AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MARCH 10, 2000

REGISTRATION NO. 333-95689

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 1 TO FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

LIVEPERSON, INC.
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE	7379	13-3861628
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

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462 SEVENTH AVENUE
10TH FLOOR
NEW YORK, NY 10018-7606
(212) 277-8950
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

ROBERT P. LOCASCIO
CHIEF EXECUTIVE OFFICER
LIVEPERSON, INC.
462 SEVENTH AVENUE
10TH FLOOR
NEW YORK, NY 10018-7606
(212) 277-8950
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code of Agent for Service)

Copies to:

ALEXANDER D. LYNCH, ESQ. BRIAN B. MARGOLIS, ESQ. BROBECK, PHLEGER & HARRISON LLP 1633 BROADWAY, 47TH FLOOR NEW YORK, NY 10019 (212) 581-1600	DEANNA L. KIRKPATRICK, ESQ. DAVIS POLK & WARDWELL 450 LEXINGTON AVENUE NEW YORK, NY 10017 (212) 450-4000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. / /

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / / _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / / _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / / _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. / /

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE (2)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (2)	AMOUNT OF REGISTRATION FEE (3)
Common stock, par value $0.001 per share......................	4,600,000	$15.00	$69,000,000	$18,216

(1) Includes 600,000 shares which may be sold pursuant to the underwriters' over-allotment option.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(a) of the Securities Act of 1933.

(3) $15,180 has been previously paid.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT SELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IT IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED MARCH 10, 2000

PROSPECTUS

4,000,000 SHARES

[LOGO]

COMMON STOCK

This is an initial public offering of common stock by LivePerson, Inc. LivePerson is selling 4,000,000 shares of common stock. The estimated initial public offering price is between $13.00 and $15.00 per share.

Prior to this offering, there has been no public market for our common stock. We have applied to have our common stock approved for quotation on the Nasdaq National Market under the symbol LPSN.

	PER SHARE	TOTAL
Initial public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds to LivePerson, before expenses	$	$

LivePerson has granted the underwriters an option for a period of 30 days to purchase up to 600,000 additional shares of our common stock.

INVESTING IN THE COMMON STOCK INVOLVES A HIGH DEGREE OF RISK.

SEE "RISK FACTORS" BEGINNING ON PAGE 7.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

CHASE H&Q

THOMAS WEISEL PARTNERS LLC

PAINEWEBBER INCORPORATED

, 2000

INSIDE FRONT COVER:

- --Entire page contains a photograph of an overturned, empty shopping cart in the foreground, occupying most of the lower half of the page. The shopping cart appears alone in a dusty field, with other empty shopping carts in the background. The text on the page is superimposed over the photograph.

- --Title text reading: " 2/3 of all online shopping carts are abandoned. *"

- --Upper-left quarter of page contains text reading:

"How can you convert an online shopper into a buyer?" (bold text)
"Human interaction." (bold text)

"LivePerson's clients believe in the value of real-time sales and customer service on the Web. Through an easy-to-use text dialogue window, they can interact with their customers at crucial moments to solve problems and assist in closing sales. And with low upfront costs, we've made it simple to add live customer service to your site."

- --Left middle of page contains the LivePerson Web site address: "www.liveperson.com"

- --Right middle of page contains the LivePerson logo

- --Bottom right of page includes footnote: "* The Forrester Report: "Making Net Shoppers Loyal" (June 1999)"

LEFT PAGE OF GATEFOLD:

- --Upper left of page contains picture of woman typing on a computer, with the following text to the right of the picture:

"Enabling Live Online Customer Service" (bold text)
"LivePerson technology changes the way Web site owners communicate with their customers."

- --Center and center-right of page contains screen shot of the LivePerson Web site homepage, with screen shot of sample text dialogue window superimposed over homepage, indicating button on homepage which leads to the text dialogue window. The following text is above the screen shots:

"Real-time Interaction" (bold text)
"LivePerson enables its clients to interact with their customers on a one-to-one basis, answering questions and solving problems in real time."

RIGHT PAGE OF GATEFOLD:

- --Upper left of page contains the following text:

"LivePerson is an Outsourced Solution" (bold text)
" - LivePerson hosts, upgrades and maintains the service"
" - The LivePerson service is easy to install"
" - Our clients' information technology resources are free to focus on other priorities"

- --Lower half of page contains a Y-shaped schematic of the LivePerson service, with diagrams one and two, two and three, and diagram two and the data collection diagram, respectively, linked by two-way arrows. The description of each diagram is as follows:

- --Diagram one is labeled "1. Internet user" and contains an illustration of an Internet user viewing a LivePerson client Web site, with the text dialogue window linked to the LivePerson icon on the client Web page. Underneath the diagram is the following text: "Internet users click on the LivePerson icon"

- --Diagram two is labeled "2. LivePerson" and contains an illustration of computers labeled "LivePerson Servers."

- --The data collection diagram is a cylinder labeled "LivePerson Data Collection" with the following text alongside it: "Both users and operators are linked through LivePerson's server facilities"

- --Diagram three is labeled "3. Operator" and is an illustration of an operator using a computer, with a supervisor standing over the operator. Underneath the diagram is the following text: "Customer service operators chat in real-time with Internet users"

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We have applied for federal registration of the marks "Live Person" and "LivePerson Give Your Site a Pulse". "LivePerson" is a common law trademark of ours. Other trademarks and service marks appearing in this prospectus are the property of their respective holders.

PROSPECTUS SUMMARY

THIS SUMMARY HIGHLIGHTS SELECTED INFORMATION CONTAINED ELSEWHERE IN THIS PROSPECTUS. THIS SUMMARY MAY NOT CONTAIN ALL OF THE INFORMATION THAT YOU SHOULD CONSIDER BEFORE INVESTING IN OUR COMMON STOCK. YOU SHOULD READ THE ENTIRE PROSPECTUS CAREFULLY, INCLUDING "RISK FACTORS" AND THE FINANCIAL STATEMENTS AND THE RELATED NOTES, BEFORE MAKING AN INVESTMENT DECISION.

LIVEPERSON

LivePerson is a leading provider of technology that facilitates real-time sales and customer service for companies doing business on the Internet. We are an Application Service Provider, or ASP, and we offer our proprietary real-time interaction technology as an outsourced service. Our service appears as a LivePerson-branded or custom-created icon on our clients' Web sites. When a customer or other Web visitor clicks on the icon, a pop-up dialogue window appears, enabling our clients to communicate directly with Internet users via text-based chat. Our clients can respond to customer inquiries in real time, and can thereby enhance their customers' online shopping experience. Our technology requires no software or hardware installation by our clients or their customers.

We believe that our service offers our clients the opportunity to increase sales, reduce customer service costs and increase responsiveness to customer needs and preferences. Because we are an ASP and provide our clients with a service rather than an in-house technology solution, our clients can devote their information technology resources to other priorities. We offer low start-up costs and reasonable ongoing monthly fees. We can implement our LivePerson service immediately following a two-hour training session. Upgrades to the LivePerson service are automatic because they are installed on our servers, without requiring action by either our clients or their customers. We also offer our clients the ability to add capacity whenever requested.

We currently have more than 450 clients. Our service benefits companies of all sizes doing business on the Internet, including online retailers, online service providers and traditional offline businesses with a Web presence. Our clients include EarthLink, GMAC's ditech.com, Intuit, iQVC, LookSmart, Priceline.com and ShopNow.

We plan to enhance our current position as a leading provider of real-time sales and customer service technology for companies doing business on the Internet. The key elements of our strategy include:

- strengthening our market position by significantly expanding our installed client base;

- adding features and functionality to our live interaction platform to increase the value of our service to our clients and their reliance on its benefits;

- continuing to build brand awareness;

- continuing to develop our technological capabilities by devoting significant resources to network architecture and software design;

- seeking opportunities to form strategic alliances and make acquisitions where appropriate; and

- expanding our international presence.

Our business was incorporated in the State of Delaware in November 1995 under the name Sybarite Interactive Inc. Prior to November 1998, we generated programming revenue from services primarily related to Web-based community programming and media design. In 1998, we shifted our core business focus to the development of the LivePerson service and phased out our programming and media design business. Following our introduction of the LivePerson service in November 1998, we changed our name in January 1999 to Live Person, Inc., and on March 8, 2000 to LivePerson, Inc. Our principal executive offices are located at 462 Seventh Avenue, 10th Floor, New York, New York 10018-7606. Our telephone number is (212) 277-8950. The address of our Web site is www.liveperson.com. Information contained on our Web site does not constitute part of this prospectus.

RECENT FINANCING

On January 27, 2000, we completed a private placement of 3,157,895 shares of our series D redeemable convertible preferred stock with an affiliate of, and other entities associated with, Dell Computer Corporation and with NBC Interactive Media, Inc. (a division of NBC) at a purchase price of $5.70 per share. We received net proceeds of approximately $17.9 million from this private placement. Our series D redeemable convertible preferred stock will convert, at a two-for-three ratio, into common stock upon the closing of this offering. The common stock has an assumed value of $14.00 per share, the mid-point of the range set forth on the cover page of this prospectus. See "Management's Discussion and Analysis of Financial Condition and Results of Operations--Liquidity and Capital Resources."

Prospective investors should be aware that investing in our common stock involves many risks, which are described more fully in the section "Risk Factors" beginning on page 7. In particular, we face risks including, but not limited to, the facts that:

- we have an unproven business model and will rely on revenues from the LivePerson service for substantially all of our revenues for the forseeable future;

- we have a limited operating history related to the LivePerson service and a history of significant losses;

- we have an accumulated deficit of approximately $7.9 million as of December 31, 1999;

- we anticipate incurring losses in the foreseeable future which may be substantial; and

- we operate in an emerging and highly competitive marketplace with relatively low barriers to entry.

THE OFFERING

Common stock offered by LivePerson...........	4,000,000 shares
Common stock to be outstanding after this offering..................................	29,323,804 shares
Use of proceeds..............................	General corporate purposes, including working capital, and strategic alliances and acquisitions, if any.
Proposed Nasdaq National Market symbol.......	LPSN

The number of shares of common stock to be outstanding after the offering is based on the number of shares outstanding as of March 8, 2000 and excludes:

- 10,000,000 shares of common stock reserved for issuance under our 2000 Stock Incentive Plan, of which 5,528,970 shares are issuable upon the exercise of stock options outstanding as of March 8, 2000 with a weighted average exercise price of $2.28 per share;

- 94,500 shares of common stock reserved for issuance upon the exercise of stock options with an exercise price of $1.60 per share granted outside of the predecessor to our 2000 Stock Incentive Plan;

- 450,000 shares of common stock reserved for issuance under our 2000 Employee Stock Purchase Plan; and

- 542,968 shares of common stock issuable upon the exercise of warrants outstanding as of March 8, 2000, with a weighted average exercise price of $1.60 per share.

Unless otherwise indicated, all information in this prospectus:

- reflects the automatic conversion of all of our outstanding shares of convertible preferred stock, including the series D redeemable convertible preferred stock, at a two-for-three ratio into 17,962,273 shares of our common stock upon the closing of this offering;

- reflects a three-for-two stock split of shares of our common stock effected on March 8, 2000;

- assumes the filing of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws, each as contemplated to be in effect as of the closing of this offering; and

- assumes no exercise of the underwriters' over-allotment option.

SUMMARY FINANCIAL INFORMATION
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

THE TABLE BELOW SETS FORTH SUMMARY FINANCIAL INFORMATION FOR THE PERIODS INDICATED. IT IS IMPORTANT THAT YOU READ THIS INFORMATION TOGETHER WITH THE SECTION ENTITLED "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" AND OUR FINANCIAL STATEMENTS AND THE RELATED NOTES INCLUDED ELSEWHERE IN THIS PROSPECTUS.

	YEAR ENDED DECEMBER 31,			
	1996	1997	1998	1999
STATEMENT OF OPERATIONS DATA:				
Revenue:				
Service revenue	$ --	$ --	$ 1	$ 600
Programming revenue	11	245	378	39
Total revenue	11	245	379	639
Total operating expenses	42	251	399	8,920
Loss from operations	(31)	(6)	(20)	(8,281)
Net loss	(30)	(6)	(20)	(7,808)
Basic and diluted net loss per share	$ 0.00	$ 0.00	$ 0.00	$ (1.10)
Weighted average basic and diluted shares outstanding	7,092,000	7,092,000	7,092,000	7,092,000
Pro forma basic and diluted net loss per share				$ (0.50)
Shares used in pro forma basic and diluted net loss per share				15,465,304

Shares used in computing pro forma basic and diluted net loss per share include the shares used in computing basic and diluted net loss per share adjusted for the conversion of our series A convertible preferred stock, series B convertible preferred stock and series C redeemable convertible preferred stock to common stock at a two-for-three ratio as if the conversion occurred at the date of their original issuance.

The pro forma balance sheet data summarized below give effect to:

- the receipt of net proceeds of approximately $17.9 million from the sale of our series D redeemable convertible preferred stock on January 27, 2000; and

- the automatic conversion into common stock of all of our outstanding convertible preferred stock (including our series D redeemable convertible preferred stock) at a two-for-three ratio upon the closing of this offering.

The pro forma as adjusted balance sheet data summarized below give effect to our receipt of the estimated net proceeds from the sale of the 4,000,000 shares of common stock offered hereby at an assumed initial public offering price of $14.00 per share (the mid-point of the range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

	DECEMBER 31, 1999		
	ACTUAL	PRO FORMA	PRO FORMA AS ADJUSTED
BALANCE SHEET DATA:			
Cash and cash equivalents	$14,944	$32,844	$83,924
Working capital	13,380	31,280	82,360
Total assets	19,289	37,189	88,269
Redeemable convertible preferred stock	18,990	--	--
Total stockholders' equity (deficit)	(2,327)	34,563	85,643

RISK FACTORS

AN INVESTMENT IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY CONSIDER THE RISKS DESCRIBED BELOW, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THIS PROSPECTUS, BEFORE MAKING AN INVESTMENT DECISION. AS A RESULT OF THE FOLLOWING RISKS, THE MARKET PRICE OF OUR COMMON STOCK COULD DECLINE, AND YOU COULD LOSE ALL OR PART OF YOUR INVESTMENT.

RISKS RELATED TO OUR BUSINESS

WE HAVE A LIMITED OPERATING HISTORY PROVIDING THE LIVEPERSON SERVICE AND EXPECT TO ENCOUNTER DIFFICULTIES FACED BY EARLY STAGE COMPANIES IN NEW AND RAPIDLY EVOLVING MARKETS.

We have only a limited operating history providing the LivePerson service upon which to base an evaluation of our current business and future prospects. We began offering the LivePerson service in November 1998; accordingly, the revenue and income potential of our business and the related market are unproven. As a result of our limited operating history as a provider of real-time sales and customer service technology for companies doing business on the Internet, we have only one year of historical financial data relating to the LivePerson service upon which to forecast revenue and results of operations.

In addition, because this market is relatively new and rapidly evolving, we have limited insight into trends that may emerge and affect our business. Before investing in us, you should evaluate the risks, expenses and problems frequently encountered by companies such as ours that are in the early stages of development and that are entering new and rapidly changing markets. These risks include our ability to:

- attract more clients and retain existing clients;
- sell additional operator access accounts (seats), which generate monthly fees, and other services to our existing clients;
- effectively market and maintain our brand name;
- respond effectively to competitive pressures;
- continue to develop and upgrade our technology; and
- attract, integrate, retain and motivate qualified personnel.

If we are unsuccessful in addressing some or all of these risks, our business, financial condition and results of operations would be materially and adversely affected.

OUR ANNUAL REVENUE HAS NEVER EXCEEDED $640,000, WE HAD AN ACCUMULATED DEFICIT OF $7.9 MILLION AS OF DECEMBER 31, 1999 AND WE EXPECT TO INCUR SIGNIFICANT LOSSES FOR THE FORESEEABLE FUTURE.

We have not achieved profitability and, as we expect to continue to incur significant operating expenses and to make significant capital expenditures, we expect to continue to experience significant losses and negative cash flow for the foreseeable future. We recorded a net loss of $20,000 for the year ended December 31, 1998 (the year in which we commenced offering the LivePerson service) and a net loss of approximately $7.8 million for the year ended December 31, 1999. As of December 31, 1999, our accumulated deficit was approximately $7.9 million. Even if we do achieve profitability, we cannot assure you that we can sustain or increase profitability on a quarterly or annual basis in the future. Failure to achieve or maintain profitability may materially and adversely affect the market price of our common stock.

WE HAVE AN UNPROVEN BUSINESS MODEL AND MAY NOT GENERATE SUFFICIENT REVENUE FOR OUR BUSINESS TO SURVIVE.

Our business model is based on the delivery of real-time sales and customer service technology to companies doing business on the Internet, a largely untested business. Sales and

customer service historically have been provided primarily in person or by telephone. Our business model assumes that companies doing business on the Internet will choose to provide sales and customer service via the Internet. Our business model also assumes that many companies will recognize the benefits of an outsourced application, that their customers will choose to engage a customer service representative in a live text-based interaction, that this interaction will maximize sales opportunities and enhance the online shopping experience and that companies will seek to have their online sales and customer service technology provided by us. If any of these assumptions is incorrect, our business may be harmed.

WE EXPECT THAT SUBSTANTIALLY ALL OF OUR REVENUE WILL COME FROM THE LIVEPERSON SERVICE FOR THE FORESEEABLE FUTURE AND IF WE ARE NOT SUCCESSFUL IN SELLING THE SERVICE, OUR REVENUE WILL NOT INCREASE AND MAY DECLINE.

The success of our business currently depends, and for the foreseeable future will continue to substantially depend, on the sale of only one service. Revenue related to the LivePerson service, which will account for substantially all of our revenue for the forseeable future, is comprised of initial non-refundable set-up fees and ongoing monthly fees. Ongoing monthly fees, in turn, result from the sale of seats to new clients and the sale of additional seats to existing clients. We introduced our LivePerson service in November 1998, and we currently have more than 450 clients. We cannot be certain that there will be client demand for our service or that we will be successful in penetrating the market for real-time sales and customer service technology. A decline in the price of, or fluctuation in the demand for, the LivePerson service, is likely to cause our revenue to decline. In addition, if our clients were to reduce the number of seats used or fail to purchase additional seats, our revenue might not increase.

THE SUCCESS OF OUR BUSINESS REQUIRES THAT CLIENTS CONTINUE TO USE THE LIVEPERSON SERVICE AND PURCHASE ADDITIONAL SEATS.

Our LivePerson service agreements typically have no termination date and are terminable upon 30 to 90 days' notice without penalty. If a significant number of our clients, or any one client with a significant number of seats, were to terminate these service agreements, reduce the number of seats purchased or fail to purchase additional seats, our results of operations may be negatively and materially affected. We cannot assure you that we will continue to experience high client retention rates. Our client retention rates may decline as a result of a number of factors, including competition, consolidation in the Internet industry or termination of operations by a significant number of our clients. Dissatisfaction with the nature or quality of our services could also lead clients to terminate our service. We depend on monthly fees from the LivePerson service for substantially all our revenue. If our retention rate declines, our revenue could decline unless we are able to obtain additional clients or alternate revenue sources. Further, because of the historically small number of seats sold in initial orders, we depend on sales to new clients and sales of additional seats to our existing clients.

OUR QUARTERLY REVENUE AND OPERATING RESULTS ARE SUBJECT TO SIGNIFICANT FLUCTUATIONS WHICH MAY ADVERSELY AFFECT THE TRADING PRICE OF OUR COMMON STOCK.

We expect our quarterly revenue and operating results to fluctuate significantly in the future due to a variety of factors, including:

- market acceptance of real-time sales and customer service technology;
- our clients' business success;
- our clients' demand for seats;
- seasonal factors affecting our clients' businesses;
- our ability to attract and retain clients;

- the amount and timing of capital expenditures and other costs relating to the expansion of our operations, including those related to acquisitions;

- the introduction of new services by us or our competitors;

- changes in our pricing policies or the pricing policies of our competitors;

- economic conditions specific to the Internet, electronic commerce and online media; and

- general economic conditions.

Factors relating to the operation of our business and products are generally within our control. All other factors are, in whole or in part, outside of our control.

Many of our clients' businesses are seasonal. Our clients' demand for real-time sales and customer service technology in general and their demand for seats, in particular, may be seasonal as well. As a result, our future revenue and profits may vary from quarter to quarter.

We do not believe that period-to-period comparisons of our operating results are meaningful. You should not rely upon these comparisons as indicators of our future performance.

Due to the foregoing factors, it is possible that our results of operations in one or more future quarters may fall below the expectations of securities analysts and investors. If this occurs, the trading price of our common stock would decline.

COMPETITION FOR PERSONNEL IN OUR INDUSTRY IS INTENSE.

We may be unable to retain our key employees or attract, integrate or retain other highly qualified employees in the future. We have experienced, and expect to continue to experience, difficulty in hiring highly-skilled employees with appropriate qualifications. As we continue to increase our client base and expand our operations, we expect that we will hire additional technical personnel, client services personnel and sales and marketing personnel. There is significant competition for qualified employees in our industry, particularly employees with technical backgrounds. If we do not succeed in attracting new personnel or retaining and motivating our current personnel, or if we are unable to outsource certain functions, our business, results of operations and financial condition will be materially and adversely affected.

WE MAY NOT BE ABLE TO EFFECTIVELY MANAGE OUR EXPANDING OPERATIONS.

Since the launch of the LivePerson service in November 1998, we have grown rapidly. This growth has placed a significant strain on our managerial, operational, technical and financial resources. In 2000, we intend to replace our existing accounting and other back-office systems at a cost of approximately $1.0 million. The new systems will have to be integrated with our operations, controls and procedures. If we are not able to successfully integrate these new systems with our existing systems, or if we incur significant costs in order to achieve such integration, our business could be harmed. In order to manage our growth, we must also continue to implement new or upgraded operating and financial systems, procedures and controls. Our failure to expand our operations in an efficient manner could cause our expenses to grow, our revenue to decline or grow more slowly than expected and could otherwise have a material adverse effect on our business, results of operations and financial condition.

Further, as a result of our growth, the number of our employees grew from six at December 31, 1998 to 125 at March 8, 2000. In the area of technology, which grew from one employee to 46 employees during this period, we plan to continue to significantly expand our personnel. We cannot assure you that we will be successful in integrating these new employees or that such integration will not distract valuable management resources.

In addition, in January 2000, we hired our Chief Operating Officer, Dean Margolis, and our Chief Technology Officer, James L. Reagan, who do not have significant experience working with us or with each other. The process of integrating new members of our senior management team can be time-consuming and may distract other members of management from the operation of

our business. If members of our senior management are unable to work together successfully or manage our growth, our business will be harmed.

OUR REPUTATION DEPENDS, IN PART, ON FACTORS WHICH ARE ENTIRELY OUTSIDE OF OUR CONTROL.

Our service appears as a LivePerson-branded or custom-created icon on our clients' Web sites. When a customer or other Web visitor clicks on the icon, a pop-up dialogue window appears, which, in nearly all cases, displays the slogan "Powered by LivePerson." The customer service operators who respond to the inquiries of our clients' customers or Web visitors are employees or agents of our clients; they are not employees of LivePerson. As a result, we have no way of controlling the actions of these operators. In addition, a customer of our client may not know that the operator is an employee or agent of our client, rather than a LivePerson employee. If a customer were to have a negative experience in a LivePerson-powered real-time dialogue, it is possible that this experience could be attributed to us, which could diminish our brand and harm our business. Finally, we believe the success of our service depends on the prominent placement of the icon on the client's Web site, over which we also have no control.

WE MAY BE UNABLE TO CONTINUE TO BUILD AWARENESS OF THE LIVEPERSON BRAND NAME.

Building recognition of our brand is critical to establishing the advantage of being among the first ASPs to provide real-time sales and customer service and to attracting new clients. If we fail to successfully promote and maintain our brand or incur significant expenses in promoting our brand without an associated increase in our revenue, our business, results of operations and financial condition may be materially and adversely affected.

WE ARE DEPENDENT ON TECHNOLOGY SYSTEMS THAT ARE BEYOND OUR CONTROL.

The success of the LivePerson service depends in part on our clients' online services as well as the Internet connections of visitors to their Web sites, both of which are outside of our control. As a result, it may be difficult to identify the source of problems if they occur. In the past, we have experienced problems related to connectivity which have resulted in slower than normal response times to customer chat requests and messages and interruptions in service. The LivePerson service relies both on the Internet and on our connectivity vendors for data transmission. Therefore, even when connectivity problems are not caused by the LivePerson service, our clients or their customers may attribute the problem to us. This could diminish our brand and harm our business, divert the attention of our technical personnel from our product development efforts or cause significant client relations problems.

In addition, we rely on two Web hosting services for Internet connectivity to deliver our service, power, security and technical assistance. They have, in the past, experienced problems that have resulted in slower than normal response times and interruptions in service. If we are unable to continue utilizing the services of our existing Web hosting providers or if our Web hosting services experience interruptions or delays, it is possible that our business could be harmed.

Our service also depends on many third parties for hardware and software, which products could contain defects. Problems arising from our use of such hardware or software could require us to incur significant costs or divert the attention of our technical personnel from our product development efforts. To the extent any such problems require us to replace such hardware or software, we may not be able to do so on acceptable terms, if at all.

TECHNOLOGICAL DEFECTS COULD DISRUPT OUR SERVICE, WHICH COULD HARM OUR BUSINESS AND REPUTATION.

We face risks related to the technological capabilities of the LivePerson service. We expect the number of simultaneous chats between operators and our clients' customers over our system to increase significantly as we expand our client base. Our network hardware and software may not

be able to accommodate this additional volume. Additionally, we must continually upgrade our software to improve the features and functionality of the LivePerson service in order to be competitive in our market. If future versions of our software contain undetected errors, our business could be harmed. As a result of major software upgrades at LivePerson, our client sites have, from time to time, experienced slower than normal response times and interruptions in service. If we experience system failures or degraded response times, our reputation and brand could be harmed. We may also experience technical problems in the process of installing and initiating the LivePerson service on new Web hosting services. These problems, if unremedied, could harm our business.

The LivePerson service also depends on complex software which may contain defects, particularly when we introduce new versions onto our servers. We may not discover software defects that affect our new or current services or enhancements until after they are deployed. It is possible that, despite testing by us, defects may occur in the software. These defects could result in:

- damage to our reputation;

- lost sales;

- delays in or loss of market acceptance of our products; and

- unexpected expenses and diversion of resources to remedy errors.

WE MAY BE UNABLE TO RESPOND TO THE RAPID TECHNOLOGICAL CHANGE AND CHANGING CLIENT PREFERENCES IN OUR INDUSTRY AND THIS MAY HARM OUR BUSINESS.

If we are unable, for technological, legal, financial or other reasons, to adapt in a timely manner to changing market conditions in the online sales and customer service industry or clients' or their customers' requirements, our business, results of operations and financial condition would be materially and adversely affected. Business on the Internet is characterized by rapid technological change. Sudden changes in client and customer requirements and preferences, frequent new product and service introductions embodying new technologies, such as broadband communications, and the emergence of new industry standards and practices could render the LivePerson service and our proprietary technology and systems obsolete. The rapid evolution of these products and services will require that we continually improve the performance, features and reliability of the LivePerson service. Our success will depend, in part, on our ability to:

- enhance the features and performance of the LivePerson service;

- develop and offer new services that are valuable to companies doing business on the Internet and their customers; and

- respond to technological advances and emerging industry standards and practices in a cost-effective and timely manner.

If any of our new services, including upgrades to the LivePerson service, do not meet our clients' or their customers' expectations, our business may be harmed. Updating our technology may require significant additional capital expenditures and could materially and adversely affect our business, results of operations and financial condition.

IF WE ARE NOT COMPETITIVE IN THE MARKET FOR REAL-TIME SALES AND CUSTOMER SERVICE TECHNOLOGY, OUR BUSINESS COULD BE HARMED.

There are no substantial barriers to entry in the real-time sales and customer service technology market, other than the ability to design and build scalable software and, with respect to outsourced solution providers, the ability to design and build scalable network architecture. Established or new entities may enter this market in the near future, including those that provide real-time interaction online, with or without the user's request.

We compete directly with companies focused on technology that facilitates real-time sales and customer service interaction. Our competitors include customer service enterprise software providers such as eGain Communications Corp., eShare Technologies, Inc., Kana Communications, Inc. and WebLine Communications (a part of Cisco Systems' applications technology group), some of which are beginning to offer hosted solutions.

We also face potential competition from larger enterprise software companies such as Oracle Corporation and Siebel Systems. In addition, established technology companies, including IBM, Hewlett-Packard and Microsoft, may also leverage their existing relationships and capabilities to offer real-time sales and customer service applications.

Finally, we face competition from clients and potential clients that choose to provide a real-time sales and customer service solution in-house as well as, to a lesser extent, traditional offline customer service solutions, such as telephone call centers.

We believe that competition will increase as our current competitors increase the sophistication of their offerings and as new participants enter the market. Many of our current and potential competitors have:

- longer operating histories;
- larger client bases;
- greater brand recognition;
- more diversified lines of products and services; and
- significantly greater financial, marketing and other resources.

These competitors may enter into strategic or commercial relationships with larger, more established and better-financed companies. These competitors may be able to:

- undertake more extensive marketing campaigns;
- adopt more aggressive pricing policies; and
- make more attractive offers to businesses to induce them to use their products or services.

Any delay in the general market acceptance of the real-time sales and customer service solution business model would likely harm our competitive position. Delays would allow our competitors additional time to improve their service or product offerings, and would also provide time for new competitors to develop real-time sales and customer service applications and solicit prospective clients within our target markets. Increased competition could result in pricing pressures, reduced operating margins and loss of market share.

IF WE DO NOT SUCCESSFULLY INTEGRATE POTENTIAL FUTURE ACQUISITIONS, OUR BUSINESS COULD BE HARMED.

In the future, we may acquire or invest in complementary companies, products or technologies. Acquisitions and investments involve numerous risks to us, including:

- difficulties in integrating operations, technologies, products and personnel;
- diversion of financial and management resources from efforts related to the LivePerson service or other then-existing operations;
- risks of entering new markets beyond those that we currently serve;
- potential loss of either our existing key employees or key employees of any companies we acquire; and
- our inability to generate sufficient revenue to offset acquisition or investment costs.

These difficulties could disrupt our ongoing business, distract our management and employees, increase our expenses and adversely affect our results of operations. Furthermore, we

may incur debt or issue equity securities to pay for any future acquisitions. The issuance of equity securities could be dilutive to our existing stockholders.

WE COULD FACE ADDITIONAL REGULATORY REQUIREMENTS, TAX LIABILITIES AND OTHER RISKS AS WE EXPAND INTERNATIONALLY.

We intend to expand internationally. There are risks related to doing business in international markets, such as changes in regulatory requirements, tariffs and other trade barriers, fluctuations in currency exchange rates and adverse tax consequences. In addition, there are likely to be different consumer preferences and requirements in specific international markets. Furthermore, we may face difficulties in staffing and managing any foreign operations. One or more of these factors could harm any future international operations.

OUR BUSINESS AND PROSPECTS WOULD SUFFER IF WE ARE UNABLE TO PROTECT AND ENFORCE OUR INTELLECTUAL PROPERTY RIGHTS.

Our success and ability to compete depend, in part, upon the protection of our intellectual property rights relating to the technology underlying the LivePerson service. We currently have a U.S. patent application pending relating to such technology and have not filed applications outside the U.S. It is possible that:

- our pending patent application may not result in the issuance of a patent;

- any patent issued may not be broad enough to protect our intellectual property rights;

- any patent issued could be successfully challenged by one or more third parties, which could result in our loss of the right to prevent others from exploiting the invention claimed in the patent;

- current and future competitors may independently develop similar technology, duplicate our service or design around any patent we may have; and

- effective patent protection may not be available in every country in which we do business.

We also rely upon copyright, trade secret and trademark law, written agreements and common law to protect our proprietary technology, processes and other intellectual property, to the extent that protection is sought or secured at all. We currently have one patent application pending. To the extent that the invention described in our U.S. patent application was made public prior to the filing of the application, we may not be able to obtain patent protection in certain foreign countries. We currently have a common law trademark, "LivePerson", and three pending U.S. trademark applications. The trademark examiner assigned to our applications has issued non-final office actions with respect to our applications, requesting additional information and making initial refusals. However, no final determinations as to the registrability of the marks have been made. We are in the process of responding to these office actions prior to their respective deadlines, but ultimately we may not be able to secure registration of our trademarks. In addition, we do not have any trademarks registered outside the U.S., nor do we have any trademark applications pending outside the U.S. We cannot assure you that any steps we might take will be adequate to protect against infringement and misappropriation of our intellectual property by third parties. Similarly, we cannot assure you that third parties will not be able to independently develop similar or superior technology, processes or other intellectual property. The unauthorized reproduction or other misappropriation of our intellectual property rights could enable third parties to benefit from our technology without paying us for it. If this occurs, our business, results of operations and financial condition would be materially and adversely affected. In addition, disputes concerning the ownership or rights to use intellectual property could be costly and time-consuming to litigate, may distract management from operating our business and may result in our loss of significant rights.

OUR PRODUCTS AND SERVICES MAY INFRINGE UPON INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES AND ANY INFRINGEMENT COULD REQUIRE US TO INCUR SUBSTANTIAL COSTS AND MAY DISTRACT OUR MANAGEMENT.

Although we attempt to avoid infringing known proprietary rights of third parties, we are subject to the risk of claims alleging infringement of third-party proprietary rights. If we infringe upon the rights of third parties, we may not be able to obtain licenses to use those rights on commercially reasonable terms. In that event, we would need to undertake substantial reengineering to continue offering our service. Any effort to undertake such reengineering might not be successful. In addition, any claim of infringement could cause us to incur substantial costs defending against the claim, even if the claim is invalid, and could distract our management from our business. Furthermore, a party making such a claim could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our products. If any of these events occurred, our business, results of operations and financial condition would be materially and adversely affected.

WE CANNOT PREDICT OUR FUTURE CAPITAL NEEDS TO EXECUTE OUR BUSINESS STRATEGY AND WE MAY NOT BE ABLE TO SECURE ADDITIONAL FINANCING.

We believe that the net proceeds from this offering, together with the proceeds from the sale of our series D redeemable convertible preferred stock, and our current cash and cash equivalents, will be sufficient to fund our working capital and capital expenditure requirements for at least the next 12 months. To the extent that we require additional funds to support our operations or the expansion of our business, or to pay for acquisitions, we may need to sell additional equity, issue debt or convertible securities or obtain credit facilities through financial institutions. In the past, we have obtained financing principally through the sale of preferred stock, common stock and warrants. If additional funds are raised through the issuance of debt or preferred equity securities, these securities could have rights, preferences and privileges senior to holders of common stock. The terms of any debt securities could impose restrictions on our operations. If additional funds are raised through the issuance of additional equity or convertible securities, our stockholders could suffer dilution. We cannot assure you that additional funding, if required, will be available to us in amounts or on terms acceptable to us. If sufficient funds are not available or are not available on acceptable terms, our ability to fund our expansion, take advantage of acquisition opportunities, develop or enhance our services or products, or otherwise respond to competitive pressures would be significantly limited. Those limitations would materially and adversely affect our business, results of operations and financial condition.

OUR BUSINESS IS DEPENDENT ON A FEW KEY EMPLOYEES, INCLUDING OUR CHIEF EXECUTIVE OFFICER, ROBERT P. LOCASCIO.

Our future success depends to a significant extent on the continued services of our senior management team, including Robert P. LoCascio, our founder and Chief Executive Officer. The loss of the services of any member of our senior management team, in particular Mr. LoCascio, could have a material and adverse effect on our business, results of operations and financial condition.

WE MAY BE LIABLE IF THIRD PARTIES MISAPPROPRIATE PERSONAL INFORMATION BELONGING TO OUR CLIENTS' CUSTOMERS.

We maintain dialogue transcripts of the text-based chats between our clients and their customers and store on our servers information supplied voluntarily by these customers in exit surveys which follow the chats. We provide this information to our clients to allow them to perform customer analyses and monitor the effectiveness of our service. Some of the information

we collect in text-based chats and exit surveys may include personal information, such as contact and demographic information. If third parties were able to penetrate our network security or otherwise misappropriate personal information relating to our clients' customers or the text of customer service inquiries, we could be subject to liability. We could be subject to negligence claims or claims for misuse of personal information. These claims could result in litigation which could have a material adverse effect on our business, results of operations and financial condition. We may incur significant costs to protect against the threat of security breaches or to alleviate problems caused by such breaches.

PROBLEMS RESULTING FROM THE YEAR 2000 PROBLEM COULD REQUIRE US TO INCUR UNANTICIPATED EXPENSES, DIVERT MANAGEMENT'S TIME AND ATTENTION, AND DISRUPT OUR BUSINESS.

Many currently installed computer systems and software products produced before January 1, 2000 were coded to accept or recognize only two-digit entries in the date code field. These systems may interpret the date code "00" as the year 1900 rather than as the year 2000. As a result, computer systems and software in use today may need to be upgraded or replaced to comply with Year 2000 requirements or risk system failure or miscalculations causing disruptions of normal business activities. We are not aware of any material Year 2000 problems that have harmed or threaten to harm our business, but we cannot assure you that no such problems will emerge. Our failure to correct a material Year 2000 problem could result in an interruption in, or a failure of, aspects of our normal business activities or operations. In addition, a significant Year 2000 problem involving the LivePerson service, including our hosting facilities or equipment provided to us by third-party vendors, could cause our clients to consider seeking alternate solutions or cause an unmanageable burden on our internal client service and network support staff. Any significant Year 2000 problem could require us to incur significant unanticipated expenses to remedy these problems and could divert management from other tasks of operating our business, which would harm our business, results of operations and financial condition. Please see "Management's Discussion and Analysis of Financial Condition and Results of Operations--Year 2000" for more detailed information regarding the Year 2000 issue.

DATA AND PROJECTIONS INCLUDED IN THIS PROSPECTUS RELATING TO THE GROWTH OF THE INTERNET ARE BASED ON ASSUMPTIONS THAT COULD TURN OUT TO BE INCORRECT, AND ACTUAL RESULTS COULD BE MATERIALLY DIFFERENT.

This prospectus contains various third-party data and projections, including those relating to Internet business activity. These data and projections have been included in the results of studies prepared by third parties, and purport to be based on surveys, reports and models used by these firms. Actual results or circumstances may be materially different from the data or projections. Any difference could reduce our revenue and harm our results of operations.

RISKS RELATED TO OUR INDUSTRY

WE ARE DEPENDENT ON CONTINUED GROWTH IN THE USE OF THE INTERNET AS A MEDIUM FOR COMMERCE.

We cannot be sure that a sufficiently broad base of consumers will adopt, and continue to use, the Internet as a medium for commerce. Our long-term viability depends substantially upon the widespread acceptance and development of the Internet as an effective medium for consumer commerce. Use of the Internet to effect retail transactions is at an early stage of development. Convincing our clients to offer real-time sales and customer service technology may be difficult.

Demand for recently introduced services and products over the Internet is subject to a high level of uncertainty. Few proven services and products exist. The development of the Internet into a viable commercial marketplace is subject to a number of factors, including:

- continued growth in the number of users;
- concerns about transaction security;
- continued development of the necessary technological infrastructure;
- development of enabling technologies;
- uncertain and increasing government regulation; and
- the development of complementary services and products.

WE DEPEND ON THE CONTINUED VIABILITY OF THE INFRASTRUCTURE OF THE INTERNET.

To the extent that the Internet continues to experience growth in the number of users and frequency of use by consumers resulting in increased bandwidth demands, we cannot assure you that the infrastructure for the Internet will be able to support the demands placed upon it. The Internet has experienced outages and delays as a result of damage to portions of its infrastructure. Outages or delays, including those resulting from Year 2000 problems, could adversely affect online sites, email and the level of traffic on the Internet. We also depend on Internet service providers that provide our clients and their customers with access to the LivePerson service. In the past, users have experienced difficulties due to system failures unrelated to our service. In addition, the Internet could lose its viability due to delays in the adoption of new standards and protocols required to handle increased levels of Internet activity. Insufficient availability of telecommunications services to support the Internet also could result in slower response times and negatively impact use of the Internet generally, and our clients' sites (including the LivePerson pop-up dialogue window) in particular. If the use of the Internet fails to grow or grows more slowly than expected, if the infrastructure for the Internet does not effectively support growth that may occur or if the Internet does not become a viable commercial marketplace, we may not achieve profitability and our business, results of operations and financial condition will suffer.

WE MAY BECOME SUBJECT TO BURDENSOME GOVERNMENT REGULATION AND LEGAL UNCERTAINTIES.

Laws and regulations directly applicable to Internet communications, commerce and advertising are becoming more prevalent. Recently, the United States Congress enacted Internet legislation relating to issues such as children's privacy, copyright and taxation. The children's privacy legislation imposes restrictions on the collection, use and distribution of personal identification information obtained online from children under the age of 13. The copyright legislation establishes rules governing the liability of Internet service providers and Web site publishers for the copyright infringement of Internet users. The tax legislation places a moratorium on certain forms of Internet taxes for three years; however, this moratorium does not apply to sales and use taxes. Additionally, the European Union recently adopted a directive addressing data privacy which imposes restrictions on the collection, use and processing of personal data. Existing legislation and any new legislation could hinder the growth in use of the Internet generally and decrease the acceptance of the Internet as a medium for communication, commerce and advertising. The laws governing the Internet remain largely unsettled, even in areas where legislation has been enacted. It may take several years to determine whether and how existing laws such as those governing intellectual property, taxation and personal privacy apply to the Internet and Internet services. In addition, the growth and development of the market for Internet commerce may prompt calls for more stringent consumer protection laws,

both in the U.S. and abroad, which may impose additional burdens on companies conducting business online. Our business, results of operations and financial condition could be materially and adversely affected if we do not comply with recent legislation or laws or regulations relating to the Internet that are adopted or modified in the future.

For example, the LivePerson service allows our clients to capture and save information about their customers, possibly without their knowledge. Additionally, our service uses a tool, commonly referred to as a "cookie" to uniquely identify each of our clients' customers. To the extent that additional legislation regarding Internet user privacy is enacted, such as legislation governing the collection and use of information regarding Internet users through the use of cookies, the effectiveness of the LivePerson service could be impaired by restricting us from collecting information which may be valuable to our clients. The foregoing could harm our business, results of operations and financial condition.

SECURITY CONCERNS COULD HINDER COMMERCE ON THE INTERNET.

User concerns about the security of confidential information online has been a significant barrier to commerce on the Internet and online communications. Any well-publicized compromise of security could deter people from using the Internet or other online services or from using them to conduct transactions that involve the transmission of confidential information. If Internet commerce is inhibited as a result of such security concerns, our business would be harmed.

RISKS RELATED TO THIS OFFERING

AFTER THIS OFFERING, OUR EXECUTIVE OFFICERS, DIRECTORS AND 5% OR GREATER STOCKHOLDERS WILL EXERCISE CONTROL OVER ALL MATTERS REQUIRING A STOCKHOLDER VOTE.

After this offering, our executive officers, directors and existing stockholders who each own greater than 5% of the common stock that was outstanding immediately before this offering and their affiliates, each of whom is listed in "Principal Stockholders," will, in the aggregate, beneficially own approximately 74.7% of our outstanding common stock. As a result, these stockholders will be able to exercise control over all matters requiring approval by our stockholders, including the election of directors and approval of significant corporate transactions. This concentration of ownership could also have the effect of delaying or preventing a change in control.

OF OUR TOTAL OUTSTANDING SHARES, 25,323,804 ARE RESTRICTED FROM IMMEDIATE RESALE PURSUANT TO CONTRACTUAL AGREEMENTS AND PROVISIONS OF LAWS, BUT MAY BE SOLD INTO THE MARKET IN THE NEAR FUTURE. THE SALE OF THESE SHARES COULD CAUSE THE MARKET PRICE OF OUR COMMON STOCK TO DROP SIGNIFICANTLY, EVEN IF OUR BUSINESS IS DOING WELL.

After this offering, we will have outstanding 29,323,804 shares of common stock. Of these shares, the 4,000,000 shares sold in this offering will be freely tradable except for any shares purchased by our "affiliates" as that term is used in Rule 144 of the Securities Act, who are generally those persons who directly or indirectly control LivePerson, such as our directors, executive officers, and significant stockholders. Affiliates may only sell their shares pursuant to

the requirements of Rule 144 or in a registered public offering. The remaining 25,323,804 shares will become available for resale in the public market at various times in the future.

NUMBER OF SHARES	DATE
4,000,000	After the date of this prospectus, freely tradable shares sold in this offering and shares saleable under Rule 144(k) that are not subject to the 180-day lock-up
0	After 90 days from the date of this prospectus, shares saleable under Rule 144 or Rule 701 that are not subject to the 180-day lock-up
20,586,962	After 180 days from the date of this prospectus, the 180-day lock-up is released and these shares are saleable under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701
4,736,842	After 180 days from the date of this prospectus, restricted securities that are held for less than one year are not yet saleable under Rule 144

As restrictions on resale end, the market price of our stock could drop significantly if the holders of restricted shares sell them or are perceived by the market as intending to sell them. For more detailed information, see "Shares Eligible for Future Sale."

THERE HAS BEEN NO PRIOR MARKET FOR OUR COMMON STOCK AND OUR STOCK PRICE MAY EXPERIENCE EXTREME PRICE AND VOLUME FLUCTUATIONS.

Prior to this offering, investors could not buy or sell our common stock publicly. An active public market for our common stock may not develop or be sustained after the offering. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. The market price of our common stock may decline below the initial public offering price after this offering.

Fluctuations in market price and volume are particularly common among securities of Internet and other technology companies. The market price of our common stock may fluctuate significantly in response to the following factors, some of which are beyond our control:

- variations in our quarterly operating results;

- changes in market valuations of Internet and other technology companies;

- our announcements of significant client contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;

- our failure to complete significant sales;

- additions or departures of key personnel;

- future sales of our common stock; and

- changes in financial estimates by securities analysts.

In the past, companies that have experienced volatility in the market price of their common stock have been the object of securities class action litigation. We may in the future be the target of similar litigation. Securities litigation could result in substantial costs and distract management from other aspects of operating our business.

WE MAY SPEND A SUBSTANTIAL PORTION OF THE NET PROCEEDS OF THIS OFFERING IN WAYS WITH WHICH YOU MAY NOT AGREE.

The net proceeds of this offering are not allocated for specific uses. Our management will have broad discretion to spend the net proceeds from this offering in ways with which you may not agree. The failure of our management to apply these funds effectively could result in unfavorable returns. This could have a material and adverse effect on our business, results of operations and financial condition, and could cause the price of our common stock to decline.

ANTI-TAKEOVER PROVISIONS IN OUR CHARTER DOCUMENTS AND DELAWARE LAW MAY MAKE IT DIFFICULT FOR A THIRD PARTY TO ACQUIRE US.

Provisions of our amended and restated certificate of incorporation, such as our staggered board of directors, the manner in which director vacancies may be filled and provisions regarding the calling of stockholder meetings, could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. In addition, provisions of our amended and restated bylaws, such as advance notice requirements for stockholder proposals, and applicable provisions of Delaware law, such as the application of business combination limitations, could impose similar difficulties.

INVESTORS PURCHASING SHARES IN THIS OFFERING WILL SUFFER IMMEDIATE AND SUBSTANTIAL DILUTION.

Investors purchasing shares in this offering will incur immediate and substantial dilution in pro forma net tangible book value, in the amount of $11.06 per share. To the extent outstanding options to purchase common stock are exercised, there will be further dilution. Please see "Dilution."

FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements which involve risks and uncertainties. These forward-looking statements, which are usually accompanied by words such as "may," "might," "will," "should," "could," "intends," "estimates," "predicts," "potential," "continue," "believes," "anticipates," "plans," "expects" and similar expressions, relate to, without limitation, statements about our market opportunities, our strategy, our competition, our projected revenue and expense levels and the adequacy of our available cash resources. This prospectus also contains forward-looking statements attributed to third parties relating to their estimates regarding Internet business activity. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this prospectus. Our actual results could differ materially from those expressed or implied by these forward-looking statements as a result of various factors, including the risk factors described above and included elsewhere in this prospectus. We undertake no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

USE OF PROCEEDS

We estimate that we will receive net proceeds from the sale of the shares of common stock in this offering of $51.1 million, assuming an initial public offering price of $14.00 per share (the mid-point of the range set forth on the cover page of this prospectus) and after deducting estimated underwriting discounts and commissions and estimated offering expenses. If the underwriters exercise their over-allotment option in full, we estimate that our net proceeds will be $58.9 million.

We presently intend to use the proceeds for general corporate purposes, including working capital. The primary purposes of this offering are to obtain additional equity capital, create a public market for our common stock and facilitate future access to public capital markets. We also believe opportunities may exist to expand our current business through strategic alliances and acquisitions, and we may utilize a portion of the proceeds for such purposes. We are not currently a party to any contracts or letters of intent with respect to any strategic alliances or acquisitions.

Pending such uses, we intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities.

DIVIDEND POLICY

We have not declared or paid any cash dividends on our capital stock since our inception. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Consequently, stockholders will need to sell shares of common stock to realize a return on their investment, if any.

CAPITALIZATION

The following table sets forth our cash and cash equivalents, and capitalization as of December 31, 1999:

- on an actual basis;
- on a pro forma basis to give effect to:
  - the receipt of net proceeds of approximately $17.9 million from the sale of our series D redeemable convertible preferred stock on January 27, 2000; and
  - the automatic conversion into common stock of all of our outstanding convertible preferred stock (including the series D redeemable convertible preferred stock) at a two-for-three ratio upon the closing of this offering;
- on a pro forma as adjusted basis to give effect to the sale of 4,000,000 shares of common stock by us in this offering at an assumed initial public offering price of $14.00 per share (the mid-point of the range set forth on the cover page of this prospectus), after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The information set forth in the table below is based on shares outstanding as of December 31, 1999, and excludes:

- 10,000,000 shares of common stock reserved for issuance under our 2000 Stock Incentive Plan, of which 5,528,970 shares are issuable upon the exercise of stock options outstanding as of March 8, 2000 with a weighted average exercise price of $2.28 per share;
- 93,750 shares of common stock issued upon the exercise of options since December 31, 1999;
- 94,500 shares of common stock reserved for issuance upon the exercise of stock options with an exercise price of $1.60 per share granted outside of the predecessor to our 2000 Stock Incentive Plan;
- 450,000 shares of common stock reserved for issuance under our 2000 Employee Stock Purchase Plan;
- 542,968 shares of common stock issuable upon the exercise of warrants outstanding as of March 8, 2000, with a weighted average exercise price of $1.60 per share; and
- 175,781 shares of common stock issued upon the exercise of warrants since December 31, 1999.

This information should be read in conjunction with our financial statements and the related notes to those statements included in this prospectus.

	DECEMBER 31, 1999		
	ACTUAL	PRO FORMA	PRO FORMA AS ADJUSTED
	(DOLLARS IN THOUSANDS)		
Cash and cash equivalents	$14,944	$32,844	$83,924
Series C redeemable convertible preferred stock, $.001 par value; actual--5,132,433 shares authorized, issued and outstanding; pro forma and pro forma as adjusted--no shares authorized, issued or outstanding	$18,990	$ --	$
Series D redeemable convertible preferred stock, $.001 par value; actual, pro forma and pro forma as adjusted--no shares authorized, issued or outstanding	--	--	
Stockholders' equity (deficit):			
Series A convertible preferred stock, $.001 par value; actual--2,541,667 shares authorized, issued and outstanding; pro forma and pro forma as adjusted--no shares authorized, issued or outstanding	3	--	
Series B convertible preferred stock, $.001 par value; actual--1,142,857 shares authorized, issued and outstanding; pro forma and pro forma as adjusted--no shares authorized, issued or outstanding	1	--	
Preferred stock, $.001 par value, actual and pro forma--no shares authorized, issued or outstanding; pro forma as adjusted--5,000,000 shares authorized and no shares issued or outstanding	--	--	
Common stock, $.001 par value; actual--30,000,000 shares authorized and 7,092,000 shares issued and outstanding; pro forma--100,000,000 shares authorized and 25,054,273 shares issued and outstanding; pro forma as adjusted--100,000,000 shares authorized and 29,054,273 shares issued and outstanding	7	25	29
Additional paid-in capital	5,928	42,804	93,880
Deferred compensation	(402)	(402)	(402)
Accumulated deficit	(7,864)	(7,864)	(7,864)
Total stockholders' equity (deficit)	(2,327)	34,563	85,643
Total capitalization	$16,663	$34,563	$85,643

DILUTION

Our pro forma net tangible book value as of December 31, 1999 was $34.2 million, or $1.37 per share. Pro forma net tangible book value per share is determined by dividing the amount of our pro forma tangible net worth (pro forma total tangible assets less total liabilities) by the number of shares of our common stock outstanding after giving pro forma effect to the receipt of net proceeds of approximately $17.9 million from the sale of our series D redeemable convertible preferred stock on January 27, 2000 and to the automatic conversion of each outstanding share of our convertible preferred stock into common stock at a two-for-three ratio upon the closing of this offering. Dilution in pro forma net tangible book value per share represents the difference between the amount per share paid by investors in this offering and the net tangible book value per share of common stock immediately after the completion of this offering. After giving effect to our sale of 4,000,000 shares offered hereby at an assumed initial public offering price of $14.00 per share (the mid-point of the range set forth on the cover page of this prospectus) and after deducting estimated underwriting discounts and commissions and estimated offering expenses and the application of the estimated net proceeds therefrom, our pro forma net tangible book value as of December 31, 1999 would have been $85.3 million, or $2.94 per share. This represents an immediate increase in pro forma net tangible book value of $1.57 per share to existing stockholders and an immediate dilution in pro forma net tangible book value of $11.06 per share to new investors. The following table illustrates this per share dilution:

Assumed initial public offering price per share.........		$ 14.00
Pro forma net tangible book value per share at December 31, 1999..................................	$ 1.37	
Increase per share attributable to new investors......	1.57	
Pro forma net tangible book value per share after this offering..		2.94
Dilution per share to new investors....................		$ 11.06

The following table sets forth, on a pro forma basis as of December 31, 1999, after giving effect to the automatic conversion of all outstanding shares of preferred stock into common stock upon the closing of this offering, the total number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid to us by existing stockholders and by new investors who purchase shares of common stock in this offering, before deducting the estimated underwriting discounts and commissions and estimated offering expenses, assuming an initial public offering price of $14.00 per share (the mid-point of the range set forth on the cover page of this prospectus):

	SHARES PURCHASED		TOTAL CONSIDERATION		AVERAGE PRICE
	NUMBER	PERCENT	AMOUNT	PERCENT	PER SHARE
Existing stockholders.....	25,054,273	86.2%	$41,600,000	42.6%	$ 1.66
New investors.............	4,000,000	13.8	56,000,000	57.4	14.00
Total............	29,054,273	100.0%	$97,600,000	100.0%	

The foregoing tables and calculations assume no exercise of any stock options or warrants outstanding as of December 31, 1999. Specifically, these tables and calculations exclude:

- 10,000,000 shares of common stock reserved for issuance under our 2000 Stock Incentive Plan, of which 5,528,970 shares are issuable upon the exercise of stock options outstanding as of March 8, 2000 with a weighted average exercise price of $2.28 per share;

- 93,750 shares of common stock issued upon the exercise of options since December 31, 1999;

- 94,500 shares of common stock reserved for issuance upon the exercise of stock options with an exercise price of $1.60 per share granted outside of the predecessor to our 2000 Stock Incentive Plan;

- 450,000 shares of common stock reserved for issuance under our 2000 Employee Stock Purchase Plan;

- 542,968 shares of common stock issuable upon the exercise of warrants outstanding as of March 8, 2000, with a weighted average exercise price of $1.60 per share; and

- 175,781 shares of common stock issued upon the exercise of warrants since December 31, 1999.

To the extent that any of these options or warrants are exercised, there will be further dilution to new investors.

SELECTED FINANCIAL DATA
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

The selected balance sheet data as of December 31, 1998 and 1999 and the selected statement of operations data for each of the years in the three-year period ended December 31, 1999 have been derived from our audited financial statements included elsewhere in this prospectus. The balance sheet data as of December 31, 1996 and 1997 and the statement of operations data for 1996 have been derived from our audited financial statements not included in this prospectus. We were incorporated in 1995 but did not commence operations until 1996. Historical results are not indicative of the results to be expected in the future and results of interim periods are not necessarily indicative of results for the entire year. You should read these selected financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," our financial statements and the related notes included elsewhere in this prospectus.

	YEAR ENDED DECEMBER 31,			
	1996	1997	1998	1999
STATEMENT OF OPERATIONS DATA:				
Revenue:				
Service revenue	$ --	$ --	$ 1	$ 600
Programming revenue	11	245	378	39
Total revenue	$ 11	$ 245	$ 379	639
Operating expenses:				
Cost of revenue	6	121	70	856
Product development	--	--	93	1,637
Sales and marketing	--	--	33	3,987
General and administrative	36	130	178	1,706
Non-cash compensation	--	--	25	734
Total operating expenses	42	251	399	8,920
Loss from operations	(31)	(6)	(20)	(8,281)
Other income (expense):				
Interest income	1	--	--	474
Interest expense	--	--	--	(1)
Total other income (expense), net	1	--	--	473
Net loss	$ (30)	$ (6)	$ (20)	$ (7,808)
Basic and diluted net loss per share	$ 0.00	$ 0.00	$ 0.00	$ (1.10)
Weighted average basic and diluted shares outstanding	7,092,000	7,092,000	7,092,000	7,092,000
Pro forma basic and diluted net loss per share				$ (0.50)
Shares used in pro forma basic and diluted net loss per share				15,465,304

Shares used in computing pro forma basic and diluted net loss per share include the shares used in computing basic and diluted net loss per share adjusted for the conversion of our series A convertible preferred stock, series B convertible preferred stock and series C redeemable convertible preferred stock to common stock at a two-for-three ratio as if the conversion occurred at the date of their original issuance.

	DECEMBER 31,			
	1996	1997	1998	1999
BALANCE SHEET DATA:				
Cash and cash equivalents	$ 2	$ 10	$ 107	$ 14,944
Working capital (deficit)	(29)	(35)	(30)	13,380
Total assets	2	30	142	19,289
Redeemable convertible preferred stock	--	--	--	18,990
Total stockholders' equity (deficit)	(29)	(35)	(30)	(2,327)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

THE FOLLOWING DISCUSSION OF OUR FINANCIAL CONDITION AND RESULTS OF OPERATIONS SHOULD BE READ TOGETHER WITH OUR CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES, WHICH APPEAR ELSEWHERE IN THIS PROSPECTUS. THE FOLLOWING DISCUSSION CONTAINS FORWARD-LOOKING STATEMENTS THAT REFLECT OUR CURRENT PLANS, ESTIMATES AND BELIEFS AND INVOLVE RISKS AND UNCERTAINTIES. OUR ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE DISCUSSED IN THE FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE OR CONTRIBUTE TO SUCH DIFFERENCES INCLUDE THOSE DISCUSSED BELOW AND ELSEWHERE IN THIS PROSPECTUS, PARTICULARLY IN THE SECTION ENTITLED "RISK FACTORS."

OVERVIEW

We are a leading provider of technology that facilitates real-time sales and customer service for companies doing business on the Internet. We are an Application Service Provider, and we offer our proprietary real-time interaction technology as an outsourced service. We currently generate revenue from the sale of our LivePerson service, which enables our clients to communicate directly with Internet users via text-based chat. Our clients can respond to customer inquiries in real time, and can thereby enhance their customers' online shopping experience.

Our business was incorporated in the State of Delaware in November 1995 under the name Sybarite Interactive Inc.; however, we did not commence operations until January 1996. We had no significant revenue until 1997, when we began to generate revenue from services primarily related to Web-based community programming and media design.

In 1998, we shifted our core business focus to the development of the LivePerson service and phased out our prior programming efforts, which last generated revenue in December 1999. We introduced the LivePerson service in November 1998.

REVENUE

With respect to the LivePerson service, our clients pay us an initial non-refundable set-up fee, as well as a monthly fee for each seat. Our set-up fee is intended to recover certain costs incurred by us (principally customer service, training and other administrative costs) prior to deployment of our service. Such fees are recorded as deferred revenue and recognized over a period of 24 months, representing the estimated expected term of a client relationship. As a result of recognizing set-up fees in this manner, combined with the fact that we have more seats on an aggregate basis than clients, revenue attributable to our monthly service constitutes a substantial majority of LivePerson service revenue for any given period. In addition, because we expect the aggregate number of seats to continue to grow, we expect the set-up fee to represent a decreasing percentage of total revenue over time. We do not charge an additional set-up fee if an existing client adds more seats. We recognize monthly service revenue fees as services are provided. Given the time required to schedule training for our clients' operators and our clients' resource constraints, we have historically experienced a lag between signing a client contract and generating revenue from that client.

Prior to November 1998, when the LivePerson service was introduced, we generated revenue from services primarily related to Web-based community programming and media design. Revenue from such services was $245,000 for the year ended December 31, 1997, $378,000 for the year ended December 31, 1998 and $39,000 for the year ended December 31, 1999. As of January 2000, we no longer generate any revenue from these services. Revenue generated from Web-based community programming and media design services is recognized upon completion of the project provided that no significant obligations remain outstanding and collection of the resulting receivable is probable.

OPERATING EXPENSES

Our cost of revenue associated with programming activity consisted primarily of the personnel expenses associated with outsourced programming and design. We no longer incurred these costs as of December 1998. We began developing the LivePerson service in the third quarter of 1998. We did not allocate development costs of the LivePerson service separately. Accordingly, since November 1998, our cost of revenue has principally been associated with the LivePerson service and has consisted of:

- compensation costs relating to employees who provide customer service to our clients, consisting of 17 people at December 31, 1999;

- compensation costs relating to our network support staff, consisting of five people at December 31, 1999;

- allocated occupancy costs and related overhead; and

- the cost of supporting our infrastructure, including expenses related to leasing space and connectivity for our services, as well as depreciation of certain hardware and software.

Our product development expenses consist primarily of compensation and related expenses for product development personnel, consisting of 15 people at December 31, 1999, allocated occupancy costs and related overhead, and expenses for testing new versions of our software. Product development expenses are charged to operations as incurred.

Our sales and marketing expenses consist of compensation and related expenses for sales personnel and marketing personnel, consisting of 21 people at December 31, 1999, allocated occupancy costs and related overhead, advertising, sales commissions, marketing programs, public relations, promotional materials, travel expenses and trade show exhibit expenses.

Our general and administrative expenses consist primarily of compensation and related expenses for executive, accounting and human resources personnel, consisting of 15 people at December 31, 1999, allocated occupancy costs and related overhead, professional fees, provision for doubtful accounts and other general corporate expenses.

In 1999 we increased our allowance for doubtful accounts principally due to an increase in accounts receivable as a result of the growth in our business. We base our allowance for doubtful accounts on specifically identified known doubtful accounts plus a general reserve for potential future doubtful accounts. We adjust our allowance for doubtful accounts when accounts previously reserved have been collected.

COMPENSATION EXPENSE

In 1998 and 1999, we recorded an aggregate of $25,000 and $474,000, respectively, of compensation expense in connection with our grants to consultants of options to acquire an aggregate of 458,010 shares of common stock. The expenses were determined using a Black-Scholes pricing model.

In addition, during May 1999, we issued an option to purchase 94,500 shares of common stock at an exercise price of $1.60 per share to ShopNow.com Inc., a client, in connection with an agreement by us to provide the LivePerson service over a two-year period. The original terms of the option provided that it would vest in or before May 2001 if the client met certain defined revenue targets. At December 31, 1999, the total value ascribed to this option, using a Black-Scholes pricing model, of $235,000, was recorded as a deferred cost. In 1999, we amortized $36,000 of this deferred cost.

In February 2000, we amended the option agreement with ShopNow.com Inc. to provide that this option was fully vested and immediately exercisable. ShopNow.com Inc. has agreed, however, that it will not sell the underlying common stock until the earlier of February 2005 and, if it has achieved certain revenue targets, between May and June 2001. The value ascribed to the option

at the time the option agreement was amended, using a Black-Scholes pricing model, was $1.1 million. As a result, in the first quarter of 2000, the deferred cost will be increased from $235,000 to $1.1 million, and the unamortized balance will be amortized ratably over the remaining service period of approximately 18 months.

Through March 8, 2000, we granted stock options to purchase 5,246,085 shares of common stock to employees, of which options to purchase 5,164,710 shares of common stock at a weighted average exercise price of $2.36 remained outstanding at March 8, 2000. Certain of these options were granted at less than the deemed fair value at the date of grant. The deemed fair value of our common stock ranged from $0.67 to $13.00 for the period during which these options were granted. In connection with the granting of these options, we recorded deferred compensation of $576,000 in 1999 and expect to record additional deferred compensation of $13.1 million in the first quarter of 2000, representing the difference between the deemed fair value of the common stock at the date of grant for accounting purposes and the exercise price of the related options. This amount will be recorded as deferred compensation in our financial statements and will be amortized over the vesting period, typically three to four years, of the applicable options. In 1999, we amortized $174,000 of deferred compensation. We expect to amortize the remaining deferred compensation annually as follows:

- 2000--$9.0 million, of which $3.5 million is expected to be recorded in the first quarter;
- 2001--$2.7 million;
- 2002--$1.4 million; and
- 2003--$461,000.

In January 1999, we issued 41,667 shares of Series A Convertible Preferred Stock in exchange for consulting services provided by Silicon Alley Venture Partners, LLC in the amount of $50,000.

RESULTS OF OPERATIONS

Due to the phasing out of our programming services and our limited operating history, we believe that comparisons of our 1999 operating results with those of prior periods are not meaningful and that our historical operating results should not be relied upon as indicative of future performance.

COMPARISON OF FISCAL YEARS ENDED DECEMBER 31, 1999 AND 1998

REVENUE. Total revenue increased to $639,000 in 1999, from $379,000 in 1998. Revenue associated with the LivePerson service increased to $600,000 in 1999 from $1,000 in 1998 and revenue associated with Web-based community programming and media design services decreased to $39,000 in 1999 from $378,000 in 1998. We no longer provided these services as of January 2000; accordingly, we believe period-to-period comparisons are not meaningful.

COST OF REVENUE. Cost of revenue increased to $856,000 in 1999, from $70,000 in 1998. This increase was primarily attributable to $279,000 of costs associated with the addition of client services staff as well as $65,000 of depreciation of computer hardware and software. We did not incur any depreciation expense in 1998 because we rented all of our equipment during that period, the total cost of which was not significant.

PRODUCT DEVELOPMENT. Product development costs increased to $1.6 million for 1999, from $93,000 in 1998. This increase was primarily attributable to $809,000 associated with an increase in the number of LivePerson service product development personnel, which grew from four to 15 people in 1999, and $342,000 of technology development activities related to the LivePerson service, consisting of network architecture and software design expenses.

SALES AND MARKETING. Sales and marketing expenses increased to $4.0 million for 1999, from $33,000 in 1998. This increase was primarily attributable to $1.1 million associated with an increase in salaries and related expenses resulting from an increase in sales and marketing personnel, which grew from two to 21 people in 1999, and to an increase in advertising and promotional expenses of $1.9 million, both of which related to the LivePerson service.

GENERAL AND ADMINISTRATIVE. General and administrative expenses increased to $1.7 million for 1999, from $178,000 in 1998. This increase was due primarily to $711,000 associated with increases in personnel expenses related to support and administration, occupancy costs, and to an increase of $339,000 in recruitment costs, principally for our officers. The number of our executive, accounting and human resources personnel grew from one to 15 in 1999.

NON-CASH COMPENSATION. In 1999, non-cash compensation represented amortization of deferred compensation of $174,000 and compensation expense incurred in connection with options and preferred stock issued to non-employees in lieu of payment for services rendered.

OTHER INCOME. Interest income amounted to $474,000 for 1999, and consists of interest earned on cash and cash equivalents generated by the receipt of proceeds from our preferred stock issuances. Other income in 1998, representing interest earned on cash balances, was less than $500.

NET LOSS. Our net loss increased to $7.8 million for 1999, from $20,000 in 1998.

COMPARISON OF FISCAL YEARS ENDED DECEMBER 31, 1998 AND 1997

REVENUE. Revenue increased to $379,000 in 1998 from $245,000 in 1997. This increase was due to an increase in revenue associated with Web-based community programming and media design.

COST OF REVENUE. Cost of revenue decreased to $70,000 in 1998 from $121,000 in 1997. This decrease was primarily attributable to a reduction of outsourced programming and design and related expenses as we performed more functions internally at lower costs.

PRODUCT DEVELOPMENT. Product development costs increased to $93,000 in 1998 from $0 in 1997. This increase was primarily due to the hiring of our product development staff related to our programming services.

SALES AND MARKETING. Sales and marketing expenses increased to $33,000 in 1998 from $0 in 1997. This increase was primarily due to our initiating the sales and marketing efforts related to our programming services.

GENERAL AND ADMINISTRATIVE. General and administrative costs increased to $178,000 in 1998 from $130,000 in 1997. This increase was primarily due to increases in personnel expenses and occupancy costs incurred as our operations grew.

NET LOSS. Our net loss increased to $20,000 in 1998 from $6,000 in 1997.

QUARTERLY RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, our financial information for the four most recent quarters ended December 31, 1999. In our opinion, this unaudited information has been prepared on a basis consistent with our annual financial statements and includes all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the unaudited information for the periods presented. This information should be read in conjunction with the financial statements, including the related notes, included elsewhere in this prospectus. The results of operations for any quarter are not necessarily indicative of results that we may achieve for any subsequent periods.

	QUARTER ENDED			
	MARCH 31, 1999	JUNE 30, 1999	SEPTEMBER 30, 1999	DECEMBER 31, 1999
	(IN THOUSANDS)			
Revenue:				
Service revenue	$ 15	$ 26	$ 145	$ 414
Programming revenue	9	23	4	3
Total revenue	24	49	149	417
Operating expenses:				
Cost of revenue	24	51	173	608
Product development	139	147	478	873
Sales and marketing	51	396	1,429	2,111
General and administrative	158	189	422	937
Non-cash compensation	50	91	19	574
Total operating expenses	422	874	2,521	5,103
Loss from operations	(398)	(825)	(2,372)	(4,686)
Other income (expense):				
Interest income	20	38	199	217
Interest expense	(1)	--	--	--
Total other income (expense), net	19	38	199	217
Net loss	$ (379)	$ (787)	$(2,173)	$(4,469)

Our revenue from the LivePerson service has increased in each of the last four quarters, from $15,000 to $414,000, due primarily to increased market acceptance of our service, which is in part attributable to the growth of our direct sales force. The growth of our sales force has allowed us to solicit more prospective clients and to respond more quickly and effectively to their inquiries. We cannot assure you that we will achieve similar growth in future periods.

Programming revenue, which has decreased from $9,000 to $3,000 during the last four quarters, represents income from business activities which we are no longer pursuing. We do not anticipate any significant programming revenue in the future.

Our total operating expenses have increased significantly in absolute terms in each of the last four quarters, increasing from $422,000 to $5.1 million. As a percentage of revenue, operating expenses declined slightly over the period. We expect our operating expenses to continue to increase as we expand our business.

The increase in our cost of revenue has been primarily due to the addition of client services personnel and the expansion of our technological infrastructure. We expect the cost of our client services department to continue to increase as we continue to hire additional personnel. We also expect to continue to expend significant amounts to expand our technological infrastructure and to incur increased depreciation expenses related to such spending. As a result, we expect cost of revenue as a percentage of revenue to increase in the short term.

Product development costs increased significantly in absolute dollar terms in each of the last four quarters, from $139,000 to $873,000, principally as a result of increased headcount and allocated occupancy costs and related overhead. As a percentage of revenue, however, product development costs in each of the three quarters declined.

Our sales and marketing expense has increased significantly in each of the last four quarters, from $51,000 to $2.1 million, due to increases in the size of our sales and marketing staff and an increase in marketing-related activities. The increase in sales staff headcount is attributable to the expansion of our sales efforts. The increase in our marketing headcount and related expenses is due to our increasing efforts to enhance our brand recognition. We expect sales and marketing expense to continue to increase as we expand our business.

General and administrative costs increased in absolute dollar terms in each of the last four quarters, from $158,000 to $937,000, principally due to an increase in the number of employees and, to a lesser extent, to professional fees. We expect general and administrative costs to increase in connection with our becoming a public company and as our business grows.

Other income (expense), which is principally comprised of interest income earned on cash and cash equivalents, has increased in each of the last four quarters. The increase, particularly in the third quarter of 2000, is due primarily to interest earned on the net proceeds from the July 1999 private placement of our series C redeemable convertible preferred stock. We expect interest income to increase with the investment of the proceeds from the issuance of our series D redeemable convertible preferred stock and of this offering in short-term, interest-bearing, investment-grade securities, pending our use of such proceeds.

The increase in non-cash compensation expense during 1999 was due to deferred compensation recognized in connection with employee options and compensation expense incurred in connection with options and preferred stock issued to non-employees in lieu of payment for services rendered.

We have experienced substantial increases in our expenses since our introduction of the LivePerson service and we anticipate that our expenses will continue to grow in the future. Although our revenue from the LivePerson service has grown in each of the quarters since its introduction, we cannot assure you that we can sustain this growth or that we will generate sufficient revenue to achieve profitability. Consequently, we believe that period-to-period comparisons of our operating results may not be meaningful, and as a result, you should not rely on them as an indication of future performance.

LIQUIDITY AND CAPITAL RESOURCES

Since our inception, we have financed our operations principally through cash generated by private placements of our convertible preferred stock. Through December 31, 1999, we have raised a total of $23.5 million in aggregate net proceeds in three private placements. As of December 31, 1999, we had $14.9 million in cash and cash equivalents, an increase of $14.8 million from December 31, 1998. In addition, on January 27, 2000, we issued 3,157,895 shares of series D redeemable convertible preferred stock at $5.70 per share, raising total net proceeds of approximately $17.9 million. Since December 31, 1999 we have entered into two letters of credit, which serve as the security deposits for our new leases of office space, in an aggregate amount of $2.3 million for 2000. We expect to enter into an additional letter of credit for $2.2 million in 2001.

Net cash used in operating activities was $6.0 million for the year ended December 31, 1999. Net cash provided by operating activities was $19,000 and $42,000 for the years ended December 31, 1998 and 1997, respectively. Net cash used in operating activities for the year ended December 31, 1999 consisted primarily of net operating losses, depreciation expense, non-cash compensation and changes in accounts receivable, prepaid expenses and other current assets, security deposits, accounts payable and accrued expenses and deferred revenue. Net cash provided by operating activities for the years ended December 31, 1998 and 1997 was primarily due to changes in accounts receivable, prepaid expenses and other current assets, security deposits, accounts payable and accrued expenses and deferred revenue, partially offset by net operating losses and non-cash compensation charges.

Net cash used in investing activities was $2.6 million for the year ended December 31, 1999 and $0 for each of the years ended December 31, 1998 and 1997. Net cash used in investing activities for the year ended December 31, 1999 was related to purchases of property and

equipment. There were no investments in fixed assets for the years ended December 31, 1998 or 1997.

Net cash provided by financing activities was $23.4 million for the year ended December 31, 1999 and $78,000 for the year ended December 31, 1998. Net cash used in financing activities was $34,000 for the year ended December 31, 1997. Net cash provided by financing activities for the year ended December 31, 1999 was attributable to proceeds from the sale of our convertible preferred stock. Net cash provided by financing activities for 1998 was principally attributable to $100,000 in proceeds from the issuance of a note payable, which was converted into 83,333 shares of our series A convertible preferred stock in January 1999. Net cash used in financing activities in 1997 was attributable to an advance made to an officer.

As of December 31, 1999, our principal commitments consisted of $70,000 due per month under operating leases. Although we have no material commitments for capital expenditures, we anticipate an increase in capital expenditures and lease commitments consistent with our anticipated growth in operations, infrastructure and personnel.

In the first quarter of 2000 we entered into two additional leases for office space, one in San Francisco and one in New York City. The lease for our San Francisco office space, entered into in February 2000, provides for annual aggregate payments of $275,000. In February 2000, we also entered into a sublease for approximately 8,000 square feet in New York City expiring in September 2000, providing for annual aggregate payments of $238,000. In March 2000, we entered into a lease for an aggregate of approximately 83,500 square feet on two floors at a location in New York City. The lease provisions with respect to one floor, consisting of approximately 40,500 square feet, commence in June 2000, with rent of approximately $1.4 million per year in the first three years, $1.5 million per year in years four through seven and $1.6 million per year in years eight through ten. The related security deposit is $2.0 million for the first three years, $1.3 million for years four through seven and $670,000 for years eight through ten. The other floor consists of approximately 43,000 square feet, and the lease provisions relating to that floor commence in August 2001, with rent of approximately $1.5 million per year in the first three years, $1.6 million per year in years four through seven and $1.7 million per year in years eight through ten. The related security deposit is $2.2 million for the first three years, $1.5 million for years four through seven and $747,000 for years eight through ten. At our option, we may provide the security deposit by a letter of credit.

We have incurred significant net losses and negative cash flows from operations since inception, and as of December 31, 1999, had an accumulated deficit of $7.9 million. These losses have been funded primarily through the issuance of our convertible preferred stock. We intend to continue to invest heavily in sales, marketing, promotion, technology and infrastructure development as we grow. As a result, we expect to continue to incur operating losses and negative cash flows for the foreseeable future.

We believe that the net proceeds from this offering, together with the proceeds from the sale of our series D redeemable convertible preferred stock and our current cash and cash equivalents will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least the next 12 months. If cash generated from operations is insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities or seek alternative sources of financing. If we are unable to obtain this additional financing, we may be required to reduce the scope of our planned sales and marketing and product development efforts, which could harm our business, financial condition and operating results.

YEAR 2000

The Year 2000 issue is the result of computer programs being written using two digits rather than four to define the applicable year. Any computer programs or hardware that have date-sensitive software may recognize a date using "00" as the year 1900 rather than the year 2000. Prior to January 1, 2000, there was a great deal of concern that this could result in system failures or miscalculations, causing disruptions of operations for any company using such computer programs or hardware, including, among other things, a temporary inability to process transactions, send invoices or engage in normal business activities. Most reports to date, however, are that computer systems are functioning normally and the compliance and remediation work accomplished leading up to the Year 2000 was effective to prevent any problems. Computer experts have warned, however, that there may still be residual consequences. We cannot assure you that any Year 2000 problems will not disrupt our service and thereby result in a decrease in sales of the LivePerson service, an increase in allocation of resources to address Year 2000 problems or an increase in litigation costs.

We designed our internal systems as well as our software, hardware and network architecture to be Year 2000 compliant, and we believe, based on our initial reports, that such systems are Year 2000 compliant.

To date, we have not experienced any significant problems relating to the Year 2000 compliance of our major suppliers. However, we cannot assure you that these suppliers will not experience a Year 2000 problem in the future. In the event that any such suppliers experience a Year 2000 problem, and we are unable to replace it with an alternate source, our business would be harmed.

Our clients' online services may be affected by Year 2000 issues if they need to expend significant resources to remedy a Year 2000 problem that may arise. This may reduce funds available to purchase the LivePerson service.

We have not incurred any significant expenses to date, and we do not anticipate that the total costs associated with our Year 2000 remediation efforts, including both expenses incurred and any to be incurred in the future, will be material.

It remains impossible to determine with complete certainty that all Year 2000 problems that may affect us have been identified or corrected. The number of devices that could be affected and the interactions among these devices are simply too numerous. In addition, no one can accurately predict how many Year 2000 problem-related failures will occur or the severity, duration or financial consequences of these perhaps inevitable failures. As a result, we believe that the following consequences, among others, are possible:

- operational inconveniences and inefficiencies for us, our suppliers and our clients that may divert management's time and attention from ordinary business activities; and

- some clients may postpone their purchases of our service and we will experience a decrease in revenue.

Based on our initial assessment of our Year 2000 readiness, we do not anticipate being required to implement any material aspects of a contingency plan to address Year 2000 readiness of our critical operations.

RECENTLY ISSUED ACCOUNTING STANDARDS

In April 1998, the American Institute of Certified Public Accountants ("AICPA") issued SOP No. 98-5, "Reporting on the Costs of Start-Up Activities," which provides guidance on the financial reporting of start-up costs. SOP 98-5 requires costs of start-up activities and

organization costs to be expensed as incurred. We adopted SOP 98-5 on January 1, 1999. As we had not capitalized such costs, the adoption of SOP 98-5 did not have an impact on our consolidated financial statements.

In April 1998, AICPA issued Statement of position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1")." SOP 98-1 provides guidance for determining whether computer software is internal-use software and on accounting for the proceeds of computer software originally developed or obtained for internal use and then subsequently sold to the public. It also provides guidance on capitalization of the costs incurred for computer software developed or obtained for internal use. We adopted SOP 98-1 in the first quarter of 1999, which did not have a material effect on our financial statements.

In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS No. 133 establishes accounting and reporting standards for derivative instruments, including derivative instruments embedded in other contracts, and for hedging activities. Subsequently, the FASB issued SFAS No. 137 which deferred the effective date of SFAS No. 133. SFAS No. 137 is effective for all fiscal quarters of fiscal years beginning after June 15, 2000. We have not yet analyzed the impact of this pronouncement on our financial statements.

BUSINESS

OVERVIEW

LivePerson is a leading provider of technology that facilitates real-time sales and customer service for companies doing business on the Internet. We change the way Web site owners communicate with Internet users by enabling live text-based chat. Historically, Internet users have had limited ways to communicate with online businesses to inquire about matters such as product features, transaction security and shipping details. The LivePerson service enables our clients to communicate with Internet users via text-based chat. They can respond to these and other customer inquiries in real time via text-based chat, and can thereby enhance their customers' online shopping experience.

We are an Application Service Provider, or ASP, and we offer our proprietary real-time interaction technology as an outsourced service. Our technology requires no software or hardware installation by our clients or their customers. We can implement our LivePerson service immediately following a two-hour training session. Upgrades to the LivePerson service are automatic because they are installed on our servers, without requiring action by either our clients or their customers. We also offer our clients the ability to add capacity whenever requested.

We believe that our service offers our clients the opportunity to increase sales by answering customer questions and solving customer problems at critical points in the buying process. It also enables our clients to reduce customer service costs by allowing them to enhance operating efficiency and to improve customer response times. Further, information captured in transcripts of live text-based interactions can be used by our clients to increase their responsiveness to customer needs and preferences, thereby improving customer satisfaction, loyalty and retention.

We currently have more than 450 clients, including numerous online retailers, online service providers and traditional offline businesses with a Web presence. Our clients include EarthLink, GMAC's ditech.com, Intuit, iQVC, LookSmart, Priceline.com and ShopNow.

INDUSTRY BACKGROUND

The Internet is evolving from primarily a static information source to a widely accepted medium for commerce. Approximately 850,000 businesses currently offer goods, services and information over the Web, according to an eMarketer report of December 1999. Competition among online businesses is intense, with new companies launching commercial Web sites every day. eMarketer estimates that the number of actively maintained business Web sites will grow to 2.3 million worldwide by the year 2002.

To compete effectively in this environment, online businesses are increasingly striving to provide high quality service to attract and retain customers. This increased focus is in turn leading to heightened expectations for online service by Internet users. Whether to ask questions about product features or transaction security, or to get help with completing an online application, Internet users today expect effective, timely answers. Companies that do not provide this level of service risk losing customers to competitors.

Companies are also increasingly focused on gathering information to improve responsiveness and increase the rate of conversion from Web visitor to buyer. Online shoppers have many purchasing options, with easy access to competitive pricing, feature and distribution information. According to a Forrester Research report of June 1999, 70% of all online merchants experience sales conversion rates of less than 2%. In this environment, online businesses that collect substantial information about their customers are better able to serve them effectively. Customer feedback provides Web site owners with input on product and service offerings, customer preferences and Web site usability.

LIMITATIONS OF EXISTING SALES AND CUSTOMER SERVICE SOLUTIONS. Online businesses currently use several methods to provide service and support to, and gather information from, Internet users. Common methods include toll-free telephone call centers, email response systems and listings of frequently asked questions and answers.

Telephone support, while similar in some ways to an in-store experience, typically requires that customers using the Internet with a single telephone line log off the Web. Internet users, who know that competition is literally a mouse-click away, may prefer to move quickly to a competitor's Web site rather than take the time to place a telephone call and face a potentially lengthy wait time.

Email support eliminates the need for the Internet user to log off to make a telephone call and may result in lower telecommunication and support costs for online businesses; however, email does not satisfy the real-time needs of Internet users who desire communication at key points in the shopping process.

Frequently asked questions, though available to Internet users on demand, are typically general in content and may also be unsuitable for transactions involving expensive or complex products and services. Internet users may desire the comfort of an active communication with a customer service representative before actually making such a purchase. In addition, because frequently asked questions provide only one-way communication, they provide a limited means for companies to gather customer feedback.

In order to provide high quality service to customers and other Web users, companies require a customer interaction solution that:

- provides real-time responses;

- maximizes sales opportunities;

- strengthens customer relationships;

- allows companies to gather information to remain responsive to customer needs;

- can be implemented quickly and easily; and

- can be operated in a cost-effective manner.

THE LIVEPERSON SOLUTION

LivePerson provides technology that facilitates real-time sales and customer service for companies doing business on the Internet. We are an ASP offering this technology as an outsourced service to companies of all sizes. Our technology enables our clients to interact with customers in real time at the user's request through live text-based chat. This improves Web site communication and enhances the online shopping experience.

To implement the LivePerson service, our clients simply place a LivePerson-branded or custom-created icon on one or more pages of their Web sites and give their operators access to our service via the Internet. When an Internet user browsing a client's Web site desires assistance, the user simply clicks on the icon. This causes a pop-up dialogue window to appear on the user's screen. The Internet user and our client's operator then engage in a real-time online conversation in this dialogue window. The operator may incorporate graphics and links to Web pages into the dialogue window. Our service enables this live conversation by linking the Internet user and our clients' operators through our proprietary technology, which resides on our servers.

We create and store conversation transcripts and related data, and we also enable our clients to generate optional customer exit surveys, which our clients can use to collect additional

information about their customers. Stored data include the Internet user's name, browser type, Internet Protocol (IP) address and responses to exit surveys, the operator's identity and time stamps for each chat transmission. In addition, we provide our clients with tools to analyze the stored information. These tools include summary reports of the number of chats in certain periods and the duration of such chats, filters to sort data from exit surveys, statistical summaries of those data and statistical summaries of operator performance.

We believe the LivePerson service gives our clients the opportunity to:

- MAXIMIZE SALES OPPORTUNITIES. Our clients are able to respond to customer inquiries in real time. Live customer interaction creates opportunities to:

  - answer questions on demand and resolve customer issues as they occur;

  - assist in closing sales that might otherwise have been abandoned without direct one-to-one real-time interaction; and

  - market additional products and services in order to increase average order sizes.

- STRENGTHEN CUSTOMER RELATIONSHIPS. Personalized service generates increased customer satisfaction. Our service enables our clients to build relationships with their customers and offers our clients the opportunity to market to their customers on a one-to-one basis. Furthermore, transcripts from LivePerson conversations and optional exit surveys often provide relevant customer data and valuable real-time feedback. Our clients may then use this information to modify product offerings and marketing efforts, improve Web site navigation and refine their frequently asked questions listings.

- REDUCE OPERATING COSTS. Our clients' experience has shown that a single operator can interact with as many as four users simultaneously. As a result, an operator can provide service to more customers, thereby reducing costs per customer interaction. In addition, our clients can create pre-formatted responses to customer questions, allowing them to improve response time and operator efficiency. An operator can simply choose and, where appropriate, slightly modify a pre-formatted response to answer many questions.

Because we are an ASP and provide our clients with a service rather than an in-house technology solution, we provide our clients with the following additional benefits:

- LOW SET-UP COSTS AND REASONABLE ONGOING FEES. We charge our clients a low set-up fee and reasonable ongoing monthly fees.

- EFFECTIVE USE OF INTERNAL RESOURCES. Because the LivePerson service is an outsourced application, our clients can devote their information technology resources to other priorities.

- RAPID DEPLOYMENT. We provide the technology needed to facilitate real-time sales and customer service without plug-ins or customization. Our clients do not need to install any hardware or software in order to immediately provide the LivePerson service, other than any hardware or software they might need to install in order to connect to the Internet generally. In addition, our clients' operators and customers can use our service with any standard Web browser.

- AUTOMATIC UPGRADES. We install all upgrades to the LivePerson service on our servers. As a result, upgrades are immediately available for use and require no action by either our clients or their customers.

- EASE OF EXPANSION. Our clients can add additional operator seats simply by requesting them, enabling the LivePerson service to meet our clients' growth needs.

OUR STRATEGY

Our objective is to enhance our current position as a leading provider of real-time sales and customer service technology for companies doing business on the Internet. The key elements of our strategy include:

STRENGTHENING OUR MARKET LEADERSHIP POSITION AND GROWING OUR RECURRING REVENUE BASE. We intend to extend our market leadership position by significantly increasing our installed client base. We intend to capitalize on our growing base of existing clients by selling them additional seats and other services as their customers are increasingly exposed to the benefits and functionality of live text-based interaction. Increasing our client base will enable us to continue to strengthen our recurring revenue stream. We also believe that greater exposure of Internet users to our service will create additional demand for real-time sales and customer service solutions. We plan to continue expanding into all areas of Internet commerce which could benefit from real-time sales and customer service technology.

INCREASING THE VALUE OF OUR SERVICE TO OUR CLIENTS. We strive to continuously add new features and functionality to our live interaction platform. Because we host our service, we can make new features available immediately to our clients without client or end-user installation of software or hardware. We currently offer a suite of reporting and administrative tools as part of the LivePerson service. Over time, we intend to develop richer tools for appropriate sectors of our client base, while adding further interactive capabilities. We also intend to develop additional services that will provide value to our clients. For example, we intend to provide advisory services to our clients that enable improved reporting capabilities, data storage and bridges to existing client systems. Our clients may use these capabilities to increase productivity, manage call center staffing, develop one-to-one marketing tactics and pinpoint sales opportunities. Through these and other initiatives, we intend to increase the value of our service to clients and their reliance on its benefits, which we believe will result in additional revenue from both new and existing clients over time.

CONTINUING TO BUILD STRONG BRAND RECOGNITION. The LivePerson brand name is prominently displayed on the pop-up dialogue window that appears when an Internet user has requested assistance. We believe that high visibility placement of our brand name will create greater brand awareness and increase demand for the LivePerson service. In addition, we intend to leverage increasing awareness of our brand and our reputation as a leading provider of real-time sales and customer service technology to become a well-recognized solution for companies doing business on the Internet. We intend to expand our traditional and online marketing activities to achieve these goals.

MAINTAINING OUR TECHNOLOGICAL LEADERSHIP POSITION. We focus on the development of tightly integrated software design and network architecture that is both reliable and scalable. We continue to devote significant resources to technological innovation. Specifically, we plan to expand the features and functionality of our existing service, develop broader applications for our service and create new products and services that will benefit our expanding client base. We evaluate emerging technologies and industry standards and continually update our technology in response to changes in the real-time customer service industry. We believe that these efforts will allow us to effectively anticipate changing client and end-user requirements in our rapidly evolving industry.

EVALUATING STRATEGIC ALLIANCES AND ACQUISITIONS WHERE APPROPRIATE. We intend to seek opportunities to form strategic alliances with or to acquire other companies that will enhance our business. We have entered into selected strategic alliances with customer service call centers and may enter into additional alliances in the future. We have no present plans or commitments with

respect to any strategic alliances or acquisitions and we are not currently engaged in any material negotiations with respect to these opportunities.

EXPANDING OUR INTERNATIONAL PRESENCE. We currently have more than 35 non-U.S. based clients in Europe, Asia, South America and the Middle East, all of which were sold and are serviced by our U.S. offices. We have also translated the user interface for the LivePerson service into a variety of languages, including presently, Dutch, French, German, Italian, Portuguese, Spanish and Swedish, and are currently making them available for our international clients. We intend to expand our international presence to better penetrate these markets and are evaluating strategies to implement international expansion.

THE LIVEPERSON SERVICE

The LivePerson service appears on our clients' Web sites as a LivePerson-branded or custom-created icon. An Internet user browsing a client's Web site who desires assistance simply clicks on the icon, causing the LivePerson pop-up dialogue window to appear on the user's screen. An operator prompts the user with an offer of assistance, commencing a live text-based interaction. In many instances pre-formatted responses are used to respond to customer inquiries.

In addition, an operator may offer hyperlinks to other parts of a client's Web site, product photos and graphics in the dialogue window. This allows an operator to easily present additional products or services, thereby maximizing sales opportunities.

The LivePerson technology consists of five integrated components that form a comprehensive real-time interaction platform. We currently offer the features and functionality outlined below to all customers and intend to add more features in the future. These may include additional reporting and administrative tools, new interactive capabilities and data bridges to existing client systems.

[GRAPHIC APPEARS HERE]

The graphic is a three-dimensional diagram surrounded by a box comprised of two layers. The first layer is subdivided into five equal sized cubes numbered 1 to 5 from left to right with the following titles: "Customer Interaction", "Direct Marketing", "Operator Control", "Administrator Control" and "Customer Data Collection" and a sixth cube titled "Future Component" that is raised slightly higher than cubes 1 to 5. The second layer is an undivided layer positioned directly below the first layer labelled "Integrated Network Infrastructure".

[GRAPHIC APPEARS HERE]
The graphic, positioned to the left of the text, is a larger cube positioned upon a smaller three-dimensional cube, with the number 1 in the larger cube.

CUSTOMER INTERACTION. The customer interaction component is the core of real-time communication between our clients' operators and their customers.

- REAL-TIME TEXT-BASED INTERACTION. Real-time text-based interaction is the communication vehicle between our clients' operators and their customers. Text is currently the preferred method of communication because it requires no special plug-ins or hardware and it can be stored and analyzed.

- IMAGE / LINK / PAGE PRESENTER. An operator may present photographs, images or links to other Web pages or sites in the dialogue window in response to customer queries. An operator may also "push" Web pages to a customer's screen.

- SHOPPING CART CONVERTER. The shopping cart converter is a pop-up window feature that is often used to help prevent shopping cart abandonment. Typically, after a customer has been at a shopping cart for a set period, a pop-up window will appear offering assistance. This enables the customer to instantly ask a question before completing or potentially abandoning a transaction.

- EXIT SURVEY. A customizable exit survey is presented to the customer after each conversation. The survey can be modified in real time and is used by our clients primarily for gathering customer feedback, creating customer profiles and quality control.

[GRAPHIC APPEARS HERE]
The graphic, positioned to the left of the text, is a larger cube positioned upon a smaller three-dimensional cube, with the number 2 in the larger cube.

DIRECT MARKETING. The direct marketing component enables Web site owners to classify customers and target outbound email to selected groups.

- GROUP PROFILER. The group profiler provides administrators with the power to analyze, profile and classify customers based on various data collected in an exit survey. This is used by the administrator to understand customer patterns and to create customer groups.

- EMAIL TARGETER. Based on information collected in exit surveys, the email targeter allows clients to target sales and marketing campaigns to selected customer groups.

[GRAPHIC APPEARS HERE]
The graphic, positioned to the left of the text, is a larger cube positioned upon a smaller three-dimensional cube, with the number 3 in the larger cube.

OPERATOR CONTROL. The operator control component enables operators to efficiently manage interactions with multiple customers.

- SKILL-BASED ROUTING. Customers can be routed to specific operators based on the operator's particular knowledge of specific products or services. For example, many of our clients have specialized operator groups focusing separately on sales or customer service to whom they selectively route inquiries. This routing complements and partially automates the alternative operator transfer capability.

- ALTERNATIVE OPERATOR TRANSFER. The operator can transfer a customer to another operator or to an administrator with unique skills or knowledge.

- PRE-FORMATTED RESPONSES. The operator can use and modify pre-formatted responses to assist in responding to a customer, rather than manually typing a response. Pre-formatted responses are usually created by administrators and may be accessed and modified on a real-time basis to continuously improve response time and quality. Operators preview and

may edit pre-formatted responses to respond appropriately to
customer inquiries.

[GRAPHIC APPEARS HERE]
The graphic, positioned to the left of the text, is a larger cube positioned upon a smaller three-dimensional cube, with the number 4 in the larger cube.

ADMINISTRATOR CONTROL. The administrator control component enables administrators to manage operators.

- OPERATOR EVALUATION TOOL. The administrator can view operator call activity by date, time, length and number of dialogues, and operator response time, enabling real time operator evaluation.

- REAL-TIME OPERATOR CONTROL CENTER. The administrator can view the conversations between all operators online and their customers. Administrators can also participate in conversations to help operators respond to inquiries.

[GRAPHIC APPEARS HERE]
The graphic, positioned to the left of the text, is a larger cube positioned upon a smaller three-dimensional cube, with the number 5 in the larger cube.

CUSTOMER DATA COLLECTION. The customer data collection component captures, stores and processes all customer information.

- TEXT-BASED TRANSCRIPTS. All textual data, including exit survey data, are archived in an indexed database which can be queried on several criteria. Multiple transcripts from conversations with the same customer are saved within one record set, ensuring that an exact history of the customer's interaction is accurately maintained. Transcripts of prior conversations can be viewed by operators in real time as they interact with customers.

- LAST-PAGE VIEWED TRACKER. The specific page that the customer viewed before entering into a LivePerson text-based interaction is captured and saved with the transcript of the dialogue.

- BROWSER / IP ADDRESS TRACKER. The customer's browser type and IP address are captured and saved with the transcript of the dialogue.

- EXIT SURVEY ANALYZER. Survey results and summaries can be instantly displayed, queried and graphed.

CLIENTS

We currently have more than 450 clients, including dedicated Internet companies, Fortune 1000 companies and other companies with established commercial Web sites. Our service benefits companies of all sizes doing business on the Internet.

The following is a selected list of clients using the LivePerson service as of March 8, 2000:

Adatom.com
APC
Babygear.com
clickandmove
betmaker.com
CMC Group Plc
CollegeClub.com
Comtrad Industries
CyBerCorp
DigitalWork.com
Drake Software Solutions
EarthLink
ephones
eScore
evesta.com
ExpressAutoparts.com
Financial Times
firstsource.com
Forextrading.com
giftpoint.com
Gifts.com
GMAC's ditech.com
Hand Technologies
Harris Interactive
HealthAxis.com
Homelender.com
IGoGolf
IMX Exchange
Internet Financial Network
Intuit
iOwn.com
iQVC
JB Oxford & Company
Last Minute Network
Laidlaw Global Services
LookSmart
M&I Mortgage
Miadora
MyHome.com
National Discount Brokers
Neiman Marcus
Playboy.com
PlayersOnly.com
Priceline.com
PrintNation, Inc.
Professional Shopper
ScreamingMedia
ShopAtHome
ShopNow
The boxLot Company
TradeCapture.com
USABancShares
USlaw.com
Warrior Insurance Group
WebHosting.com
WhatsHotNow

SALES, CLIENT SUPPORT AND MARKETING

SALES. The sales cycle for the LivePerson service has generally been short. We sell LivePerson primarily via telephone as a monthly fee service. Due to the relatively low start-up costs of the LivePerson service, our experience has shown that purchase approval comes from customer service, sales or marketing managers, and requires little or no involvement on the part of a client's information technology staff.

We sell primarily through a direct sales organization and target companies seeking to improve customer relations and increase Internet commerce activity. Additionally, potential clients have contacted us as a result of our participation in trade shows, press releases, news articles, online and offline advertising campaigns or visits to our Web site. We demonstrate the LivePerson service online and, for larger accounts, we provide in-person service demonstrations.

We also have begun to enter into contractual arrangements that complement our direct sales force. These are primarily with Web hosting and call center service companies, and are in the form of value-added reseller or referral agreements pursuant to which the parties are paid a commission based on generated revenue.

CLIENT SUPPORT. Our client services group assists the client in launching the LivePerson service, and manages our ongoing relationship with the client. Each client is assigned a client services manager who is responsible for day-to-day client interaction.

The following steps are required to launch a new LivePerson client:

- ACCOUNT SETUP. We create operator names and passwords for our client.

- SITE SETUP. Our client places our HTML link on its Web site.

- TRAINING. We provide telephone-based training of operators and administrators.

Setup and training can generally be accomplished within the same day. We also maintain a 24-hour per day / seven-day per week help desk to assist clients with any technical concerns or issues.

MARKETING. Our marketing strategy is focused on building brand awareness of LivePerson as a leading provider of real-time sales and customer service technology for companies doing business on the Internet. Our marketing targets dedicated Internet companies, Fortune 1000 companies and other companies with established commercial Web sites.

Our strategic advertising campaigns utilize both traditional and online media. Our print advertising focuses on targeted trade publications, including Internet commerce and other categories, while our online advertising targets decision makers of companies doing business on the Internet. We also exhibit prominently at key industry trade shows.

Our marketing strategy also includes aggressive public relations efforts. These initiatives include interviews with media and industry analysts which often result in published articles and studies. They also include speaking engagements and byline articles featuring our executives.

COMPETITION

The market for real-time sales and customer service technology is new and intensely competitive. There are no substantial barriers to entry in this market, other than the ability to design and build scalable software and, with respect to outsourced solution providers, the ability to design and build scalable network architecture. Established or new entities may enter this market in the near future, including those that provide real-time interaction online, with or without the user's request.

We compete directly with companies focused on technology that facilitates real-time sales and customer service interaction. Our competitors include customer service enterprise software providers such as eGain Communications Corp., eShare Technologies, Inc., Kana Communications, Inc. and WebLine Communications (a part of Cisco Systems' applications technology group), some of which are beginning to offer hosted solutions.

We also face potential competition from larger enterprise software companies such as Oracle and Siebel Systems. In addition, established technology companies, including IBM, Hewlett-Packard and Microsoft, may also leverage their existing relationships and capabilities to offer real-time sales and customer service applications.

Finally, we face competition from clients and potential clients that choose to provide a real-time sales and customer service solution in-house as well as, to a lesser extent, traditional offline customer service solutions, such as telephone call centers.

We believe that competition will increase as our current competitors increase the sophistication of their offerings and as new participants enter the market. Many of our current and potential competitors have:

- longer operating histories;

- larger client bases;

- greater brand recognition;

- more diversified lines of products and services; and

- significantly greater financial, marketing and other resources.

These competitors may enter into strategic or commercial relationships with larger, more established and better-financed companies. These competitors may be able to:

- undertake more extensive marketing campaigns;

- adopt more aggressive pricing policies; and

- make more attractive offers to businesses to induce them to use their products or services.

Any delay in the general market acceptance of the real-time sales and customer service solution business model would likely harm our competitive position. Delays would allow our competitors additional time to improve their service or product offerings, and would also provide time for new competitors to develop real-time sales and customer service applications and solicit prospective clients within our target markets. Increased competition could result in pricing pressures, reduced operating margins and loss of market share.

TECHNOLOGY

Three key technological features distinguish the LivePerson service:

- All of our customers share the same servers, databases, and network connections. We are therefore able to accommodate our expanding customer base and increasing system usage without incrementally adding new hardware or network infrastructure.

- Our network, hardware and software are designed to accommodate our clients' demand for high-quality 24-hours per day / seven-days per week service.

- As a hosted service we are able to add additional capacity and new features quickly and efficiently. This has enabled us to immediately provide these benefits simultaneously to our entire client base. In addition, it allows us to maintain a relatively short development and implementation cycle of several weeks.

As an ASP, we focus on the development of tightly integrated software design and network architecture. We have dedicated significant resources to designing our software and network architecture based on the fundamental principles of reliability and scalability.

SOFTWARE DESIGN. Our software design provides a reliable store-and-forward message delivery solution that actively routes messages between operators and Internet users.

The LivePerson real-time interaction platform can efficiently accommodate additional features and functionality due to its distributed processes, which can be replicated on several servers. In some cases, key processes are run independently to enhance performance. Our software design is also based on open standards. These standard protocols facilitate integration with our clients' legacy and third-party systems, and include:

- Java

- XML (Extensible Mark-up Language)

- HTML (Hypertext Mark-up Language)

- SQL (Structured Query Language)

- Internet Protocol (IP)

NETWORK ARCHITECTURE. The software underlying our service is integrated with a scalable and reliable network architecture. Our network is scalable in that we do not need to incrementally add new hardware or network capacity for each new LivePerson client. This network architecture is supported by data centers that have redundant network connections, servers and other features, ensuring a high level of reliability.

Our network architecture is also based on proprietary packet routing and server clustering techniques and superior network connectivity. Requests are routed among several servers dynamically to ensure uninterrupted service. In addition, we use a "multi-homed" Internet access

system, which incorporates multiple direct Internet connections to reduce the impact of latency that may occur on different parts of the Internet. This design enables our clients and their customers to efficiently connect to our servers.

We also use advanced load-balancing techniques to ensure that each LivePerson conversation is connected at an optimal speed and that no single point of failure can affect the LivePerson service.

GOVERNMENT REGULATION

We are subject to federal, state and local regulation, including laws and regulations applicable to access to or commerce over the Internet. Due to the increasing popularity and use of the Internet and various other online services, it is likely that a number of new laws and regulations will be adopted with respect to the Internet or other online services covering issues such as user privacy, freedom of expression, pricing, content and quality of products and services, taxation, advertising, intellectual property rights and information security. The nature of such legislation and the manner in which it may be interpreted and enforced cannot be fully determined and, therefore, such legislation could subject us and/or our clients or their customers to potential liability, which in turn could have an adverse effect on our business, results of operations and financial condition. The adoption of any such laws or regulations might also impair the growth of Internet use, which in turn could decrease the demand for our service or increase the cost of doing business or in some other manner have a material adverse effect on our business, results of operations and financial condition. In addition, applicability to the Internet of existing laws governing issues such as intellectual property, taxation and personal privacy is uncertain. The vast majority of such laws were adopted prior to the advent of the Internet and related technologies and, as a result, do not contemplate or address the unique issues of the Internet and related technologies.

As a result of collecting data from live online customer dialogues, our clients may be able to analyze the commercial habits of their customers. Privacy concerns may cause customers to avoid online sites that collect such behavioral information and even the perception of security and privacy concerns, whether or not valid, may indirectly inhibit market acceptance of our services. In addition, our clients may be harmed by any laws or regulations that restrict their ability to collect or use this data. Several states have proposed legislation that would govern the collection and use of personal user information gathered online or require online services to establish privacy policies. The Federal Trade Commission has initiated actions against online services regarding the manner in which information is collected from users, used by online services and/or provided to third parties, and has begun investigations into the privacy practices of companies that collect information about individuals on the Internet. The European Union has enacted its own privacy regulations that may result in limits on the collection and use of some user information. Changes to existing domestic or international laws or the passage of new laws intended to address these or other issues, including some recently proposed changes, could create uncertainty in the marketplace that could reduce demand for our services or increase the cost of doing business as a result of litigation costs or increased service delivery costs, or could in some other manner have a material adverse effect on our business, results of operations and financial condition.

It may take years to determine how existing laws apply to the Internet. Any new legislation or regulation regarding the Internet, or the application of existing laws and regulations to the Internet, could harm us. Additionally, as we expand outside the U.S., the international regulatory environment relating to the Internet could have a material and adverse effect on our business, results of operations and financial condition.

INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

We rely upon a combination of patent, copyright, trade secret and trademark law, written agreements and common law to protect our proprietary technology, processes and other intellectual property, to the extent that protection is sought or secured at all. We currently have one U.S. patent application pending. To the extent that the invention described in our U.S. patent application was made public prior to the filing of the application, we may not be able to obtain patent protection in certain foreign countries. In addition, we have a common law trademark, "LivePerson", and three pending U.S. trademark applications. The trademark examiner assigned to our applications has issued non-final office actions with respect to our applications, requesting additional information and making initial refusals. However, no final determinations as to the registrability of the marks have been made. We are in the process of responding with respect to our applications, to these office actions prior to their respective deadlines, but ultimately we may not be able to secure registration of our trademarks. We do not have any trademarks registered outside the U.S., nor do we have any trademark applications pending outside the U.S.

Although we rely on patent, copyright, trade secret and trademark law, written agreements and common law, we believe that factors such as the technological and creative skills of our personnel, new service developments, frequent enhancements and reliable maintenance are more essential to establishing and maintaining a technology leadership position. We cannot assure you that others will not develop technologies that are similar or superior to our technology. We enter into confidentiality and other written agreements with our employees, consultants and strategic partners, and through written agreements, control access to and distribution of our software, documentation and other proprietary information. Despite our efforts to protect our proprietary rights, third parties may, in an unauthorized manner, attempt to copy or otherwise obtain and use our service or technology or otherwise develop a service with the same functionality as our products. Policing unauthorized use of our products is difficult, and we cannot be certain that the steps we have taken will prevent misappropriation of our technology, particularly in foreign countries where the laws may not protect proprietary rights as fully as do the laws of the United States.

Substantial litigation regarding intellectual property rights exists in the software industry. Our service may be increasingly subject to third-party infringement claims as the number of competitors in our industry segment grows and the functionality of services in different industry segments overlaps. Some of our competitors in the market for real-time sales and customer service solutions may have filed or may intend to file patent applications covering aspects of their technology. Although we believe that our service and technology do not infringe upon the intellectual property rights of others and that we have all rights necessary to utilize the intellectual property employed in our business, we may be subject to claims alleging infringement of third-party intellectual property rights. Any such claims could require us to spend significant amounts in litigation, distract management from other tasks of operating our business, pay damage awards, delay delivery of the LivePerson service, develop non-infringing intellectual property or acquire licenses to the intellectual property that is the subject of any such infringement. Therefore, such claims could have a material adverse effect on our business, results of operations and financial condition.

EMPLOYEES

As of March 8, 2000, we had 125 full-time employees. Members of senior management have entered into employment agreements with us, some of which are described in "Management--Employment Agreements." None of our employees are covered by collective bargaining agreements. We believe our relations with our employees are good.

FACILITIES

We currently lease an aggregate of approximately 25,000 square feet at our headquarters location in New York City, consisting of a lease for approximately 17,000 square feet expiring in October 2006 and a sub-lease for approximately 8,000 square feet expiring in September 2000. We also lease an additional, approximately 6,000 square foot location in New York City, expiring in April 2000. In addition, in March 2000, we entered into a lease for an aggregate of approximately 83,500 square feet on two floors at a location in New York City which we expect to occupy in the third quarter of 2000.

We currently maintain offices in San Francisco subleased to us by one of our investors, which we expect to vacate upon relocation to our new facility of approximately 7,850 square feet. We expect to relocate in the second quarter of 2000. The term of the lease for our new facility expires in January 2005.

LEGAL PROCEEDINGS

We are not a party to any material legal proceedings. We may be subject to various claims and legal actions arising in the ordinary course of business.

MANAGEMENT

EXECUTIVE OFFICERS, KEY EMPLOYEES AND DIRECTORS

The executive officers, key employees and directors of LivePerson, and their ages and positions as of March 8, 2000, are:

NAME	AGE	POSITION
Robert P. LoCascio*............	31	President, Chief Executive Officer and Chairman of the Board
Dean Margolis*.................	42	Chief Operating Officer
Timothy E. Bixby*..............	35	Executive Vice President, Chief Financial Officer, Secretary and Director
Scott E. Cohen*................	41	Executive Vice President, Sales/Client Services
James L. Reagan*...............	34	Chief Technology Officer
Vincent Beese..................	34	Vice President, Sales
Victor K. Cheng................	26	Vice President, Product Management
Dwight D. Foster...............	37	Vice President, West Coast Sales
Christopher L. Smith...........	32	Vice President, Client Services
Lawrence A. Wasserman..........	34	Vice President, Marketing
Richard L. Fields..............	43	Director
Wycliffe K. Grousbeck..........	38	Director
Kevin C. Lavan.................	47	Director
Edward G. Sim..................	29	Director

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* Denotes Executive Officer.

ROBERT P. LOCASCIO has been our President, Chief Executive Officer and Chairman of our board of directors since our inception in November 1995. Mr. LoCascio founded our company as Sybarite Interactive Inc., which developed a community-based web software platform known as TOWN. Before founding Sybarite Interactive, through November 1995, Mr. LoCascio was the founder and Chief Executive Officer of Sybarite Media Inc. (known as IKON), a developer of interactive public kiosks that integrated interactive video features with advertising and commerce capabilities. Mr. LoCascio received a B.B.A. from Loyola College.

DEAN MARGOLIS has been our Chief Operating Officer since January 2000. From December 1996 until August 1999, Mr. Margolis was the founder and Chief Executive Officer of Comet Systems, Inc., a Web site tools company which licenses technology that allows a Web site publisher to change the appearance of its cursor. Mr. Margolis was a consultant to several Internet companies between August 1999 and January 2000, and between October 1995 and December 1996. From November 1993 to October 1995, Mr. Margolis was President of Blackberry Technologies, Inc., a software development firm. From April 1989 until November 1993, Mr. Margolis held various sales management positions with ABT Corporation, a project management software company. Mr. Margolis received a M.B.A. and a M.S. from Harvard University, and a B.A. from Columbia University.

TIMOTHY E. BIXBY has been our Chief Financial Officer since June 1999, our Secretary and a director since October 1999 and an Executive Vice President since January 2000. From March 1999 until May 1999, Mr. Bixby was a private investor. From January 1994 until February 1999, Mr. Bixby was Vice President of Finance for Universal Music & Video Distribution Inc., a manufacturer and distributor of recorded music and video products, where he was responsible for internal financial operations, third party distribution deals and strategic business development. From October 1992 through January 1994, Mr. Bixby was Associate Director, Business

Development, with the Universal Music Group. Prior to that, Mr. Bixby spent three years in Credit Suisse First Boston's mergers and acquisitions group as a financial analyst. Mr. Bixby received a M.B.A. from Harvard University and an A.B. from Dartmouth College.

SCOTT E. COHEN has been our Executive Vice President, Sales/Client Services since November 1999 and was our Executive Vice President of Sales from March 1999 until November 1999. Mr. Cohen was a consultant to several Internet companies between January 1999 and March 1999. From February 1998 to December 1998, Mr. Cohen was Senior Vice President, Strategic Alliances and Direct Marketing at 24/7 Media, Inc., an online advertising network. Mr. Cohen was Senior Vice President of Sales for Petry Interactive, Inc. from August 1997 until February 1998, and Vice President of Business Development from November 1996 until August 1997. From November 1992 through November 1996, Mr. Cohen held various positions with companies held by MacAndrews & Forbes Holdings Inc., including Sales Executive and Manager of Business Development at New World Communications Inc. and Director of Real Estate at Revlon Consumer Products Corporation. Mr. Cohen received a M.B.A. from the University of Rochester.

JAMES L. REAGAN has been our Chief Technology Officer since January 2000. Prior to joining us, Mr. Reagan was Vice President, Technology Risk Management for First Union National Bank, from June 1998 through December 1999, where he led the risk management process associated with the strategy, use and deployment of First Union's Internet commerce technology. From September 1996 through June 1998, Mr. Reagan was Director of Strategic Information Technology for AverStar, Inc., a systems and software development company, where he managed strategic information technology products. From February 1985 through September 1996, Mr. Reagan was in the United States Army, where most recently he was a senior project manager in charge of management and operations for military intelligence projects. Mr. Reagan received a M.S. from Bowie State University and a B.A. from the State University of New York.

VINCENT BEESE has been our Vice President, Sales since May 1999. Prior to joining us, from August 1996 through April 1999, Mr. Beese was the Advertising and Alliance Director for AT&T's Interactive Group, concentrating on developing strategic partnerships, as well as Internet commerce and advertising opportunities. Prior to that, from April 1994 through August 1996, Mr. Beese held various positions at BPI Communications Inc. including Marketing Associate and Product Manager for Billboard Electronic Publishing Group, responsible for product development, generating revenue and increasing new subscribers. Mr. Beese received a B.A. from the University of Maryland.

VICTOR K. CHENG has been our Vice President, Product Management since January 2000 and was Assistant to the Chief Executive Officer from September 1999 through January 2000. Prior to joining us, Mr. Cheng founded and was Chief Executive Officer of eHaHa.com, Inc., a Web site serving online communities, from January 1999 through August 1999. From March 1998 through December 1998, Mr. Cheng founded and was Chief Executive Officer of Small Biz Media, Inc., an online purchasing alliance for small businesses. Between September 1995 and February 1998, Mr. Cheng worked for the consulting firm McKinsey & Company, as an Associate from July 1997 through February 1998, and as a Business Analyst between September 1995 and June 1997. Mr. Cheng received a M.A. and a B.A. from Stanford University.

DWIGHT D. FOSTER has been our Vice President, West Coast Sales since August 1999. Prior to joining us, Mr. Foster was Western Region Account Manager for Net Perceptions, Inc., from December 1997 through July 1999, responsible for southern California as well as strategic accounts in the San Francisco area. Prior to that, from November 1996 through December 1997, Mr. Foster was an Account Executive with Careerbuilder.com. From July 1995 through November 1996, Mr. Foster was Director of Business Development for Genwell Corp., a systems integrator.

From January 1994 through July 1995, Mr. Foster was Director of Sales and Marketing for RangeStar International, an antenna manufacturer. Mr. Foster received a B.A. from the University of Colorado.

CHRISTOPHER L. SMITH has been our Vice President, Client Services since September 1999. Before joining us, Mr. Smith was Manager of Strategic Development at Comcast Online Communications, a division of Comcast Corporation, from March 1996 to September 1999, responsible for launching and developing InYourTown.com, a network of city guides. Before that, Mr. Smith founded Travel Media Services, Inc., a provider of travel products distributed by television infomercials, serving as President from March 1995 to March 1996. From September 1990 to July 1993, Mr. Smith was a Relationship Manager at The Chase Manhattan Bank, responsible for small and middle market commercial clients. Mr. Smith received a M.B.A. from Columbia University and a B.A. from Duke University.

LAWRENCE A. WASSERMAN has been our Vice President, Marketing since March 1999. Prior to joining us, from March 1998 through January 1999, Mr. Wasserman was Director, U.S. Marketing for Bertelsmann AG, helping develop the business and marketing strategy for their online book retailer, BOL.com. Prior to that, from March 1997 through February 1998, Mr. Wasserman was Director, Interactive Media in the Interactive Media Department for Bertelsmann's Doubleday Direct, Inc. Prior to that, from May 1994 through February 1997, Mr. Wasserman was Director, Current Member Marketing, for Doubleday Direct's Specialty Clubs division. Mr. Wasserman received a M.B.A. from the University of Michigan and a B.S. from the State University of New York.

RICHARD L. FIELDS has been a director since July 1999, having been elected pursuant to the terms of the Second Amended and Restated Stockholders' Agreement dated as of July 19, 1999. Mr. Fields is a Managing Director of the investment banking firm Allen & Company Incorporated, where he has been employed since 1986. Mr. Fields is a director of VoiceStream Wireless Corporation and the Telecommunications Development Fund. Mr. Fields received a J.D. from Harvard University, a M.B.A. from Stanford University and a B.S. from the Massachusetts Institute of Technology.

WYCLIFFE K. GROUSBECK has been a director since July 1999, having been elected pursuant to the terms of the Second Amended and Restated Stockholders' Agreement dated as of July 19, 1999. Mr. Grousbeck has been a General Partner of Highland Capital Partners, Inc. since August 1996 and joined as an Associate in May 1995. Mr. Grousbeck was the founder, and President from September 1993 to May 1995, of Grousbeck Medical Resources Inc., a start-up consumer medical information and research company. Mr. Grousbeck is a director of EXACT Laboratories, Inc., GuruNet Corporation, Mantra Software Corporation and Odyssey Healthcare, Inc. Mr. Grousbeck received a M.B.A. from Stanford University, a J.D. from the University of Michigan and an A.B. from Princeton University.

KEVIN C. LAVAN has been a director since January 2000. Mr. Lavan is currently an Executive Vice President of Wunderman Cato Johnson, the direct marketing and customer relationship marketing division of Young & Rubicam Inc. From February 1997 to March 1999, Mr. Lavan was Senior Vice President of Finance at Young & Rubicam. From January 1995 to February 1997, Mr. Lavan held various positions at Viacom Inc., including Controller, and Chief Financial Officer for Viacom's subsidiary, MTV Networks. Mr. Lavan received a B.S. from Manhattan College.

EDWARD G. SIM has been a director since January 1999, having been elected pursuant to the terms of the Stockholders' Agreement dated as of January 21, 1999. Since October 1999, Mr. Sim has been a Managing Director of Wit Capital Corporation's Venture Capital Fund Group. Since April 1998, Mr. Sim has been a Managing Director and Senior Vice President of DT Advisors LLC, which is the managing entity of Dawntreader Fund I LP, and whose members now manage

Wit Capital's venture capital funds. From April 1996 to April 1998, Mr. Sim was an Associate with Prospect Street Ventures, a New York venture capital firm, and from May 1994 to April 1996, he was a member of the Structured Derivatives Group at J.P. Morgan Investment Management Inc. Mr. Sim is a director of expertcity.com, inc., Flashbase, Inc., GuruNet Corporation and MaterialNet, Inc. Mr. Sim received an A.B. from Harvard University.

COMPOSITION OF THE BOARD

Prior to the closing of this offering, we intend to file an amended and restated certificate of incorporation pursuant to which our board of directors will be divided into three classes, each of whose members will serve for a staggered three-year term. Upon the expiration of the term of a class of directors, directors in that class will be elected for three-year terms at the annual meeting of stockholders in the year in which their term expires. Our board of directors has resolved that Mr. Fields and Mr. Sim will be Class I Directors whose terms expire at the 2000 annual meeting of stockholders. Mr. Grousbeck and Mr. Bixby will be Class II Directors whose terms expire at the 2001 annual meeting of stockholders. Mr. Lavan and Mr. LoCascio will be Class III Directors whose terms expire at the 2002 annual meeting of stockholders. With respect to each class, a director's term will be subject to the election and qualification of their successors, or their earlier death, resignation or removal.

BOARD COMMITTEES

The Audit Committee of our board of directors reviews, acts on and reports to our board of directors with respect to various auditing and accounting matters, including the recommendations of our independent auditors, the scope of the annual audits, the fees to be paid to the auditors, the performance of our auditors and our accounting practices. The members of the Audit Committee are Mr. Fields, Mr. Grousbeck and Mr. Lavan.

For our common stock to be included in the Nasdaq National Market, each member of the Audit Committee of our Board of Directors must be considered independent under Nasdaq's rules. Among other things, a director is not independent under Nasdaq rules if he or she has been employed by us or our affiliates in the current year or past three years. One non-independent director may serve on the Audit Committee if our Board determines it to be in the best interests of our company and our stockholders, but our current officers or other employees are not able to serve on the Audit Committee under this exception.

The Compensation Committee of the board of directors recommends, reviews and oversees the salaries, benefits and stock option plans for our employees, consultants, directors and other individuals whom we compensate. The Compensation Committee also administers our compensation plans. The members of the Compensation Committee are Mr. Lavan, Mr. Sim and Mr. LoCascio.

DIRECTOR COMPENSATION

Directors who are also our employees receive no additional compensation for their services as directors. Directors who are not our employees will not receive a fee for attendance in person at meetings of the board of directors or committees of the board of directors, but they will be reimbursed for travel expenses and other out-of-pocket costs incurred in connection with attendance at meetings. Pursuant to our 2000 Stock Incentive Plan, non-employee directors will be granted 15,000 options to purchase common stock upon completion of this offering. In addition, non-employee directors will be granted 5,000 options to purchase common stock on each anniversary of their election to the board of directors.

EMPLOYMENT AGREEMENTS

Robert P. LoCascio, our President and Chief Executive Officer, is employed pursuant to an employment agreement entered into as of January 1, 1999. After its initial term, which expires on January 1, 2002, our agreement with Mr. LoCascio will extend automatically for one-year terms on each of January 1, 2002 and January 1, 2003, unless either we or Mr. LoCascio gives notice not to extend the term of the agreement. Mr. LoCascio is entitled to receive an annual base salary of $125,000, plus an annual discretionary bonus of up to $50,000, determined by our board based upon achievement of performance objectives. If Mr. LoCascio is terminated by us without cause or following a material change or diminution in his duties, a reduction in his salary or bonus, or if we are sold or following a change in control of our company, or if we relocate him to a location outside the New York metropolitan area, we must pay him an amount equal to the amount of his salary for the 12 months following the date of termination, and the pro rata portion of the bonus he would have been entitled to receive for the fiscal year in which the termination occurred. These amounts are payable in three monthly installments beginning 30 days after his termination. Pursuant to the agreement, for a period of one year from the date of termination of Mr. LoCascio's employment, he may not directly or indirectly compete with us, including, but not limited to, being employed by any business which competes with us, or otherwise acting in a manner intended to advance an interest of a competitor of ours in a way that will or may injure an interest of ours.

On January 28, 2000, we entered into a three-year employment agreement with Dean Margolis, our Chief Operating Officer. We will pay Mr. Margolis a fixed annual base salary of $175,000, plus an annual discretionary bonus. Mr. Margolis is also eligible under the agreement to receive a long-term incentive award, determined by our board, consisting of options to purchase common stock, with the initial award of options to purchase up to 510,000 shares of common stock at a purchase price of $3.33 per share. These options will begin vesting on July 1, 2000 in four equal annual installments. If, within 24 months after a change in control of our company, we terminate Mr. Margolis without cause or if he terminates his employment with us because we have reduced his compensation or materially changed his duties or responsibilities, we will pay him a lump-sum amount equal to one-half of his annual base salary and any unvested options will vest immediately. In addition, if Mr. Margolis otherwise terminates his employment following a change in control of our company, any options which would have vested within 12 months after such termination will continue to vest under the original vesting schedule. Pursuant to the agreement, for a period of one year from the date of termination of Mr. Margolis's employment, he may not directly or indirectly compete with us including, but not limited to, being employed by any business which competes with us, or otherwise acting in a manner intended to advance an interest of a competitor of ours in a way that will or may injure an interest of ours.

Timothy E. Bixby, our Chief Financial Officer, is employed pursuant to an employment agreement entered into as of June 23, 1999, which shall continue until it is terminated by either party. Pursuant to the agreement, Mr. Bixby receives an annual base salary of $140,000 and an annual discretionary bonus. Mr. Bixby is also eligible to receive a long-term incentive award determined by our board consisting of options to purchase common stock, with the initial award of options to purchase up to 202,500 shares of common stock at a purchase price of $0.67 per share. Twenty-five percent of those options vested on January 1, 2000 and the remaining options will vest in three equal annual installments starting on January 1, 2001. In October 1999, Mr. Bixby was granted options to purchase up to an additional 97,500 shares of common stock at a purchase price of $2.00 per share. These options begin vesting on July 1, 2000 in four equal annual installments. In January 2000, Mr. Bixby was granted options to purchase up to an additional 75,000 shares of common stock at a purchase price of $3.33 per share. These options

begin vesting on July 1, 2000 in four equal annual installments. If Mr. Bixby is terminated following a change in control of our company or if he terminates his employment with us following a reduction in his salary, a material change or diminution in his duties or if Robert LoCascio is no longer our President or Chief Executive Officer, all of his options will vest immediately, and we must pay him a lump-sum amount equal to his annual salary, and the pro rata portion of the bonus he would have been entitled to receive for the year in which the termination occurred. Pursuant to the agreement, for a period of one year from the date of termination of Mr. Bixby's employment, he may not directly or indirectly compete with us, including, but not limited to, being employed by any business which competes with us, or otherwise acting in a manner intended to advance an interest of a competitor of ours in a way that will or may injure an interest of ours.

Scott E. Cohen, our Executive Vice President, Sales/Client Services, is employed pursuant to an employment agreement entered into as of March 29, 1999. The agreement's initial term expires on March 31, 2000 and has been extended for one year. Mr. Cohen receives an annual base salary of $185,000 and an annual discretionary bonus. For the first year of the agreement's term, we have agreed to pay Mr. Cohen commissions on a quarterly basis in the amount of 10% of the portion of our gross sales (consisting of revenues from sales invoiced by us, net of tax and other surcharges payable by us and amounts rebated or refunded) in excess of $1,000,000 during the first year of his employment. For the second year of the agreement's term, we will pay him commissions on a quarterly basis in the amount of 10% of the first $1,000,000 of gross sales in excess of the amount of gross sales in the first year, plus 7.5% of all gross sales in excess of that amount. Additionally, we granted Mr. Cohen options to purchase up to 588,960 shares of common stock at a purchase price of $0.80 each. Fifty percent of those options will vest on March 31, 2000 with the remainder vesting on March 31, 2001. We also, in March 2000, granted Mr. Cohen options to purchase an additional 240,000 shares of common stock at a purchase price of $6.67 per share, which options vested upon grant. If (1) Mr. Cohen is terminated following a sale or a change in control of our company or (2) if Mr. Cohen chooses to terminate his employment because he is no longer serving in a senior executive capacity or because Robert LoCascio is no longer our President or Chief Executive Officer, we must pay him the salary and the amount of commissions that he would have earned for a period of four months after the date of termination had we not terminated him, reduced by any amount he earns as a result of his employment by any business in that four-month period. In addition, any options which would have vested on the first vesting date following the date of termination as a result of a change in control will vest immediately upon such termination. Pursuant to the agreement, for a period of one year from the date of termination of Mr. Cohen's employment, he may not directly or indirectly compete with us, including, but not limited to, being employed by any business which competes with us, or otherwise acting in a manner intended to advance an interest of a competitor of ours in a way that will or may injure an interest of ours.

On January 3, 2000, we entered into a three-year employment agreement with James L. Reagan, our Chief Technology Officer. We will pay Mr. Reagan a fixed annual base salary of $165,000, plus an annual discretionary bonus, of which $20,000 was paid upon commencement of his employment. In addition, Mr. Reagan received a starting bonus of $20,000. Mr. Reagan is also eligible under the agreement to receive a long-term incentive award, determined by our board, consisting of options to purchase common stock, with the initial award of options to purchase up to 300,000 shares of common stock at a purchase price of $2.00 per share. These options will begin vesting on January 1, 2001 in four equal annual installments. If, within 24 months after a change in control of our company, we terminate Mr. Reagan without cause, we will pay him a lump sum amount equal to two-thirds of his annual base salary. In addition, any options which would have vested within 24 months after such termination will vest immediately. Pursuant to the agreement, for a period of one year from the date of termination of Mr. Reagan's

employment, he may not directly or indirectly compete with us including, but not limited to, being employed by any business which competes with us, or otherwise acting in a manner intended to advance an interest of a competitor of ours in a way that will or may injure an interest of ours.

EXECUTIVE COMPENSATION

The following table sets forth the compensation earned for all services rendered to us in all capacities during 1999 by our Chief Executive Officer and our most highly compensated executive officers, other than our Chief Executive Officer, who earned more than $100,000 in 1999 and who served as executive officers at the end of 1999.

SUMMARY COMPENSATION TABLE

	ANNUAL COMPENSATION		LONG-TERM COMPENSATION AWARDS
NAME AND PRINCIPAL POSITION	SALARY ($)	BONUS ($)	SECURITIES UNDERLYING OPTIONS (#)
Robert P. LoCascio Chief Executive Officer	108,000	50,000	--
Timothy E. Bixby(1) Chief Financial Officer	73,231	--	300,000
Scott E. Cohen(2) Executive Vice President, Sales/Client Services	138,250	--	588,960

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(1) Mr. Bixby became our Chief Financial Officer in June 1999. His annualized salary for 1999 was $140,000.

(2) Mr. Cohen became our Executive Vice President in March 1999. His annualized salary for 1999 was $185,000.

OPTION GRANTS IN LAST FISCAL YEAR

The following table sets forth information regarding exercisable and unexercisable stock options granted to each of the named executive officers in the last fiscal year. No stock appreciation rights were granted to the named executive officers during the year ended December 31, 1999. Potential realizable values are computed by (1) multiplying the number of shares of common stock subject to a given option by the assumed market value on the date of grant, (2) assuming that the aggregate stock value derived from that calculation compounds annually for the entire term of the option and (3) subtracting from that result the aggregate option exercise price.

	INDIVIDUAL GRANTS (1)				POTENTIAL REALIZABLE VALUE AT ASSUMED ANNUAL RATES OF STOCK PRICE APPRECIATION FOR OPTION TERM (2)		
NAME	NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED (#)	PERCENT OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR (%)	EXERCISE OR BASE PRICE ($/SH)	EXPIRATION DATE	0% ($)	5% ($)	10% ($)
Robert P. LoCascio...	--	--	--	--	--	--	--
Timothy E. Bixby.....	202,500	6.7	0.67	June 23, 2009	35,100	142,075	306,196
	97,500	3.2	2.00	October 25, 2009	21,450	157,574	366,416
Scott E. Cohen.......	588,960	19.4	0.80	March 31, 2004	--	70,041	211,771

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(1) Each option represents the right to purchase one share of common stock. Mr. Bixby's 202,500 options which expire on June 23, 2009 vested 25% on January 1, 2000 and will vest an additional 25% on each anniversary thereof. Mr. Bixby's 97,500 options which expire on October 25, 2009 will vest 25% on July 1, 2000 and will vest an additional 25% on each anniversary thereof. Mr. Cohen's options will vest 50% on March 31, 2000 and 50% on March 31, 2001.

(2) Amounts represent hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. The 5% and 10% assumed annual rates of compounded stock price appreciation are mandated by rules of the Securities and Exchange Commission and do not represent our estimate or projection of our future common stock prices. These amounts represent assumed rates of appreciation in the value of our common stock from the assumed fair market value on the date of grant. The assumed fair market values on the dates of grant relevant to this table were $0.72 per share for options granted between January 21, 1999 and May 3, 1999, $0.84 per share for options granted between May 4, 1999 and July 18, 1999 and $2.22 per share for options granted between July 19, 1999 and October 25, 1999. Actual gains, if any, on stock option exercises are dependent on the future performance of our common stock. The amounts reflected in the table may not necessarily be achieved. See "Risk Factors."

AGGREGATED OPTION EXERCISES IN THE YEAR ENDED DECEMBER 31, 1999 AND YEAR-END OPTION VALUES

The following table provides certain summary information concerning stock options held as of December 31, 1999 by each of the named executive officers. No options were exercised during fiscal 1999 by any of the named executive officers. The value of the unexercised in-the-money options at December 31, 1999 is based on the assumed fair market value of our common stock at December 31, 1999, less the exercise price of the option, multiplied by the number of shares underlying the options.

	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 31, 1999 (#)		VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT DECEMBER 31, 1999 ($) (1)	
NAME	EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Robert P. LoCascio.................	--	--	--	--
Timothy E. Bixby...................	--	202,500	--	2,700,000
	--	97,500	--	1,170,000
Scott E. Cohen.....................	--	588,960	--	7,774,272

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(1) There was no public trading market for our common stock as of December 31, 1999. The value of unexercised in-the-money options has been calculated using an assumed value of $14.00 per share, the mid-point of the range set forth on the cover page of this prospectus.

2000 STOCK INCENTIVE PLAN

We intend to adopt the 2000 Stock Incentive Plan (the "2000 Plan"), which is intended to serve as the successor equity incentive program to our Stock Option and Restricted Stock Purchase Plan (the "1998 Plan"). The 2000 Plan will become effective upon its adoption by our board of directors and ratification by our stockholders prior to the date of this offering.

10,000,000 shares of common stock have been authorized for issuance under the 2000 Plan. This share reserve consists of the shares which were available for issuance under the 1998 Plan on the effective date of the 2000 Plan plus an additional increase of approximately 4,150,000 shares. The share reserve will automatically be increased on the first trading day of January each calendar year, beginning in January 2001, by a number of shares equal to 3% of the total number of shares of common stock outstanding on the last trading day of the immediately preceding calendar year, but no such annual increase will exceed 1,500,000 shares. However, in no event may any one participant in the 2000 Plan receive option grants or direct stock issuances for more than 500,000 shares in the aggregate per calendar year.

Outstanding options under the 1998 Plan will be incorporated into the 2000 Plan upon the date of this offering, and no further option grants will be made under that plan. The incorporated options will continue to be governed by their existing terms, unless the compensation committee extends one or more features of the 2000 Plan to those options. However, except as otherwise noted below, the outstanding options under the 1998 Plan contain substantially the same terms and conditions summarized below for the discretionary option grant program under the 2000 Plan.

The 2000 Plan has five separate programs:

- the discretionary option grant program under which eligible individuals in our employ or service (including officers, non-employee board members and consultants) may be granted options to purchase shares of our common stock;

- the stock issuance program under which such individuals may be issued shares of common stock directly, through the purchase of such shares or as a bonus tied to the performance of services;

- the salary investment option grant program under which executive officers and other highly compensated employees may elect to apply a portion of their base salary to the acquisition of special below-market stock option grants;

- the automatic option grant program under which option grants will automatically be made at periodic intervals to eligible non-employee board members; and

- the director fee option grant program under which non-employee Board members may elect to apply a portion of their retainer fee to the acquisition of special below-market stock option grants.

The discretionary option grant and stock issuance programs will be administered by our compensation committee. This committee will determine which eligible individuals are to receive option grants or stock issuances, the time or times when such option grants or stock issuances are to be made, the number of shares subject to each such grant or issuance, the exercise or purchase price for each such grant or issuance (which may be less than, equal to or greater than the fair market value of the shares), the status of any granted option as either an incentive stock option or a non-statutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding. The committee will also select the executive officers and other highly compensated employees who may participate in the salary investment option grant program in

the event that program is activated for one or more calendar years. Neither the compensation committee nor the board will exercise any administrative discretion with respect to option grants made under the salary investment option grant program or under the automatic option grant program or director fee option grant program for the non-employee board members.

The exercise price for the options may be paid in cash or in shares of our common stock valued at fair market value on the exercise date. The option may also be exercised through a same-day sale program without any cash outlay by the optionee. In addition, the compensation committee may allow a participant to pay the option exercise price or direct issue price (and any associated withholding taxes incurred in connection with the acquisition of shares) with a full-recourse, interest-bearing promissory note.

In the event that we are acquired, whether by merger or asset sale or board-approved sale by our stockholders of more than 50% of our voting stock, each outstanding option under the discretionary option grant program which is not to be assumed by the successor corporation or otherwise continued will automatically accelerate in full, and all unvested shares under the discretionary option grant and stock issuance programs will immediately vest, except to the extent the repurchase rights with respect to those shares are to be assigned to the successor corporation or otherwise continued in effect. The compensation committee may grant options and issue shares which will accelerate (i) in the acquisition even if the options are assumed and repurchase rights assigned, (ii) in connection with a hostile change in control (effected through a successful tender offer for more than 50% of our outstanding voting stock or by proxy contest for the election of board members) or (iii) upon a termination of the individual's service following a change in control or hostile take-over.

In the event of an acquisition of our company (by merger or asset sale), options currently outstanding under the 1998 Plan will be assumed by the successor corporation. Such options are not by their terms subject to acceleration in connection with any other change in control or hostile take-over.

Stock appreciation rights may be issued under the discretionary option grant program which will provide the holders with the election to surrender their outstanding options for an appreciation distribution from us equal to the fair market value of the vested shares subject to the surrendered option less the aggregate exercise price payable for such shares. Such appreciation distribution may be made in cash or in shares of common stock. There are currently no outstanding stock appreciation rights under the 1998 Plan.

The compensation committee has the authority to cancel outstanding options under the discretionary option grant program (including options incorporated from the 1998 Plan) in return for the grant of new options for the same or different number of option shares with an exercise price per share based upon the fair market value of our common stock on the new grant date.

In the event our compensation committee elects to activate the salary investment option grant program for one or more calendar years, each of our executive officers and other highly compensated employees selected for participation may elect to reduce his or her base salary for that calendar year by a specified dollar amount not less than $5,000 nor more than $50,000. In return, the individual will automatically be granted, on the first trading day in the calendar year for which the salary reduction is to be in effect, a non-statutory option to purchase that number of shares of common stock determined by dividing the salary reduction amount by two-thirds of the fair market value per share of our common stock on the grant date. The option exercise price will be equal to one-third of the fair market value of the option shares on the grant date. As a result, the fair market value of the option shares on the grant date less the exercise price payable for those shares will be equal to the salary reduction amount. The option will become exercisable in a series of 12 equal monthly installments over the calendar year for which the salary reduction

is to be in effect and will be subject to full and immediate vesting in the event of an acquisition or change in control of the company.

Under the automatic option grant program, each individual who first joins the board after the date of this offering as a non-employee board member will automatically be granted an option for 15,000 shares of our common stock at the time of his or her commencement of board service, provided such individual has not been in our prior employ. In addition, on the date of each of our annual stockholders' meeting held after the date of this offering, each individual who is to continue to serve as a non-employee Board member after such meeting will receive an option grant to purchase 5,000 shares of common stock. Each automatic grant will have an exercise price equal to the fair market value per share of our common stock on the grant date and will have a maximum term of 10 years, subject to earlier termination following the optionee's cessation of board service. Each option will be immediately exercisable, subject to our right to repurchase any unvested shares, at the original exercise price, at the time of the board member's cessation of service. Each 15,000-share option grant will vest, and the repurchase right will lapse, in a series of three equal successive annual installments upon the optionee's completion of each year of Board service over the three-year period measured from the grant date. Each 5,000-share option grant will vest, and the repurchase right will lapse, upon the optionee's completion of one year of Board service measured from the grant date. However, each such outstanding option will immediately vest upon a change in control, a hostile takeover or the death or disability of the optionee while serving as a Board member.

If the director fee option grant program is put into effect in the future, then each non-employee board member may elect to apply all or a portion of any cash retainer fee for the year to the acquisition of a below-market option grant. The option grant will automatically be made on the first trading day in January in the year for which the non-employee board member would otherwise be paid the cash retainer fee in the absence of his or her election. The option will have an exercise price per share equal to one-third of the fair market value of the option shares on the grant date, and the number of shares subject to the option will be determined by dividing the amount of the retainer fee applied to the program by two-thirds of the fair market value per share of common stock on the grant date. As a result, the fair market value of the option shares on the grant date less the exercise price payable for those shares will be equal to the portion of the retainer fee applied to that option. The option will become exercisable in a series of 12 equal monthly installments over the calendar year for which the election is in effect. However, the option will become immediately exercisable for all the option shares upon the death or disability of the optionee while serving as a board member.

Limited stock appreciation rights will automatically be included as part of each grant made under the automatic option grant and salary investment option grant programs and may be granted to one or more officers as part of their option grants under the discretionary option grant program. Options with such a limited stock appreciation right may be surrendered to the company upon the successful completion of a hostile tender offer for more than 50% of our outstanding voting stock. In return for the surrendered option, the optionee will be entitled to a cash distribution from us in an amount per surrendered option share equal to the highest price per share of common stock paid in connection with the tender offer less the exercise price payable for such share.

The board may amend or modify the 2000 Plan at any time, subject to any required stockholder approval. The 2000 Plan will terminate no later than March 2010.

EMPLOYEE STOCK PURCHASE PLAN

We intend to adopt the 2000 Employee Stock Purchase Plan (the "ESPP"), which is intended to serve (along with the 2000 Plan) as the successor program to the 1998 Plan. The ESPP will be adopted by our board of directors and ratified by our stockholders prior to the date of this offering. The ESPP will become effective immediately upon the execution of the underwriting agreement for this offering. The ESPP is designed to allow our eligible employees and eligible employees of our participating subsidiaries to purchase shares of common stock, at semi-annual intervals, through their periodic payroll deductions. A total of 450,000 shares of our common stock will initially be issued under the ESPP. The share reserve will automatically increase on the first trading day of January of each year beginning in January 2001, by 0.50% of the total shares of common stock outstanding on the last trading day of the immediately preceding calendar year, but no such annual increase will exceed 150,000 shares. In no event, however, may any participant purchase more than 1,000 shares, nor may all participants in the aggregate purchase more than 112,500 shares on any one semi-annual purchase date.

The ESPP will have a series of successive offering periods, each with a maximum duration of 24 months. However, the initial offering period will begin on the day the underwriting agreement is executed in connection with this offering and will end on the last business day in April 2002. The next offering period will begin on the first business day in May 2002, and subsequent offering periods will be set by the compensation committee. Shares will be purchased for the participants semi-annually (the last business day of October and April each year) during the offering period. The first purchase date will occur on October 31, 2000. Should the fair market value of the common stock on any semi-annual purchase date be less than the fair market value on the first day of the offering period, then the current offering period will automatically end and a new offering period will begin, based on the lower fair market value.

Individuals who are eligible employees on the start date of any offering period may enter the ESPP on that start date or on any subsequent semi-annual entry date (generally May 1 or November 1 of each year). Individuals who become eligible employees after the start date of the offering period may join the ESPP on any subsequent semi-annual entry date within that period.

A participant may contribute up to 15% of his or her cash compensation through payroll deductions and the accumulated payroll deductions will be applied to the purchase of shares on the participant's behalf on each semi-annual purchase date. The purchase price per share will be 85% of the lower of the fair market value of our common stock on the participant's entry date into the offering period or the fair market value on the semi-annual purchase date.

The board may at any time amend or modify the ESPP. The ESPP will terminate no later than the last business day in March 2010.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

PREFERRED STOCK INVESTMENTS

We issued 2,541,667 shares of series A convertible preferred stock in January 1999; 1,142,857 shares of series B convertible preferred stock in May 1999; 5,132,433 shares of series C redeemable convertible preferred stock in July 1999 and 3,157,895 shares of series D redeemable convertible preferred stock in January 2000. Substantially all of our shares of convertible preferred stock have been sold to venture capital funds. The detailed description of the beneficial ownership within each venture capital fund, and cumulative ownership information for entities that hold a 5% or more beneficial interest, is contained in "Principal Stockholders," and the footnotes thereto, to the extent not described below. Each share of convertible preferred stock will automatically convert into common stock upon closing of this offering at a two-for-three ratio.

SERIES A CONVERTIBLE PREFERRED STOCK. We sold 2,500,000 shares of series A convertible preferred stock in January 1999 at a purchase price per share of $1.20 for gross proceeds of $3,000,000. In these transactions, we sold:

- 937,500 shares to Dawntreader Fund I LP;
- 937,500 shares to FG-LP, an entity affiliated with FGII;
- 416,667 shares to Sterling Payot Capital, LP; and
- 208,333 shares to an affiliate of Silicon Alley Venture Partners, LLC.

A portion of the series A convertible preferred stock issued to FG-LP was issued in satisfaction of a promissory note made by us in the amount of $100,000, plus interest. In addition, we issued 41,667 shares to Silicon Alley Venture Partners, LLC in exchange for consulting services related to the sale of the series A convertible preferred stock.

We also issued warrants to these investors at an exercise price of $1.60 per share. These warrants have a purchase price of $0.003 per warrant, expire in January 2004 and are exercisable at any time. The expiration date of the warrants may be accelerated in certain circumstances, if the managing underwriter of this offering determines that the failure to accelerate the expiration or exercise of the warrant could adversely affect this offering; however, we have been informed by Chase Securities Inc. that they do not intend to do so. These warrants are exercisable for:

- 175,781 shares by Dawntreader Fund I LP;
- 175,781 shares by FG-LP;
- 78,124 shares by Sterling Payot Capital, LP; and
- 39,063 shares by an affiliate of Silicon Alley Venture Partners, LLC.

SERIES B CONVERTIBLE PREFERRED STOCK. We sold 1,142,857 shares of series B convertible preferred stock in May 1999 at a purchase price per share of $1.40 for gross proceeds of $1,600,000. In these transactions, we sold:

- 892,857 shares to Allen & Company Incorporated;
- 35,714 shares to Alan Braverman; and
- 214,286 shares to Sculley Brothers LLC.

We also issued warrants to these investors at an exercise price of $1.60 per share. These warrants have a purchase price of $0.003 per warrant, expire in May 2004 and are exercisable at any time. The expiration date of the warrants may be accelerated in certain circumstances, if the managing underwriter of this offering determines that the failure to accelerate the warrant could

adversely affect this offering; however, we have been informed by Chase Securities Inc. that they do not intend to do so. These warrants are exercisable for:

- 195,313 shares by Allen & Company Incorporated;

- 7,812 shares by Alan Braverman; and

- 46,875 shares by Sculley Brothers LLC.

SERIES C REDEEMABLE CONVERTIBLE PREFERRED STOCK. We sold 5,132,433 shares of series C redeemable convertible preferred stock in July 1999 at a purchase price per share of $3.70 for gross proceeds of $18,990,000. In these transactions, we sold:

- 2,162,162 shares to Highland Capital Partners IV Limited Partnership and an affiliated entity;

- 608,108 shares to FG-LPC, an entity affiliated with FGII;

- 540,540 shares to Dawntreader Fund I LP;

- 67,568 shares to Allen & Company Incorporated;

- 810,811 shares to The Goldman Sachs Group, Inc. and an affiliated entity;

- 202,703 shares to Sterling Payot Capital, LP;

- 121,622 shares to entities affiliated with Silicon Alley Venture Partners, LLC;

- 108,108 shares to entities which are affiliates of Chase Securities Inc.;

- 432,432 shares to Access Technology Partners, L.P., a fund of outside investors that is managed by an affiliate of Chase Securities Inc.;

- 67,568 shares to Henry R. Kravis;

- 8,108 shares to Esther Dyson; and

- 2,703 shares to Mark Lipschultz.

SERIES D REDEEMABLE CONVERTIBLE PREFERRED STOCK. We sold 3,157,895 shares of series D redeemable convertible preferred stock on January 27, 2000, at a purchase price per share of $5.70 for gross proceeds of $18,000,000. In these transactions, we sold:

- 1,754,386 shares to Dell USA, L.P.;

- 350,878 shares to entities affiliated with MSD Capital, L.P.; and

- 1,052,631 shares to NBC Interactive Media, Inc.

OPTION GRANT

In April 1999, we granted options to purchase up to 16,065 shares of common stock, which vested on July 1, 1999, to Kevin Lavan, a director, for advisory services rendered prior to his appointment to our board of directors.

SAN FRANCISCO LEASE

Since August 1999, we have leased our San Francisco office space pursuant to a month-to-month agreement with Sterling Payot Capital LP, one of our investors. Our monthly payments for rent and shared services are approximately $11,000 and, to date, we have paid an aggregate of approximately $82,500 under the lease. We believe that this lease is on terms no less favorable to us than could be obtained from unaffiliated third parties. We expect to terminate this agreement

upon relocation into our new San Francisco offices, which is expected to occur in the second quarter of 2000.

CHIEF OPERATING OFFICER CONSULTING SERVICES

From April 1999 through January 2000, as we developed our management team, E. Kirk Shelton acted as our Chief Operating Officer on a consulting basis. For these services, we granted Mr. Shelton options to purchase our common stock. Prior to joining us as a consultant, Mr. Shelton was Vice Chairman and a director of Cendant Corporation from December 1997 through April 1998, and prior thereto, he was President and Chief Operating Officer of CUC International, Inc. from May 1991 through December 1997.

REGISTRATION RIGHTS

We have granted registration rights to certain holders of our convertible preferred stock. See "Description of Capital Stock--Registration Rights."

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our outstanding common stock as of March 8, 2000, as adjusted to reflect the sale of the shares of common stock offered hereby by:

- each person or group of affiliated persons whom we know to beneficially own 5% or more of the common stock;
- each of our directors;
- each of our named executive officers; and
- all of our directors and executive officers as a group.

Unless otherwise indicated, the address of each beneficial owner listed below is c/o LivePerson, Inc., 462 Seventh Avenue, 10th Floor, New York, New York 10018-7606.

The following table gives effect to the shares of common stock issuable within 60 days of March 8, 2000 upon the exercise of all options and other rights beneficially owned by the indicated stockholders on that date. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and includes voting and investment power with respect to shares. Unless otherwise indicated, the persons named in the table have sole voting and sole investment control with respect to all shares beneficially owned.

	NUMBER OF SHARES BENEFICIALLY OWNED BEFORE THE OFFERING(1)	PERCENTAGE OF SHARES BENEFICIALLY OWNED(1)	
HOLDERS		BEFORE THE OFFERING	AFTER THE OFFERING
5% STOCKHOLDERS			
Highland Capital Partners IV......... Limited Partnership and an affiliated entity(2) 2 International Place Boston, Massachusetts 02110	3,243,243	12.8%	11.1%
Dell USA, L.P........................ c/o Dell Computer Corporation One Dell Way Round Rock, Texas 78682	2,631,579	10.4%	9.0%
Entities affiliated with FGII(3)..... 20 Dayton Avenue Greenwich, Connecticut 06830	2,494,193	9.8%	8.5%
Dawntreader Fund I LP(4)............. 118 West 22nd Street, 11th Floor New York, New York 10011	2,392,841	9.4%	8.2%
Allen & Company Incorporated(5)...... 711 Fifth Avenue New York, New York 10022	1,635,950	6.4%	5.5%
NBC Interactive Media, Inc........... 30 Rockefeller Plaza New York, New York 10112	1,578,946	6.2%	5.4%

HOLDERS	NUMBER OF SHARES BENEFICIALLY OWNED BEFORE THE OFFERING(1)	PERCENTAGE OF SHARES BENEFICIALLY OWNED(1) BEFORE THE OFFERING	AFTER THE OFFERING
DIRECTORS AND EXECUTIVE OFFICERS			
Robert P. LoCascio	6,835,713	27.0%	23.3%
Dean Margolis	--	*	*
Timothy E. Bixby(6)	50,625	*	*
Scott E. Cohen(7)	534,480	2.1%	1.8%
James L. Reagan	--	*	*
Wycliffe K. Grousbeck(2)	3,243,243	12.8%	11.1%
Edward G. Sim(4)	2,392,841	9.4%	8.2%
Richard L. Fields(5)	1,635,950	6.4%	5.5%
Kevin C. Lavan(8)	16,065	*	*
Directors and Executive Officers as a Group (9 persons)(9)	14,708,917	56.3%	48.8%

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* Less than one percent.

(1) The table and related footnotes assume the automatic conversion of all of our outstanding shares of convertible preferred stock at a two-for-three ratio into common stock upon the closing of this offering and reflect a three-for-two stock split of shares of our common stock effected on March 8, 2000. Percentage of beneficial ownership prior to this offering is based on 25,323,804 shares of common stock outstanding at March 8, 2000. Percentage of beneficial ownership after this offering is based on 29,323,804 shares of common stock outstanding, which includes the foregoing plus 4,000,000 shares of common stock to be sold in this offering.

(2) Includes 3,113,513 shares of common stock owned by Highland Capital Partners IV Limited Partnership ("Highland Capital Partners IV") and 129,730 shares of common stock owned by Highland Entrepreneurs' Fund IV Limited Partnership ("Highland Entrepreneurs' Fund IV"). Mr. Grousbeck, a member of our board of directors, is a managing member of Highland Management Partners IV, LLC, the general partner of Highland Capital Partners IV and is a managing member of Highland Entrepreneurs' Fund IV LLC, the general partner of Highland Entrepreneurs' Fund IV. Mr. Grousbeck may be deemed to have beneficial ownership of the shares owned by Highland Capital Partners IV and Highland Entrepreneurs' Fund IV and disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest, if any.

(3) Includes 1,406,250 shares of common stock owned by FG-LP and 912,162 shares of common stock owned by FG-LPC. Also includes 175,781 shares of common stock issuable upon exercise of warrants owned by FG-LP. FGII is the general partner of both limited partnerships.

(4) Mr. Sim, a member of our board of directors, is a Managing Director of DT Advisors LLC, which is the general partner of Dawntreader Fund I LP. Mr. Sim may be deemed to have beneficial ownership of the shares owned by Dawntreader Fund I LP and disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest, if any.

(5) Includes 195,313 shares of common stock issuable upon exercise of warrants. Mr. Fields is a Managing Director of Allen & Company Incorporated ("Allen & Company"). Mr. Fields does not exercise voting or investment power over, and disclaims beneficial ownership of, 1,119,177 shares and 148,426 shares issuable upon exercise of warrants which are held by Allen & Company, other of its officers and related persons. Allen & Company disclaims

beneficial ownership of 503,137 shares and 58,594 shares issuable upon exercise of warrants which are beneficially owned by certain officers of Allen & Company and related persons.

(6) Consists of 50,625 shares of common stock issuable upon exercise of options exercisable within 60 days of March 8, 2000.

(7) Consists of 534,480 shares of common stock issuable upon exercise of options exercisable within 60 days of March 8, 2000.

(8) Consists of 16,065 shares of common stock issuable upon exercise of options exercisable within 60 days of March 8, 2000.

(9) Includes 601,170 shares of common stock issuable upon exercise of options exercisable within 60 days of March 8, 2000.

DESCRIPTION OF CAPITAL STOCK

GENERAL

The following description of our common stock and preferred stock and the relevant provisions of our amended and restated certificate of incorporation and amended and restated bylaws to be in effect upon the closing of this offering are summaries thereof and are qualified by reference to our amended and restated certificate of incorporation and amended and restated bylaws, copies of which have been filed with the Securities and Exchange Commission as exhibits to our registration statement, of which this prospectus forms a part.

Upon the closing of our offering, our authorized capital stock will consist of 100,000,000 shares of common stock, par value $0.001 per share, and 5,000,000 shares of preferred stock, par value $0.001 per share.

COMMON STOCK

As of March 8, 2000, there were 7,361,531 shares of our common stock outstanding held of record by seven stockholders, without giving effect to the conversion of our convertible preferred stock. Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election. Holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by our board of directors out of funds legally available therefor, subject to any preferential dividend rights of any outstanding preferred stock. Upon our liquidation, dissolution or winding up, our common stockholders are entitled to receive ratably our net assets available, if any, after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The outstanding shares of our common stock are, and the shares offered in this offering will be, when issued in consideration for payment thereof, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate and issue in the future.

PREFERRED STOCK

Upon the closing of this offering, there will be no shares of preferred stock outstanding. Our board of directors will be authorized, without further stockholder approval, to issue from time to time up to an aggregate of 5,000,000 shares of preferred stock in one or more series and to fix or alter the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of each series thereof, including the dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, including sinking fund provisions, redemption price or prices, liquidation preferences and the number of shares constituting any series or designation of series. The issuance of preferred stock could decrease the amount of earnings and assets available for distribution to holders of common stock or adversely affect the rights and powers, including voting rights, of the holders of common stock. Such issuance could also have the effect of delaying, deferring or preventing a change in control of our company. For more information, see "--Anti-Takeover Effects of Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws."

OPTIONS

We have 10,000,000 shares of our common stock reserved for issuance, upon exercise of stock options, under our 2000 Stock Incentive Plan. As of March 8, 2000, there were outstanding

options to purchase a total of 5,528,970 shares of common stock, of which options to purchase approximately 1,467,853 will be exercisable upon the closing of this offering. Because we intend to file a registration statement on Form S-8 as soon as practicable following the closing of this offering, any shares issued upon exercise of these options will be immediately available for sale in the public market, subject to the terms of lock-up agreements entered into with the underwriters. For more information, see "Management--2000 Stock Incentive Plan" and "Shares Eligible for Future Sale." We also have 94,500 shares of our common stock reserved for issuance, upon exercise of an option granted to a client. For more information, please see "Management's Discussion and Analysis of Financial Condition and Results of Operations--Overview."

REGISTRATION RIGHTS

Pursuant to the terms of a registration rights agreement, beginning 180 days after the effective date of the Registration Statement of which this prospectus is a part, the holders of 25,824,772 shares of common stock and warrants to acquire common stock have the right to demand registration of their shares of common stock under the Securities Act of 1933. We are not required to effect more than two registrations pursuant to these demand registration rights (unless we are eligible to file a registration statement on Form S-3, in which case we may be required to effect up to three registrations). In addition, these holders are entitled, subject to limitations, to require us to register the common stock held by them when we register common stock for our own account or for the account of other stockholders. This type of registration right is known as a "piggyback" registration right. These registration rights are subject to certain conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares of common stock held by stockholders with registration rights to be included in a registration. Generally, we are required to bear all of the expenses of all of these registrations, except underwriting discounts and selling commissions. Registration of any shares of common stock held by security holders with registration rights would result in shares becoming freely tradable without restriction under the Securities Act of 1933 immediately upon effectiveness of such registration.

LIMITATIONS ON LIABILITY

Our amended and restated certificate of incorporation limits or eliminates the liability of our directors to us or our stockholders for monetary damage to the fullest extent permitted by the Delaware General Corporation Law. As permitted by the Delaware General Corporation Law, our amended and restated certificate of incorporation provides that our directors shall not be personally liable to us or our stockholders for monetary damages for a breach of fiduciary duty as a director, except for liability:

- for any breach of such person's duty of loyalty to us or our stockholders;

- for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law;

- for payment of dividends or approval of stock repurchases or redemptions that are prohibited by Section 174 of the Delaware General Corporation Law; and

- for any transaction resulting in receipt by such person of an improper personal benefit.

Our amended and restated certificate of incorporation also contains provisions indemnifying our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. We currently have directors' and officers' liability insurance to provide our directors and officers with insurance coverage for losses arising from claims based on breaches of duty, negligence, errors and other wrongful acts.

We have also entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation. We believe that these agreements are necessary to attract and retain qualified directors and executive officers.

ANTI-TAKEOVER EFFECTS OF PROVISIONS OF DELAWARE LAW AND OUR CERTIFICATE OF INCORPORATION AND BYLAWS

We are subject to the provisions of Section 203 of the Delaware General Corporation Law. Subject to some exceptions, Section 203 prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding certain shares); or

- on or subsequent to such date, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders by the affirmative vote of a least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

A "business combination" includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. Except as otherwise specified in Section 203 of the Delaware General Corporation Law, an interested stockholder is defined to include (x) any person that owns (or, within the prior three years, did own) 15% or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation at any time within three years immediately prior to the date of determination and (y) the affiliates and associates of any such person. This statute could prohibit or delay the accomplishment of mergers or other takeover or change in control attempts with respect to us and, accordingly, may discourage attempts to acquire us.

In addition, various provisions of our amended and restated certificate of incorporation and our amended and restated bylaws, which provisions will be in effect upon the closing of the offering and are summarized in the following paragraphs, may be deemed to have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by stockholders.

STAGGERED BOARD. Our amended and restated certificate of incorporation provides for division of our board into three classes, with each class as nearly equal in number as possible. Each class must serve a three-year term. The terms of each class are staggered so that each term ends in a different year in the three-year period.

BOARD OF DIRECTORS VACANCIES. Our amended and restated certificate of incorporation authorizes our board of directors to fill vacant directorships or increase the size of the board of directors. This may deter a stockholder from removing incumbent directors and simultaneously

gaining control of our board of directors by filling the vacancies created by this removal with its own nominees.

STOCKHOLDER ACTION; SPECIAL MEETING OF STOCKHOLDERS. Our amended and restated certificate of incorporation provides that stockholders may not take action by written consent, but only at duly called annual or special meetings of stockholders. Our amended and restated bylaws further provide that special meetings of our stockholders may be called only by the chairman of the board of directors, our president or at the request of two-thirds of the board of directors.

ADVANCE NOTICE REQUIREMENTS FOR STOCKHOLDER PROPOSALS AND DIRECTORS' NOMINATIONS. Our amended and restated bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual meeting of stockholders, must provide us timely notice thereof in writing. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices, not less than 90 days nor more than 120 days prior to the first anniversary of the date of the preceding year's annual meeting provided with respect to the previous year's annual meeting of stockholders; provided, however, that if no annual meeting of stockholders was held in the previous year or the date of the annual meeting of stockholders has been changed to be more than 30 calendar days earlier than or 70 calendar days after this anniversary, notice by the stockholder, to be timely, must be so received not more than 120 days prior to the annual meeting of stockholders nor later than the later of:

- 90 days prior to the annual meeting of stockholders; and

- the close of business on the 10th day following the date on which notice of the date of the meeting is made public.

Our amended and restated bylaws also specify certain requirements as to the form and content of a stockholders' notice. These provisions may preclude stockholders from bringing matters before an annual meeting of stockholders or from making nominations for directors at an annual meeting of stockholders.

AUTHORIZED BUT UNISSUED SHARES. The authorized but unissued shares of our common stock and preferred stock are available for future issuance without stockholder approval, subject to various limitations imposed by the Nasdaq National Market. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy context, tender offer, merger or otherwise.

Our amended and restated certificate of incorporation requires the affirmative vote of not less than 66.67% of the outstanding shares of our capital stock entitled to vote generally in the election of directors (considered for this purpose as a single class) cast at a meeting of our stockholders called for that purpose, to repeal, alter, amend or rescind the provisions in our amended and restated certificate of incorporation relating to:

- directors;

- stockholder meetings;

- limitations on director liability;

- indemnification;

- amendment of our bylaws; or

- business combinations.

Our amended and restated certificate of incorporation requires the affirmative vote as specified in the Delaware General Corporation Law to amend any other provision of our amended and restated certificate of incorporation.

To repeal, alter, amend or rescind our amended and restated bylaws, our amended and restated certificate incorporation and our amended and restated bylaws require the affirmative vote of not less than 66.67% of the outstanding shares of our capital stock entitled to vote generally in the election of directors (considered for this purpose as a single class) cast at a meeting of our stockholders called for that purpose, or the affirmative vote of at least 66.67% of our Board of Directors.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

SHARES ELIGIBLE FOR FUTURE SALE

Sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices of our common stock. Furthermore, since substantially all outstanding shares of our common stock (other than those shares offered in this offering) will not be available for sale shortly after this offering because of certain contractual and legal restrictions on resale described below, sales of substantial amounts of common stock in the public market after these restrictions lapse could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Upon the closing of this offering, we will have outstanding an aggregate of 29,323,804 shares of our common stock, assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options. Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act of 1933 unless such shares are purchased by "affiliates" as that term is defined in Rule 144 under the Securities Act of 1933. The remaining 25,323,804 shares of common stock held by existing stockholders are "restricted securities" as defined in Rule 144. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144, Rule 144(k) or 701 under the Securities Act of 1933, which rules are summarized below. The following table illustrates the shares eligible for sale in the public market:

NUMBER OF SHARES	DATE
4,000,000	After the date of this prospectus, freely tradable shares sold in this offering and shares saleable under Rule 144(k) that are not subject to the 180-day lock-up
0	After 90 days from the date of this prospectus, shares saleable under Rule 144 or Rule 701 that are not subject to the 180-day lock-up
20,586,962	After 180 days from the date of this prospectus, the 180-day lock-up is released and these shares are saleable under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701
4,736,842	After 180 days from the date of this prospectus, restricted securities that are held for less than one year are not yet saleable under Rule 144

LOCK-UP AGREEMENTS

We expect that our directors, executive officers, and substantially all of our existing stockholders will sign lock-up agreements under which they will agree that, without the prior written consent of Chase Securities Inc. on behalf of the underwriters, they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock;

whether any transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise.

The restrictions described in the preceding paragraph do not apply to:

- transfers to certain persons or entities of shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock, provided that the transferees agree in writing to be bound by the foregoing restrictions;

- non-derivative sales in open market transactions of shares of our common stock or other securities acquired in open market transactions after the completion of the offering of the shares; and

- non-derivative sales in open market transactions of shares of our common stock reserved by the underwriters for, and sold at the initial public offering price to, our directors, employees other than executive officers, business associates, and their family members.

RULE 144

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of (i) 1% of the number of shares of common stock then outstanding, which will equal approximately 293,238 shares immediately after the offering, and (ii) the average weekly trading volume of the common stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale. Sales under Rule 144 are also subject to certain manner-of-sale provisions, notice requirements and the availability of current public information about us.

RULE 144(K)

Under Rule 144(k), a person who is not one of our affiliates at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate, is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Therefore, unless otherwise contractually restricted, "144(k)" shares may be sold immediately upon completion of this offering.

RULE 701

In general, under Rule 701 of the Securities Act of 1933 as currently in effect, each of our employees, consultants or advisors who purchases shares from us in connection with a compensatory stock plan or other written agreement is eligible to resell such shares 90 days after the date of this prospectus in reliance on Rule 144, but without compliance with certain restrictions, including the holding period, contained in Rule 144.

REGISTRATION RIGHTS

After this offering, the holders of 25,824,772 shares of our common stock and warrants to acquire common stock will be entitled to certain rights with respect to the registration of those shares under the Securities Act of 1933. For more information, see "Description of Capital Stock--Registration Rights." After such registration, these shares of our common stock become freely tradable without restriction under the Securities Act. These sales could have a material adverse effect on the trading price of our common stock.

STOCK PLANS AND OTHER OPTIONS

Immediately after this offering, we intend to file a registration statement under the Securities Act covering 10,450,000 shares of common stock reserved for issuance under our 2000 Stock Incentive Plan and our Employee Stock Purchase Plan. We expect this registration statement to be filed and to become effective as soon as practicable after the effective date of this offering.

As of March 8, 2000, options to purchase 5,528,970 shares of common stock were issued and outstanding under our 2000 Plan, of which 1,472,753 are exercisable within 60 days of March 8, 2000. Upon exercise, the shares underlying these options will be eligible for sale in the public market from time to time, subject to vesting provisions, Rule 144 volume limitations applicable to our affiliates and, in the case of some options, the expiration of lock-up agreements. In addition, an option to purchase 94,500 shares of common stock was issued and outstanding outside of our 2000 Plan, which is currently fully vested and immediately exercisable; however the sale of the shares of common stock underlying this option is subject to restrictions described in "Management's Discussion and Analysis of Financial Condition and Results of Operations--Overview--Compensation."

UNDERWRITING

Chase Securities Inc., Thomas Weisel Partners LLC and PaineWebber Incorporated are the representatives of the underwriters. Subject to the terms and conditions of the underwriting agreement, the underwriters named below, through their representatives, have severally agreed to purchase from LivePerson the following respective number of shares of common stock:

NAME	NUMBER OF SHARES
Chase Securities Inc.	
Thomas Weisel Partners LLC	
PaineWebber Incorporated	
Total	4,000,000

DISCOUNTS AND COMMISSIONS. The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent, including the absence of any material adverse change in our business and the receipt of certain certificates, opinions and letters from us, our counsel and the independent auditors. The underwriters are committed to purchase all of the shares of common stock offered by us if they purchase any shares.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters. The underwriting discounts and commissions were determined through negotiations with the underwriters, and equal the public offering price per share of common stock, less the amount paid by the underwriters to us per share of common stock. Such amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option to purchase additional shares.

UNDERWRITING DISCOUNTS AND COMMISSIONS

	WITHOUT OVER-ALLOTMENT EXERCISE	WITH OVER-ALLOTMENT EXERCISE
Per Share	$	$
Total	$	$

We estimate that the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately $1,000,000.

The underwriters propose to offer the shares of common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. The underwriters may allow and such dealers may reallow a concession not in excess of $ per share to certain other dealers. After the initial public offering of the shares, the offering price and other selling terms may be changed by the representatives of the underwriters. The representatives have advised us that the underwriters do not intend to confirm discretionary sales in excess of 5% of the shares of common stock offered by this prospectus.

OVER-ALLOTMENT OPTION. We have granted to the underwriters an option, exercisable no later than 30 days after the date of this prospectus, to purchase up to 600,000 additional shares of common stock at the initial public offering price, less the underwriting discount set forth on the cover page of this prospectus. To the extent that the underwriters exercise this option, each of

the underwriters will have a firm commitment to purchase approximately the same percentage thereof which the number of shares of common stock to be purchased by it shown in the above table bears to the total number of shares of common stock offered hereby. We will be obligated, pursuant to the option, to sell shares to the underwriters to the extent the option is exercised. The underwriters may exercise this option only to cover over-allotments made in connection with the sale of shares of common stock offered by us.

DELIVERY OF SHARES. The offering of the shares is made for delivery when, as and if accepted by the underwriters and subject to prior sale and to withdrawal, cancellation or modification of the offering without notice. The underwriters reserve the right to reject an order for the purchase of shares in whole or in part.

INDEMNIFICATION. We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, and to contribute to payments the underwriters may be required to make in respect of these liabilities.

LOCK-UP AGREEMENTS. We expect that we and our directors, executive officers and substantially all of our existing stockholders will agree that, without the prior written consent of Chase Securities Inc. on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock;

whether any transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise.

The restrictions described in this paragraph do not apply to:

- the sale of shares to the underwriters;

- the issuance of shares of our common stock upon the exercise of an option or a warrant, or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing;

- the grant of additional options under our 2000 Plan and our ESPP;

- transfers to certain persons or entities of shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock, provided that the transferees agree in writing to be bound by the foregoing restrictions;

- non-derivative sales in open market transactions by any person other than us relating to shares of our common stock or other securities acquired in open market transactions after the completion of the offering of the shares; and

- non-derivative sales in open market transactions of shares of our common stock reserved by the underwriters for, and sold at the initial public offering price to, our directors, employees other than executive officers, business associates, and their family members.

Without the prior written consent of Chase Securities Inc., any options granted outside of our 2000 Plan shall not be exercisable during this 180-day period. In addition, if Chase Securities Inc. agrees to release any of our stockholders (except any employee or consultant that is not one

of our officers or directors) from the foregoing restrictions prior to the expiration of the 180-day period referred to above, with respect to all or a percentage of the shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock subject to the foregoing restrictions, then all of our other stockholders subject to the foregoing restrictions shall be released from such restrictions to the same extent and on the same terms and conditions.

STABILIZATION. Certain persons participating in this offering may over-allot or effect transactions which stabilize, maintain or otherwise affect the market price of the common stock at levels above those which might otherwise prevail in the open market, including by entering stabilizing bids, effecting syndicate covering transactions or imposing penalty bids. A stabilizing bid means the placing of any bid or effecting of any purchase, for the purpose of pegging, fixing or maintaining the price of the common stock. A syndicate covering transaction means the placing of any bid on behalf of the underwriting syndicate or the effecting of any purchase to reduce a short position created in connection with the offering. A penalty bid means an arrangement that permits the underwriters to reclaim a selling concession from a syndicate member in connection with the offering when shares of common stock sold by the syndicate member are purchased in syndicate covering transactions. Such transactions may be effected on the Nasdaq National Market, in the over-the-counter market, or otherwise. Such stabilizing, if commenced, may be discontinued at any time.

DETERMINATION OF OFFERING PRICE. Prior to this offering, there has been no public market for our common stock. The initial public offering price for the common stock will be determined by negotiations among us and the representatives. Among the factors to be considered in determining the initial public offering price will be prevailing market and economic conditions, our revenue and earnings, market valuations of other companies engaged in activities similar to our business operations, and our management. The estimated initial public offering price range set forth on the cover of this preliminary prospectus is subject to change as a result of market conditions or other factors.

RESERVED SHARES. At our request, the underwriters have reserved up to 400,000 shares of common stock for sale at the initial public offering price to our directors, officers, employees, business associates, and their family members. The number of shares of common stock available for sale to the general public will be reduced if such persons purchase the reserved shares. Any reserved shares which are not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered hereby.

UNDERWRITER'S BENEFICIAL OWNERSHIP. Chase Securities Inc. may be deemed to have beneficial ownership of an aggregate of 108,108 shares of our series C redeemable convertible preferred stock. Additionally, Access Technology Partners, L.P., a fund of outside investors that is managed by an affiliate of Chase Securities Inc., owns 432,432 shares of series C redeemable convertible preferred stock. All shares of convertible preferred stock issued by us, including the series C redeemable convertible preferred stock, will automatically convert into shares of common stock upon completion of this offering, at a two-for-three ratio. Upon such conversion, Chase Securities Inc. may be deemed to have beneficial ownership of 0.6% of the shares of common stock outstanding.

NEW UNDERWRITER. Thomas Weisel Partners LLC, one of the representatives of the underwriters, was organized and registered as a broker-dealer in December 1998. Since December 1998, Thomas Weisel Partners has been named as a lead or co-manager of 131 filed public offerings of equity securities, of which 99 have been completed, and has acted as a syndicate member in an additional 69 public offerings of equity securities. Thomas Weisel Partners does not have any material relationship with us or any of our officers, directors or controlling persons, except with respect to its contractual relationship with us under the underwriting agreement entered into in connection with this offering.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Brobeck, Phleger & Harrison LLP, New York, New York. A partner of Brobeck, Phleger & Harrison LLP is the brother of our Chief Operating Officer. Certain legal matters in connection with the offering will be passed upon for the underwriters by Davis Polk & Wardwell.

EXPERTS

The financial statements of LivePerson, Inc. as of December 31, 1998 and 1999 and for each of the years in the three-year period ended December 31, 1999 have been included in this prospectus and elsewhere in the registration statement in reliance upon the report of KPMG LLP, independent accountants, appearing elsewhere herein and upon the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 (including exhibits and schedules thereto) under the Securities Act of 1933 with respect to the common stock to be sold in this offering. This prospectus does not contain all of the information set forth in this registration statement. For further information about us and the shares of common stock to be sold in the offering, please refer to the registration statement and the exhibits and schedules thereto. Statements contained in this prospectus about the contents of any contract or other document filed as an exhibit to the registration statement are not necessarily complete, and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the registration statement. To have a complete understanding of any such document, you should read the entire document filed as an exhibit.

You may read and copy all or any portion of the registration statement or any other document we file at the Securities and Exchange Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C., 20549. You can request copies of these documents upon payment of a duplicating fee, by writing to the Securities and Exchange Commission. Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information about the public reference rooms. Our Securities and Exchange Commission filings, including the registration statement, are also available to you on the Securities and Exchange Commission's Web site at http://www.sec.gov.

As a result of this offering, we will become subject to the Securities Exchange Act of 1934, as amended, and, in accordance with the requirements of this Act, will file periodic reports, proxy statements and other information with the Securities and Exchange Commission.

We intend to furnish our stockholders with annual reports containing audited consolidated financial statements and make available quarterly reports for the first three quarters of each year containing unaudited consolidated financial information.

LIVEPERSON, INC.

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Stockholders of
LivePerson, Inc.:

We have audited the accompanying balance sheets of LivePerson, Inc. as of December 31, 1998 and 1999, and the related statements of operations, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 1999. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of LivePerson, Inc. as of December 31, 1998 and 1999, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 1999 in conformity with generally accepted accounting principles.

/s/KPMG LLP

New York, New York
March 9, 2000

LIVEPERSON, INC.

BALANCE SHEETS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	DECEMBER 31, 1998	DECEMBER 31, 1999	PRO FORMA (SEE NOTE 1(B)) DECEMBER 31, 1999 (UNAUDITED)
ASSETS			
Current assets:			
Cash and cash equivalents	$107	$14,944	$32,844
Accounts receivable, less allowance for doubtful accounts of $15, and $85, as of December 31, 1998 and 1999 and $85 pro forma	10	465	465
Prepaid expenses and other current assets	--	597	597
Due from officer	25	--	--
Total current assets	142	16,006	33,906
Property and equipment, net	--	2,457	2,457
Security deposits	--	487	487
Deferred offering costs	--	140	140
Deferred costs, net	--	199	199
Total assets	$142	$19,289	$37,189
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)			
Current liabilities:			
Accounts payable	$ 17	$ 1,776	$ 1,776
Accrued expenses	55	689	689
Note payable	100	--	--
Deferred revenue	--	161	161
Total current liabilities	172	2,626	2,626
Commitments and contingencies			
Series C redeemable convertible preferred stock, $.001 par value; 5,132,433 shares authorized, issued and outstanding actual; no shares issued and outstanding pro forma, with an aggregate liquidation preference of $18,990	--	18,990	--
Series D redeemable convertible preferred stock, $.001 par value; no shares authorized, issued and outstanding actual and pro forma	--	--	--
Stockholders' equity (deficit):			
Series A convertible preferred stock, $.001 par value; 2,541,667 shares authorized, issued and outstanding actual; no shares issued and outstanding pro forma, with an aggregate liquidation preference of $3,000	--	3	--
Series B convertible preferred stock $.001 par value; 1,142,857 shares authorized, issued and outstanding actual; no shares issued and outstanding pro forma, with an aggregate liquidation preference of $1,600	--	1	--
Common stock, $0.001 par value; 100,000,000 shares authorized; 7,092,000 shares issued and outstanding actual; 25,054,273 shares issued and outstanding pro forma	7	7	25
Additional paid-in capital	19	5,928	42,804
Deferred compensation	--	(402)	(402)
Accumulated deficit	(56)	(7,864)	(7,864)
Total stockholders' equity (deficit)	(30)	(2,327)	34,563
Total liabilities and stockholders' equity (deficit)	$142	$19,289	$37,189

SEE ACCOMPANYING NOTES TO FINANCIAL STATEMENTS.

LIVEPERSON, INC.

STATEMENTS OF OPERATIONS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	YEAR ENDED DECEMBER 31,		
	1997	1998	1999
Revenue:			
Service revenue	$ --	$ 1	$ 600
Programming revenue	245	378	39
Total revenue	245	379	639
Operating expenses:			
Cost of revenue	121	70	856
Product development	--	93	1,637
Sales and marketing	--	33	3,987
General and administrative	130	178	1,706
Non-cash compensation	--	25	734
Total operating expenses	251	399	8,920
Loss from operations	(6)	(20)	(8,281)
Other income (expense):			
Interest income	--	--	474
Interest expense	--	--	(1)
Total other income (expense), net	--	--	473
Net loss	$ (6)	$ (20)	$ (7,808)
Basic and diluted net loss per share	$ 0.00	$ 0.00	$ (1.10)
Weighted average shares outstanding used in basic and diluted net loss per share calculation	7,092,000	7,092,000	7,092,000
Pro forma basic and diluted net loss per share			$ (0.50)
Weighted average shares outstanding used in pro forma basic and diluted net loss per share calculation			15,465,304

SEE ACCOMPANYING NOTES TO FINANCIAL STATEMENTS.

LIVEPERSON, INC.
STATEMENTS OF STOCKHOLDERS' DEFICIT
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	SERIES A PREFERRED STOCK		SERIES B PREFERRED STOCK		COMMON STOCK		ADDITIONAL PAID-IN CAPITAL
	SHARES	AMOUNT	SHARES	AMOUNT	SHARES	AMOUNT	
Balance at December 31, 1996............	--	$ --	--	$ --	7,092,000	$ 7	$ (6)
Net loss................................	--	--	--	--	--	--	--
Balance at December 31, 1997............	--	--	--	--	7,092,000	7	(6)
Issuance of stock options in lieu of payment for services..................	--	--	--	--	--	--	25
Net loss................................	--	--	--	--	--	--	--
Balance at December 31, 1998............	--	--	--	--	7,092,000	7	19
Issuance of stock options in lieu of payment for services..................	--	--	--	--	--	--	474
Issuance of stock options to employees below fair market value...............	--	--	--	--	--	--	576
Amortization of deferred compensation...	--	--	--	--	--	--	--
Issuance of stock options to a client...	--	--	--	--	--	--	235
Issuance of Class A preferred stock and warrants..............................	2,416,667	3	--	--	--	--	2,899
Issuance of Class A preferred stock in lieu of payment for services..........	41,667	--	--	--	--	--	50
Conversion of note payable into shares of Class A preferred stock............	83,333	--	--	--	--	--	100
Issuance of Class B preferred stock and warrants, net of $15 issuance costs...	--	--	1,142,857	1	--	--	1,585
Offering costs in connection with Series C redeemable preferred stock..........	--	--	--	--	--	--	(10)
Net loss................................	--	--	--	--	--	--	--
Balance at December 31, 1999............	2,541,667	$ 3	1,142,857	$ 1	7,092,000	$ 7	$5,928

	DEFERRED COMPENSATION	ACCUMULATED DEFICIT	TOTAL
Balance at December 31, 1996............	$ --	$ (30)	$ (29)
Net loss................................	--	(6)	(6)
Balance at December 31, 1997............	--	(36)	(35)
Issuance of stock options in lieu of payment for services..................	--	--	25
Net loss................................	--	(20)	(20)
Balance at December 31, 1998............	--	(56)	(30)
Issuance of stock options in lieu of payment for services..................		--	474
Issuance of stock options to employees below fair market value...............	(576)	--	--
Amortization of deferred compensation...	174	--	174
Issuance of stock options to a client...	--	--	235
Issuance of Class A preferred stock and warrants..............................	--	--	2,902
Issuance of Class A preferred stock in lieu of payment for services..........	--	--	50
Conversion of note payable into shares of Class A preferred stock............	--	--	100
Issuance of Class B preferred stock and warrants, net of $15 issuance costs...	--	--	1,586
Offering costs in connection with Series C redeemable preferred stock..........	--	--	(10)
Net loss................................	--	(7,808)	(7,808)
Balance at December 31, 1999............	$(402)	$(7,864)	$(2,327)

SEE ACCOMPANYING NOTES TO FINANCIAL STATEMENTS

LIVEPERSON, INC.

STATEMENTS OF CASH FLOWS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	YEAR ENDED DECEMBER 31,		
	1997	1998	1999
Cash flows from operating activities:			
Net loss	$ (6)	$ (20)	$(7,808)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Non-cash compensation	--	25	734
Depreciation	--	--	98
Provision for doubtful accounts	--	15	85
Changes in operating assets and liabilities:			
Accounts receivable	(17)	(8)	(540)
Prepaid expenses and other current assets	--	--	(597)
Security deposits	--	--	(487)
Accounts payable	40	(23)	1,759
Accrued expenses	25	30	634
Deferred revenue	--	--	161
Net cash provided by (used in) operating activities	42	19	(5,961)
Cash flows from investing activities:			
Purchases of property and equipment	--	--	(2,555)
Net cash used in investing activities	--	--	(2,555)
Cash flows from financing activities:			
Net proceeds from issuance of Class A, B and C preferred stock and warrants	--	--	23,468
Proceeds from issuance of note payable	--	100	--
Due to (from) officer	(34)	(22)	25
Deferred offering costs	--	--	(140)
Net cash provided by (used in) financing activities	(34)	78	23,353
Net increase in cash and cash equivalents	8	97	14,837
Cash and cash equivalents at the beginning of the period	2	10	107
Cash and cash equivalents at the end of the period	$ 10	$ 107	$14,944

Supplemental disclosure of non-cash information:

The Company did not pay interest or income taxes for any period presented.

Non-cash financing activities:

During the year ended December 31, 1999, the Company issued 83,333 shares of its Series A preferred stock at $1.20 per share in settlement of a $100 note payable. This transaction resulted in a non-cash financing activity of $100.

SEE ACCOMPANYING NOTES TO FINANCIAL STATEMENTS.

(ALL INFORMATION SUBSEQUENT TO DECEMBER 31, 1999 IS UNAUDITED)
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

(A) SUMMARY OF OPERATIONS

LivePerson, Inc. (the "Company" or "LivePerson"), was incorporated in the State of Delaware in 1995 under the name of Sybarite Interactive, Inc. The Company, which commenced operations in 1996, changed its name to Live Person, Inc. in January 1999 and to LivePerson, Inc. in March 2000. The Company offers the LivePerson service, which facilitates real-time sales and customer service for companies doing business on the Internet.

The Company generates revenues from the sale of the LivePerson service. Prior to November 1998, when the LivePerson service was introduced, the Company provided services primarily related to Web-based community programming and media design.

(B) INITIAL PUBLIC OFFERING AND PRO FORMA BALANCE SHEET--UNAUDITED

In January 2000, the Board of Directors authorized the filing of a registration statement with the Securities and Exchange Commission ("SEC") that would permit the Company to sell shares of its common stock in connection with a proposed initial public offering ("IPO").

If the IPO is consummated under the terms presently anticipated, upon the closing of the proposed IPO, each of the then outstanding shares of the Company's convertible preferred stock will automatically convert, at a two-for-three ratio, into 17,962,273 shares of common stock.

The accompanying pro forma balance sheet as of December 31, 1999 gives effect to:

- the issuance of 3,157,895 shares of Series D redeemable convertible preferred stock at $5.70 per share during January 2000 for net proceeds of approximately $17.9 million; and

- the automatic conversion of 2,541,667, 1,142,857, 5,132,433 and 3,157,895 shares of Series A, B, C and D convertible preferred stock, respectively, representing all outstanding shares of convertible preferred stock, into 17,962,273 shares of common stock upon the closing of this offering.

(C) USE OF ESTIMATES

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(D) CASH AND CASH EQUIVALENTS

The Company considers all highly liquid securities, with original maturities of three months or less when acquired, to be cash equivalents.

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(E) PROPERTY AND EQUIPMENT

Property and equipment are stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the related assets, generally ranging from three to seven years.

(F) IMPAIRMENT OF LONG-LIVED ASSETS

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to future net cash flows expected to be generated by the assets. If the assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. To date, no impairment has occurred.

(G) INCOME TAXES

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in results of operations in the period that the tax change occurs. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

(H) REVENUE RECOGNITION

Prior to November 1998, when the LivePerson service was introduced, the Company generated revenue from services primarily related to Web-based community programming and media design. Revenues from such services are recognized upon completion of the project provided that no significant Company obligations remain and collection of the resulting receivable is probable.

During 1998, the Company began offering the LivePerson service. The LivePerson service facilitates real-time sales and customer service for companies doing business on the Internet. The Company charges an initial non-refundable set-up fee as well as a monthly fee for each operator access account ("seat") using the LivePerson service.

The initial set-up fee principally represents customer service, training and other administrative costs related to the deployment of the LivePerson service. Such fees are recorded as deferred revenue and recognized over a period of 24 months, representing the Company's

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

current estimate of the expected term of a client relationship. This estimate may change in the future.

The Company also records revenue based upon a monthly fee charged for each seat using the LivePerson service provided that no significant Company obligations remain and collection of the resulting receivable is probable. The Company recognizes monthly service revenue fees as services are provided. The Company's service agreements typically have no termination date and are terminable by either party upon 30 to 90 days' notice without penalty. The Company does not charge an additional set-up fee if an existing client adds more seats.

(I) PRODUCT DEVELOPMENT COSTS

The Company accounts for product development costs in accordance with SFAS No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed," under which certain software development costs incurred subsequent to the establishment of technological feasibility are capitalized and amortized over the estimated lives of the related products. Technological feasibility is established upon completion of a working model. To date, completion of a working model of the Company's products and general release have substantially coincided. As a result, the Company has not capitalized any software development costs since such costs have not been significant. Through December 31, 1999, all development costs have been charged to product development expense in the accompanying statements of operations.

(J) ADVERTISING COSTS

The Company expenses the cost of advertising and promoting its services as incurred. Such costs totaled approximately $0, $1 and $1,935 for the years ending December 31, 1997, 1998 and 1999, respectively.

(K) FINANCIAL INSTRUMENTS AND CONCENTRATION OF CREDIT RISK

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist of cash and cash equivalents, accounts receivable, accounts payable and note payable. At December 31, 1998 and 1999, the fair value of these instruments approximated their financial statement carrying amount because of the short-term maturity of these instruments. The Company has not experienced any significant credit loss to date. In 1997, two customers accounted for all of the Company's accounts receivable, and revenue from the Company's three largest customers accounted for 86% of the Company's revenue. Two customers accounted for 80% of the Company's accounts receivable in 1998. No single customer accounted for or exceeded 10% of either revenue or accounts receivable in 1999.

(L) STOCK-BASED COMPENSATION

The Company accounts for stock-based compensation arrangements in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)
Compensation," which permits entities to recognize as expense over the vesting period the fair value of all stock-based awards on the date of grant. Alternatively, SFAS No. 123 allows entities to continue to apply the provisions of Accounting Principle Board ("APB") Opinion No. 25 and provide pro forma net earnings (loss) disclosures for employee stock option grants as if the fair-value-based method defined in SFAS No. 123 had been applied. The Company has elected to continue to apply the provisions of APB Opinion No. 25 and provide the pro forma disclosure provisions of SFAS No. 123.

(M) BASIC AND DILUTED NET LOSS PER SHARE

The Company calculates earnings per share in accordance with the provisions of SFAS No. 128, "Earnings Per Share", and the Securities and Exchange Commission Staff Accounting Bulletin No. 98. Under SFAS No. 128, basic EPS excludes dilution for common stock equivalents and is computed by dividing income or loss available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock and resulted in the issuance of common stock. Diluted net loss per share is equal to basic loss per share since all common stock equivalents are anti-dilutive for each of the periods presented.

Diluted net loss per common share for the year ended December 31, 1998 and 1999, does not include the effects of options to purchase 197,100 and 3,612,345 shares of common stock, respectively, 0 and 718,749 common stock warrants, respectively, and 0 and 13,225,431 shares of Series A, Series B and Series C convertible preferred stock on an "as if" converted basis, respectively, as the effect of their inclusion is anti-dilutive during each period. There were no dilutive securities outstanding in 1997.

The pro forma net loss per share for the year ended December 31, 1999, is computed by dividing the net loss by the sum of the weighted average number of shares of common stock outstanding and the shares resulting from the automatic conversion of all of our outstanding convertible preferred stock, totalling 13,225,431, as if such conversion occurred at the date of original issuance during 1999. The number of pro forma weighted average shares used in computing basic and diluted net loss per share is as follows:

Actual weighted average shares outstanding..................	7,092,000
Series A Convertible Preferred Stock........................	3,655,821
Series B Convertible Preferred Stock........................	1,089,628
Series C Convertible Preferred Stock........................	3,627,855
Weighted average shares outstanding used in pro forma basic and diluted net loss per share calculation................	15,465,304

(ALL INFORMATION SUBSEQUENT TO DECEMBER 31, 1999 IS UNAUDITED)
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(N) STOCK SPLIT

Effective January 20, 1999, the Company authorized and implemented a 10-for-1 stock split in the form of a common stock dividend. Accordingly, all share and per share information in the accompanying financial statements have been retroactively restated to reflect the effect of the stock split.

Effective March 8, 2000, the Company authorized and implemented a 3-for-2 split of shares of the Company's common stock in the form of a common stock dividend. Accordingly, all common share and per common share information, warrants and options, in the accompanying financial statements has been retroactively restated to reflect the effect of the stock split.

(O) COMPREHENSIVE LOSS

The Company adopted the provisions of Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" in 1998. SFAS No. 130 requires the Company to report in its financial statements, in addition to its net income (loss), comprehensive income (loss), which includes all changes in equity during a period from non-owner sources including, as applicable, foreign currency items, minimum pension liability adjustments and unrealized gains and losses on certain investments in debt and equity securities. There were no differences between the Company's comprehensive loss and its net loss for all periods presented.

(P) SEGMENT REPORTING

During 1998, the Company adopted the provisions of SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information." SFAS No. 131 establishes annual and interim reporting standards for operating segments of a company. SFAS No. 131 requires disclosures of selected segment-related financial information about products, major customers, and geographic areas. The Company is organized in a single operating segment for purposes of making operating decisions and assessing performance. The chief operating decision maker evaluates performance, makes operating decisions, and allocates resources based on financial data consistent with the presentation in the accompanying financial statements.

The Company's revenues have been earned primarily from customers in the United States. In addition, all significant operations and assets are based in the United States. No customer accounted for or exceeded more than 10% of revenues for the years ended December 31, 1998 and 1999.

(R) RECENT ACCOUNTING PRONOUNCEMENTS

In April 1998, the AICPA issued SOP No. 98-5, "Reporting on the Costs of Start-Up Activities," which provides guidance on the financial reporting of start-up costs. SOP 98-5 requires costs of start-up activities and organization costs to be expensed as incurred. SOP 98-5 was adopted by the Company on January 1, 1999. As the Company had not capitalized such costs,

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)
the adoption of SOP 98-5 did not have an impact on the consolidated financial statements of the Company.

In April 1998, the American Institute of Certified Public Accountants issued Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use." SOP 98-1 provides guidance for determining whether computer software is internal-use software and on accounting for the proceeds of computer software originally developed or obtained for internal use and then subsequently sold to the public. It also provides guidance on capitalization of the costs incurred for computer software developed or obtained for internal use. The Company adopted SOP 98-1 in the first quarter of 1999, the effect of which did not have a material effect on the financial statements.

In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS No. 133 establishes accounting and reporting standards for derivative instruments, including derivative instruments embedded in other contracts, and for hedging activities. Subsequently, the FASB issued SFAS No. 137 which deferred the effective date of SFAS No. 133. SFAS No. 137 is effective for all fiscal quarters of fiscal years beginning after June 15, 2000. The Company has not yet analyzed the impact of this pronouncement on its financial statements.

(2) BALANCE SHEET COMPONENTS

Property and equipment is stated at cost and is summarized as follows:

	DECEMBER 31, 1999
Computer equipment and software	$2,367
Furniture and equipment	188
	2,555
Less accumulated depreciation	98
Total	$2,457

Accrued expenses consists of the following:

	DECEMBER 31,	
	1998	1999
Professional services and consulting fees	$ 55	$554
Sales commissions	--	68
Other	--	67
Total	$ 55	$689

(2) BALANCE SHEET COMPONENTS (CONTINUED)

Prepaid expenses and other current assets at December 31, 1999 principally included prepayments for various advertising and promotional activities.

(3) NOTE PAYABLE

On December 17, 1998, the Company received a $100 loan from a venture capital firm bearing interest at 8% due on February 1, 1999. Interest expense on the note payable amounted to less than $1 for the year ended December 31, 1998. The loan was converted into 83,333 shares of Series A convertible preferred stock as part of the issuance of Series A preferred stock in January 1999 (see note 4).

(4) CAPITALIZATION

The Company had 30,000,000 shares of common stock authorized and 9,000,000 shares of preferred stock authorized as of December 31, 1999. On January 27, 2000, the Company increased the number of its authorized shares of common stock to 35,000,000 and the number of its authorized shares of preferred stock to 12,274,852. On March 8, 2000, the Company increased the number of its authorized shares of common stock to 100,000,000.

In January 1999, the Company completed a private placement of 2,500,000 shares of Series A Convertible Preferred Stock ("Series A") with 468,749 common stock warrants at an offering price of $1.20 per Series A share and $0.001 per warrant, on a pre-split basis. Total proceeds amounted to $2,902. The warrants are exercisable at a price of $2.40 per common share and have a term of 5 years. None of these warrants have been exercised. As part of the Series A private placement, a $100 note payable was converted into 83,333 shares of Series A preferred stock.

In January 1999, the Company issued an additional 41,667 shares of Series A preferred stock to a financial advisor in exchange for services. The Company recorded compensation expense of $50 in connection with the issuance of the shares at $1.20 per share.

In May 1999, the Company completed a private placement of 1,142,857 shares of Series B Convertible Preferred Stock ("Series B") with 250,000 common stock warrants at an offering price of $1.40 per Series B share and $0.001 per warrant, on a pre-split basis. The warrants are exercisable at a price of $1.60 per common share and have a term of 5 years. None of these warrants have been exercised. Total proceeds, net of offering costs of $15, amounted to $1,586.

The managing underwriter of the Company's IPO can request the Company to accelerate the expiration of the Series A and Series B warrants to the day immediately preceding the date on which the Company's registration statement is declared effective by the SEC. The Company has been informed by the managing underwriter that it does not intend to do so.

In July 1999, the Company completed a private placement of 5,132,433 shares of Series C Redeemable Convertible preferred stock ("Series C") at $3.70 per share. Total proceeds, net of offering costs of $10, amounted to $18,980. Such stock is redeemable at $3.70 per share at the

(4) CAPITALIZATION (CONTINUED)
option of the holder. 33% of such shares are subject to mandatory redeemption beginning on July 19, 2004, an additional 17% on July 19, 2005 and the remaining 50% on July 19, 2006.

In January 2000, LivePerson issued an aggregate of 3,157,895 shares of Series D Redeemable Convertible preferred stock ("Series D") at $5.70 per share. Total proceeds, net of offering costs of $100, amounted to $17,900.

Each share of common stock and Series A, Series B, Series C and Series D preferred stock has one vote per share. In the event of any liquidation or winding up of the Company, holders of the Series A, Series B, Series C, and Series D preferred stock will be entitled, (ranking in preference among preferred stockholders in the reverse order of issuance), in preference to the holders of the common stock, to an amount equal to the applicable purchase price per share plus any accrued but unpaid dividends.

If the IPO is consummated, upon the closing, 2,541,667, 1,142,857, 5,132,433 and 3,157,895 shares of Series A, Series B, Series C and Series D convertible preferred stock, respectively, representing all of the outstanding shares of the convertible preferred stock, shall automatically convert at a two-for-three ratio into 17,962,273 shares of common stock.

(5) STOCK OPTIONS

During 1998, the Company established the Stock Option and Restricted Stock Purchase Plan (the "1998 Plan"). Under the 1998 Plan, the Board of Directors may issue incentive stock options or nonqualified stock options to purchase up to 5,850,000 common shares.

(ALL INFORMATION SUBSEQUENT TO DECEMBER 31, 1999 IS UNAUDITED)
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(5) STOCK OPTIONS (CONTINUED)

A summary of the Company's stock option activity and weighted average exercise prices is as follows:

	OPTIONS	WEIGHTED AVERAGE EXERCISE PRICE
Options outstanding at December 31, 1997	--	--
Options granted	197,100	$0.67
Options cancelled	--	--
Options outstanding at December 31, 1998	197,100	$0.67
Options granted	3,496,245	$1.37
Options cancelled	(81,000)	$0.94
Options outstanding at December 31, 1999	3,612,345	$1.33
Options exercisable at December 31, 1998	--	--
Options exercisable at December 31, 1999	479,960	$1.09

(5) STOCK OPTIONS (CONTINUED)

The Company applies APB No. 25 and related interpretations in accounting for its stock option grants to employees. Accordingly, except as mentioned below, no compensation expense has been recognized relating to these stock option grants. Had compensation cost for the Company's stock option grants been determined based on the fair value at the grant date for awards consistent with the method of SFAS No. 123, the Company's net loss for each year is presented below. The Company did not have any employee stock options outstanding prior to January 1, 1998.

	YEAR ENDED DECEMBER 31,	
	1998	1999
Net loss:		
As reported	$ (20)	$ (7,808)
Pro forma	$ (28)	$(10,290)
Basic and diluted net loss per share:		
As reported	$ 0.00	$ (1.10)
Pro forma	$(0.01)	$ (1.45)

The resulting effect on the pro forma net loss disclosed for the years ended December 31, 1998 and 1999 is not likely to be representative of the effects on the net loss on a pro forma basis in future years, because the pro forma results include the impact of only one period of grants and related vesting, while subsequent years will include additional grants and vesting.

The per share weighted average fair value of stock options granted during 1998 and 1999, was $0.26 and $1.40, respectively. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions used for grants in 1998 and 1999: dividend yield of zero percent for both years, risk-free interest rates of 5.4 and 6.0%, respectively and expected life of 5 years for both years. As permitted under the provisions of SFAS No. 123 and based on the historical lack of a public market for the Company's stock, no factor for volatility has been reflected in the option pricing calculation. No employee stock options were granted in 1997.

During December 1998, the Company granted options to purchase 93,750 shares of common stock at an exercise price of $0.67 per share, the then fair market value of the Company's common stock, to a consultant for services performed. These options are exercisable for a period of 5 years. The Company recorded an expense of $25 in connection with the issuance of the fully vested options using a Black-Scholes pricing model using a volatility factor of 40%.

During April 1999, the Company granted options to purchase an aggregate of 64,260 shares of common stock at an exercise price of $0.67 per share, to four consultants for services performed. These options are exercisable for a period of 10 years. The Company recorded an

(5) STOCK OPTIONS (CONTINUED)

expense of $29 in connection with the issuance of the fully vested options using a Black-Scholes pricing model using a volatility factor of 40% and a deemed fair value of $1.08 per share.

During May 1999, the Company issued an option to purchase 94,500 shares of common stock at an exercise price of $1.60 per share to a client in connection with an agreement by the Company to provide services to the client for a two-year period. This option originally provided that it would vest in or before May 2001 if the client met certain defined revenue targets and was exercisable for a period of 3 years from the date of grant. The Company accounted for this option in accordance with Emerging Issues Task Force Abstract No. 96-18, "Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." Pursuant to EITF-96-18, the Company valued the option at each balance sheet date using a Black-Scholes pricing model using a volatility factor of 40%, a $1.60 per share exercise price and the then fair value of the Company's common stock as of each balance sheet date. The $235 value ascribed to the option reflects the market value at December 31, 1999 and has been recorded as deferred cost. This cost is being ratably amortized over the two-year contract period, as the Company believes that the achievement of the revenue targets is probable. The value ascribed to this option was adjusted at each balance sheet date to bring the total charge recognized and amortized up to the then current fair value. The Company has amortized $36 of the deferred costs as of December 31, 1999. In February 2000, the Company amended the option agreement with the client whereby the option became fully vested and immediately exercisable. However, the client is precluded from selling the underlying common stock until the earlier of five years or, if certain revenue targets are met, by May 19, 2001. The value of the option at the time the agreement was amended was $1.1 million which will be ratably amortized over the remaining service period of approximately 18 months.

During June 1999, the Company granted options to purchase 150,000 shares of common stock to an advisor at an exercise price of $0.67 per share. These options are exercisable for a period of 10 years. The Company has recorded compensation expense of $83 using the Black-Scholes pricing model with a volatility factor of 40% and a deemed fair value of $0.84 per share.

In December 1999, the Company recorded compensation expense of approximately $362 in connection with the options granted to an advisor to purchase 150,000 shares of common stock at an exercise price of $2.00 for services performed. These options are exercisable for a period of 10 years. The fair value of the options was determined using a Black-Scholes pricing model with a volatility factor of 40% and a deemed fair value of $3.33 per share.

During 1999, the Company granted stock options to purchase 3,496,245 shares of common stock to employees at a weighted average exercise price of $1.37, certain of which were granted at less than the deemed fair value of the common stock at the date of grant. For the year ended December 31, 1999, the Company recorded deferred compensation of approximately $576 in connection with these options. This amount is presented as deferred compensation within the financial statements and will be amortized over the vesting period, typically three to four years, of the applicable options. The Company amortized $174 of deferred compensation for the year

(5) STOCK OPTIONS (CONTINUED)

ended December 1999. The Company expects to amortize the following amounts of deferred compensation relating to options granted in 1999 as follows: 2000-$252; 2001-$98; 2002-$45; and 2003-$7.

The following table summarizes information about stock options outstanding and exercisable at December 31, 1998:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE
$0.67	197,100	7.43	$0.67	--	--

The following table summarizes information about stock options outstanding and exercisable at December 31, 1999:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE
$0.67	1,241,010	8.95	$0.67	329,960	$0.67
$0.80	588,960	4.24	$0.80	--	--
$1.60	94,500	2.38	$1.60	--	--
$2.00	1,687,875	9.79	$2.00	150,000	2.00
	3,612,345		$1.33	479,960	$1.09

(6) COMMITMENTS AND CONTINGENCIES

LEASES

The Company leases facilities and certain equipment under agreements accounted for as operating leases. These leases generally require the Company to pay all executory costs such as maintenance and insurance. Rental expense for operating leases for the years ending December 31, 1997, 1998 and 1999 were approximately $14, $26 and $311, respectively. One of the leases is with a related party and payments thereunder aggregated approximately $50 in 1999.

(6) COMMITMENTS AND CONTINGENCIES (CONTINUED)

Future minimum lease payments under operating leases (with initial or remaining lease terms in excess of one year) are as follows:

YEAR ENDING DECEMBER 31,	OPERATING LEASES
2000	$1,084
2001	1,014
2002	1,034
2003	1,054
2004	1,094
Thereafter	1,972
Total minimum lease payments	$7,252

In the first quarter of 2000, the Company entered into two additional leases for office space. The lease for the Company's San Francisco office space, entered into in February 2000, provides for annual aggregate payments of $275,000. The security deposit for this lease is approximately $300. In February 2000, the Company entered into a sublease for approximately 8,000 square feet in New York City expiring in September 2000, providing for annual aggregate payments of $238,000. In March 2000, the Company entered into a lease for an aggregate of approximately 83,500 square feet on two floors at a location in New York City. The lease with respect to one floor, consisting of approximately 40,500 square feet, commences in June 2000, at a rent of approximately $1.4 million per year in the first three years, $1.5 million per year in years four through seven and $1.6 million per year in years eight through ten. The related security deposit is $2.0 million for the first three years, $1.3 million for years four through seven and $670,000 for years eight through ten. The other floor consists of approximately 43,000 square feet, and the lease term relating to that floor commences in August 2001, at a rent of approximately $1.5 million per year in the first three years, $1.6 million per year in years four through seven and $1.7 million per year in years eight through ten. The related security deposit is $2.2 million for the first three years, $1.5 million for years four through seven and $747,000 for years eight through ten. At our option, we may provide the security deposit by a letter of credit.

EMPLOYMENT AGREEMENTS

The Company has employment agreements with 5 senior employees which provide for severance benefits among other items. In the event these agreements are terminated, the Company may be liable for severance payments of up to $703 of salary payable during the year following termination.

(7) INCOME TAXES

The Company has adopted the cash method of accounting for income tax purposes. There is no provision for federal, state or local income taxes for any periods presented, since the Company

(7) INCOME TAXES (CONTINUED)

has incurred losses since inception. At December 31, 1999, the Company had approximately $5.6 million of federal net operating loss carryforwards available to offset future taxable income. Such carryforwards expire in various years through 2019. The Company has recorded a full valuation allowance against its deferred tax assets since management believes that, after considering all the available objective evidence, it is not more likely than not that these assets will be realized. The tax effect of temporary differences that give rise to significant portions of federal deferred tax assets principally consists of the Company's net operating loss carryforwards.

Under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), the utilization of net operating loss carryforwards may be limited under the change in stock ownership rules of the Code. The Company has not yet determined whether the IPO will result in an ownership change.

The effects of temporary differences and tax loss carryforwards that give rise to significant portions of federal deferred tax assets and deferred tax liabilities at December 31, 1998 and 1999 are presented below.

	1998	1999
Deferred tax assets:		
Net operating loss carry forwards	$ --	$2,177
Differences due to cash method vs. accrual method of Accounting	25	674
Non-cash compensation	--	290
Gross deferred tax assets	25	3,141
Less: valuation allowance	(20)	(3,132)
Net deferred tax assets	5	9
Deferred tax liabilities:		
Plant and equipment, principally due to differences in depreciation	(5)	(9)
Other	--	--
Gross deferred tax liabilities	(5)	(9)
	$ --	$ --

(8) VALUATION AND QUALIFYING ACCOUNTS

	BALANCE AT BEGINNING OF PERIOD	ADDITIONS CHARGED TO COSTS AND EXPENSES	DEDUCTIONS/ WRITE-OFFS	BALANCE AT END OF PERIOD
For the year ended December 31, 1997:				
Allowance for doubtful accounts...............	$ --	$ --	$ --	$ --
For the year ended December 31, 1998:				
Allowance for doubtful accounts...............	$ --	$ 15	$ --	$ 15
For the year ended December 31, 1999:				
Allowance for doubtful accounts...............	$ 15	$ 85	$(15)	$ 85

(9) SUBSEQUENT EVENTS--UNAUDITED

Upon the closing of this offering, the Company intends to authorize the issuance of 5,000,000 shares of preferred stock.

The Company intends to establish a successor to the 1998 Plan, the 2000 Stock Incentive Plan (the "2000 Plan"). Under the 2000 Plan, the options which had been outstanding under the 1998 Plan will be incorporated into the 2000 Plan and the Company will increase the number of options available under the plan by approximately 4,150,000 options effectively authorizing 10,000,000 options in the aggregate. These options will have 10 year terms.

The Company intends to adopt the 2000 Employee Stock Purchase Plan with 450,000 shares of common stock initially reserved for issuance.

For the period from January 1, 2000 through March 8, 2000, the Company granted stock options to purchase 2,105,250 shares of common stock, respectively, to employees at a weighted average exercise price of $3.81. The deemed fair value of the Company's common stock ranged from $3.33 to $13.00 per share during such period. For the period from January 1, 2000 through March 8, 2000, the Company recorded deferred compensation of approximately $13,134, in connection with the grant of certain options to employees, representing the difference between the deemed fair value of its common stock as of the date of grant for accounting purposes and the exercise price of the related options. This amount will be presented as deferred compensation in the financial statements and will be amortized over the vesting period, typically three to four years, of the applicable options. The Company expects to amortize the following amounts of deferred compensation relating to options granted from January 1, 2000 through March 8, 2000 as follows: 2000-$8,747; 2001-$2,604; 2002-$1,329; and 2003-$454. During the period from January 1, 2000 through March 8, 2000, 93,750 stock options were exercised at an exercise price of $0.67 per share and 375 options were cancelled at an exercise price of $0.67 per share.

(9) SUBSEQUENT EVENTS--UNAUDITED (CONTINUED)

During the period from January 1, 2000 through March 8, 2000, 175,781 warrants to purchase common stock at an exercise price of $1.60 per share were exercised.

INSIDE BACK COVER

- -Centered on the upper third of the page is the following bold, large size text: "These are some of the sites experiencing the impact of [LivePerson logo]"

- -The bottom half of the page contains the following client logos:

[ShopNow.com logo] [Miadora logo] [LookSmart logo]
[Intuit logo] [EarthLink logo] [ditech.com logo]
[nbd.com logo] [Playboy.com logo] [iQVC logo] [ScreamingMedia logo]

4,000,000 SHARES

[LOGO]

COMMON STOCK

PROSPECTUS

CHASE H&Q
THOMAS WEISEL PARTNERS LLC
PAINEWEBBER INCORPORATED

, 2000

YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED IN THIS PROSPECTUS. WE HAVE NOT AUTHORIZED ANYONE TO PROVIDE YOU WITH INFORMATION DIFFERENT FROM THAT CONTAINED IN THIS PROSPECTUS. WE ARE OFFERING TO SELL, AND SEEKING OFFERS TO BUY, SHARES OF COMMON STOCK ONLY IN JURISDICTIONS WHERE OFFERS AND SALES ARE PERMITTED. THE INFORMATION CONTAINED IN THIS PROSPECTUS IS ACCURATE ONLY AS OF THE DATE OF THIS PROSPECTUS, REGARDLESS OF THE TIME OF DELIVERY OF THIS PROSPECTUS OR OF ANY SALE OF OUR COMMON STOCK.

NO ACTION IS BEING TAKEN IN ANY JURISDICTION OUTSIDE THE UNITED STATES TO PERMIT A PUBLIC OFFERING OF THE COMMON STOCK OR POSSESSION OR DISTRIBUTION OF THIS PROSPECTUS IN THAT JURISDICTION. PERSONS WHO COME INTO POSSESSION OF THIS PROSPECTUS IN JURISDICTIONS OUTSIDE THE UNTIED STATES ARE REQUIRED TO INFORM THEMSELVES ABOUT AND TO OBSERVE ANY RESTRICTIONS AS TO THIS OFFERING AND THE DISTRIBUTION OF THIS PROSPECTUS APPLICABLE TO THAT JURISDICTION.

UNTIL   , 2000 (25 DAYS AFTER THE DATE OF THIS PROSPECTUS), ALL DEALERS THAT EFFECT TRANSACTIONS IN THESE SECURITIES, WHETHER OR NOT PARTICIPATING IN THIS OFFERING, MAY BE REQUIRED TO DELIVER A PROSPECTUS. THIS IS IN ADDITION TO THE DEALERS' OBLIGATION TO DELIVER A PROSPECTUS WHEN ACTING AS UNDERWRITERS AND WITH RESPECT TO THEIR UNSOLD ALLOTMENTS OR SUBSCRIPTIONS.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the estimated costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of the common stock being registered.

	AMOUNT TO BE PAID
SEC registration fee	$ 18,216
NASD filing fee	7,400
Nasdaq National Market listing fee	95,000
Legal fees and expenses	400,000
Accounting fees and expenses	200,000
Printing and engraving expenses	200,000
Blue Sky fees and expenses	5,000
Transfer agent and registrar fees and expenses	5,000
Miscellaneous	69,384
Total	$1,000,000

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The registrant's amended and restated certificate of incorporation in effect as of the date hereof, and the registrant's amended and restated certificate of incorporation to be in effect upon the closing of this offering (the "Certificate") provide that, except to the extent prohibited by the Delaware General Corporation Law, as amended (the "DGCL"), the registrant's directors shall not be personally liable to the registrant or its stockholders for monetary damages for any breach of fiduciary duty as directors of the registrant. Under the DGCL, the directors have a fiduciary duty to the registrant which is not eliminated by this provision of the Certificate and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available. In addition, each director will continue to be subject to liability under the DGCL for any breach of the director's duty of loyalty to the registrant or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are prohibited by the DGCL. This provision also does not affect the directors' responsibilities under any other laws, such as the Federal securities laws or state or Federal environmental laws. The registrant has obtained liability insurance for its officers and directors.

Section 145 of the DGCL empowers a corporation to indemnify its directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers, provided that this provision shall not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) arising under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. The DGCL provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's bylaws, any agreement, a vote of stockholders or otherwise. The Certificate eliminates the personal liability of directors to the fullest extent permitted by Section 102(b)(7) of the DGCL and provides that the registrant shall,

to the fullest extent permitted by the DGCL, fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was, or has agreed to become, a director or officer of the registrant, or is or was serving at the request of the registrant as a director, officer or trustee of or, in a similar capacity with, another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such person in connection with such action, suit or proceeding and any appeal therefrom.

We have also entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in the Certificate. We believe that these agreements are necessary to attract and retain qualified directors and executive officers.

At present, there is no pending litigation or proceeding involving any director, officer, employee or agent as to which indemnification will be required or permitted under the Certificate or the aforementioned indemnification agreements. The registrant is not aware of any threatened litigation or proceeding that may result in a claim for such indemnification.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

All information in this section relating to common stock, warrants and options reflects a three-for-two stock split of shares of the registrant's common stock effected on March 8, 2000. All information in this section relating to shares of convertible preferred stock reflects the actual shares issued, which will convert at a two-for-three ratio into shares of common stock upon the closing of this offering.

In the preceding three years, the registrant has issued the following securities that were not registered under the Securities Act of 1933, as amended (the "Act"):

COMMON STOCK. In January 1999, in order to effect a 10-for-1 stock split, the registrant issued an aggregate of 6,382,800 shares of common stock, par value $0.001 per share ("Common Stock") to Robert P. LoCascio and Robert Olender, then the holders of Common Stock. On January 28, 2000, the registrant issued 93,750 shares of Common Stock to Silicon Alley Venture Partners, LLC pursuant to an option to purchase shares of Common Stock, at an aggregate price of $62,500. On February 29, 2000, the registrant issued 175,781 shares of Common Stock to Dawntrader Fund I LP pursuant to an exercise of a warrant to purchase shares of Common Stock, at an aggregate price of $281,250. All such issuances were made under the exemption from registration provided by Section 4(2) of the Act.

CONVERTIBLE PREFERRED STOCK. The registrant issued an aggregate of 17,962,273 shares of convertible preferred stock, par value $0.001 per share, consisting of (i) 2,500,000 shares of series A convertible preferred stock in January 1999 at a purchase price per share of $1.20 for gross proceeds of $3,000,000 to Dawntreader Fund I LP, FG-LP, Sterling Payot Capital, LP, and SAVP Sidecar I LLC; (ii) 41,667 shares of series A convertible preferred stock in January 1999 in exchange for consulting services provided to the Registrant by Silicon Alley Venture Partners, LLC in the amount of $50,000; (iii) 1,142,857 shares of series B convertible preferred stock in May 1999 at a purchase price per share of $1.40 for gross proceeds of $1,600,000 to Allen & Company Incorporated, Alan Braverman, and Sculley Brothers LLC; (iv) 5,132,433 shares of series C redeemable convertible preferred stock in July 1999 at a purchase price per share of $3.70 for gross proceeds of $18,990,000 to Highland Capital Partners IV Limited Partnership, Highland Entrepreneurs' Fund IV Limited Partnership, FG-LPC, Dawntreader Fund I LP, Allen & Company Incorporated, The Goldman Sachs Group, Inc., Stone Street Fund 1999, L.P.,

Sterling Payot Capital, LP, SAVP Sidecar I-B, LLC, Silicon Alley Ventures, L.P., Hambrecht & Quist California, Hambrecht & Quist Employee Venture Fund, L.P. II, Access Technology Partners Brokers Fund, L.P., Access Technology Partners, L.P., Henry R. Kravis, Esther Dyson, and Mark Lipschultz; and (v) 3,157,895 shares of series D redeemable convertible preferred stock in January 2000 at a purchase price per share of $5.70 for gross proceeds of $18,000,000 to Dell USA, L.P., Austin I, LLC, Van Eyck Partners, LLC, Striped Marlin Investments, LLC, MSD EC I, LLC, and NBC Interactive Media, Inc. A portion of the series A convertible preferred stock issued to FG-LP was issued in satisfaction of a promissory note made by the registrant in the amount of $100,000, plus interest. All such issuances were made under the exemption from registration provided under Section 4(2) of the Act.

WARRANTS. Since its inception, the registrant issued warrants exercisable for an aggregate of 718,749 shares of Common Stock consisting of (i) warrants issued in January 1999 exercisable for 468,749 shares of Common Stock, at a purchase price per warrant of $0.003, for gross proceeds of $1,562.50, to Dawntreader Fund I LP, FG-LP, Sterling Payot Capital, LP, and SAVP Sidecar I LLC, which are presently exercisable at an exercise price per share of $1.60 and which expire in January 2004; and (ii) warrants issued in May 1999 exercisable for 250,000 shares of Common Stock, at a purchase price per warrant of $0.003, for gross proceeds of $833, to Allen & Company Incorporated, Alan Braverman, and Sculley Brothers LLC, which are presently exercisable at an exercise price per share of $1.60 and which expire in May 2004. The expiration date of the warrants listed in (i) and (ii) may be accelerated in certain circumstances, if the managing underwriter of the registrant's initial public offering determines that the failure to accelerate the expiration or exercise of the warrants could adversely affect the offering; however, the registrant has been informed by Chase Securities Inc. that they do not intend to do so. All such issuances were made under the exemption from registration provided under Section 4(2) of the Act.

OPTIONS. Of the options granted by the registrant pursuant to the registrant's 2000 Stock Incentive Plan and 2000 Employee Stock Purchase Plan, successors to the registrant's 1998 Plan, options to purchase 81,000 shares of Common Stock were cancelled in 1999 and options to purchase a total of 5,528,970 shares of Common Stock at a weighted average exercise price of $2.28 per share remain outstanding at March 8, 2000. For a more detailed description of the registrant's option plans, see "Management--2000 Stock Incentive Plan" and "Management--2000 Employee Stock Purchase Plan." All such grants were made under the exemptions from registration provided under Rule 701 and Section 4(2) of the Act.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Exhibits.

NUMBER	DESCRIPTION
1.1*	Form of Underwriting Agreement
3.1**	Third Amended and Restated Certificate of Incorporation
3.2	Form of Amended and Restated Certificate of Incorporation to be in effect upon the closing of this offering
3.3**	Bylaws
3.4	Form of Amended and Restated Bylaws to be in effect upon the closing of this offering
3.5	Certificate of Amendment to Third Amended and Restated Certificate of Incorporation
4.1*	Specimen Common Stock certificate
4.2	Second Amended and Restated Registration Rights Agreement
4.3	See Exhibits 3.1, 3.2, 3.3, 3.4 and 3.5 for further provisions defining the rights of holders of common stock of the registrant
5.1	Opinion of Brobeck, Phleger & Harrison LLP
10.1**	Employment Agreement between LivePerson, Inc. and Robert P. LoCascio
10.2	Employment Agreement between LivePerson, Inc. and Dean Margolis
10.3**	Employment Agreement between LivePerson, Inc. and Timothy E. Bixby
10.4**	Employment Agreement between LivePerson, Inc. and Scott E. Cohen
10.5**	Employment Agreement between LivePerson, Inc. and James L. Reagan
10.6*	2000 Stock Incentive Plan
10.7*	2000 Employee Stock Purchase Plan
10.8	Agreement of Lease between Vornado 330 West 34th Street L.L.C. as Landlord and LivePerson, Inc. as Tenant
23.1	Consent of KPMG LLP
23.2	Consent of Brobeck, Phleger & Harrison LLP (included in Exhibit 5.1)
24.1**	Powers of Attorney (See Signature Page)
27.1	Financial Data Schedule

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* To be filed by amendment.

** Filed previously as an exhibit to the Registration Statement on Form S-1 filed on January 28, 2000.

ITEM 17. UNDERTAKINGS

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such

indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424 (b)(1) or (4), or 497(h) under the Act, shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial BONA FIDE offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in The City of New York, State of New York, on this 10th day of March, 2000.

LIVEPERSON, INC.

BY: /S/ ROBERT P. LOCASCIO

Robert P. LoCascio
PRESIDENT AND CHIEF EXECUTIVE OFFICER

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

SIGNATURE	TITLE(S)	DATE
/s/ ROBERT P. LOCASCIO Robert P. LoCascio	President, Chief Executive Officer and Chairman of the Board of Directors (principal executive officer)	March 10, 2000
/s/ TIMOTHY E. BIXBY Timothy E. Bixby	Executive Vice President, Chief Financial Officer, Secretary and Director (principal financial and accounting officer)	March 10, 2000
* Richard L. Fields	Director	March 10, 2000
* Wycliffe K. Grousbeck	Director	March 10, 2000
* Kevin C. Lavan	Director	March 10, 2000
* Edward G. Sim	Director	March 10, 2000

*By: /s/ TIMOTHY E. BIXBY

Timothy E. Bixby
ATTORNEY-IN-FACT

INDEX TO EXHIBITS

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* To be filed by amendment.

** Filed previously as an exhibit to the Registration Statement on Form S-1 filed on January 28, 2000.

Exhibit 3.2

FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

LIVEPERSON, INC.

(Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware)

LivePerson, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: The present name of the Corporation is "LivePerson, Inc." The name under which the Corporation was originally incorporated was "Sybarite Interactive, Inc." The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was November 29, 1995. A Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 21, 1999, changing the Corporation's name Live Person, Inc. Amended and Restated Certificates of Incorporation of the Corporation were filed with the Secretary of State of the State of Delaware on May 4, 1999, July 19, 1999 and January 27, 2000. An amendment to the Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 8, 2000, changing the Corporation's name to LivePerson, Inc. Pursuant to Sections 242 and 245 of the General Corporation Law, this Fourth Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Third Amended and Restated Certificate of Incorporation.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Third Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders of the issued and outstanding Common Stock, par value $.001 per share, and Preferred Stock, par value $.001 per share, voting as a single class and as separate classes, all in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law.

THIRD: That the resolution setting forth the proposed amendment and restatement is as follows:

> RESOLVED, that the Third Amended and Restated of Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of the Corporation is LivePerson, Inc.

ARTICLE II

REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle, State of Delaware 19801. The name of its registered agent at such address is Corporation Trust Company.

ARTICLE III

PURPOSE / TERM

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law. The Corporation is to have perpetual existence.

ARTICLE IV

CAPITAL STOCK

A. CLASSES OF STOCK. The total number of shares of stock which the Corporation shall have authority to issue is one hundred and five million (105,000,000), consisting of five million (5,000,000) shares of Preferred Stock, par value $.001 per share (the "Preferred Stock"), and one hundred million (100,000,000) shares of Common Stock, par value $.001 per share (the "Common Stock"). The consideration for the issuance of the shares shall be paid to or received by the Corporation in full before their issuance and shall not be less than the par value per share. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. COMMON STOCK.

(1) GENERAL. All shares of Common Stock will be identical and will entitle the holders thereof to the same rights, powers and privileges. The rights, powers and privileges of the holders of the Common Stock are subject to and qualified by the rights of holders of any then outstanding Preferred Stock.

(2) DIVIDENDS. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

(3) DISSOLUTION, LIQUIDATION OR WINDING UP. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, whether voluntary or involuntary, each issued and outstanding share of Common Stock shall entitle the holder thereof to receive an equal portion of the net assets of the Corporation available for distribution to the holders of Common Stock, subject to any preferential rights of any then outstanding Preferred Stock.

(4) VOTING RIGHTS. Except as otherwise required by law or this Fourth Amended and Restated Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held of record by such holder on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise required by law or provided herein, holders of Preferred Stock shall vote together with holders of Common Stock as a single class, subject to any special or preferential voting rights of any then outstanding Preferred Stock. There shall be no cumulative voting.

(5) REDEMPTION. The Common Stock is not redeemable.

C. PREFERRED STOCK. The Board of Directors is authorized, subject to limitations prescribed by law, by the rules of a national securities exchange or automated quotation system of a registered national securities association, if applicable, and by the provisions of this ARTICLE IV, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish, from time-to-time, the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following ("Preferred Designations"):

(1) The number of shares constituting that series and the distinctive designation of that series;

(2) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(3) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(4) Whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

(5) Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

(6) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

(7) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights or priority, if any, of payment of shares of that series; and

(8) Any other relative rights, preferences and limitations of that series.

Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payment on the Common Stock with respect to the same dividend period.

If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed ratably among the shares of all series of Preferred Stock in accordance with the respective preferential amounts (including unpaid cumulative dividends, if any) payable with respect thereto.

Except as may be provided by the Board of Directors in a Preferred Designation or as required by law, shares of any series of Preferred Stock that have been redeemed or purchased by the Corporation, or, if convertible or exchangeable, have been converted into or exchanged for shares of stock of any other class or classes shall have the status of authorized and unissued shares of Preferred Stock, and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preferred Stock.

D. PREEMPTIVE RIGHTS. No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series, or any unissued bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of any class or series or carrying any right to purchase stock of any class or series; but any such unissued stock, bonds, certificates or indebtedness, debentures or other securities convertible into or exchangeable for stock or carrying any right to purchase stock may be issued pursuant to resolution of the Board of Directors of the Corporation to such persons, firms, corporations or associations, whether or not holders thereof, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

ARTICLE V

DIRECTORS

A. NUMBER. The number of directors of the Corporation shall be such number, not less than three (3) nor more than fifteen (15) (exclusive of directors, if any, to be elected by holders of preferred stock of the Corporation, voting separately as a class), as shall be set forth from time to time in the Corporation's Amended and Restated Bylaws (the "Bylaws"); PROVIDED THAT no action shall be taken to decrease or increase the authorized number of directors unless at least 66.67% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose approve such decrease or increase. Vacancies in the Board of Directors of the Corporation, however caused, and newly created directorships shall be filled by a vote of a majority of the directors then in office, whether or not a quorum, and any director so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which the director has been chosen expires and when the director's successor is elected and qualified.

B. CLASSIFIED BOARD OF DIRECTORS. The Board of Directors shall be and is divided into three classes: Class I, Class II and Class III, each of which shall be as nearly equal in number as possible. Each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected; PROVIDED, HOWEVER, that each initial director in Class I shall hold office until the annual meeting of stockholders in 2001; each initial director in Class II shall hold office until the annual meeting of stockholders in 2002; and each initial director in Class III shall hold office until the annual meeting of stockholders in 2003. Notwithstanding the foregoing provisions of this ARTICLE V, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal.

Subject to the provisions of this ARTICLE V, should the number of directors not be equally divisible by three, the excess director or directors shall be assigned to Classes I or II as follows: (i) if there shall be an excess of one directorship over a number equally divisible by three, such extra directorship shall be classified in Class I; and (ii) if there shall be an excess of two directorships over a number divisible by three, one shall be classified in Class I and the other in Class II.

In the event of any increase or decrease in the authorized number of directors, (1) each director then serving as such shall nevertheless continue as a director of the class of which he is a member until the expiration of his current term, or his earlier resignation, removal from office or death, and (2) the newly created or eliminated directorship resulting from such increase or decrease shall be appointed by the Board of Directors among the three classes of directors so as to maintain such classes as nearly equal as possible.

C. REMOVAL OF DIRECTORS. Notwithstanding any other provisions of this Fourth Amended and Restated Certificate of Incorporation or the Bylaws, any director or the entire Board of Directors of the Corporation may be removed, at any time, but only for cause and by the affirmative vote of the holders of not less than 66.67% of the outstanding shares of capital

stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose. Notwithstanding the foregoing, whenever the holders of any one or more series of preferred stock of the Corporation shall have the right, voting separately as a class, to elect one or more directors of the Corporation, the preceding provisions of this ARTICLE V shall not apply with respect to the director or directors elected by such holders of preferred stock.

D. DIRECTORS ELECTED BY HOLDERS OF PREFERRED STOCK. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV, then upon commencement and for the duration of the period during which such right continues (1) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (2) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to death, disqualification, resignation or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such Preferred Stock, the terms of office of all such additional directors elected by the holders of such Preferred Stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total and authorized number of directors of the Corporation shall be reduced accordingly. Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV, the holders of any one or more series of Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Corporation's Amended and Restated Certificate of Incorporation (as then in effect) and the Certificate of Designation applicable thereto.

ARTICLE VI

STOCKHOLDER MEETINGS

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws. The stockholders of the Corporation may not take any action by written consent in lieu of a meeting.

ARTICLE VII

LIMITATION OF DIRECTORS' LIABILITY

Except to the extent that the General Corporation Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. If the General Corporation Law is amended after approval by the stockholders of this ARTICLE VII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

ARTICLE VIII

INDEMNIFICATION

The Corporation may, to the fullest extent permitted by Section 145 of the General Corporation Law, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by or in the right of the Corporation or otherwise, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the Corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the Indemnitee to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this ARTICLE VIII, which undertaking may be accepted without reference to the financial ability of such person to make such repayment.

The Corporation shall not indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the Corporation.

The indemnification rights provided in this ARTICLE VIII (i) shall not be deemed exclusive of any other rights to which Indemnitees may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to

the benefit of the heirs, executors and administrators of such persons. The Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this ARTICLE VIII.

Any repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission occurring prior to the time of such repeal or modification.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the General Corporation Law.

In the event the General Corporation Law is amended after the date hereof to authorize corporate action further limiting or eliminating the personal liability of directors or officers, then the personal liability of a director or officer of the Corporation shall be further limited or eliminated to the fullest extent permitted by the General Corporation Law, as so amended.

ARTICLE IX

AMENDMENT OF BYLAWS

In furtherance of and not in limitation of powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, repeal, alter, amend and rescind the Bylaws by the affirmative vote of at least 66.67% of the Board of Directors.

ARTICLE XI

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Fourth Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Fourth Amended and Restated Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in ARTICLES V, VI, VII, VIII, IX and this ARTICLE X may not be repealed, altered, amended or rescinded in any respect unless the same is approved by the affirmative vote of the holders of not less than 66.67% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as a single class) cast at a meeting of the stockholders called for that purpose (provided that notice of such proposed repeal, alteration, amendment or rescission is included in the notice of such meeting).

* * *

FOURTH: That said amendments were duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Fourth Amended and Restated Certificate of Incorporation has been signed by the Chief Executive Officer and the Secretary of the Corporation this __ day of March, 2000.

/s/ ROBERT P. LOCASCIO

Robert P. LoCascio, Chief Executive Officer

/s/ TIMOTHY E. BIXBY

Timothy E. Bixby, Secretary

Exhibit 3.4

AMENDED AND RESTATED BY-LAWS OF LIVEPERSON, INC.

ARTICLE I

CERTIFICATE OF INCORPORATION AND BYLAWS

Section 1. These Amended and Restated Bylaws (the "Bylaws") are subject to the Fourth Amended and Restated Certificate of Incorporation (as it may be amended and/or restated from time to time, the "Certificate of Incorporation") of LivePerson, Inc., a Delaware corporation (the "Corporation"). In these Bylaws, references to law, statutes, the Certificate of Incorporation and Bylaws mean the law, applicable statutes, the Certificate of Incorporation and these Bylaws, each as from time to time in effect.

ARTICLE II

OFFICES

Section 1. The registered office of the Corporation in the State of Delaware shall be at 1013 Centre Road, in the city of Wilmington, County of New Castle, State of Delaware. The registered agent at such address shall be Corporation Service Company.

Section 2. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine or the business of the Corporation may require.

ARTICLE III

MEETINGS OF STOCKHOLDERS

Section 1. All meetings of the stockholders for the election of directors shall be held at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect, by a plurality vote, the directors to be elected at such meeting, and transact such other business as may properly be brought before the meeting.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4. The officer who has charge of the stock ledger of the Corporation shall prepare and make (or cause to be prepared or made), at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may only be called by the Chairman of the Board or the President and shall be called by the Chairman of the Board, the President or Secretary, at the request in writing of two-thirds of the Board of Directors.

Section 6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 7. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 8. The holders of fifty percent (50%) of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall, at every meeting of the stockholders, be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

Section 11. Unless otherwise provided in the Certificate of Incorporation, the Chairman of the Board may adjourn a meeting of stockholders from time to time, without notice other than announcement at the meeting. No notice of the time and place of an adjourned meeting need be given except as required by law.

Section 12.

A. ANNUAL MEETINGS OF STOCKHOLDERS

1. Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 12, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 12.

2. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph A.1. of this Section 12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the date of the preceding year's annual meeting; PROVIDED, HOWEVER, that if either the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in

such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (y) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (z) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

3. Notwithstanding anything in the second sentence of paragraph A.2. of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting (or, if the annual meeting is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least seventy (70) days prior to such annual meeting), a stockholder's notice required by this Section 12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

B. SPECIAL MEETINGS OF STOCKHOLDERS. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time notice provided for in this Section 12 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election, who complies with the notice procedures set forth in this Section 12. If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph A.2. of this Section 12 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120) day prior to such special meeting and not later than the later of (y) the close of business of the ninetieth (90th) day prior to such special meeting or (z) the close of business of the tenth (10th) day following the day on which public announcement is first made of the date of

such special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

C. GENERAL.

1. Only such persons who are nominated in accordance with the procedures set forth in this Section 12 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 12. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairman of the Board shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 12 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (c)(iv) of paragraph A.2. of this Section 12) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 12, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

2. For purposes of this Section 12, the term "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 and 15(d) of the Exchange Act.

3. Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 12 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Notwithstanding any other provision of law, the Certificate of Incorporation or these Bylaws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least 66.67% of the votes which all the stockholders would be entitled to cast at any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Section 12.

ARTICLE IV

DIRECTORS

GENERAL

Section 1. The number of directors which shall constitute the whole Board shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting of the stockholders, except as provided in Section 2 of this Article. The Board shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. The Board of Directors shall be classified in accordance with the provisions of the Corporation's Certificate of Incorporation. Directors need not be stockholders.

Section 2. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by the affirmative vote of not less than 66.67% of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election at which such director's class is to be elected and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Delaware Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. The business of the Corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD OF DIRECTORS

Section 4. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors. Members of the Board of Directors may participate in regular or special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person.

Section 6. Special meetings of the Board may be called by the Corporation's Chairman of the Board, Chief Executive Officer or President on not less than two (2) days' notice to each director by mail or not less than twenty four (24) hours' notice to each director, either personally or by facsimile; special meetings shall be called by the Corporation's Chairman of the Board, Chief Executive Officer, President or Secretary in like manner and on like notice on the written request of two directors, unless the Board consists of only one director, in which case special meetings shall be called by the Corporation's Chairman of the Board, Chief Executive Officer, President or Secretary in like manner and on like notice on the written request of the sole director.

Section 7. At all meetings of the Board a majority of the directors fixed by Section 1 of this Article shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 8. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board, or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 9. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

COMMITTEES OF DIRECTORS

Section 10. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in

the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending these Bylaws; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors and may, but is not required to, adopt a written charter setting forth the matters to be determined by such committee, the scope of the responsibilities of such committee, and the means by which such committee carries out such responsibilities.

Section 11. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

COMPENSATION OF DIRECTORS

Section 12. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

REMOVAL OF DIRECTORS

Section 13. Any director or the entire Board of Directors may be removed only in accordance with the provisions of the Certificate of Incorporation.

ARTICLE V

NOTICES

Section 1. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at the address appearing on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telecopy.

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VI

OFFICERS

Section 1. The officers of the Corporation shall be chosen by the Board of Directors and shall consist of a Chief Executive Officer, Chief Financial Officer, President, Treasurer and a Secretary. The Board of Directors may elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board of Directors may also choose one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a Chief Executive Officer, a President, a Treasurer, and a Secretary and may choose Vice-Presidents.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors or a committee thereof.

Section 5. The officers of the Corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

THE CHAIRMAN OF THE BOARD

Section 6. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which such individual shall be present. Such individual shall have and may exercise such powers as are, from time to time, assigned to him by the Board of Directors and as may be provided by law.

Section 7. In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which such individual shall be present. Such individual shall have and may exercise such powers as are, from time to time, assigned to him by the Board of Directors and as may be provided by law.

CHIEF EXECUTIVE OFFICER

Section 8. The Chief Executive Officer shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect.

Section 9. The Chief Executive Officer shall have the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to another officer or agent of the Corporation.

THE PRESIDENT

Section 10.

The President shall conduct general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the Board of Directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the Corporation. The President shall have the general power and duties of supervision and management usually vested in the office of President of a corporation. In the absence of the Chairman and Vice Chairman of the Board of Directors, the President shall preside at all meetings of the stockholders and the Board of Directors.

The President shall have the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to another officer or agent of the Corporation.

THE VICE-PRESIDENTS

Section 11. In the absence of the President or in the event of his inability or refusal to act, the Vice-President, if any, (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated by the Board of Directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE SECRETARY AND ASSISTANT SECRETARY

Section 12. The secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. Such individual shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors,

and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision such individual shall be. Such individual shall have custody of the corporate seal of the Corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

Section 13. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE TREASURER AND ASSISTANT TREASURERS

Section 14. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

Section 15. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as treasurer and of the financial condition of the Corporation.

Section 16. If required by the Board of Directors, such individual shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 17. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE VII

CERTIFICATE OF STOCK

Section 1. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman or Vice-Chairman of the Board of Directors, or the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions or such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock; PROVIDED THAT, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such individual were such officer, transfer agent or registrar at the date of issue.

LOST CERTIFICATES

Section 3. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

TRANSFER OF STOCK

Section 4. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

FIXING RECORD DATE

Section 5. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; PROVIDED, HOWEVER, that the Board of Directors may fix a new record date for the adjourned meeting.

REGISTERED STOCKHOLDERS

Section 6. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

GENERAL PROVISIONS

DIVIDENDS

Section 1. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purposes as the Board of Directors shall think conducive to the

interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

CHECKS

Section 3. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

FISCAL YEAR

Section 4. The fiscal year of the Corporation shall end on December 31, unless otherwise fixed by resolution of the Board of Directors.

SEAL

Section 5. The Board of Directors may adopt a corporate seal having inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

TRANSACTIONS WITH INTERESTED PARTIES

Section 6. No contract or transaction between the Corporation and one or more of the directors or officers, or between the Corporation and any other corporation, partnership, or other entity in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

A. The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

B. The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

C. The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee of the Board of Directors or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IX

AMENDMENTS

These Bylaws may be repealed, altered, amended or rescinded by the stockholders of the Corporation by vote of not less than 66.67% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose (provided that notice of such proposed repeal, alteration, amendment or rescission is included in the notice of such meeting). In addition, in accordance with the Certificate of Incorporation, the Board of Directors may repeal, alter, amend or rescind these Bylaws by the affirmative vote of at least 66.67% of the Board of Directors.

Exhibit 3.5

CERTIFICATE OF AMENDMENT
TO THE
THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
LIVE PERSON, INC.

(Pursuant to Sections 228 and 242 of the
General Corporation Law of the State of Delaware)

Live Person, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is Live Person, Inc. The Corporation was originally incorporated in Delaware under the name Sybarite Interactive Inc., and the date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 29, 1995.

SECOND: That this Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation was duly adopted, in accordance with Sections 228 and 242 of the DGCL.

THIRD: That Article FIRST of the Third Amended and Restated Certificate of Incorporation, stating the name of the Corporation, is hereby amended to read as herein set forth in full:

"FIRST. The name of the Corporation is LivePerson, Inc."

FOURTH: That the first paragraph of Article FOURTH of the Third Amended and Restated Certificate of Incorporation, stating the total number of shares of capital stock which the Corporation is authorized to issue, is hereby deleted and the following text replaced in lieu thereof:

"The aggregate number of shares of capital stock which the Corporation shall have authority to issue is 112,274,852 shares, which shall be comprised of 100,000,000 shares of Common Stock, par value $.001 per share (the "Common Stock"), and 12,274,852 shares of Preferred Stock, par value $.001 per share (the "Preferred Stock"), of which (i) 2,541,667 shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock"), (ii) 1,142,857 shares are designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock"), (iii) 5,132,433 shares are designated as Series C Convertible Preferred Stock (the "Series C Preferred Stock"), (iv) 3,157,895 shares are designated as Series D Convertible Preferred Stock (the "Series D Preferred Stock" and together with the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, the "Series Preferred Stock"), and (v) 300,000 shares shall be undesignated."

FIFTH: That the foregoing amendments have been duly adopted in accordance with the provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, this Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of Live Person, Inc. has been signed by a duly authorized officer of the Corporation on this 8th day of March, 2000.

Name: Robert P. LoCascio

Title: President and Chief Executive Officer

EXHIBIT 4.2

SECOND AMENDED AND RESTATED

REGISTRATION RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT is being entered into and is effective as of this 27th day of January, 2000, by and among LIVE PERSON, INC., Delaware corporation (the "Company"), the several persons and entities named on the signature pages hereto as INVESTORS (the "Investors") and ROBERT LOCASCIO (the "Founder").

WHEREAS, the Founder is the holder of 4,557,142 shares of Common Stock, $0.001 par value ("Common Stock"), of the Company; and

WHEREAS, certain of the Investors (the "Series A Investors") are the holders of an aggregate of 2,541,667 shares (the "Series A Shares") of Series A Convertible Preferred Stock, $0.001 par value ("Series A Preferred Stock"), of the Company, and warrants to purchase up to 312,500 shares of Common Stock (the "January 1999 Warrant Shares"); and

WHEREAS, certain of the Investors (the "Series B Investors") are the holders of an aggregate of 1,142,857 shares (the "Series B Shares") of Series B Convertible Preferred Stock, $0.001 par value (the "Series B Preferred Stock"), of the Company, and warrants to purchase up to 166,667 shares of Common Stock (the "May 1999 Warrant Shares" and, together with the January 1999 Warrant Shares, the "Warrant Shares"); and

WHEREAS, certain of the Investors (the "Series C Investors" and, together with the Series A Investors and the Series B Investors, the "Existing Investors"), are the holders of an aggregate of an aggregate of 5,132,433 shares (the "Series C Shares") of Series C Convertible Preferred Stock, $0.001 par value (the "Series C Preferred Stock"), of the Company; and

WHEREAS, the Existing Investors and the Founder were granted certain registration rights under an Amended and Restated Registration Rights Agreement dated as of July 19, 1999, (the "Existing Agreement"); and

WHEREAS, pursuant to a Series D Convertible Preferred Stock Purchase Agreement dated as of the date hereof (the "Series D Purchase Agreement"), among the Company and the persons named therein as Purchasers (the "New Investors" and, together with the Existing Investors, the "Investors"), the Company will issue and sell up to an aggregate of 3,157,895 shares (the "Series D Shares" and, collectively with the Series A Shares, the Series B Shares and the Series C Shares, the "Preferred Shares") of Series D Convertible Preferred Stock, $0.001 par value (the "Series D Preferred Stock" and, collectively with Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, the "Preferred Stock"), of the Company; and

WHEREAS, in order to induce the New Investors to consummate the transactions contemplated by the Purchase Agreement, and in order to merge and consolidate herein the provisions of the Existing Agreement, the parties hereto desire to amend and restate the Existing Agreement in its entirety and to provide for such additional terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual premises and of the covenants and obligations hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree that the Existing Agreement is hereby amended and restated in its entirety to read as follows:

1. CERTAIN DEFINITIONS. For the purposes of this Agreement, the following terms shall have the following meanings:

"EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended, or any similar federal statute then in effect, and a reference to a particular section thereof shall be deemed to include a reference to the comparable section, if any, of any such similar federal statute.

"FOUNDER'S STOCK" shall mean all shares of Common Stock which are held on the date hereof or may be issued in the future to the Founder.

"HOLDER" shall mean the Founder, the Investors and any permitted transferees thereof to whom Registrable Securities are transferred so long as such person holds such Registrable Securities.

"INVESTORS' STOCK" shall mean the Preferred Shares, the shares of Common Stock held by the Investors or issued upon conversion of the Preferred Shares, the Warrant Shares and any other shares of Common Stock or other capital stock issued to or acquired by the Investors, including, without limitation, as a result of stock splits, stock dividends, reclassifications, recapitalizations, or similar events relating to any such shares.

"PREFERRED SHARES" shall have the meaning ascribed to such term in the Recitals to this Agreement.

"QUALIFIED PUBLIC OFFERING" shall mean an initial public offering of the Company's Common Stock underwritten on a firm commitment basis by a "nationally recognized" (as determined below) underwriter pursuant to an effective registration statement under the Securities Act of 1933, as amended, (i) which raises gross proceeds to the Company of at least $20,000,000 and (ii) in which such Common Stock is sold at a price per share (prior to underwriters' commissions and expenses) of at least $11.10 (as adjusted for stock splits, stock dividends, combinations and the like). For purposes of this Agreement, in order to determine if an underwriter is "nationally recognized," the adequacy of such underwriter's national presence shall be determined by the Company's Board of Directors.

"REGISTRABLE SECURITIES" shall mean (i) the Founder's Stock and (ii) the Investors' Stock, provided, however, that the only class of securities that the Company shall be required to register shall be Common Stock. As to any particular Registrable Securities, once issued, such securities shall cease to be Registrable Securities when (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act in accordance with the terms hereof, regardless of whether such securities are actually sold pursuant to such registration statement (provided that such registration

statement remains effective for at least 180 days (which 180-day period shall be extended on a day-per-day basis to the extent of any suspension in the Holder's ability to sell pursuant to clause (iv) of Section 6), (ii) such securities can be sold in the public market pursuant to Rule 144 of the Securities Act, without regard to volume or manner-of-sale limitations, (iii) they shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent disposition of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force (and the Holder thereof shall have received an opinion of independent counsel for the Holder reasonably satisfactory to the Company to the foregoing effects), or (iv) they shall have ceased to be outstanding.

"REGISTRATION EXPENSES" shall mean any and all expenses incident to performance of or compliance with this Agreement, including, without limitation, (i) all SEC and National Association of Securities Dealers, Inc. or relevant stock exchange registration, listing and filing fees, (ii) all fees and expenses of complying with securities or blue sky laws (including reasonable fees and disbursements of counsel for the Company, the underwriters or the Holders in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger, telephone and delivery expenses and transfer taxes, (iv) the fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits and/or cold comfort letters required by or incident to such performance and compliance, (v) the reasonable fees and disbursements of one law firm retained in connection with each such registration by the Holders of Registrable Securities being registered and selected by the Holders of a majority of the Registrable Securities being sold, and (vi) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding underwriting discounts and commissions of underwriters, agents or dealers relating to the distribution of the Registrable Securities, if any.

"SEC" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act or any similar federal statutes then in effect.

"SECURITIES ACT" shall mean the Securities Act of 1933, as amended, or any similar federal statute then in effect, and a reference to a particular section thereof shall be deemed to include a reference to the comparable section, if any, of any such similar federal statute.

"STOCKHOLDERS' AGREEMENT" shall mean the Third Amended and Restated Stockholders' Agreement dated as of January 27, 2000, by and among the Company and the persons named therein as Stockholders, as the same may be amended from time to time.

"THEN OUTSTANDING" shall be determined by the number of shares of Common Stock outstanding which are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities which are, Registrable Securities.

"WARRANT SHARES" shall have the meaning ascribed to such term in the Recitals to this Agreement.

2. DEMAND REGISTRATION.

(a) If the Company shall receive, at any time after the earlier of (x) January 27, 2003 and (y) that date that is 180 days following the effective date of the first registration statement on Form S-1 filed by the Company with the SEC registering the initial public offering of the Company's Common Stock (the "IPO"), a written request that the Company file a registration statement under the Securities Act from the Holders of not less than thirty-three and one-third percent (33-1/3%) of the Investors' Stock Then Outstanding, the Company shall use its best efforts to file, within ninety (90) days of receipt of such written request and subject to the limitations of Section 2(b), a registration statement and to have the registration statement declared effective by the SEC as soon as reasonably practicable after filing. Notwithstanding the foregoing, the Company shall, within fifteen (15) days of the receipt of such written request, give written notice of such request to the other Holders, which Holders may elect to have their Registrable Securities included in the offering. The Company shall not, pursuant to this Section 2(a), (i) be obligated to effect more than two (2) registrations for the Investors or (ii) prepare such registration statement unless the anticipated aggregate net cash proceeds resulting from such registration to the Initiating Holders (as defined below) are expected to exceed $1,000,000; provided, however, that a registration shall not be counted as a registration under this Section 2 (x) until such time as the registration statement has been declared effective by the SEC, and (y) such registration statement shall include at least thirty percent (30%) of the Registrable Securities other than Founder's Stock for which such registration has been requested, unless the Initiating Holders withdraw their request for such registration and elect not to pay the Registration Expenses therefor; provided further that if the Initiating Holders withdraw their request for registration during a deferral period under Section 2(c) hereof, the Company shall pay the Registration Expenses therefor, and such expenses shall not be debited against Registration Expense allotments for ensuing registrations hereunder, and such withdrawal request shall not be counted towards the number of demand registration permitted hereunder. The Initiating Holders shall select the underwriter, subject to the approval of the Company, which approval shall not be unreasonably withheld or delayed, for an offering made pursuant to this Section 2.

(b) Notwithstanding any other provision of this Section 2, if the contemplated distribution pursuant to this Section 2 shall be by means of an underwriting and if the underwriter advises the holders of Investors' Stock initiating the registration request hereunder ("INITIATING HOLDER(S)") that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holder(s) shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated, first, to the Holders of Registrable Securities other than the Founder's Stock, pro rata based on the number of shares of the Registrable Securities set forth in the requests made pursuant to Section 2(a) and then to the extent, if any, advised by the managing underwriter, among all Holders of Founder's Stock requesting registration hereunder, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each such other Holder.

(c) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2, a certificate signed by the President of the Company stating that in good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than 90 days after receipt of the request of the Initiating Holders. During any such deferral period, the Initiating Holders may withdraw their request, in which case the Initiating Holders will not have been deemed to have made a request for registration under this Section 2.

(d) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2:

(i) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration statement filed by the Company (other than a registration statement on Form S-4, Form S-8 or a "universal shelf registration" on Form S-3 or any successor form); provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective, and further provided that such right to defer such filing shall not be exercised by the Company more than once in any twelve month period; or

(ii) If the Initiating Holder(s) is able to dispose of all of its remaining shares of Registrable Securities during a three-month period under Rule 144 promulgated under the Securities Act.

3. FORM S-3 REGISTRATION.

(a) If at any time (1) the Company shall receive from any Holder or Holders of Investors' Stock a written request or requests that the Company effect a registration of all or any portion of the Investors' Stock on Form S-3 or any successor thereto, (2) the reasonably anticipated proceeds therefrom shall be at least $1,500,000 and (3) the Company is a registrant entitled to use Form S-3 or any successor thereto to register such shares, the Company will:

(i) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other holders of any shares of Registrable Securities; and

(ii) use its reasonable best efforts to effect, as soon as reasonably practicable, such registration (including, without limitation, the execution of an undertaking to file post effective amendments, appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other government requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities, of any Holder or Holders of Registrable Securities joining in such request as are specified in a written request given within thirty (30) days after receipt of such written notice from the Company.

(b) Notwithstanding any other provision of this Section 3, if the contemplated distribution pursuant to this Section 3 shall be by means of an underwriting and if the underwriter advises the holders of Investors' Stock initiating the registration request hereunder ("INITIATING HOLDER(S)") that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holder(s) shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated, first, to the Holders of Registrable Securities other than the Founder's Stock, pro rata based on the number of shares of the Registrable Securities set forth in the requests made pursuant to Section 3(a) and then to the extent, if any, advised by the managing underwriter, among all Holders of Founder's Stock requesting registration hereunder, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each such other Holder.

(c) The Company shall not, pursuant to Section 3(a), be obligated to (i) effect more than three (3) such registrations for the Investors, or (ii) effect more than one such registration per 180-day period; provided, however, that a registration shall not be counted as a registration under this Section 3 unless such registration statement shall include at least thirty percent (30%) of the Registrable Securities other than Founder's Stock for which such registration has been requested; and further provided, that if the Initiating Holders withdraw their request for registration during a deferral period under Section 3(c) hereof, the Company shall pay the Registration Expenses therefor, and such expenses shall not be debited against Registration Expense allotments for ensuing registrations hereunder, and such withdrawal request shall not be counted towards the number of S-3 registration permitted hereunder.

(d) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 3, a certificate signed by the President of the Company stating that in good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than 90 days after receipt of the request of the Initiating Holders. During any such deferral period, the Initiating Holders may withdraw their request, in which case the Initiating Holders will not have been deemed to have made a request for registration under this Section 3.

4. INCIDENTAL REGISTRATION. If at any time the Company proposes to register any of its equity securities under the Securities Act (other than (i) a "universal shelf" registration on Form S-3, or a registration on Form S-4 or Form S-8, or any similar or successor forms, (ii) a registration of securities in a Rule 145 transaction, (iii) with respect to an offering that is reasonably anticipated to be a Qualified Public Offering or (iv) with respect to an employee benefit plan), whether or not for sale for its own account, it will promptly give written notice to all Holders of Registrable Securities of its intention to do so at least 30 days prior to the filing date. If the registration for which the Company gives notice is a registered public offering involving an underwriting, the Company shall advise the Holders as part of the written notice. Upon the written request of any such Holder made within twenty (20) days after the receipt of any such notice (which request shall specify the Registrable Securities intended to be disposed of by such Holder and the intended method of disposition thereof), the Company will use its best efforts to effect the registration under the Securities Act of all Registrable Securities, which the

Company has been so requested to register by the Holders thereof, to the extent required to permit the disposition (in accordance with such intended methods thereof) of the Registrable Securities so to be registered ("INCIDENTAL REGISTRATION"); PROVIDED that if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register the securities giving rise to the Holder's Incidental Registration rights hereunder, the Company may, at its election, give written notice of such determination to each Holder of Registrable Securities and thereupon shall be relieved of its obligation to register any Registrable Securities in connection with such registration, provided that the foregoing shall not affect the obligations of the Company under Sections 2 or 3. The Company shall select the underwriter for an offering made pursuant to this Section 4. All Holders requesting registration in such offering shall be eligible to distribute their securities through such underwriting, subject to compliance with the provisions of Sections 2, 3 and 7 of this Agreement. If a registration pursuant to this Section 4 involves an underwritten offering and the managing underwriter advises the Company in that, in its opinion, marketing factors require a limitation on the number of shares to be underwritten, then (i) the securities of the Company held by holders other than the Holders shall be excluded from such registration and underwriting to the extent deemed advisable by the managing underwriter, and (ii) if a further limitation on the number of shares is required, then the number of shares of Registrable Securities that may be included in the underwriting shall be subject to reduction, first, among the holders of Founder's Stock pro rata based on the relative amount of Registrable Securities for which registration has been requested by such Holders, and second, among the remaining requesting Holders pro rata based on the relative amount of Registrable Securities for which registration has been requested by a Holder, provided, however, that in the case that such further limitation shall be imposed in connection with an underwritten offering other than a Qualified IPO, the number of shares of Registrable Securities other than Founder's Stock for which registration has been requested by the Holder(s) in such underwriting shall not be reduced to less than thirty percent (30%) of the aggregate number of shares to be included in such underwritten offering. Any Holder disapproving of the terms of any such underwriting may elect to withdraw from it by written notice to the Company and the underwriter.

5. EXPENSES. The Company has agreed that the Registration Expenses in each registration under Sections 2, 3 and 4 hereof shall be borne by the Company; PROVIDED that, subject to Section 2(a), in the event a registration requested by the Initiating Holders pursuant to Section 2(a) is withdrawn at the request of such Holders, and if the Initiating Holders elect not to have such registration counted as a registration under Section 2(a), the Initiating Holders shall pay the Registration Expenses of such registration pro rata in accordance with the number of Registrable Securities included in such registration.

6. REGISTRATION PROCEDURES. Whenever the Company effects or causes the registration of the Registrable Securities under the Securities Act as provided in this Agreement, the Company will use its reasonable best efforts to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof, and will:

(a) prepare (and afford counsel for the selling Holders of Registrable Securities reasonable opportunity to review and comment thereon) and file with the SEC a registration

statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective as soon as commercially reasonable;

(b) amend or supplement (and afford counsel for the selling Holders of Registrable Securities reasonable opportunity to review and comment thereon) such registration statement and the prospectus contained therein from time to time to the extent necessary to comply with the Securities Act (including the anti-fraud provisions thereof) and applicable state securities as may be necessary to keep such registration statement effective until the earlier of (x) the date on which securities registered pursuant to such registration statement have been disposed of and (y) the 180th day following the effectiveness of such registration statement (which 180-day period shall be extended on a day-per-day basis to the extent of any suspension in the Holder's ability to sell pursuant to clause (iv) of Section 6);

(c) furnish to the Holders (i) notices of declaration of effectiveness issued by the SEC with respect to such filed registration statements, (ii) notices of suspension or withdrawal by the Company of any registration statement pursuant to which Registrable Securities are to be registered, and (iii) such reasonable number of the copies of registration statements and the prospectus included therein or any amendments or supplements thereto, and other documents incident thereto as may be reasonably requested from time to time;

(d) use its best efforts to register or qualify (and keep effective such registration or qualification) such Registrable Securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions within the United States as may be reasonably required to permit the Holders to sell the Registrable Securities or as the Holders shall reasonably request, PROVIDED that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction where, but for the requirements of this subsection (d), it would not be obligated to be so qualified, to subject itself to taxation in any such jurisdiction, or to consent to general service of process in any such jurisdiction; and PROVIDED, FURTHER, that this subsection (d) shall not be construed to require the Company to register as a broker-dealer in any jurisdiction any third person to whom or through whom a Holder proposes to sell Registrable Securities;

(e) as expeditiously as possible, cause all such Registrable Securities to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(f) promptly provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(g) promptly make available for inspection by the Holders, any managing underwriter participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the Holders, all financial and other records, pertinent corporate documents and properties of the Company and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(h) as expeditiously as possible following the effectiveness of such registration statement, notify each seller of such Registrable Securities of any request by the Commission for the amending or supplementing of such registration statement or prospectus; and

(i) obtain opinions of counsel to the Company addressed to the underwriters covering the matters customarily covered in underwritten offerings, and obtain a "cold comfort" letter or letters and updates thereof from the Company's independent public accountants (to the extent then permitted under applicable professional guidelines and standards) in customary form and covering matters of the type customarily covered in underwritten offerings, in each case as the underwriters or the Holder shall request; and make available for inspection by the Holders, by any underwriter participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant, or other agent retained by the Holders or any such underwriter, such pertinent corporate documents and properties of the Company as may be reasonably requested.

In connection with each registration hereunder, as a condition to the right to sell under any registration statement (i) the selling Holders of Registrable Securities will furnish to the Company in writing such information with respect to themselves and the proposed distribution by them as shall be reasonably necessary in order to assure compliance with federal and applicable state securities laws; (ii) any such Holder of Registrable Securities will enter into a written agreement with the underwriters and the Company in such form and containing such provisions as are customary in the securities business for such an arrangement between major underwriters and companies of the Company's size and investment stature, and, if requested by the managing underwriter in connection with an underwritten public offering, such Holder of Registrable Securities will use its reasonable best efforts to cause its counsel to give any opinion customarily given, in connection with secondary distributions under similar circumstances PROVIDED that such underwriting agreement shall not provide for indemnification or contribution obligations on the part of the Holders materially greater than the obligations of the Holders set forth in Section 7; (iii) during such time as any such Holder of Registrable Securities may be engaged in a distribution of such stock, such Holder of Registrable Securities will comply with all applicable laws and, to the extent required by such laws, will, among other things (A) not engage in any stabilization activity in connection with the securities of the Company in contravention of such rules, (B) distribute the Registrable Securities owned by such Holder solely in the manner described in applicable registration statement or as otherwise permitted by law, (C) cause to be furnished to each agent or broker-dealer to or through whom the Registrable Securities owned by such Holder may be offered, or to the offeree if an offer is made directly by such holder, such copies of the applicable prospectus (as amended and supplemented to such date) and the documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree, provided that the Company shall have provided such holder of Registrable Securities with an adequate number of copies thereof and (D) not bid for or purchase any securities of the Company or attempt to induce any person to purchase any securities of the Company; and (iv) on notice from the Company of the happening of any event that requires the suspension by Holders of Registrable Securities of the distribution of any of Registrable Securities, then such Holder will cease offering or distributing the Registrable Securities until the Company notifies such Holder that the offering and distribution of the Registrable Securities may recommence. The Company shall not exercise its rights under Section 6(i)(iv) for a period

in excess of 120 days in any twelve-month period.

7. INDEMNIFICATION.

(a) INDEMNIFICATION BY THE COMPANY. In the event of any registration of any securities of the Company under the Securities Act pursuant to Sections 2, 3 or 4 herein, the Company will, and it hereby does, indemnify and hold harmless, to the fullest extent permitted by law, the sellers of any Registrable Securities covered by such registration statement, its directors and officers or general and limited partners (and directors and officers thereof), each person who participates as an underwriter in the offering or sale of such securities and each other person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act, against any and all losses, claims, damages or liabilities, joint or several, and expenses (including legal, accounting and other expenses incurred in connection with investigation, preparation or defense of any of the foregoing, and including any amounts paid in any settlement effected with the Company's consent) to which such seller, any such director or officer or general or limited partner or any such underwriter or controlling person may become subject under the Securities Act, the Exchange Act, common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act, any preliminary, final or supplemental prospectus contained therein, or any amendment or supplement thereto, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company will reimburse such seller and each such director, officer, general or limited partner, underwriter and controlling person for any legal or any other expenses reasonably incurred by them in connection with investigating or preparing for and defending any such loss, claim, liability, damages, action or proceeding from time to time as such expenses are incurred; PROVIDED that the Company shall not be liable in any such case to any such person, to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement or amendment or supplement thereto or in any such preliminary, final or supplemental prospectus in reliance upon and in conformity with written information furnished to the Company through an instrument duly executed by such seller or underwriter specifically stating that it is for use in the preparation thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such seller or any such director, officer, general or limited partner, underwriter or controlling person and shall survive the transfer of such securities by such seller.

(b) INDEMNIFICATION BY SELLERS OF REGISTRABLE SECURITIES. Each seller of Registrable Securities will, severally and not jointly, if Registrable Securities held by such seller are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless (in the same manner and to the same extent as set forth in subsection (a) of this Section 7) the Company, its directors and officers signing the registration statement and each person who participates as an underwriter in the offering or sale of such securities and their respective controlling persons with respect to any untrue statement or alleged untrue statement of a material fact in or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading from such registration statement, any preliminary, final or supplemental prospectus contained therein, or any amendment or supplement, if such statement or alleged statement or omission or alleged

omission was made in reliance upon and in conformity with written information furnished to the Company through an instrument duly executed by such seller specifically stating that it is for use in the final or supplemental prospectus or amendment or supplement; PROVIDED in no event shall the liability of any seller of Registrable Securities be greater in amount than the amount of net proceeds received by such seller upon such sale. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any other prospective sellers or any of their respective directors, officers or controlling Persons and shall survive the transfer of such securities by such sellers.

(c) NOTICES OF CLAIMS, ETC. Promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 7, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; PROVIDED that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding subdivisions of this Section 7, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, unless in such indemnified party's reasonable judgment (which is based on the written opinion of its counsel) a conflict of interest between such indemnified and indemnifying parties exists in respect of such claim, the indemnifying party will be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof. If in an indemnified party's reasonable judgment (which is based on the written opinion of its counsel) a conflict of interest between the indemnified and indemnifying parties exists in respect of a claim or if the indemnifying party refuses or fails to participate in and to assume the defense of any action brought against an indemnified party, the indemnified party may assume the defense of such claim or action with counsel of its choosing at the expense of the indemnifying party which shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 7. No indemnifying party will consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(d) CONTRIBUTION. If the indemnification provided for in or pursuant to this Section 7 is due in accordance with the terms hereof but is held by a court to be unavailable or unenforceable in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party, in lieu of indemnifying such indemnified person, shall contribute to the amount paid or payable by such indemnified person as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified person on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of the indemnifying party on the one hand and of the indemnified person on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement

of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified person by such person's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this section were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above. In no event shall the liability of any selling seller of Registrable Securities be greater in amount than the amount of net proceeds received by such seller of Registrable Securities upon such sale, and the Company shall be liable and responsible for any amount in excess of such proceeds; PROVIDED, HOWEVER, that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this section, notify such party or parties from whom contribution may be sought, but the omission so to notify such party or parties from whom contribution may be sought shall not relieve such party from any other obligation it or they may have thereunder or otherwise under this section. No party shall be liable for contribution with respect to any action, suit, proceeding or claim settled without its prior written consent, which consent shall not be unreasonably withheld.

8. NOTICE OF PROPOSED TRANSFER; LEGEND.

(a) Prior to any proposed transfer of any share of Registrable Securities (other than under the circumstances described in Section 2, 3 or 4 hereof) so long as the certificates representing Registrable Securities are required to bear the legends set forth in the Stockholders' Agreement, and in addition to any requirement or restriction on transfer set forth in the Stockholders' Agreement, the holder thereof shall give written notice to the Company of its intention to effect such transfer. Each such notice shall describe the manner of the proposed transfer and, if requested by the Company, shall be accompanied by an opinion of counsel reasonably satisfactory to the Company (it being agreed that Kalow, Springut & Bressler LLP shall be satisfactory) to the effect that the proposed transfer of the Registrable Securities may be effected without registration under the Securities Act and appropriate action necessary for compliance with the Securities Act and any applicable state, local or foreign law has been taken, whereupon the holder of such Registrable Securities may transfer such Registrable Securities, in accordance with the terms of its notice. Notwithstanding the foregoing, no such opinion or other documentation shall be required if such notice shall cover (i) a transfer of Registrable Securities by a partnership or corporation to an affiliate of such partnership or corporation, or (ii) a distribution by a partnership to its partners or by a limited liability company to its members or by any other legal entity to its beneficial owners. The term "affiliate" of a person or entity or "affiliated with" a specified person or entity means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person or entity specified. The term "control" means the possession, directly or indirectly, alone or in concert with others, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of securities, by contract, or otherwise.

(b) Each certificate of Registrable Securities, as the case may be, transferred as above shall bear the legends substantially set forth in the Stockholders' Agreement unless (i) such transfer is to the public in accordance with the provisions of Rule 144 (or any other rule permitting public sale without registration under the Securities Act) or (ii) the opinion of counsel referred to above is to the further effect that the transferee and any subsequent transferee (other than an affiliate of the Company) would be entitled to transfer such securities in a public sale without registration under the Securities Act.

9. LOCKUP AGREEMENT. Each Holder, during the period of duration (up to, but not exceeding, one hundred eighty (180) days) specified by the Company and the managing underwriter of an underwritten public offering of Common Stock or other securities of the Company (the "Lockup Period"), following the effective date of a registration statement of the Company filed under the Securities Act, will not, to the extent requested by the Company and such underwriter, without the consent of the Company and such underwriter, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period except Common Stock included in such registration. The Holders' agreement under the preceding sentence, however, shall be subject to the following conditions:

(a) that all directors, officers and executive-level employees of the Company and all holders of more than three percent (3%) of the then outstanding capital stock of the Company shall have agreed to comparable restrictions,

(b) if the managing underwriter releases from the lockup restrictions described in this Section 9, any stockholder of the Company (except any employee or consultant of the Company that is not an officer, director or executive) prior to the expiration of the Lockup Period with respect to all or a percentage of the Common Stock held by such stockholder, all other stockholders of the Company subject to the lockup shall be released from such lockup restrictions to the same extent and on the same terms and conditions, and

(c) the registrations with respect to which such restrictions shall be applicable shall be (A) the IPO, and (B) any other underwritten public offering in which such Holder shall have agreed to sell Registrable Securities.

Notwithstanding anything herein to the contrary, this agreement shall not restrict Goldman, Sachs & Co. or Allen & Company Incorporated and their respective affiliates from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, merger advisory, financing, asset management, trading, market making, arbitrage and other similar activities conducted in the ordinary course of its or its affiliates' business, so long as such activities are not conducted with respect to any Registrable Securities.

10. NOTICES. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (i) two business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient at the address specified below its respective signature hereto, if to an Investor, at his or its address specified on Schedule I hereto.

Any party may give any written notice, request, consent or other written communication under this Agreement using any other means (including, without limitation, personal delivery, messenger service, telecopy, first class mail or electronic mail), but no such notice, request, consent or other communication shall be deemed to have been duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings between them or any of them with respect to such subject matter (including, without limitation, the Existing Agreement). The parties hereto, being all the parties to the Existing Agreement, hereby acknowledge and agree that this Agreement constitutes a valid amendment and restatement of the Existing Agreement, in accordance with Section 12 hereof.

12. AMENDMENTS, WAIVERS, ETC. Neither this Agreement nor any provision hereof may be waived, modified, amended or terminated, nor may the Company grant registration rights that conflict in any way with the registration rights granted hereunder, except by a written agreement signed by each of the parties hereto, PROVIDED, HOWEVER, that Investors holding at least sixty percent (60%) of the Investors' Stock may effect any such waiver, modification, amendment or termination on behalf of all holders of Investors' Stock, which shall then be binding on all such holders of Investors' Stock, and holders of at least sixty percent (60%) of the Founder's Stock may effect any such waiver, modification, amendment or termination on behalf of all holders of Founder's Stock, which shall then be binding on all such holders of Founder's Stock; PROVIDED FURTHER, that without the consent of the Company and holders of ninety percent (90%) of the Investors' Stock Then Outstanding, no amendment or addition to this Agreement may be made which alters the stated requisite percentage of holdings of Investors' Stock Then Outstanding to request a registration under Section 2(a) above or alters the provisions of this Section 12 affecting the holders of Investors' Stock. Notwithstanding the foregoing, if any waiver, modification, amendment or termination shall directly apply to any holder or holders of Investors' Stock or Founder's Stock, as the case may be, hereunder in a different fashion than all other holders of Investors' Stock or Founder's Stock, as the case may be, the written agreement of each holder of Registrable Securities Stock so adversely affected shall additionally be required.

13. RULE 144 REPORTING.

(a) The Company shall make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after the 90th day after its initial registration statement is declared effective by the Commission.

(b) The Company shall use its reasonable best efforts to file with the Commission in a timely manner all reports and other documents as the Commission may prescribe under Section 13(a) or 15(d) of the Exchange Act at any time after the Company has become subject to such reporting requirements of the Exchange Act.

(c) The Company shall furnish to any holder of Registrable Securities upon request (i) a written statement by the Company as to its compliance with the reporting requirements of

Rule 144 and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), (ii) a copy of the most recent annual or quarterly report of the Company, and (iii) such other reports and documents of the Company as such holder may reasonably request to avail itself of any similar rule or regulation of the Commission allowing it to sell any such securities without registration.

14. GOVERNING LAW; SUCCESSORS AND ASSIGNS. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of New York without giving effect to the conflicts of laws principles thereof and, except as otherwise provided herein, shall be binding upon, and shall inure to the benefit of, the heirs, personal representatives, executors, administrators, successors and assigns of the parties.

15. SEVERABILITY. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and this Agreement shall be carried out as if any such illegal, invalid or unenforceable provision were not contained herein.

16. PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

17. CAPTIONS. Captions are for convenience only and are not deemed to be part of this Agreement.

19. COUNTERPARTS; FACSIMILE. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

COMPANY:

LIVE PERSON, INC.

By: ______________________________
Name:
Title:

FOUNDER:

____
Robert LoCascio

INVESTORS:

DAWNTREADER FUND I LP

By: DT Advisors LLC, General Partner

By: ______________________________
Name: Edward Sim
Title: Senior Vice President

FG-LP

By: ______________________________
Name:
Title:

FG-LPC

By: ______________________________
Name:
Title:

SIGNATURE PAGE FOR LIVEPERSON, INC. SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

STERLING PAYOT CAPITAL, LP

By: ______________________________
Name:
Title:

SAVP SIDECAR I LLC

By: ______________________________
Name:
Title:

ALLEN & COMPANY INCORPORATED

By: ______________________________
Name:
Title:

SCULLEY BROTHERS LLC

By: ______________________________
Name:
Title:

SILICON ALLEY VENTURE PARTNERS, LLC

By: ______________________________
Name:
Title:

____
HENRY R. KRAVIS

____
MARC LIPSCHULTZ

____
ESTHER DYSON

____
ALAN BRAVERMAN

SIGNATURE PAGE FOR LIVEPERSON, INC. SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

HIGHLAND CAPITAL PARTNERS IV
LIMITED PARTNERSHIP

By: Highland Management Partners IV
Limited Partnership
Its General Partner

By: ____
General Partner

HIGHLAND ENTREPRENEURS' FUND IV
LIMITED PARTNERSHIP

By: Highland Entrepreneurs' Fund IV LLC,
Its General Partner

By: ____
Member

SIGNATURE PAGE FOR LIVEPERSON, INC. SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

HAMBRECHT & QUIST CALIFORNIA

By: ____
Name: ____
Title: ____

HAMBRECHT & QUIST EMPLOYEE VENTURE FUND, L.P. II

By: H&Q VENTURE MANAGEMENT, L.L.C.
Its: General Partner

By: ____
Title: ____

ACCESS TECHNOLOGY PARTNERS, L.P.

By: ACCESS TECHNOLOGY MANAGEMENT, L.L.C.
Its: General Partner

By: H&Q VENTURE MANAGEMENT, L.L.C.
Its: Managing Member

By: ____
Title: ____

ACCESS TECHNOLOGY PARTNERS BROKERS FUND, L.P.

By: H&Q VENTURE MANAGEMENT, L.L.C.
Its: General Partner

By: ____
Title: ____

THE GOLDMAN SACHS GROUP, INC.

By: ____________________________________
Name:
Title:

STONE STREET FUND 1999, L.P.
By: Stone Street 1999 Corp.,
its general partner

By: ____________________________________
Name:
Title:

SIGNATURE PAGE FOR LIVEPERSON, INC. SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

SILICON ALLEY VENTURES, L.P.

By:_________________________
General Partner

SAVP SIDECAR I-B, LLC

By:_________________________
Member

SIGNATURE PAGE FOR LIVEPERSON, INC. SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

DELL USA, L.P.

By: Del. Gen. P. Corp., its General Partner

By: ____________________________________
Name:
Title:

AUSTIN I, LLC

By: ____________________________________
Name:
Title:

VAN EYCK PARTNERS, LLC

By: ____________________________________
Name:
Title:

STRIPED MARLIN INVESTMENTS, LLC

By: ____________________________________
Name:
Title:

MSD EC I, LLC

By: ____________________________________
Name:
Title:

NBC INTERACTIVE MEDIA, INC.

By: ____________________________________
Name:
Title:

SCHEDULE I

Dawntreader Fund I LP
118 West 22nd Street
11th Floor
New York, NY 10011
Attn: Ed Sim
Fax no. (212) 337-1257

FG-LP
FG-LPC
20 Dayton Avenue
Greenwich, Connecticut 06830
Attn: Kathleen Shepphird
Fax no. (203) 661-1331

Sterling Payot Capital, LP
222 Sutter Street, 8th Floor
San Francisco, CA 94108
Attn: Josh Huffard
Fax no. (415) 274-4545

SAVP Sidecar I LLC
SAVP Sidecar I-B LLC
Silicon Alley Venture Partners, LLC
Silicon Alley Ventures, L.P.
c/o the Scion Group
1010 Northern Blvd., Suite 310
Great Neck, New York 11021
Attn: Steve Brotman
Fax no. (212) 898-9044

Allen & Company Incorporated
711 Fifth Avenue
New York, New York 10022
Attn: Mr. Richard Fields

Sculley Brothers LLC
90 Park Avenue
New York, New York 10016
Attn: Mr. Arthur Sculley

Henry R. Kravis
c/o KKR
9 West 57th Street
New York, New York 10019

Marc Lipschultz
c/o KKR
9 West 57th Street
New York, New York 10019

Esther Dyson
104 Fifth Avenue, 20th Floor
New York, New York 10011

Alan Braverman
16 Cardinal Drive
Princeton Junction, NJ 08550

Highland Capital Partners IV Limited Partnership
Highland Entrepreneurs' Fund IV Limited Partnership
c/o Highland Capital Partners
Two International Place
Boston, MA 02110
Attention: Wycliffe K. Grousbeck
Fax: 617-531-1550

Hambrecht & Quist California
Access Technology Partners, L.P.
Access Technology Partners Brokers Fund, L.P.
Hambrecht & Quist Employee Venture Fund II, L.P.
c/o Hambrecht & Quist
One Bush Street
San Francisco, CA 94104
Attention: Chris Montano
Fax: (415) 439-3818

The Goldman Sachs Group, L.P.
Stone Street Fund 1999, L.P.
85 Broad Street, 19th Floor
New York, NY 10004
Attention: Eve Gerriets
Fax: 212-357-5505

Dell USA, L.P.
Paul Legris
Dell Ventures
c/o Dell Computer Corporation
Mail Stop 8066
One Dell Way
Round Rock, TX 78682

With a copy to:

Thomas H. Welch, Jr.
VP and Deputy General Counsel
Legal Dept.
Dell Computer Corporation
Mail Stop 8033
One Dell Way
Round Rock, TX 78682

Austin I, LLC
Van Eyck Partners, LLC
Striped Marlin Investments, LLC
MSD EC I, LLC
c/o MSD Capital, L.P.
780 Third Avenue, 43rd Floor
New York NY 10017
Attn: Marc R. Lisker

NBC Interactive Media, Inc.
30 Rockefeller Plaza
New York, NY 10112
Attn: Martin J. Yudkovitz

Exhibit 5.1

[Brobeck, Phleger & Harrison LLP letterhead]

March 10, 2000

LivePerson, Inc.
462 Seventh Avenue
10th Floor

New York, NY 10018-7606

Re: LivePerson, Inc. Registration Statement on Form S-1
for 4,600,000 Shares of Common Stock

Ladies and Gentlemen:

We have acted as counsel to LivePerson, Inc., a Delaware corporation (the "Company"), in connection with the proposed issuance and sale by the Company of up to 4,600,000 shares of the Company's Common Stock (the "Shares") pursuant to the Company's Registration Statement on Form S-1 (the "Registration Statement") filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act").

This opinion is being furnished in accordance with the requirements of Item 16(a) of Form S-1 and Item 601(b)(5)(i) of Regulation S-K.

We have reviewed the Company's charter documents and the corporate proceedings taken by the Company in connection with the issuance and sale of the Shares. Based on such review, we are of the opinion that the Shares have been duly authorized, and if, as and when issued in accordance with the Registration Statement and the related prospectus (as amended and supplemented through the date of issuance) will be legally issued, fully paid and non-assessable.

We consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus which is part of the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act, the rules and regulations of the Securities and Exchange Commission promulgated thereunder, or Item 509 of Regulation S-K.

This opinion letter is rendered as of the date first written above and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion,

whether by implication or otherwise, as to any other matters relating to the Company or the Shares.

Very truly yours,

/s/ Brobeck, Phleger & Harrison LLP

BROBECK, PHLEGER & HARRISON LLP

Exhibit 10.2

EMPLOYMENT AGREEMENT

This Agreement made effective as of January 28, 2000 by and between LivePerson, Inc. (the "Company"), a Delaware corporation, and Dean Margolis, ("Executive").

Whereas the Company wishes to retain the services of the Executive for the period and upon the terms of this Agreement and the Executive wishes to serve in the employ of the Company on a full time basis for the period and upon the terms and conditions provided in this Agreement,

Now therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1

EMPLOYMENT

The company agrees to employ the Executive and the Executive agrees to be employed by the Company, for the Period of Employment as provided in Paragraph III A below and upon the terms and conditions provided in the Agreement.

SECTION II

POSITION AND RESPONSIBILITIES

During the Period of Employment the Executive agrees to serve as Chief Operating Officer of the Company, reporting to either the Chief Executive Officer, Chairman or President of the Company.

SECTION III

TERMS AND DUTIES

A. PERIOD OF EMPLOYMENT

The period of the Executive's employment under this Agreement will commence as of the effective date above and shall continue for 3 years unless terminated as provided in this agreement.

B. DUTIES

During the Period of Employment and except for illness, incapacity or any reasonable vacation periods in any calendar year, the Executive shall devote his business time, attention and skill exclusively to the business and affairs of the Company except for serving on boards, including charities, so long as Executive's efforts do not interfere with his employment obligations hereunder.

SECTION IV

A. COMPENSATION

For all services rendered by the Executive in any capacity during the Period of Employment, the Executive shall be compensated as follows:

i. BASE SALARY

The Company shall pay the Executive a fixed Base Salary at the rate of not less than $175,000 per year. Base salary shall be payable according to the customary payroll practices of the Company.

ii. ANNUAL INCENTIVE AWARDS

The Executive will be eligible for discretionary annual incentive compensation awards or bonuses. The initial bonus target will be $40,000.

iii. LONG TERM INCENTIVE AWARDS

The Executive will be eligible for discretionary stock option awards as may be awarded by the Board of Directors. The initial option award will be 340,000 options with a)$5.00 exercise price; b) 10 year term; c) 25% annual vesting beginning on 7/1/00.

B. ADDITIONAL BENEFITS

In addition, the Executive will be entitled to participate in all employee benefit plans which any salaried employees are eligible to participate in. Nothing in this Agreement will preclude the Company from amending or terminating any of the plans applicable to salaried employees as long as such amendment or termination is applicable to all salaried employees. The Executive will be entitled to three weeks vacation annually. All accrued vacation may be carried over for use in subsequent years provided that no more than two weeks may be carried over into a subsequent year.

SECTION V

BUSINESS EXPENSES

Upon presentation of appropriate documentation, the Company will reimburse the Executive for all reasonable travel and other expenses incurred by the Executive in connection with the performance of his duties and obligations under this Agreement.

SECTION VI

DISABILITY

In the event of disability of the Executive during the Period of Employment the Company will continue to pay the Executive according to the compensation provisions of this Agreement during the period of his disability. However, in the event the Executive is disabled and unable to perform his duties for a continuous period of 120 days or more, the Company may terminate the employment of the Executive 120 days after the commencement of the Executive's disability and all unvested stock options held by the Executive which would have vested during the 12 months following such termination shall be deemed vested on the date of such termination and shall remain exercisable until the applicable expiration dates contained in the applicable stock option agreements pursuant to which such options were granted. In addition, normal compensation will cease except for earned but unpaid Base Salary, accrued unused

vacation pay and pro-rata bonus. The Company will also continue all of the benefits described in this Agreement or subsequently provided to the Executive for 12 months subsequent to such termination.

SECTION VII

DEATH

In the event of death of the Executive during the Period of Employment the Company's obligation to make payments under this Agreement shall cease as of the date of death, except for earned but unpaid Base Salary, accrued unused vacation and pro-rata bonus All unvested options held by the executive which would have vested during the 12 months following the death shall be deemed vested on the date of death consistent with the Executive's stock option agreement, a copy of which is attached hereto. The Company will also continue the benefits described in this Agreement for 12 months subsequent to such termination.

SECTION VIII

EFFECT OF TERMINATION OF EMPLOYMENT

A. Prior to April 27, 2000, in the event the Executive's employment terminates due to either a Without Cause Termination or a Constructive Discharge, as defined later in this agreement, the Executive will be entitled to the immediate vesting of 34,000 options at an exercise price of $5.00. Additionally, the Executive shall be entitled to all other benefits in this paragraph A. If, after April 27, 2000, the Executive's employment terminates due to either a Without Cause Termination or a Constructive Discharge, as defined later in this Agreement, the Company will continue to pay the Executive his Base Salary for a period of 4 months following such Termination or Constructive Discharge. Earned but unpaid Base Salary will be paid in a lump sum at such time. The benefits described in this Agreement will continue for 4 months. In the event of any such Without Cause Termination or Constructive Discharge, any unvested stock options held by the Executive which would have vested on either 7/1/00 or 7/1/01 shall continue to vest under their original vesting schedule and shall remain exercisable for the full ten year term contained in the applicable stock option agreements pursuant to which such options were granted..

B. If the Executive's employment terminates due to a Termination for Cause, as defined later in this Agreement, earned but unpaid Base Salary will be paid on a pro-rated basis for the year in which the termination occurs. Earned but unpaid incentive awards for any prior years shall be payable in full, but no other payments will be made or benefits provided by the Company.

C. Upon termination of the Executive's employment other than for reasons due to death, disability, or pursuant to Paragraph A of this Section and Section XI, the Period of Employment and the Company's obligation to make payments under this Agreement will cease as of the date of the termination except as expressly defined in this Agreement.

D. For this Agreement the following terms have the following meanings:

    i. "Termination for Cause" means termination of the Executive's employment by the Company upon a good faith determination by the Company, by written notice to the Executive specifying the event relied upon for such termination, due to the Executive's serious, willful misconduct or gross negligence with respect to his duties under this Agreement (including but not limited to conviction for a felony or a common law fraud)

which has resulted in economic damage to the Company and which is not cured (if such is capable of being cured) within 30 days after written notice thereof to the Executive.

ii. "Without Cause Termination" means termination of the Executive's employment by the Company other than due to death, disability, expiration of the Period of Employment or Termination for Cause.

iii. Constructive Discharge" means termination of the Executive's employment by the Executive due to a failure of the Company to fulfill its obligations under this agreement in any material respect including any reduction of the Executive's compensation or other material change by the Company in the functions, duties or responsibilities of the position which would materially reduce the responsibility or scope of the position. The Executive will provide the Company a written notice which describes the circumstances being relied upon for termination with respect to the Agreement. The Company will have 30 days to remedy the situation prior to the Termination for Constructive Discharge

SECTION IX

OTHER DUTIES OF THE EXECUTIVE DURING AND AFTER THE PERIOD OF EMPLOYMENT

A. The Executive will with reasonable notice during, or after the Period of Employment furnish information as may be in his possession and cooperate with the Company as may be reasonably requested in connection with any claims or legal action in which the Company is or may become a party. In the event the Executive is requested to participate in assisting the Company after the termination of the Executive's employment, the Executive shall be paid a daily rate of $1000 per day plus reasonable expenses and attorney's fees.

B. The Executive recognizes and acknowledges that all information pertaining to the software, business, clients, customers or other relationship of the Company is confidential and is a unique and valuable asset of the Company. Access to and knowledge of this information are essential to the performance of the Executive's duties under this Agreement. The Executive will not during the Period of Employment or after, except to the extent reasonably necessary in performance of the duties under this Agreement, give to any person, firm, governmental agency or other entity any information concerning the affairs, business, clients, or customers of the Company except as required by law. The Executive will not make use of this type of information for his own purposes or for the benefit of any person or organization other than the Company. The Executive will use his best efforts to prevent the disclosure of this information by others. All records, memoranda, software or intellectual property whether made by the Executive or otherwise coming into his possession are confidential and will remain the property of the Company.

C. During the Period of Employment and for a 12 month period thereafter (the "Restricted Period") the Executive will not use his status with the Company to obtain goods or services from another organization on terms that would not be available to him in the absence of his relationship to the Company.

D. During the Restricted Period, the Executive will not make any statement or perform any acts intended to or which may have the effect of advancing the interest of any existing or prospective competitors of the Company or in any way injuring the interest of the Company.

E. During the Restricted Period, the Executive, without prior express written approval by the Chief Executive, will not engage in, or directly or indirectly own or hold proprietary interest in, manage, operate, or control or join or participate in the ownership, management, operation or control of, or furnish any capital to or be connected in any manner with, any party which directly competes with the business of the Company. For the purposes of this Agreement, proprietary interest means legal or equitable ownership, whether through stock holding or otherwise, or an equity interest in a business, firm or entity or ownership of more than 5% of any class of equity interest in a publicly-held company and the term "affiliate" shall include all subsidiaries and licensees of the Company

F. During the Restricted Period, the Executive, without express written approval from the Chief Executive, will not on behalf of any competitor of the Company solicit any clients of the Company.

G. During the Restricted Period, the Executive will not solicit or induce any employee of the Company to terminate their employment with the Company, nor shall the executive during such period directly or indirectly engage, employ, compensate or cause or permit any person with which the Executive is affiliated to engage or employ any employee of the Company.

H. The Company's obligation to make any cash payments after the Period of Employment shall cease upon any violation of this Section IX. The company must first provide written notice to the Executive specifying the act which has violated this Section IX, and if such violation is not cured within 30 days, if capable of being cured, then the Company will inform the Executive of its termination of its post-employment payments.

I. The period of time during which the provisions of this Section IX shall be in effect shall be extended by the length of time during which the Executive is in breach of this section.

J. The Executive agrees that the restrictions contained in this section IX are an essential element of the compensation the Executive is granted hereunder and but for the Executive's agreement to comply with such restrictions, the Company would not have entered into this Agreement.

SECTION X

INDEMNIFICATION, LITIGATION

A. The Company will indemnify the Executive to the fullest extent permitted by the laws of Delaware in effect at that time, or the certificate of incorporation and by-laws of the Company, whichever affords the greater protection to the Executive.

B. In the event of litigation or other proceeding between the Company and the Executive with respect to the subject matter of this Agreement, the Company shall reimburse the Executive for all reasonable costs and expenses related to the litigation or proceeding, including attorney's fees and expenses, provided that the litigation or proceeding results in either settlement requiring the Company to make a payment to the Executive or judgement in favor of the Executive.

SECTION XI

CHANGE IN CONTROL

In the event there is a Change in Control of the ownership of the Company, and within 24 months of such Change in Control, the Executive's employment terminates due to either a Without Cause Termination or a Constructive Discharge, then the Company shall pay to the Executive a lump sum amount equal to 50% of his Annual Base Salary as in effect at the time of such termination. In addition, a) any unvested stock

options granted to the Executive prior to termination will be fully vested upon termination and shall remain exercisable for the full ten year term contained in the applicable stock options agreements pursuant to which such stock options were granted; and b) the benefits described in this Agreement will be continued for six months from the date of termination.

In the event there is a Change of Control of the ownership of the Company, and the Executive terminates his employment, then any stock options that would have vested in the 12 months following such termination shall continue to vest under the original vesting schedule and and shall remain exercisable for the full ten year term contained in the applicable stock options agreements pursuant to which such stock options were granted.

A "Change in Control" shall be deemed to have occurred if (i) a tender offer shall be made and consummated for 50.1% or more of the outstanding voting securities of the Company (ii) the Company shall be merged or consolidated with another company and as a result less than 50% of the outstanding voting securities of the surviving corporation shall be owned in the aggregate by the former shareholders of the Company, (iii) the Company shall sell substantially all of its assets to another company which is not a subsidiary of the Company, or (iv) a person, within the meaning of Section 3(a)(9) or of Section 13(d)(3) of the Securities Act of 1934 shall acquire 51% or more of the outstanding voting securities of the Company.

SECTION XII

WITHHOLDING TAXES

The company may directly or indirectly withhold from any payments under this Agreement all federal, state, city or other taxes that shall be required pursuant to any law or governmental regulation.

SECTION XIII

EFFECTIVE PRIOR AGREEMENTS

This Agreement contains the entire understanding between the Company and the Executive with respect to the subject matter. Where there are different provision between this Agreement and any stock option agreements made between the Executive and the Company, the terms of this Agreement shall prevail.

SECTION XIV
CONSOLIDATION, MERGER OR SALE OF ASSETS

Nothing in this Agreement shall preclude the Company from consolidating or merging into or with, or transferring all or substantially all of its assets to, another corporation which assumes this Agreement and all obligations of the Company hereunder. Upon such a consolidation, merger or sale of assets the term "Company" as used will mean the other corporation and this Agreement shall continue in full force and effect.

SECTION XV
NO OTHER AGREEMENTS

The Executive represents that he is not bound by any other employment agreement or other covenants that would restrict him from entering into this agreement.

SECTION XVI
MODIFICATION

This Agreement may not be modified or amended except in writing signed by the parties. No term or condition of this Agreement will be deemed to have been waived except in writing by the party charged with the waiver. A waiver shall operate only as to the specific term or condition waived and will not constitute a waiver for the future or act on anything other than that which is specifically waived.

SECTION XVII
GOVERNING LAW

This Agreement has been executed and delivered in the State of New York and its validity, interpretation, performance and enforcement shall be governed by the laws of that state.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date just above written.

LivePerson, Inc.

- ---

Tim Bixby, Chief Financial Officer

- ---

Dean Margolis

Exhibit 10.8

AGREEMENT OF LEASE, made as of the 8th day of March, 2000, between Landlord and Tenant.

W I T N E S S E T H:

The parties hereto, for themselves, their legal representatives, successors and assigns, hereby covenant as follows.

DEFINITIONS

"AAA" shall have the meaning set forth in Section 37.7 hereof.

"ACM" shall have the meaning set forth in Section 3.6 hereof.

"Affiliate" shall mean a Person which shall (1) Control, (2) be under the Control of, or (3) be under common Control with, the Person in question.

"Alterations" shall mean alterations, installations, improvements, additions or other physical changes (other than carpeting, painting, wall coverings, floor coverings and decorations) in or about the Premises.

"Applicable Area" shall have the meaning set forth in Section 41.1 hereof.

"Applicable Initial Alterations" shall mean the Tenth Floor Space Initial Alterations or the Seventh Floor Space Initial Alterations.

"Applicable Landlord's Work Date" shall mean the day that is one hundred twenty (120) days after the Commencement Date or the Seventh Floor Space Commencement Date, as the case may be.

"Applicable Rate" shall mean the lesser of (x) two (2) percentage points above the then current Base Rate, and (y) the maximum rate permitted by applicable law.

"Applicable Rent Commencement Date" shall mean the Tenth Floor Space Rent Commencement Date or the Seventh Floor Space Rent Commencement Date.

"Applicable Security Amount" shall mean the Tenth Floor Space Security Amount or the Seventh Floor Space Security Amount.

"Applicable Tenant Fund" shall have the meaning set forth in Section 3.5 hereof.

"Applicable Terms" shall have the meaning set forth in Section 7.8 hereof.

"Appraiser" shall have the meaning set forth in Section 41.1 hereof.

"Assessed Valuation" shall have the meaning set forth in Section 27.1 hereof.

"Assignment Proceeds" shall have the meaning set forth in Section 12.8 hereof.

"Assignment Statement" shall have the meaning set forth in Section 12.8 hereof.

"Assignment Termination" shall have the meaning set forth in Section 12.8 hereof.

"Bankruptcy Code" shall mean 11 U.S.C. Section 101 et seq., or any statute of similar nature and purpose.

"Base Operating Expenses" shall have the meaning set forth in Section 27.1 hereof.

"Base Operating Year" shall have the meaning set forth in Section 27.1 hereof.

"Base Rate" shall mean the rate of interest publicly announced from time to time by The Chase Manhattan Bank, or its successor, as its "prime lending rate" (or such other term as may be used by The Chase Manhattan Bank, from time to time, for the rate presently referred to as its "prime lending rate"), which rate was 8.50% on January 19, 2000.

"Base Rental Amount" shall have the meaning set forth in Section 41.1 hereof.

"Base Taxes" shall have the meaning set forth in Section 27.1 hereof.

"Broker" shall have the meaning set forth in Article 34 hereof.

"Building" shall mean all the buildings, equipment and other improvements and appurtenances of every kind and description now located or hereafter erected, constructed or placed upon the land and any and all alterations, and replacements thereof, additions thereto and substitutions therefor, known by the address of 330 West 34th Street, New York, New York.

"Building Systems" shall mean the mechanical, gas, electrical, sanitary, heating, air conditioning, ventilating, elevator, plumbing, life-safety and other service systems of the Building.

"Business Days" shall mean all days, excluding Saturdays, Sundays and all days observed by either the State of New York or the Federal Government and by the labor unions servicing the Building as legal holidays.

"Commencement Date" shall have the meaning set forth in Section 1.1 hereof.

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. In the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or any other nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the Consumer Price Index. If Landlord and Tenant are unable to agree as to such substituted index, such matter shall be submitted to the American Arbitration Association or any successor organization for determination in accordance with the regulations and procedures thereof then obtaining for commercial arbitration.

"Control" or "control" shall mean direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation or other majority equity and control interest if not a corporation and the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or according to the provisions of a contract.

"CR&A" shall have the meaning set forth in Section 3.1 hereof.

"Current Year" shall have the meaning set forth in Section 27.4 hereof.

"Deficiency" shall have the meaning set forth in Section 17.2 hereof.

"Escalation Rent" shall mean, individually or collectively, the Tax Payment and the Operating Payment.

"Event of Default" shall have the meaning set forth in Section 16.1 hereof.

"Excluded Space" shall have the meaning set forth in Section 7.6 hereof.

"Existing Ground Lease" shall mean the Superior Lease described on Exhibit "A" attached hereto and made a part hereof.

"Expiration Date" shall mean the Fixed Expiration Date or such earlier date on which the Term shall sooner end pursuant to any of the terms, conditions or covenants

of this Lease or pursuant to law.

"Fair Market Rent" shall have the meaning set forth in Section 41.1 hereof.

"Fixed Expiration Date" shall have the meaning set forth in Section 1.1 hereof.

"Fixed Rent" shall have the meaning set forth in Section 1.1 hereof.

"Governmental Authority (Authorities)" shall mean the United States of America, the State of New York, the City of New York, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, having jurisdiction over the Real Property or any portion thereof.

"HVAC" shall mean heat, ventilation and air conditioning.

"HVAC Systems" shall mean the Building Systems providing HVAC.

"HVAC Units" shall have the meaning set forth in Section 28.2 hereof.

"Indemnitees" shall mean Landlord, the partners or members comprising Landlord and its and their members, partners, shareholders, officers, directors, employees, agents and contractors, Lessors and Mortgagees.

"Initial Alterations" shall mean the Alterations to be made by Tenant to initially prepare the Premises for Tenant's occupancy.

"Landlord", on the date as of which this Lease is made, shall mean Vornado 330 West 34th Street L.L.C., a Delaware limited liability company, having an office c/o MRC Management LLC, 330 Madison Avenue, New York, New York, but thereafter, "Landlord" shall mean only the fee owner of the Real Property or if there shall exist a Superior Lease, the tenant thereunder.

"Landlord's Determination" shall have the meaning set forth in Section 41.1 hereof.

"Landlord's Work" shall have the meaning set forth in Article 19 hereof.

"Lessor(s)" shall mean a lessor under a Superior Lease.

"Letter of Credit" shall have the meaning set forth in Article 31 hereof.

"LivePerson" shall mean LivePerson, Inc., a Delaware corporation, having an office at 462 Seventh Avenue, New York, New York.

"LivePerson Party" shall mean LivePerson or an Affiliate of LivePerson.

"Long Lead Work" shall mean any item which is not customarily a stock item and must be specially manufactured, fabricated or installed or is of such an unusual, delicate or fragile nature that there is a substantial risk that

(i) there will be a material delay in its manufacture, fabrication, delivery or installation, or

(ii) after delivery, such item will need to be reshipped or redelivered or repaired

so that the item in question cannot be completed when the standard items are completed even though the item of Long Lead Work in question is (1) ordered together with the other items required and (2) installed or performed (after the manufacture or fabrication thereof) in the order and sequence that such Long Lead Work and other items are normally installed or performed in accordance with good construction practice. In addition, "Long Lead Work" shall include any component of work which in accordance with good construction practice should be completed after the completion of any item of work in the nature of the items described in the immediately preceding sentence.

"Major Sublease" shall mean a sublease, between Tenant, as sublessor, and a third party, as sublessee, which (i) Tenant enters into in accordance with the provisions of Article 12 hereof, (ii) demises to the sublessee not less than the entire rentable area of the Tenth Floor Space or not less than the entire rentable area of the Seventh Floor Space, as the case may be, and (iii) expires no earlier than the day immediately preceding the Fixed Expiration Date.

"Major Sublease Fair Market Rent" shall have the meaning set forth in Section 7.8 hereof.

"Mortgage(s)" shall mean any trust indenture or mortgage which may now or hereafter affect the Real Property, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

"Mortgagee(s)" shall mean any trustee, mortgagee or holder of a Mortgage.

"Mutual Determination" shall have the meaning set forth in Section 41.1 hereof.

"Nondisturbance Agreement" shall have the meaning set forth in Section 7.1 hereof.

"Operating Expenses" shall have the meaning set forth in Section 27.1 hereof.

"Operating Payment" shall have the meaning set forth in Section 27.4 hereof.

"Operating Statement" shall have the meaning set forth in Section 27.1 hereof.

"Operating Year" shall have the meaning set forth in Section 27.1 hereof.

"Operation of the Property" shall mean the maintenance, repair and management of the Real Property and the curbs, sidewalks and areas adjacent thereto.

"Overtime Periods" shall have the meaning set forth in Section 28.3 hereof.

"Parties" shall have the meaning set forth in Section 37.2 hereof.

"Partner" or "partner" shall mean any partner of Tenant, any employee of a professional corporation which is a partner comprising Tenant, and any shareholder of Tenant if Tenant shall become a professional corporation.

"Partnership Tenant" shall have the meaning set forth in Article 29 hereof.

"Person(s) or person(s)" shall mean any natural person or persons, a partnership, a corporation and any other form of business or legal association or entity.

"Premises" shall mean, subject to the provisions of Section 14.4 hereof, the Tenth Floor Space and, as of the Seventh Floor Space Commencement Date, the Seventh Floor Space.

"Qualified Specialty Alterations" shall have the meaning set forth in Section 3.1 hereof.

"Real Property" shall mean the Building, together with the plot of land upon which it stands.

"Recapture Space" shall have the meaning set forth in Section 12.6 hereof.

"Recapture Statement" shall have the meaning set forth in Section 12.6 hereof.

"Recapture Sublease" shall have the meaning set forth in Section 12.6 hereof.

"Recapture Termination" shall have the meaning set forth in Section 12.6 hereof.

"Recognition Agreement" shall have the meaning set forth in Section 7.7 hereof.

"Recognition Effective Date" shall have the meaning set forth in Section 7.8 hereof.

"Related Costs" shall have the meaning set forth in Section 3.5 hereof.

"Related Entity" shall have the meaning set forth in Section 12.4 hereof.

"Rental" shall mean and be deemed to include Fixed Rent, Escalation Rent, all additional rent and any other sums payable by Tenant hereunder.

"Rental Value" shall have the meaning set forth in Section 41.1 hereof.

"Rent Notice" shall have the meaning set forth in Section 41.1 hereof.

"Rent Per Square Foot" shall have the meaning set forth in Section 12.7 hereof.

"Required Amount" shall have the meaning set forth in Section 3.5 hereof.

"Requirements" shall mean all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Real Property or any portion thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, or requiring removal of any encroachment, or affecting the maintenance, use or occupation of the Real Property or any portion thereof.

"Risers" shall have the meaning set forth in Section 3.7 hereof.

"Rules and Regulations" shall mean the rules and regulations annexed hereto and made a part hereof as Schedule A, and Exhibit "D" and such other and further rules and regulations as Landlord or Landlord's agents may from time to time adopt on such notice to be given as Landlord may elect, subject to Tenant's right to dispute the reasonableness thereof as provided in Article 8 hereof.

"Satellite Dish" shall have the meaning set forth in Section 39.1 hereof.

"Seventh Anniversary Date" shall have the meaning set forth in Section 1.1 hereof.

"Seventh Floor Space" shall mean the entire rentable area of the seventh (7th) floor of the Building as set forth on the floor plan attached as Exhibit "B" and made a part thereof.

"Seventh Floor Space Commencement Date" shall mean, subject to Article 22 hereof, March 1, 2001.

"Seventh Floor Space Factor" shall mean Forty-Two Thousand Nine Hundred

Thirty- Two (42,932) (if the Seventh Floor Space Commencement Date has occurred).

"Seventh Floor Space Initial Alterations" shall mean the Initial Alterations to initially prepare the Seventh Floor Space for Tenant's occupancy.

"Seventh Floor Space Landlord's Work" shall have the meaning set forth in Section 19.1 hereof.

"Seventh Floor Space Rent Commencement Date" shall mean subject to Article 22 and Section 19.2 hereof the earlier to occur of (x) August 1, 2001, and (y) the date that Tenant initially occupies the Seventh Floor Space for the conduct of business.

"Seventh Floor Space Security Amount" shall mean:

(i) Two Million Two Hundred Twenty-Five Thousand and 00/100 Dollars ($2,225,000.00) in respect of the period of time commencing on the Seventh Floor Space Commencement Date and ending on the day immediately prior to the fourth (4th) anniversary of the Commencement Date;

(ii) One Million Four Hundred Ninety-Three Thousand Three Hundred Thirty-Three and 00/100 ($1,493,333.00) in respect of the period of time commencing on the fourth (4th) anniversary of the Commencement Date and ending on the day immediately prior to the seventh (7th) anniversary of the Commencement Date; and

(iii) Seven Hundred Forty-Six Thousand Six Hundred Sixty-Six and 00/100 Dollars ($746,666.00) in respect of the period of time commencing on the seventh (7th) anniversary of the Commencement Date and ending on the Expiration Date.

"Seventh Floor Space Share" shall mean Six and Eight Thousand Fifty-Five ten-thousandths percent (6.8055%).

"Seventh Floor Space Tenant Fund" shall have the meaning set forth in Section 3.5 hereof.

"Space Factor" shall mean the Tenth Floor Space Factor and the Seventh Floor Space Factor (if the Seventh Floor Space Commencement Date has occurred).

"Specialty Alterations" shall mean Alterations consisting of kitchens (but not a "dwyer unit" or kitchenette), executive bathrooms, raised computer floors, computer installations, vaults, libraries, internal staircases, dumbwaiters, pneumatic tubes, vertical and horizontal transportation systems, the Satellite Dish and other Alterations of a similar character.

"Sublease Expenses" shall have the meaning set forth in Section 12.7 hereof.

"Sublease Profit" shall have the meaning set forth in Section 12.7 hereof.

"Sublease Rent" shall have the meaning set forth in Section 12.7 hereof.

"Sublease Rent Per Square Foot" shall have the meaning set forth in Section 12.7 hereof.

"Substantial Completion" or "Substantially Completed" or words of similar import shall mean that Landlord's Work has been substantially completed, it being agreed that Landlord's Work shall be deemed substantially complete notwithstanding the fact that (a) minor or insubstantial details of construction or demolition and/or mechanical adjustment and/or decorative items remain to be performed, and (b) any Long Lead Work remains to be performed.

"Superior Lease(s)" shall mean all ground or underlying leases of the Real Property or the Building and all renewals, extensions, supplements, amendments and modifications thereof.

"Taxes" shall have the meaning set forth in Section 27.1 hereof.

"Tax Payment" shall have the meaning set forth in Section 27.2 hereof.

"Tax Statement" shall have the meaning set forth in Section 27.1 hereof.

"Tax Year" shall have the meaning set forth in Section 27.1 hereof.

"Tenant" on the date as of which this Lease is made, shall mean LivePerson but thereafter "Tenant" shall mean only the tenant under this Lease at the time in question; provided, however, that the originally named tenant and any assignee of this Lease shall not be released from liability hereunder in the event of any assignment of this Lease.

"Tenant Signs" shall have the meaning set forth in Article 40 hereof.

"Tenant Statement" shall have the meaning set forth in Section 12.6 hereof.

"Tenant's Determination" shall have the meaning set forth in Section 41.1 hereof.

"Tenant's Property" shall mean Tenant's movable fixtures and movable partitions, telephone and other equipment, furniture, furnishings, decorations and other items of personal property.

"Tenant's Share" shall mean the Tenth Floor Space Share plus the Seventh Floor Space Share.

"Tentative Monthly Escalation Charge" shall have the meaning set forth in Section 27.4 hereof.

"Tenth Floor Space" shall mean the entire rentable area of the tenth (10th) floor of the Building as set forth on the floor plan attached as Exhibit "C" and made a part hereof.

"Tenth Floor Space Factor" shall mean Forty Thousand Five Hundred Twenty-Seven (40,527).

"Tenth Floor Space Initial Alterations" shall mean the Initial Alterations to initially prepare the Tenth Floor Space for Tenant's occupancy.

"Tenth Floor Space Landlord's Work" shall have the meaning set forth in Section 19.1 hereof.

"Tenth Floor Space Rent Commencement Date" shall mean subject to Section 19.2 hereof the earlier to occur of (x) June 1, 2000, and (y) the date that Tenant initially occupies the Tenth Floor Space for the conduct of business.

"Tenth Floor Space Security Amount" shall mean:

(i) Two Million and 00/100 Dollars ($2,000,000.00) in respect of the period of time commencing on the Commencement Date and ending on the day immediately prior to the fourth (4th) anniversary of the Commencement Date;

(ii) One Million Three Hundred Forty Thousand and 00/100 Dollars ($1,340,000.00) in respect of the period of time commencing on the fourth (4th) anniversary of the Commencement Date and ending on the day immediately prior to the seventh (7th) anniversary of the Commencement Date; and

(iii) Six Hundred Seventy Thousand and 00/100 Dollars ($670,000.00) in respect of the period of time commencing on the seventh (7th) anniversary of the Commencement Date and ending on the Expiration Date.

"Tenth Floor Space Share" shall mean Six and Four Thousand Two Hundred Forty-Two ten-thousandths percent (6.4242%).

"Tenth Floor Space Tenant Fund" shall have the meaning set forth in Section 3.5 hereof.

"Term" shall mean a term which shall commence on the Commencement Date and shall expire on the Expiration Date.

"Termination Date" shall have the meaning set forth in Article 22 hereof.

"Third Anniversary Date" shall have the meaning set forth in Section 1.1 hereof.

"Unavoidable Delays" shall have the meaning set forth in Article 25 hereof.

"Work" shall have the meaning set forth in Section 14.5 hereof.

ARTICLE 1
DEMISE, PREMISES, TERM, RENT

Section 1.1. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Tenth Floor Space for the Term to commence on the date hereof (the "Commencement Date") and to end on the day (the "Fixed Expiration Date") that is the last day of the month in which occurs the tenth (10th) anniversary of the Commencement Date at an annual rent (the "Fixed Rent") of:

(1) One Million Three Hundred Seventy-Seven Thousand Nine Hundred Eighteen and 00/100 Dollars ($1,377,918.00) for the period commencing on the Tenth Floor Space Rent Commencement Date and ending on the day immediately prior to the day that is the third (3rd) anniversary of the Commencement Date (the day that is the third (3rd) anniversary of the Commencement Date being referred to herein as the "Third Anniversary Date"), payable in equal monthly installments of One Hundred Fourteen Thousand Eight Hundred Twenty-Six and 50/100 Dollars ($114,826.50);

(2) One Million Four Hundred Ninety-Nine Thousand Four Hundred Ninety- Nine and 00/100 Dollars ($1,499,499.00) for the period commencing on the Third Anniversary Date and ending on the day immediately prior to the day that is the seventh (7th) anniversary of the Commencement Date (the day that is the seventh (7th) anniversary of the Commencement Date being referred to herein as the "Seventh Anniversary Date"), payable in equal monthly installments of One Hundred Twenty-Four Thousand Nine Hundred Fifty-Eight and 25/100 Dollars ($124,958.25); and

(3) One Million Six Hundred Twenty-One Thousand Eighty and 00/100 Dollars ($1,621,080.00) for the period commencing on the Seventh Anniversary Date and ending on the Fixed Expiration Date, payable in equal monthly installments of One Hundred Thirty-Five Thousand Ninety and 00/100 Dollars ($135,090.00).

Section 1.2. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Seventh Floor Space for a term commencing on the Seventh Floor Space Commencement Date and ending on the Fixed Expiration Date at a Fixed Rent of:

(1) One Million Four Hundred Fifty-Nine Thousand Six Hundred Eighty-Eight and 00/100 Dollars ($1,459,688.00) for the period commencing on the Seventh Floor Space Rent Commencement Date and ending on the day immediately prior to the Third Anniversary Date, payable in equal monthly installments of One Hundred Twenty-One Thousand Six Hundred Forty and 67/100 Dollars ($121,640.67);

(2) One Million Five Hundred Eighty-Eight Thousand Four Hundred Eighty Four and 00/100 Dollars ($1,588,484.00) for the period commencing on the Third Anniversary Date and ending on the day immediately prior to the Seventh Anniversary Date, payable in equal monthly installments of One Hundred Thirty-Two Thousand Three Hundred Seventy-Three and 67/100 Dollars ($132,373.67); and

(3) One Million Seven Hundred Seventeen Thousand Two Hundred Eighty and 00/100 Dollars ($1,717,280.00) for the period commencing on the Seventh Anniversary Date and ending on the Fixed Expiration Date, payable in equal monthly installments of One Hundred Forty-Three Thousand One Hundred Six and 67/100 Dollars ($143,106.67).

Section 1.3. Tenant agrees to pay the Fixed Rent in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance, on the first (1st) day of each calendar month during the Term commencing on the Rent Commencement Date, at the office of Landlord or such other place as Landlord may designate, without any set-off, offset, abatement or deduction whatsoever except as expressly set forth herein, except that Tenant shall pay the first full monthly installment on the execution hereof.

ARTICLE 2
USE AND OCCUPANCY

Section 2.1. Tenant shall use and occupy the Premises as general and executive offices, uses incidental thereto and for no other purpose.

Section 2.2. (A) Tenant shall not use the Premises or any part thereof, or permit the Premises or any part thereof to be used, (1) for the business of photographic, multilith or multigraph reproductions or offset printing, except in connection with, either directly or indirectly, Tenant's own business and/or activities, (2) for a banking, trust company, depository, guarantee or safe deposit business in either case conducting business with the general public on an off-the-street retail business, (3) as a savings bank, a savings and loan association, or as a loan company in either case conducting business with the general public on an off-the-street retail business, (4) for the sale of travelers checks, money orders, drafts, foreign exchange or letters of credit or for the receipt of money for transmission in either case conducting business with the general public on an off-the-street retail business, (5) as a stockbroker's or dealer's office or for the underwriting or sale of securities in either case conducting business with the general public on an off-the-street retail business, (6) by the United States government, the City or State of New York, any foreign government, the United Nations or any agency or department of any of the foregoing or any other Person having sovereign or diplomatic immunity, (7) as a restaurant or bar or for the sale of

confectionery, soda or other beverages, sandwiches, ice cream or baked goods or for the preparation, dispensing or consumption of food or beverages in any manner whatsoever, except for consumption by Tenant's officers, employees and business guests, (8) as an employment agency, executive search firm or similar enterprise, labor union, school, or vocational training center (except for the training of employees of Tenant, or (9) as a barber shop or beauty salon.

(B) In connection with, and incidental to, Tenant's use of the Premises for general and executive offices as provided in this Article 2, Tenant, at its sole cost and expense and upon compliance with all applicable Requirements, may install a "dwyer" or similar unit in the Premises for the purpose of warming food for the officers, employees and business guests of Tenant (but not for use as a public restaurant), provided that Tenant shall obtain all permits required by any Governmental Authorities for the operation thereof and such installation shall comply with the provisions of this Lease, including, without limitation, Article 3 hereof. Tenant may also install, at its sole cost and expense and subject to and in compliance with the provisions of Articles 3 and 4 hereof, vending machines for the exclusive use of the officers, employees and business guests of Tenant, each of which vending machines (if it dispenses any beverages or other liquids or refrigerates) shall have a waterproof pan located thereunder, connected to a drain.

ARTICLE 3
ALTERATIONS

Section 3.1. (A) Except as provided in Section 3.4 hereof, Tenant shall not make any Alterations without Landlord's prior consent. Landlord shall not unreasonably withhold, condition or delay its consent to any proposed nonstructural Alterations, provided that such Alterations (i) are not visible from the ground level outside of the Building, (ii) do not affect in any material and adverse respect any part of the Building other than the Premises or require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building or the Real Property other than the Premises, (iii) do not affect in any material and adverse respect any service required to be furnished by Landlord to Tenant or to any other tenant or occupant of the Building, (iv) do not affect in any material and adverse respect the proper functioning of any Building System, (v) do not reduce the value or utility of the Building, and (vi) do not require a change to the certificate of occupancy for the Building or the Premises.

(B) (1) Prior to making any Alterations, including, without limitation, the Initial Alterations, Tenant shall (i) submit to Landlord detailed plans and specifications (including layout, architectural, mechanical and structural drawings) for each proposed Alteration and shall not commence any such Alteration without first obtaining Landlord's approval of such plans and specifications (except with respect to any nonstructural Alteration referred to in Section 3.4 hereof for which Landlord's

approval is not required), which, in the case of nonstructural Alterations which meet the criteria set forth in Section 3.1(A) above, shall not be unreasonably withheld, conditioned or delayed, (ii) at Tenant's expense, obtain all permits, approvals and certificates required by any Governmental Authorities, it being agreed that all filings with Governmental Authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense, by a Person designated by Landlord (it being understood that (x) the Person initially so designated by Landlord is Charles Rizzo & Associates ("CR&A"), and (y) Tenant shall not discharge CR&A unless CR&A's fees are not commercially competitive or Tenant in good faith believes CR&A is not performing its services properly), and (iii) furnish to Landlord duplicate original policies or certificates thereof of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and general commercial public liability (including property damage coverage) insurance in such form, with such companies, for such periods and in such amounts as Landlord may reasonably approve, naming Landlord and its agents, any Lessor and any Mortgagee, as additional insureds. Upon completion of such Alteration, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Alteration required by any Governmental Authority and shall furnish Landlord with copies thereof, together with the "as-built" plans and specifications for such Alterations, it being agreed that all filings with Governmental Authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense, by a Person designated by Landlord (it being understood that (x) the Person initially so designated by Landlord is CR&A, and (y) Tenant shall not discharge CR&A unless CR&A's fees are not commercially competitive or Tenant in good faith believes CR&A is not performing its services properly). All Alterations shall be made and performed substantially in accordance with the plans and specifications therefor as approved by Landlord (unless Landlord's consent to the Alteration is not required), all Requirements, the Rules and Regulations, and all rules and regulations relating to Alterations promulgated by Landlord in its reasonable judgment. The rules and regulations for Alterations that exist as of the date hereof are attached as Exhibit "D" and made a part hereof. Tenant shall not be required to comply with any new or revised rule or regulation promulgated by Landlord after the commencement of a particular Alteration if such new or revised rule or regulation has more than a de minimis effect on the design or performance of such Alteration. All materials and equipment to be incorporated in the Premises as a result of any Alterations or a part thereof shall be first quality and no such materials or equipment (other than Tenant's Property) shall be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement. If, as a result of any Alterations performed by Tenant, including, without limitation, the Initial Alterations, any alterations, installations, improvements, additions or other physical changes are required to be performed or made to any portion of the Building or the Real Property other than the Premises in order to comply with any Requirement(s), which alterations, installations, improvements, additions or other physical changes would not otherwise have had to be performed or made pursuant to applicable Requirement(s) at such time, Landlord, at Tenant's sole cost and expense, may perform or make such alterations, installations, improvements, additions or other physical changes and take such actions as Landlord shall deem reasonably necessary and Tenant, within five (5) days after demand therefor by Landlord, shall provide Landlord with such security as Landlord

shall reasonably require, in an amount equal to the cost of such alterations, installations, improvements, additions or other physical changes, as reasonably estimated by Landlord's architect, engineer or contractor. All Alteration(s) requiring the consent of Landlord shall be performed only under the supervision of an independent licensed architect approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord hereby approves Tenant's use of Aplusi Design Corp. as Tenant's architect for the Initial Alterations and Flack & Kurtz Consulting Engineers, LLP as Tenant's mechanical engineer for the Initial Alterations.

(2) If Landlord shall fail to disapprove Tenant's final plans and specifications for any Alteration within ten (10) Business Days, or within five (5) Business Days (with respect to any resubmission of disapproved plans), after Landlord's receipt thereof (provided in each instance the same shall be of a scope and scale reasonably susceptible of review in such periods), Landlord shall be deemed to have approved such plans and specifications. Any disapproval given by Landlord shall be accompanied by a reasonably detailed statement of the reasons for such disapproval. Landlord reserves the right (in accordance with the standards for Landlord's consent set forth in this Article 3) to disapprove any plans and specifications in part, to reserve approval of items shown thereon pending its review and approval of other plans and specifications, and to condition its approval upon Tenant making revisions to the plans and specifications or supplying additional information. Any review or approval by Landlord of any plans and/or specifications or any preparation or design of any plans by Landlord's architect or engineer (or any architect or engineer designated by Landlord) with respect to any Alteration is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant or any other Person with respect to the compliance thereof with any Requirements, the adequacy, correctness or efficiency thereof or otherwise.

(C) Tenant shall be permitted to perform Alterations at any time, provided that (x) such work shall not materially interfere with or interrupt the operation and maintenance of the Building or unreasonably interfere with or interrupt the use and occupancy of the Building by other tenants in the Building, and (y) Tenant pays to Landlord within thirty (30) days after demand therefor Landlord's then standard charge for engineers to monitor Tenant's performance of Alterations, or security guards to monitor the loading dock or other areas of the Building impacted by Tenant's performance of Alterations, in either case (i) in respect of any period of time after 6:00 P.M. and prior to 8:00 A.M. on Business Days and at any time on days that are not Business Day, and (ii) to the extent such engineers or such guards are reasonably required by Landlord. Otherwise, Alterations shall be performed at such times and in such manner as Landlord may from time to time reasonably designate. All Tenant's Property installed by Tenant and all Alterations in and to the Premises which may be made by Tenant at its own cost and expense prior to and during the Term, shall remain the property of Tenant. Upon the Expiration Date, Tenant shall remove Tenant's

Property from the Premises and, at Tenant's option, Tenant also may remove, at Tenant's cost and expense, all Alterations made by Tenant to the Premises, provided, however, in any case, that Tenant shall repair and restore in a good and workerlike manner to good condition any damage to the Premises or the Building caused by such removal. Notwithstanding the foregoing, however, Landlord, upon notice given at least ninety (90) days prior to the Fixed Expiration Date or upon such shorter notice as is reasonable under the circumstances upon the earlier expiration of the Term, may require Tenant to remove any Specialty Alterations, and to repair and restore in a good and workerlike manner to good condition any damage to the Premises or the Building caused by such removal; provided, however, that Tenant shall not be required to remove any Specialty Alterations that constitute Qualified Specialty Alterations. Tenant shall have the right to request (simultaneously with Tenant's submission to Landlord of plans and specifications for such Specialty Alterations) that Landlord designate that Tenant shall not be required to remove such Specialty Alteration upon the expiration or earlier termination of the Term, as aforesaid. Landlord shall have the right to approve or deny any such request in Landlord's sole discretion. If Tenant makes any such request, and, together with such request, identifies the provisions of this Section 3.1(C) requiring Landlord to respond thereto not later than the date that Landlord's approval of such plans and specifications is deemed to be granted pursuant to Section 3.1(B)(2) hereof (it being understood that if Landlord does not have the right to approve such Specialty Alteration under this Article 3, then such date shall be deemed to be the tenth (10th) Business Day after the date when Tenant makes such request), and Landlord either approves such request, or fails to respond to Tenant's aforesaid request on or prior to such date, then Landlord shall not have the right to require Tenant to remove such Specialty Alteration upon the expiration or earlier termination of the Term (any such Specialty Alteration which Tenant shall not be required to remove as aforesaid being referred to herein as a "Qualified Specialty Alteration"). If the Satellite Dish does not constitute a Qualified Specialty Alteration, then the removal thereof at Landlord's option, shall be performed by either Landlord or Tenant, in either case, at Tenant's sole cost and expense. In addition, upon notice given at least thirty (30) days prior to the Expiration Date or upon such shorter notice as is reasonable under the circumstances upon the earlier expiration of the Term, Landlord may require that any cables, conduits, risers and other similar items and equipment which pass through portions of the Building and which connect to the Satellite Dish and which items and equipment do not constitute a Qualified Specialty Alteration, which Tenant is permitted to install pursuant to the provisions of Article 39 hereof shall be disconnected, capped and sealed by Tenant, at its sole cost and expense at the point of connection to the Premises.

(D) (1) All Alterations shall be performed, at Tenant's sole cost and expense, by Landlord's contractor(s) or by contractors, subcontractors or mechanics approved by Landlord, which approval solely with respect to general contractors shall not be unreasonably withheld, conditioned or delayed. Prior to making an Alteration, at Tenant's request, Landlord shall furnish Tenant with a list of contractors (it being agreed that any subcontractors on such list shall charge commercially competitive rates) who

may perform Alterations to the Premises on behalf of Tenant. If Tenant engages any contractor set forth on the list, Tenant shall not be required to obtain Landlord's consent for such contractor unless, prior to the earlier of (a) entering into a contract with such contractor, and (b) the commencement of work by such contractor, Landlord shall notify Tenant that such contractor has been removed from the list. The current list of contractors approved by Landlord is attached as Exhibit "E" hereto and made a part hereof. If Tenant engages any contractor set forth on such list, Tenant shall not be required to obtain Landlord's consent for such contractor unless, prior to the earlier of (a) entering into a contract with such contractor, and (b) the commencement of work by such contractor Landlord shall notify Tenant that such contractor has been removed from such list.

(2) Notwithstanding the foregoing, with respect to any Alteration affecting any Building System, (i) Tenant shall select a contractor from a list of approved contractors furnished by Landlord to Tenant (containing at least three (3) contractors) and (ii) the Alteration shall, at Tenant's cost and expense, be designed by Tenant's engineer for the relevant Building System and approved by Landlord's engineer, which approval shall not be unreasonably withheld, conditioned or delayed (it being agreed that Landlord consents to Flack & Kurtz Consulting Engineers, LLP as Tenant's engineer to design the Initial Alterations affecting any Building System).

(E) Any mechanic's lien filed against the Premises or the Real Property for work claimed to have been done for, or materials claimed to have been furnished to, Tenant (except as part of Landlord's Work) shall be discharged by Tenant within thirty (30) days after Tenant shall have received notice thereof (or such shorter period if required by the terms of any Superior Lease or Mortgage), at Tenant's expense, by payment or filing the bond required by law. Tenant shall not, at any time prior to or during the Term, directly or indirectly employ, or permit the employment of, any contractor, mechanic or laborer in the Premises, whether in connection with any Alteration or otherwise, if such employment would interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others, or of any adjacent property owned by Landlord. In the event of any such interference or conflict, Tenant, upon demand of Landlord, shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

Section 3.2. Tenant shall pay to Landlord or to Landlord's agent, from time to time, the reasonable out-of-pocket costs incurred by Landlord in connection with Alterations (including, without limitation, the reasonable out-of-pocket costs incurred by Landlord in reviewing Tenant's plans and specifications for a proposed Alteration), upon the submission of Landlord's receipts and invoices therefor, within thirty (30) days after Landlord's demand therefor.

Section 3.3. Upon the request of Tenant, Landlord, at Tenant's cost and expense, shall join in any applications for any permits, approvals or certificates required

to be obtained by Tenant in connection with any permitted Alteration (provided that the provisions of the applicable Requirement shall require that Landlord join in such application) and shall otherwise cooperate with Tenant in connection therewith, provided that Landlord shall not be obligated to incur any cost or expense, including, without limitation, attorneys' fees and disbursements, or suffer any liability in connection therewith.

Section 3.4. Anything contained in this Lease to the contrary notwithstanding, Landlord's consent shall not be required with respect to any nonstructural Alteration, provided that (a) consent for such Alteration is not required under the terms of any Superior Lease or Mortgage, and (b) such Alteration (i) is not visible from the ground level outside of the Building, (ii) does not affect in any material and adverse respect any part of the Building other than the Premises or require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building or the Real Property other than the Premises, (iii) does not affect in any material and adverse respect any service required to be furnished by Landlord to any other tenant or occupant of the Building, (iv) does not affect in any material and adverse respect the proper functioning of any Building System, (v) does not impair or diminish the value or utility of the Building, (vi) does not violate the provisions of or require a change to the certificate of occupancy for the Building or the Premises, and (vii) the estimated cost of the labor and materials for which shall not exceed Five Hundred Thousand and 00/100 Dollars ($500,000.00), which amount shall be increased on the third (3rd) anniversary of the Commencement Date and annually thereafter by the annual percentage increase, if any, in the Consumer Price Index from that in effect on the date immediately preceding the Commencement Date, either individually or in the aggregate with other nonstructural Alterations constructed within any twelve (12) month period; provided, however, that at least ten (10) days prior to making any such nonstructural Alteration, Tenant shall submit to Landlord for informational purposes only the detailed plans and specifications for such Alteration, as required by Section 3.1(B)(1)(i) hereof, and any such Alteration shall otherwise be performed in compliance with the provisions of this Article 3.

Section 3.5. (A) Landlord shall contribute an amount not to exceed (x) One Million Five Hundred Nineteen Thousand Six Hundred Twenty and 00/100 Dollars ($1,519,620.00) in respect of the Seventh Floor Space Initial Alterations (the "Seventh Floor Space Tenant Fund"), and (y) One Million Four Hundred Thirty Thousand Four Hundred Forty-Five and 00/100 Dollars ($1,430,445.00) in respect of the Tenth Floor Space Initial Alterations (the "Tenth Floor Space Tenant Fund"; the Seventh Floor Space Tenant Fund or the Tenth Floor Space Tenant Fund being referred to herein as the "Applicable Tenant Fund") toward (I) the "hard" cost of the Applicable Initial Alterations, and (II) architect's and engineering fees, permit fees, expediter's fees and designers' fees in connection with the Applicable Initial Alterations and deposits for materials to be installed as part of the Applicable Initial Alterations so long as such deposits are required in the ordinary course of performing work similar to the Applicable Initial Alterations (such "soft costs" and related costs referred to in this clause (II)

incurred by Tenant in connection with the Applicable Initial Alterations being collectively referred to herein as "Related Costs"). If Landlord fails to disburse a portion of the Applicable Tenant Fund when due in accordance with this Section 3.5 and such failure continues for ten (10) days after Tenant gives Landlord notice thereof, then Tenant shall have the right to offset such applicable portion thereof which Landlord failed to disburse against the Rental due hereunder, together with interest thereon at the Applicable Rate computed from the date such disbursement was due to Tenant in accordance with this Section 3.5 through the date upon which such portion of the Applicable Tenant Fund which Landlord failed to disburse is offset against such Rental.

(B) Landlord shall disburse a portion of the Applicable Tenant Fund to Tenant (or at Tenant's request, to Tenant's general contractor or construction manager) from time to time, within thirty (30) days after receipt of the items set forth in Section 3.5(C) hereof, provided that on the date of a request and on the date of disbursement from the Applicable Tenant Fund no Event of Default shall have occurred and be continuing. Landlord shall have no obligation to disburse any portion of the Seventh Floor Space Tenant Fund unless and until the Seventh Floor Space Commencement Date has occurred. Landlord shall portion of the Applicable Tenant Fund to or on behalf of Tenant until Tenant has (i) disbursed an aggregate amount of at least Five Hundred Thousand and 00/100 Dollars ($500,000.00) (such amount for purposes of this Section 3.5 being referred to herein as the "Required Amount") in respect of the Applicable Initial Alterations (of which amount at least Four Hundred Twenty- Five Thousand and 00/100 Dollars ($425,000.00) must be incurred for "hard" costs as described in clause (A) of this Section 3.5), (ii) provided Landlord with copies of all receipts, invoices and bills to reasonably substantiate that Tenant has spent the Required Amount for the Applicable Initial Alterations, and (iii) provided Landlord with waivers of lien for the Applicable Initial Alterations performed in the Seventh Floor Space or the Tenth Floor Space, as the case may be, as of the date Landlord makes its first disbursement of the Applicable Tenant Fund from the contractors and materialmen involved in the performance of such Applicable Initial Alterations (which waivers of lien may be conditioned upon payment of an amount that is part of the requisition then being disbursed by Landlord); provided, however, that if, as of the Seventh Floor Space Commencement Date, Tenant's stock is traded publicly through the "over-the-counter market" or through any recognized stock exchange, then Tenant shall have no obligation to disburse the Required Amount prior to Landlord's disbursing the Seventh Floor Space Tenant Fund to Tenant in accordance with this Section 3.5. Disbursements from the Applicable Tenant Fund shall not be made more frequently than monthly, and shall be in an amount equal to the aggregate amounts theretofore paid or payable other than amounts on account of the Required Amount (as certified by an officer of Tenant and Tenant's independent, licensed architect) to Tenant's contractors, subcontractors and materialmen which have not been the subject of a previous disbursement from the Applicable Tenant Fund. In no event shall disbursements of the Applicable Tenant Fund on account of Related Costs exceed (x) Two Hundred Fourteen Thousand Five Hundred Sixty-Six and 75/100 Dollars ($214,566.75) in respect of the Tenth Floor Space Tenant Fund, or (y) Two Hundred

Twenty-Seven Thousand Nine Hundred Forty- Three and 00/100 Dollars ($227,943.00) in respect of the Seventh Floor Space Tenant Fund.

(C) Landlord's obligation to make disbursements from the Applicable Tenant Fund shall be subject to Landlord's verification of the total cost of the Applicable Initial Alterations as estimated by Tenant's independent licensed architect and receipt of: (a) a request for such disbursement from Tenant signed by officer of Tenant, together with the certification required by Section 3.5(B) hereof, (b) copies of all receipts, invoices and bills for the work completed and materials furnished in connection with the Applicable Initial Alterations, which are to be paid from the requested disbursement or which have been paid by Tenant and for which Tenant is seeking reimbursement (it being agreed that except for deposits for materials included in "soft costs" in accordance with clause (A) of this Section 3.5, Landlord shall have no obligation to make a disbursement from the Applicable Tenant Fund on account of materials in respect of the Applicable Initial Alterations until such materials are incorporated in the Seventh Floor Space or the Tenth Floor Space, as the case may be), (c) copies of all contracts, work orders, change orders and other materials relating to the work or materials which are the subject of the requested disbursement or reimbursement, (d) if requested by Landlord, waivers of lien from all contractors and materialmen involved in the performance of the Applicable Initial Alterations relating to the portion of the Applicable Initial Alterations theretofore performed and materials theretofore provided and for which previous disbursements and/or the requested disbursement has been or is to be made (except to the extent such waivers of lien were previously furnished to Landlord upon a prior request), it being acknowledged that such lien waivers may be conditioned upon payment of an invoice which is included in the subject disbursement, and (e) a certificate of Tenant's independent licensed architect stating that, in his opinion, the portion of the Applicable Initial Alterations theretofore completed and for which the disbursement is requested was performed in a good and workerlike manner and substantially in accordance with the final detailed plans and specifications for such Applicable Initial Alterations, as approved by Landlord.

(D) In no event shall the aggregate amount paid by Landlord to Tenant under this Section 3.5 exceed the amount of the Applicable Tenant Fund. Upon the completion of the Applicable Initial Alterations and satisfaction of the conditions set forth in Section 3.5(E) hereof, any amount of the Applicable Tenant Fund which has not been previously disbursed shall be retained by Landlord; provided, however, that if (x) Tenant has disbursed the Required Amount, and (y) the sum of the Required Amount and the amount of the Applicable Tenant Fund theretofore disbursed to Tenant equals or exceeds the amount of the Applicable Tenant Fund, then any amount of the Applicable Tenant Fund which has not been previously disbursed shall be payable to Tenant on or prior to thirty (30) days after Tenant's request therefor. Upon the disbursement of the entire Applicable Tenant Fund (or the portion thereof if upon completion of the Applicable Initial Alterations the Applicable Tenant Fund is not exhausted) in accordance with this Section 3.5(D), Landlord shall have no further obligation or liability whatsoever to Tenant for further disbursement of any portion of the

Applicable Tenant Fund to Tenant. Subject to Landlord's obligation to disburse the Applicable Tenant Fund, it is expressly understood and agreed that Tenant shall complete, at its sole cost and expense, the Applicable Initial Alterations, whether or not the Applicable Tenant Fund is sufficient to fund such completion. Any costs to complete the Applicable Initial Alterations in excess of the Applicable Tenant Fund shall be the sole responsibility and obligation of Tenant.

(E) Within ninety (90) days after completion of the Applicable Initial Alterations, Tenant shall deliver to Landlord and waivers of lien from all contractors, subcontractors and materialmen involved in the performance of the Applicable Initial Alterations and the materials furnished in connection therewith (unless same previously were furnished pursuant to Section 3.5(C) hereof), and a certificate from Tenant's independent licensed architect certifying that (i) in his opinion the Applicable Initial Alterations have been performed in a good and workerlike manner and completed in accordance with the final detailed plans and specifications for such Applicable Initial Alterations as approved by Landlord and (ii) all contractors, subcontractors and materialmen have been paid for the Applicable Initial Alterations and materials furnished through such date. Notwithstanding the foregoing, Tenant shall not be required to deliver to Landlord any general release or waiver of lien if Tenant shall be disputing in good faith the payment which would otherwise entitle Tenant to such release or waiver, provided that Tenant shall keep Landlord advised in a timely fashion of the status of such dispute and the basis therefor and Tenant shall deliver to Landlord the waiver of lien when the dispute is settled. Nothing contained in this Section, however, shall relieve Tenant from complying with the provisions of Section 3.1(E) hereof.

(F) Tenant shall spend from the Applicable Tenant Fund no less than (x) Twelve Thousand and 00/100 Dollars ($12,000.00) in the Tenth Floor Space, and (y) Seventeen Thousand and 00/100 Dollars ($17,000.00) in the Seventh Floor Space, in either case for the "hard" costs of installing restrooms in the Tenth Floor Space or the Seventh Floor Space, as the case may be, that comply with the American with Disabilities Act and all other applicable Requirements.

Section 3.6. Subject to the terms of this Section 3.6, Landlord shall deliver to Tenant, in connection with Tenant's applications to the applicable Governmental Authority for a building permit regarding any Alterations, three (3) copies of a Form ACP-5, duly executed by an appropriate party and covering all of the Premises, within two (2) weeks after Tenant delivers to Landlord the final plans and specifications for the applicable Alterations. If (x) any asbestos or asbestos containing materials (any asbestos or any such materials being collectively referred to herein as "ACM") are located in the Premises, and (y) Tenant reasonably determines that applicable Requirements require that such ACM be abated before Tenant performs Alterations therein, then (i) Landlord, at Landlord's sole cost and expense, shall perform such abatement, with due diligence, in accordance with good construction practice and in compliance with all applicable Requirements, in an effort to Substantially Complete

such abatement within a reasonable period after the date that Tenant gives Landlord notice thereof, and (ii) Landlord shall have reasonable access to the Premises (if necessary) for the purpose of performing such abatement in accordance with the provisions of Article 4 hereof, it being agreed that Landlord shall not be required to (A) deliver a Form ACP-5 for the portion of the Premises or the other portions of the Building in which Tenant, or any Person claiming by, through or under Tenant, plans to perform the applicable Alteration until the applicable ACM is abated as contemplated by this Section 3.6, or (B) abate any such ACM to the extent that such ACM is installed by Tenant or any other party claiming by, through or under Tenant, after the Commencement Date (or the Seventh Floor Space Commencement Date, as the case may be). If (i) the Commencement Date (or the Seventh Floor Space Commencement Date, as the case may be) has theretofore occurred, (ii) ACM is discovered in the Premises, (iii) the existence or removal of such ACM actually delays Tenant's performance of the Applicable Initial Alterations, and (iv) Tenant gives notice thereof to Landlord (which includes reasonable evidence of such actual delay), then the Applicable Rent Commencement Date shall be adjourned by one (1) day for each day that Tenant's performance of the Applicable Initial Alterations is actually delayed by reason of Landlord's performance of such abatement (or, if the Applicable Rent Commencement Date has theretofore occurred, Tenant shall be entitled to a one (1) day abatement of the Rental due hereunder for the Tenth Floor Space or the Seventh Floor Space, as the case may be for each such day that Tenant's performance is so actually delayed). Tenant shall cooperate with Landlord, at no expense to Tenant, to minimize, to the extent reasonably practicable, the duration of any such actual delay suffered by Tenant in the performance of the applicable Alterations. If Tenant's performance of the Applicable Initial Alterations is actually delayed by virtue of the existence or presence of ACM in the Premises pursuant to this Section 3.6 on a day when Landlord's failure to complete Landlord's Work pursuant to and in accordance with Section 19.2 hereof also delays Tenant's performance of the Applicable Initial Alterations, then Tenant shall only be entitled to one (1) day's adjournment of the Applicable Rent Commencement Date (or a one (1) day abatement of the Rental due hereunder, as the case may be) for such day.

Section 3.7. Subject to the terms of this Section 3.7, Landlord hereby consents to Tenant, as part of the Initial Alterations, installing electrical risers, telecommunications risers, or other similar risers (collectively, the "Risers") in any of the stairwells depicted on Exhibit "F" attached hereto and made a part hereof to the extent permitted by Requirements (it being agreed that any Risers shall be enclosed or "boxed" within the applicable stairwell). Landlord shall provide Tenant with all reasonably necessary access for the installation of the Risers, provided that such access shall (i) not unreasonably interfere with or interrupt the operation and maintenance of the Building, and (ii) be upon such other terms reasonably designated by Landlord. If Tenant installs any Risers, then such installation shall be Tenant's sole cost and expense. Any such installation shall be performed in accordance with the provisions of this Lease, including, without limitation, the provisions pertaining to the performance of Alterations (it being acknowledged that Tenant's installation of the

Risers under this Section 3.7 shall be subject to Landlord's approval of Tenant's plans and specifications therefor, which approval Landlord shall not unreasonably withhold, condition or delay as otherwise provided in this Article 3). Tenant, at Tenant's sole cost and expense, shall repair and maintain any such Risers during the Term in accordance with all applicable Requirements. Landlord, at Landlord's cost and expense and at no cost to Tenant, and upon reasonable prior notice to Tenant of not less than ninety (90) days, may, at any time and from time to time during the Term, relocate any of the Risers, provided that such relocation does not interfere other than to a de minimis extent with the operation of Tenant's business. Any Risers installed by Tenant shall constitute a Specialty Alteration for purposes hereof, it being understood, however, that Tenant, upon the Expiration Date, shall not be required to remove the Risers but shall at Tenant's sole cost and expense be required to remove and discard the wiring and cabling within the Risers.

Section 3.8. Subject to the terms of this Section 3.8, Landlord shall not unreasonably withhold, condition or delay its consent to Tenant, as part of the Initial Alterations, installing louvers in place of windows for the Premises, for purposes of drawing outside air into, or for exhausting air from, the Premises to reasonably accommodate Tenant's supplemental HVAC system and any other Alteration requiring an exhaust or air intake system. Tenant shall not use any such louvers to exhaust air to the extent such exhaust violates any applicable Requirements. Tenant's installation of such louvers shall be at Tenant's sole cost and expense. Any installation of such louvers shall be performed in accordance with the provisions of this Article 3. If Tenant installs any louvers, then Tenant, at Tenant's sole cost and expense, shall operate, repair, clean, and maintain such louvers in a manner that is consistent with the operation of the Building as a first-class office building and that complies with all applicable Requirements. Tenant acknowledges that Landlord, in considering whether to consent to Tenant's request to install any such louvers, shall have the right to take into account the aesthetic qualities of any such louvers, the proximity of such louvers to the mechanical rooms on the particular floor of the Building, the effect of such louvers on the exterior appearance of the Building, and the proximity of any such louvers to louvers, ducts, or other similar apparatus theretofore installed in the Building that in any such case are used for purposes of drawing fresh air into the Building. Landlord, at Landlord's cost and expense and at no cost to Tenant, and upon prior reasonable notice to Tenant of not less than ninety (90) days, may, at any time during the Term, relocate any of Tenant's louvers, provided that such relocation does not interfere other than to a de minimis extent with the operation of Tenant's business. Tenant's installation of such louvers as contemplated by this Section 3.8 shall constitute a Qualified Specialty Alteration for purposes hereof.

Section 3.9. Landlord shall not unreasonably withhold, delay, or condition its consent to an Alteration consisting of the installation of a supplementary air-cooled air conditioning system (and any equipment required to be installed in connection therewith) to service the Premises. Tenant shall install any such system at Tenant's sole cost and expense. If Tenant installs any such systems, then such installation shall

be in accordance with the provisions of this Lease, including, without limitation, the provisions pertaining to the performance of Alterations (it being acknowledged that Tenant's installation of such system under this Section 3.9 shall be subject to Landlord's approval of Tenant's plans and specifications therefor, which approval Landlord shall not unreasonably withhold, condition or delay as otherwise provided in this Article 3). Any such system installed by Tenant shall be repaired and maintained during the Term at Tenant's sole cost and expense in accordance with all applicable Requirements.

ARTICLE 4
REPAIRS-FLOOR LOAD

Section 4.1. Landlord shall operate, maintain and make all necessary repairs (both structural and nonstructural) to the part of the Building Systems which provide service to the Premises (but not to the distribution portions of such Building Systems located within the Premises) and the structural portion of the Building, the roof, and the sidewalks adjacent to the Building, and the public portions of the Building, both exterior and interior, in conformance with standards applicable to non-institutional first class office buildings in Manhattan. Tenant, at Tenant's sole cost and expense, shall take good care of the Premises and the fixtures, equipment and appurtenances therein and the distribution portions of such Building Systems and shall make all nonstructural repairs thereto as and when needed to preserve them in good working order and condition, except for reasonable wear and tear, obsolescence and damage for which Tenant is not responsible pursuant to the provisions of Article 10 hereof. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Building and Building Systems, or to its fixtures, equipment and appurtenances (other than any damage with respect to which Article 10 shall apply), whether requiring structural or nonstructural repairs, caused by or resulting from the negligence of, or Alterations made by, Tenant, Tenant's agents, employees, invitees or licensees, shall be repaired at Tenant's sole cost and expense, by Tenant to the reasonable satisfaction of Landlord (if the required repairs are nonstructural in nature and do not affect any Building System), or by Landlord (if the required repairs are structural in nature or affect any Building System). All of the aforesaid repairs shall be of first quality and of a class consistent with non-institutional first class office building work or construction and shall be made in accordance with the provisions of Article 3 hereof. If Tenant fails after thirty (30) days' notice (or such shorter period as Landlord may be permitted pursuant to any Superior Lease or Mortgage or such shorter period as may be required due to an emergency) to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant, and the expenses thereof incurred by Landlord, with interest thereon at the Applicable Rate, shall be forthwith paid to Landlord as additional rent within thirty (30) days after rendition of a bill or statement therefor. Tenant shall give Landlord prompt notice of any defective condition in the Building or in any Building System, located in, servicing or passing through the Premises of which Tenant has knowledge.

Section 4.2. Tenant shall not place a load upon any floor of the Premises exceeding fifty (50) pounds per square foot "live load". Tenant shall not move any safe, heavy machinery, heavy equipment, business machines, freight, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed, and shall make payment to Landlord of Landlord's reasonable, out-of-pocket costs in connection therewith. If such safe, machinery, equipment, freight, bulky matter or fixtures requires special handling, Tenant shall employ only persons holding a Master Rigger's license to do said work. All work in connection therewith shall comply with all Requirements and the Rules and Regulations, and shall be done at any time, provided that if such work is reasonably likely to materially interfere with the operation of the Building or unreasonably interfere with the use and occupancy of the Building by other tenants, then such work shall be done during such hours as Landlord may reasonably designate. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Except as expressly provided in this Lease, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others making, or failing to make, any repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof.

Section 4.3. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in making any repairs, alterations, additions or improvements; provided, however, that Landlord shall have no obligation to employ contractors or labor at so-called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever, except that Landlord, at its expense but subject to recoupment pursuant to Article 27 hereof, shall employ contractors or labor at so-called overtime or other premium pay rates if necessary to make any repair required to be made by it hereunder to remedy any condition that either (i) results in a denial of access to the Premises, (ii) threatens the health or safety of any occupant of the Premises, or (iii) except in the case of a fire or other casualty, materially interferes with Tenant's ability to conduct its business in the Premises. In all other cases, at Tenant's request, Landlord shall employ contractors or labor at so-called overtime or other premium pay rates and incur any other overtime costs or expenses in making any repairs, alterations, additions or improvements, and Tenant shall pay to Landlord, as additional rent, within thirty (30) Business Days after demand, an amount equal to the difference between the overtime or other premium pay rates and the regular pay rates for such labor and any other overtime costs or expenses so incurred.

Section 4.4. Both the design and decoration of the elevator areas of each entire floor of the Premises and the public corridors of any entire floor of the Premises occupied by more than one (1) occupant (as a result of a subletting or occupancy arrangement, if any, in accordance with Article 12 hereof) shall be subject to Landlord's

approval, which approval shall not be unreasonably withheld, conditioned or delayed, and such elevator areas and public corridors shall be maintained and kept clean by Tenant to Landlord's reasonable satisfaction. Nothing contained in the foregoing sentence, however, shall vitiate Landlord's obligation to clean the Premises as provided in Section 28.4 hereof. ARTICLE 5 WINDOW CLEANING

Tenant shall not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned from the outside in violation of Section 202 of the Labor Law, or any other Requirement, or of the rules of the Board of Standards and Appeals, or of any other board or body having or asserting jurisdiction.

ARTICLE 6
REQUIREMENTS OF LAW

Section 6.1. (A) Tenant, at Tenant's expense, shall comply with all Requirements applicable to the use and occupancy of the Premises, including, without limitation, those applicable to the making of any Alterations therein or the result of the making thereof and those applicable by reason of the nature or type of business operated by Tenant in the Premises except that (other than with respect to the making of Alterations or the result of the making thereof) Tenant shall not be under any obligation to make any Alteration in order to comply with any Requirement applicable to the mere general "office" use (as opposed to the manner of use) of the Premises, unless otherwise expressly required herein. Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate or be in conflict with a standard "all-risk" insurance policy; and shall not do, or permit anything to be done in or upon the Premises, or bring or keep anything therein, except as now or hereafter permitted by the New York City Fire Department, New York Board of Fire Underwriters, the Insurance Services Office or other authority having jurisdiction and then only in such quantity and manner of storage as not to increase the rate for fire insurance applicable to the Building, or use the Premises in a manner (as opposed to mere use as general "offices") which shall increase the rate of fire insurance on the Building or on property located therein, over that in similar type buildings or in effect on the Commencement Date. If by reason of Tenant's failure to comply with the provisions of this Article, the fire insurance rate shall be higher than it otherwise would be, then Tenant shall desist from doing or permitting to be done any such act or thing and shall reimburse Landlord, as additional rent hereunder, for that part of all fire insurance premiums thereafter paid by Landlord which shall have been charged because of such failure by Tenant, and shall make such reimbursement upon demand by Landlord. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" of rates for the Building or the Premises issued by the Insurance Services Office, or other body

fixing such fire insurance rates, shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to the Building.

(B) Landlord, at its sole cost and expense (but subject to recoupment as provided in Article 27 hereof), shall comply with all Requirements applicable to the Premises and the Building which affect Tenant's use or occupancy of the Premises other than those Requirements with respect to which Tenant or other tenants or occupants of the Building shall be required to comply, subject to Landlord's right to contest the applicability or legality thereof.

Section 6.2. Tenant, at its sole cost and expense and after notice to Landlord, may contest by appropriate proceedings prosecuted diligently and in good faith, the legality or applicability of any Requirement affecting the Premises with which Tenant is obligated to comply, provided that (a) Landlord (or any Indemnitee) shall not be subject to imprisonment or to prosecution for a crime, nor shall the Real Property or any part thereof be subject to being condemned or vacated, nor shall the certificate of occupancy for the Premises or the Building be suspended or threatened to be suspended by reason of non-compliance or by reason of such contest; (b) before the commencement of such contest, if Landlord or any Indemnitee may be subject to any civil fines or penalties or other criminal penalties or if Landlord may be liable to any independent third party as a result of such noncompliance, Tenant shall furnish to Landlord either (i) a bond of a surety company satisfactory to Landlord, in form and substance reasonably satisfactory to Landlord, and in an amount equal to one hundred twenty percent (120%) of the sum of (A) the cost of such compliance, (B) the criminal or civil penalties or fines that may accrue by reason of such non-compliance (as reasonably estimated by Landlord), and (C) the amount of such liability to independent third parties (as reasonably estimated by Landlord), and shall indemnify Landlord (and any Indemnitee) against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (except that Tenant shall not be required to furnish such bond to Landlord if it has otherwise furnished any similar bond required by law to the appropriate Governmental Authority and has named Landlord as a beneficiary thereunder) or (ii) other security reasonably satisfactory in all respects to Landlord; (c) such non-compliance or contest shall not constitute or result in a violation (either with the giving of notice or the passage of time or both) of the terms of any Mortgage or Superior Lease, or if such Superior Lease or Mortgage shall condition such non-compliance or contest upon the taking of action or furnishing of security by Landlord, such action shall be taken or such security shall be furnished at the expense of Tenant; and (d) Tenant shall keep Landlord regularly advised as to the status of such proceedings. Without limiting the applicability of the foregoing, Landlord (or any Indemnitee) shall be deemed subject to prosecution for a crime if Landlord (or any Indemnitee), a Lessor, a Mortgagee or any of their officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatsoever, unless such charges are withdrawn ten (10) days before Landlord (or any Indemnitee), such Lessor or such Mortgagee or such officer, director, partner, shareholder, agent or

employee, as the case may be, is required to plead or answer thereto.

ARTICLE 7
SUBORDINATION

Section 7.1. (A) Provided that (a) a Mortgagee shall execute and deliver to Tenant an agreement to the effect that, if there shall be a foreclosure of its Mortgage, such Mortgagee will not make Tenant a party defendant to such foreclosure, evict Tenant, disturb Tenant's possession under this Lease, or terminate or disturb Tenant's leasehold estate or rights hereunder, and will recognize Tenant as the direct tenant of such Mortgagee on the same terms and conditions as are contained in this Lease, subject to the provisions hereinafter set forth, provided no Event of Default shall have occurred and be continuing hereunder or (b) a Lessor shall execute and deliver to Tenant an agreement to the effect that if its Superior Lease shall terminate or be terminated for any reason, Lessor will not evict Tenant, disturb Tenant's possession under this Lease, or terminate or disturb Tenant's leasehold estate or rights hereunder, and will recognize Tenant as the direct tenant of such Lessor on the same terms and conditions as are contained in this Lease (subject to the provisions hereinafter set forth), provided no Event of Default shall have occurred and be continuing and Lessor shall not make Tenant a party in any action to terminate such Superior Lease or to remove or evict Tenant from the Premises provided no Event of Default shall have occurred and be continuing (any such agreement, or any agreement of similar import, from a Mortgagee or a Lessor, as the case may be, being hereinafter referred to as a "Nondisturbance Agreement"), this Lease shall be subject and subordinate to such Superior Lease and/or to such Mortgage. Subject to receipt of a Nondisturbance Agreement, this clause shall be self-operative and no further instrument of subordination shall be required from Tenant to make the interest of any Lessor or Mortgagee superior to the interest of Tenant hereunder. Tenant, however, at Tenant's sole cost and expense, shall execute and deliver promptly the Nondisturbance Agreement or any other agreement that Landlord may reasonably request in confirmation of such subordination. If the date of expiration of any Superior Lease shall be the same day as the Expiration Date, the Term shall end and expire twelve (12) hours prior to the expiration of the Superior Lease. If, in connection with the financing of the Real Property, the Building or the interest of the lessee under any Superior Lease, or if in connection with the entering into of a Superior Lease, any lending institution or Lessor shall request reasonable modifications of this Lease that do not increase Tenant's monetary obligations under this Lease, or adversely affect or diminish the rights, or increase the other obligations of Tenant under this Lease, in any such case except to a de minimis extent, Tenant shall make such modifications.

(B) Any Nondisturbance Agreement may be made on the condition that neither the Mortgagee nor the Lessor (other than a Mortgagee or a Lessor that is an Affiliate of Landlord), as the case may be, nor any Person claiming by, through or under such Mortgagee or Lessor, as the case may be, including a purchaser at a foreclosure sale, shall be:

(1) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting Landlord), or

(2) subject to any defense, offsets or abatements which Tenant may have against any prior landlord (including, without limitation, the then defaulting Landlord), (except for any offsets expressly permitted under this Lease, including, without limitation (a) the offset set forth in this Lease to which Tenant is entitled after Tenant exercises Tenant's rights hereunder to perform work that Landlord failed to perform, (b) the offset set forth in this Lease to which Tenant is entitled if Landlord does not disburse the Applicable Tenant Fund, (c) the abatement set forth in Section 14.5 of this Lease, and (d) any adjournment of the Applicable Rent Commencement Date expressly set forth herein), or

(3) bound by any payment of Rental which Tenant may have made to any prior landlord (including, without limitation, the then defaulting Landlord) more than thirty (30) days in advance of the date upon which such payment was due, or

(4) bound by any obligation to make any payment to or on behalf of Tenant, or to make any payments on account of any Applicable Tenant Fund (it being understood, however, that if Landlord fails to disburse the Applicable Tenant Fund in accordance with the provisions hereof, then Tenant shall have the right to offset the applicable portion of the Applicable Tenant Fund which Landlord failed to disburse against the Rental due hereunder in accordance with Section 3.5(A) hereof, from and after the date that such Mortgagee or such Lessor, or any such Person, succeeds to the interest of the then defaulting Landlord), or

(5) bound by any obligation to perform any work or to make improvements to the Premises, except for (i) repairs, alterations and maintenance pursuant to the provisions of Articles 4 or 6 hereof, the need for which repairs, alterations and maintenance first arises after the date upon which such owner, Lessor or Mortgagee shall be entitled to possession of the Premises, (ii) repairs to the Premises or any part thereof as a result of damage by fire or other casualty (x) that occur after the date upon which such owner, Lessor or Mortgagee shall be entitled to possession of the Premises, or (y) that occur prior to such date, but only to the extent (in the case of clause (y)) that such repairs can be reasonably made from the net proceeds of any insurance actually made available to such Mortgagee, and (iii) repairs to the Premises as a result of a partial condemnation pursuant to Article 11 hereof, but only to the extent that such repairs can be reasonably made from the net proceeds of any award made available to such owner, Lessor or Mortgagee, or

(6) bound by any amendment or modification of this Lease made without its consent if such amendment or modification was made after Tenant was notified of the existence of such Superior Lease or Mortgage, or

(7) bound to return Tenant's security deposit, if any, until such deposit has come into its actual possession and Tenant would be entitled to such security deposit pursuant to the terms of this Lease.

(C) If required by the Lessor or Mortgagee, within seven (7) days after notice thereof, Tenant shall join in any Nondisturbance Agreement to indicate its concurrence with the provisions thereof and its agreement set forth in Section 7.2 hereof to attorn to such Lessor or Mortgagee, as Tenant's landlord hereunder. Tenant shall promptly so accept, execute and deliver any Nondisturbance Agreement proposed by any such Mortgagee or Lessor which conforms to the provisions of this Article 7. Any such Nondisturbance Agreement may also contain other terms and conditions as may otherwise be required by such Lessor or Mortgagee which do not increase Tenant's monetary obligations under this Lease, or, except to a de minimis extent, adversely affect or diminish the rights, or increase the other obligations of Tenant under this Lease.

Section 7.2. If at any time prior to the expiration of the Term, any Superior Lease shall terminate or be terminated for any reason or any Mortgagee comes into possession of the Real Property or the Building or the estate created by any Superior Lease by receiver or otherwise, Tenant agrees, at the election and upon demand of any owner of the Real Property or the Building, or of the Lessor, or of any Mortgagee in possession of the Real Property or the Building, to attorn, from time to time, to any such owner, Lessor or Mortgagee or any person acquiring the interest of Landlord as a result of any such termination, or as a result of a foreclosure of the Mortgage or the granting of a deed in lieu of foreclosure, upon the then executory terms and conditions of this Lease, subject to the provisions of Section 7.1 hereof, for the remainder of the Term, provided that such owner, Lessor or Mortgagee, as the case may be, or receiver caused to be appointed by any of the foregoing, shall then be entitled to possession of the Premises. The provisions of this Section 7.2 shall enure to the benefit of any such owner, Lessor or Mortgagee, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any Superior Lease, and shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions. Tenant, however, upon demand of any such owner, Lessor or Mortgagee, shall execute, at Tenant's expense, from time to time, instruments, in recordable form, which are reasonably required by such owner, Lessor or Mortgagee, in confirmation of the foregoing provisions of this Section 7.2, satisfactory to any such owner, Lessor or Mortgagee, acknowledging such attornment and setting forth the terms and conditions of its tenancy. Nothing contained in this Section 7.2 shall be construed to impair any right otherwise exercisable by any such owner, Lessor or Mortgagee except as may be set forth in Section 7.1 or in any Nondisturbance Agreement.

Section 7.3. From time to time, within fifteen (15) days next following request by Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord, such Mortgagee or such Lessor a written statement executed by Tenant, in form satisfactory

to Landlord, such Mortgagee or such Lessor, (1) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (2) setting forth the date to which the Fixed Rent, Escalation Rent and other items of Rental have been paid, (3) stating whether or not, to the best knowledge of Tenant (but without having made any investigation), Landlord is in default under this Lease, and, if Landlord is in default, setting forth the specific nature of all such defaults, and (4) as to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor and related to this Lease. Tenant acknowledges that any statement delivered pursuant to this Section 7.3 may be relied upon by any purchaser or owner of the Real Property or the Building, or Landlord's interest in the Real Property or the Building or any Superior Lease, or by any Mortgagee, or by an assignee of any Mortgagee, or by any Lessor.

Section 7.4. From time to time, within fifteen (15) days next following request by Tenant, Landlord shall deliver to Tenant a written statement executed by Landlord (i) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the date to which the Fixed Rent, Escalation Rent and any other items of Rental have been paid, (iii) stating whether or not, to the best knowledge of Landlord (but without having made any investigation), Tenant is in default under this Lease, and, if Tenant is in default, setting forth the specific nature of all such defaults, and (iv) as to any other matters reasonably requested by Tenant and related to this Lease. Landlord acknowledges that any statement delivered pursuant to this Section 7.4 may be relied upon by any subtenant or assignee of Tenant.

Section 7.5. As long as any Superior Lease or Mortgage shall exist (other than any Superior Lease or Mortgage held by an Affiliate of Landlord), Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to all Lessors and Mortgagees at such addresses as shall have been furnished to Tenant by such Lessors and Mortgagees and, if any such Lessor or Mortgagee, as the case may be, shall have notified Tenant within ten (10) Business Days following receipt of such notice of its intention to remedy such act or omission, until a reasonable period of time (not to exceed ninety (90) days) shall have elapsed following the giving of such notice, during which period such Lessors and Mortgagees shall have the right, but not the obligation, to remedy such act or omission.

Section 7.6. Tenant hereby irrevocably waives any and all right(s) it may have in connection with any zoning lot merger or transfer of development rights with respect to the Real Property including, without limitation, any rights it may have to be a party to, to contest, or to execute, any Declaration of Restrictions (as such term is used in Section 12-10 of the Zoning Resolution of The City of New York effective December 15, 1961, as amended) with respect to the Real Property, which would cause the Premises to be merged with or unmerged from any other zoning lot pursuant to such Zoning Resolution or to any document of a similar nature and purpose, and Tenant agrees that this Lease

shall be subject and subordinate to any Declaration of Restrictions or any other document of similar nature and purpose now or hereafter affecting the Real Property. In confirmation of such subordination and waiver, Tenant shall execute and deliver promptly any certificate or instrument that Landlord reasonably may request.

Section 7.7. If Tenant enters into a Major Sublease, then, subject to the terms of this Section 7.7, Landlord, promptly after Tenant's request, shall execute and deliver to the applicable subtenant under such Major Sublease an agreement (a "Recognition Agreement"), in form and substance reasonably satisfactory to Landlord, to the effect that if this Lease terminates during the term of the applicable Major Sublease for any reason other than pursuant to Articles 10 or 11 hereof, Landlord will not evict such subtenant, disturb such subtenant's possession or terminate or disturb such subtenant's leasehold estate or rights thereunder, and will recognize such subtenant as the direct tenant of Landlord on the Applicable Terms; provided, however, that if in addition to at least the entire rentable area on one (1) full floor of the Building, the Major Sublease demises to the subtenant thereunder less than the entire rentable area on another floor, then Landlord, at Landlord's option, may elect to deliver a Recognition Agreement to the applicable subtenant in respect of such Major Sublease that excludes the space demised on such other floor that exceeds (x) Thirty Thousand Five Hundred (30,500) square feet of rentable area in respect of the Tenth Floor Space, or (y) Thirty-Two Thousand (32,000) square feet of rentable area in respect of the Seventh Floor Space, as the case may be, from the protection afforded by such Recognition Agreement (the space that Landlord excludes from the protection afforded by a Recognition Agreement being referred to herein as the "Excluded Space")(and, accordingly, if this Lease terminates during the term of the applicable Major Sublease for any reason, Landlord may elect to evict such subtenant from the Excluded Space, disturb such subtenant's possession therein and terminate such subtenant's leasehold estate or rights thereunder). Landlord shall reasonably determine the configuration and location of the Excluded Space. If Landlord makes such an election, then Landlord shall notify Tenant thereof on or prior to the tenth (10th) day after the date that Landlord receives Tenant's request for a Recognition Agreement for such Major Sublease. If Tenant still desires a Recognition Agreement in respect of such Major Sublease, then Tenant shall so notify Landlord on or prior to the tenth (10th) day after the date upon which Tenant receives Landlord's notice (it being understood that if Tenant fails to notify Landlord within such ten (10) day period, then Tenant's request for such Recognition Agreement shall be deemed to be withdrawn). Tenant shall not have the right to request a Recognition Agreement as contemplated by this Section 7.7 (w) more than forty-five (45) days after the applicable Major Sublease is executed and delivered by Tenant and the applicable subtenant, (x) if Tenant is not then a LivePerson Party, (y) if an Event of Default has occurred and is then continuing, and (z) if the financial condition of the applicable subtenant is not reasonably satisfactory to Landlord (it being understood that if such subtenant's net worth, determined in accordance with generally accepted accounting principles, is equal to or greater than ten (10) times the annual Fixed Rent that would be payable by the applicable subtenant to Landlord pursuant to the Applicable Terms or if such subtenant's net worth, determined in accordance with generally accepted

accounting principles, is less than ten (10) times but more than five (5) times the annual Fixed Rent that would be payable by the applicable subtenant to Landlord pursuant to the Applicable Terms and such subtenant posts a security deposit of fifty percent (50%) of the then annual Fixed Rent, then such subtenant's financial condition shall be deemed to be reasonably satisfactory to Landlord).

Section 7.8. As used herein, the term "Applicable Terms" shall mean all of the terms and conditions set forth in this Lease, with the understanding that:

(i) the annual Fixed Rent payable by the applicable subtenant at any time from and after the Recognition Effective Date shall be an amount equal to the greatest of (A) the rental that would have been payable by the applicable subtenant under the Major Sublease at such time if the applicable Major Sublease remained in effect, (B) the product obtained by multiplying (x) the quotient obtained by dividing (I) the Fixed Rent that would have then been payable by Tenant under this Lease at such time if this Lease then remained in full force and effect, by (II) the number of square feet of rentable area included in the Premises on the day immediately preceding the Recognition Effective Date, by (y) the number of square feet of rentable area demised by Tenant to the applicable subtenant under the applicable Major Sublease, and (C) the Rental Value for the portion of the Premises demised under the Major Sublease (the "Major Sublease Fair Market Rent") as of the Recognition Effective Date, as determined pursuant to Article 41 hereof;

(ii) the subtenant under the applicable Major Sublease shall have no right to receive from Landlord any payments on account of the Applicable Tenant Fund;

(iii) the term of the applicable subtenant's direct tenancy shall expire on the Fixed Expiration Date (it being the parties' intention that such subtenant shall not have any right to extend the term of such direct tenancy to a date that occurs later than the Fixed Expiration Date);

(iv) if, on the Recognition Effective Date, the applicable subtenant's net worth determined in accordance with generally accepted accounting principles consistently applied, is (I) less than five (5) times the annual Fixed Rent determined pursuant to clause (i) above, then, on the Recognition Effective Date, the applicable subtenant shall deposit with the party that then constitutes the applicable subtenant's lessor an amount equal to the annual Fixed Rent determined pursuant to clause (i) above as security for such subtenant's obligations to such party in respect of such direct tenancy, or (II) at least five (5) times but less than ten (10) times the Fixed Rent determined pursuant to clause (i) above, then, on the Recognition Effective Date, the applicable subtenant shall deposit with the party that then constitutes the applicable subtenant's lessor an amount equal to fifty percent (50%) of the annual Fixed Rent determined pursuant to clause (i) above as security for such subtenant's obligations to such party in respect of such direct tenancy;

(v) for purposes of such direct tenancy, the Space Factor shall be deemed to be the number of square feet of rentable area in the space demised by the applicable Major Sublease, excluding any Excluded Space;

(vi) for purposes of such direct tenancy, Tenant's Share shall be deemed to be the quotient (expressed as a percentage) obtained by dividing (x) the Space Factor as determined pursuant to clause (v) above, by (y) the number of square feet of rentable area in the Building (other than any portion of the Building that is used for retail purposes);

(vii) the applicable subtenant shall not be deemed to constitute a LivePerson Party for purposes of such direct tenancy;

(viii) the applicable subtenant shall not have the right to such direct tenancy (and accordingly, the applicable subtenant, at the lessor's option, shall have no right to remain in occupancy of the applicable portion of the Premises from and after the Recognition Effective Date) if (w) this Lease is terminated by reason of an Event of Default that derives from the applicable subtenant's default under the applicable Major Sublease, (x) on the day immediately preceding the Recognition Effective Date, the applicable Major Sublease demises less than the entire rentable area of the Tenth Floor Space or the entire rentable area of the Seventh Floor Space, as the case may be, (y) on the day immediately preceding the Recognition Effective Date, the applicable subtenant then occupies less than seventy-five percent (75%) of the entire rentable area demised by the Major Sublease for the conduct of business, or (z) the applicable subtenant is the Person, or an Affiliate of the Person, that constituted Tenant immediately prior to the Recognition Effective Date; and

(ix) the party that constitutes such subtenant's direct lessor shall not be:

(1) liable for any act or omission of such subtenant's lessor immediately prior to the Recognition Effective Date;

(2) subject to any defense or offsets which the applicable subtenant may have against any prior lessor;

(3) bound by any payment of rental which the applicable subtenant may have made to any prior lessor more than thirty (30) days in advance of the due date therefor; or

(4) bound by any of the provisions of the applicable Major Sublease.

As used herein, the term "Recognition Effective Date" shall mean the date when

Landlord, the Lessor, Mortgagee or any other Person claiming by, through or under the Mortgagee (including, without limitation, a purchaser of a foreclosure sale) becomes the direct lessor of the applicable subtenant under a Major Sublease as contemplated by a Recognition Agreement.

Section 7.9. Tenant shall submit to Landlord, with each request for a Recognition Agreement financial information about the subtenant for whose benefit such agreement is requested, including, without limitation, documentation of such subtenant's net worth determined in accordance with generally accepted accounting principles.

Section 7.10. Landlord represents that: (a) Landlord is not in default in respect of its material obligations under the Existing Ground Lease, (b) Landlord has delivered to Tenant a true and correct copy of the Existing Ground Lease, (c) the term of the Existing Ground Lease was validly extended to expire on December 31, 2020, (d) there are no mortgages encumbering Landlord's interest in the Real Property, and (e) there are no Superior Leases other than the Existing Ground Lease. Promptly after the date hereof, Landlord shall request a Nondisturbance Agreement from the Lessor under the Existing Ground Lease.

ARTICLE 8
RULES AND REGULATIONS

Tenant and Tenant's contractors, employees, agents, visitors, invitees and licensees shall comply with the Rules and Regulations. Tenant shall have the right to dispute the reasonableness of any additional Rule or Regulation hereafter adopted by Landlord. If Tenant disputes the reasonableness of any additional Rule or Regulation hereafter adopted by Landlord, the dispute shall be determined by arbitration in the City of New York in accordance with the rules and regulations then obtaining of the American Arbitration Association or its successor. Any such determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice upon Landlord within thirty (30) days after receipt by Tenant of notice of the adoption of any such additional Rule or Regulation. Nothing in this Lease contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, except that Landlord shall not enforce any Rule or Regulation against Tenant which Landlord shall not then be enforcing against all other office tenants in the Building (other than Landlord or its Affiliates). In the event of any inconsistency between the provisions of this Lease and the provisions of any Rule or Regulation, the provisions of this Lease shall control.

ARTICLE 9
INSURANCE, PROPERTY LOSS OR DAMAGE; REIMBURSEMENT

Section 9.1. (A) Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft or otherwise. Neither Landlord nor its agents shall be liable for any injury (or death) to persons or damage to property, or interruption of Tenant's business, resulting from fire or other casualty; nor shall Landlord or its agents be liable for any such injury (or death) to persons or damage caused by other tenants or persons in the Building or caused by construction of any private, public or quasi-public work; nor shall Landlord be liable for any injury (or death) to persons or damage to property or improvements, or interruption of Tenant's business, resulting from any latent defect in the Premises or in the Building (provided that the foregoing shall not relieve Landlord from its obligations, if any, to repair such latent defect pursuant to the provisions of Article 4 hereof or affect Tenant's rights pursuant to Section 14.5 hereof. Anything in this Article 9 to the contrary notwithstanding, except as set forth in Articles 4, 10, 13, 28 and 35 of this Lease and otherwise as expressly provided herein, Landlord shall not be relieved from responsibility directly to Tenant for any loss or damage caused directly to Tenant wholly or in part by the negligent acts or omissions of Landlord.

(B) If at any time any windows of the Premises are temporarily closed, darkened or bricked-up due to any Requirement or by reason of repairs, maintenance, alterations, or improvements to the Building performed in accordance with Article 4, or any of such windows are permanently closed, darkened or bricked-up due to any Requirement, Landlord shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor, nor abatement or diminution of Fixed Rent or any other item of Rental, nor shall the same release Tenant from its obligations hereunder, nor constitute an actual or constructive eviction, in whole or in part, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise, nor impose any liability upon Landlord or its agents. If at any time the windows of the Premises are temporarily closed, darkened or bricked-up, as aforesaid, then, unless Tenant is required pursuant to the Lease to perform the repairs, maintenance, alterations, or improvements, or to comply with the Requirements, which resulted in such windows being closed, darkened or bricked-up, Landlord shall perform such repairs, maintenance, alterations or improvements and comply with the applicable Requirements with reasonable diligence and otherwise take such action as may be reasonably necessary to minimize the period during which such windows are temporarily closed, darkened, or bricked-up.

(C) Tenant shall immediately notify Landlord of any fire or accident in the Premises.

Section 9.2. Tenant shall obtain and keep in full force and effect (i) an "all risk" insurance policy for Tenant's Specialty Alterations and Tenant's Property at the Premises in an amount equal to one hundred percent (100%) of the replacement value thereof, and (ii) a policy of commercial general liability and property damage insurance on an occurrence basis, with a broad form contractual liability endorsement. Such policies shall provide that Tenant is named as the insured. Landlord, Landlord's managing agent, Landlord's agents and any Lessors and any Mortgagees (whose names shall have been furnished to Tenant) shall be added as additional insureds, as their respective interests may appear, with respect to the insurance required to be carried pursuant to clauses (i) and (ii) above. Such policy with respect to clause (ii) above shall include a provision under which the insurer agrees to indemnify, defend and hold Landlord, Landlord's managing agent, Landlord's agents and such Lessors and Mortgagees harmless from and against, subject to the limits of liability set forth in this Section 9.2, all cost, expense and liability arising out of, or based upon, any and all claims, accidents, injuries and damages mentioned in Article 35. In addition, the policy required to be carried pursuant to clause (ii) above shall contain a provision that (a) no act or omission of Tenant shall affect or limit the obligation of the insurer to pay the amount of any loss sustained and (b) the policy shall be non-cancelable with respect to Landlord, Landlord's managing agent, Landlord's agents and such Lessors and Mortgagees (whose names and addresses shall have been furnished to Tenant) unless thirty (30) days' prior written notice shall have been given to Landlord by certified mail, return receipt requested, which notice shall contain the policy number and the names of the insured and additional insureds. In addition, upon receipt by Tenant of any notice of cancellation or any other notice from the insurance carrier which may adversely affect the coverage of the insureds under such policy of insurance, Tenant shall immediately deliver to Landlord and any other additional insured hereunder a copy of such notice. The minimum amounts of liability under the policy of insurance required to be carried pursuant to clause (ii) above shall be a combined single limit with respect to each occurrence in an amount of $5,000,000 for injury (or death) to persons and damage to property, which amount shall be increased from time to time (but not more than once in any three (3) year period) to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by prudent landlords of non-institutional first class buildings in New York City, provided the same is not inconsistent with the minimum amounts of insurance then required by Landlord for other office tenants in the Building. All insurance required to be carried by Tenant pursuant to the terms of this Lease shall be effected under valid and enforceable policies issued by reputable and independent insurers permitted to do business in the State of New York, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a general policyholder rating of "A" and a financial rating of at least "XIII".

Section 9.3. Landlord shall obtain and keep in full force and effect insurance against loss or damage by fire and other casualty to the Building, including Tenant's Alterations (exclusive of Specialty Alterations), as may be insurable under then

available standard forms of "all-risk" insurance policies, in an amount equal to one hundred percent (100%) of the replacement value thereof or in such lesser amount as will avoid co-insurance (including an "agreed amount" endorsement). Notwithstanding the foregoing, Landlord shall not be liable to Tenant for any failure to insure, replace or restore any Alterations unless Tenant shall have notified Landlord of the completion of such Alterations and of the cost thereof, and shall have maintained adequate records with respect to such Alterations to facilitate the adjustment of any insurance claims with respect thereto. Tenant shall cooperate with Landlord and Landlord's insurance companies in the adjustment of any claims for any damage to the Building or such Alterations. Landlord also shall maintain in full force and effect a policy of commercial general liability insurance that names Landlord as the insured thereunder and that is consistent with the nature and level of insurance customarily obtained by prudent owners of first-class office buildings in midtown Manhattan. Landlord shall name Tenant as an additional insured under the aforesaid policy of commercial general liability insurance if Landlord's insurer is willing to do so without additional charge to Landlord (with the understanding, however, that the liability insurance policy described in Section 9.2 hereof shall afford primary coverage to Landlord and Tenant with respect to claims for property damage or personal injury that derive from events occurring within the Premises or Tenant's conduct of business therein).

Section 9.4. On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate certificates of insurance, including evidence of waivers of subrogation required pursuant to Section 10.5 hereof, required to be carried by Tenant pursuant to this Article 9. Evidence of each renewal or replacement of a policy shall be delivered by Tenant to Landlord at least twenty (20) days prior to the expiration of such policy.

Section 9.5. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for damage to, Tenant's Property or Specialty Alterations, and that Landlord shall not carry insurance against, or be responsible for any loss suffered by Tenant due to, interruption of Tenant's business.

Section 9.6. If notwithstanding the recovery of insurance proceeds by Tenant for loss, damage or destruction of its property Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair or restoration, then, at Landlord's option, either (i) the amount of the net proceeds of Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefor, or (ii) shall be made available to Landlord to pay for replacement, repair or restoration.

ARTICLE 10 DESTRUCTION-FIRE OR OTHER CAUSE

Section 10.1. (A) If the Premises (including Alterations which shall include

Landlord's Work but not Specialty Alterations) shall be damaged by fire or other casualty, and if Tenant shall give prompt notice thereof to Landlord, the damage, with such modifications as shall be required in order to comply with Requirements shall be diligently repaired by and at the expense of Landlord to substantially the condition prior to the damage, and until such repairs which are required to be performed by Landlord (excluding Long Lead Work the absence of which does not in and of itself materially impair Tenant's ability to conduct its business in the Premises in substantially the same manner as prior to such casualty) shall be Substantially Completed (of which Substantial Completion Landlord shall promptly notify Tenant) the Fixed Rent, Escalation Rent and Space Factor shall be reduced in the proportion which the area of the part of the Premises which is not usable by Tenant, bears to the total area of the Premises immediately prior to such casualty. Upon the Substantial Completion of such repairs (excluding Long Lead Work the absence of which does not in and of itself materially impair Tenant's ability to conduct its business in the Premises in substantially the same manner as prior to such casualty), Landlord shall diligently prosecute to completion any items of Long Lead Work remaining to be completed. Landlord shall have no obligation to repair any damage to, or to replace, any Specialty Alterations or Tenant's Property. In addition, Landlord shall not be obligated to repair any damage to, or to replace, any Alterations unless Tenant shall have notified Landlord of the completion of such Alterations and the cost thereof. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy in making any repairs pursuant to this Section. Anything contained herein to the contrary notwithstanding, if the Premises (including any Alterations) are damaged by fire or other casualty at any time prior to the completion of the Initial Alterations, Landlord's obligation to repair the Premises (and any Alterations) shall be limited to repair of the part of the Building Systems serving the Premises on the Commencement Date, but not the distribution portions of such Building Systems located within the Premises, the floor and ceiling slabs of the Premises and the exterior walls of the Premises, all to substantially the same condition which existed on the Commencement Date, with such modifications as shall be required in order to comply with Requirements. If a fire or other casualty occurs during the period beginning on (x) the Commencement Date and ending on the day immediately prior to the Tenth Floor Space Rent Commencement Date, or (y) the Seventh Floor Space Commencement Date and ending on the day immediately prior to the Seventh Floor Space Rent Commencement Date, as the case may be, then Tenant, as and for the abatement of Rental as contemplated by this Article 10 by reason of the occurrence of a fire or other casualty during such period, shall have the right to credit against the Rental due hereunder from and after the Applicable Rent Commencement Date an amount equal to the abatement of Rental to which Tenant would have been entitled under this Article 10 if such fire or other casualty occurred immediately after the Applicable Rent Commencement Date.

(B) Prior to the Substantial Completion of Landlord's repair obligations set forth in Section 10.1(A) hereof, Landlord shall provide Tenant and Tenant's contractor, subcontractors and materialmen access to the Premises to perform Specialty Alterations (or Alterations, if Landlord is not obligated to repair same pursuant

to the provisions hereof), on the following terms and conditions (but not to occupy the same for the conduct of business).

(1) Tenant shall not commence work in any portion of the Premises until the date specified in a notice from Landlord to Tenant stating that the repairs required to be made by Landlord have been or will be completed to the extent reasonably necessary, in Landlord's discretion, to permit the commencement of the Specialty Alterations (or Alterations, if Landlord is not obligated to repair same pursuant to the provisions hereof) then prudent to be performed in accordance with good construction practice in the portion of the Premises in question without interference with, and consistent with the performance of, the repairs remaining to be performed.

(2) Such access by Tenant shall be deemed to be subject to all of the applicable provisions of this Lease except that there shall be no obligation on the part of Tenant solely because of such access to pay any Fixed Rent or Escalation Rent with respect to the affected portion of the Premises for any period prior to substantial completion of the repairs.

(3) It is expressly understood that if Landlord shall be delayed from substantially completing the repairs due to any acts of Tenant, its agents, servants, employees or contractors, including, without limitation, by reason of the performance of any Specialty Alteration (or Alteration, if Landlord is not obligated to repair same pursuant to the provisions hereof), by reason of Tenant's failure or refusal to comply or to cause its architects, engineers, designers and contractors to comply with any of Tenant's obligations described or referred to in this Lease, or if such repairs are not completed because under good construction scheduling practice such repairs should be performed after completion of any Specialty Alteration (or Alteration, if Landlord is not obligated to repair same pursuant to the provisions hereof), then such repairs shall be deemed substantially complete on the date when the repairs would have been substantially complete but for such delay and the expiration of the abatement of the Tenant's obligations hereunder shall not be postponed by reason of such delay. Any additional costs to Landlord to complete any repairs occasioned by such delay shall be paid by Tenant to Landlord within thirty (30) days after demand, as additional rent.

Section 10.2. Anything contained in Section 10.1 hereof to the contrary notwithstanding, if the Building shall be so damaged by fire or other casualty that substantial alteration, demolition, or reconstruction of the Building shall be required (whether or not the Premises shall have been damaged or rendered untenantable), then Landlord, at Landlord's option, may, not later than ninety (90) days following the damage, give Tenant a notice in writing terminating this Lease; provided that if the Premises are not substantially damaged or rendered untenantable, Landlord may not terminate this Lease unless it shall elect to terminate leases (including this Lease), affecting at least fifty percent (50%) of the rentable area of the Building (excluding any rentable area occupied by Landlord or its Affiliates). If Landlord elects to terminate this

Lease, the Term shall expire upon a date set by Landlord, but not sooner than the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the provisions of Article 20 hereof. Upon the termination of this Lease under the conditions provided for in this Section 10.2, the Fixed Rent and Escalation Rent shall be apportioned and any prepaid portion of Fixed Rent and Escalation Rent for any period after such date shall be refunded by Landlord to Tenant.

Section 10.3. (A) Within forty-five (45) days after notice to Landlord of any damage described in Section 10.1 hereof, Landlord shall deliver to Tenant a statement prepared by an independent reputable contractor setting forth such contractor's estimate as to the time required to repair such damage, exclusive of time required to perform Long Lead Work. If the estimated time period exceeds nine (9) months from the date of such statement, then Tenant may elect to terminate this Lease by notice given to Landlord not later than thirty (30) days following Tenant's receipt of such statement. If Tenant makes such election, then the Term shall expire upon the thirtieth (30th) day after notice of such election is given by Tenant, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the provisions of Article 20 hereof. If Tenant does not elect to terminate this Lease pursuant to this Article 10 (or is not entitled to terminate this Lease pursuant to this Article 10), then the damages shall be diligently repaired by and at the expense of Landlord as set forth in Section 10.1 hereof, unless Landlord elects to terminate this Lease in accordance with Section 10.2 hereof.

(B) If Tenant does not elect to terminate this Lease pursuant to Section 10.3(A) (or is not entitled to terminate this Lease pursuant to Section 10.3(A)), and the repair of the damage to the Premises described in Section 10.1 hereof is not Substantially Completed within three (3) months after the estimated date of such Substantial Completion as set forth in the contractor's estimate delivered to Tenant as aforesaid (which three (3) month period may be extended for up to a six (6) month period to the extent Landlord cannot Substantially Complete such damage within such three (3) month period by virtue of Unavoidable Delays), then Tenant may elect to terminate this Lease by delivering a notice to Landlord not later than the earlier to occur of (x) the date that such Substantial Completion occurs, and (y) the thirtieth (30th) day following the last day of such three (3) month period (or the thirtieth (30th) day following the last day of such extended period, if applicable), and the Term shall expire upon the thirtieth (30th) day after notice of such election is given by Tenant, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the provisions of Article 20 hereof.

(C) If the Premises shall be substantially damaged during the last two (2) years of the Term, Landlord or Tenant may elect by notice, given within thirty (30) days after the occurrence of such damage, to terminate this Lease and if either party makes such election, the Term shall expire upon the thirtieth (30th) day after notice of such election is given by such party and Tenant shall vacate the Premises and

surrender the same to Landlord in accordance with the provisions of Article 20 hereof.

Section 10.4. This Article 10 constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force shall have no application in any such case.

Section 10.5. The parties hereto shall procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Premises, the Building and personal property, fixtures and equipment located thereon or therein, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery and having obtained such clauses or endorsements of waiver of subrogation or consent to a waiver of right of recovery, will not make any claim against or seek to recover from the other for any loss or damage to its property or the property of others resulting from fire or other hazards covered by such fire and extended coverage insurance, provided, however, that the release, discharge, exoneration and covenant not to sue herein contained shall be limited by and be coextensive with the terms and provisions of the waiver of subrogation clause or endorsements or clauses or endorsements consenting to a waiver of right of recovery. If the payment of an additional premium is required for the inclusion of such waiver of subrogation provision, each party shall advise the other of the amount of any such additional premiums and the other party at its own election may, but shall not be obligated to, pay the same. If such other party shall not elect to pay such additional premium, the first party shall not be required to obtain such waiver of subrogation provision. If either party shall be unable to obtain the inclusion of such clause even with the payment of an additional premium, then such party shall attempt to name the other party as an additional insured (but not a loss payee) under the policy. If the payment of an additional premium is required for naming the other party as an additional insured (but not a loss payee), each party shall advise the other of the amount of any such additional premium and the other party at its own election may, but shall not be obligated to, pay the same. If such other party shall not elect to pay such additional premium or if it shall not be possible to have the other party named as an additional insured (but not loss payee), even with the payment of an additional premium, then (in either event) such party shall so notify the first party and the first party shall not have the obligation to name the other party as an additional insured. Tenant acknowledges that Landlord shall not carry insurance on and shall not be responsible for damage to, Tenant's Property or Specialty Alterations or any other Alteration prior to the completion of the Initial Alterations, and that Landlord shall not carry insurance against, or be responsible for any loss suffered by Tenant due to, interruption of Tenant's business.

ARTICLE 11
EMINENT DOMAIN

Section 11.1. If the whole of the Real Property, the Building or the Premises shall be acquired or condemned for any public or quasi-public use or purpose, this Lease and the Term shall end as of the date of the vesting of title with the same effect as if said date were the Expiration Date. If only a part of the Real Property and not the entire Premises shall be so acquired or condemned then, (1) except as hereinafter provided in this Section 11.1, this Lease and the Term shall continue in force and effect, but, if a part of the Premises is included in the part of the Real Property so acquired or condemned, from and after the date of the vesting of title, the Fixed Rent and the Space Factor shall be reduced in the proportion which the area of the part of the Premises so acquired or condemned bears to the total area of the Premises immediately prior to such acquisition or condemnation and Tenant's Share shall be redetermined based upon the proportion in which the ratio between the rentable area of the Premises remaining after such acquisition or condemnation bears to the rentable area of the Building remaining after such acquisition or condemnation; (2) if at least ten percent (10%) of the Real Property is so acquired or condemned and whether or not the Premises shall be affected thereby, Landlord, at Landlord's option, may give to Tenant, within sixty (60) days next following the date upon which Landlord shall have received notice of vesting of title, a thirty (30) days' notice of termination of this Lease if Landlord shall elect to terminate leases (including this Lease), affecting at least fifty percent (50%) of the rentable area of the Building (excluding any rentable area leased by Landlord or its Affiliates); and (3) if the part of the Real Property so acquired or condemned shall contain more than fifteen percent (15%) of the total area of the Premises immediately prior to such acquisition or condemnation, or if, by reason of such acquisition or condemnation, Tenant no longer has reasonable means of access to the Premises, Tenant, at Tenant's option, may give to Landlord, within sixty (60) days next following the date upon which Tenant shall have received notice of vesting of title, a thirty (30) days' notice of termination of this Lease. If any such thirty (30) days' notice of termination is given by Landlord or Tenant, this Lease and the Term shall come to an end and expire upon the expiration of said thirty (30) days with the same effect as if the date of expiration of said thirty (30) days were the Expiration Date. If a part of the Premises shall be so acquired or condemned and this Lease and the Term shall not be terminated pursuant to the foregoing provisions of this Section 11.1, Landlord, at Landlord's expense, shall restore that part of the Premises not so acquired or condemned to a self-contained rental unit inclusive of Tenant's Alterations (other than Specialty Alterations), except that if such acquisition or condemnation occurs prior to completion of the Initial Alterations, Landlord shall only be required to restore that part of the Premises not so acquired or condemned to a self-contained rental unit exclusive of Tenant's Alterations. Upon the termination of this Lease and the Term pursuant to the provisions of this Section 11.1, the Fixed Rent and Escalation Rent shall be apportioned as of the date of vesting of title and any prepaid portion of Fixed Rent and Escalation Rent for any period after such date shall be refunded by Landlord to Tenant.

Section 11.2. In the event of any such acquisition or condemnation of all or any part of the Real Property, Landlord shall be entitled to receive the entire award for any

such acquisition or condemnation, Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term and Tenant hereby expressly assigns to Landlord all of its right in and to any such award. Nothing contained in this Section 11.2 shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's Property included in such taking, and for any moving expenses.

Section 11.3. If the whole or any part of the Premises shall be acquired or condemned temporarily during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full all items of Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(i) if the acquisition or condemnation is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Landlord as a fund which Landlord shall apply from time to time to the Rental payable by Tenant hereunder, except that, if by reason of such acquisition or condemnation changes or alterations are required to be made to the Premises which would necessitate an expenditure to restore the Premises, then a portion of such award or payment reasonably appropriate to cover the expenses of the restoration shall be retained by Landlord, without application as aforesaid, and applied toward the restoration of the Premises as provided in Section 11.1 hereof; or

(ii) if the acquisition or condemnation is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date; Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Landlord and applied in accordance with the provisions of clause (i) above, provided, however, that the amount of any award or payment allowed or retained for restoration of the Premises shall remain the property of Landlord if this Lease shall expire prior to the restoration of the Premises.

ARTICLE 12
ASSIGNMENT, SUBLETTING, MORTGAGE, ETC.

Section 12.1. (A) Except as expressly permitted herein, Tenant, without the prior consent of Landlord in each instance, shall not (a) assign its rights or delegate its duties under this Lease (whether by operation of law, transfers of interests in Tenant or otherwise), mortgage or encumber its interest in this Lease, in whole or in part, (b)

sublet, or permit the subletting of, the Premises or any part thereof, or (c) permit the Premises or any part thereof to be occupied or used for desk space, mailing privileges or otherwise, by any Person other than Tenant.

(B) If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

Section 12.2. (A) If Tenant's interest in this Lease is assigned in violation of the provisions of this Article 12, such assignment shall be void and of no force and effect against Landlord; provided, however, that Landlord may collect an amount equal to the then Fixed Rent plus any other item of Rental from the assignee as a fee for its use and occupancy, and shall apply the net amount collected to the Fixed Rent and other items of Rental reserved in this Lease. If the Premises or any part thereof are sublet to, or occupied by, or used by, any Person other than Tenant, whether or not in violation of this Article 12, Landlord, after default by Tenant under this Lease, including, without limitation, a subletting or occupancy in violation of this Article 12, may collect any item of Rental or other sums paid by the subtenant, user or occupant as a fee for its use and occupancy, and shall apply the net amount collected to the Fixed Rent and other items of Rental reserved in this Lease. No such assignment, subletting, occupancy or use, whether with or without Landlord's prior consent, nor any such collection or application of Rental or fee for use and occupancy, shall be deemed a waiver by Landlord of any term, covenant or condition of this Lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as tenant hereunder. The consent by Landlord to any assignment, subletting, occupancy or use shall not relieve Tenant from its obligation to obtain the express prior consent of Landlord to any further assignment, subletting, occupancy or use, to the extent required hereunder.

(B) Tenant shall reimburse Landlord within thirty (30) days after demand for any reasonable, out-of-pocket costs that may be incurred by Landlord in connection with any proposed assignment of Tenant's interest in this Lease or any proposed subletting of the Premises or any part thereof, including, without limitation, any reasonable processing fee, reasonable attorneys' fees and disbursements and the reasonable costs of making investigations as to the acceptability of the proposed subtenant or the proposed assignee.

(C) Neither any assignment of Tenant's interest in this Lease nor any subletting, occupancy or use of the Premises or any part thereof by any Person other than Tenant, nor any collection of Rental by Landlord from any Person other than Tenant as provided in this Section 12.2, nor any application of any such Rental as

provided in this Section 12.2 shall, in any circumstances, relieve Tenant of its obligations under this Lease on Tenant's part to be observed and performed.

(D) Any Person to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption. No assignment of this Lease shall relieve Tenant of its obligations hereunder and, subsequent to any assignment, Tenant's liability hereunder shall continue notwithstanding any subsequent modification or amendment hereof or the release of any subsequent tenant hereunder from any liability, to all of which Tenant hereby consents in advance (it being understood, however, that Tenant shall not have liability hereunder to the extent that Tenant's obligations hereunder are expanded or amended by any such modification or amendment that Landlord consummates with the assignee after the date of any such assignment by Tenant of the tenant's interest).

Section 12.3. (A) If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than twenty (20) days after receipt by Tenant, but in any event no later than ten (10) days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption. Such notice shall set forth (a) the name and address of such Person, (b) all of the terms and conditions of such offer, and (c) adequate assurance of future performance by such Person under the Lease as set forth in Paragraph (B) below, including, without limitation, the assurance referred to in Section 365(b)(3) of the Bankruptcy Code. Landlord shall have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which would otherwise be payable by Tenant out of the consideration to be paid by such Person in connection with the assignment of this Lease.

(B) The term "adequate assurance of future performance" as used in this Lease shall mean that any proposed assignee shall, among other things, (a) deposit with Landlord on the assumption of this Lease an amount equal to the then annual Fixed Rent as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, which sum shall be held by Landlord in accordance with the provisions of Article 31 hereof, (b) furnish Landlord with financial statements of such assignee for the prior three (3) fiscal years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth of at least six (6) times the then Fixed Rent for each of such three (3) years, (c) grant to Landlord a security interest in such

property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (d) provide such other information or take such action as Landlord, in its reasonable judgment shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

Section 12.4. (A) Tenant shall have the privilege, subject to the terms and conditions hereinafter set forth, without the consent of Landlord but subject to Tenant's satisfaction of conditions set forth in clauses (4) and (5) of Section 12.8(A) hereof, and without Landlord having the right granted in Section 12.8(B) hereof to recapture, to assign its interest in this Lease (i) to any corporation which is a successor to Tenant either by merger or consolidation, (ii) to a purchaser of all or substantially all of Tenant's assets or stock (provided such purchaser shall have also assumed substantially all of Tenant's liabilities) or (iii) to a Person which shall (1) Control, (2) be under the Control of, or (3) be under common Control with Tenant (any such Person referred to in this clause (iii) being a "Related Entity"). Tenant also shall have the privilege, subject to the terms and conditions hereinafter set forth, without the consent of Landlord but subject to Tenant's satisfaction of conditions set forth in clauses (5) through (7) and (9) of Section 12.6(A) and without Landlord having the right granted in Section 12.6(B) hereof to recapture, to sublease all or any portion of the Premises to a Related Entity. Any assignment or subletting described above may only be made upon the condition that (a) the principal purpose of such assignment or sublease is not the acquisition of Tenant's interest in this Lease or to circumvent the provisions of Section 12.1 of this Article (except if such assignment or sublease is made to a Related Entity and is made for a valid intracorporate business purpose and is not made to circumvent the provisions of Section 12.1 of this Article), and (b) in the case of an assignment, any such assignee shall have a net worth determined in accordance with generally accepted accounting principles, consistently applied, after giving effect to such assignment, equal to the greater of Tenant's net worth and annual income and cash flow, as so determined, on (i) the date immediately preceding the date of such assignment, and (ii) the Commencement Date. Tenant shall, within ten (10) Business Days after execution thereof, deliver to Landlord either (x) a duplicate original instrument of assignment in form and substance reasonably satisfactory to Landlord, duly executed by Tenant, together with an instrument in form and substance reasonably satisfactory to Landlord, duly executed by the assignee, in which such assignee shall assume observance and performance of, and agree to be personally bound by, all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, or (y) a duplicate original sublease in form and substance reasonably satisfactory to Landlord, duly executed by Tenant and the subtenant.

(B) If Tenant is a partnership, the admission of new Partners, the withdrawal, retirement, death, incompetency or bankruptcy of any Partner, or the reallocation of partnership interests among the Partners shall not constitute an assignment of this Lease, provided the principal purpose of any of the foregoing is not to circumvent the restrictions on assignment set forth in the provisions of this Article 12.

The reorganization of Tenant from a professional corporation into a partnership or the reorganization of a Tenant from a partnership into a professional corporation, shall not constitute an assignment of this Lease, provided that immediately following such reorganization the Partners of Tenant shall be substantially the same as the shareholders of Tenant existing immediately prior to such reorganization, or the shareholders of Tenant shall be substantially the same as the Partners of Tenant existing immediately prior to such reorganization, as the case may be. If Tenant shall become a professional corporation, each individual shareholder in Tenant and each professional employee of a professional corporation which is a shareholder in Tenant shall have the same personal liability as such individual or professional employee would have under this Lease if Tenant were a partnership and such individual or accountant-employee were a Partner in Tenant. If any individual Partner in Tenant is or becomes a professional employee of a professional corporation, such individual shall have the same personal liability under this Lease as such individual would have if he and not the professional corporation were a Partner of Tenant.

(C) Except as set forth above, either a transfer (including the issuance of treasury stock or the creation and issuance of new stock or a new class of stock) of a controlling interest in the shares of Tenant or of any entity which holds an interest in Tenant through one or more intermediaries (if Tenant or such entity is a corporation or trust) or a transfer of a majority of the total interest in Tenant or of any entity which holds an interest in Tenant through one or more intermediaries (if Tenant or such entity is a partnership or other entity) at any one time or over a period of time through a series of transfers, shall be deemed an assignment of this Lease and shall be subject to all of the provisions of this Article 12, including, without limitation, the requirement that Tenant obtain Landlord's prior consent thereto. The transfer of shares of Tenant or of any entity which holds an interest in Tenant through one or more intermediaries (if Tenant or such entity is a corporation or trust) for purposes of this Section 12.4 shall not include the sale of shares by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, which sale is effected through the "over-the-counter market" or through any recognized stock exchange.

Section 12.5. If, at any time after the originally named Tenant herein may have assigned Tenant's interest in this Lease, this Lease shall be disaffirmed or rejected in any proceeding of the types described in paragraph (E) of Section 16.1 hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to said Article 16 based upon any of the Events of Default set forth in such paragraph, any prior Tenant, including, without limitation, the originally named Tenant, then at such originally named Tenant's option or upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord or such Tenant in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (1) pay to Landlord all Fixed Rent, Escalation Rent and other items of Rental due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination (other than any Rental demanded by Landlord pursuant to Section 17.2(A)(3)), and (2) as "tenant", enter into a new lease with Landlord of the Premises for a term commencing on the effective date of such

disaffirmance, rejection or termination and ending on the Expiration Date, unless sooner terminated as in such lease provided, at the same Fixed Rent and upon the then executory terms, covenants and conditions as are contained in this Lease, except that (a) Tenant's rights under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any statute or of any order of any court, (b) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (c) such new lease shall require Tenant to pay all Escalation Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of Article 27 hereof after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If any such prior Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then, in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against such Tenant as if such Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of such Tenant's default thereunder.

Section 12.6. (A) Notwithstanding the provisions of Section 12.1 hereof, if Landlord shall not exercise its rights pursuant to paragraph (B) of this Section 12.6, Landlord shall not unreasonably withhold, condition or delay its consent to any subletting of the Premises, provided that:

(1) the Premises shall not, without Landlord's prior consent, have been listed or otherwise publicly advertised for subletting at a rental rate less than the prevailing rental rate set by Landlord for comparable space in the Building or if there is no comparable space the prevailing rental rate reasonably determined by Landlord;

(2) no Event of Default shall have occurred and be continuing;

(3) upon the date Tenant delivers the Tenant Statement to Landlord and upon the date immediately preceding the commencement date of any sublease approved by Landlord, the proposed subtenant shall have a financial standing (taking into consideration the obligations of the proposed subtenant under the sublease and the financial standing of Tenant) reasonably satisfactory to Landlord, be of a character, be engaged in a business, and propose to use the Premises in a manner in keeping with the standards in such respects of the other tenancies in the Building;

(4) if Landlord has or within one hundred eighty (180) days thereafter reasonably expects to have comparable space in the Building for a comparable term, the proposed subtenant (or any Person who is an Affiliate of the

proposed subtenant) shall not be a tenant or subtenant of any space in the Building, nor shall the proposed subtenant (or any Person who is an Affiliate of the proposed subtenant) be a Person with whom Landlord is negotiating or discussing to lease space in the Building (it being agreed, however, that the proposed subtenant may be an Affiliate of a Person with whom Landlord is negotiating or discussing to lease space in the Building or an Affiliate of a tenant or subtenant of the Building, so long as in either case (x) such proposed subtenant constitutes a separate business entity that has operated independently as a separate entity from such Person with whom Landlord is negotiating or discussing as aforesaid, or from such tenant or subtenant in the Building, in either case for at least two (2) years, and (y) such proposed subtenant was not formed for the purpose of circumventing the requirements of this clause (4)). If Tenant shall propose to sublease space and is about to commence negotiations with a prospective subtenant, then Tenant may notify Landlord of the identity of such prospective subtenant and Landlord shall notify Tenant within ten (10) days after the date upon which Landlord is advised of the identity of such prospective subtenant if the execution of a sublease with a prospective subtenant would violate the provisions of this clause (4). If (x) Landlord does not so notify Tenant within such ten (10) day period, and (y) Tenant submits a Tenant Statement for such proposed subtenant to Landlord within the one hundred eighty (180) day period of time commencing on the day after the end of such ten (10) day period, then Landlord, within such succeeding one hundred eighty (180) day period, shall not have the right to withhold, delay or condition its consent to the subleasing contemplated by such Tenant Statement solely by reason of such proposed subtenant being (i) a Person (or an Affiliate of a Person) with whom Landlord is negotiating or discussing to lease space in the Building, or (ii) a tenant or subtenant of the Building or an Affiliate of a tenant or subtenant of the Building;

(5) the character of the business to be conducted or the proposed use of the Premises by the proposed subtenant shall not (a) be likely to increase Landlord's operating expenses beyond that which would be incurred for use by Tenant, (b) increase the burden on existing cleaning services or elevators over the burden prior to such proposed subletting; (c) violate any provision or restrictions herein relating to the use or occupancy of the Premises; (d) require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building or the Real Property other than the Premises; or (e) violate any provision or restrictions in any Superior Lease or Mortgage to which this Lease is subordinate; if Landlord shall have consented to a sublease and, as a result of the use and occupancy of the subleased portion of the Premises by the subtenant, operating expenses are increased, then Tenant shall pay to Landlord, within ten (10) days after demand, as additional rent, all resulting increases in operating expenses;

(6) the subletting shall be expressly subject to all of the terms, covenants, conditions and obligations on Tenant's part to be observed and performed under this Lease and the further condition and restriction that the sublease shall not be materially modified without the prior written consent of Landlord, which consent shall

not be unreasonably withheld, conditioned or delayed or assigned (by operation of law or otherwise; for purposes of this clause (6), the transfer of a majority of the issued and outstanding capital stock of any corporate subtenant or the transfer of a majority of the total interest in a subtenant (if a partnership or other entity), however accomplished, whether in a single transaction or in a series of related or unrelated transactions, shall be deemed an assignment of the sublease, except that the transfer of the outstanding capital stock of a corporate subtenant shall be deemed not to include the sale of such stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, which sale is effected through the "over-the-counter market" or through any recognized stock exchange) encumbered or otherwise transferred or the subleased premises further sublet by the subtenant in whole or in part, or any part thereof suffered or permitted by the subtenant to be used or occupied by others, without the prior written consent of Landlord in each instance;

(7) the subletting shall end no later than one (1) day before the Expiration Date and shall not be for a term of less than two (2) years unless it commences less than two (2) years before the Expiration Date (provided, however, that Tenant shall have the one- time right to sublease the Seventh Floor Space (or a portion thereof, subject to clause (8) of this Section 12.6) for a term of less than two (2) years that commences more than two (2) years prior to the Expiration Date);

(8) no subletting shall be for less than Five Thousand (5,000) contiguous rentable square feet and at no time shall there be more than three (3) occupants, including Tenant, on any one (1) floor of the Premises; and

(9) subject to the terms of a Recognition Agreement, such sublease shall expressly provide that in the event of termination, re-entry or dispossess of Tenant by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor under such sublease, and such subtenant, at Landlord's option, shall attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be:

(i) liable for any act or omission of Tenant under such sublease, or

(ii) subject to any defense or offsets which such subtenant may have against Tenant, or

(iii) bound by any previous payment which such subtenant may have made to Tenant more than thirty (30) days in advance of the date upon which such payment was due, unless previously approved by Landlord, or

(iv) bound by any obligation to make any payment to or on behalf of such subtenant, or

(v) bound by any obligation to perform any work or to make improvements to the Premises, or portion thereof demised by such sublease, or

(vi) bound by any amendment or modification of such sublease made without its consent, or

(vii) bound to return such subtenant's security deposit, if any, until such deposit has come into its actual possession and such subtenant would be entitled to such security deposit pursuant to the terms of such sublease.

If Tenant proposes to sublet a portion of the Premises then, unless the context otherwise requires, references in this Section 12.6 to the Premises shall be deemed to refer to the portion of the Premises proposed to be sublet by Tenant. Landlord shall have the right to enter into a Recapture Sublease or a Recapture Termination on the terms set forth in this Article 12 in respect of Tenant's proposed subleasing of all or any portion of the Premises.

(B) Except as otherwise provided in Section 12.4 hereof and subject to the terms of this Section 12.6(B), if (x) Tenant proposes to sublet all or any portion of the Premises in respect of which Landlord does not have the right to enter into a Recapture Sublease or a Recapture Termination, or (y) Tenant proposes to sublet all or any portion of the Premises in respect of which (I) Landlord had the right to enter into a Recapture Sublease or a Recapture Termination, (II) Tenant gave a Recapture Statement to Landlord as contemplated by Section 12.6(C) hereof, and (III) Landlord did not exercise Landlord's rights to enter into a Recapture Sublease or a Recapture Termination in respect thereof, then Tenant shall submit a statement to Landlord (a "Tenant Statement") containing the following information: (a) a description of the Premises (or a portion thereof) to be sublet, (b) the name of the proposed subtenant, (c) the material terms and conditions of the proposed subletting, including, without limitation, the rent payable, the free rent period (if any) and the estimated value (including cost, overhead and supervision) of any improvements (including any demolition to be performed) to the Premises for occupancy by the proposed subtenant, and (d) any other information that Landlord may reasonably request within five (5) Business Days of Landlord's receipt of the Tenant Statement, together with a statement specifically directing Landlord's attention to the provisions of this Section 12.6(B) requiring Landlord to respond to Tenant's request within fifteen (15) Business Days after Landlord's receipt of the Tenant Statement. If Landlord fails to notify Tenant within fifteen (15) Business Days after the date when Tenant gives the Tenant Statement to Landlord of Landlord's consent to or disapproval of the proposed subletting pursuant to the Tenant Statement as contemplated by Section 12.6(A) hereof, or if Landlord consents to such subletting as provided in Section 12.6(A) hereof, then Tenant shall have the right to sublease the Premises (or the applicable portion thereof) to the proposed subtenant on the same terms and conditions set forth in the Tenant Statement. If Tenant does not enter into such sublease within one hundred twenty (120) days after the delivery of the Tenant Statement to Landlord, then the

provisions of Section 12.1 hereof and this Section 12.6 shall again be applicable to any other proposed subletting. If Tenant enters into such sublease within one hundred twenty (120) days as aforesaid, then Tenant shall deliver a true, complete and fully executed counterpart of such sublease to Landlord within ten (10) days after execution thereof.

(C) Subject to the terms of this Section 12.6(C), if Tenant proposes to sublease all or any portion of the Premises in respect of which Landlord has the right to enter into a Recapture Sublease or a Recapture Termination, then Tenant shall submit a statement to Landlord (a "Recapture Statement") containing the following information: (a) a description of the Premises (or portion thereof) to be sublet, (b) the material terms and conditions of the proposed subletting, including, without limitation, the term of such proposed subletting, the rent payable, the free rent period (if any), and the estimated value (including cost, overhead and supervision) of any improvements (including any demolition to be performed) to the Premises for occupancy by a subtenant, and (c) any other information that Landlord may reasonably request within five (5) Business Days after Landlord's receipt of the Recapture Statement (but excluding the identity of the proposed subtenant), together with a statement specifically directing Landlord to respond to Tenant's request within thirty (30) days after Landlord's receipt of the Recapture Statement. Landlord shall have the right, exercisable within thirty (30) days after Landlord's receipt of the Recapture Statement, (x) to sublet (in its own name or that of its designee) the Premises (or the applicable portion thereof) (the "Recapture Space") from Tenant on the terms and conditions set forth in the Recapture Statement, subject to the further provisions of paragraph (D) of this Section 12.6, or (y) with respect to a proposed sublease of any portion of the Premises for the balance of the Term with respect to which Landlord would otherwise have the right to enter into a Recapture Sublease, to terminate this Lease with respect to such Recapture Space on the terms set forth in Section 12.6(H) hereof by giving notice thereof to Tenant within thirty (30) days after Landlord's receipt of the Recapture Statement (such termination of this Lease with respect to the Recapture Space being referred to herein as a "Recapture Termination") (it being agreed that for purposes of this clause (C), any proposed sublease shall be deemed to be for the balance of the Term if the last day of the term of such proposed sublease occurs later than two (2) years prior to the Fixed Expiration Date). If (x) Tenant gives a Recapture Statement to Landlord as contemplated by this Section 12.6(C), (y) Landlord does not exercise Landlord's rights to enter into a Recapture Sublease or a Recapture Termination (as the case may be) in respect thereof, and (z) Tenant does not give a Tenant Statement in respect of such subletting within one hundred eighty (180) days after the delivery of the Recapture Statement to Landlord, then the provisions of Section 12.1 hereof and this Section 12.6 shall again be applicable to any other proposed subletting therefor (including, without limitation, the requirement that Tenant deliver to Landlord a Recapture Notice therefor). If, at any time during the one hundred eighty (180) day period commencing on the date when Tenant gives a Recapture Statement to Landlord, the sublease rental, the term, the portion of the Premises that Tenant proposes to sublet, or any other term set forth in such Recapture Statement changes in any material respect such that (I) there is a

greater than ten percent (10%) variance in the space proposed to be sublet from the space specified in the Recapture Statement, or (II) there is a greater than ten percent (10%) decrease in the value to Tenant of the aggregate economic terms of the proposed sublease specified in the Recapture Statement (taking into account, without limitation, work to be performed, work allowances, and free rent periods), then Tenant shall not have the right to enter into any sublease unless Tenant gives Landlord a revised Recapture Statement in respect thereof, and the procedure described in this Section 12.6(C) shall again apply. Tenant's submission of such revised Recapture Statement shall be accompanied by a statement directing Landlord to respond to Tenant's request within five (5) Business Days after Landlord's receipt of such revised Recapture Statement. Landlord shall have the right, exercisable within five (5) Business Days after Landlord's receipt of the revised Recapture Statement, to enter into a Recapture Sublease (on the terms and conditions set forth in the revised Recapture Statement, subject to the further provisions of paragraph (D) of this Section 12) or a Recapture Termination (if the term of the proposed sublease pursuant to such revised Recapture Statement is (or is deemed to be) for the balance of the Term). Landlord acknowledges that Tenant shall have the right to give the Tenant Statement and the Recapture Statement simultaneously.

(D) If Landlord exercises its option to sublet the Recapture Space, such sublease to Landlord or its designee as subtenant (each, a "Recapture Sublease") shall:

(1) be at a rental equal to the lesser of (x) the Rent Per Square Foot multiplied by the number of rentable square feet of the Recapture Space, and (y) the sublease rent set forth in the Tenant Statement, and otherwise be upon the same terms and conditions as those contained in this Lease (as modified by the Tenant Statement, including, without limitation, the obligation to pay the rental set forth in the Tenant Statement), except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this paragraph (D);

(2) give the subtenant the unqualified and unrestricted right, without Tenant's permission, to assign such sublease and to further sublet the Recapture Space or any part thereof and to make any and all changes, alterations, and improvements in the Recapture Space;

(3) provide in substance that any such changes, alterations, and improvements made in the Recapture Space may be removed, in whole or in part, prior to or upon the expiration or other termination of the Recapture Sublease provided that any material damage and injury caused thereby shall be repaired (it being agreed that (I) any Specialty Alterations in the Recapture Space shall be removed and the Recapture Space restored to the condition existing on the day immediately prior to the commencement of the term of the Recapture Sublease if (x) so provided in the Recapture Statement, and (y) the term of such Recapture Sublease is for less than the balance of the Term, (II) if the term of such Recapture Sublease is for the balance of

the Term, then any Specialty Alteration in the Recapture Space shall be deemed a Qualified Specialty Alteration to the extent the Recapture Statement provided for the proposed subtenant to remove such Specialty Alteration, and (III) if Landlord fails to fulfill its obligation to remove any Specialty Alterations from the Recapture Space and restore the Recapture Space as aforesaid, and Tenant so notifies Landlord, then Tenant, from and after the day that is thirty (30) days after the day that Tenant gives such notice and Landlord fails to fulfill such obligation, shall have the right to (x) remove such Specialty Alterations and restore the Recapture Space as aforesaid, and (y) offset against the Rental next due hereunder an amount equal to the reasonable out-of-pocket expenses incurred by Tenant in performing such work together with interest thereon at the Applicable Rate computed from the date that Tenant paid such expense on account of such work through the date that Tenant offsets such expenses against the Rental as aforesaid);

(4) provide that (i) the parties to such Sublease expressly negate any intention that any estate created under such Sublease be merged with any other estate held by either of said parties, (ii) prior to the commencement of the term of the Recapture Sublease, Tenant, at its sole cost and expense (unless the Tenant Statement provides otherwise), shall make such alterations as may be required or reasonably deemed necessary by the subtenant to physically separate the Recapture Space, if such Recapture Space constitutes a portion of a floor, from the balance of the Premises and to provide appropriate means of ingress to and egress thereto and to the public portions of the balance of the floor such as toilets, janitor's closets, telephone and electrical closets, fire stairs, elevator lobbies, etc., and (iii) at the expiration of the term of such Recapture Sublease, Tenant shall accept the Recapture Space in its then existing condition, broom clean except as provided in Section 12.6(D)(3) hereof;

(5) provide that the subtenant or occupant may use and occupy the Recapture Space for any lawful purpose (without regard to any limitation set forth in the Tenant Statement); and

(6) not require the subtenant thereunder to post a security deposit.

(E) Performance by Landlord, or its designee, under a Recapture Sublease shall be deemed performance by Tenant of any similar obligation under this Lease and Tenant shall not be liable for any default under this Lease or deemed to be in default hereunder if such default is occasioned by or arises from any act or omission of the subtenant under the Recapture Sublease or is occasioned by or arises from any act or omission of any occupant under the Recapture Sublease. If Landlord or its designee fails to make any payment due to Tenant under the Recapture Sublease, Tenant shall have the right to offset the amount thereof against the next Rental due hereunder.

(F) If Landlord is unable to give Tenant possession of the Recapture

Space at the expiration of the term of the Recapture Sublease by reason of the holding over or retention of possession of any tenant or other occupant, then (w) Landlord, at Landlord's expense, shall use commercially reasonable efforts to deliver possession of the Recapture Space, (x) Landlord shall continue to pay all charges previously payable, and comply with all other obligations, under the Recapture Sublease until the date upon which Landlord shall give Tenant possession of the Recapture Space free of occupancies, (y) neither the Expiration Date nor the validity of this Lease shall be affected, and (z) Tenant waives any rights under Section 223-a of the Real Property Law of New York, or any successor statute of similar import, to rescind this Lease and further waives the right to recover any damages from Landlord which may result from the failure of Landlord to deliver possession of the Recapture Space at the end of the term of the Recapture Sublease.

(G) The failure by Landlord to exercise its option under Section 12.6(B) with respect to any subletting shall not be deemed a waiver of such option with respect to any extension of such subletting (other than pursuant to a renewal right set forth in the relevant Tenant Statement and the corresponding sublease) or any subsequent subletting of the Premises affected thereby.

(H) If Landlord exercises Landlord's right to consummate a Recapture Termination in respect of the Recapture Space and the Recapture Space constitutes the then entire Premises, then the Lease shall terminate on the date that the term of the sublease proposed initially by Tenant would have commenced and the provisions of Article 20 hereof shall apply. If Landlord exercises Landlord's right to consummate a Recapture Termination in respect of Recapture Space that constitutes a portion of the Premises, then:

(1) on the date that the term of the sublease proposed initially by Tenant would have commenced, the Recapture Space shall be deemed to be deleted from the Premises, and accordingly, on such date, Tenant shall deliver exclusive possession of the Recapture Space to Landlord in the condition required hereby upon the expiration or earlier termination of the Term, free and clear of leases, tenancies and rights of occupants;

(2) effective on such date, the Fixed Rent payable hereunder shall be reduced by an amount equal to the product obtained by multiplying (I) the number of square feet of rentable area that comprises the Recapture Space, and (II) each of the applicable amounts set forth on Exhibit "G" attached hereto that corresponds to the period from such date to the Fixed Expiration Date;

(3) effective on such date, the Space Factor shall be reduced by an amount equal to the number of square feet of rentable area that comprises the Recapture Space;

(4) effective on such date, Tenant's Share shall be recalculated

as the fraction, the numerator of which shall be the number of square feet of rentable area then constituting the Premises, and the denominator of which shall be the rentable area of the Building (exclusive of any space leased for retail use); and

(5) prior to the date that the term of the sublease proposed initially by Tenant would have commenced (unless the Recapture Statement provides otherwise), Tenant, at its sole cost and expense (unless the Recapture Statement provides otherwise), shall make such Alterations as may be required or reasonably deemed necessary by Landlord to physically separate the Recapture Space, if such Recapture Space constitutes a portion a floor, from the balance of the Premises and to provide appropriate means of ingress to and egress thereto and to the public portions of the balance of the floor such as toilets, janitor's closets, telephone and electrical closets, fire stairs, elevator lobbies, etc.

Section 12.7. (A) In connection with any subletting of all or any portion of the Premises other than pursuant to Section 12.4(A), Tenant shall pay to Landlord an amount equal to seventy percent (70%) of any Sublease Profit derived therefrom. Anything contained herein to the contrary notwithstanding Tenant shall not be entitled to any proceeds derived from or relating to (directly or indirectly) any subletting of the Recapture Space by Landlord or its designee to a subtenant. All sums payable hereunder by Tenant shall be calculated on an annualized basis, but shall be paid to Landlord, as additional rent, within ten (10) days after receipt thereof by Tenant.

(B) For purposes of this Lease:

(1) "Rent Per Square Foot" shall mean the sum of the then Fixed Rent and Escalation Rent divided by the Space Factor.

(2) "Sublease Profit" shall mean the product of (x) the Sublease Rent Per Square Foot less the Rent Per Square Foot, and (y) the number of rentable square feet constituting the portion of the Premises sublet by Tenant.

(3) "Sublease Rent" shall mean any rent or other consideration paid to Tenant directly or indirectly by any subtenant or any other amount received by Tenant from or in connection with any subletting (including, but not limited to, sums paid for the sale or rental, or consideration received on account of any contribution, of Tenant's Property or sums paid in connection with the supply of electricity or HVAC) less the Sublease Expenses.

(4) "Sublease Expenses" shall mean: (i) in the event of a sale of Tenant's Property, the then unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns, (ii) the reasonable out-of-pocket costs and expenses of Tenant in making such sublease, such as brokers' fees, attorneys' fees, and advertising fees paid to unrelated third parties, (iii) any sums paid to Landlord pursuant to Section 12.2(B) hereof, (iv) the cost of improvements or alterations made

by Tenant expressly and solely for the purpose of preparing that portion of the Premises for such subtenancy if not used by Tenant subsequent to the expiration of the term of the sublease, (v) the cost of any other concession granted to the subtenant other than free rent or any rent credit, and (vi) the unamortized or undepreciated cost of any Tenant's Property leased to and used by such subtenant. In determining Sublease Rent, the costs set forth in clauses (ii), (iii), (iv) and (v) shall be amortized on a straight-line basis over the term of such sublease and the costs set forth in clause (vi) shall be amortized on a straight line basis over the greater of the longest useful life of such improvements, alterations or Property (as permitted pursuant to the Internal Revenue Code of 1986, as amended) and the term of such sublease.

(5) "Sublease Rent Per Square Foot" shall mean the Sublease Rent divided by the rentable square feet of the space demised under the sublease in question.

(6) Sublease Profit shall be recalculated from time to time to reflect any corrections in the prior calculation thereof due to (i) subsequent payments received or made by Tenant, (ii) the final adjustment of payments to be made by or to Tenant, and (iii) mistake. Promptly after receipt or final adjustment of any such payments or discovery of any such mistake, Tenant shall submit to Landlord a recalculation of the Sublease Profit, and an adjustment shall be made between Landlord and Tenant, on account of prior payments made or credits received pursuant to this Section 12.7. In addition, if Sublease Expenses utilized for the purpose of calculating Sublease Profit included an amount attributable to the cost of the improvements made by Tenant expressly and solely for the purpose of preparing the Premises or a portion thereof for the occupancy of the subtenant and subsequent to the expiration of the sublease such improvements and/or alterations were not demolished and/or removed and Tenant reoccupies the Premises or portion thereof demised under such sublease, Sublease Profits shall be recalculated as if the cost of such improvements and/or alterations were not incurred by Tenant and Tenant promptly shall pay to Landlord seventy percent (70%) of the additional amount of such Sublease Profit resulting from such recalculation.

Section 12.8. (A) Notwithstanding the provisions of Section 12.1 hereof but subject to the provisions of Section 12.4 hereof, if Landlord shall not exercise its rights pursuant to paragraph (B)(2) of this Section 12.8, Landlord shall not unreasonably withhold condition or delay its consent to an assignment of this Lease in its entirety provided that:

(1) no Event of Default shall have occurred and be continuing;

(2) upon the date Tenant delivers the Assignment Statement to Landlord and upon the date immediately preceding the date of any assignment approved by Landlord, the proposed assignee shall have a financial standing (taking into consideration the obligations of the proposed assignee under this Lease)

reasonably satisfactory to Landlord, be of a character, be engaged in a business, and propose to use the Premises in a manner in keeping with the standards in such respects of the other tenancies in the Building;

(3) if Landlord has or within one hundred eighty (180) days thereafter reasonably expects to have comparable space in the Building available for leasing, the proposed assignee (or any Person who is an Affiliate of the proposed assignee) shall not be a tenant or subtenant of any space in the Building, nor shall the proposed assignee (or any Person who is an Affiliate of the Proposed Assignee) be a Person with whom Landlord is negotiating or discussing to lease space in the Building (it being agreed, however, that the proposed assignee may be an Affiliate of a Person with whom Landlord is negotiating or discussing to lease space in the Building or an Affiliate of a tenant or subtenant of the Building, so long as in either case (x) the proposed assignee constitutes a separate business entity that has operated independently as a separate entity from such Person with whom Landlord is negotiating or discussing as aforesaid, or from such tenant or subtenant in the Building, in either case for at least two (2) years, and (y) such proposed subtenant was not formed for the purpose of circumventing the requirements of this clause (3));

(4) the proposed use of the Premises by the proposed assignee shall not (a) be likely to increase Landlord's operating expenses beyond that which would be incurred for use by Tenant; (b) increase the burden on existing cleaning services or elevators over the burden prior to such proposed assignment; (c) violate any provision or restrictions herein relating to the use or occupancy of the Premises; (d) require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building or the Real Property other than the Premises; or (e) violate any provision or restrictions in any Superior Lease or Mortgage to which this Lease is subordinate; if Landlord shall have consented to an assignment and, as a result of the use and occupancy of the Premises by Tenant/assignee, operating expenses are increased, then Tenant shall pay to Landlord, within thirty (30) days after demand, as additional rent, all resulting increases in operating expenses; and

(5) the assignee shall agree to assume all of the obligations of Tenant under this Lease from and after the date of the assignment.

(B) (1) Subject to the terms of this Section 12.8(B), if Tenant proposes to assign the tenant's interest hereunder in its entirety, then Tenant shall submit a statement to Landlord (the "Assignment Statement") containing the following information: (i) the essential terms and conditions of the proposed assignment, including, without limitation, the consideration payable for such assignment and the estimated value (including cost, overhead and supervision) of any improvements (including any demolition to be performed) to the Premises proposed to be made by Tenant to prepare the Premises for occupancy by such assignee, and (ii) any other information that Landlord may reasonably request, together with a statement

specifically directing Landlord's attention to the provisions of this Section 12.8(B) requiring Landlord to respond to Tenant's request within (x) forty-five (45) days (if Tenant does not identify the proposed assignee in the Assignment Statement) or (y) fifteen (15) Business Days (if Tenant identifies the proposed assignee in the Assignment Statement), as the case may be, after Landlord's receipt of the Assignment Statement (it being understood that Tenant shall not be required to identify the proposed assignee in the Assignment Statement). Tenant shall not be required to deliver an Assignment Statement in respect of assignments that do not require Landlord's prior approval as provided in Section 12.4 hereof.

(2) Landlord shall have the right, exercisable by written notice given by Landlord to Tenant within forty-five (45) days after Landlord's receipt of the Assignment Statement, to terminate this Lease (an "Assignment Termination"), in which event the Term shall expire on the proposed effective date set forth in the Assignment Statement, or if none, on a date set by Landlord that is not later than ninety (90) days after the date of Landlord's notice, and Tenant shall vacate the Premises and surrender the same to Landlord on such date set by Landlord in accordance with the provisions of Article 20 hereof; provided, however, that the aforesaid period of forty-five (45) days shall be reduced to fifteen (15) Business Days if Tenant identifies the proposed assignee in the Assignment Statement.

(3) If Landlord fails to notify Tenant within said forty-five (45) day period (or said fifteen (15) Business Day period, as the case may be) of Landlord's intention to exercise its rights pursuant to paragraph (B)(2) of this Section 12.8 (or if Landlord notifies Tenant that Landlord is not exercising its rights pursuant to paragraph (B)(2) of this Section 12.8) or of Landlord's consent to or disapproval of the proposed assignment pursuant to the Assignment Statement, or if Landlord consents to such assignment as provided in Section 12.8(A) hereof, then Tenant shall be free to assign the Premises to the proposed assignee on substantially the same terms and conditions set forth in the Assignment Statement (it being understood that with respect to proposed assignments in respect of which Landlord had the right to exercise Landlord's rights as set forth in Section 12.8(B)(2) hereof, Tenant's rights to so assign this Lease shall be subject to the terms hereof, including, without limitation, Landlord's right to approve the assignee under Section 12.8(A) hereof). If Tenant does not enter into such assignment within one hundred eighty (180) days after the delivery of the Assignment Statement to Landlord, then the provisions of this Section 12.8 shall again be applicable in their entirety to any proposed assignment. If, at any time after delivery of an Assignment Statement, the consideration payable to Tenant pursuant to the terms of an assignment transaction that Tenant proposes with an independent third party changes in any material respect such that there is a greater than ten percent (10%) decrease in the value to Tenant of the aggregate economic terms of the proposed assignment specified in the Assignment Statement, then Tenant shall promptly notify Landlord of such change in writing and Landlord shall have the right, exercisable within ten (10) Business Days after Landlord's receipt of such revised Assignment Statement, to effect an Assignment Termination pursuant to paragraph (B)(2) of this Section 12.8. Prior to

entering into any such assignment, Tenant shall notify Landlord in writing of the identity of the proposed assignee (if not identified in the Assignment Statement) so that Landlord may exercise its reasonable approval rights pursuant to this Section 12.8. If Landlord shall fail to notify Tenant within fifteen (15) Business Days of Landlord's receipt of the identity of the proposed assignee, Tenant shall have the right to assign the Lease to such proposed assignee for the terms set forth in the Assignment Statement (as the same may have been modified, as aforesaid) pursuant to an assignment which shall otherwise be subject to the terms and conditions of this Lease.

(4) If Tenant proposes to assign this Lease and is about to commence negotiations with a prospective assignee, Tenant may supply Landlord with a list of Persons with whom Tenant plans to negotiate an assignment, and Landlord shall notify Tenant within ten (10) days after Landlord's receipt of such list if such Persons would violate the provisions of paragraph (A)(3) of this Section 12.8. If (x) Landlord does not so notify Tenant within such ten (10) day period, and (y) Tenant submits an Assignment Statement to Landlord within the one hundred eighty (180) day period of time commencing on the day after the end of such ten (10) day period, then Landlord, during such succeeding one hundred eighty (180) day period, shall not have the right to withhold, delay, or condition its consent to the assignment contemplated by such Assignment Statement solely by reason of such proposed assignee being (i) a Person (or an Affiliate of a Person) with whom Landlord is negotiating or discussing to lease space in the Building, or (ii) a tenant or subtenant in the Building or an Affiliate of a tenant or subtenant of the Building.

(C) If Tenant shall assign this Lease, Tenant shall deliver to Landlord, within five (5) days after execution thereof, (x) a duplicate original instrument of assignment in form and substance reasonably satisfactory to Landlord, duly executed by Tenant, and (y) an instrument in form and substance reasonably satisfactory to Landlord, duly executed by the assignee, in which such assignee shall assume observance and performance of, and agree to be personally bound by, all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

(D) Except in connection with an assignment pursuant to Section 12.4(A), Tenant shall pay to Landlord, upon receipt thereof, an amount equal to seventy percent (70%) of all Assignment Proceeds. For purposes of this paragraph (D), "Assignment Proceeds" shall mean all consideration paid to Tenant, directly or indirectly, by any assignee, including Landlord pursuant to paragraph (B) of this Section 12.8, or any other amount received by Tenant from or in connection with any assignment (including, but not limited to, sums paid for the sale or rental, or consideration received on account of any contribution, of Tenant's Property) after deducting therefrom: (i) in the event of a sale (or contribution) of Tenant's Property, the then unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns, (ii) the reasonable out-of-pocket costs and expenses of Tenant in making such assignment, such as brokers' fees, attorneys' fees, and advertising fees paid to unrelated third parties, (iii) any payments required to be made

by Tenant in connection with the assignment of its interest in this Lease pursuant to Article 31-B of the Tax law of the State of New York or any real property transfer tax of the United States or the City or State of New York (other than any income tax), (iv) any sums paid by Tenant to Landlord pursuant to Section 12.2(B) hereof, (v) the cost of improvements or alterations made by Tenant expressly and solely for the purpose of preparing the Premises for such assignment, as determined by Tenant's federal income tax returns, (vi) the unamortized or undepreciated cost of any Tenant's Property leased to and used by such assignee, (vii) the cost of any other concession granted to the assignee, and (viii) the then unamortized or undepreciated cost of the Alterations determined on the basis of Tenant's federal income tax returns less the Applicable Tenant Fund. If the consideration paid to Tenant for any assignment shall be paid in installments, then the expenses specified in this paragraph (D) shall be amortized over the period during which such installments shall be payable.

Section 12.9. Notwithstanding any other provision of this Lease, neither Tenant nor any direct or indirect assignee or subtenant of Tenant may enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of space in the Premises which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, occupied or utilized, or which would require the payment of any consideration which would not fall within the definition of "rents from real property", as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

ARTICLE 13
ELECTRICITY

Section 13.1. Tenant shall at all times comply with the rules, regulations, terms and conditions applicable to service, equipment, wiring and requirements of the public utility supplying electricity to the Building. The risers and other electrical installations serving the Tenth Floor Space shall be capable of supplying on a demand load basis eight (8) watts of electricity per usable square foot of the Tenth Floor Space at the electrical closets serving the Premises (exclusive of the electricity required for HVAC). The risers and other electrical installations serving the Seventh Floor Space shall be capable of supplying on a demand load basis seven (7) watts of electricity per usable square foot of the Seventh Floor Space (exclusive of the electricity required for HVAC); provided, however, that by notice given by Tenant to Landlord not later than sixty (60) days after the Seventh Floor Space Commencement Date, Tenant shall have the right with respect to the Seventh Floor Space to increase such supplied wattage to eight (8) watts. If Tenant elects to so increase such wattage with respect to the Seventh Floor Space, then Tenant shall pay to Landlord within thirty (30) days after demand therefor, an amount equal to Sixty-Five Thousand Dollars ($65,000) to provide such additional wattage at the electrical closet serving the Seventh Floor Space. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed such

capacity or interfere with the electrical service to other tenants of the Building. In the event that, in Landlord's sole judgment, Tenant's electrical requirements necessitate installation of an additional riser, risers or other proper and necessary equipment, Landlord shall so notify Tenant of same. Within ten (10) Business Days after receipt of such notice, Tenant shall either cease such use of such additional electricity or shall request that additional electrical capacity (specifying the amount requested) be made available to Tenant. Landlord, in Landlord's sole judgment shall determine whether to make available such additional electrical capacity to Tenant and the amount of such additional electrical capacity to be made available. If Landlord shall agree to make available additional electrical capacity and the same necessitates installation of an additional riser, risers or other proper and necessary equipment, including, without limitation, any switchgear, the same shall be installed by Landlord. Any such installation shall be made at Tenant's sole cost and expense, and shall be chargeable and collectible as additional rent and paid within thirty (30) days after the rendition of a bill to Tenant therefor. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electric service furnished to the Premises by reason of any requirement, act or omission of the utility serving the Building or for any other reason not attributable to the negligence of Landlord, whether electricity is provided by public or private utility or by any electricity generation system owned and operated by Landlord.

Section 13.2. Tenant shall obtain electric energy directly from the public utility furnishing electric service to the Building. The costs of such service shall be paid by Tenant directly to such public utility. Such electricity may be furnished to Tenant by means of the existing electrical facilities serving the Premises, at no charge, to the extent the same are available, suitable and safe for such purposes. All meters and all additional panel boards, feeders, risers, wiring and other conductors and equipment which may be required to obtain electricity shall be installed by Landlord at Tenant's expense.

ARTICLE 14
ACCESS TO PREMISES

Section 14.1. (A) Subject to the provisions of Section 14.1(C) below, Tenant shall permit Landlord, Landlord's agents, representatives, contractors and employees and public utilities servicing the Building to erect, use and maintain, concealed ducts, pipes and conduits in and through the Premises. Landlord, Landlord's agents, representatives, contractors, and employees and the agents, representatives, contractors, and employees of public utilities servicing the Building shall have the right to enter the Premises at all reasonable times upon reasonable prior notice (except in the case of an emergency in which event Landlord and Landlord's agents, representatives, contractors, and employees may enter without prior notice to Tenant), which notice may be oral, to examine the same, to show them to prospective purchasers, or prospective or existing Mortgagees or Lessors, and to make such

repairs, alterations, improvements, additions or restorations (1) to the Premises (i) as Landlord is required to perform pursuant to this Lease, or (ii) which Landlord may elect to perform following ten (10) days after notice, except in the case of an emergency (in which event Landlord and Landlord's agents, representatives, contractors, and employees may enter without prior notice to Tenant), following Tenant's failure to make repairs or perform any work which Tenant is obligated to make or perform under this Lease, or (iii) for the purpose of complying with any Requirements, a Superior Lease or a Mortgage, and (2) to any other portion of the Building as Landlord may deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Premises that may be required therefor without the same constituting an eviction or constructive eviction of Tenant in whole or in part and, except as set forth in Section 14.5 hereof, the Fixed Rent (and any other item of Rental) shall in no wise abate while said repairs, alterations, improvements, additions or restorations are being made, by reason of loss or interruption of business of Tenant, or otherwise.

(B) Any work performed or installations made pursuant to this Article 14 shall be made with reasonable diligence and otherwise pursuant to the provisions of Section 4.3 hereof.

(C) Except as hereinafter provided, any pipes, ducts, or conduits installed in or through the Premises pursuant to this Article 14 shall be concealed behind, beneath or within partitioning, columns, ceilings or floors located or to be located in the Premises. Notwithstanding the foregoing, any such pipes, ducts, or conduits may be furred at points immediately adjacent to partitioning columns or ceilings located or to be located in the Premises, provided that the same are completely furred and that the installation of such pipes, ducts, or conduits, when completed, shall not reduce the usable area of the Premises beyond a de minimis amount. All costs and expenses in connection with any such installation pursuant to this clause (C), including the costs of repairing and restoring any portion of the Premises affected by such installation, shall be borne by Landlord.

Section 14.2. During the twelve (12) month period prior to the Expiration Date, Landlord may exhibit the Premises to prospective tenants thereof upon prior appointment with Tenant during regular business hours.

Section 14.3. If Tenant shall not be present when for any reason entry into the Premises shall be necessary, Landlord or Landlord's agents, representatives, contractors or employees may enter the same without rendering Landlord or such agents liable therefor if during such entry Landlord or Landlord's agents shall accord reasonable care under the circumstances to Tenant's Property, and without in any manner affecting this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Building or any part thereof, other than as herein provided.

Section 14.4. Landlord also shall have the right at any time, without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor, to change the arrangement or location of entrances or passageways, doors and doorways, and corridors, elevators, stairs, toilets, or other public parts of the Building and to change the name, number or designation by which the Building is commonly known, provided any such change does not (a) unreasonably reduce, interfere with or deprive Tenant of access to the Building or the Premises (it being agreed that any permanent reduction in the number of elevators serving the Premises shall be deemed to unreasonably interfere with Tenant's access to the Premises) or (b) reduce the rentable area (except by a de minimis amount) of the Premises. All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises (including exterior Building walls, exterior core corridor walls, exterior doors and entrances), all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, heating, air cooling, plumbing and other mechanical facilities, service closets and other Building facilities are not part of the Premises, and Landlord shall have the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, alteration and repair as provided in this Article 14.

Section 14.5. If, due to any alterations, restorations, work, installation, or repair (collectively the "Work") performed by Landlord hereunder or failure by Landlord to perform any of its obligations hereunder (including, without limitation, Landlord's obligation to provide the services described in Article 28 hereof), (i) Tenant is unable for at least ten (10) consecutive days to reasonably operate its business in all or any portion of the Premises in substantially the same manner as such business was operated prior to the performance of the Work or such failure, and (ii) such interruption occurs during Tenant's business hours, then the Fixed Rent and the Escalation Rent shall be reduced on a per diem basis in the proportion in which the area of the portion of the Premises which is unusable bears to the total area of the Premises for each day from and after the aforesaid ten (10) day period that such portion of the Premises was and remains unusable (it being understood that such portion of the Premises shall be deemed to be usable if Tenant actually uses such portion of the Premises for the conduct of business).

ARTICLE 15
CERTIFICATE OF OCCUPANCY

Tenant shall not at any time use or occupy the Premises in violation of the certificate of occupancy at such time issued for the Premises or for the Building and in the event that any department of the City or State of New York shall hereafter contend or declare by notice, violation, order or in any other manner whatsoever that the Premises are used for a purpose which is a violation of such certificate of occupancy, Tenant, upon written notice from Landlord or any Governmental Authority, shall

immediately discontinue such use of the Premises. On the Commencement Date a temporary or permanent certificate of occupancy covering the Premises will be in force permitting the Premises to be used as offices, provided, however, neither such certificate, nor any provision of this Lease, nor any act or omission of Landlord, shall be deemed to constitute a representation or warranty that the Premises, or any part thereof, lawfully may be used or occupied for any particular purpose or in any particular manner, in contradistinction to mere "office" use. Landlord shall not cause the certificate of occupancy to be amended during the Term so as to cause Tenant's use or occupancy of the Premises in accordance with the terms of this Lease to violate such certificate of occupancy.

ARTICLE 16
DEFAULT

Section 16.1. Each of the following events shall be an "Event of Default" hereunder:

(A) If Tenant shall default in the payment when due of any installment of Fixed Rent and such default shall continue for five (5) Business Days after notice of such default is given to Tenant, or in the payment when due of any other item of Rental and such default shall continue for five (5) Business Days after notice of such default is given to Tenant, except that if Landlord shall have given two (2) such notices in any twelve (12) month period, Tenant shall not be entitled to any further notice of its delinquency in the payment of Rental until such time as twelve (12) consecutive months shall have elapsed without Tenant having defaulted in any such payment; or

(B) if the entire Premises shall become permanently abandoned; or

(C) if Tenant shall default in the observance or performance of any term, covenant or condition on Tenant's part to be observed or performed under any other lease with Landlord or Landlord's predecessor in interest of space in the Building and such default shall continue beyond any grace period set forth in such other lease for the remedying of such default; or,

(D) if Tenant's interest or any portion thereof in this Lease shall devolve upon or pass to any person, whether by operation of law or otherwise, except as expressly permitted under Article 12 hereof; or

(E) (1) if Tenant shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(2) if Tenant shall commence or institute any case, proceeding or other action (A) seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation,

dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or

(3) if Tenant shall make a general assignment for the benefit of creditors; or

(4) if any case, proceeding or other action shall be commenced or instituted against Tenant (A) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, which in either of such cases (i) results in any such entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having a similar effect or (ii) remains undismissed for a period of ninety (90) days; or

(5) if any case, proceeding or other action shall be commenced or instituted against Tenant seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or

(6) if Tenant shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (2), (3), (4) or (5) above; or

(7) if a trustee, receiver or other custodian is appointed for any substantial part of the assets of Tenant which appointment is not vacated or stayed within ten (10) Business Days; or

(F) if Tenant shall fail more than five (5) times during any twelve (12) month period to pay any installment of Fixed Rent or any item of Rental when due, after receipt of the notice and the expiration of the applicable grace period pursuant to the provisions of paragraph (A) above, if such notice and grace period are then required; or

(G) if Tenant shall fail to pay any installments of Fixed Rent or items of Rental when due as required by this Lease, and Landlord shall bring more than one (1) summary dispossess proceeding during any twelve (12) month period; or

(H) if this Lease is assigned (or all or a portion of the Premises are

subleased) to a Related Entity and such Related Entity shall no longer (i) Control, (ii) be under common Control with, or (iii) be under the Control of Tenant (or any permitted successor by merger, consolidation or purchase as provided herein); or

(I) if Landlord shall present the Letter of Credit to the bank which issued the same in accordance with the provisions of Article 31 hereof, and the bank shall fail to honor the Letter of Credit and pay the proceeds thereof to Landlord for any reason whatsoever (other than by virtue of an act or failure to act of Tenant) and Tenant on or prior to five (5) Business Days after notice of such failure is given to Tenant fails to pay to Landlord an amount equal to the Security Amount for the Applicable Security Period; or

(J) if Landlord shall present the Letter of Credit to the bank which issued the same in accordance with the provisions of Article 31 hereof, and the bank shall fail by virtue of an act or failure to act of Tenant to honor the Letter of Credit and pay the proceeds thereof to Landlord, or

(K) if Tenant shall fail to provide the Seventh Floor Space Security Amount in respect of the period of time commencing on the Seventh Floor Space Commencement Date on or prior to five (5) Business Days after the occurrence of the Seventh Floor Space Commencement Date; or

(L) if Tenant shall default in the observance or performance of any other term, covenant or condition of this Lease on Tenant's part to be observed or performed and Tenant shall fail to remedy such default within thirty (30) days after notice by Landlord to Tenant of such default, or if such default is of such a nature that it cannot with due diligence be completely remedied within said period of thirty (30) days and Tenant shall not commence within said period of thirty (30) days, or shall not thereafter diligently prosecute to completion, all steps necessary to remedy such default.

Section 16.2. (A) If an Event of Default (i) described in Section 16.1(E) hereof shall occur, or (ii) described in Sections 16.1(A), (B), (C), (D), (F), (G), (H), (I), (J), (K) or (L) shall occur and Landlord, at any time thereafter, at its option gives written notice to Tenant stating that this Lease and the Term shall expire and terminate on the date Landlord shall give Tenant such notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date on which the Event of Default described in clause (i) above occurred the date of such notice, pursuant to clause (ii) above, as the case may be, were the Fixed Expiration Date and Tenant immediately shall quit and surrender the Premises, but Tenant shall nonetheless be liable for all of its obligations hereunder, as provided for in Articles 17 and 18 hereof. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Section 16.1(E) hereof, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as

debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 12.3(B), Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said five (5) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession or said trustee shall immediately quit and surrender the Premises as aforesaid.

(B) If an Event of Default described in Section 16.1(A) hereof shall occur, or this Lease shall be terminated as provided in Section 16.2(A) hereof, Landlord, without notice but only to the extent permitted by law, may reenter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

Section 16.3. If at any time, (i) Tenant shall be comprised of two (2) or more persons, or (ii) Tenant's obligations under this Lease shall have been guaranteed by any person other than Tenant, or (iii) Tenant's interest in this Lease shall have been assigned, the word "Tenant", as used in Section 16.1(E), shall be deemed to mean any one or more of the persons primarily or secondarily liable for Tenant's obligations under this Lease. Any monies received by Landlord from or on behalf of Tenant during the pendency of any proceeding of the types referred to in Section 16.1(E) shall be deemed paid as compensation for the use and occupation of the Premises and the acceptance of any such compensation by Landlord shall not be deemed an acceptance of Rental or a waiver on the part of Landlord of any rights under Section 16.2.

ARTICLE 17
REMEDIES AND DAMAGES

Section 17.1. (A) If there shall occur any Event of Default, and this Lease and the Term shall expire and come to an end as provided in Article 16 hereof:

(1) Tenant shall quit and peacefully surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such default or after the date upon which this Lease and the Term shall expire and come to an end, re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force or otherwise (without being liable to indictment, prosecution or damages therefor, except as otherwise provided by law), and may repossess the Premises and dispossess Tenant

and any other persons from the Premises and remove any and all of their property and effects from the Premises; and

(2) Landlord, at Landlord's option, may relet the whole or any portion or portions of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, may determine; provided, however, that Landlord shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise affect any such liability, and Landlord, at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(B) Tenant hereby waives the service of any notice of intention to re-enter or to institute legal proceedings to that end which may otherwise be required to be given under any present or future law. Tenant, on its own behalf and on behalf of all persons claiming through or under Tenant, including all creditors, does further hereby waive any and all rights which Tenant and all such persons might otherwise have under any present or future law to redeem the Premises, or to re-enter or repossess the Premises, or to restore the operation of this Lease, after (a) Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or (b) any re-entry by Landlord, or (c) any expiration or termination of this Lease and the Term, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings. In the event of a breach or threatened breach by Tenant, or any persons claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and the right to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The right to invoke the remedies hereinbefore set forth are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

Section 17.2. (A) If this Lease and the Term shall expire and come to an end as provided in Article 16 hereof, or by or under any summary proceeding or any other action or proceeding, or if Landlord shall re-enter the Premises as provided in Section 17.1, or by or under any summary proceeding or any other action or proceeding, then, in any of said events:

(1) Tenant shall pay to Landlord all Fixed Rent, Escalation Rent and other items of Rental payable under this Lease by Tenant to Landlord to the date upon which this Lease and the Term shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be;

(2) Tenant also shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as "Deficiency") between the Rental for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of clause (2) of Section 17.1(A) for any part of such period (first deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease, Landlord's re-entry upon the Premises and with such reletting, including, but not limited to, all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs, contribution to work and other expenses of preparing the Premises for such reletting); any such Deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for payment of installments of Fixed Rent; Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise, and no suit to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(3) whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency as and for liquidated and agreed final damages, a sum equal to the amount by which the Rental for the period which otherwise would have constituted the unexpired portion of the Term (commencing on the date immediately succeeding the last date with respect to which a Deficiency, if any, was collected) exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the Base Rate; if, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord to a bona fide independent third party in an arms' length transaction for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(B) If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 17.2. Tenant shall in no event be entitled to any rents collected or payable under any reletting, whether or not such rents shall exceed the Fixed Rent reserved in this Lease. Solely for the purposes of this Article 17, the term "Escalation Rent" as used in Section 17.2(A) shall mean the Escalation Rent in effect immediately prior to the Expiration Date, or the date of re-entry upon the Premises by Landlord, as the case

may be, adjusted to reflect any increase pursuant to the provisions of Article 27 hereof for the Operating Year immediately preceding such event. Nothing contained in Article 16 hereof or this Article 17 shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any statute or rule of law, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this Section 17.2.

ARTICLE 18
LANDLORD FEES AND EXPENSES

Section 18.1. If an Event of Default has occurred and is continuing, Landlord may (1) as provided in Section 14.1 hereof, perform the obligation which Tenant has failed to perform for the account of Tenant, or (2) make any expenditure or incur any obligation for the payment of money, including, without limitation, reasonable attorneys' fees and disbursements in instituting, prosecuting or defending any action or proceeding, and the cost thereof, with interest thereon at the Applicable Rate, shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days of rendition of any bill or statement to Tenant therefor and if the term of this Lease shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Landlord as damages.

Section 18.2. If Tenant shall fail to pay any installment of Fixed Rent, Escalation Rent or any other item of Rental when due, Tenant shall pay to Landlord, in addition to such installment of Fixed Rent, Escalation Rent or other item of Rental, as the case may be, as a late charge and as additional rent, a sum equal to interest at the Applicable Rate on the amount unpaid, computed from the date such payment was due to and including the date of payment.

ARTICLE 19
NO REPRESENTATIONS BY LANDLORD

Section 19.1. Landlord and Landlord's agents and representatives have made no representations or promises with respect to the Building, the Real Property or the Premises except as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth herein. Tenant shall accept possession of (i) the Tenth Floor Space in the condition which shall exist on the Commencement Date and (ii) the Seventh Floor Space in the condition which shall exist on the Seventh Floor Space Commencement Date, in either case "as is" (subject to the provisions of Section 4.1 hereof), and Landlord shall have no obligation to perform any work or make any installations in order to prepare the Premises for Tenant's occupancy except for (x) the items with respect to the Tenth Floor Space (the "Tenth Floor Space Landlord's Work") set forth on Exhibit "H" attached hereto and made a part hereof, and (y) the items with respect to the Seventh

Floor Space (the "Seventh Floor Space Landlord's Work") set forth on Exhibit "I" attached hereto and made a part hereof (the Tenth Floor Space Landlord's Work or the Seventh Floor Space Landlord's Work, as the case may be, being referred to herein as "Landlord's Work").

Section 19.2. Subject to the terms of Section 3.6 hereof and this Section 19.2, Landlord has made and makes no representation as to the date on which it will complete Landlord's Work. Except as set forth herein, no delay in completing Landlord's Work shall in any way affect the validity of this Lease or the obligations of Tenant hereunder or give rise to a claim for damages by Tenant or a claim for rescission of this Lease, nor shall the same be construed in any wise to extend the Term hereof. Landlord agrees that, subject to Unavoidable Delay, each item of Landlord's Work shall be prosecuted with due diligence from and after the Commencement Date or the Seventh Floor Space Commencement Date, as the case may be; provided, however, that nothing contained in this Article 19 shall be deemed to impose upon Landlord any obligations to employ contractors or labor at so-called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever. Landlord shall have the right to enter the Premises subsequent to the Commencement Date or the Seventh Floor Space Commencement Date, as the case may be, to perform Landlord's Work and except as set forth herein the payment of Fixed Rent and Escalation Rent shall not be affected thereby. Landlord and Tenant shall cooperate in good faith in connection with scheduling and sequencing Tenant's performance of the Initial Alterations with Landlord's performance of Landlord's Work. Landlord shall use commercially reasonable efforts to complete Landlord's Work on or prior to the Applicable Landlord's Work Date. Subject to the terms of this Section 19.2, if Landlord does not Substantially Complete Landlord's Work on or prior to the Applicable Landlord's Work Date therefor, then (a) Landlord shall use its diligent efforts to complete Landlord's Work as promptly as reasonably practicable after such date, (b) such failure by Landlord to so Substantially Complete such Landlord's Work shall not extend the Term except as expressly provided herein, (c) except as otherwise provided in this Section 19.2, as Tenant's sole remedy for Landlord's aforesaid failure to Substantially Complete such Landlord's Work on or prior to the Applicable Landlord's Work Date therefor, (I) with respect to the Tenth Floor Space, Tenant shall receive a one (1) day abatement of the Rental due hereunder with respect to the Tenth Floor Space for each day from and after the Applicable Landlord's Work Date that Landlord fails to Substantially Complete Landlord's Work with respect to the Tenth Floor Space and such failure actually delays Tenant's performance of the Tenth Floor Space Initial Alterations (it being agreed that Tenant shall give Landlord reasonable evidence of such actual delay), (II) with respect to the Seventh Floor Space, the Seventh Floor Space Rent Commencement Date shall be adjourned by one (1) day for each day from and after the Applicable Landlord's Work Date that Landlord fails to Substantially Complete Landlord's Work with respect to the Seventh Floor Space and such failure actually delays Tenant's performance of the Seventh Floor Space Initial Alterations (it being agreed that Tenant shall give Landlord reasonable evidence of such actual delay), and (III) the Expiration Date shall be adjourned by one (1) day for (x) each day

that the Rental is abated (with respect to the Tenth Floor Space) as aforesaid, or (y) each day that the Seventh Floor Space Rent Commencement Date is so adjourned (with respect to the Seventh Floor Space), but in no event shall the Expiration Date be so adjourned by more than thirty (30) days. Landlord and Tenant each acknowledge that Landlord's Work does not include any items that constitute Long Lead Work. If (i) Landlord does not Substantially Complete Landlord's Work on or prior to the Applicable Landlord's Work Date, (ii) Tenant gives Landlord notice of Tenant's intention to exercise its self- help rights pursuant to this Section 19.2, and (iii) Landlord fails to Substantially Complete such Landlord's Work on or prior to the thirtieth (30th) day after the date that Tenant gives such notice to Landlord, then Tenant shall have the right thereafter to (I) perform Landlord's Work in the Tenth Floor Space or the Seventh Floor Space, as the case may be, and (II) offset against the Rental next due hereunder an amount equal to the reasonable out-of-pocket expenses incurred by Tenant in performing the Landlord's Work (but in no event may Tenant offset any expenses on account of any work performed by Tenant that is outside the scope of the Landlord's Work described on Exhibit "F" or Exhibit "G", as the case may be, attached hereto), together with interest thereon at the Applicable Rate computed from the date that Tenant paid such expenses on account of Landlord's Work through the date that Tenant offsets such expenses against the Rental as aforesaid. If Tenant performs such Landlord's Work in accordance with the provisions of this Section 19.2, then, so long as Tenant prosecutes with due diligence the Substantial Completion of such Landlord's Work, Tenant shall be entitled to the aforesaid abatement or adjournment, as the case may be (in addition to having the right of offset as aforesaid) for the period of time through the date that Tenant Substantially Completes Landlord's Work.

ARTICLE 20
END OF TERM

Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Premises, vacant, broom clean, in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and otherwise in compliance with the provisions of Article 3 hereof. If the last day of the Term falls on Saturday or Sunday, this Lease shall expire on the Business Day immediately preceding. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which Landlord may institute to enforce the foregoing provisions of this Article 20. Tenant acknowledges that possession of the Premises must be surrendered to Landlord on the Expiration Date. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Premises as aforesaid will be extremely substantial, will exceed the amount of the monthly installments of the Fixed Rent and Rental theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Premises is not

surrendered to Landlord on the Expiration Date, other than by reason of any Unavoidable Delay relating solely to the Building, in addition to any other rights or remedies Landlord may have hereunder or at law, and without in any manner limiting Landlord's right to demonstrate and collect any damages suffered by Landlord and arising from Tenant's failure to surrender the Premises as provided herein, Tenant shall pay to Landlord on account of use and occupancy of the Premises for each month and/or for each portion of any month during which Tenant holds over in the Premises after the Expiration Date, a sum equal to the greater of (i) one hundred fifty percent (150%) of the Rental which was payable under this Lease during the last month of the Term, and (ii) the then fair market rental value for the Premises; provided, however, that with respect to the period from and after the forty-fifth (45th) day after the Expiration Date, said monthly amount payable by Tenant to Landlord on account of use and occupancy of the Premises shall be an amount equal to the greater of (i) two hundred percent (200%) of the Rental which was payable under this Lease during the last month of the Term, and (ii) the then fair market rental value for the Premises. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or to limit in any manner Landlord's right to regain possession of the Premises through summary proceedings, or otherwise, and no acceptance by Landlord of payments from Tenant after the Expiration Date shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article 20. If (i) Tenant fails to deliver exclusive possession of the Premises to Landlord on or prior to the date that is forty-five (45) days after the Expiration Date pursuant to the terms of this Article 20 other than by reason of any Unavoidable Delay relating solely to the Building, or (ii) Tenant defaults in respect of Tenant's obligation to pay the aforesaid fee for use and occupancy of the Premises after the Expiration Date and such default continues for seven (7) Business Days after the date that Landlord gives Tenant notice thereof, then Tenant shall indemnify and save Landlord harmless from and against all claims, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and disbursements) resulting from the delay by Tenant in so surrendering the Premises, including, without limitation, (x) any claims made by any succeeding tenant founded on such delay, or (y) any damages sustained by Landlord by reason of Tenant's failure to deliver possession of the Premises to Landlord. The provisions of this Article 20 shall survive the Expiration Date.

ARTICLE 21
QUIET ENJOYMENT

Provided no Event of Default has occurred and is continuing, Tenant may peaceably and quietly enjoy the Premises subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE 22
FAILURE TO GIVE POSSESSION

Landlord shall deliver vacant and exclusive possession of the Tenth Floor Space to Tenant on the Commencement Date. Landlord hereby represents that the Tenth Floor Space is occupied by a tenant pursuant to a lease expiring February 28, 2001. Except as hereinafter provided, Tenant waives any right to rescind this Lease under Section 223-a of the New York Real Property Law or any successor statute of similar nature and purpose then in force and further waives the right to recover any damages which may result from Landlord's failure for any reason to deliver vacant and exclusive possession of the Seventh Floor Space to Tenant on the Seventh Floor Space Commencement Date. If Landlord shall be unable to give vacant and exclusive possession of the Seventh Floor Space on the Seventh Floor Space Commencement Date, and provided Tenant is not responsible for such inability to give possession, then (i) Landlord, at Landlord's sole cost and expense, shall use its diligent efforts to deliver to Tenant possession of the Seventh Floor Space as promptly as reasonably practicable (it being understood that Landlord, if necessary, shall promptly institute and diligently and in good faith prosecute, at Landlord's sole cost and expense, holdover and any other appropriate proceedings against the occupant of the Seventh Floor Space), (ii) the Seventh Floor Space Commencement Date shall be deemed to be adjourned until the date when Landlord delivers vacant and exclusive possession of the Seventh Floor Space to Tenant, and (iii) the Seventh Floor Space Rent Commencement Date shall be deemed to be the date that is the earlier to occur of (I) the date that Tenant initially occupies the Seventh Floor Space for the conduct of business (but not solely for the conduct of Tenant's Initial Alterations therein), and (II) the date that occurs One Hundred Fifty-Two (152) days after the adjourned Seventh Floor Space Commencement Date pursuant to clause (ii) above. No such failure to give possession on the Seventh Floor Commencement Date shall in any wise affect the validity of this Lease or the obligations of Tenant hereunder or give rise to any claim for damages by Tenant or claim for rescission of this Lease, nor shall the same be construed in any wise to extend the Term. The provisions of this Article are intended to constitute an "express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law. If Landlord fails to deliver to Tenant vacant and exclusive possession of the Seventh Floor Space on or prior to November 1, 2001 (the "Termination Date"), then Tenant shall have the right to terminate this Lease with respect to the Seventh Floor Space only by giving notice thereof to Landlord on or prior to the twentieth (20th) day after the Termination Date, except that Tenant shall not have such right to terminate this Lease with respect to the Seventh Floor Space if Landlord delivers such vacant and exclusive possession to Tenant prior to the date when Tenant delivers such notice to Landlord. If Tenant exercises Tenant's aforesaid right to terminate this Lease for the Seventh Floor Space, then the Seventh Floor Space shall not constitute part of the Premises for any purposes hereof, and accordingly, the Fixed Rent shall not be deemed to include the Fixed Rent for the Seventh Floor Space, Tenant's Share shall not include the Seventh Floor Space Tenant's Share, and the Space Factor shall not include the Seventh Floor Space Factor. Tenant's aforesaid termination of this Lease for the Seventh Floor Space shall not affect or impair the validity of this Lease for the Tenth Floor Space.

ARTICLE 23
NO WAIVER

Section 23.1. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of this Lease or a surrender of the Premises. In the event Tenant at any time desires to have Landlord sublet the Premises for Tenant's account, Landlord or Landlord's agents are authorized to receive said keys for such purpose without releasing Tenant from any of the obligations under this Lease, and Tenant hereby relieves Landlord of any liability for loss of or damage to any of Tenant's effects in connection with such subletting.

Section 23.2. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation of the provisions of this Lease, from having all of the force and effect of an original violation of the provisions of this Lease. The receipt by Landlord of Fixed Rent, Escalation Rent or any other item of Rental with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the Rules and Regulations set forth, or hereafter adopted, against Tenant or any other tenant in the Building shall not be deemed a waiver of any such Rules and Regulations. No provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Fixed Rent or other item of Rental herein stipulated shall be deemed to be other than on account of the earliest stipulated Fixed Rent or other item of Rental, or as Landlord may elect to apply same, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Fixed Rent or other item of Rental be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Fixed Rent or other item of Rental or to pursue any other remedy provided in this Lease. This Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

Section 23.3. The failure of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease, on

Landlord's part to be performed, shall not be deemed to be a waiver of such breach or prevent a subsequent act which would have originally constituted a violation of the provisions of this Lease from having all of the force and effect of an original violation of the provisions of this Lease. The payment by Tenant of Fixed Rent, Escalation Rent or any other item of Rental or performance of any obligation of Tenant hereunder with knowledge of any breach on the part of Landlord of any covenant of this Lease shall not be deemed a waiver of such breach, and payment of same by Tenant shall be without prejudice to Tenant's right to pursue any remedy against Landlord provided in this Lease.

ARTICLE 24
WAIVER OF TRIAL BY JURY

The respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or for the enforcement of any remedy under any statute, emergency or otherwise. If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding (unless failure to impose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

ARTICLE 25
INABILITY TO PERFORM

Except as provided in this Lease, including, without limitation, Section 14.5 hereof, this Lease and the obligation of Tenant to pay Rental hereunder and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease expressly or impliedly to be performed by Landlord or because Landlord is unable to make, or is delayed in making any repairs, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures, if Landlord is prevented or delayed from so doing by reason of strikes or labor troubles or by accident, or by any cause whatsoever beyond Landlord's control, including, but not limited to, laws, governmental preemption in connection with a national emergency or by reason of any Requirements of any Governmental Authority or by reason of failure of the HVAC, electrical, plumbing, or other Building Systems in the Building, or by reason of the conditions of supply and demand which have been or are affected by war or other emergency ("Unavoidable

Delays"), provided that Landlord exercises due diligence and commercially reasonable efforts in fulfilling its obligations hereunder..

ARTICLE 26
BILLS AND NOTICES

Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications given or required to be given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (against a signed receipt by an officer of the entity) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight courier addressed

> if to Tenant (a) at Tenant's address set forth in this Lease, Attn.: Chief Financial Officer, if mailed prior to Tenant's taking possession of the Premises, or (b) at the Building, Attn.: Chief Financial Officer, if mailed subsequent to Tenant's taking possession of the Premises, or (c) at any place where Tenant or any agent or employee of Tenant may be found if mailed subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises, in each case with a copy to Robinson Silverman Pearce Aronsohn & Berman LLP, 1290 Avenue of the Americas, New York, New York 10104, Attn.: Jonathan S. Margolis, Esq., or

> if to Landlord at Landlord's address set forth in this Lease, Attn.: Mr. David E. Green, and with copies to (x) Vornado Realty Trust, Park 80 West, Plaza II, Saddle Brook, New Jersey, 07663, Attn.: Joseph Macnow, (y) Proskauer Rose LLP, 1585 Broadway, New York, New York 10036, Attn.: Lawrence J. Lipson, Esq., and (z) each Mortgagee and Lessor which shall have requested same, by notice given in accordance with the provisions of this Article 26 at the address designated by such Mortgagee or Lessor, or

to such other address(es) as Landlord, Tenant or any Mortgagee or Lessor may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this Article 26. Any such bill, statement, consent, notice, demand, request or other communication shall be deemed to have been rendered or given on the date when it shall have been hand delivered (against a signed receipt as aforesaid) or four (4) Business Days from when it shall have been mailed as provided in this Article 26 except that any notices to terminate the Lease given by Landlord to Tenant shall be deemed to have been rendered or given on the date received by Tenant. Anything contained herein to the contrary notwithstanding, any

Operating Statement, Tax Statement or any other bill, statement, consent, notice, demand, request or other communication from Landlord to Tenant with respect to any item of Rental (other than any "default notice" if required hereunder) may be sent to Tenant by regular United States mail.

ARTICLE 27
ESCALATION

Section 27.1. For the purposes of this Article 27, the following terms shall have the meanings set forth below.

(A) "Assessed Valuation" shall mean the amount for which the Real Property is assessed pursuant to applicable provisions of the New York City Charter and of the Administrative Code of the City of New York for the purpose of calculating all or any portion of the Taxes payable with respect to the Real Property.

(B) "Base Operating Expenses" shall mean the Operating Expenses for the Base Operating Year.

(C) "Base Operating Year" shall mean the calendar year ending December 31, 2000.

(D) "Base Taxes" shall mean the Taxes payable for the Tax Year commencing July 1, 2000 and ending June 30, 2001.

(E) (1) "Operating Expenses" shall mean the aggregate of those costs and expenses (and taxes, if any, thereon, including without limitation, sales and value added taxes) paid or incurred by or on behalf of Landlord (whether directly or through independent contractors) in respect of the Operation of the Property which, are properly chargeable to the Operation of the Property in accordance with generally accepted accounting principles together with and including (without limitation) the costs of gas, oil, steam, water, sewer rental, electricity (for the portions of the Real Property not leased to and occupied by tenants or available for occupancy), HVAC and other utilities furnished to the Building and utility taxes, and the expenses incurred in connection with the Operation of the Property such as insurance premiums, attorneys' fees and disbursements, auditing and other professional fees and expenses, and all expenses (including attorneys' fees and disbursements, experts' and other witnesses' fees) incurred in contesting the validity or amount of any Taxes or in obtaining a refund of any Taxes, but specifically excluding:

(i) Taxes;

(ii) franchise, transfer, inheritance or income taxes imposed upon Landlord;

(iii) debt service on Mortgages and other financing costs;

(iv) leasing commissions and any other costs incurred in connection with entering into leases;

(v) capital expenditures or any other expenses which are required to be capitalized under generally accepted accounting principles (except as otherwise provided herein);

(vi) the cost of electrical energy furnished directly to Tenant and other tenants of the Building or to portions of the Building available for occupancy by tenants;

(vii) the cost of tenant installations incurred in connection with preparing space for a new tenant or payments made in lieu thereof;

(viii) salaries and fringe benefits of personnel above the grade of building manager and such building manager's supervisor;

(ix) rent paid under Superior Leases (other than in the nature of Rent consisting of Operating Expenses);

(x) any expense for which Landlord is otherwise compensated through the proceeds of insurance or otherwise or is otherwise compensated by any tenant (including Tenant) of the Building other than pursuant to this Article 27 or pursuant to clauses in other leases similar to this Article 27;

(xi) the cost for services in excess of the services Landlord is obligated to furnish to Tenant hereunder;

(xii) legal and other professional fees (other than in connection with the preparation of annual operating expense statements);

(xiii) depreciation, except as provided herein;

(xiv) Landlord's advertising and promotional costs for the Building or any space therein;

(xv) any fee or expenditure paid to any Affiliate of Landlord in excess of the amount which would be paid in the absence of such relationship;

(xvi) the cost of the installation, operation and

maintenance of any specialty service, such as an observatory, broadcasting facilities, luncheon club, athletic or recreational club;

(xvii) the cost of any work or service performed for any tenant of the Building (other than Tenant) to a materially greater extent or in a materially more favorable manner than that furnished generally to the tenants and other occupants (including Tenant);

(xviii) the cost of any work or service to the extent performed for any facility other than the Building;

(xix) the cost of any capital improvements to the Building after the date hereof (except to the extent otherwise expressly provided);

(xx) charges (including applicable taxes) for electricity, water, steam and other utilities for which Landlord is entitled to reimbursement from any tenant (except to the extent such reimbursement is accomplished by such other tenant making contributions to costs incurred by Landlord for Operating Expenses);

(xxi) any costs of painting or decorating of any tenanted part of the Building;

(xxii) lease payments for rented equipment, the cost of which equipment would constitute a capital expenditure if the equipment were purchased (except to the extent otherwise expressly provided);

(xxiii) any tenant improvement work, tenant allowances or other tenant concessions (e.g., lease takeover payments) paid, performed or reimbursed by Landlord;

(xxiv) rent, additional rent or other charges under any lease or sublease which is assumed by Landlord or under any recapture sublease entered into by Landlord;

(xxv) costs in connection with any judgment, settlement or arbitration resulting from any tort liability on the part of Landlord and the amount of such judgment, settlement, or award, including any punitive damages assessed against Landlord;

(xxvi) interest, penalties and late charges incurred as a result of late payments made by Landlord;

(xxvii) fines, interest, late charges and penalties payable by Landlord resulting from noncompliance with any laws and punitive damages regardless of the underlying cause of action;

(xxviii) costs incurred to correct any material misrepresentation by Landlord in this Lease;

(xxix) costs incurred to correct any material violation by Landlord of any of the terms of this Lease or any other lease with a tenant in the Building (except to the extent such costs would otherwise constitute Operating Expenses);

(xxx) fees and expenses incurred in connection with the granting of any mortgage or the entering into of any ground lease or the sale of the Real Property or any portion thereof;

(xxxi) costs and expenses incurred in causing the mechanical, computer, or other systems of the Building to properly reflect the transition from calendar year 1999 to calendar year 2000;

(xxxii) costs and expenses incurred in providing services for any retail portions of the Building;

(xxxiii) costs and expenses incurred for the handling, removal, treatment, disposal or replacement of asbestos or asbestos containing materials in the Building and costs and expenses incurred for the handling, removal, treatment, disposal or replacement of other hazardous substances in the Building to the extent any such hazardous materials violate applicable Requirements as of the date hereof; and

(xxxiv) costs and expenses to cure violations (including the cost of penalties and fines in connection therewith) noted against the Real Property prior to the date hereof,

except, however, that if Landlord is not furnishing any particular work or service (the cost of which if performed by Landlord would constitute an Operating Expense) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which reasonably would have been incurred during such period by Landlord if it had at its own expense furnished such work or services to such tenant. Any insurance proceeds received with respect to any item previously included as an Operating Expense shall be deducted from Operating Expenses for the Operating Year in which such proceeds are received; provided, however, to the extent any insurance proceeds are received by Landlord in any Operating Year with respect to any item which was included in Operating Expenses during the Base Operating Year, the amount of insurance proceeds so received shall be deducted from Base Operating Expenses and (x) the Base Operating Expenses shall be retroactively adjusted to reflect such deduction and (y) all retroactive Operating

Payments resulting from such retroactive adjustment shall be due and payable when billed by Landlord. Until such time as the electricity supplied to each floor of the Building and the common and public areas of the Building (including, without limitation, the Building Systems) shall be separately metered or submetered, Operating Expenses shall include an amount equal to (x) (i) Landlord's cost (utilizing the electrical rates applicable to the Building including energy charges, demand charges, time-of-day charges, fuel adjustment charges, rate adjustment charges, sales tax and any other factors used by the public utility in computing its charges to Landlord) of furnishing electric current to the entire Building, multiplied by (ii) the number of kilowatt hours of electric current furnished to the public and common areas of the Building (including, without limitation, the Building Systems) and other areas not available for occupancy as determined by a survey prepared by an independent, reputable electrical engineer selected by Landlord, plus (y) an amount equal to six percent (6%) of the amount determined pursuant to clause (x), as Landlord's administrative charge for overhead and supervision. Operating Expenses shall be reduced by any net reimbursement, refund or credit received by Landlord (other than reimbursement by tenants of the Building for Operating Expenses as contemplated by this Article 27) with respect to any item that is included in Operating Expenses.

(2) In determining the amount of Operating Expenses for any Operating Year (including, without limitation, the Base Operating Year), if less than all of the Building rentable area shall have been occupied by tenant(s) at any time during any such Operating Year, Operating Expenses shall be determined for such Operating Year to be an amount equal to the like expenses which would normally be expected to be incurred had all such areas been occupied throughout such Operating Year.

(3) (a) If any capital improvement is made during any Operating Year in compliance with a Requirement, whether or not such Requirement is valid or mandatory, or in lieu of a repair, then the cost of such improvement shall be included in Operating Expenses for the Operating Year in which such improvement was made; provided, however, to the extent the cost of such improvement is required to be capitalized for federal income tax purposes, such cost shall be amortized over the useful economic life of such improvement as reasonably estimated by Landlord, and the annual amortization, together with interest thereon at the then Base Rate, of such improvement shall be deemed an Operating Expense in each of the Operating Years during which such cost of the improvement is amortized.

(b) If any capital improvement is made during any Operating Year either for the purpose of saving or reducing Operating Expenses (as, for example, a labor-saving improvement), then the cost of such improvement shall be included in Operating Expenses for the Operating Year in which such improvement was made; provided, however, such cost shall be amortized over such period of time as Landlord reasonably estimates such savings or reduction in Operating Expenses will equal the cost of such improvement and the annual amortization, together with interest thereon at the then Base Rate, of such improvement shall be deemed an Operating

Expense in each of the Operating Years during which such cost of the improvement is amortized, it being agreed however, that the annual amortization shall not exceed the aforesaid savings or reduction in Operating Expense, or the annual amounts Landlord would have incurred in performing the applicable repair, as the case may be.

(F) "Operating Statement" shall mean a statement in reasonable detail setting forth a comparison of the Operating Expenses for an Operating Year with the Base Operating Expenses and the Escalation Rent for the preceding Operating Year pursuant to the provisions of this Article 27.

(G) "Operating Year" shall mean the calendar year within which the Commencement Date occurs and each subsequent calendar year for any part or all of which Escalation Rent shall be payable pursuant to this Article 27.

(H) "Taxes" shall mean the aggregate amount of real estate taxes and any general or special assessments (exclusive of penalties and interest thereon) imposed upon the Real Property (including, without limitation, (i) assessments made upon or with respect to any "air" and "development" rights now or hereafter appurtenant to or affecting the Real Property, (ii) any fee, tax or charge imposed by any Governmental Authority for any vaults, vault space or other space within or outside the boundaries of the Real Property, and (iii) any taxes or assessments levied after the date of this Lease in whole or in part for public benefits to the Real Property or the Building, including, without limitation, any Business Improvement District taxes and assessments) without taking into account any discount that Landlord may receive by virtue of any early payment of Taxes; provided, that if because of any change in the taxation of real estate, any other tax or assessment, however denominated (including, without limitation, any franchise, income, profit, sales, use, occupancy, gross receipts or rental tax) is imposed upon Landlord or the owner of the Real Property or the Building, or the occupancy, rents or income therefrom, in substitution for any of the foregoing Taxes, such other tax or assessment shall be deemed part of Taxes computed as if Landlord's sole asset were the Real Property. Anything contained herein to the contrary notwithstanding, Taxes shall not be deemed to include (w) any taxes on Landlord's income, (x) franchise taxes, (y) estate or inheritance taxes or (z) any similar taxes imposed on Landlord, unless such taxes are levied, assessed or imposed in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions which now constitute Taxes.

(I) "Tax Statement" shall mean a statement in reasonable detail setting forth a comparison of the Taxes for a Tax Year with the Base Taxes.

(J) "Tax Year" shall mean the period July 1 through June 30 (or such other period as hereinafter may be duly adopted by the Governmental Authority then imposing Taxes as its fiscal year for real estate tax purposes), any portion of which occurs during the Term.

Section 27.2. (A) If the Taxes payable for any Tax Year (any part or all of which falls within the Term from and after the Applicable Rent Commencement Date) shall represent an increase above the Base Taxes, then Tenant shall pay as additional rent for such Tax Year and continuing thereafter until a new Tax Statement is rendered to Tenant, Tenant's Share of such increase (the "Tax Payment") as shown on the Tax Statement with respect to such Tax Year. Tenant shall be obliged to pay the Tax Payment regardless of whether Tenant is exempt in whole or part, from the payment of any Taxes by reason of Tenant's diplomatic status or for any other reason whatsoever. The Taxes shall be computed initially on the basis of the Assessed Valuation in effect at the time the Tax Statement is rendered (as the Taxes may have been settled or finally adjudicated prior to such time) regardless of any then pending application, proceeding or appeal respecting the reduction of any such Assessed Valuation, but shall be subject to subsequent adjustment as provided in Section 27.3 hereof.

(B) At any time during or after the Term, Landlord may render to Tenant a Tax Statement or Statements showing (i) a comparison of the Taxes for the Tax Year with the Base Taxes and (ii) the amount of the Tax Payment resulting from such comparison. On the first day of the month following the furnishing to Tenant of a Tax Statement, Tenant shall pay to Landlord a sum equal to 1/12th of the Tax Payment shown thereon to be due for such Tax Year multiplied by the number of months of the Term then elapsed since the commencement of such Tax Year after deducting any amounts paid by Tenant on account of such Tax Year prior thereto. Tenant shall continue to pay to Landlord a sum equal to one-twelfth (1/12th) of the Tax Payment shown on such Tax Statement on the first day of each succeeding month until the first day of the month following the month in which Landlord shall deliver to Tenant a new Tax Statement. If Landlord furnishes a Tax Statement for a new Tax Year subsequent to the commencement thereof, promptly after the new Tax Statement is furnished to Tenant, Landlord shall give notice to Tenant stating whether the amount previously paid by Tenant to Landlord for the current Tax Year was greater or less than the installments of the Tax Payment for the current tax year in accordance with the Tax Statement, and (a) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (b) if there shall have been an overpayment, Landlord shall credit the amount thereof against the next monthly installments of the Fixed Rent payable under this Lease. Tax Payments shall be collectible by Landlord in the same manner as Fixed Rent. Landlord's failure to render a Tax Statement shall not prejudice Landlord's right to render a Tax Statement during or with respect to any subsequent Tax Year, and shall not eliminate or reduce Tenant's obligation to make Tax Payments for such Tax Year; provided, however, that Landlord shall not have the right to require Tenant to make a Tax Payment to Landlord in respect of a Tax Year unless Landlord gives Tenant a Tax Statement therefor within two (2) years after the last day of such Tax Year.

Section 27.3. (A) Only Landlord shall be eligible to institute tax reduction or other proceedings to reduce the Assessed Valuation. In the event that, after a Tax Statement has been sent to Tenant, an Assessed Valuation which had been utilized in

computing the Taxes for a Tax Year is reduced (as a result of settlement, final determination of legal proceedings or otherwise), and as a result thereof a refund of Taxes is actually received by or on behalf of Landlord, then, promptly after receipt of such refund, Landlord shall send Tenant a Tax Statement adjusting the Taxes for such Tax Year and setting forth Tenant's Share of such refund and Tenant shall be entitled to receive such amount, at Landlord's option, either by way of a credit against the Fixed Rent next becoming due after the sending of such Tax Statement or by a refund to the extent no further Fixed Rent is due; provided, however, that Tenant's Share of such refund shall be limited to the portion of the Tax Payment, if any, which Tenant had theretofore paid to Landlord attributable to increases in Taxes for the Tax Year to which the refund is applicable on the basis of the Assessed Valuation before it had been reduced. Not earlier than sixty (60) days nor later than thirty (30) days before the last day on which tax certiorari proceedings (i.e. the filing of the notice of protest) with respect to the Real Property may be instituted, Tenant may request that Landlord advise it of whether Landlord intends to commence such proceedings and Landlord, by the date which is the later to occur of (x) fifteen (15) Business Days after Tenant shall make such request and (y) five (5) Business Days after Landlord shall have received notice of the Assessed Valuation of the Real Property, shall so advise Tenant. If within such period Landlord either fails to advise Tenant of its intentions or advises Tenant that it does not intend to commence such proceedings, then if, at any time on or before the tenth (10th) day prior to the last date to commence such proceedings, Tenant so requests and provided that Tenant then occupies at least forty-five (45%) of the rentable area of the Building, or other tenants of the Building which together with Tenant occupy at least fifty-one percent (51%) of the rentable area of the Building (excluding any rentable area occupied by Landlord or its Affiliates) join Tenant in such request and Tenant or Tenant and such other tenants agree to pay Landlord's reasonable out-of-pocket expenses as herein provided, Landlord shall institute, and in good faith prosecute (which shall include the right of Landlord to settle in good faith any such proceeding), tax certiorari proceedings with respect to the Real Property. In the event of the institution of such proceedings, such proceedings shall be at Tenant's sole cost and expense as to which cost and expense, Tenant may be reimbursed by such other tenants if applicable) and Tenant or Tenant and such other tenants shall promptly reimburse Landlord after request therefor (and such obligation shall survive the Expiration Date), unless the Assessed Valuation of the Real Property shall be reduced as a result of the institution of such proceedings, in which event the cost and expense of such proceedings shall be paid by Landlord to the extent of any tax savings obtained as a result of such reduction, subject to reimbursement pursuant to the provisions of Section 27.2 hereof.

(B) In the event that, after a Tax Statement has been sent to Tenant, the Assessed Valuation which had been utilized in computing the Base Taxes is reduced (as a result of settlement, final determination of legal proceedings or otherwise) then, and in such event: (i) the Base Taxes shall be retroactively adjusted to reflect such reduction, and (ii) all retroactive Tax Payments resulting from such retroactive adjustment shall be due and payable within thirty (30) days after being billed

by Landlord. Landlord promptly shall send to Tenant a statement setting forth the basis for such retroactive adjustment and Tax Payments.

Section 27.4. (A) If the Operating Expenses for any Operating Year (any part or all of which falls within the Term from and after the Applicable Rent Commencement Date) shall be greater than the Base Operating Expenses, then Tenant shall pay as additional rent for such Operating Year and continuing thereafter until a new Operating Statement is rendered to Tenant, Tenant's Share of such increase (the "Operating Payment") as hereinafter provided.

(B) At any time during or after the Term Landlord may render to Tenant an Operating Statement or Statements showing (i) a comparison of the Operating Expenses for the Operating Year in question with the Base Operating Expenses, and (ii) the amount of the Operating Payment resulting from such comparison. Landlord's failure to render an Operating Statement during or with respect to any Operating Year in question shall not prejudice Landlord's right to render an Operating Statement during or with respect to any subsequent Operating Year, and shall not eliminate or reduce Tenant's obligation to make payments of the Operating Payment pursuant to this Article 27 for such Operating Year; provided, however, that Landlord shall not have the right to require Tenant to make an Operating Payment to Landlord in respect of an Operating Year unless Landlord gives Tenant an Operating Statement therefor within two (2) years after the last day of such Operating Year.

(C) On the first day of the month following the furnishing to Tenant of an Operating Statement, Tenant shall pay to Landlord a sum equal to 1/12th of the Operating Payment shown thereon to be due for the preceding Operating Year multiplied by the number of months (and any fraction thereof) of the Term then elapsed since the commencement of such Operating Year in which such Operating Statement is delivered, less Operating Payments theretofore made by Tenant for such Operating Year and thereafter, commencing with the then current monthly installment of Fixed Rent and continuing monthly thereafter until rendition of the next succeeding Operating Statement, Tenant shall pay on account of the Operating Payment for such Year an amount equal to 1/12th of the Operating Payment shown thereon to be due for the preceding Operating Year. Any Operating Payment shall be collectible by Landlord in the same manner as Fixed Rent.

(D) (1) As used in this Section 27.4, (i) "Tentative Monthly Escalation Charge" shall mean a sum equal to 1/12th of the product of (a) Tenant's Share, and (b) the difference between (x) the Base Operating Expenses and (y) Landlord's good faith reasonable estimate of Operating Expenses for the Current Year, and (ii) "Current Year" shall mean the Operating Year in which a demand is made upon Tenant for payment of a Tentative Monthly Escalation Charge.

(2) At any time in any Operating Year, Landlord, at its option, in lieu of the payments required under Section 27.4(C) hereof, may demand and collect

from Tenant, as additional rent, a sum equal to the Tentative Monthly Escalation Charge multiplied by the number of months in said Operating Year preceding the demand and reduced by the sum of all payments theretofore made under Section 27.4(C) with respect to said Operating Year, and thereafter, commencing with the month in which the demand is made and continuing thereafter for each month remaining in said Operating Year, the monthly installments of Fixed Rent shall be deemed increased by the Tentative Monthly Escalation Charge. Any amount due to Landlord under this Section 27.4(D) may be included by Landlord in any Operating Statement rendered to Tenant as provided in Section 27.4(B) hereof.

(E) (1) After the end of the Current Year and at any time that Landlord renders an Operating Statement or Statements to Tenant as provided in Section 27.4(B) hereof with respect to the comparison of the Operating Expenses for said Operating Year or Current Year, with the Base Operating Expenses, as the case may be, the amounts, if any, collected by Landlord from Tenant under Section 27.4(C) or (D) on account of the Operating Payment or the Tentative Monthly Escalation Charge, as the case may be, shall be adjusted, and, if the amount so collected is less than or exceeds the amount actually due under said Operating Statement for the Operating Year, a reconciliation shall be made as follows: Tenant shall be debited with any Operating Payment shown on such Operating Statement and credited with the amounts, if any, paid by Tenant on account in accordance with the provisions of subsection (C) and subsection (D)(2) of this Section 27.4 for the Operating Year in question. Tenant shall pay any net debit balance to Landlord within thirty (30) days next following rendition by Landlord of an invoice for such net debit balance; any net credit balance shall be applied against the next accruing monthly installments of Fixed Rent.

(2) If the sum of the Tentative Monthly Escalation Charges and payments made by Tenant in accordance with subsection (C) of this Section 27.4 for any Operating Year shall have exceeded the Operating Payment for such Operating Year by more than ten percent (10%), interest at the Applicable Rate on the portion of the overpayment that exceeds the applicable Operating Payment by more than ten percent (10%) determined as of the respective dates of such payments by Tenant and calculated from such respective dates to the dates on which such amounts are credited against the monthly installments of Fixed Rent, shall be so credited. Any amount owing to Tenant subsequent to the Term shall be paid to Tenant within ten (10) Business Days after a final determination has been made of the amount due to Tenant.

Section 27.5. Any Operating Statement sent to Tenant shall be conclusively binding upon Tenant unless, within one hundred twenty (120) days after such Statement is sent, Tenant shall send a written notice to Landlord objecting to such Statement and specifying the respects in which such Statement is disputed. If such notice is sent, Tenant (together with its independent certified public accountants, provided they are a nationally recognized firm of at least one hundred fifty (150) partners or principals who are certified public accountants) may examine Landlord's

books and records relating to the Operation of the Property to determine the accuracy of the Operating Statement. Tenant recognizes the confidential nature of such books and records and agrees to maintain the information obtained from such examination in strict confidence. If after such examination, Tenant still disputes such Operating Statement, either party may refer the decision of the issues raised to a reputable independent firm of certified public accountants, selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld or delayed as long as such firm of certified public accountants is one of the so-called "big-five" public accounting firms or if at such time there is no group of accounting firms commonly referred to as "big-five", then a nationally recognized firm of at least one hundred fifty (150) partners or principals who are certified public accountants, and the decision of such accountants shall be conclusively binding upon the parties. The fees and expenses involved in such decision shall be borne by the unsuccessful party (and if both parties are partially successful, such fees and expenses shall be apportioned between Landlord and Tenant in inverse proportion to the amount by which such decision is favorable to each party). Notwithstanding the giving of such notice by Tenant, and pending the resolution of any such dispute, Tenant shall pay to Landlord when due the amount shown on any such Operating Statement, as provided in Section 27.4 hereof.

Section 27.6. The expiration or termination of this Lease during any Operating Year or Tax Year shall not affect the rights or obligations of the parties hereto respecting any payments of Operating Payments for such Operating Year and any payments of Tax Payments for such Tax Year, and any Operating Statement relating to such Operating Payment and any Tax Statement relating to such Tax Payment, may be sent to Tenant subsequent to, and all such rights and obligations shall survive, any such expiration or termination, subject to the provisions of Section 27.2(B) and 27.4(B). In determining the amount of the Operating Payment for the Operating Year or the Tax Payment for the Tax Year in which the Term shall expire, the payment of the Operating Payment for such Operating Year or the Tax Payment for the Tax Year shall be prorated based on the number of days of the Term which fall within such Operating Year or Tax Year, as the case may be. Any payments due under such Operating Statement or Tax Statement shall be payable within thirty (30) days after such Statement is sent to Tenant.

ARTICLE 28
SERVICES

Section 28.1. (A) Landlord shall provide passenger elevator service to the Premises on Business Days from 8:00 A.M. to 6:00 P.M. and have an elevator subject to call at all other times.

(B) There shall be two (2) freight elevators serving the Premises and the entire Building on call on a "first come, first served" basis on Business Days from 8:00 A.M. to 5:00 P.M., and on a reservation, "first come, first served" basis from 5:00 P.M.

to 8:00 A.M. on Business Days and at any time on days other than Business Days. If Tenant shall use the freight elevators serving the Premises between 5:00 P.M. and 8:00 A.M. on Business Days or at any time on any other days, Tenant shall pay Landlord, as additional rent for such use, the standard rates then fixed by Landlord for the Building, or if no such rates are then fixed, at reasonable rates (it being agreed that Tenant shall not be charged such rates for up to ten (10) hours of freight elevator use with respect to Tenant's initial move into the Tenth Floor Space by Tenant during such hours). The standard rate for such freight elevator service as of the date hereof is set forth as part of Landlord's standard rates summary annexed as Schedule C hereto and made a part hereof (it being agreed that any rate set forth on Schedule C hereto is subject to change by Landlord from time to time).

(C) Landlord shall not be required to furnish any freight elevator services during the hours from 5:00 P.M. to 8:00 A.M. on Business Days and at any time on days other than Business Days unless Landlord has received advance notice from Tenant requesting such services prior to 2:00 P.M. of the day upon which such service is requested or by 2:00 P.M. of the last preceding Business Day if such periods are to occur on a day other than a Business Day.

Section 28.2. Landlord, at Landlord's expense (but subject to recoupment pursuant to Article 27 hereof), shall furnish to the Building standard water-cooled air-conditioning units (the "HVAC Units") installed as part of Landlord's Work, condenser water to provide air- conditioning in the cooling season (May 15th through October 15th, from 8:00 A.M. to 6:00 P.M. on Business Days). In addition, Landlord shall provide perimeter heating through the existing radiators when required for the comfortable occupancy of the Premises from 8:00 A.M. to 6:00 P.M. on Business Days, Landlord, throughout the Term, shall have free access to any and all mechanical installations of Landlord, including, but not limited to, air-cooling, fan, ventilating and machine rooms and electrical closets; Tenant shall not construct partitions or other obstructions which may interfere with Landlord's free access thereto, or interfere with the moving of Landlord's equipment to and from the enclosures containing said installations. Neither Tenant, nor its agents, employees or contractors shall at any time enter the said enclosures or tamper with, adjust or touch or otherwise in any manner affect said mechanical installations. Tenant shall draw and close the draperies or blinds for the windows of the Premises whenever the HVAC System is in operation and the position of the sun so requires and shall at all times cooperate fully with Landlord and abide by all of the reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of the HVAC System. Tenant, at Tenant's cost and expense, shall maintain and repair the HVAC Units during the Term.

Section 28.3. The Fixed Rent does not reflect or include any charge to Tenant for the furnishing of any necessary condenser water to the HVAC Units or perimeter heating to the Premises during periods other than the hours and days set forth above ("Overtime Periods"). Accordingly, if Landlord shall furnish such condenser water to the HVAC Units or perimeter heating at the request of Tenant during Overtime Periods,

Tenant shall pay Landlord additional rent for such services at the standard rates then fixed by Landlord for the Building, or if no such rates are then fixed, at reasonable rates. The standard rate for such services during Overtime Periods as of the date hereof is set forth on Schedule C annexed hereto and made a part hereof (it being agreed that such rate set forth on Schedule C hereto is subject to change from Landlord from time to time). Landlord shall not be required to furnish any such services during any Overtime Periods unless Landlord has received advance notice from Tenant requesting such services prior to 2:00 P.M. of the day upon which such services are requested or by 2:00 P.M. of the last preceding Business Day if such Overtime Periods are to occur on a day other than a Business Day. If Tenant fails to give Landlord such advance notice, then, failure by Landlord to furnish or distribute any such services during such Overtime Periods shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rental, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business or otherwise. If more than one tenant utilizing the same system as Tenant requests the same Overtime Periods for the same services as Tenant, the charge to Tenant shall be adjusted pro rata.

Section 28.4. Provided Tenant shall keep the Premises in order, Landlord, at Landlord's expense, subject to recoupment pursuant to Article 27 hereof, shall cause the Premises, excluding any portions thereof used for the storage or preparation of food or beverages, to be cleaned, substantially in accordance with the standards set forth in Schedule B annexed hereto and made a part hereof. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish from the Premises and the Building to the extent that the same exceeds the refuse and rubbish usually attendant upon the use of such Premises as offices. Bills for the same shall be rendered by Landlord to Tenant at such time as Landlord may elect and shall be due and payable within thirty (30) days after being rendered as additional rent. Tenant, at Tenant's sole cost and expense, shall cause all portions of the Premises used for the storage or preparation, of food or beverages to be cleaned daily in a manner reasonably satisfactory to Landlord, and to be exterminated against infestation by vermin, rodents or roaches regularly and, in addition, whenever there shall be evidence of any infestation. Any such exterminating shall be done at Tenant's sole cost and expense, in a manner reasonably satisfactory to Landlord, and by Persons approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If Tenant shall perform any cleaning services in addition to the services provided by Landlord as aforesaid, Tenant shall employ the cleaning contractor providing cleaning services to the Building on behalf of Landlord provided the charges imposed by such cleaning contractor are commercially reasonable or such other cleaning contractor as shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall comply with any recycling program and/or refuse disposal program (including, without limitation, any program related to the recycling, separation or other disposal of paper, glass or metals) which Landlord shall reasonably impose or which shall be required pursuant to any Requirements.

Section 28.5. If the New York Board of Fire Underwriters or the Insurance Services Office or any Governmental Authority, department or official of the state or city government shall require or recommend that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied by reason of Tenant's business, or the location of the partitions, trade fixtures, or other contents of the Premises, Landlord, at Tenant's cost and expense, shall promptly make and supply such changes, modifications, alterations, additional sprinkler heads or other equipment.

Section 28.6. Landlord shall provide to the Premises hot and cold water for ordinary drinking, cleaning and lavatory purposes. If Tenant requires, uses or consumes water for any purpose in addition to ordinary drinking, cleaning or lavatory purposes, Landlord may install a water meter and thereby measure Tenant's water consumption. In such event (1) Tenant shall pay Landlord for the cost of the meter and the cost of the installation thereof and through the duration of Tenant's occupancy Tenant shall keep said meter and equipment in good working order and repair at Tenant's own cost and expense; (2) Tenant shall pay for water consumed as shown on said meter at the rate charged to Landlord, as additional rent, and on default in making such payment Landlord may pay such charges and collect the same from Tenant; and (3) Tenant shall pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or shall become a lien upon the Premises or the Real Property of which they are a part pursuant to any Requirement made or issued in connection with any such metered use, consumption, maintenance or supply of water, water system, or sewage or sewage connection or system. The bill rendered by Landlord for the above shall be based upon Tenant's consumption and shall be payable by Tenant as additional rent within thirty (30) days after rendition.

Section 28.7. Landlord reserves the right, on such prior notice as is reasonably practicable, if any, to stop service of the HVAC System or the elevator, electrical, plumbing or other Building Systems when necessary, by reason of accident or emergency, or for repairs, additions, alterations, replacements or improvements in the reasonable judgment of Landlord desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed (which repairs, additions, alterations, replacements and improvements shall be performed in accordance with Section 4.3 hereof). Subject to Section 14.5 hereof, Landlord shall have no responsibility or liability for interruption, curtailment or failure to supply HVAC, elevator, electrical, plumbing or other Building Systems when prevented by Unavoidable Delays or by any Requirement of any Governmental Authority or due to the exercise of its right to stop service as provided in this Article 28. The exercise of such right or such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any compensation or to any abatement or diminution of Rental subject to Section 14.5 hereof, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

Section 28.8. Tenant, at Tenant's cost and expense, shall be entitled to ten (10) listings on the standard directory in the Building. From time to time, but not more frequently than once every three (3) months, Landlord shall change the listings in the standard directory therein as Tenant shall request, and Tenant promptly after request shall pay to Landlord a reasonable charge for each Tenant request.

ARTICLE 29
PARTNERSHIP TENANT

If Tenant is a partnership (including, without limitation, a limited liability partnership) or a limited liability company or a professional corporation (or is comprised of two (2) or more Persons, individually or as co-partners of a partnership (including, without limitation a limited liability partnership), as members of a limited liability company or as shareholders of a professional corporation) or if Tenant's interest in this Lease shall be assigned to a partnership (including, without limitation, a limited liability partnership) a limited liability company or a professional corporation (or to two (2) or more Persons, individually or as co-partners of a partnership, as members of a limited liability company or shareholders of a professional corporation) pursuant to Article 12 hereof (any such partnership, professional corporation and such Persons are referred to in this Article 29 as "Partnership Tenant"), the following provisions shall apply to such Partnership Tenant: (a) the liability of each of the parties comprising Partnership Tenant shall be joint and several; (b) each of the parties comprising Partnership Tenant hereby consents in advance to, and agrees to be bound by (x) any written instrument which may hereafter be executed by Partnership Tenant or any successor entity, changing, modifying, extending or discharging this Lease, in whole or in part, or surrendering all or any part of the Premises to Landlord, and (y) any notices, demands, requests or other communications which may hereafter be given by Partnership Tenant or by any of the parties comprising Partnership Tenant; (c) any bills, statements, notices, demands, requests or other communications given or rendered to Partnership Tenant or to any of such parties shall be binding upon Partnership Tenant and all such parties; (d) if Partnership Tenant shall admit new partners, shareholders or members, as the case may be, Partnership Tenant shall give Landlord notice of such event not later than ten (10) Business Days prior to the admission of such partner(s), shareholder(s) or member(s) together with an assumption agreement in form and substance satisfactory to Landlord pursuant to which each of such new partners, shareholders or members, as the case may be, shall, by their admission to Partnership Tenant, agree to assume joint and several liability for the performance of all of the terms, covenants and conditions of this Lease (as the same may have been or thereafter be amended) on Tenant's part to be observed and performed; it being expressly understood and agreed that each such new partner, shareholder or member (as the case may be) shall be deemed to have assumed joint and several liability for the performance of all of the terms, covenants and conditions of this Lease (as the same may have been or thereafter be amended), whether or not such new partner, shareholder or member shall have executed such assumption agreement, and that

neither Tenant's failure to deliver such assumption agreement nor the failure of any such new partner or shareholder, as the case may be, to execute or deliver any such agreement to Landlord shall vitiate the provisions of this clause (d) of this Article 29).

ARTICLE 30
VAULT SPACE

Notwithstanding anything contained in this Lease or indicated on any sketch, blueprint or plan, any vaults, vault space or other space outside the boundaries of the Real Property are not included in the Premises. Landlord makes no representation as to the location of the boundaries of the Real Property. All vaults and vault space and all other space outside the boundaries of the Real Property which Tenant may be permitted to use or occupy are to be used or occupied under a revocable license, and if any such license shall be revoked, or if the amount of such space shall be diminished or required by any Governmental Authority or by any public utility company, such revocation, diminution or requisition shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rental, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord. Any fee, tax or charge imposed by any Governmental Authority for any such vaults, vault space or other space occupied by Tenant shall be paid by Tenant.

ARTICLE 31
SECURITY

Section 31.1. Tenant shall deposit with Landlord on the signing of this Lease the Applicable Security Amount, or at Tenant's option, a "clean," unconditional, irrevocable and transferable letter of credit (the "Letter of Credit") in the same amount, satisfactory to Landlord, issued by and drawn on a bank satisfactory to Landlord and which is a member of the New York Clearing House Association (which Letter of Credit shall provide that it may be presented and shall be duly honored for payment by such issuing bank at its office located in Manhattan), for the account of Landlord, for a term of not less than one (1) year (it being agreed that Tenant shall be permitted to deposit one (1) Letter of Credit with Landlord for each of the Tenth Floor Space Security Amount and the Seventh Floor Space Security Amount, so long as the sum of such Letters of Credit at any time equals the Applicable Security Amount at such time) (any reference in this Section 31.1 to "Letter of Credit" shall be deemed to refer to "Letters of Credit" if applicable) as security for the faithful performance and observance by Tenant of the terms, covenants, conditions and provisions of this Lease, including, without limitation, the surrender of possession of the Premises to Landlord as herein provided. If an Event of Default shall occur and be continuing, Landlord may apply the whole or any part of the security so deposited, or present the Letter of Credit for payment and apply the whole or any part of the proceeds thereof, as the case may be, (i) toward the payment of any Fixed Rent, Escalation Rent or any other item of Rental as to which Tenant is in default, (ii) toward any sum which Landlord may expend or be required to

expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, without limitation, any damage, liability or expense (including, without limitation, reasonable attorneys' fees and disbursements) incurred or suffered by Landlord, and (iii) toward any damage or deficiency incurred or suffered by Landlord in the reletting of the Premises, whether such damages or deficiency accrue or accrues before or after summary proceedings or other re-entry by Landlord. If Landlord applies or retains any part of the proceeds of the Letter of Credit or the security so deposited, as the case may be, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full deposit on hand at all times during the Term. If Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Letter of Credit or the security, as the case may be, shall be returned to Tenant after the Expiration Date and after delivery of possession of the Premises to Landlord. In the event of a sale or leasing of the Real Property or the Building, Landlord shall have the right to transfer the Letter of Credit or security, as the case may be, to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such security or the Letter of Credit, as the case may be, and Tenant shall cause the bank which issued the Letter of Credit to issue an amendment to the Letter of Credit or issue a new Letter of Credit naming the vendee or lessee as the beneficiary thereunder. Tenant shall look solely to the new landlord for the return of the Letter of Credit or the security, as the case may be. The provisions hereof shall apply to every transfer or assignment of the Letter of Credit or security made to a new landlord. Except in connection with a permitted assignment of this Lease, Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. Tenant shall renew any Letter of Credit from time to time, at least thirty (30) days prior to the expiration thereof, and deliver to Landlord a new Letter of Credit or an endorsement to the Letter of Credit, and any other evidence reasonably required by Landlord that the Letter of Credit has been renewed for a period of at least one (1) year. If Tenant shall fail to renew the Letter of Credit as aforesaid, Landlord may present the Letter of Credit for payment and retain the proceeds thereof as security in lieu of the Letter of Credit.

Section 31.2. Tenant shall provide Landlord with the Seventh Floor Space Security Amount for the period of time commencing on the Seventh Floor Space Commencement Date on or prior to five (5) Business Days after the occurrence of the Seventh Floor Space Commencement Date. Provided no Event of Default shall have occurred and be continuing on any day upon which the Applicable Security Amount decreases pursuant to the terms of this Lease, Tenant shall be entitled to replace the Letter of Credit on deposit with Landlord with a Letter of Credit in the Applicable Security Amount. If the Security pursuant to this Article 31 is held in the form of a cash deposit, then provided no Event of Default shall have occurred and be continuing on any day upon which the Applicable Security Amount decreases pursuant to the terms of this Lease, then Landlord shall promptly refund to Tenant that portion of such cash deposit (if any) that exceeds the then required Applicable Security Amount.

ARTICLE 32
CAPTIONS

The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

ARTICLE 33
PARTIES BOUND

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and, except as otherwise provided in this Lease, their assigns.

ARTICLE 34
BROKER

Each party represents and warrants to the other that it has not dealt with any broker or Person in connection with this Lease other than Cushman & Wakefield, Inc. ("Broker"). The execution and delivery of this Lease by each party shall be conclusive evidence that such party has relied upon the foregoing representation and warranty. Tenant shall indemnify and hold Landlord harmless from and against any and all claims for commission, fee or other compensation by any Person (other than Broker) who shall claim to have dealt with Tenant in connection with this Lease and for any and all costs incurred by Landlord in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. Landlord shall indemnify and hold Tenant harmless from and against any and all claims for commission, fee or other compensation by the Broker and any Person who shall claim to have dealt with Landlord in connection with this Lease and for any and all costs incurred by Tenant in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. The provisions of this Article 34 shall survive the Expiration Date.

ARTICLE 35
INDEMNITY

Section 35.1. (A) Tenant shall indemnify and save the Indemnitees harmless from and against (a) all claims of whatever nature against the Indemnitees arising from any act, omission or negligence of Tenant, its contractors, licensees, agents, servants, employees, invitees or visitors, (b) all claims against the Indemnitees arising from any

accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the Term in or about the Premises, (c) all claims against the Indemnitees arising from any accident, injury or damage occurring outside of the Premises but anywhere within or about the Real Property, where such accident, injury or damage results or is claimed to have resulted from an act, omission or negligence of Tenant or Tenant's contractors, licensees, agents, servants, employees, invitees or visitors, and (d) any breach, violation or non-performance of any covenant, condition or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature (including, without limitation, attorneys' fees and disbursements) incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof but except with respect to claims with respect to bodily injury or death, shall be limited to the extent any insurance proceeds collectible by Landlord under policies owned by Landlord or such injured party with respect to such damage or injury are insufficient to satisfy same. Tenant shall have no liability for any consequential damages suffered either by Landlord or by any party claiming through Landlord.

(B) Except as provided in Articles 4, 9, 10, 13, 28, 36 and 37 hereof and otherwise as expressly provided herein, Landlord shall indemnify and save Tenant its shareholders, directors, officers, Partners, employees and agents harmless from and against all claims against Tenant arising from any direct damage to the Premises and any bodily injury to Tenant's employees, agents or invitees resulting from the acts, omissions or negligence of Landlord or its agents, or any breach, violation or non-performance of any covenant, condition or agreement in this Lease set forth and contained on the part of Landlord to be fulfilled, kept, observed and performed. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) incurred in or in connection with any such claim or proceeding brought thereon, but shall be limited to the extent any insurance proceeds collectible by Tenant or such injured party with respect to such damage or injury are insufficient to satisfy same. Landlord shall have no liability for any consequential damages suffered either by Tenant or by any party claiming through Tenant.

Section 35.2. If any claim, action or proceeding is made or brought against either party, which claim, action or proceeding the other party shall be obligated to indemnify such first party against pursuant to the terms of this Lease, then, upon demand by the indemnified party, the indemnifying party, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the indemnified party's name, if necessary, by such attorneys as the indemnified party shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. Attorneys for the indemnifying party's insurer are hereby deemed approved for purposes of this Section 35.2. Notwithstanding the foregoing, an indemnified party may retain its own attorneys

to defend or assist in defending any claim, action or proceeding involving potential liability of Five Million Dollars ($5,000,000) or more, and the indemnifying party shall pay the reasonable fees and disbursements of such attorneys. The provisions of this Article 35 shall survive the expiration or earlier termination of this Lease.

ARTICLE 36
ADJACENT EXCAVATION-SHORING

If an excavation shall be made upon land adjacent to the Premises, or shall be authorized to be made, Tenant, upon reasonable advance notice, shall afford to the person causing or authorized to cause such excavation, a license to enter upon the Premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the Building from injury or damage and to support the same by proper foundations, without any claim for damages or indemnity against Landlord, or diminution or abatement of Rental, provided that Tenant shall continue to have access to the Premises and the Building.

ARTICLE 37
MISCELLANEOUS

Section 37.1. This Lease is offered for signature by Tenant and it is understood that this Lease shall not be binding upon Landlord or Tenant unless and until Landlord and Tenant shall have executed and unconditionally delivered a fully executed copy of this Lease to each other.

Section 37.2. The obligations of Landlord under this Lease shall not be binding upon Landlord named herein after the sale, conveyance, assignment or transfer by such Landlord (or upon any subsequent landlord after the sale, conveyance, assignment or transfer by such subsequent landlord) of its interest in the Building or the Real Property, as the case may be, and in the event of any such sale, conveyance, assignment or transfer, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder arising from and after such sale, conveyance, assignment or transfer, provided that any such transferee of Landlord's interest assumes all obligations of Landlord to the extent thereafter arising (but subject, nonetheless, to the provisions of this Section 37.2 with respect to any subsequent transfer made by any transferee). The partners, shareholders, directors, officers and principals, direct and indirect, comprising Landlord (collectively, the "Parties") shall not be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder and shall not seek any damages against any of the Parties. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and the proceeds thereof and Tenant shall not look to any other property or assets of Landlord or the property or assets of any of the Parties in seeking either to enforce

Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.

Section 37.3. Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Escalation Rent, additional rent or Rental, shall constitute rent for the purposes of Section 502(b)(7) of the Bankruptcy Code.

Section 37.4. Tenant's liability for all items of Rental shall survive the Expiration Date.

Section 37.5. Tenant shall reimburse Landlord as additional rent, within thirty (30) days after rendition of a statement, for all expenditures made by, or damages or fines sustained or incurred by, Landlord, due to any default by Tenant under this Lease after notice and the expiration of the applicable grace period, with interest thereon at the Applicable Rate.

Section 37.6. This Lease shall not be recorded.

Section 37.7. (A) Subject to the terms of Section 37.7(B) hereof, Tenant hereby waives any claim against Landlord which Tenant may have based upon any assertion that Landlord has unreasonably withheld, unreasonably delayed or unreasonably conditioned any consent or approval requested by Tenant (in cases where Landlord has agreed to not unreasonably withhold, unreasonably delay, or unreasonably condition Landlord's consent), and Tenant agrees that its sole remedy shall be an action or proceeding to enforce any related provision or for specific performance, injunction or declaratory judgment. In the event of a determination that such consent or approval has been unreasonably withheld or delayed, the requested consent or approval shall be deemed to have been granted; however, Landlord shall have no liability to Tenant for its refusal or failure to give such consent or approval (except as expressly provided in Section 37.7(B)). Tenant's sole remedy for Landlord's unreasonably withholding, delaying, or conditioning consent or approval shall be as provided in this Section 37.7.

(B) If there is a dispute between Landlord and Tenant as to (i) whether Landlord unreasonably withheld, unreasonably delayed or unreasonably conditioned Landlord's consent to any assignment or subletting or (ii) whether Landlord unreasonably withheld, unreasonably delayed or unreasonably conditioned Landlord's consent to any Alteration, in either event where Landlord has agreed not to unreasonably withhold, condition or delay its consent, Tenant may, at its option, as its sole and exclusive remedy, submit such dispute to arbitration in the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association ("AAA") (presently Rules E-1 through E-10 and, to the extent applicable, Section R-19; provided, however, that with respect to any such arbitration, (i) the list of arbitrators referred to in Rule E-5 shall be returned within five (5) days from the date of mailing; (ii) the parties shall notify the AAA by telephone,

within four (4) days of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance with the second paragraph of Rule E-5; (iii) the Notice of Hearing referred to in Rule E-8 shall be four (4) days in advance of the hearing; (iv) the hearing shall be held within seven (7) days after the appointment of the arbitrator; (v) the arbitrator shall have no right to award damages; (vi) the decision and award of the arbitrator shall be final and conclusive on the parties; and (vii) the losing party shall pay the reasonable fees and expenses, if any, of both parties in connection with such arbitration, including the expenses and fees of the arbitrator selected.

(C) If the determination of any such arbitration pursuant to clause (B) above shall be that Landlord unreasonably withheld, conditioned or delayed any approval (provided Landlord shall have agreed not to unreasonably withhold, delay or condition its consent with respect thereto) Tenant's sole remedy arising out of such arbitrator's determination shall be to proceed on the basis that the requested approval had been given; provided, however, that nothing contained in this Section 37.7 shall prohibit Tenant after the final determination of such arbitration from commencing an action against Landlord in order to determine whether Landlord acted in bad faith or in an arbitrary, capricious or malicious fashion and, if so, the damages suffered by Tenant in connection therewith. If there is a final judicial determination in any such suit or in any arbitration (with all appeals having been exhausted or expired) that Landlord has acted in bad faith or in an arbitrary, capricious or malicious fashion in unreasonably withholding, conditioning or delaying any such consent or approval, then Tenant shall be entitled to receive any damages from Landlord therefor provided for in the judgment of the court entertaining such suit or in such arbitration; provided, however, in no event shall Landlord be liable for, nor shall Tenant be entitled to recover, any consequential damages.

Section 37.8. This Lease contains the entire agreement between the parties and supersedes all prior understandings, if any, with respect thereto. This Lease shall not be modified, changed, or supplemented, except by a written instrument executed by both parties.

Section 37.9. Tenant hereby (a) irrevocably consents and submits to the jurisdiction of any Federal, state, county or municipal court sitting in the State of New York in respect to any action or proceeding brought therein by Landlord against Tenant concerning any matters arising out of or in any way relating to this Lease; (b) irrevocably waives personal service of any summons and complaint and consents to the service upon it of process in any such action or proceeding by mailing of such process to Tenant at the address set forth herein and hereby irrevocably designates Robinson Silverman Pearce Aronsohn & Berman LLP or other law firm located in Manhattan if disclosed to Landlord in writing (or if not so located, then upon any member of the law firm of Robinson Silverman Pearce Aronsohn & Berman LLP, or their successor, if so located in Manhattan), to accept service of any process on Tenant's behalf and hereby agrees that such service shall be deemed sufficient; (c) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect

to any such action or proceedings; (d) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York; and (e) agrees that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Tenant further agrees that any action or proceeding by Tenant against Landlord in respect to any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, County of New York. In furtherance of the foregoing, Tenant hereby agrees that its address for notices given by Landlord and service of process under this Lease shall be as set forth in Article 26. Notwithstanding the foregoing provisions of this Section 37.9, Tenant may, by written notice to Landlord, change the designated agent for acceptance of service of process to any other law firm located in the City, County and State of New York.

Section 37.10. Unless Landlord shall render written notice to Tenant to the contrary in accordance with the provisions of Article 26 hereof, MRC Management LLC is authorized to act as Landlord's agent in connection with the performance of this Lease, including, without limitation, the receipt and delivery of any and all notices and consents in accordance with Article 26. Tenant shall direct all correspondence and requests to, and shall be entitled to rely upon correspondence received from, MRC Management LLC, as agent for the Landlord in accordance with Article 26. Tenant acknowledges that MRC Management LLC is acting solely as agent for Landlord in connection with the foregoing, and neither MRC Management LLC nor any of its direct or indirect partners, officers, shareholders, directors or employees shall have any liability to Tenant in connection with the performance of Landlord's obligations under this Lease and Tenant waives any and all claims against any such party arising out of, or in any way connected with, this Lease or the Real Property.

Section 37.11. (A) All of the Schedules and Exhibits attached hereto are incorporated in and made a part of this Lease, but, in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Schedules and Exhibits hereto, the terms and provisions of this Lease shall control. Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular to include the plural. All Article and Section references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this Lease.

(B) If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to any other Person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(C) All references in this Lease to the consent or approval of Landlord shall be deemed to mean the written consent or approval of Landlord and no consent or approval of Landlord shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by Landlord.

ARTICLE 38
RENT CONTROL

If at the commencement of, or at any time or times during the Term of this Lease, the Rental reserved in this Lease shall not be fully collectible by reason of any Requirement, Tenant shall enter into such agreements and take such other steps (without additional expense to Tenant) as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents which may from time to time during the continuance of such legal rent restriction be legally permissible (and not in excess of the amounts reserved therefor under this Lease). Upon the termination of such legal rent restriction prior to the expiration of the Term, (a) the Rental shall become and thereafter be payable hereunder in accordance with the amounts reserved in this Lease for the periods following such termination, and (b) Tenant shall pay to Landlord, if legally permissible, an amount equal to (i) the items of Rental which would have been paid pursuant to this Lease but for such legal rent restriction less (ii) the rents paid by Tenant to Landlord during the period or periods such legal rent restriction was in effect.

ARTICLE 39
SATELLITE DISH

Section 39.1. Landlord understands that during the Term Tenant may require communication services in connection with the operation of Tenant's business which would necessitate the construction, installation, operation and use by Tenant of a satellite dish of a size not to exceed twenty (20) inches (DSL), together with related equipment, mountings and supports (collectively, the "Satellite Dish") on the roof of the Building. Subject to the terms of this Section 39.1, Landlord shall make available to Tenant, for Tenant's own use (and not for resale purposes) sufficient (as reasonably determined by Landlord) space on the roof of the Building for the Satellite Dish at a location designated by Landlord. Landlord shall have no obligation to reserve any portion of the roof for Tenant's use and the use of the roof for such purposes shall be allocated on a "first come, first served" basis. Tenant's use of the roof of the Building shall be on a non-exclusive basis. In connection with Tenant's use of the roof of the Building, and subject to the rights of tenants in the Building pursuant to leases executed prior to the date hereof, Landlord shall make available to Tenant access to the roof for the construction, installation, maintenance, repair, operation and use of the Satellite Dish, as well as reasonable space in the Building to run electrical and

telecommunications conduits from the Satellite Dish to the Premises. The installation of the Satellite Dish shall constitute an Alteration and shall be performed at Tenant's sole cost and expense (including, without limitation, any costs and expenses in connection with reinforcing the roof of the Building, if required) in accordance with and subject to the provisions of Article 3 hereof and except as otherwise expressly set forth in this Article 39, the Satellite Dish shall be deemed for all purposes of this Lease to be a Specialty Alteration. All of the provisions of this Lease with respect to Tenant's obligations hereunder shall apply to the installation, use and maintenance of the Satellite Dish, including, without limitation, provisions relating to compliance with Requirements, insurance, indemnity, repairs and maintenance. The license granted to Tenant in this Article 39 shall not be assignable by Tenant separate and apart from this Lease.

Section 39.2. Landlord retains the right to use the portion of the roof on which the Satellite Dish is located for any purpose whatsoever. Tenant shall use the Satellite Dish so as not to cause any interference to other tenants or Landlord in the Building or interference with or disturbance to the reception or transmission of communication signals by or from any antenna, satellite dishes or similar equipment previously installed by landlord or any other tenant in the Building or damage to or interference with the operation of the Building or Building Systems. Landlord shall use reasonable efforts to cause tenants who enter into leases with Landlord after the date hereof that have the right to place equipment on the roof to operate such equipment and, if Landlord has equipment on the roof, Landlord shall operate such equipment, in a manner so as not to cause any interference to Tenant or interference with or disturbance to the reception or transmission of communications signals by or from the Satellite Dish. If after any Satellite Dish is installed by Tenant it is discovered that the Satellite Dish causes any such interference, damage or disturbance, then Tenant, at its sole cost and expense, upon written notice from Landlord shall relocate its Satellite Dish to another area on the roof reasonably designated by Landlord provided that such relocation does not cause the transmission or receipt of communication signals to be materially interrupted or impaired other than temporarily in connection with such relocation. If such interference or disturbance still occurs despite such relocation, or if no portion of the roof is available for such relocation, Tenant, at its sole cost and expense, shall remove its Satellite Dish from the roof of the Building. In the event Tenant fails to relocate or remove the Satellite Dish within thirty (30) days after written notice from Landlord, Landlord may do so, and Tenant shall promptly reimburse Landlord for any costs incurred by Landlord in connection therewith.

Section 39.3. If Tenant is in default under any provision of this Article 39 and such default continues for thirty (30) days after written notice from Landlord, then, without limiting Landlord's rights and remedies Landlord may otherwise have under this Lease the license granted pursuant to this Article 39 shall automatically terminate and, Tenant, upon written notice from Landlord, shall, at Tenant's sole cost and expense immediately discontinue its use of the Satellite Dish and remove the same from the roof of the Building.

Section 39.4. In addition to the right of Landlord to cause Tenant to relocate the Satellite Dish pursuant to Section 39.2 hereof, Landlord may at its option, at any time during the Term after reasonable prior notice to Tenant (except in the event of an emergency) relocate the Satellite Dish to another area on the roof designated by Landlord, provided that such relocation does not cause the transmission or receipt of communication signals to be materially interrupted or impaired other than temporarily in connection with such relocation and, except as set forth with respect to Landlord's right to cause Tenant to relocate the Satellite Dish pursuant to Section 39.2 hereof, such relocation shall be performed at Landlord's sole cost and expense.

Section 39.5. (A) Landlord shall not have any obligations with respect to the Satellite Dish or compliance with any Requirements relating thereto (including, without limitation, the obtaining of any required permits or licenses, or the maintenance thereof), nor shall Landlord be responsible for any damage that may be caused to Tenant or the Satellite Dish by any other tenant or occupant of the Building. Landlord makes no representation that the Satellite Dish will be able to receive or transmit communication signals without interference or disturbance (whether or not by reason of the installation or use of similar equipment by others on the roof) and Tenant agrees that Landlord shall not be liable to Tenant therefor.

(B) Tenant, at Tenant's sole cost and expense, shall maintain the Satellite Dish and shall install such lightning rods or air terminals on or about the Satellite Dish as Landlord may reasonably require.

(C) Tenant shall (i) be solely responsible for any damage caused to Landlord or any other Person or property as a result of the installation, maintenance or use of the Satellite Dish, (ii) promptly pay any tax, license, permit or other fees or charges imposed pursuant to any Requirements relating to the installation, maintenance or use of the Satellite Dish, (iii) promptly comply with all precautions and safeguards recommended by Landlord's insurance company and all Governmental Authorities, and (iv) perform all necessary repairs or replacements to, or maintenance of, the Satellite Dish.

Section 39.6. Tenant acknowledges and agrees that the privileges granted Tenant under this Article 39 shall merely constitute a license and shall not, now or at any time after the installation of the Satellite Dish, be deemed to grant Tenant a leasehold or other real property interest in the Building or any portion thereof. Landlord shall not terminate the license granted to Tenant pursuant to this Article 39 other than pursuant to the express provisions of this Article 39. The license granted to Tenant in this Article 39 shall automatically terminate and expire upon the expiration or earlier termination of this Lease and the termination of such license shall be self-operative and no further instrument shall be required to effect such termination. The foregoing notwithstanding, upon request by Landlord, Tenant, at Tenant's sole cost and expense, promptly shall execute and deliver to Landlord, in recordable form, any certificate or

other document confirming the termination of Tenant's right to use the roof of the Building.

ARTICLE 40
TENANT SIGNS

Section 40.1. Subject to the terms of this Article 40, Tenant shall have the right to erect signs identifying Tenant as an occupant of the Building in the lobby of the Building as described in, and in accordance with the specifications described in, Exhibit "J" attached hereto and made a part hereof (any such signs erected by Tenant being collectively referred to herein as "Tenant Signs"). Tenant shall not be permitted to erect the Tenant Signs if, at any time, (x) Tenant is not a LivePerson Party, or (y) Tenant (and/or a LivePerson Party) does not occupy at least seventy- five percent (75%) of the then rentable area of the Premises for the conduct of business (other than the period after the Seventh Floor Space Commencement Date during which Tenant shall be performing the Seventh Floor Space Initial Alterations and moving its property and employees into the Seventh Floor Space). Tenant, at Tenant's sole cost and expense, shall operate, maintain and repair any Tenant Signs that Tenant erects pursuant to this Section 40.1 in a first-class manner and in compliance with all applicable Requirements. Tenant shall not have the right to illuminate any Tenant Sign. Tenant shall have the right to use the signs only to identify (x) LivePerson, or (y) a LivePerson Party (other than LivePerson). Tenant, at Tenant's sole cost and expense, shall remove Tenant Signs promptly upon the earlier to occur of (x) the Expiration Date, and (y) the date that Tenant has no further right to erect Tenant Signs pursuant to this Section 40.1, and shall repair any damage caused by the installation of Tenant Signs or such removal.

Section 40.2. Prior to making any installation of Tenant Signs as contemplated by this Article 40, Tenant shall (i) at Tenant's expense, obtain all permits, approvals and certificates required by any Governmental Authorities, agreed that all filings with Governmental Authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense, by a Person designated by Landlord (it being understood that (x) the Person initially so designated by Landlord is CR&A, and (y) Tenant shall not discharge CR&A unless CR&A's fees are not commercially competitive or Tenant in good faith believes CR&A is not performing its services properly), and (ii) furnish to Landlord duplicate original policies or certificates thereof of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors, in either case in connection with the installation of Tenant Signs) and general commercial public liability (including property damage coverage) insurance in such form, with such companies, for such periods and in such amounts as Landlord may reasonably approve, naming Landlord and its agents, any Lessor and any Mortgagee, as additional insureds. Upon completion of such installation, Tenant, at Tenant's expense, shall obtain certificates of final approval of such installation required by any Governmental Authority and shall furnish Landlord with copies thereof, together with final, marked drawings and field notes for such installation,

it being agreed that all filings with Governmental Authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense, by a Person designated by Landlord (it being understood that (x) the Person initially so designated by Landlord is CR&A, and (y) Tenant shall not discharge CR&A unless CR&A's fees are not commercially competitive or Tenant in good faith believes CR&A is not performing its services properly). Such installation shall be made and performed substantially in accordance with Exhibit "H" attached hereto, all Requirements, the Rules and Regulations, and all rules and regulations relating to Alterations promulgated by Landlord in its reasonable judgment. All materials and equipment to be incorporated in the Building as a result of any such installation or a part thereof shall be first quality and no such materials or equipment (other than Tenant's Property) shall be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement.

ARTICLE 41
RENTAL VALUE

Section 41.1. (A) As used herein, the term "Rental Value" shall mean an amount equal to ninety-five percent (95%) of the annual fair market rental value of the Applicable Area (the "Fair Market Rent") on the Recognition Effective Date.

(B) As used herein, the term "Applicable Area" shall mean the portion of the Premises demised under a Major Sublease (other than any Excluded Space) in connection with the determination of the Rental Value therefor pursuant to Section 7.8 hereof.

(C) As used herein, the term "Base Rental Amount" shall mean the greater of (x) the amount described in Section 7.8(i)(A) hereof, and (y) the amount described in Section 7.8(i)(B) hereof.

(D) The Fair Market Rent shall be determined on the basis of the use of the Applicable Area as offices assuming that the Applicable Area is free and clear of all leases and tenancies (including this Lease), that the Applicable Area is available in the then rental market for comparable office buildings in Manhattan, that Landlord has had a reasonable time to locate a tenant who rents with the knowledge of the uses to which the Applicable Area can be adapted, and that neither Landlord nor the subtenant under the applicable Major Sublease is under any compulsion to rent, and taking into account:

(1) the fact that the Base Taxes and the Base Operating Expenses for the Applicable Area shall not change for the purpose of calculating the Escalation Rent payable pursuant to Article 27 hereof, which payments shall continue to be made for the remainder of the Term;

(2) the fact that as of the Recognition Effective Date, the

subtenant under the applicable Major Sublease shall not be required to pay, in addition to the escalation payments presently provided for under this Lease, Tenant's Share (as described in Section 7.8(vi) hereof) of such other escalation payments, if any, which landlords are then charging tenants under leases or offers for leases in other office buildings which are similar in character or location to the Building;

(3) that the subtenant under the applicable Major Sublease is deemed to have received rent concessions or other inducements (in the form of free rent, work allowance or otherwise) which, in the then current rental market for comparable office buildings in Manhattan, are given for a lease with a term comparable to the term with respect to the Applicable Area (regardless of the fact that such concessions or inducements are not being given under this Lease for the Applicable Area);

(4) that Landlord is assumed to be obligated to pay a brokerage commission to the Broker with respect to the Applicable Area; and

(E) For purposes of determining the Rental Value, the following procedure shall apply:

(1) Landlord and the subtenant under the applicable Major Sublease shall each contemporaneously deliver to the other, at Landlord's office, a written notice (each a "Rent Notice"), on a date mutually agreed upon, but in no event later than ten (10) days after the Recognition Effective Date with respect to the portion of the Premises demised under a Major Sublease (other than any Excluded Space), which Rent Notice shall set forth each of their respective determinations of the Rental Value (Landlord's determination of the Rental Value is referred to as "Landlord's Determination" and such subtenant's determination of the Rental Value is referred to as "Tenant's Determination"). If Landlord shall fail or refuse to give such Rent Notice as aforesaid, Landlord's Determination shall be deemed to be equal to the Base Rental Amount and if such subtenant shall fail or refuse to give such Rent Notice as aforesaid, Tenant's Determination shall be deemed to be the same as Landlord's Determination. If neither Landlord nor the subtenant under the applicable Major Sublease shall deliver a Rent Notice as aforesaid, the Rental Value shall be deemed to be equal to the Base Rental Amount. Landlord acknowledges that Tenant may participate with the subtenant under the applicable Major Sublease in this process.

(2) If Landlord's Determination and Tenant's Determination are not equal and Tenant's Determination is lower than Landlord's Determination, and each of Landlord's Determination and Tenant's Determination exceeds an amount equal to the Base Rental Amount, Landlord and the subtenant under the applicable Major Sublease shall attempt to agree upon the Fair Market Rent (and accordingly, the Rental Value). If Tenant's Determination is higher than Landlord's Determination, the Rental Value shall be equal to Landlord's Determination. If Landlord and the subtenant under the applicable Major Sublease mutually agree upon the determination (the "Mutual

Determination") of the Rental Value, then their determination shall be final and binding upon the parties. If Landlord and such subtenant are unable to reach a Mutual Determination within ten (10) days after delivery of Landlord's Determination to such subtenant and Tenant's Determination to Landlord, then Landlord and such subtenant shall jointly select an independent real estate appraiser (the "Appraiser") whose fee shall be borne equally by Landlord and such subtenant. If Landlord and such subtenant are unable to jointly agree on the designation of the Appraiser within ten (10) days after they are requested to do so by either party, then the parties agree to allow the American Arbitration Association, or any successor organization, to designate the Appraiser in accordance with the rules, regulations and/or procedures then obtaining of the American Arbitration Association or any successor organization.

(3) The Appraiser shall conduct such hearings and investigations as he or she may deem appropriate and shall, within thirty (30) days after the date of designation of the Appraiser, choose either Landlord's Determination or Tenant's Determination, and such choice by the Appraiser shall be conclusive and binding upon Landlord and the subtenant under the applicable Major Sublease. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this Article. The Appraiser appointed pursuant to this Article shall be an independent real estate appraiser with at least ten (10) years' experience in leasing of properties which are similar in character to the Building, and a member of the American Institute of Appraisers of the National Association of Real Estate Boards and a member of the Society of Real Estate Appraisers. The Appraiser shall not have the power to add to, modify or change any of the provisions of this Lease.

(4) It is expressly understood that any determination of the Rental Value pursuant to this Article shall be based on the criteria stated in Section 41.1(D) hereof.

(F) After a determination has been made of the Rental Value, the parties shall execute and deliver to each other an instrument setting forth the Fixed Rent for the premises demised under a Major Sublease for the period from and after the Recognition Effective Date.

(G) If the final determination of the Rental Value shall not be made on or before the Recognition Effective Date in accordance with the provisions of this Article 41, then, pending such final determination, the Rental Value shall be deemed to be an amount equal to the Base Rental Amount, except that from and after the date that Landlord has submitted Landlord's Determination, and the subtenant under the applicable Major Sublease has submitted Tenant's Determination, in either case as contemplated by this Section 41.1, the Rental Value (pending the final determination thereof) shall be deemed to be Landlord's Determination. If, based upon the final determination hereunder of the Rental Value, the payments made by the subtenant on account of the Fixed Rent for the period prior to the final determination of the Rental Value were less than the payments for such period as determined pursuant to this

Article 41, then such subtenant not later than the tenth (10th) day after Landlord's demand therefor, shall pay to Landlord the amount of such deficiency. If, based upon the final determination of the Rental Value, the payments made by such subtenant on account of the Fixed Rent for the period prior to the final determination of the Rental Value were more than the payments for such period as determined pursuant to this Article 41, then Landlord, not later than the tenth (10th) day after such subtenant's demand therefor, shall, at Landlord's option, pay such excess to such subtenant or, to the extent applicable, credit such excess against the Rental thereafter coming due hereunder.

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this Lease as of the day and year first above written.

VORNADO 330 WEST 34TH STREET L.L.C.,
Landlord

By: Vornado Realty L.P., member

By: Vornado Realty Trust, general partner

By: /s/ Joseph Macnow

Joseph Macnow
Executive Vice President
Officer

LIVEPERSON, INC., Tenant

By:/s/ Dean Margolis

Dean Margolis
Chief Operating Officer

Fed. Id. No. 13-3861628

ACKNOWLEDGMENTS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ___ day of March in the year 2000 before me, the undersigned, a Notary Public in and said State, personally appeared ____________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ___ day of March in the year 2000 before me, the undersigned, a Notary Public in and said State, personally appeared ____________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Schedule A

RULES AND REGULATIONS

(1) The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and for delivery of merchandise and equipment in prompt and efficient manner, using elevators and passageways reasonably designated for such delivery by Landlord.

(2) No awnings, air-conditioning units, fans or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades, or screens, other than those which conform in all material respects to Building standards as established by Landlord from time to time, shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed. Such awnings, projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner reasonably approved by Landlord. All electrical fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design and bulb color approved by Landlord, which consent shall not be withheld, conditioned or delayed unreasonably unless the prior consent of Landlord has been obtained for other lamping.

(3) Except as set forth in the Lease, no sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Premises or Building or on the inside of the Premises if the same can be seen from the ground floor outside of the Premises without the prior written consent of Landlord except that the name of Tenant may appear on the entrance door of the Premises. In the event of the violation of the foregoing by Tenant, if Tenant has refused to remove same after reasonable notice from Landlord, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant. Interior signs on doors and directory tablet shall be of a size, color and style reasonably acceptable to Landlord.

(4) The exterior windows and doors that reflect or admit light and air into the Premises or the halls, passageways or other public places in the Building, shall not be covered or obstructed by Tenant.

(5) No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules, nor shall any article obstruct any air-conditioning supply or exhaust without the prior written consent of Landlord.

(6) The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings,

rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant.

(7) Subject to the provisions of Article 3 of this Lease, Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises or the Building. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

(8) No space in the Building shall be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction or otherwise.

(9) Tenant shall not make, or permit to be made, any unseemly or disturbing noises or unreasonably disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them whether by the use of any musical instrument, radio, television set, talking machine, unmusical noise, whistling, singing, or in any other way.

(10) Tenant, or any of Tenant's employees, agents, visitors or licensees, shall not at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance except such as are incidental to usual office occupancy.

(11) No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism thereof, unless Tenant promptly provides Landlord with the key or combination thereto. Tenant must, upon the termination of its tenancy, return to Landlord all keys of stores, offices and toilet rooms, and in the event of the loss of any keys furnished at Landlord's expense, Tenant shall pay to Landlord the cost thereof.

(12) No bicycles, vehicles or animals of any kind except for seeing eye dogs shall be brought into or kept by Tenant in or about the Premises or the Building.

(13) All removals, or the carrying in or out of any safes, freight, furniture or bulky matter of any description must take place in the manner and during the hours which Landlord or its agent reasonably may determine from time to time. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

(14) Tenant shall not occupy or permit any portion of the Premises demised to it to be occupied as an office for a public stenographer or typist, or for the possession, storage, manufacture, or sale of liquor, narcotics, dope, or as a barber or manicure

shop, or as an employment bureau.

(15) Tenant shall not purchase spring water, ice, towels or other like service, or accept barbering or bootblacking services in the Premises, from any company or persons not approved by Landlord, which approval shall not be withheld, conditioned or delayed unreasonably and at hours and under regulations other than as reasonably fixed by Landlord.

(16) Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

(17) Landlord reserves the right to exclude from the Building between the hours of 6 P.M. and 8 A.M. and at all hours on days other than Business Days all persons who do not present a pass to the Building signed or approved by Landlord. Tenant shall be responsible for all persons for whom a pass shall be issued at the request of Tenant and shall be liable to Landlord for all acts of such persons.

(18) Tenant shall, at its expense, provide artificial light for the employees of Landlord while doing janitor service or other cleaning, and in making repairs or alterations in the Premises permitted by the terms of this Lease.

(19) The requirements of Tenant will be attended to only upon written application at the office of the Building. Building employees shall not perform any work or do anything outside of the regular duties, unless under special instructions from the office of Landlord.

(20) Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same.

(21) There shall not be used in any space, or in the public halls of the Building, either by Tenant or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards.

(22) Except as specifically provided in Section 2.2 of this Lease, Tenant shall not do any cooking, conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, or cause or permit any odors of cooking or other processes or any unusual or objectionable odors to emanate from the Premises. Tenant shall not permit the delivery of any food or beverage to the Premises, except by such persons delivering the same as shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(23) Landlord shall have the right to require that all messengers and other Persons delivering packages, papers and other materials to Tenant (i) be directed to deliver such

packages, papers and other materials to a Person designated by Landlord who will distribute the same to Tenant or (ii) be escorted by a person designated by Landlord to deliver the same to Tenant

(25) Landlord and its agents reserve the right to inspect all packages, boxes, bags, suitcases, and other large items carried into the Building, and to refuse entry into the Building to any person who either refuses to cooperate with such inspection or who is carrying any object which may be dangerous to persons or property. In addition, Landlord reserves the right to implement such further measures designed to ensure safety of the Building and the persons and property located therein as Landlord shall reasonably deem necessary or desirable.

Schedule B

CLEANING SPECIFICATIONS

GENERAL CLEANING:

NIGHTLY

General Offices:

1. All hardsurfaced flooring to be swept using approved dustdown preparation.

2. Carpet sweep all carpets, moving only light furniture (desks, file cabinets, etc. not to be moved).

3. Hand dust and wipe clean all furniture, fixtures and window sills.

4. Empty and clean all ash trays and screen all sand urns.

5. Empty and clean all waste disposal cans and baskets.

6. Dust interiors of all waste disposal cans and baskets.

7. Wash clean all water fountains and coolers.

Public Lavatories (Base Building):

1. Sweep and wash all floors, using proper disinfectants.

2. Wash and polish all mirrors, shelves, bright work and enameled surfaces.

3. Wash and disinfect all basins, bowls and urinals.

4. Wash all toilet seats.

5. Hand dust and clean all partitions, tile walls, dispensers and receptacles in lavatories and restrooms.

6. Empty paper receptacles and remove wastepaper.

7. Fill and clean all soap, towel and toilet tissue dispensers as needed, supplies therefore to be furnished by Landlord at a reasonable charge to Tenant. If the Premises consists of a part of a rentable floor, said charge

to Tenant shall be that portion of a reasonable charge for such supplies that is reasonably allocable to Tenant.

8. Empty and clean sanitary disposal receptacles.

WEEKLY:

1. Vacuum clean all carpeting and rugs.

2. Dust all door louvres and other ventilating louvres within a person's reach.

3. Wipe clean all brass and other bright work.

QUARTERLY:

High dust the Premises complete, including the following:

1. Dust all pictures, frames, charts, graphs and similar wall hangings not reached in nightly cleaning.

2. Dust clean all vertical surfaces, such as walls, partitions, doors and door bucks and other surfaces not reached in nightly cleaning.

3. Dust all pipes, ventilating and air-conditioning louvres, ducts, high mouldings and other high areas not reached in nightly cleaning.

4. Dust all venetian blinds.

Wash exterior and interior of windows periodically, subject to weather conditions and requirements of law.

Schedule C

LANDLORD'S STANDARD RATES

[See Attached]

EXHIBIT "A"

EXISTING GROUND LEASE

Lease, dated July 28, 1967, made by and between Massachusetts Mutual Life Insurance Company ("Mass Mutual"), as lessor, and Stacrat Corp., as lessee, a memorandum of which was recorded on August 2, 1967 in Record Liber 205, page 355, in the New York County Register's Office ("Register's Office"); the interest of lessee under which Lease was acquired by Village Resources, Inc. ("VRI"), by virtue of mesne assignments dated November 1, 1968 (recorded November 13, 1968 in Reel 122, page 1924 in the Register's Office), and May 8, 1978 (recorded on June 13, 1978 in Reel 527, page 752 in the Register's Office), respectively; which Lease was modified by unrecorded Lease Modification Agreement dated as of January 1, 1980 between Mass Mutual, as lessor, and VRI, as lessee; the interest of lessor under which lease was assigned by Mass Mutual to 330 West 34th Street Associates ("330 Associates") by an unrecorded assignment dated July 1, 1986 in connection with the sale of the Land (as described in such Lease) by Mass Mutual to 330 Associates by Deed dated July 1, 1986 and recorded July 7, 1986 in Reel 1084, page 937 in the Register's Office; and which Lease was amended and restated by Restatement of Lease Agreement (the "First Lease Restatement") dated as of September 9, 1986, between 330 Associates, as lessor, and VRI, as lessee, a memorandum of which First Lease Restatement was duly recorded on October 29, 1986 in the Register's Office in Reel 1136, page 247); the interest of lessee under which Lease was assigned by VRI to M/H 34th Street Associates ("M/H Associates"), by Assignment of Lease dated as of December 1, 1986 and recorded in the Register's Office on December 11, 1986 in Reel 1155, Page 1152; and which First Lease Restatement was amended and restated by Second Restatement of Lease Agreement (the "Second Lease Restatement") dated as of December 1, 1986 by and between 330 Associates, as lessor, and M/H Associates, as lessee, a memorandum of which Second Lease Restatement was recorded in the Register's Office on December 11, 1986 in Reel 1155, Page 1156; the interest of lessee under which Second Lease Restatement was assigned by M/H Associates to Mendik Real Estate Limited Partnership by an Assignment and Assumption of Ground Lease, dated as of April 23, 1987, and recorded in the Register's Office on May 21, 1987 in Reel 1233, Page 2477; and which Second Lease Restatement was modified pursuant to that certain First Modification of Ground Lease, dated as of August 13, 1999 between 330 Associates, as landlord, and Vornado 330 West 34th Street L.L.C., as tenant.

EXHIBIT "B"

SEVENTH FLOOR SPACE PLAN

[See Attached]

EXHIBIT "C"

TENTH FLOOR SPACE FLOOR PLAN

[See Attached]

EXHIBIT "D"

RULES AND REGULATIONS FOR ALTERATIONS

[See Attached]

EXHIBIT "E"

APPROVED CONTRACTORS

[See Attached]

EXHIBIT "F"

STAIRWELLS

[See Attached]

EXHIBIT "G"

FIXED RENT PER SQUARE FOOT

$34.00	Commencement Date through the day immediately prior to the Third Anniversary Date.
$37.00	The Third Anniversary Date through the day immediately prior to the Seventh Anniversary Date.
$40.00	The Seventh Anniversary Date through the Expiration Date.

EXHIBIT "H"

TENTH FLOOR SPACE LANDLORD'S WORK

- Provide that all perimeter-heating systems will be in good working order during building standard hours. Landlord to provide manual control valves on all radiators.

- HVAC - Furnish and install two (58) ton Trane water-cooled units as described in the specifications that are a part of this Exhibit "H" (excluding ductwork) and accompanying mechanical equipment rooms.

- Demolish all existing partitions and deliver Premises in "broom clean" condition.

- Repair and replace damaged or missing fireproof encasement of beams throughout the entire premises. Patching to be performed in a workmanlike manner, only in those areas where required for fireproofing purposes, with resulting finished surfaces flush and smooth and ready for paint.

- Remove all flooring finishes that contain Asbestos Containing Materials (ACM). Tenant shall remove all finished flooring therefore, Landlord shall remove any and all finished flooring that contains asbestos.

- Patch and Fireproof two (2) columns and fifteen (15) beams where necessary.

- Provide sprinkler system in "existing" configuration in good working order.

- Flash patch floor smooth and level, flush to adjacent surfaces where necessary.

- Provide a sufficient amount of "Class E" System points at the "Class E" System located in the lobby of the Building.

- Provide ACP-5 Certificate.

- Remove all unnecessary electrical conduit, receptacles, panel boards and other non-essential items in the space.

- Replace one (1) window.

- Perform sheetrock or plaster repairs to the perimeter walls where necessary.

EXHIBIT "I"

SEVENTH FLOOR SPACE LANDLORD'S WORK o Provide that all perimeter-heating systems will be in good working order during building standard hours. Landlord to provide manual control valves on all radiators.

- HVAC - Furnish and install two (58) ton Trane water-cooled units as described in the specifications that are a part of Exhibit "H" hereof (excluding ductwork) and accompanying mechanical equipment rooms.

- Demolish all existing partitions and deliver Premises in "broom clean" condition.

- Repair and replace damaged or missing fireproof encasement of beams throughout the entire premises. Patching to be performed in a workmanlike manner, only in those areas where required for fireproofing purposes, with resulting finished surfaces flush and smooth and ready for paint.

- Remove all flooring finishes that contain Asbestos Containing Materials (ACM). Tenant shall remove all finished flooring therefore, Landlord shall remove any and all finished flooring that contains asbestos.

- Patch and Fireproof eighteen (18) beams were necessary. o Provide sprinkler system in "existing" configuration in good working order. o Flash patch floor smooth and level, flush to adjacent surfaces where necessary. o Provide a sufficient amount of "Class E" System points at the "Class E" System located in the lobby of the Building.

- Provide ACP-5 Certificate.

- Remove all unnecessary electrical conduit, receptacles, panel boards and other non-essential items in the space.

- Replace five (5) windows.

- Perform sheetrock or plaster repairs to the perimeter walls where necessary.

EXHIBIT "J"

TENANT SIGNS

[See Attached]

AGREEMENT OF LEASE

between

VORNADO 330 WEST 34TH STREET L.L.C.,

Landlord

and

LIVEPERSON, INC.,

Tenant

330 West 34th Street
New York, New York

PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036-8299

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

The Board of Directors
Live Person, Inc.:

We consent to the use of our report included herein and to the reference to our firm under the heading "Experts" in the Prospectus.

KPMG LLP

New York, New York
March 10, 2000

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LIVEPERSON, INC.

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DEC-31-1999
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