installation, modification, maintenance or removal of the Equipment at the Building on behalf of Licensee. If Licensee intends to perform its own installation, modification, maintenance or removal work, it shall be subject to Licensor's written approval as a "contractor" hereunder, and Licensor's withholding of approval of Licensee as a contractor in accordance with this Agreement shall not relieve Licensee of its obligations hereunder.

(k) Licensee acknowledges that the Building is "AS IS" during the entire License Term and except as expressly set forth herein, Licensor has no obligation for any repair to the Building even if the condition of the Building changes during the License Term. Furthermore, Licensor may conduct any repair or maintenance to the Building or construct any improvements without the written consent of Licensee and without any liability to Licensee except to the extent that such repairs or work

materially and adversely impact Licensee's rights under this Agreement, in which event Licensor agrees to coordinate such work with Licensee in order to reasonably minimize such adverse impact and Licensee agrees to not unreasonably delay or obstruct its approval of such repair, maintenance or construction.

(l) After Licensee has completed Licensee's installation and provided written notice of such to Licensor, Licensor or Licensor's designated representative shall have the right, but not the obligation, to inspect Licensee's installation without unreasonable delay and either (i) approve Licensee's installation or (ii) provide Licensee, in writing, with a "punch list" setting forth those items which are not in compliance with Licensee's installation. Licensee shall have a reasonable time, not to exceed _____ ( ) days, to remedy such items contained on the "punch list".

8. Maintenance Obligations

(a) Licensee shall, at Licensee's expense, keep and maintain the Premises in commercially reasonable condition and repair during the License Term. Licensee agrees to maintain the Equipment in proper operating condition and within industry accepted safety standards. All installations and operations in connection with this Agreement by Licensee will adhere to reasonable technical standards developed for the Building by Licensor as amended from time to time. Licensor assumes no responsibility for the licensing, operation and maintenance of the Equipment.

(b) All penetrations into any Building surfaces shall be sealed so as to prevent any water leakage. Licensor reserves the right to require Licensee to use a roofing contractor specified by Licensor to perform any work which may involve penetrations into the roof of the Building or may otherwise render the roof warranty void. Licensee, at its sole expense and risk, shall ensure that a physical inspection of the Rooftop Space occurs at intervals of no more than twelve (12) months and that this inspection includes a survey of structural integrity and a review and correction of any loose bolts, fittings or other appurtenances. Licensee shall provide a written certification of such inspections to Licensor not more than _____ ( ) days following each such inspection. In the absence of such a certification, Licensor shall have the right (but not the obligation) to conduct or arrange for such an inspection and corrective action and to charge Licensee for such costs.

(c) If Licensor determines that the Premises is not being maintained in the condition required by this Agreement, and without limiting Licensor's other rights and remedies under this Agreement, Licensor shall have the right, if Licensee fails to remedy the condition(s) identified by Licensor to the reasonable satisfaction of Licensor within _____ ( ) business days of receipt of notice thereof, or immediately in the event of an emergency, to take such action, at Licensee's expense, as Licensor reasonably deems necessary to restore the Premises to the condition required by this Agreement. In the event of an emergency, Licensor shall give to Licensee as much advance notice as reasonably possible of its intent to enter the Premises and, within _____ ( ) days following such entry, shall provide to Licensee a written report detailing the nature of such emergency and the corrective actions taken. Licensee shall pay to Licensor, on demand, Licensor's reasonable costs and expenses incurred pursuant to this Section 8.

9. Access

(a) Licensee's authorized representatives shall have access to the Premises at all times, for the purposes of installing, maintaining, operating and repairing the Equipment, and Licensor further agrees to give Licensee ingress and egress to the Premises at all times during the term of this Agreement, including non-exclusive use of an elevator. It is agreed, however, that Licensee shall comply with Licensor's security procedures for the Building, and that only authorized engineers, employees or properly authorized contractors, subcontractors and agents of Licensee, other authorized regulatory inspectors or persons under their direct supervision and control will be permitted to enter the Premises, and only upon conditions set forth herein.

(b) Except in the event of an emergency, Licensee agrees to give at least _____ ( ) hours notice to Licensor of its intent to enter the Premises. At the time that such

notice is given, Licensee shall inform Licensor of the names of the persons who will be accessing the Premises, the reasons for entry, and the expected duration of the work to be performed. Licensee shall provide such information substantially in the form attached hereto as **Exhibit J**whenever feasible. In the event of an emergency, Licensee shall give to Licensor as much advance notice as reasonably possible of its intent to enter the Premises and, within _____ ( ) days following such entry, shall provide to Licensor a written report detailing the nature of such emergency and the corrective actions taken.

(c) Licensee shall not enter any area other than Premises without the consent of Licensor (or with respect to Tenant Areas, the consent of such Tenant). In addition, except in the case of an emergency, Licensee shall not enter or attempt access to any of the Building's air, electrical, mechanical or telecommunications risers, ducts, closets, conduits, duct work, rooms or other horizontal or vertical spaces in the Building, without notifying Licensor in writing at least _____ ( ) business days in advance. In the case of an emergency, Licensee may enter or seek access to such areas provided it uses its reasonable efforts to give Licensor at least _____ ( ) hours prior notice and provided that, if practicable, a Building security guard or engineer unlock, and accompany Licensee's employees into such areas (and Licensor will use its reasonable efforts to make such access available to Licensee on an expedited basis). Licensee also shall furnish Licensor, within _____ ( ) business days thereafter, a written report explaining all repairs and procedures which were conducted during any such emergency operations in sufficient detail to permit Licensor's engineers to evaluate same. If Licensor's engineers reasonably believe that such repairs need to be modified, Licensee shall make such necessary repairs at its own expense.

(d) Licensor and its representatives reserve the right to enter the Premises for any purpose. If any such entry is reasonably likely to disturb the rights granted to Licensee hereunder, then Licensor must give Licensee advance notice if reasonably possible before entry and use reasonable efforts to minimize any interference with Licensee's operations or Equipment. Notwithstanding the foregoing, Licensor shall incur no liability to Licensee for such entry, nor shall such entry constitute an abridgement of or interference with Licensee's rights or a termination of this Agreement, or entitle any abatement of fees therefor, provided that Licensor's entry is reasonable in duration and scope.

10. Removal of the Equipment Upon Termination

(a) Upon expiration or earlier termination of this Agreement (the "Termination Date"), Licensee shall pay Licensor all amounts outstanding pursuant to this Agreement as of the Termination Date, and at Licensee's sole cost and expense, without liens, remove all Equipment and Licensee's personal property from the Building. Any property not so removed within ___ ( ) days after the Termination Date may, at Owner's sole option (i) be removed and stored by Licensor at Licensee's Expense or (ii) become the property of Licensor without compensation to Licensee. Further, Licensee agrees, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal of Licensor's Equipment, excepting damage caused by ordinary wear and tear. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor for all costs and expenses incurred in such repair or refinishing. Notwithstanding the foregoing, Licensee's Connecting Equipment (hereinafter defined) shall, at Owner's option and upon written notice to Licensee, become the property of Licensor and remain in the Building. If Licensor elects to retain some or all of Licensee's Connecting Equipment, Licensee shall execute a bill of sale or other document necessary to effect such transfer of ownership, at no additional cost or consideration from Owner to Licensee, within _____ ( ) days after receiving such written notice.

(b) Notwithstanding the foregoing, Licensor agrees that if Licensee requests permission to maintain the Equipment at the Building after the termination of this Agreement, Licensor shall not unreasonably withhold its consent thereto, provided Licensee continues to pay the License Fees then in effect, but in no event shall Licensee be entitled to maintain the Equipment at the Building for more than _____ ( ) days after the expiration or termination of this Agreement without the prior written consent of Licensor, which may be withheld or granted in Licensor's sole and absolute discretion.

(c) If Licensee fails to remove the Equipment and vacate the Premises within the time period set forth above, Licensee shall indemnify and hold harmless Licensor against and from any and all Claims asserted by third parties proximately caused by delay in obtaining possession of the Premises by Licensor or by any other licensee to whom Licensor may have licensed all or any part of the Building effective upon the expiration or termination of this Agreement. This indemnification shall survive any termination of this Agreement.

(d) Upon the expiration or earlier termination of this Agreement, Licensee agrees to use its reasonable best efforts to arrange for the conversion of all Tenant customers to service from another telecommunications service provider with little or no disruption of service.

11. Cable Distribution System

(a) Licensor reserves the right to provide access to both existing and future telecommunications services and service providers by installing a central telecommunications cable distribution system ("**CDS**") in the Building, including a main demarcation frame ("**MDF**") for use by all competitive service providers in order to reach tenant demarcation points in the Building. If a CDS is installed, the MDF shall serve as the minimum point of entry ("**MPOE**") demarcation point for service providers. The MDF shall also serve as the origination point of the CDS. The tenant demarcation block on each floor of the Building will serve as the terminating point of the CDS on that floor. Licensor shall charge all competitive service providers (including Licensee) a fee for each CDS cable-pair used (the "**CDS Fee**") in accordance with **Exhibit K** which will be attached hereto and incorporated herein as it may be amended from time to time if the CDS is installed by Licensor. If Licensor installs a CDS, it may, in its sole discretion, appoint a third party as its agent to own and/or manage the CDS.

(b) If Licensor installs a CDS:

(1) Licensor may, but is not obligated to, purchase from Licensee those portions of Licensee's cables, conduits, inner ducts and other connecting hardware ("**Connecting Equipment**") that Licensor, in its sole discretion, determines are necessary to incorporate into the CDS. The purchase price of such portions of Licensee's Connecting Equipment shall be an amount equal to the then "as is" fair market value as agreed to by the parties, or as determined by a third party reasonably acceptable to both parties who is experienced in the valuation of such equipment. Licensee shall, at Licensor's option and expense, remove any remaining Connecting Equipment that is not purchased by Licensor.

(2) Licensee shall, at Licensee's expense, relocate its existing services and demarcation facilities to the CDS;

(3) Licensee shall utilize the CDS for providing all service to Licensee's customers once Licensor notifies Licensee that the MDF is ready for use;

(4) Licensor agrees to allow Licensee a reasonable amount of time (not to exceed _____ ( ) days) for proper planning, engineering and cut-over in this regard. Cut-over to the MDF will be accomplished at times other than normal business hours, unless previously approved by Licensor.

(c) If Licensor installs a CDS, Licensor's sole responsibility in the event of interruption or other effects caused by malfunction, damage or destruction of the CDS shall be to repair or replace the CDS as necessary to eliminate the cause of malfunction or interruption, the cost of which shall be borne by Licensor, unless the problem was caused directly or indirectly by Licensee, its agents, representatives, employees or invitees. In limitation of the foregoing, Licensor's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by Tenants after the malfunction, damage or destruction or that, if damaged or destroyed, will be again used by Tenants upon the completion of restoration or repair thereof. In no event shall Licensee have any right to make any claim against Licensor whatsoever for any damages, whether direct, indirect or consequential, in any circumstance. In the event of malfunction or, damage to, or

destruction of, the CDS, as Licensee's sole remedy, the License Fees and CDS Fee paid by Licensee under the Agreement shall equitably abate (to the degree related to the defect) from the date of such malfunction, damage or destruction until the date upon which Licensor completes its repair or replacement of the CDS ("**Completion Date**"), to the extent that Licensor is required to do so by this Agreement. The abated amount, to the extent already paid, shall be refunded to Licensee within _____ ( ) days of the Completion Date. Licensor shall promptly provide to Licensee the phone number(s) for the person or persons responsible for the operation and maintenance of the CDS. If the CDS malfunctions or becomes damaged or destroyed, and such event prohibits Licensee from providing services to its customers for a period of _____ ( ) days after such malfunction, damage, or destruction, Licensor shall use commercially reasonable efforts to provide an alternative location for Licensee to relocate its facilities, at Licensee's expense, so that Licensee may continue to provide its services. Upon completion of Licensor's restoration or repair of the CDS, Licensee shall, within _____ ( ) business days, return and re-connect its Equipment to the CDS. If (i) Licensor does not provide an alternative location for Licensee to relocate its facilities as described herein, and (ii) the MDF has not been repaired and is unsuitable for use by Licensee for a period of _____ ( ) days after its malfunction, damage, or destruction, then Licensee shall have the right to terminate this Agreement, said termination to take effect immediately upon written notice to Licensor.

(d) Notwithstanding the foregoing, if Licensor installs a CDS, Licensee may, in its sole option and within _____ ( ) days after such installation, terminate this Agreement upon written notice to Licensor.

12. Insurance, Release and Indemnity

(a) During the term of this Agreement, Licensee, at its sole cost and expense, shall keep in full force and effect a comprehensive commercial general liability insurance policy, including blanket contractual and completed operations coverage, with limits of at least _____ million dollars ($__,000,000.00) for bodily injury, including death, arising from any one occurrence, and "All Risk" or "Cause of Loss Special Form" property insurance of at least _____ million dollars ($_,000,000.00) for damage to property arising from any one occurrence for Equipment and all personal property.

(b) Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as Licensor and Licensee are concerned, with any other insurance maintained by Licensor being excess and non-contributing with the insurance of Licensee required hereunder and providing coverage for the contractual liability of Licensee to indemnify Licensor pursuant to Section 12(f) below. All insurance policies shall be endorsed to include Licensor, the manager of the Building (the "**Building Manager**") and any other parties reasonably designated in writing by Licensor as additional insureds and shall provide that Licensor and any other parties reasonably designated in writing by Licensor will receive at least thirty (30) days prior written notice of any cancellation or material change in such insurance policy. Licensee shall, prior to the installation of the Equipment, furnish to Licensor or Building Manager a certificate of insurance confirming that the insurance coverage as specified herein is in full force and effect.

(c) All policies shall be written by an insurer having a policyholder rating ("**Best Rating**") of at least "A" or better and be assigned a financial size category of at least Class VIII as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, licensed to do business within the jurisdiction where the Building is located.

(d) Licensee's contractors must comply with the same insurance requirements defined in this Section and must produce, prior to commencing any testing, installation, repair, or maintenance work on the Premises, a certificate of insurance or a policy evidencing that the above-referenced insurances are maintained including, but not limited to, naming Licensor and Building Manager as additional insureds.

(e) Licensee hereby releases Licensor, Building Manager, and their respective agents, employees, officers, directors, shareholders, members and partners (collectively the "**Releasees**") from,

and shall not hold Releasees liable for, any liability for personal injury, consequential damages, loss of income or damage to or loss of property or persons, or loss of use of any property, in or about the Premises from any cause, unless caused by the gross negligence or willful misconduct of said Releasees. Further, the Releasees shall not be liable to Licensee for any such damage or loss to the extent Licensee is compensated or would have been compensated by the insurance which Licensee is obligated to maintain pursuant to this Section.

(f) Licensee agrees to indemnify, defend and hold Releasees harmless from and against all Claims which may be imposed upon or incurred by or asserted against Releasees occurring during the License Term, or during any period of time prior to the Commencement Date hereof or after the expiration date hereof when Licensee may have been given access to or possession of all or any part of the Premises arising from:

(1) the installation, use, maintenance, repair or removal of the Equipment, the provision of Services, or the breach of this Agreement, except to the extent attributable to the gross negligence or willful misconduct of the Releasees;

(2) any work or act done in, on or about the Premises or any part thereof at the direction of Licensee, its agents, contractors, subcontractors, servants, employees, licensees or invitees, except if such work or act is done or performed by the Releasees;

(3) any negligence or other wrongful act or omission on the part of Licensee or any of its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees;

(4) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, unless caused by the gross negligence or willful misconduct of the Releasees, and

(5) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement on its part to be performed or complied with.

(g) This Section shall survive the expiration or earlier termination of this Agreement.

(h) If the parties execute the Insurance Rider attached hereto as **Schedule D** the terms of such Rider shall supersede this Section.

13. Waiver of Subrogation Rights. To the extent allowable under the laws and regulations governing the writing of insurance within the jurisdiction in which the Building is located, Licensor and Licensee shall each have the option to release or not release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Agreement, pursuant to insurance policies carried by the parties which are in force at the time of the loss or damage. If the parties elect to waive subrogation, Licensor and Licensee will each request its insurance carrier to include in policies provided pursuant to this Agreement an endorsement recognizing this waiver of subrogation. The waiver of subrogation endorsement need not be obtained if it incurs an additional cost for the affected policy, unless, following written notice, the other party elects to pay that additional cost to obtain the waiver of subrogation endorsement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

14. Subordination. Licensee accepts this Agreement subject to any ground lease, mortgage, deed of trust or other lien ("Interest") presently existing or hereafter arising upon the Building or the land upon which the Building is located and to any renewals, modifications, consolidation, refinancing and extensions thereof, but Licensee agrees that any such Interest holder shall have the right at any time to subject such Interest to this Agreement on such terms and subject to such conditions as such Interest holder may deem appropriate in its discretion. This provision is hereby

declared to be self-operative and no further instrument shall be required to effectuate the foregoing, but in confirmation of this provision, Licensee shall execute, within _____ ( ) days after request at no cost and expense to Licensee, any certificate that Licensor may reasonably require acknowledging this provision. Notwithstanding the foregoing, the Interest holder shall have the right to recognize and preserve this Agreement in the event of any foreclosure sale or possessory action, and in such case, this Agreement shall continue in full force and effect at the option of the Interest holder and Licensee shall acknowledge such party and shall execute, acknowledge and deliver any instrument that has for its purpose and effect the confirmation of the foregoing.

15. Estoppel Certificate. Licensee shall, at any time and from time to time, upon not less than _____ ( ) business days' prior written notice from Licensor, execute, acknowledge and deliver to Licensor or to such third party as Licensor may direct, a statement in writing certifying the following information, (but not limited to the following information if further information is reasonably requested): (a) that this Agreement is unmodified and in full force and effect (or, if modified, is in full force and effect); (b) the dates to which the License Fees and other charges are paid in advance, if any; (c) acknowledging that there are not, to Licensee's knowledge, any uncured defaults on the part of Licensor hereunder, and no events or conditions then in existence which, with the passage of time or giving of notice or both, would constitute a default on the part of Licensor hereunder, or specifying such defaults, events or conditions, if any are claimed. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Building. Licensee's failure to deliver such statement after _____ ( ) business days notice shall constitute an admission by Licensee that all statements contained therein are true and correct. Licensor may thereafter execute and deliver such certificate on Licensee's behalf and such certificate shall be binding on Licensee.

16. Event of Default

(a) It shall be an "Event of Default" if any one or more of the following events shall occur:

(1) Licensee shall default in the payment when due of any License Fees or other sum of money specified hereunder to be paid by Licensee, and Licensee does not remedy such default within _____ ( ) days after written notice thereof from Licensor (provided, however, that Licensor shall not be required to provide such notice with respect to more than _____ ( ) payments required during any calendar year during the term hereof);

(2) Licensee fails to comply with the terms of Section 4(b)hereof and cease operations within _____ ( ) hours of Licensee's receipt of notice by Licensor of such interference and Licensee fails to correct such interference within _____ ( ) days after receipt of Licensor's initial notice advising of such interference;

(3) Licensee shall fail to remove any Hazardous Materials installed in the Building by or on behalf of Licensee within _____ ( ) hours of written notice of such condition by Licensor to Licensee;

(4) Upon the occurrence of any of the following:

(A) if any representation or warranty made by Licensee upon execution of this Agreement or during the term of this Agreement shall be untrue in any material respect; or

(B) if Licensee assigns, sublicenses, mortgages or pledges this Agreement in violation of Section 22 hereof; or

(C) if Licensee fails to maintain adequate financial and technical capacity to perform its obligations hereunder, as provided in Exhibit H; or

(D) if Licensee is not providing Services to at least one Tenant for a continuous period of _____ ( ) days; or

(E) if Licensee fails to commence construction in the Premises within _____ ( ) days of the Commencement Date; or

(F) if Licensee fails to complete installation of the Equipment within ___ days/months of the Commencement Date; or

(G) if Licensee fails to commence the provision of Services to Tenants within _____ days/months of the Commencement Date; or

(H) if any assignment shall be made by Licensee (or any assignee, sublicensee or guarantor of Licensee) for the benefit of creditors; or

(I) if Licensee's interest shall be taken on execution or by other process of law; or

(J) if a petition is filed by Licensee (or any assignee, sublicensee or guarantor of Licensee) for adjudication as a bankrupt, or for reorganization or an arrangement under any provision of any bankruptcy act then in force and effect; or

(K) if an involuntary petition under the provisions of any bankruptcy act is filed against Licensee (or any assignee, sublicensee or guarantor of Licensee) and such involuntary petition is not dismissed within _____ ( ) days thereafter; or

(L) if a receiver, trustee or assignee shall be petitioned for and not contested by Licensee for the whole or any part of Licensee's (or such assignee's, or guarantor's) property, or if a receiver, trustee or assignee shall be appointed over Licensee's (or such other person's) objection and not be removed within _____ ( ) days thereafter.

(5) Licensee shall default in the performance of any other of the terms, conditions or covenants contained in this Agreement to be performed or observed by Licensee other than those specified in (A), (B) and (C) above and Licensee does not remedy such default within _____ ( ) days after written notice thereof is given to Licensee; provided, however, that if such default cannot be reasonably cured within _____ ( ) days, Licensee shall commence and diligently pursue the remedy of such default within _____ ( ) days, and cure such default within _____ ( ) days.

(b) Upon the occurrence of an Event of Default, Licensor shall have and may pursue all rights and remedies permitted by applicable law, including but not limited to the following:

(1) upon _____ ( ) days' notice to Licensee, declare to be immediately due and payable, on account of the License Fees and other charges herein reserved for the balance of the term of this Agreement (taken without regard to any early termination of such term on account of an Event of Default or other right to terminate this Agreement), a sum equal to all License Fees and other charges, payments, costs and expenses due from Licensee to Licensor and in arrears at the time of the Event of Default, plus the present value of (using an interest rate equal to the prime rate of interest as published in the Wall Street Journal on the date the computation is made) the License Fees reserved for the then entire unexpired balance of the term of this Agreement (taken without regard to any early termination of the term), plus all other charges, payments, costs and expenses herein agreed to be paid by Licensee up to the end of such term which shall be capable of precise determination at the time of the Event of Default;

(2) whether or not Licensor has elected to recover the sum set forth in (1) above, terminate this Agreement along with any ancillary agreement, and any one particular or all service agreements with Tenants on at least _____ ( ) days' notice to Licensee (including identification of the particular agreements to be terminated) and, on the date specified in such notice, this Agreement along with such other agreements identified in the foregoing notice) shall terminate and Licensor shall thereby be released in accordance with the terms of each respective agreement. Licensee shall thereupon quit and surrender possession of the Premises to Licensor in the condition elsewhere herein required in which event Licensee shall remain liable to Licensor as herein provided;

(3) suspend the supply of electrical power to the Equipment until the default is cured by Licensee, and Licensor shall have no liability to Licensee, and Licensee shall have no right to an abatement of License Fees for such suspension and Licensee hereby waives all claims for damages against Licensor resulting from such suspension of services;

(4) seek and obtain equitable relief by way of injunction or otherwise; or

(5) pursue any and all monetary damages available to Licensor.

(c) In addition to the foregoing remedies, if Licensee fails to perform as required as set forth in Sections 16(a)(4)(D), (E), (F) or (G) above, Licensee shall pay to Licensor a penalty fee of _____ dollars ($_____) per day for each day of such non-compliance.

(d) If Licensor shall fail to keep or perform any of the terms, conditions or covenants contained in this Agreement to be performed or observed by Licensor, and Licensor does not remedy such failure within _____ ( ) days after written notice thereof is received by Licensor, provided, however, that if such default cannot be reasonably cured within _____ ( ) days, Licensor shall commence and diligently pursue the remedy of such default within _____ ( ) days, and cure such default within _____ ( ) days, Licensee shall have and shall be entitled to exercise any and all rights and remedies permitted by applicable law; provided, however, that Licensee may not terminate this Agreement without an additional _____ ( ) days prior written notice to Licensor.

(e) Notwithstanding anything in this Agreement to the contrary, each of Licensee and Licensor hereby waives any claim, whether directly or through a claim under any indemnity provision set forth herein, that they may have against the other party with respect to any consequential damage including, but not limited to, loss of business income and opportunity; provided, however, that this clause shall not apply to Licensee's indemnification of third party claims against Licensor.

17. Utilities. Licensee shall be responsible, at its sole cost and expense, for contracting for and procuring of all electrical services, if any, which are necessary for the Equipment. Licensor shall have no obligation whatsoever to provide such services to Licensee. Licensee shall pay the costs associated with installation of a separate electrical panel and meter for the Equipment in the Equipment Room and shall be responsible for the electrical and any HVAC costs attributable to such Equipment. Licensor shall use reasonable efforts to notify Licensee in advance of any planned utility outages which may interfere with Licensee's use of the Equipment, but in no event will Licensor be liable to Licensee for any damages, direct or indirect, resulting from any loss of power. Licensee shall at all times be responsible for the provision of its own emergency or "backup" power, and any such "backup" power system installed by Licensee shall be the sole responsibility of Licensee.

18. Mechanics Liens. Licensee shall not file any mechanic's, laborer's or materialman's lien, or suffer or permit any such lien to be filed against the Premises, including the Building or any part thereof by reason of work, labor, services, or materials requested and/or supplies claimed to have been requested by or on behalf of Licensee; and if such lien shall at any time be so filed, within _____ ( ) days after notice of the filing thereof, Licensee shall cause it to be canceled and discharged of record. To the extent Licensee fails to remove any mechanic's, laborer's or materialman's lien filed against the Premises, including the Building or any part thereof within the time period set forth above, the Licensor may arrange bond or pay the amount of such claim upon

which the lien is based and Licensee shall thereafter be liable to Licensor for the amount so paid immediately upon demand, plus interest at _____ ( ) percent above the prime rate of interest as published in the Wall Street Journal at such time. The provisions of this Section shall survive the termination of this Agreement.

19. Casualty. In case of damage to the entire Building or the Premises or those portions of the Building or the Premises which are essential to the operation of the Equipment, by fire or other casualty, Licensor shall, at its expense, and subject to the availability of insurance proceeds, and the claim of any Interest holder, cause the damage to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of adjustment of loss under insurance policies, governmental regulations, and for delays beyond the control of Licensor, including an event of "force majeure". Licensor shall not, however, be obligated to repair, restore, or rebuild any of Licensee's personal property, including but not limited to the Equipment. Licensor shall not be liable for any inconvenience or annoyance to Licensee, or injury to Licensee's business resulting in any way from such damage or the repair thereof, except to the extent and for the time that the Building or the Premises are thereby rendered unusable for Licensee's intended purpose, in which case the License Fees shall proportionately abate. If the damage shall involve the Building generally and shall be so extensive that Licensor shall decide, at its sole discretion, not to repair or rebuild the Building, or if the casualty shall not be of a type insured against under standard fire policies with extended type coverage, or if such insurance is not adequate to repair or rebuild the Building, or if the holder of any Interest covering the Building shall not permit the application of adequate insurance proceeds for repair or restoration, this Agreement shall, at the sole option of Licensor, exercisable by written notice to Licensee given within _____ ( ) days after Licensor is notified of the unavailability or inadequacy of insurance proceeds or any decision to not apply the insurance proceeds for repair or restoration of the Building, be terminated as of the date of Licensor's notice of termination to Licensee, and the License Fees (taking into account any abatement as aforesaid) shall be adjusted to the termination date and Licensee shall thereupon promptly vacate the Premises. Notwithstanding the foregoing, Licensee shall be permitted to terminate this Agreement if the Premises have been rendered unusable for Licensee's intended purpose, and (i) Licensor's estimated period for completion of the repair and restoration of the Building exceeds _____ ( ) days (Licensor shall deliver such estimate to Licensee within _____ ( ) days after the casualty), or (ii) Licensor does not complete such restoration within _____ ( ) days from the date of such casualty (by giving Licensor _____ ( ) days notice at the expiration of such _____ ( ) day period).

20. Condemnation

(a) If all or substantially all of the Building or Premises are taken for any public or quasi-public use under any applicable laws or by right of eminent domain, or are sold to the condemning authority in lieu of condemnation, or by deed in lieu of condemnation then this Agreement will terminate as of the date when the condemning authority takes physical possession of or title to the Building or Premises, and any prepaid fees shall be apportioned as of said date and reimbursed to Licensee.

(b) If only part of the Building or Premises is thus taken or sold, and if after such partial taking, in Licensor's reasonable judgment, alteration or reconstruction is not economically justified, then Licensor (whether or not the Premises are affected) may terminate this Agreement by giving written notice to Licensee within _____ ( ) days after the taking.

(c) If over _____ percent ( %) of the Premises is thus taken or sold and Licensor is unable to provide Licensee with comparable replacement Premises in the Building, Licensee may terminate this Agreement if in Licensee's reasonable judgment the Premises cannot be operated by Licensee in an economically viable fashion because of such partial taking. Such termination by Licensee must be exercised by written notice to Licensor given not later than _____ ( ) days after Licensee is notified of the taking.

(d) Termination by Licensor or Licensee will be effective as of the date when physical possession of the applicable portion of the Building or Premises is taken by the condemning authority.

(e) If neither Licensor nor Licensee elects to terminate this Agreement upon a partial taking of a portion of the Building or the Premises, the License Fees payable under this Agreement (other than fees based on a percentage of revenue, if any) will be diminished by an amount equitably allocable to the portion of the Building or the Premises which was so taken or sold. If this Agreement is not terminated upon a partial taking of the Building or Premises, Licensor will, at Licensor's sole expense, promptly restore and reconstruct the Premises to substantially their former condition to the extent the same is feasible. However, Licensor will not be required to spend for such restoration or reconstruction an amount in excess of the net amount received by Licensor as compensation or damages for the part of the Building or Premises so taken.

(f) As between the parties to this Agreement, Licensor will be entitled to receive, and Licensee assigns to Licensor, all of the compensation awarded upon taking of any part or all of the Building or Premises, including any award for the value of the unexpired term. However, Licensee may assert a claim in a separate proceeding against the condemning authority for any damages resulting from the taking of Licensee's trade fixtures or personal property, or for moving expenses, business relocation expenses or damages to Licensee's business incurred as a result of such condemnation.

21. Notices. All notices, demands, requests and other communications hereunder shall be in writing and shall be sent by hand delivery or mailed, via certified mail, prepaid, return receipt requested, or sent by overnight courier (which provides confirmation of delivery), to the following addresses:

If to Licensor, to:

With a copy to:

If to Licensee, to:

With a copy to:

Notice shall be deemed received on the earlier of actual receipt or _____ ( ) days after posting mail, in the United States mail. Unless or until either of the respective addresses are changed by notice in writing and sent to the other party as set forth above, thereafter to the address contained in such notice.

22. Assignment by Licensee

(a) Upon notification to Licensor, Licensee shall have the limited right to assign this Agreement and its other rights hereunder (including, without limitation, its right to renew) to any person or business entity which is an Affiliate of Licensee (as such term is defined herein) without the prior consent of Licensor, provided that such Assignee's financial condition, creditworthiness and

operational ability following the transfers contemplated below are equal to or exceed those of Licensee as set forth in Exhibit H hereto.

(b) Except as provided above, Licensee may not otherwise assign, transfer (by operation of law, merger, consolidation, recapitalization, change of control or otherwise), mortgage, lease, sublease, pledge, hypothecate, or encumber this Agreement without the prior written consent of Licensor, which may be granted or withheld by Licensor in its sole and absolute discretion. Any purported assignment not in accordance with the terms hereof shall at Licensor's option, to be exercised at any time after Licensor becomes aware of any such purported assignment, be void, and may at Licensor's option be treated as an Event of Default hereunder. Licensee shall have no right to sublicense or sublet (including the license contained herein) all or any part of the Premises. Licensee's assignment of this Agreement shall not release Licensee of its obligations hereunder.

(c) Licensor reserves the right to immediately terminate this Agreement as to any assignee or transferee that fails to provide such quality and scope of Service. In the event of any permitted assignment or transfer of this Agreement by Licensee, Licensee shall provide adequate documentation, as reasonably determined by Licensor, to evidence such assignment or transfer and the written commitment of the assignee or transferee to comply with and be bound by the terms of this Agreement. Until it receives such documentation, Licensor may, at its option, elect to continue to treat assignor or transferor as Licensee hereunder. Unless approved in writing by Licensor, an assignment by Licensee to an Affiliate shall not release Licensee under the Agreement.

23. Assignment by Licensor. Licensor may assign or transfer, in whole or in part, its rights and obligations under this Agreement at any time without the consent of Licensee. Any assignment or transfer by Licensor shall release Licensor of its obligations hereunder to the extent such obligations are assumed (by operation of law or otherwise) by the assignee or transferee. Licensee agrees to look solely to such successor in interest of Licensor for the performance of such assumed obligations.

24. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties their respective permitted successors, personal representatives, transferees and assigns. The obligations of Licensor under this Agreement shall no longer be binding upon Licensor if Licensor sells, assigns or otherwise transfers its interest in the Building as owner or lessee (or upon any subsequent licensor after the sale, assignment or transfer by such subsequent licensor). In the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence.

25. Hazardous Materials

(a) Licensee agrees that it will operate and maintain the Premises in compliance with all environmental laws and shall not use, generate, store or dispose of any Hazardous Materials (as such term is defined herein) on, under, about or within the Building; except for those materials that are necessary and directly related to Licensee's Permitted Use of the Premises, in which case, Licensee's use, storage and disposal of such Hazardous Materials shall be in compliance with all environmental laws and the highest standards prevailing in the industry. Without limiting the foregoing, prior to the Commencement Date and throughout the term of this Agreement, Licensee agrees to disclose to Licensor all Hazardous Materials used or to be located in the Premises. Notwithstanding anything contained herein to the contrary, Licensee shall not have any liability to Licensor under this Section resulting from any conditions existing, or events occurring, or any Hazardous Materials existing or generated at, in, on, under or in connection with the Premises prior to the Commencement Date of this License, except to the extent Licensee exacerbates the same. Licensee shall defend, indemnify and hold harmless Licensor and Licensor's direct or indirect partners, officers, affiliates, agents, members, shareholders, beneficiaries and principals and their respective directors, trustees, officers and employees (collectively, the "Licensor's Parties"), against any and all Claims

arising from any breach of any representation, warranty or agreement contained in this Section. This Section shall survive the expiration or earlier termination of this Agreement.

(b) If Licensee discovers, uncovers, disturbs or otherwise reveals any existing Hazardous Materials within the Building, Licensee shall immediately stop any work in progress and report such findings to Licensor within twenty-four (24) hours. Licensee shall not conduct any further work in the reported area without Licensor's written approval. In the event Licensor takes no corrective action, Licensee shall have two (2) options upon discovery of Hazardous Materials and cessation of work as described above: (i) reroute its planned access route to avoid such hazardous material area; or (ii) terminate this Agreement according to the procedure set forth in Section 16(d). In the event Licensor commences corrective action, Licensee shall reschedule its installation work to a period after Licensor has completed corrective action in regard to such Hazardous Materials; provided, however, that Licensee may terminate this Agreement upon written notice to Licensor if such corrective action has not been commenced and diligently pursued within _____ ( ) days after Licensor's receipt of notice of Licensee's discovery of the Hazardous Materials. Licensee is hereby released and indemnified from any responsibility for managing, monitoring or abating, and shall not be deemed to have ownership of Hazardous Materials, including asbestos, pre-existing within the Building and undisturbed by Licensee, or brought on the Premises, into the Building, on, in or under the land upon which the Building is located, by any other Tenant or by Licensor.

26. Non-Recourse. In no event shall Licensor be liable to Licensee either for (i) any loss or damage that may be occasioned by or through the acts or omissions of any third parties or (ii) any consequential damages unless caused by the gross negligence or willful misconduct of the Licensor. None of the Licensor's Parties shall be personally liable for the performance of Licensor's obligations under this Agreement. Licensee shall look solely to Licensor to enforce Licensor's obligations hereunder and shall not seek any damages against any of the Licensor's Parties. Notwithstanding anything contained in this Agreement to the contrary, Licensee acknowledges and agrees that Licensee shall look solely to the estate and interest of Licensor, its successors and assigns, in the Building, for the collection of any judgment recovered against, or liability of, Licensor by reason of Licensor's breach of this Agreement or otherwise, and no other property or assets of Licensor or any of Licensor's Parties shall be subject to levy, execution or other enforcement procedures for the satisfaction of Licensee's remedies under this Agreement.

27. Rules and Regulations. Licensee agrees to comply with all Building Rules (as hereinafter defined), as adopted and altered by Licensor from time to time, and will cause its agents, employees, contractors, invitees and visitors to do so. Licensee shall not be bound by any changes in the Building Rules until after it has received written notice of such changes. No revision of the Building Rules shall materially adversely affect Licensee's rights or increase the License Fees payable under this Agreement. The current rules and regulations applicable to Licensee's in the Building are attached hereto as **Exhibit M**and made a part hereof (the "**Building Rules**").

28. Non-Waiver. Failure of Licensor to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but Licensor shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or in equity. The receipt of any sum paid by Licensee to Licensor after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing signed by Licensor.

29. Taxes. Licensee accepts and assumes full and exclusive liability for, and shall hold Licensor harmless from, the payment of all taxes, monies and other expenses arising from the conduct of Licensee's business in the Building, including, without limitation, taxes attributable to the ownership and operation of the Equipment, contributions required under state and federal law providing for state and federal payroll taxes or contributions for unemployment insurance or old age pensions, or annuities which are measured by wages, salaries or other remuneration paid by Licensee to its employees for any and all activities in connection with this Agreement. Notwithstanding the foregoing, Licensee shall not be responsible for any taxes imposed on the

income of the Licensor derived from the Building or otherwise, except that Licensee will be responsible for the payment of all applicable federal, state and local taxes imposed on Licensor as a direct result of the exercise, directly or indirectly, of Licensee's rights under this Agreement, including Licensee's operations and sales within the Building.

30. License Only. This Agreement creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building or Premises by virtue of this Agreement or Licensee's use of the Premises pursuant hereto. In connection with the foregoing, Licensee further acknowledges that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall Licensee be entitled to avail itself of any rights afforded to tenants under the laws of the state in which the Building is located. This Agreement is not and does not grant an easement.

31. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Building is located.

32. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

33. Survival. Any obligation of the parties related to monies owed, obligations accruing prior to termination and expressly surviving termination, as well as those provisions relating to limitations on liability, indemnification and actions, shall survive the expiration or earlier termination of this Agreement.

34. Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by Licensor or Licensee, Licensor or Licensee shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials (not caused by the party seeking the benefit of this section), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Licensor or Licensee, but in no event for more than _____ ( ) days regardless of the cause. The provisions of this Section shall not apply to the payment of fees or the payments of other monies to be paid by Licensor or Licensee under this Agreement. In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this Section, the party claiming such excuse shall promptly give written notice to the other party hereto of any event or occurrence which it believes falls within the contemplation of this Section. Notwithstanding the foregoing, Licensor and Licensee shall each take commercially reasonable precautions to (i) avoid reasonably foreseeable force majeure events, and (ii) mitigate the adverse affects of other force majeure events.

35. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be declared to be invalid or unenforceable under applicable law by a court or agency having jurisdiction over the subject matter, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted in such a manner so as to give the greatest possible effect of the original intent and purpose of the Agreement.

36. No Third Party Beneficiaries. Nothing herein expressed or implied is intended to confer on any person, other than the parties hereto or their respective permitted assigns, successors, heirs and legal representatives, and the Licensor's Parties, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

37. Publicity. Neither party shall issue or release, or allow any of its Affiliates to issue or release, any advertisement, brochure, press release, public announcement or other similar public communication which makes reference to the other party or its Affiliates or any of their respective

trademarks, trade names or logos, without such other party's written consent, which consent shall not be unreasonably withheld, conditioned or denied.

In addition, except as permitted in writing by Licensor in its reasonable discretion, no advertisement, brochure, press release, public announcement or other similar public communication by Licensee shall:

(a) make any reference to or use the name of the Building or the Property, or of any other property owned or managed by Licensor or any of its Affiliates;

(b) state or imply that Licensor or any of its Affiliates endorses or recommends Licensee's products or Services;

(c) state or imply that Licensee has any exclusive right to provide such products or Services at the Building;

(d) use any picture or likeness of the Building or Property or any other properties owned or managed by Licensor or its Affiliates; or

(e) be in bad taste, materially inaccurate or misleading or adversely affect the reputation of the Building or Licensor or its Affiliates.

38. Confidentiality

(a) Neither party hereto will, without the prior written consent of the other party disclose any **Confidential Information** to any person or entity other than the trustees, directors, officers, employees and agents of such party and its Affiliates who reasonably need to have access to the Confidential Information (provided the disclosing party shall be responsible for any violation by such party of the confidentiality provisions hereof). The obligations of a recipient party with respect to Confidential Information shall remain in effect except to the extent that: (i) such Confidential Information becomes generally available to the public other than as a result of unauthorized disclosure by the recipient or persons to whom such recipient has made the information available; (ii) the recipient can demonstrate that such Confidential Information was received by such recipient on a non-confidential basis, prior to receipt from the other party, from a third party lawfully possessing and lawfully entitled to disclose such information; or (iii) such Confidential Information is required to be released pursuant to a court order or an administrative proceeding (provided that the party required to release such information shall provide the other party with reasonable prior notice in order to permit such other party to obtain confidential treatment or other appropriate relief) or is required to be disclosed by federal and state securities laws and regulations.

(b) Confidential Information shall remain the property of the disclosing party and, if requested by the disclosing party, shall be destroyed or returned to the disclosing party upon satisfaction or completion of the performance obligations under this Agreement with respect to which such Confidential Information was disclosed. Each recipient party agrees to safeguard Confidential Information utilizing the same degree of care utilized by such recipient party in protecting its own confidential information. In addition to any other remedies which each party providing Confidential Information may have at law or in equity, such party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance and to prevent a breach or threatened breach of the provisions of this Section 38.

(c) For purposes of this Agreement, the term "Confidential Information" shall mean the following:

39. Licensee REIT Representations, Warranties and Covenants. If Licensee is a real estate investment trust ("REIT"), by its execution of this Agreement, Licensee adopts the representations, warranties and covenants set forth in Exhibit L hereto.

40. Miscellaneous

(a) The descriptive heading of the several paragraphs of this Agreement are inserted for convenience and ease of reference only and do not constitute part of this Agreement.

(b) The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other.

(c) All rights and remedies of Licensor under this Agreement shall be cumulative and none shall exclude any other rights or remedies allowed by law.

(d) This Agreement shall be executed in counterparts and each executed counterpart shall be construed to be an original.

(e) Time shall be of the essence of this Agreement and each and every provision herein, subject to force majeure.