

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

**FORM 10-K**

**(Mark one)**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended July 31, 2018

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 001-35394

**Guidewire Software, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
Incorporation or organization)

36-4468504  
(I.R.S. Employer  
Identification No.)

1001 E. Hillsdale Blvd., Suite 800 Foster City, California, 94404

(Address of principal executive offices, including zip code)

(650) 357-9100

(Registrant's telephone number, including area code)

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

(Title of class)  
Common Stock, \$0.0001 par value

(Name of exchange on which registered)  
New York Stock Exchange

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark whether the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§232.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or in any amendment to this Form 10-K.

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The aggregate market value of common stock held by non-affiliates of the registrant, computed by reference to the closing price at which the common stock was sold on January 31, 2018, the last business day of the registrant's most recently completed second fiscal quarter, as reported on the New York Stock Exchange, was approximately \$3.4 billion. Shares of common stock held by each executive officer, director and holder of 5% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status does not reflect a determination that such persons are affiliates of the registrant for any other purpose.

On August 31, 2018, the registrant had 80,608,319 shares of common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement relating to its 2018 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

**Guidewire Software, Inc.**

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## FORWARD-LOOKING STATEMENTS

The sections titled “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as other parts of this Annual Report on Form 10-K and certain information incorporated herein by reference contain forward-looking statements within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, which are subject to risks and uncertainties. The forward-looking statements may include statements concerning, among other things, our business strategy (including anticipated trends and developments in, and management plans for, our business and the markets in which we operate), financial results, results of operations, revenue, gross margins, operating expenses, products, projected costs and capital expenditures, research and development programs, sales and marketing initiatives and competition. In some cases, you can identify these statements by forward-looking words, such as “will,” “may,” “might,” “should,” “could,” “estimate,” “expect,” “suggest,” “believe,” “anticipate,” “intend,” “plan” and “continue,” the negative or plural of these words and other comparable terminology. Actual events or results may differ materially from those expressed or implied by these statements due to various factors, including but not limited to the matters discussed below, in the section titled “Item 1A. Risk Factors,” and elsewhere in this Annual Report on Form 10-K. Examples of forward-looking statements include statements regarding:

- growth prospects of the property & casualty (“P&C”) insurance industry and our company;
- the developing market for subscription services and uncertainties attendant on emerging sales and delivery models;
- trends in future sales, including the mix of licensing and subscription models and seasonality;
- our competitive environment and changes thereto;
- competitive attributes of our software applications and delivery models;
- challenges to further increase sales outside of the United States;
- our research and development investment and efforts;
- expenses to be incurred, and benefits to be achieved, from our acquisitions;
- our gross and operating margins and factors that affect such margins;
- our provision for tax liabilities and other critical accounting estimates;
- the impact of new accounting standards and any contractual changes we have made in anticipation of such changes;
- our exposure to market risks, including geographical and political events that may negatively impact our customers; and
- our ability to satisfy future liquidity requirements.

Forward-looking statements are not guarantees of future performance and involve risks and uncertainties. The forward-looking statements contained in this Annual Report on Form 10-K are based on information available to us as of the filing date of this Annual Report on Form 10-K and our current expectations about future events, which are inherently subject to change and involve risks and uncertainties. You should not place undue reliance on these forward-looking statements.

We do not undertake any obligation to update any forward-looking statements in this report or in any of our other communications, except as required by law. All such forward-looking statements should be read as of the time the statements were made and with the recognition that these forward-looking statements may not be complete or accurate at a later date.

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Unless the context requires otherwise, we are referring to Guidewire Software, Inc. together with its subsidiaries when we use the terms “Guidewire,” the “Company,” “we,” “our” or “us.”

## **Item 1. Business**

### **Overview**

We provide a technology platform, composed of software, services, and a partner ecosystem, for the global Property and Casualty (“P&C”) insurance industry.

Guidewire InsurancePlatform™ applications support core operations, data management and analytics, and digital engagement that can be deployed in the cloud or on-premise, and are connected to numerous data sources and third-party applications. Our applications are designed to work together to strengthen our customers’ ability to adapt and succeed in a rapidly changing market. Guidewire InsuranceSuite™ and Guidewire InsuranceNow™ provide core transactional systems of record that support the entire insurance lifecycle, including product definition, distribution, underwriting, policy-holder services, and claims management. Guidewire InsuranceSuite is a highly-configurable and scalable system primarily comprised of three applications (PolicyCenter, BillingCenter, and ClaimCenter) that can be licensed separately or together and can be deployed on-premise or in the cloud. Guidewire InsuranceNow is a cloud-based system that offers policy, billing, and claims management functionality to insurers that prefer an all-in-one solution. Our data and analytics applications enable insurers to manage data more effectively, gain insights into their business, and underwrite new and evolving risks. Our digital engagement applications enable digital sales, omni-channel service and enhanced claims experiences for policyholders, agents, vendor partners and field personnel. To support P&C insurers globally, we have localized, and will continue to localize, our software for use in a variety of international regulatory, language, and currency environments.

Guidewire delivers Software-as-a-Service (SaaS) subscriptions via Guidewire Cloud™. Guidewire’s cloud products enable insurers to focus on business agility while transferring undifferentiating IT responsibilities to Guidewire, in exchange for a subscription fee. All Guidewire products are available via Guidewire Cloud with a number of products only available via Guidewire Cloud.

Our customers range from some of the largest global insurance carriers or their subsidiaries, such as Aviva, AXA, and Zurich to predominantly national carriers such as Basler Versicherung (Switzerland), Direct Line Group (U.K.), Farmers Insurance (U.S.), IAG (Australia), MS&AD (Japan), Nationwide (U.S.), PZU (Poland) and San Cristobal Seguros S.A. (Argentina) and carriers that serve specific states and/or regions such as Automobile Club of Southern California (California), Canadian Automobile Association Insurance Company (Ontario), Kentucky Farm Bureau (Kentucky), and Vermont Mutual Insurance Group (Vermont).

Our customer engagement is led by our direct sales team and supported by our system integrator (“SI”) partners. We maintain and continue to grow our sales and marketing efforts globally, and maintain regional sales centers in the Americas, Europe, and Asia.

We began our principal business operations in 2001. To date, we have generated a substantial majority of our software license fees through license agreements that generally have a term of at least two years. We generally price our licenses based on the amount of direct written premiums (“DWP”) that will be managed by our solutions. Our term licenses for both recurring term license and maintenance fees are typically invoiced annually in advance or, in certain cases, quarterly. Term licenses that are greater than one year generally include extended payment terms. We also generate cloud-based revenue (also referred to as “subscriptions”). Currently, these subscriptions may be for terms greater than two years, and we anticipate that a majority of these arrangements will be billed annually or quarterly in advance, although in some instances additional fees may be assessed in arrears as customers increase their DWP. Revenue derived from these subscriptions is recognized ratably over the contractual term beginning after the subscription is effectively provisioned, which is the date our software service is made available to customers. We anticipate that subscription revenue will increase as a percentage of total revenue as we develop and bring to market more cloud-based solutions to meet increasing industry demand. Services revenue is primarily derived from implementation and training services performed for our customers. Substantially all of our services revenue is billed on a time and materials basis.

### **Industry Background**

The P&C insurance industry is large, fragmented, highly regulated, and complex. It is also highly competitive, with carriers competing primarily on the following factors: product differentiation, pricing options, customer service, marketing and advertising, affiliate programs and channel strategies.

P&C insurers continue to actively modernize the transactional systems that support the key functional areas of P&C insurance: product definition, underwriting and policy administration, claims management and billing. Product definition specifies the insurance coverage, pricing, and financial and legal terms of insurance policies. Underwriting and policy administration includes collecting information from potential policyholders, determining appropriate coverages and terms, pricing policies, issuing policies and updating and maintaining policies over their lifetimes. Claims management includes loss intake, investigation and evaluation

of incidents, settlement negotiation, vendor management, litigation management and payment processing. Billing includes policyholder invoicing, payment collection, agent commission calculation and disbursement. We believe insurers that adopt modern infrastructures can enhance customer experience, operate more efficiently and introduce innovative products more rapidly.

We believe the P&C industry is experiencing accelerating change in how insurers engage with, sell to, and manage relationships with individual and business customers. Today, P&C insurers are striving to respond to significant changes in their competitive marketplace and the character of the risks they underwrite. The most significant changes include:

- a rise in customer expectations for digital, omni-channel interaction;
- a growth in demand for personalized products and services;
- an increase in technology-driven changes in vehicular risk;
- demand for coverage of “21<sup>st</sup> century risks” such as terrorism, cybersecurity and reputational risk;
- advances in the use of data to better market to and engage with customers, price policies and manage claims;
- development of opportunities to compete or partner with non-traditional players that offer disruptive technology-based value propositions; and
- the introduction and leveraging of new technologies, such as drones, artificial intelligence, the “Internet of Things” and blockchain technology.

In response to these challenges and opportunities, we believe that the P&C insurance industry is entering a phase of increasing investment in technology, characterized by a moderated pace of core modernization programs, and growing adoption of new digital engagement and data analytics offerings.

While each insurer may have different goals and priorities when pursuing new IT investments, there are several major themes that we believe guide these investments:

- **Legacy Modernization.** A significant portion of the market continues to rely on legacy systems. We believe new claims, policy management, and billing systems will continue to be adopted as insurers that rely on legacy systems seek to gain operating efficiencies, expand into new markets and lines of business, and introduce new digital and data offerings.
- **New Digital Engagement Models.** We believe that insurers will need to provide a more intuitive, digital user experience to reduce the risk of customer dissatisfaction and loss. Investment in digital user experience will allow insurers to deepen their engagement with customers and transition from passive and transactional customer interactions to active and advisory relationships. This transition will require investments in software products that are designed to model user journeys and enable more frequent, informed and dynamic interactions between insurers and their customers. We believe these efforts can improve financial performance for insurers through increased lead conversions and lower customer churn.
- **Smarter Decision-Making.** Insurers are seeking to explore, visualize, and analyze operational and third-party data to optimize decision-making across the insurance lifecycle. We believe that such predictive analytical solutions are most effective when they provide predictive scores and other analytical insights to insurers’ employees as they perform their underwriting and claims management activities.

Insurers may also apply data and machine learning to automate certain tasks whenever possible, thereby enabling efficiencies, such as straight-through processing, that lessen the burden on subject matter experts.

- **Innovation.** Insurers are under pressure to innovate across their product lifecycle in order to grow their business and improve service quality. Examples of focus areas include creating products to target under-insured risks such as cyber, supply chain disruption, and reputational and partnering with InsurTech providers to streamline operations and improve service to policyholders and agents.
- **Cloud-Delivered Solutions.** We believe that increased recognition of the compelling economic benefits of deploying software solutions on public infrastructure combined with reduced concerns about the security and reliability of such platforms will cause more insurers to consider cloud-deployed solutions. Insurers benefit from an optimized division of labor and risk, allowing third parties to manage their infrastructure as they focus on competitively differentiating activities.

## Products

Guidewire InsurancePlatform is designed to offer insurers the ability to adapt and succeed in meeting these challenges and capitalize on new opportunities. We believe that the proliferation of modern back-office infrastructures has significantly increased the ability of insurers to utilize new solutions to grow revenue, reduce costs and losses, improve pricing and engage more deeply and in more intuitive ways with a customer base that is increasingly comfortable with mobile and automated forms of self-service and communication. We anticipate that we will continue to invest in research and development and strategic investments so that we may further assist insurers in reaching their business goals.

## **Core Operational Platforms**

We offer two core operational platforms: Guidewire InsuranceSuite and Guidewire InsuranceNow.

### *Guidewire InsuranceSuite*

Guidewire InsuranceSuite is comprised of three primary applications: PolicyCenter, BillingCenter, and ClaimCenter. We offer several add-on products designed to work seamlessly with these primary applications. InsuranceSuite is built on a unified technology platform that provides enhanced functionality and a common data model across applications, available on-premise and via the Guidewire Cloud.

Guidewire PolicyCenter is our flexible underwriting and policy administration application that serves as a comprehensive system-of-record supporting the entire policy lifecycle, including product definition, underwriting, quoting, binding, issuances, endorsements, audits, cancellations and renewals. Guidewire BillingCenter automates the billing lifecycle, enables the design of a wide variety of billing and payment plans, manages agent commissions, and integrates with external payment systems. Guidewire ClaimCenter offers end-to-end claims lifecycle management, including product definition, distribution, underwriting, policy holder services, and claims management.

### *Guidewire InsuranceNow*

Guidewire InsuranceNow is a cloud-based platform for P&C insurers that offers policy, billing, and claims management functionality to insurers that prefer to subscribe to a cloud-based, all-in-one solution. Guidewire InsuranceNow is only offered in the cloud, and is currently only available in the United States, though we intend to introduce it to select international markets in the future.

### **Guidewire InsuranceSuite: Add-on Applications**

We offer a number of additional add-on applications for Guidewire InsuranceSuite.

#### *Guidewire Underwriting Management*

Guidewire Underwriting Management is a cloud-based, integrated business application designed for commercial and specialty line insurers to drive premium growth and profit from better underwriting. This feature-rich workstation delivers straight-through processing, exception-based underwriting, real-time collaboration, and knowledge management in one integrated solution. Guidewire Underwriting Management is typically sold alongside Guidewire PolicyCenter, although it functions with other policy administration systems as well.

#### *Guidewire Rating Management*

Guidewire Rating Management enables P&C insurers to manage the pricing of their insurance products.

#### *Guidewire Reinsurance Management*

Guidewire Reinsurance Management enables P&C insurers to use rules-based logic to execute their reinsurance strategy through their underwriting and claims processes.

#### *Guidewire Client Data Management*

Guidewire Client Data Management helps P&C insurers capitalize on customer information more coherently, overcoming traditional siloed practices that impair efficiency and customer service.

#### *Guidewire Product Content Management*

Guidewire Product Content Management provides software tools and standards-based, line-of-business templates to enable insurers to more rapidly introduce and modify products by reducing product configuration and maintenance efforts. Any such product introduction or modification must connect to and incorporate regulatory or industry-standard data and content, such as ISO content.

#### *Guidewire AppReader*

Guidewire AppReader is a submission intake management solution that enables P&C insurers to process Association for Cooperative Operations Research and Development (“ACORD”) forms faster and more accurately than with manual processes or traditional upload solutions. AppReader is available for both Guidewire Underwriting Management and Guidewire PolicyCenter.

#### *Guidewire London Market Messaging*

Guidewire London Market Messaging provides a message-processing and action framework with enhanced configuration to manage claims and settlement messages covering the Lloyd’s of London market and the London Company Market, as well as subscription business multi-currency reserving. Guidewire London Market Messaging is a specialized add-on for Guidewire ClaimCenter customers.

## **Data Management and Analytics**

We offer a variety of applications that allow insurers to consolidate, explore and analyze the data that is generated from their own operations and the data they capture from third-party sources.

### *Guidewire DataHub*

Guidewire DataHub is an operational data store that unifies, standardizes and stores data from the patchwork of an insurer's systems as well as from external sources. DataHub enables carriers to accelerate legacy system replacement.

### *Guidewire InfoCenter*

Guidewire InfoCenter is a business intelligence warehouse for P&C insurers which provides information in easy-to-use formats for business intelligence, analysis and enhanced decision making. With InfoCenter, customers gain flexible operational insights as well as the ability to optimize their business.

### *Guidewire Live Analytics*

Guidewire Live Analytics is a cloud analytics platform that streams data from core systems and other sources into a scalable data infrastructure to enable smart business decisions. Guidewire Live Analytics applications are designed to complement Guidewire's operational systems, combining data from many different sources, core systems, anonymized benchmarks, and third-party data to enable real-time exploration and visualization for more precise decision-making. Guidewire Live Analytics applications include: Explore, Claim Canvas, Compare, and Spotlight.

### *Guidewire Predictive Analytics*

Guidewire Predictive Analytics is a cloud-based tool which allows insurers to make data-driven decisions throughout the insurance lifecycle. By building predictive models from multiple data sets, analyzing model output, and deploying predictive models, insurers can realize significant reductions in loss ratio and expenses.

### *Guidewire Cyence Risk Analytics*

Guidewire Cyence Risk Analytics is a cloud-native economic cyber risk modeling solution built to help the insurance industry quantify cyber risk exposures. It enables insurers to manage portfolio exposure accumulations and develop new products. Through a process called "data listening", Guidewire Cyence Risk Analytics collects technical and behavioral data from a variety of sources, including public data, open-source data, proprietary data, and third-party data.

## **Digital Engagement**

### *Guidewire Digital Engagement Applications*

Our Digital Engagement Applications enable insurers to provide digital experiences to customers, agents, vendors and field personnel through their device of choice. As consumers increasingly use self-service functions on the Internet and on mobile devices, we believe that many of them prefer to interact with their insurance providers digitally and they expect to have consistent and efficient transactional experience through multiple channels, whether online, in-person or by phone. Our Digital Engagement applications also benefit agents and brokers who are seeking to automate business processes with insurers to improve customer service and productivity.

## **Technology**

Our applications are designed to assist P&C insurers to grow their business, improve customer and agent engagement, lower operating costs and improve decision making. We have increased the scope of Guidewire InsurancePlatform through internal development and acquisitions. This growing scope has required greater investment in the development of application interfaces and shared services necessary to unify the operations and user experience across our applications. To meet the anticipated increased demand for cloud-delivered solutions, we have increased investments to leverage the growing number of technology services provided by on-demand infrastructure vendors such as Amazon with AWS and Microsoft with Azure. The shift to cloud-delivered solutions has also required significant focus in improving our ability to manage and operate our applications since our cloud-based deployments, unlike our on-premise implementations, shift many operational responsibilities to us. Finally, we continue to improve the scalability of our applications, which are required to perform millions of complex transactions that must balance on a daily basis. This accuracy must be maintained not only during normal business operations, but also during extraordinary events such as catastrophes, which may result in extremely high transaction volume in a short period of time.

## **Services**

### *Implementation Services*



We provide implementation and integration services to help our customers realize the benefits of our software products and subscription services. Our implementation teams assist customers in building implementation plans, integrating our software with their existing systems and defining business rules and specific requirements unique to each customer and installation. We also partner with leading system integration consulting firms, certified on our software, to achieve scalable, cost-effective implementations for our customers.

#### *Guidewire Production Services*

Customers that contract with us for a cloud-based version of any Guidewire InsurancePlatform application receive access to our software, 24x7 technical management, monitoring and, in some cases, version upgrades. Customers may also receive additional services, such as defect fixes, regulatory updates, and minor platform delivery enhancements.

### **Customers**

We market and sell our products to a wide variety of global P&C insurers ranging from some of the largest global insurers to national and regional carriers. We believe strong customer relationships are a key driver of our success given the long-term nature of our customer engagements and importance of customer references for new sales. We focus on developing and maintaining our customer relationships through customer service and account management. As of July 31, 2018, we had approximately 380 customers using one or more of our products in 39 countries.

### **Strategic Relationships**

We have extensive relationships with system integration, consulting, and industry partners. Our network of partners has expanded as interest in and adoption of our products has grown. We encourage our partners to co-market, pursue joint sales initiatives and drive broader adoption of our technology, helping us grow our business more efficiently and enabling us to focus our engineering resources on continued innovation and further enhancement of our solutions.

As part of our PartnerConnect alliance program, we have a community of Solution Partners developing integration accelerators that enable their on-premise and cloud-based software solutions to interoperate with our products. As of July 31, 2018, more than 85 of these partner-developed integrations have been validated by us and awarded Ready for Guidewire branding. Guidewire Marketplace provides our customers with an online forum to learn about and download Ready for Guidewire integration accelerators for use with our products. These accelerators help customers reduce implementation risk and effort, and lower the total cost of implementation and operation. We anticipate expanding the reach of Guidewire Marketplace.

### **Sales and Marketing**

Consistent with our industry focus and the mission-critical needs our products address, our sales and marketing efforts are tailored to communicate effectively to senior executives within the P&C industry. Our sales, marketing, and executive teams work together to cultivate long-term relationships with current and prospective customers in each of the geographies in which we are active.

Our direct sales team serves as both our exclusive sales channel and our account management function and is organized by geographic region across the Americas, EMEA, and APAC. We augment our sales professionals with a presales team possessing insurance domain and technical expertise, who engage customers in sessions to understand their specific business needs and then represent our products through demonstrations tailored to address those needs.

Our marketing team supports sales with competitive analysis and sales tools, while investing to strengthen our brand name and reputation. We participate at industry conferences, are published frequently in the industry press and have active relationships with all of the major industry analysts. We also host Connections, our annual user conference where customers both participate in and deliver presentations on a wide range of Guidewire and insurance technology topics. We invite potential customers and partners to our user conference, as we believe customer references are a key component of driving new sales. Our strong relationships with leading system integrators enhance our direct sales through co-marketing efforts and by providing additional market validation of the distinctiveness and quality of our offerings.

### **Research and Development**

Our research and development efforts focus on enhancing our products to meet the increasingly complex requirements of P&C insurers by broadening the capabilities and delivery options of Guidewire InsurancePlatform and its associated applications. These efforts are intended to help our customers improve their operations; drive greater digital engagement with their customers, agents and brokers; and gather, store and analyze data to improve business decisions. We also invest significantly in developing the product definitions and integrations necessary to have our applications meet the market requirements of each country or state in which we sell our software. This market-segment specific functionality must be updated regularly in order to stay current with

regulatory changes in each market. We rely on a multi-national engineering team, which has grown organically and through acquisitions.

## Competition

The software market that caters to the P&C insurance industry is highly competitive and fragmented. Increased spending by carriers on software solutions and the emergence of new platforms that have broadened from core system modernization to new digital engagement and data and analytics solutions, have generated significant interest among investors and entrepreneurs. Increased capital allows market participants to adopt more aggressive go-to-market strategies, improve existing products, introduce new ones, and consolidate with other vendors. This market is also subject to changing technology preferences, shifting customer needs and the introduction of new cloud-delivered models. This creates an environment of increasing competition. Our current and future competitors vary in size and in the breadth and scope of the products and services they offer. Our current competitors include, but are not limited to:

Internally developed software	Many large insurance companies have sufficient IT resources to maintain and augment their own proprietary internal systems, or to consider developing new custom systems;
Technology services firms	Firms such as DXC Technology, NTT Data, and Tata Consultancy Services Limited offer software and systems or develop custom, proprietary solutions for the P&C insurance industry;
P&C insurance software vendors	Vendors such as 1insurer (formerly Innovation Group), CodeObjects, Duck Creek, eBaoTech Corporation, EIS Group, Fadata AD, FINEOS, Insurity, Inc., Keylane/Quinity, Majesco, OneShield, Inc., Patriot Technology Solutions, Prima Solutions, RGI, Sapiens International Corporation, StoneRiver, Inc., and TIA Technology A/S provide software solutions that are specifically designed to meet the needs of P&C insurers; and
Horizontal software vendors	Vendors such as Pegasystems Inc. and SAP AG offer software that can be customized to address the needs of P&C insurers.

Competitive factors in our industry depend on the product being offered, and the size, geographic market, and line of business of potential customers. The principal competitive factors include product functionality, performance, customer references, total cost of ownership, solution completeness, implementation track record, and in-depth knowledge of the P&C insurance industry. We typically compete favorably on the basis of these factors in most geographies.

As we expand our product portfolio, we may begin to compete with software and service providers we have not previously competed against. For example, companies such as Verisk, SAS, IBM and Towers Watson offer data and analytics tools that may, in time, be more competitive than our offerings. Some of these potential competitors may also acquire companies which offer P&C insurance software.

## Intellectual Property

The software industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding patent and other intellectual property rights. Our success and ability to compete depend in part upon our ability to protect our proprietary technology, to establish and adequately protect our intellectual property rights, and to protect against third-party claims and litigation related to intellectual property. To accomplish these objectives, we rely on a combination of patent, trademark, copyright, and trade secret laws in the United States and other jurisdictions, as well as license agreements and other contractual protections. We own or have pending a significant number of patents and patent applications, which generally apply to our software. Our owned patents have expiration dates starting in 2025. We also rely on several registered and unregistered trademarks, as well as pending applications for such registrations, in order to protect our brand both in the United States and internationally.

## Employees

As of July 31, 2018, we had 2,292 employees, including 838 in professional services, 121 in technical support and licensing operations, 749 in research and development, 329 in sales and marketing, and 255 in general and administrative roles. As of July 31, 2018, we had 1,466 employees in the United States and 826 employees internationally. Our employees in the United States are not represented by a labor union, however, in certain foreign locations, there are workers' councils that represent our employees. We have not experienced any work stoppages and we consider our relations with our employees to be good.

## Information about Segment and Geographic Revenue

Information about segment and geographic revenue is set forth in Note 11 of the Notes to Consolidated Financial Statements under Item 8 of this Annual Report on Form 10-K.

## Seasonality

We have historically experienced seasonal variations in our license and other revenue as a result of increased customer orders in our second and fourth fiscal quarters. We generally see a modest increase in orders in our second fiscal quarter, which is the quarter ending January 31, due to customer buying patterns. We also see increased orders in our fourth fiscal quarter, which is the quarter ending July 31, due to efforts by our sales team to achieve annual incentives. This seasonal pattern, however, may be absent in any given year. For example, the timing of a small number of large transactions or the entry into term license agreements with a term of more than two years may be sufficient to disrupt seasonal revenue trends. Additionally, the adoption of Accounting Standards Codification 606 - Revenue from Contracts with Customers (“ASC 606”) will also heighten the seasonal impact on our new term licenses that are multi-year in nature with more revenue recognized upfront upon delivery of our software. On an annual basis, our maintenance revenue which is recognized ratably, may also be impacted in the event that seasonal patterns change significantly. During fiscal years in which subscriptions increase as a percentage of total sales, the revenue we can recognize in such fiscal year will be reduced, deferred revenue will increase, and our reported revenue growth will be adversely affected due to the ratable nature of these arrangements. The seasonal nature of our sales and the concentration of such sales in our fourth fiscal quarter magnifies this impact.

Our services revenue is also subject to seasonal fluctuations, though to a lesser degree than our license revenue. Our services revenue is impacted by the number of billable days in a given fiscal quarter. The fiscal quarter ended January 31 usually has fewer billable days due to the impact of the Thanksgiving, Christmas and New Year’s holidays. The fiscal quarter ended July 31 usually has fewer billable days due to the impact of vacation times taken by our professional staff. Because we pay our services professionals the same amounts throughout the year, our gross margins on our services revenue is usually lower in these quarters. This seasonal pattern, however, may be absent in any given year.

## WHERE YOU CAN FIND MORE INFORMATION

The following filings are available to view and download free of charge on our investor relations website after we file them with the Securities and Exchange Commission (“SEC”): Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and our Proxy Statement for our annual meeting of stockholders. Our website is located at [www.guidewire.com](http://www.guidewire.com), and our investor relations website is located at <http://ir.guidewire.com/>. We also provide a link to the section of the SEC’s website at [www.sec.gov](http://www.sec.gov) that has all of our public filings, including periodic reports, proxy statements and other information. Further, a copy of this Annual Report on Form 10-K is located at the SEC’s Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases as part of our investor relations website. Investors and others can receive notifications of new information posted on our investor relations website in real time by signing up for email alerts and RSS feeds. Further corporate governance information, including our governance guidelines and code of business conduct and ethics, is also available on our investor relations website under the heading “Corporate Governance.” The contents of our websites are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

Item 1A. **Risk Factors**

*A description of the risks and uncertainties associated with our business is set forth below. You should carefully consider such risks and uncertainties, together with the other information contained in this report, and in our other public filings. If any of such risks and uncertainties actually occurs, our business, financial condition or results of operations could differ materially from the plans, projections and other forward-looking statements included in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this report and in our other public filings. In addition, if any of the following risks and uncertainties, or if any other risks and uncertainties, actually occurs, our business, financial condition or results of operations could be harmed substantially, which could cause the market price of our stock to decline, perhaps significantly.*

**Risks Related to our Business**

*We may experience significant quarterly and annual fluctuations in our results of operations due to a number of factors.*

Our quarterly and annual results of operations may fluctuate significantly due to a variety of factors, many of which are outside of our control. This variability may lead to volatility in our stock price as investors and research analysts respond to quarterly fluctuations. In addition, comparing our results of operations on a period-to-period basis, particularly on a sequential quarterly basis, may not be meaningful. You should not rely on our past results as an indication of our future performance.

Factors that may affect our results of operations include:

- the ability to attract new domestic and international customers and the timing of new orders and revenue recognition for new and prior year orders;
- seasonal buying patterns of our customers;
- the proportion and timing of subscription sales as opposed to term software licenses, and the variations in revenue recognition between the two contract types;
- changes in contract durations of term software licenses;
- introduction of new cloud-based, or the increase of existing, licensing models that feature ratable revenue recognition;
- our ability to develop and achieve market adoption of cloud-based services;
- increases in cloud-related development and services costs;
- erosion in services margins or significant fluctuations in services revenue caused by changing customer demand;
- our ability to realize expected benefits from our acquisitions;
- the lengthy and variable nature of our product implementation cycles;
- future accounting pronouncements or changes in accounting rules or our accounting policies.
- volatility in the sales of our products and the execution timing of new and renewal agreements within such periods;
- our ability to increase sales to and renew agreements with our existing customers, particularly larger customers;
- the structure of our licensing contracts, including delayed payment or acceptance terms and escalating payments, including fluctuations in perpetual licenses from period to period;
- our ability to enter into contracts on favorable terms, including terms related to price, payment timing and product delivery with customers and prospects that possess substantial negotiating leverage and procurement expertise;
- the incurrence of penalties for failing to meet certain contractual obligations, including service levels and implementation times;
- reductions in our customers’ budgets for information technology purchases and delays in their purchasing cycles;
- variations in the amount of policies sold by our customers, where pricing to such customers is based on the direct written premium that is managed by our solutions;
- the timing of hiring personnel and employee related expenses;
- the impact of a recession or any other adverse global economic conditions on our business, including trade tariffs and other uncertainties that may cause a delay in entering into or a failure to enter into significant customer agreements;
- fluctuations in foreign currency exchange rates; and
- unanticipated trade sanctions and other restrictions that may impede our ability to sell internationally.

The foregoing factors are difficult to forecast, and these, as well as other factors, could materially adversely affect our quarterly and annual results of operations. Further, in light of the transition to ASC 606 for revenue recognition, our recent changes to the length of license agreements, and our increased cloud-based subscription services, among other ongoing changes to our business, it is challenging to forecast our quarterly and annual results. We believe our ability to adjust spending quickly enough

to compensate for a revenue shortfall is very limited and our inability to do so could magnify the adverse impact of such revenue shortfall on our results of operations. If we fail to achieve our quarterly forecasts, if our forecasts fall below the expectations of investors or research analysts, or if our actual results fail to meet the expectations of investors or research analysts, our stock price may decline.

***Seasonal sales patterns and other variations related to our revenue recognition may cause significant fluctuations in our results of operations and cash flows and may prevent us from achieving our quarterly or annual forecasts, which may cause our stock price to decline.***

We have signed a higher percentage of software license orders in the second and fourth quarters of each fiscal year. We generally see increased orders in our second fiscal quarter, which is the quarter ended January 31, due to customer buying patterns, and our sales are typically greatest in the fourth fiscal quarter due to efforts by our sales team to achieve annual incentives. As a result, a significantly higher percentage of our annual license revenue has historically been recognized in our second and fourth fiscal quarters. Since a substantial majority of our license revenue has annual renewals after the initial term of the contract, we expect to continue to experience this seasonality effect in subsequent years. Further, the adoption of ASC 606 for revenue recognition will heighten the seasonal impact on our new term licenses that are multi-year in nature with more revenue recognized upfront upon delivery of our software. However, we currently anticipate that sales of subscription services will increase as a percentage of new and total yearly sales. Subscriptions are recognized ratably over the term of the agreement after provisioning of the software, which may take as many as 90 days for our more complex implementations. Over time, this may reduce the impact of our historic seasonality, but in the near term the introduction of proportionally more subscription services into our revenue stream, together with their delayed and ratable recognition, will likely impact quarter over quarter and year over year revenue growth comparisons. The concentration of sales in the fourth fiscal quarter, including sales of subscription services, may exacerbate this effect.

Our quarterly growth in license revenue also may not match up to new orders we receive in a given quarter, which could mask the impact of seasonal variations. This mismatch is primarily due to the following reasons:

- for the initial year of a multi-year term license, revenue recognition may not occur in the period when the order is placed due to certain revenue recognition criteria not being met;
- we may enter into license agreements with future product delivery requirements or specified terms for product upgrades or functionality, which may require us to delay revenue recognition for the initial period;
- our term licenses may include payment terms that escalate every year and may be modest in the first year; and
- our subscription arrangements are recognized ratably and only a portion of the revenue from an order is recognized in the same fiscal period of the order.

Additionally, seasonal patterns may be affected by the timing of particularly large transactions. For example, in fiscal year 2017, we achieved higher revenue growth in the third fiscal quarter than in the fourth fiscal quarter due to the effects of a single large contract that was entered into in the third fiscal quarter.

Our revenue may fluctuate versus comparable prior periods or prior quarters within the same fiscal year based on the terms of the agreements and the timing of new orders executed in the quarter. Our ability to renew existing contracts for multiple year terms versus annual automatic renewals may also impact revenue recognition.

We generally charge annual software license fees for our multi-year term licenses and price our licenses based on the amount of direct written premiums (“DWP”) that will be managed by our solutions. However, in certain circumstances, our customers desire the ability to purchase our products on a perpetual license basis, resulting in an acceleration of revenue recognition. Milestone payments in a perpetual license order also cause seasonal variations. Our perpetual license revenue is not necessarily consistent from period to period. In addition, a few of our multi-year term licenses provide the customer with the option to purchase a perpetual license at the end of the initial contract term, which we refer to as a perpetual buyout right. The mix of our contract terms for our licenses and the exercise of perpetual buyout rights at the end of the initial contract term by our customers may lead to variability in our revenue. Increases in perpetual license sales and exercises of perpetual buyout rights by our customers may affect our ability to show consistent growth in license revenue in subsequent periods. Reductions in perpetual licenses in future periods could cause adverse period-to-period comparisons of our financial results.

Seasonal and other variations related to our revenue recognition may cause significant fluctuations in our results of operations and cash flows, may make it challenging for an investor to predict our performance on a quarterly basis and may prevent us from achieving our quarterly or annual forecasts or meeting or exceeding the expectations of research analysts or investors, which in turn may cause our stock price to decline.

***We have relied and expect to continue to rely on orders from a relatively small number of customers in the P&C insurance industry for a substantial portion of our revenue, and the loss of any of these customers would significantly harm our business, results of operations and financial condition.***

Our revenue is dependent on orders from customers in the P&C insurance industry, which may be adversely affected by economic, environmental and world political conditions. A relatively small number of customers have historically accounted for a significant portion of our revenue. While the composition of our individual top customers will vary from year to year, in fiscal years 2018, 2017 and 2016, our ten largest customers accounted for 31%, 27% and 27% of our revenue, respectively. Customers for this metric are measured at the parent corporation level, while our total customer count is measured at the purchasing entity level. While we expect this reliance to decrease over time, we expect that we will continue to depend upon a relatively small number of customers for a significant portion of our revenue for the foreseeable future. As a result, if we fail to successfully sell our products and services to one or more of these anticipated customers in any particular period or fail to identify additional potential customers or such customers purchase fewer of our products or services, defer or cancel orders, fail to renew their license or subscription agreements or otherwise terminate their relationship with us, our business, results of operations and financial condition would be harmed. Additionally, if our sales to one or more of these anticipated customers in any particular period are ratable in nature, or if we fail to achieve the required performance or acceptance criteria for one or more of these relatively small number of customers, our quarterly and annual results of operations may fluctuate significantly.

***If we are required to, and fail to, successfully manage any changes to our business model, including the transition of our products to cloud offerings, our results of operations could be harmed.***

To address demand trends in the P&C insurance industry, we now offer customers the use of our software products through a cloud-based offering in addition to our on-premises offering. This adjustment to our business model requires a considerable investment of technical, financial, legal and sales resources. Our software and cloud services involve the storage and transmission of data, including in some cases, personal data, and security breaches could result in the loss of this information, which in turn could result in litigation, breach of contract claims, indemnity obligations and other liabilities for us. Our transition to cloud offerings will continue to divert resources and increase costs, especially in cost of license and other revenue, in any given period. Such investments may not improve our long-term growth and results of operations. Further, the increase in some costs associated with our cloud services, such as the cost of public infrastructure, may be difficult to predict over time, especially in light of our lack of historical experience with the costs of delivering cloud-based versions of our applications. Our subscription contracts also contain penalty clauses, for matters such as failing to meet stipulated service levels, which represent new risks we are not accustomed to managing. Should these penalties be triggered, our results of operations may be adversely affected. Furthermore, we may assume greater responsibilities for implementation related services during this transition. As a result, we may face risks associated with new and complex implementations, the cost of which may differ from original estimates. As with our stated history, the consequences in such circumstances could include: monetary credits for current or future service engagements, reduced fees for additional product sales, and a customer's refusal to pay their contractually-obligated subscription or service fees.

We expect the revenue we would recognize under our cloud-based subscription model to be recognized ratably over the term of the contract. The transition to ratable revenue recognition may reduce license revenue we otherwise would have recognized in those periods in which the portion of our revenue attributable to ratable subscription contracts grows. This effect on recognized revenue may be magnified in any fiscal year due to the concentration of our orders in the fourth fiscal quarter. A combination of increased costs and delayed recognition of revenue would adversely impact our gross and operating margins during those periods.

In addition, market acceptance of our cloud-based offerings may be affected by a variety of factors, including but not limited to: price, security, reliability, performance, customer preference, public concerns regarding privacy and the enactment of restrictive laws or regulations. We are in the early stages of re-architecting our existing products and developing new products in an effort to offer customers greater choices on how they consume our software. As our business practices in this area develop and evolve over time, we may be required to revise the subscription agreements we initially develop in connection with this transition, which may result in revised terms and conditions that impact how we recognize revenue and the costs and risks associated with these offerings. Whether our product development efforts or business model transition will prove successful and accomplish our business objectives is subject to numerous uncertainties and risks, including but not limited to: customer demand, our ability to further develop and scale infrastructure, our ability to include functionality and usability in such offerings that address customer requirements, tax and accounting implications, and our costs. In addition, the metrics we and our investors use to gauge the status of our business model transition may evolve over the course of the transition as significant trends emerge. It may be difficult, therefore, to accurately determine the impact of this transition on our business on a contemporaneous basis, or to clearly communicate the appropriate metrics to our investors. If we are unable to successfully establish these new cloud offerings and navigate our business model transition in light of the foregoing risks and uncertainties, our reputation could suffer and our results of operations could be harmed, which may cause our stock price to decline.

***Increases in services revenue as a percentage of total revenue or lower services margins could adversely affect our overall gross margins and profitability.***

Our services revenue was 41%, 34% and 34% of total revenue for each of fiscal years 2018, 2017 and 2016, respectively. Our services revenue produces lower gross margins than our license revenue. The gross margin of our services revenue was 8%, 7% and 8% for fiscal years 2018, 2017 and 2016, respectively, while the gross margin for license revenue was 89%, 94% and 97% for fiscal years 2018, 2017 and 2016, respectively. An increase in the percentage of total revenue represented by services revenue, like we experienced in fiscal year 2018 due to acquisitions and the recognition of revenue on certain cloud-based implementations that were completed in prior years, or lower services margins could reduce our overall gross margins and operating margins. Such a trend can be the result of several factors, some of which may be beyond our control, including increased customer demand for our service team involvement in new products and services, the rates we charge for our services, our ability to bill our customers for all time incurred to complete a project, and the extent to which system integrators are willing and able to provide services directly to customers. Erosion in our services margins would also adversely affect our gross and operating margins. Services margins may erode for a period of time as we work to grow our business and overall revenue; for instance, services margins may erode if we hire and train additional services personnel to support new products including cloud-based services, if we require additional service personnel to support entry into new markets, or if we require additional personnel on unexpectedly difficult projects to ensure customer success, perhaps without commensurate compensation.

Services margins may also decline if we are required to defer services revenue in connection with an engagement. This may happen for a number of reasons, including if there is a specific product deliverable associated with a broader services engagement. In these situations, we would defer only the direct costs associated with the engagement. Deferring all revenue but only direct costs will reduce margins. In fiscal year 2017, for example, we deferred a significant amount of revenue and direct costs associated with one project, which reduced margins and reported services revenue during fiscal year 2017, and increased margins and services revenue during fiscal year 2018 when certain amounts of this deferred revenue were recognized.

***Assertions by third parties of infringement or other violation by us of their intellectual property rights could result in significant costs and substantially harm our business and results of operations.***

The software industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding patents and other intellectual property rights. In particular, leading companies in the software industry own large numbers of patents, copyrights, trademarks and trade secrets, which they may use to assert claims against us. From time to time, third parties holding such intellectual property rights, including leading companies, competitors, patent holding companies and/or non-practicing entities, may assert patent, copyright, trademark or other intellectual property claims against us, our customers and partners, and those from whom we license technology and intellectual property.

Although we believe that our products and services do not infringe upon the intellectual property rights of third parties, we cannot assure that third parties will not assert infringement or misappropriation claims against us with respect to current or future products or services, or that any such assertions will not require us to enter into royalty arrangements or result in costly litigation, or result in us being unable to use certain intellectual property. We cannot assure that we are not infringing or otherwise violating any third-party intellectual property rights. Infringement assertions from third parties may involve patent holding companies or other patent owners who have no relevant product revenue, and therefore our own issued and pending patents may provide little or no deterrence to these patent owners in bringing intellectual property rights claims against us.

If we are forced to defend against any infringement or misappropriation claims, whether they are with or without merit, are settled out of court, or are determined in our favor, we may be required to expend significant time and financial resources on the defense of such claims. Furthermore, an adverse outcome of a dispute may require us to pay damages, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property; cease making, licensing or using our products or services that are alleged to infringe or misappropriate the intellectual property of others; expend additional development resources to redesign our products or services; enter into potentially unfavorable royalty or license agreements in order to obtain the right to use necessary technologies or works; and to indemnify our partners, customers, and other third parties. Any of these events could seriously harm our business, results of operations and financial condition.

***We may expand through acquisitions or partnerships with other companies, which may divert our management's attention and result in unexpected operating and technology integration difficulties, increased costs and dilution to our stockholders.***

Our business strategy includes the potential acquisition of shares or assets of companies with software, technologies or businesses complementary to ours. Our strategy also includes alliances with such companies. For example, in March 2016, we acquired EagleEye Analytics Inc., a provider of cloud-based predictive analytics products designed for P&C insurers; in August 2016, we acquired FirstBest Systems, Inc., a provider of an underwriting management system for P&C insurers; in February 2017, we acquired ISCS, Inc., a provider of a cloud-based, all-in-one platform that offers policy, billing, and claims management functionality for P&C insurers; and in November 2017, we acquired Cyence, a Software-as-a-Service company that applies data science and risk analytics to enable P&C insurers to underwrite "21st century risks" such as terrorism, cybersecurity, and reputational risk. Each of these acquisitions was initially dilutive to earnings. Acquisitions and alliances may result in unforeseen operating

difficulties and expenditures and may not result in the benefits anticipated by such corporate activity. In particular, we may fail to assimilate or integrate the businesses, technologies, services, products, personnel or operations of the acquired companies, retain key personnel necessary to favorably execute the combined companies' business plan, or retain existing customers or sell acquired products to new customers. Acquisitions and alliances may also disrupt our ongoing business, divert our resources and require significant management attention that would otherwise be available for ongoing development of our current business. In addition, we may be required to make additional capital investments or undertake remediation efforts to ensure the success of our acquisitions, which may reduce the benefits of such acquisitions. We also may be required to use a substantial amount of our cash or issue debt or equity securities to complete an acquisition or realize the potential of an alliance, which could deplete our cash reserves and/or dilute our existing stockholders. Following an acquisition or the establishment of an alliance offering new products, we may be required to defer the recognition of revenue that we receive from the sale of products that we acquired or that result from the alliance, or from the sale of a bundle of products that includes such new products. In addition, our ability to maintain favorable pricing of new products may be challenging if we bundle such products with sales of existing products. A delay in the recognition of revenue from sales of acquired or alliance products, or reduced pricing due to bundled sales, may cause fluctuations in our quarterly financial results, may adversely affect our operating margins and may reduce the benefits of such acquisitions or alliances.

Additionally, competition within the software industry for acquisitions of businesses, technologies and assets has been, and may continue to be, intense. As such, even if we are able to identify an acquisition that we would like to pursue, the target may be acquired by another strategic buyer or financial buyer such as a private equity firm, or we may otherwise not be able to complete the acquisition on commercially reasonable terms, if at all. Moreover, in addition to our failure to realize the anticipated benefits of any acquisition, including our revenue or return on investment assumptions, we may be exposed to unknown liabilities or impairment charges as a result of acquisitions we do complete.

***We face intense competition in our market, which could negatively impact our business, results of operations and financial condition and cause our market share to decline.***

The market for our software and services is intensely competitive. The competitors we face in any sale may change depending on, among other things, the line of business purchasing the software, the application being sold, the geography in which we are operating and the size of the insurance carrier to which we are selling. For example, we are more likely to face competition from small independent firms when addressing the needs of small insurers. These competitors may compete on the basis of price, the time and cost required for software implementation, custom development, or unique product features or functions. Outside of the United States, we are more likely to compete against vendors that may differentiate themselves based on local advantages in language, market knowledge and pre-built content applicable to that jurisdiction. We also compete with vendors of horizontal software products that may be customized to address needs of the P&C insurance industry.

Additionally, many of our prospective customers operate firmly entrenched legacy systems, some of which have been in operation for decades. Our implementation cycles may be lengthy, variable and require the investment of significant time and expense by our customers. These expenses and associated operating risks attendant on any significant process of re-engineering and technology implementation exercise, may cause customers to prefer maintaining legacy systems. Also, maintaining these legacy systems may be so time consuming and costly for our customers that they do not have adequate resources to devote to the purchase and implementation of our products. We also compete against technology consulting firms that either helped create such legacy systems or may own, in full or in part, subsidiaries that develop software and systems for the P&C insurance industry.

As we expand our product portfolio, we may begin to compete with software and service providers we have not competed against previously. Such potential competitors offer data and analytics tools that may, in time, become more competitive with our offerings.

We expect the intensity of competition to remain high in the future, as the amount of capital invested in current and potential competitors has increased significantly in recent years, and this may lead to improved product or sales capabilities, which in turn could lead to new or expanded partnerships with systems integrators. Continuing intense competition could result in increased pricing pressure, increased sales and marketing expenses, and greater investments in research and development, each of which could negatively impact our profitability. In addition, the failure to increase, or the loss of market share, would harm our business, results of operations, financial condition and/or future prospects. Our larger current and potential competitors may be able to devote greater resources to the development, promotion and sale of their products than we can devote to ours, which could allow them to respond more quickly than we can to new technologies and changes in customer needs, thus leading to their wider market acceptance. We may not be able to compete effectively and competitive pressures may prevent us from acquiring and maintaining the customer base necessary for us to increase our revenue and profitability.

In addition, our industry is evolving rapidly and we anticipate the market for cloud-based solutions will become increasingly competitive. If our current and potential customers move a greater proportion of their data and computational needs to the cloud, new competitors may emerge that offer services either comparable or better suited than ours to address the demand for such cloud-based solutions, which could reduce demand for our offerings. To compete effectively we will likely be required to increase our



investment in research and development, as well as the personnel and third-party services required to improve reliability and lower the cost of delivery of our cloud-based solutions. This may increase our costs more than we anticipate and may adversely impact our results of operations.

Our current and potential competitors may also establish cooperative relationships among themselves or with third parties to further enhance their resources and offerings. Current or potential competitors may be acquired by other vendors or third parties with greater available resources. As a result of such acquisitions, our current or potential competitors might be more able than we are to adapt quickly to new technologies and customer needs, to devote greater resources to the promotion or sale of their products and services, to initiate or withstand substantial price competition, or to take advantage of emerging opportunities by developing and expanding their product and service offerings more quickly than we can. Additionally, they may hold larger portfolios of patents and other intellectual property rights as a result of such relationships or acquisitions. If we are unable to compete effectively with these evolving competitors for market share, our business, results of operations and financial condition could be materially and adversely affected.

***If our products or cloud-based services experience data security breaches, and there is unauthorized access to our customers' data, we may lose current or future customers and our reputation and business may be harmed.***

If our security measures are breached or unauthorized access to customer data is otherwise obtained, our products may be perceived as not being secure, customers may reduce the use of or stop using our products, and we may incur significant liabilities. Our software and cloud services involve the storage and transmission of data, including in some cases, personal data, and security breaches could result in the loss of this information, which in turn could result in litigation, breach of contract claims, indemnity obligations and other liability for our company. While we have taken steps to protect the confidential information to which we have access, including confidential information we may obtain through our customer support services or customer usage of our cloud-based services, our security measures could be breached. We rely on third-party technology and systems for a variety of services, including, without limitation, encryption and authentication technology, employee email, content delivery to customers, back-office support and other functions, and our ability to control or prevent breaches of any of these systems may be beyond our control. Because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. Although we have developed systems and processes that are designed to protect customer information and prevent data loss and other security breaches, including systems and processes designed to reduce the impact of a security breach at a third-party vendor, such measures cannot provide absolute security. Any or all of these issues could negatively impact our ability to attract new customers or to increase engagement by existing customers, could cause existing customers to elect not to renew their term licenses or subscription agreements, or could subject us to third-party lawsuits, regulatory fines or other action or liability, thereby adversely affecting our results of operations.

***The nature of our business requires the application of complex revenue and expense recognition rules that require management to make estimates and assumptions. Additionally, the current legislative and regulatory environment affecting United States Generally Accepted Accounting Principles ("GAAP") is uncertain and significant changes in current principles could affect our financial statements going forward.***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenue and expenses that are not readily apparent from other sources.

While we believe that our financial statements have been prepared in accordance with accounting principles generally accepted in the United States, we cannot predict the impact of future changes to accounting principles or our accounting policies on our financial statements going forward. In addition, were we to change our critical accounting estimates, including the timing of recognition of license revenue and other revenue sources, our reported revenue and results of operations could be significantly impacted.

The accounting rules and regulations that we must comply with are complex. Additionally, the Financial Accounting Standards Board (the "FASB") and the Securities and Exchange Commission have focused on the integrity of financial reporting, and many companies' accounting policies are being subject to heightened scrutiny by regulators and the public. Further, the accounting rules and regulations are continually changing in ways that could materially impact our financial statements.

The FASB issued ASC 606, accounting guidance on revenue recognition, that became effective for us on August 1, 2018. The standard permits the use of either the full retrospective or modified retrospective method. We selected the modified retrospective method. While we continue to finalize the impact this guidance will have on our financial condition and results of operations, any change in how we recognize revenue can have a significant impact on our quarterly or annual financial results from operations.

In order to reduce the risk of financial statement volatility, we revised our contracting practices primarily by shortening the initial non-refundable term of our licenses. If we are unsuccessful in adapting our business to the requirements of the new revenue standard, or if changes to our go-to-market strategy create new risks, then we may experience greater volatility in our quarterly and annual results, which may cause our stock price to decline. In addition to greater volatility, the application of this new standard may result in a material adverse effect on our recognized revenue and net income, despite no change in associated cash flows on the date of adoption. Further, under ASC 606, more judgment and estimates will be required within the revenue recognition process than are required under existing GAAP. We currently anticipate that this standard could create volatility in our reported revenue and results of operations, which could negatively impact our stock price.

***We have implemented a new enterprise resource planning system as well as other accounting and sales IT systems. If these new systems prove ineffective, or if we experience issues with the transition from our current systems, we may be unable to timely or accurately prepare financial reports, or invoice and collect from our customers.***

In fiscal year 2017, we began the process of implementing a new enterprise resource planning (“ERP”) system and other accounting systems, including a new revenue reporting system in advance of the adoption of ASC 606 in fiscal year 2019. These systems are critical for accurately maintaining books and records and preparing our financial statements. We have completed the transition to our new ERP system and have begun using the new revenue reporting system at the beginning of fiscal year 2019. While we have invested significant amounts, including for additional personnel and third party consultants, to implement these systems, we cannot assure you that we will not experience difficulties following the transition. Any errors in our new ERP system could adversely affect our operations, including our ability to accurately report our financial results in a timely manner, file our quarterly or annual reports with the SEC, and invoice and collect from our customers, each of which may harm our operations and reduce investor confidence. Data integrity problems or other issues may be discovered even though the transition is complete which, if not corrected, could impact our business, reputation or results of operations. If we encounter unforeseen difficulties with our new ERP and revenue systems, there will be additional demands on our management team and our business, operations and results of operations could be adversely affected.

***Our customers may defer or forego purchases of our products or services in the event of weakened global economic conditions, political transitions, and industry consolidation.***

General worldwide economic conditions remain unstable. Prolonged economic uncertainties or downturns could harm our business operations or financial results. For example, the decision by referendum to withdraw the United Kingdom (U.K.) from the European Union (“Brexit”) in June 2016 caused significant volatility in global stock markets and fluctuations in currency exchange rates and the impending Brexit has arguably caused and may continue to cause delays in purchasing decisions by our potential and current customers affected by this transition. The results of this referendum, or other global events such as the recent imposition of various trade tariffs, may continue to create global economic uncertainty not only in the U.K., but in other regions in which we have significant operations. These conditions make it difficult for our customers and us to forecast and plan future business activities accurately, and they could cause our customers to reevaluate their decision to purchase our products, which could delay and lengthen our sales cycles or result in cancellations of planned purchases. Furthermore, during challenging economic times our customers may face issues in gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us. If that were to occur, we may not receive amounts owed to us and may be required to record an allowance for doubtful accounts, which would adversely affect our financial results. A substantial downturn in the P&C insurance industry may cause firms to react to worsening conditions by reducing their capital expenditures, reducing their spending on information technology, delaying or canceling information technology projects, or seek to lower their costs by renegotiating vendor contracts. Negative or worsening conditions in the general economy both in the United States and abroad, including conditions resulting from financial and credit market fluctuations, could cause a decrease in corporate spending on enterprise software in general, and in the insurance industry specifically, and negatively affect the rate of growth of our business.

The increased pace of consolidation in the P&C insurance industry may result in reduced overall spending on our products. Acquisitions of customers can delay or cancel sales cycles and because we cannot predict the timing or duration of such acquisitions, our results of operations could be materially impacted by the change in the industry.

***Factors outside of our control including but not limited to natural catastrophes and terrorism may adversely impact the P&C insurance industry, preventing us from expanding or maintaining our existing customer base and increasing our revenue.***

Our customers are P&C insurers which have experienced, and will likely experience in the future, losses from catastrophes or terrorism that may adversely impact their businesses. Catastrophes can be caused by various events, including, without limitation, hurricanes, tsunamis, floods, windstorms, earthquakes, hail, tornadoes, explosions, severe weather and fires. Global warming trends are contributing to an increase in erratic weather patterns globally and intensifying the impact of certain types of catastrophes. Moreover, acts of terrorism or war could cause disruptions to our business or our customers’ businesses or the economy as a whole.

The risks associated with natural catastrophes and terrorism are inherently unpredictable, and it is difficult to forecast the timing of such events or estimate the amount of losses they will generate. In both 2017 and 2018, for example, parts of the United States suffered extensive damage due to multiple hurricanes and fires. We anticipate the combined effect of those losses on P&C insurers to be very large. Such losses and losses due to future events may adversely impact our current or potential customers, which may prevent us from maintaining or expanding our customer base and increasing our revenue as such events may cause customers to postpone purchases of new offerings and professional service engagements or to discontinue existing projects.

***Our sales and implementation cycles are lengthy and variable, depend upon factors outside our control, and could cause us to expend significant time and resources prior to generating revenue.***

The typical sales cycle for our products and services is lengthy and unpredictable, requires pre-purchase evaluation by a significant number of employees in our customers' organizations, and often involves a significant operational decision by our customers. Our sales efforts involve educating our customers about the use and benefits of our products, including the technical capabilities of our products and the potential cost savings achievable by organizations deploying our products. Customers typically undertake a significant evaluation process, which frequently involves not only our products, but also those of our competitors and can result in a lengthy sales cycle. We spend substantial time, effort and money in our sales efforts without any assurance that our efforts will produce sales. Even if we succeed at completing a sale, we may be unable to predict the size of an initial license until very late in the sales cycle. In addition, we sometimes commit to include specific functions in our base product offering at the request of a customer or group of customers and are unable to recognize license revenue until the specific functions have been added to our products. Providing this additional functionality may be time consuming and may involve factors that are outside of our control. Customers may also insist that we commit to certain time frames in which systems built around our products will be operational, or that once implemented our products will be able to meet certain operational requirements. Our ability to meet such timeframes and requirements may involve factors that are outside of our control, and failure to meet such timeframes and requirements could result in us incurring penalties, costs and/or additional resource commitments, which would adversely affect our business and results of operations.

The implementation and testing of our products by our customers typically lasts 6 to 24 months or longer and unexpected implementation delays and difficulties can occur. Implementing our products typically involves integration with our customers' and third-party's systems, as well as adding customer and third-party data to our platform. This can be complex, time consuming and expensive for our customers and can result in delays in the implementation and deployment of our products. Failing to meet the expectations of our customers for the implementation of our products could result in a loss of customers and negative publicity about us and our products and services. Such failure could result from deficiencies in our product capabilities or inadequate service engagements by us, our system integrator partners or our customers' employees, the latter two of which are beyond our direct control. The consequences of such failure could include, and have included: monetary credits for current or future service engagements, reduced fees for additional product sales or upon renewals of existing licenses, and a customer's refusal to pay their contractually-obligated license, maintenance or service fees. In addition, time-consuming implementations may also increase the amount of services personnel we must allocate to each customer, thereby increasing our costs and adversely affecting our business, results of operations and financial condition.

***If we are unable to continue the successful development of our global direct sales force and the expansion of our relationships with our strategic partners, sales of our products and services will suffer and our growth could be slower than we project.***

We believe that our future growth will depend on the continued recruiting, retention and training of our global direct sales force and their ability to obtain new customers, both large and small P&C insurers, and to manage our existing customer base. Our ability to achieve significant growth in revenue in the future will depend, in large part, on our success in recruiting, training and retaining a sufficient number of global direct sales personnel. New hires require significant training and may, in some cases, take more than a year before becoming productive, if at all. If we are unable to hire and develop sufficient numbers of productive global direct sales personnel, sales of our products and services will suffer and our growth will be impeded.

We believe our future growth also will depend on the retention and expansion of successful relationships with system integrators, including with system integrators that will focus on products we may acquire in the future. Our system integrators as channel partners help us reach additional customers. Our growth in revenue, particularly in international markets, will be influenced by the development and maintenance of this indirect sales channel which, in some cases, may require the establishment of effective relationships with regional systems integrators. Although we have established relationships with some of the leading system integrators, our products and services may compete directly against products and services that such leading system integrators support or market. We are unable to control the quantity or quality of resources that our system integrator partners commit to implementing our products, or the quality or timeliness of such implementation. If our partners do not commit sufficient or qualified resources to these activities, our customers will be less satisfied, be less supportive with references, or may require the investment of our resources at discounted rates. These, and other failures by our partners to successfully implement our products, will have an adverse effect on our business and our results of operations could fail to grow in line with our projections.

***Our large customers have substantial negotiating leverage, which may require that we agree to terms and conditions that result in increased cost of sales, decreased revenue and lower average selling prices and gross margins, all of which could harm our results of operations.***

Some of our customers include the world's largest P&C insurers. These customers have significant bargaining power when negotiating new licenses or subscriptions, or renewals of existing agreements, and have the ability to buy similar products from other vendors or develop such systems internally. These customers have and may continue to seek advantageous pricing and other commercial terms and may require us to develop additional features in the products we sell to them. We have been required to, and may continue to be required to, reduce the average selling price of our products in response to these pressures. If we are unable to avoid reducing our average selling prices, our results of operations could be harmed.

***Failure of any of our established products or services to satisfy customer demands or to maintain market acceptance would harm our business, results of operations, financial condition and growth prospects.***

We derive a significant majority of our revenue and cash flows from our established product offerings, including InsuranceSuite, InsuranceNow and our Digital and Data Products. We expect to continue to derive a substantial portion of our revenue from these sources. As such, continued market acceptance of these products is critical to our growth and success. Demand for our products is affected by a number of factors, some of which are beyond our control, including the successful implementation of our products, the timing of development and release of new products by us and our competitors, technological advances which reduce the appeal of our products, and the growth or contraction in the worldwide market for technological solutions for the P&C insurance industry. If we are unable to continue to meet customer demands, to achieve and maintain a technological advantage over competitors, or to maintain market acceptance of our products, our business, results of operations, financial condition and growth prospects may be adversely affected.

***Our business depends on customers renewing and expanding their license, maintenance and subscription contracts for our products. A decline in our customer renewals and expansions could harm our future results of operations.***

Our customers have no obligation to renew their term licenses or subscriptions after their contract period expires, and these licenses and subscriptions, if renewed, may be done so on less favorable terms. Moreover, under certain circumstances, our customers have the right to cancel their licenses or subscriptions before they expire. We may not accurately predict future trends in customer renewals. In addition, our perpetual license customers have no obligation to renew their maintenance arrangements after the expiration of the initial contractual period. Our customers' renewal rates may fluctuate or decline because of several factors, including their satisfaction or dissatisfaction with our products and services, the prices of our products and services, the prices of products and services offered by our competitors or reductions in our customers' spending levels due to the macroeconomic environment or other factors, or the sale of their operations to a buyer that is not a current customer.

Also, in some cases, our customers have a right to exercise a perpetual buyout of their term licenses at the end of the initial contract term, which if exercised would eliminate future term license payments. If our customers do not renew their term licenses or subscriptions for our solutions or renew on less favorable terms, our revenue may decline or grow more slowly than expected and our profitability may be harmed.

***If we are unable to develop, introduce and market new and enhanced versions of our products, we may be put at a competitive disadvantage.***

Our success depends on our continued ability to develop, introduce and market new and enhanced versions of our products to meet evolving customer requirements. Because some of our products are complex and require rigorous testing, development cycles can be lengthy, taking us multiple years to develop and introduce new products or provide updates to our existing products. Additionally, market conditions may dictate that we change the technology platform underlying our existing products or that new products be developed on different technology platforms, potentially adding material time and expense to our development cycles. The nature of these development cycles may cause us to experience delays between the time we incur expenses associated with research and development and the time we generate revenue, if any, from such expenses.

If we fail to develop new products or enhancements to our existing products, our business could be adversely affected, especially if our competitors are able to introduce products with enhanced functionality. It is critical to our success for us to anticipate changes in technology, industry standards and customer requirements and to successfully introduce new, enhanced and competitive products to meet our customers' and prospective customers' needs on a timely basis. We have invested and intend to increase investments in research and development to meet these challenges. Revenue may not be sufficient to support the future product development that is required for us to remain competitive. If we fail to develop products in a timely manner that are competitive in technology and price or develop products that fail to meet customer demands, our market share will decline and our business and results of operations could be harmed.

***Real or perceived errors or failures in our products or implementation services may affect our reputation, cause us to lose customers and reduce sales which may harm our business and results of operations and subject us to liability for breach of warranty claims.***

Because we offer complex products, undetected errors or failures may exist or occur, especially when products are first introduced or when new versions are released. Our products are often installed and used in large-scale computing environments with different operating systems, system management software and equipment and networking configurations, which may cause errors or failures in our products or may expose undetected errors, failures or bugs in our products. Despite testing by us, we may not identify all errors, failures or bugs in new products or releases until after commencement of commercial sales or installation. In the past, we have discovered software errors, failures and bugs in some of our product offerings after their introduction.

We provide our customers with upfront estimates regarding the duration, resources and costs associated with the implementation of our products. Failure to meet these upfront estimates and the expectations of our customers could result from our product capabilities or service engagements performed by us, our system integrator partners or our customers' employees, the latter two of which are beyond our direct control. The consequences could include, and have included: monetary credits for current or future service engagements, reduced fees for additional product sales, and a customer's refusal to pay their contractually-obligated license, maintenance or service fees. In addition, time-consuming implementations may also increase the amount of services personnel we must allocate to each customer, thereby increasing our costs and adversely affecting our business, results of operations and financial condition.

The license and support of our software creates the risk of significant liability claims against us. Our license and subscription agreements with our customers contain provisions designed to limit our exposure to potential liability claims. It is possible, however, that the limitation of liability provisions contained in such agreements may not be enforced as a result of international, federal, state and local laws or ordinances or unfavorable judicial decisions. Breach of warranty or damage liability, or injunctive relief resulting from such claims, could harm our results of operations and financial condition.

***Failure to protect our intellectual property could substantially harm our business and results of operations.***

Our success depends in part on our ability to enforce and defend our intellectual property rights. We rely upon a combination of trademark, trade secret, copyright, patent and unfair competition laws, as well as license agreements and other contractual provisions, to do so.

We have filed, and may in the future file, patent applications related to certain of our innovations. We do not know whether those patent applications will result in the issuance of a patent or whether the examination process will require us to narrow our claims. In addition, we may not receive competitive advantages from the rights granted under our patents and other intellectual property. Our existing patents and any patents granted to us or that we otherwise acquire in the future, may be contested, circumvented or invalidated, and we may not be able to prevent third parties from infringing these patents. Therefore, the extent of the protection afforded by these patents cannot be predicted with certainty. In addition, given the costs, effort, risks and downside of obtaining patent protection, including the requirement to ultimately disclose the invention to the public, we may choose not to seek patent protection for certain innovations; however, such patent protection could later prove to be important to our business.

We also rely on several registered and unregistered trademarks to protect our brand. Nevertheless, competitors may adopt service names similar to ours, or purchase our trademarks and confusingly similar terms as keywords in Internet search engine advertising programs, thereby impeding our ability to build brand identity and possibly leading to confusion in the marketplace. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our trademarks. Any claims or customer confusion related to our trademarks could damage our reputation and brand and substantially harm our business and results of operations.

We attempt to protect our intellectual property, technology, and confidential information by generally requiring our employees and consultants to enter into confidentiality and assignment of inventions agreements and third parties to enter into nondisclosure agreements, all of which offer only limited protection. These agreements may not effectively prevent unauthorized use or disclosure of our confidential information, intellectual property or technology and may not provide an adequate remedy in the event of unauthorized use or disclosure of our confidential information, intellectual property or technology. Despite our efforts to protect our confidential information, intellectual property, and technology, unauthorized third parties may gain access to our confidential proprietary information, develop and market products or services similar to ours, or use trademarks similar to ours, any of which could materially harm our business and results of operations. In addition, others may independently discover our trade secrets and confidential information, and in such cases, we could not assert any trade secret rights against such parties. Existing United States federal, state and international intellectual property laws offer only limited protection. The laws of some foreign countries do not protect our intellectual property rights to as great an extent as the laws of the United States, and many foreign countries do not enforce these laws as diligently as governmental agencies and private parties in the United States. Moreover, policing our intellectual property rights is difficult, costly and may not always be effective.

From time to time, legal action by us may be necessary to enforce our patents and other intellectual property rights, to protect our trade secrets, to determine the validity and scope of the intellectual property rights of others or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of resources and could negatively affect our business, reputation, results of operations and financial condition. If we are unable to protect our technology and to adequately maintain and protect our intellectual property rights, we may find ourselves at a competitive disadvantage to others who need not incur the additional expense, time and effort required to create the innovative products that have enabled us to be successful to date.

***We may be obligated to disclose our proprietary source code to our customers, which may limit our ability to protect our intellectual property and could reduce the renewals of our support and maintenance services.***

Our software license agreements typically contain provisions permitting the customer to become a party to, or a beneficiary of, a source code escrow agreement under which we place the proprietary source code for our applicable products in escrow with a third party. Under these escrow agreements, the source code to the applicable product may be released to the customer, typically for its use to maintain, modify and enhance the product, upon the occurrence of specified events, such as our filing for bankruptcy, discontinuance of our maintenance services and breaching our representations, warranties or covenants of our agreements with our customers. Additionally, in some cases, customers have the right to request access to our source code upon demand. Some of our customers have obtained the source code for certain of our products by exercising this right, and others may do so in the future.

Disclosing the content of our source code may limit the intellectual property protection we can obtain or maintain for that source code or the products containing that source code and may facilitate intellectual property infringement claims against us. It also could permit a customer to which a product's source code is disclosed to support and maintain that software product without being required to purchase our support or maintenance services. Each of these could harm our business, results of operations and financial condition.

***We and our customers rely on technology and intellectual property of third-parties, the loss of which could limit the functionality of our products and disrupt our business.***

We use technology and intellectual property licensed from unaffiliated third-parties in certain of our products, and we may license additional third-party technology and intellectual property in the future. Any errors or defects in this third-party technology and intellectual property could result in errors that could harm our brand and business. In addition, licensed technology and intellectual property may not continue to be available on commercially reasonable terms, or at all. The loss of the right to license and distribute this third-party technology could limit the functionality of our products and might require us to redesign our products.

***Some of our services and technologies may use "open source" software, which may restrict how we use or distribute our services or require that we release the source code of certain products subject to those licenses.***

Some of our services and technologies may incorporate software licensed under so-called "open source" licenses. In addition to risks related to license requirements, usage of open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on origin of the software. Additionally, some open source licenses require that source code subject to the license be made available to the public and that any modifications or derivative works to open source software continue to be licensed under open source licenses. These open source licenses typically mandate that proprietary software, when combined in specific ways with open source software, become subject to the open source license. If we combine our proprietary software in such ways with open source software, we could be required to release the source code of our proprietary software.

We take steps to ensure that our proprietary software is not combined with, and does not incorporate, open source software in ways that would require our proprietary software to be subject to many of the restrictions in an open source license. However, few courts have interpreted open source licenses, and the manner in which these licenses may be interpreted and enforced is therefore subject to some uncertainty. Additionally, we rely on hundreds of software programmers to design our proprietary technologies, and although we take steps to prevent our programmers from including objectionable open source software in the technologies and software code that they design, write and modify, we do not exercise complete control over the development efforts of our programmers and we cannot be certain that our programmers have not incorporated such open source software into our proprietary products and technologies or that they will not do so in the future. In the event that portions of our proprietary technology are determined to be subject to an open source license, we could be required to publicly release the affected portions of our source code, re-engineer all or a portion of our technologies, or otherwise be limited in the licensing of our technologies, each of which could reduce or eliminate the value of our services and technologies and materially and adversely affect our business, results of operations and prospects.

***Incorrect or improper use of our products or our failure to properly train customers on how to utilize our products could result in customer dissatisfaction and negatively affect our business, results of operations, financial condition and growth prospects.***

Our products are complex and are deployed in a wide variety of network environments. The proper use of our products requires training of the customer. If our products are not used correctly or as intended, inadequate performance may result. Our products may also be intentionally misused or abused by customers or their employees or third parties who are able to access or use our products. Because our customers rely on our products, services and maintenance support to manage a wide range of operations, the incorrect or improper use of our products, our failure to properly train customers on how to efficiently and effectively use our products, or our failure to properly provide maintenance services to our customers may result in negative publicity or legal claims against us. Also, as we continue to expand our customer base, any failure by us to properly provide these services will likely result in lost opportunities for follow-on sales of our products and services.

In addition, if there is substantial turnover of customer personnel responsible for use of our products, or if customer personnel are not well trained in the use of our products, customers may defer the deployment of our products, may deploy them in a more limited manner than originally anticipated or may not deploy them at all. Further, if there is substantial turnover of the customer personnel responsible for use of our products, our ability to make additional sales may be substantially limited.

***Our ability to sell our products is highly dependent on the quality of our professional services and technical support services and the support of our system integration providers, and the failure of us or our system integration providers to offer high-quality professional services or technical support services could damage our reputation and adversely affect our ability to sell our products and services to new customers and renew agreements with our existing customers.***

If we or our system integration providers do not effectively assist our customers in deploying our products, succeed in helping our customers quickly resolve post-deployment issues, and provide effective ongoing support, our ability to sell additional products and services to existing customers would be adversely affected and our reputation with potential customers could be damaged. Once our products are deployed and integrated with our customers' existing information technology investments and data, our customers may depend on our technical support services and/or the support of system integrators or internal resources to resolve any issues relating to our products. High-quality support is critical for the continued successful marketing and sale of our products. In addition, as we continue to expand our operations internationally, our support organization will face additional challenges, including those associated with delivering support, training and documentation in languages other than English. Many enterprise customers require higher levels of support than smaller customers. If we fail to meet the requirements of our larger customers, it may be more difficult to sell additional products and services to these customers, a key group for the growth of our revenue and profitability. In addition, as we further expand our products to include a cloud-based offering, our professional services and support organization will face new challenges, including hiring, training and integrating a large number of new professional services personnel with experience in delivering high-quality support for cloud-based offerings. Alleviating any of these problems could require significant expenditures which could adversely affect our growth prospects. Further, as we continue to rely on system integrators to provide deployment and on-going services, our ability to ensure a high level of quality in addressing customer issues is diminished. Our failure to maintain high-quality implementation and support services, or to ensure that system integrators provide the same, could have a material adverse effect on our business, results of operations, financial condition and growth prospects.

***If we are unable to retain our personnel and hire and integrate additional skilled personnel, we may be unable to achieve our goals and our business will suffer.***

Our future success depends upon our ability to continue to attract, train, integrate and retain highly skilled employees, particularly those on our management team, including Marcus Ryu, one of our co-founders and our current president and chief executive officer, and our sales and marketing personnel, professional services personnel and software engineers. Our inability to attract and retain qualified personnel, or delays in hiring required personnel, may seriously harm our business, results of operations and financial condition. If U.S. immigration policy related to skilled foreign workers were materially adjusted, such a change could hamper our efforts to hire highly skilled foreign employees, including highly specialized engineers, which would adversely impact our business.

Any one of our executive officers and other key employees could terminate his or her relationship with us at any time. The loss of any member of our senior management team could significantly delay or prevent us from achieving our business and/or development objectives, and could materially harm our business.

We face competition for qualified individuals from numerous software and other technology companies. Competition for qualified personnel is particularly intense in the San Francisco Bay Area, where our headquarters are located, though we also face significant competition in all of our domestic and foreign development centers. Further, significant amounts of time and resources are required to train technical, sales, services and other personnel. We may incur significant costs to attract, train and retain such

personnel, and we may lose new employees to our competitors or other technology companies before we realize the benefit of our investment after recruiting and training them.

Also, to the extent that we hire personnel from competitors, we may be subject to allegations that such personnel have been improperly solicited or have divulged proprietary or other confidential information. In addition, we have a limited number of sales people and the loss of several sales people within a short period of time could have a negative impact on our sales efforts. We may be unable to attract and retain suitably qualified individuals who are capable of meeting our growing technical, operational and managerial requirements, or we may be required to pay increased compensation in order to do so.

Our ability to expand geographically depends, in large part, on our ability to attract, retain and integrate managers to lead the local business and employees with the appropriate skills. Similarly, our profitability depends on our ability to effectively utilize personnel with the right mix of skills and experience to perform services for our clients, including our ability to transition employees to new assignments on a timely basis. If we are unable to effectively deploy our employees globally on a timely basis to fulfill the needs of our clients, our reputation could suffer and our ability to attract new clients may be harmed.

Because of the technical nature of our products and services and the dynamic market in which we compete, any failure to attract, integrate and retain qualified direct sales, professional services and product development personnel, as well as our contract workers, could harm our ability to generate sales or successfully develop new products and consulting services and enhancements of existing products.

***Failure to manage our expanding operations effectively could harm our business.***

We have experienced consistent growth and expect to continue to expand our operations, including the number of employees and the locations and scope of our international operations. This expansion has placed, and will continue to place, a significant strain on our operational and financial resources and our personnel. To manage our anticipated future operational expansion effectively, we must continue to maintain and may need to enhance our information technology infrastructure, financial and accounting systems and controls and manage expanded operations and employees in geographically distributed locations. For example, we have recently implemented a new ERP system. Our growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of new products. If we increase the size of our organization without experiencing an increase in sales of our products and services, we will experience reductions in our gross and operating margins and net income. If we are unable to effectively manage our expanding operations, our expenses may increase more than expected, our revenue could decline or grow more slowly than expected and we may be unable to implement our business strategy.

***Our international sales and operations subject us to additional risks that can adversely affect our business, results of operations and financial condition.***

We sell our products and services to customers located outside the United States, and we are continuing to expand our international operations as part of our growth strategy. In fiscal years 2018, 2017 and 2016, \$244.1 million, \$213.1 million and \$193.5 million of our revenue, respectively, was derived from outside of the United States. Our current international operations and our plans to expand our international operations subject us to a variety of risks, including:

- increased management, travel, infrastructure and legal compliance costs associated with having multiple international operations;
- unique terms and conditions in contract negotiations imposed by customers in foreign countries;
- longer payment cycles and difficulties in enforcing contracts and collecting accounts receivable;
- the need to localize our products and licensing and subscription programs for international customers;
- lack of familiarity with and unexpected changes in foreign regulatory requirements;
- increased exposure to fluctuations in currency exchange rates;
- highly inflationary international economies, such as Argentina;
- the burdens and costs of complying with a wide variety of foreign laws and legal standards;
- compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended (“FCPA”), the U.K. Bribery Act and other anti-corruption regulations, particularly in emerging market countries;
- compliance by international staff with accounting practices generally accepted in the United States, including adherence to our accounting policies and internal controls;
- import and export license requirements, tariffs, taxes and other trade barriers;
- increased financial accounting and reporting burdens and complexities;
- weaker protection of intellectual property rights in some countries;
- multiple and possibly overlapping tax regimes;
- government sanctions that may interfere with our ability to sell into particular countries, such as Russia; and
- political, social and economic instability abroad, terrorist attacks and security concerns in general.



As we continue to expand our business globally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our international operations. Any of these risks could harm our international operations and reduce our international sales, adversely affecting our business, results of operations, financial condition and growth prospects.

***Our revenue, results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Canadian dollar, Australian dollar, Euro, British Pound, Japanese Yen, Polish Zloty, Brazilian Real, Malaysian Ringgit, and Argentine Peso.***

The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. Although we believe our operating activities act as a natural hedge for a substantial portion of our foreign currency exposure at the cash flow or operating income level because we typically collect revenue and incur costs in the currency of the location in which we provide our applications and services, our contracts with our customers are long-term in nature so it is difficult to predict if our operating activities will provide a natural hedge in the future. In addition, because our contracts are characterized by large annual payments, significant fluctuations in foreign currency exchange rates that coincide with annual payments may affect our revenue or financial results in such quarter. Our results of operations may also be impacted by transaction gains or losses related to revaluing certain current asset and liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. Moreover, significant and unforeseen changes in foreign currency exchange rates may cause us to fail to achieve our stated projections for revenue and operating income, which could have an adverse effect on our stock price. For example, in fiscal year 2018, the Argentine economy became highly inflationary; however, our new Argentina entity has had minimal activity through July 31, 2018. We will continue to experience fluctuations in foreign currency exchange rates, which, if material, may harm our revenue or results of operations.

***Privacy concerns could result in regulatory changes and impose additional costs and liabilities on us, limit our use of information, and adversely affect our business.***

Our current and predominant business model does not significantly collect and transfer personal information from our customers to us, however, as adoption of our cloud-based services occurs, the amount of customer data we manage, hold and/or collect will increase significantly. In addition, a limited number of our product solutions may collect, process, store, and use transaction-level data aggregated across insurers using our common data model. We anticipate that over time we will expand the use and collection of personal information as greater amounts of such personal information may be transferred from our customers to us and we recognize that personal privacy has become a significant issue in the United States, Europe, and many other jurisdictions where we operate. Many federal, state, and foreign legislatures and government agencies have imposed or are considering imposing restrictions and requirements about the collection, use, and disclosure of personal information.

Changes to laws or regulations affecting privacy could impose additional costs and liabilities on us and could limit our use of such information to add value for customers. If we were required to change our business activities or revise or eliminate services, or to implement burdensome compliance measures, our business and results of operations could be harmed. In addition, we may be subject to fines, penalties, and potential litigation if we fail to comply with applicable privacy and/or data security laws, regulations, standards and other requirements. The costs of compliance with and other burdens imposed by privacy-related laws, regulations and standards may limit the use and adoption of our product solutions and reduce overall demand.

Furthermore, concerns regarding data privacy and/or security may cause our customers' customers to resist providing the data and information necessary to allow our customers to use our product solutions effectively. Even the perception that the privacy and/or security of personal information is not satisfactorily managed, or does not meet applicable legal, regulatory and other requirements, could inhibit sales of our products or services, and could limit adoption of our solutions, resulting in a negative impact on our sales and results from operations.

***Privacy concerns in the European Union are evolving and we may face fines and other penalties if we fail to comply with these evolving standards, and compliance with these standards may increase our expenses and adversely affect our business and results of operations.***

In the European Community, Directive 95/46/EC (the "Directive") has required European Union member states to implement data protection laws to meet the strict privacy requirements of the Directive, which has resulted in changes in previously accepted practices.

Among other changes, European Union (the "EU") Commission has formally adopted a new mechanism for the transfer of personal data from the EU to the United States, branded the "EU-US Privacy Shield" ("Privacy Shield"). We are currently certified with the U.S. Department of Commerce ("DOC") to comply with the Privacy Shield Framework, however, companies will continue to face uncertainty to the extent they operate in both jurisdictions and transfer any Personal Data between the two. If we are investigated by a European data protection authority and found to be out of compliance, we could face fines and other penalties.

Any such investigation or charges by European data protection authorities could have a negative effect on our existing business and on our ability to attract and retain new customers.

While we will continue to undertake efforts to conform to current regulatory obligations and evolving best practices, we may be unsuccessful in conforming to means of transferring Personal Data from the European Economic Area (“EEA”). We may also experience hesitancy, reluctance, or refusal by European or multi-national customers to continue to use some of our services due to the potential risk exposure of Personal Data transfers and the current data protection obligations imposed on them by certain data protection authorities. Such customers may also view any alternative approaches to the transfer of any Personal Data as being too costly, too burdensome, or otherwise objectionable, and therefore may decide not to do business with us if the transfer of Personal Data is a necessary requirement.

Though our current and predominant business model does not significantly collect and transfer personal information from our customers to us, the potential transition to more cloud-based services, and the current data protection landscape in the EU may subject us to greater risk of potential inquiries and/or enforcement actions. We may find it necessary to establish alternative systems to maintain Personal Data originating from the EU in the EEA, which may involve substantial expense and may cause us to need to divert resources from other aspects of our business, all of which may adversely affect our results from operations. Further, any inability to adequately address privacy concerns in connection with our cloud-based services, or comply with applicable privacy or data protection laws, regulations and policies, could result in additional cost and liability to us, and adversely affect our ability to offer cloud-based services.

Anticipated further evolution of EU regulations on this topic may increase substantially the penalties to which we could be subject in the event of any non-compliance. We may incur substantial expense in complying with the new obligations to be imposed by new regulations and we may be required to make significant changes to our software applications and expanding business operations, all of which may adversely affect our results of operations.

***If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.***

Preparing our consolidated financial statements involves a number of complex manual and automated processes, which are dependent upon individual data input or review and require significant management judgment. One or more of these processes may result in errors that may not be detected and could result in a material misstatement of our consolidated financial statements. The Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) requires, among other things, that as a publicly-traded company we disclose whether our internal control over financial reporting and disclosure controls and procedures are effective.

If a material misstatement occurs in the future, we may fail to meet our future reporting obligations. For example, we may fail to file periodic reports in a timely manner or may need to restate our financial results, either of which may cause the price of our common stock to decline. Any failure of our internal controls could also adversely affect the results of the periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that are required under Section 404 of the Sarbanes-Oxley Act. Effective internal controls are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. Furthermore, transition in enterprise resource planning or other major operational systems could impact the timely generation of our financial statements. In fiscal year 2017, we began implementing a new financial management system, as well as applications to help us manage the recognition of our revenue under a new standard, which changes several of our procedures and controls. If as a result of implementing this new system or otherwise, we cannot provide timely reliable financial reports, our business and results of operations could be harmed, investors could lose confidence in our reported financial information, and the trading price of our stock could drop significantly.

***If tax laws change or we experience adverse outcomes resulting from examination of our income tax returns, it could adversely affect our results of operations.***

We are subject to federal, state and local income taxes in the United States and in foreign jurisdictions. Our future effective tax rates and the value of our deferred tax assets could be adversely affected by changes in tax laws, including impacts of the recently enacted Tax Cuts and Jobs Act, the consequences of which have not yet been fully determined. In addition, we are subject to the examination of our income tax returns by the Internal Revenue Service and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from such examinations to determine the adequacy of our provision for income taxes. Significant judgment is required in determining our worldwide provision for income taxes. Although we believe we have made appropriate provisions for taxes in the jurisdictions in which we operate, changes in the tax laws or challenges from tax authorities under existing tax laws could adversely affect our business, financial condition and results of operations.

***We may not be able to obtain capital when desired on favorable terms, if at all, and we may not be able to obtain capital or complete acquisitions through the use of equity without dilution to our stockholders.***

We may need additional financing to execute on our current or future business strategies, including to develop new or enhance existing products and services, acquire businesses and technologies, or otherwise to respond to competitive pressures.

If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our stockholders could be significantly diluted, and newly-issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we accumulate additional funds through debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. We cannot assure you that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or are not available on acceptable terms, when we desire them, our ability to fund our operations, take advantage of unanticipated opportunities, develop or enhance our products and services, or otherwise respond to competitive pressures would be significantly limited. Any of these factors could harm our results of operations.

***Our business is subject to the risks of earthquakes, fire, floods and other natural catastrophic events, and to interruption by man-made problems such as computer viruses.***

Our corporate headquarters and the majority of our operations are located in the San Francisco Bay Area, a region known for seismic activity. A significant natural disaster, such as an earthquake, tsunami, fire or a flood, could have a material adverse impact on our business, results of operations and financial condition. In addition, our information technology systems are vulnerable to computer viruses, break-ins and similar disruptions from unauthorized tampering. To the extent that such disruptions result in delays or cancellations of customer orders or collections, or the deployment of our products, our business, results of operations and financial condition would be adversely affected.

***Our stock price may be volatile, which could result in securities class action litigation against us.***

The market price of our common stock could be subject to wide fluctuations in response to, among other things, the risk factors described in this report, and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us and research analyst coverage about our business.

Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions, such as recessions, interest rate changes or international currency fluctuations, have and may continue to affect the market price of our common stock.

In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may become the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***We currently do not intend to pay dividends on our common stock and, consequently, your only opportunity to achieve a return on your investment is if the price of our common stock appreciates.***

We currently do not plan to declare dividends on shares of our common stock in the foreseeable future. Consequently, the only opportunity to achieve a return on investment in our company will be if the market price of our common stock appreciates and shares are sold at a profit.

***Certain provisions of our certificate of incorporation and bylaws and of Delaware law could prevent a takeover that stockholders consider favorable and could also reduce the market price of our stock.***

Our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions may also prevent or delay attempts by stockholders to replace or remove our current management or members of our board of directors. These provisions include:

- providing for a classified board of directors with staggered three-year terms, which could delay the ability of stockholders to change the membership of a majority of our board of directors;
- not providing for cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- authorizing our board of directors to issue, without stockholder approval, preferred stock rights senior to those of common stock, which could be used to significantly dilute the ownership of a hostile acquirer;

- prohibiting stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- limiting the persons who may call special meetings of stockholders, which could delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- requiring advance notification of stockholder nominations and proposals, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

The affirmative vote of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of our shares of capital stock entitled to vote is generally necessary to amend or repeal the above provisions that are contained in our amended and restated certificate of incorporation. Also, absent approval of our board of directors, our amended and restated bylaws may only be amended or repealed by the affirmative vote of the holders of at least 50% of our shares of capital stock entitled to vote.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from engaging in certain business combinations without approval of substantially all of our stockholders for a certain period of time.

These and other provisions in our amended and restated certificate of incorporation, our amended and restated bylaws and under Delaware law could discourage potential takeover attempts, reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than it would be without these provisions.

## **Risks Related to Our Indebtedness**

***Servicing our indebtedness requires a significant amount of cash. We may not have sufficient cash flow from our business to pay our substantial indebtedness, and we may not have the ability to raise the funds necessary to settle for cash conversions of the 2025 Notes or to repurchase the 2025 Notes upon a fundamental change, which could adversely affect our business and results of operations.***

As of July 31, 2018, we had outstanding an aggregate principal amount of \$400.0 million of our 1.25% convertible senior notes due 2025 (the "2025 Notes"). Our indebtedness may increase our vulnerability to any generally adverse economic and industry conditions, and we and our subsidiaries may, subject to the limitations in the terms of our existing and future indebtedness, incur additional debt, secure existing or future debt or recapitalize our debt. If we incur additional indebtedness, the risks related to our business and our ability to service or repay our indebtedness would increase.

Pursuant to their terms, holders may convert their 2025 Notes at their option prior to the scheduled maturities of their 2025 Notes under certain circumstances. Upon conversion of the 2025 Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be obligated to make cash payments. In addition, holders of our 2025 Notes will have the right to require us to repurchase their 2025 Notes upon the occurrence of a fundamental change (as defined in the Indenture) at a repurchase price equal to 100% of the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but not including, the fundamental change purchase date. Although it is our intention and we currently expect to have the ability to settle the 2025 Notes in cash, there is a risk that we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of 2025 Notes surrendered therefor or 2025 Notes being converted. In addition, our ability to make payments may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase 2025 Notes at a time when the repurchase is required by the Indenture or to pay any cash payable on future conversions of the 2025 Notes as required by such Indenture would constitute a default under such Indenture. A default under the Indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the 2025 Notes or make cash payments upon conversions thereof.

Our ability to make scheduled payments of the principal and interest on our indebtedness when due or to make payments upon conversion or repurchase demands with respect to our 2025 Notes, or to refinance our indebtedness as we may need or desire, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to satisfy our obligations under our existing indebtedness, and any future indebtedness we may incur, and to make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, refinancing or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance existing or future indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms or at all, which could result

in a default on our existing or future indebtedness and have a material adverse effect on our business, results of operations and financial condition.

***The conditional conversion feature of the 2025 Notes, if triggered, may adversely affect our financial condition and operating results.***

In the event the conditional conversion feature of the notes is triggered, holders of our 2025 Notes will be entitled to convert the 2025 Notes at any time during specified periods at their option. If one or more holders elect to convert their 2025 Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their 2025 Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***Transactions relating to our 2025 Notes may affect the value of our common stock.***

The conversion of some or all of the 2025 Notes would dilute the ownership interests of existing stockholders to the extent we satisfy our conversion obligation by delivering shares of our common stock upon any conversion of such 2025 Notes. Our 2025 Notes may become in the future convertible at the option of their holders under certain circumstances. If holders of our 2025 Notes elect to convert their notes, we may settle our conversion obligation by delivering to them a significant number of shares of our common stock, which would cause dilution to our existing stockholders.

In connection with the issuance of the 2025 Notes, we entered into capped call transactions with certain financial institutions (the “option counterparties”). The capped call transactions are expected generally to reduce the potential dilution to our common stock upon any conversion of the notes and/or offset any cash payments we are required to make in excess of the principal amount of converted notes, as the case may be, with such reduction and/or offset subject to a cap.

From time to time, the option counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivative transactions with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the 2025 Notes. This activity could cause a decrease in the market price of our common stock.

***The accounting method for convertible debt securities that may be settled in cash, such as the 2025 Notes, could have a material effect on our reported financial results.***

Under FASB Accounting Standards Codification 470-20 (“ASC 470-20”), Debt with Conversion and Other Options, an entity must separately account for the liability and equity components of convertible debt instruments (such as the 2025 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer’s economic interest cost. ASC 470-20 requires the value of the conversion option of the 2025 Notes, representing the equity component, to be recorded as additional paid-in capital within stockholders’ equity in our consolidated balance sheet as an original issue discount to the 2025 Notes, which reduces their initial carrying value. The carrying value of the 2025 Notes, net of the discount recorded, will be accreted up to the principal amount of the notes from the issuance date until maturity, which will result in non-cash charges to interest expense in our consolidated statement of operations. Accordingly, we will report lower net income or higher net loss in our financial results because ASC 470-20 requires interest to include both the current period’s accretion of the debt discount and the instrument’s coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the 2025 Notes.

In addition, under certain circumstances, convertible debt instruments (such as the 2025 Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the 2025 Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the 2025 Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the 2025 Notes, then our diluted earnings per share would be adversely affected.

***We are subject to counterparty risk with respect to the capped call transactions.***

The option counterparties are financial institutions, and we will be subject to the risk that any or all of them might default under the capped call transactions. Our exposure to the credit risk of the option counterparties will not be secured by any collateral. Past global economic conditions have resulted in the actual or perceived failure or financial difficulties of many financial institutions. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured

creditor in those proceedings with a claim equal to our exposure at that time under the capped call transactions with such option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the option counterparties.

**Item 1B. Unresolved Staff Comments**

Not applicable.

**Item 2. Properties**

Our corporate headquarters are located in Foster City, California, where we currently have a seven year lease for 97,674 square feet of space that commenced on August 1, 2012. As of July 31, 2018, we also lease facilities for our distributed sales, services and development centers, including in Bedford, Massachusetts; Birmingham, Alabama; Columbia, South Carolina; Edina, Minnesota; Exton, Pennsylvania; San Diego, California; San Jose, California; San Mateo, California; Dublin, Ireland; Krakow, Poland; London, United Kingdom; Madrid, Spain; Mississauga, Canada; Paris, France; Sydney, Australia; and Tokyo, Japan.

We believe that our facilities are suitable to meet our current needs, including our recently leased future headquarters in San Mateo, California for 179,496 square feet of space, which we intend to move into in mid-2019. We intend to expand our facilities or add new facilities as we add employees and enter new geographic markets, and we believe that suitable additional or alternative space will be available as needed to accommodate any such growth. However, we expect to incur additional expenses in connection with such new or expanded facilities, including our corporate headquarters.

**Item 3. Legal Proceedings**

From time to time we are involved in legal proceedings that arise in the ordinary course of our business. Any such proceedings, whether meritorious or not, could be time consuming, costly, and result in the diversion of significant operational resources or management time.

Although the outcomes of legal proceedings are inherently difficult to predict, we are not currently involved in any legal proceeding in which the outcome, in our judgment based on information currently available, is likely to have a material adverse effect on our business or financial position.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity****Securities**

Our common stock is listed on the New York Stock Exchange (“NYSE”) under the symbol “GWRE”. The following table sets forth the high and low sales price per share of our common stock as reported on the NYSE for the periods indicated:

	Fiscal Year 2018				Fiscal Year 2017			
		High		Low		High		Low
First Quarter	\$	81.46	\$	67.89	\$	63.90	\$	57.45
Second Quarter	\$	83.52	\$	70.06	\$	58.92	\$	49.33
Third Quarter	\$	92.65	\$	72.51	\$	61.72	\$	52.31
Fourth Quarter	\$	96.19	\$	83.70	\$	72.81	\$	60.50

On July 31, 2018, the last reported sale price of our common stock on the New York Stock Exchange was \$86.20 per share. As of July 31, 2018, we had 56 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

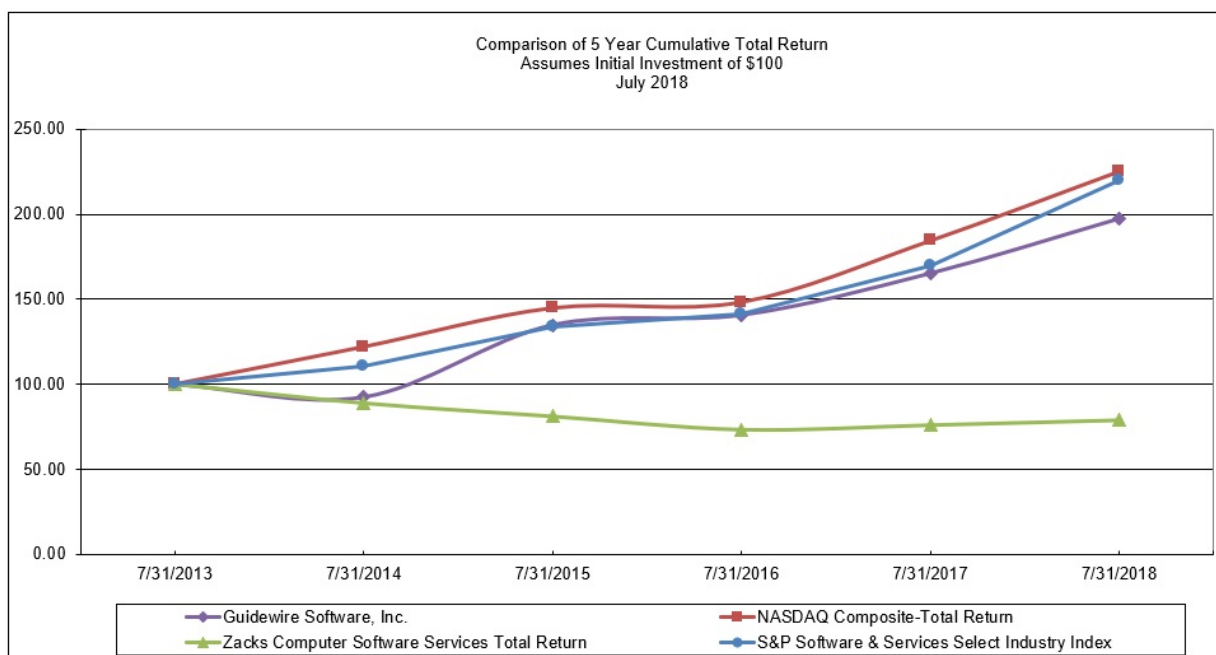
We have never declared or paid, and do not anticipate declaring or paying, any cash dividends on our capital stock. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our board of directors and will depend on then existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant.

**Performance Graph**

This performance graph shall not be deemed “soliciting material” or to be “filed” with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (“the Exchange Act”) or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any of our filings under the Securities Act of 1933, as amended (the “Securities Act”) or the Exchange Act.



The following graph shows a comparison of the cumulative total return for our common stock, the NASDAQ Composite-Total Return Index, Zacks Computer Software Services Total Return Index, and S&P Software & Services Select Industry Index for the period from July 31, 2013 through July 31, 2018. Such returns are based on historical results and are not intended to suggest future performance. Data for the NASDAQ Composite Total Return Index, Zacks Computer Software Services Total Return Index, and S&P Software & Services Select Industry Index assume reinvestment of dividends.



	<u>7/31/2013</u>	<u>7/31/2014</u>	<u>7/31/2015</u>	<u>7/31/2016</u>	<u>7/31/2017</u>	<u>7/31/2018</u>
Guidewire Software, Inc.	\$ 100.00	\$ 92.55	\$ 134.94	\$ 140.77	\$ 165.25	\$ 197.40
NASDAQ Composite-Total Return	\$ 100.00	\$ 122.00	\$ 144.83	\$ 148.24	\$ 184.43	\$ 225.25
Zacks Computer Software Services Total Return	\$ 100.00	\$ 88.85	\$ 81.15	\$ 73.39	\$ 76.05	\$ 78.90
S&P Software & Services Select Industry Index	\$ 100.00	\$ 111.03	\$ 133.79	\$ 141.70	\$ 170.09	\$ 219.95

### Unregistered Sales of Equity Securities and Use of Proceeds

#### Issuer Purchases of Equity Securities

There were no repurchases of shares of our common stock made during the three months and the fiscal year ended July 31, 2018.

## PART II

## Item 6. Selected Financial Data

## SELECTED CONSOLIDATED FINANCIAL DATA

The following tables set forth selected financial data as of and for the last five fiscal years. This selected financial data should be read in conjunction with our historical financial statements, including the notes thereto, and "Management's Discussion and Analysis of Financial Condition and Results of Operations," included elsewhere in this report.

	Fiscal years ended July 31,				
	2018	2017	2016	2015	2014
	(in thousands, except share and per share data)				
Total revenue	\$ 661,067	\$ 514,284	\$ 424,446	\$ 380,537	\$ 350,246
Total cost of revenue	296,707	191,559	151,834	147,184	148,947
Total gross profit	364,360	322,725	272,612	233,353	201,299
Income (loss) from operations	(7,330)	26,612	16,437	16,493	18,422
Net income (loss)	\$ (19,665)	\$ 21,224	\$ 14,976	\$ 9,885	\$ 14,721
Net income (loss) per share:					
Basic	\$ (0.25)	\$ 0.29	\$ 0.21	\$ 0.14	\$ 0.22
Diluted	\$ (0.25)	\$ 0.28	\$ 0.20	\$ 0.14	\$ 0.21
Shares used in computing net income (loss) per share:					
Basic	77,709,592	73,994,577	72,026,694	70,075,908	65,748,896
Diluted	77,709,592	75,328,343	73,765,960	72,314,433	69,112,733

	As of July 31,				
	2018	2017	2016	2015	2014
	(in thousands)				
Cash, cash equivalents and investments	\$ 1,258,100	\$ 687,788	\$ 735,802	\$ 677,752	\$ 647,781
Working capital	\$ 997,319	\$ 515,624	\$ 588,589	\$ 557,235	\$ 421,044
Total assets	\$ 1,978,592	\$ 1,078,901	\$ 916,178	\$ 799,947	\$ 757,227
Total stockholders' equity	\$ 1,423,744	\$ 893,281	\$ 783,935	\$ 689,388	\$ 650,686

## Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis should be read in conjunction with our consolidated financial statements and related notes thereto included in Item 8 and the Risk Factors included in Item 1A of Part I of this Annual Report on Form 10-K. All information presented herein is based on our fiscal calendar. Unless otherwise stated, references in this report to particular years or quarters refer to our fiscal years ended in July and the associated quarters of those fiscal years. We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.*

### Overview

We provide a technology platform, composed of software, services, and a partner ecosystem, for the global Property and Casualty (“P&C”) insurance industry.

Guidewire InsurancePlatform™ consists of cloud and on-premise applications to support core operations, data management and analytics, and digital engagement, and is connected to numerous data sources and third-party applications. Our applications are designed to work together to strengthen our customers’ ability to adapt and succeed in a rapidly changing market. Guidewire InsuranceSuite™ and Guidewire InsuranceNow™ provide core transactional systems of record supporting the entire insurance lifecycle, including product definition, distribution, underwriting, policy holder services and claims management. Guidewire InsuranceSuite is a highly configurable and scalable system comprised primarily of three applications (PolicyCenter, BillingCenter, and ClaimCenter) that can be licensed separately or together and can be deployed on-premise or in the cloud. Guidewire InsuranceNow is a cloud-based system that offers policy, billing, and claims management functionality to insurers that prefer an all-in-one solution. Our data and analytics applications enable insurers to manage data more effectively and gain insights into their business and underwrite new and evolving risks. Our digital engagement applications enable digital sales, omni-channel service and enhanced claims experiences for policyholders, agents, vendor partners and field personnel. To support P&C insurers globally, we have localized, and will continue to localize, our software for use in a variety of international regulatory, language and currency environments.

We sell our products to a wide variety of global P&C insurers, ranging from some of the largest global insurance carriers or their subsidiaries to national and regional carriers. Our customer engagement is led by our direct sales model and supported by our system integrator (“SI”) partners. We maintain and continue to grow our sales and marketing efforts globally, and maintain regional sales centers in the Americas, Europe and Asia. Strong customer relationships are a key driver of our success given the long-term nature of our engagements and the importance of customer references for new sales. We continue to focus on deepening our customer relationships through continued successful product implementations, robust product support, strategic engagement on new products and technologies, and ongoing account management.

Our sales cycles for new and existing customers remain protracted as customers are deliberate and the decision making and product evaluation process is long. These evaluation periods can extend further if the customer purchases multiple products or assesses the benefits of a cloud-based subscription in addition to our more traditional on-premises licensing models. Sales to new customers also involve extensive customer due diligence and reference checks. We must earn credibility with each successful implementation as we expand our sales operations, market products that have been acquired or newly introduced, and expand the ways we deliver our software. The success of our sales efforts relies on continued improvements and enhancements to our current products, the introduction of new products, and the continued development of relevant local content and the automated tools that we believe are optimal for updating that content.

To date, we have primarily licensed our software under term license contracts. We generally price our licenses based on the amount of direct written premiums (“DWP”) that will be managed by our solutions. Our term licenses for both recurring term license and maintenance fees are typically invoiced annually in advance or, in certain cases, quarterly. Term licenses that are greater than one year generally include extended payment terms. We assess whether a fee is fixed or determinable at the outset of the arrangement, primarily based on the payment terms associated with the transaction. For term licenses with extended payment terms entered into prior to August 1, 2018, term license fees are not considered to be fixed and determinable until they become due or payment is received, resulting in a deferral of the related revenue until this revenue recognition criteria is met, assuming all other revenue recognition criteria are satisfied. In preparing for our adoption of the new revenue recognition standard which will result in a majority of our term licenses being recognized as revenue upon delivery of the software rather than as payments are received or become due, we began revising our contracting practices in fiscal year 2017 by selling our term licenses with an initial two-year committed term and optional annual renewals. We also began a program to amend existing long-term contracts to the same committed term of two-years with optional annual renewals. A small portion of our revenue is derived from perpetual licenses, for which license revenue is recognized upon delivery of the software, provided that all revenue recognition criteria have been met.

We also offer subscriptions to our cloud-based services. Currently, these subscriptions may be for terms greater than two years, and we anticipate that a majority of these arrangements will be billed annually or quarterly in advance, although in some instances additional fees may be assessed in arrears as customers increase their DWP. Revenue derived from these subscriptions is recognized ratably over the contractual term beginning after the subscription is effectively provisioned, which is the date our software service is made available to customers. We anticipate that sales of subscriptions will increase as a percentage of annual sales as we sell more cloud-based services. As a result of the ratable recognition of revenue associated with subscriptions, a significant shift from term licenses to subscriptions may adversely affect our reported revenue growth. As this relatively new sales model matures, we may decide to change certain terms for future orders to remain competitive or otherwise meet market demands.

To extend our technology leadership in the global market, we continue to invest in research and development to enhance and improve our current products, introduce new products, and cost-effectively deploy our products in the cloud. Continued investment in product innovation is critical as we seek to assist our customers achieve their goals, maintain our competitive advantage, grow our revenue, expand internationally, and meet evolving customer demands. In certain cases, we will also acquire skills and technologies to accelerate our time to market for new products and solutions.

Our track record of success with customers and their implementations is central to maintaining our strong competitive position. We rely on our services teams and SI partners to meet our customers' implementation needs. Our services organization is comprised of on-site, near-shore, and off-shore technical experts. The services organization seeks to ensure that teams with the right combination of product and language skills are utilized in the most efficient way. Our partnerships with leading SIs allows us to increase efficiency and scale while reducing customer implementation costs. Our extensive relationships with SIs and industry partners have strengthened and expanded in line with the interest in and adoption of our products. We encourage our partners to co-market, pursue joint sales initiatives, and drive broader adoption of our technology, helping us grow our business more efficiently. We continue to grow our services organization and invest time and resources in increasing the number of qualified consultants employed by our SI partners, develop relationships with new SIs in existing and new markets, and ensure that all partners are ready to assist with implementing our products.

We face a number of risks in the execution of our strategy including risks related to expanding to new markets, managing lengthy sales cycles, competing effectively in the global market, relying on sales to a relatively small number of large customers, developing new or acquiring existing products successfully, migrating a portion of our business to a more ratable revenue recognition model as we bring to market more cloud-based solutions, and increasing the overall adoption of our products. In response to these and other risks we might face, we continue to invest in many areas of our business. Our investments in sales and marketing align with our goal of winning new customers in both existing and new markets, and enable us to maintain a persistent, consultative relationship with our existing customers. Our investments in product development are designed to meet the evolving needs of our customers. Our investments in services are designed to ensure customer success, both with on-premise and cloud-based solutions.

### **Acquisitions**

On November 1, 2017, we completed the acquisition of Cyence, Inc. ("Cyence"), for an aggregate consideration of approximately \$260.3 million, including cash of approximately \$146.6 million and equity consideration valued at approximately \$113.7 million of newly issued Guidewire common stock and options, net of certain adjustments. Through the acquisition we gained a cloud-based data listening and risk analytics technology that enables the P&C insurance industry to grow by underwriting new and evolving risks, such as cyber risk, that have gone underinsured or uninsured. This acquisition was accounted for as a business combination. The results of Cyence's operations have been included in our results of operations since November 1, 2017, the date of acquisition.

In February 2017, we completed the acquisition of ISCS, Inc. ("ISCS"), for cash consideration, net of certain adjustments, of approximately \$154.9 million. Through the acquisition we gained a cloud-based, all-in-one transactional platform that combines policy, billing, and claims management functionality for P&C insurers. Re-branded InsuranceNow, this platform enhances our ability to serve P&C insurers that have less complex businesses, require the functionality of a suite, and prefer cloud-based delivery. We will continue to invest in this platform, improving its scalability and performance, reducing its cost to implement and deliver, adapting it for international markets, and integrating it with our data and analytics and digital products. The results of ISCS's operations have been included in our results of operations since February 16, 2017, the date of acquisition.

In August 2016, we added Guidewire Underwriting Management through the acquisition of FirstBest, a provider of underwriting management systems and related applications to P&C insurers, for total consideration of approximately \$37.8 million. We believe that, over time, this acquisition will allow us to expand our insurance platform by providing insurers in the United States and Canada that write complex commercial, specialty, and workers' compensation lines greater support for their risk assessment and decision-making processes. The results of FirstBest's operations have been included in our results of operations since August 31, 2016, the date of acquisition.

## Seasonality

We have historically experienced seasonal variations in our license and other revenue as a result of increased customer orders in our second and fourth fiscal quarters. We generally see a modest increase in orders in our second fiscal quarter, which is the quarter ending January 31, due to customer buying patterns. We also see increased orders in our fourth fiscal quarter, which is the quarter ending July 31, due to efforts by our sales team to achieve annual incentives. This seasonal pattern, however, may be absent in any given year. For example, the timing of a small number of large transactions or the entry into term license agreements with a term of more than two years may be sufficient to disrupt seasonal revenue trends. Additionally, the adoption of ASC 606 will also heighten the seasonal impact on our new term licenses that are multi-year in nature with more revenue recognized upfront upon delivery of our software. On an annual basis, our maintenance revenue which is recognized ratably, may also be impacted in the event that seasonal patterns change significantly. During fiscal years in which subscriptions increase as a percentage of total sales, the revenue we can recognize in such fiscal year will be reduced, deferred revenue will increase, and our reported revenue growth will be adversely affected due to the ratable nature of these arrangements. The seasonal nature of our sales and the concentration of such sales in our fourth fiscal quarter magnifies this impact.

Our services revenue is also subject to seasonal fluctuations, though to a lesser degree than our license revenue. Our services revenue is impacted by the number of billable days in a given fiscal quarter. The fiscal quarter ended January 31 usually has fewer billable days due to the impact of the Thanksgiving, Christmas and New Year's holidays. The fiscal quarter ended July 31 usually has fewer billable days due to the impact of vacation times taken by our professional staff. Because we pay our services professionals the same amounts throughout the year, our gross margins on our services revenue is usually lower in these quarters. This seasonal pattern, however, may be absent in any given year.

## Public Offerings

On March 13, 2018, we closed a public offering of 2,628,571 shares of our common stock, including the underwriters' exercise in full of their option to purchase additional shares of our common stock. The public offering price of the shares sold in the offering was \$87.50 per share. Our stockholders did not sell any shares in this public offering. Concurrently, we offered and sold \$400.0 million aggregate principal amount of our 1.25% Convertible Senior Notes due 2025, including the underwriters' exercise in full of their option to purchase additional Convertible Senior Notes. Net of issuance costs, we received net proceeds of approximately \$220.9 million related to the common stock offering and \$387.2 million related to the convertible note offering.

## Key Business Metrics

We use certain key metrics to evaluate and manage our business, including rolling four-quarter recurring revenue from term licenses and total maintenance. In addition, we present selected GAAP and non-GAAP financial metrics, including operating cash flows and capital expenditures that we use internally to manage the business and that we believe are useful for investors.

### Four-Quarter Recurring Revenue

We measure four-quarter recurring revenue by adding the total term license and other revenue and total maintenance revenue recognized under GAAP in the preceding four quarters ended in the stated period. This metric excludes perpetual license revenue, revenue from perpetual buyout rights and services revenue. This metric has allowed us to better understand the trends in our recurring revenue because it typically reduces the variations in any particular quarter caused by seasonality, the effects of the annual invoicing of our term licenses and certain effects of contractual provisions that may accelerate or delay revenue recognition. This metric applies revenue recognition rules under GAAP and does not substitute individually tailored revenue recognition and measurement methods. With our transition to more subscription-based contracts and our adoption of new revenue recognition rules effective on August 1, 2018, this metric will become less indicative of our future revenue trends and will not be disclosed in future quarters. Our four-quarter recurring revenue for the last nine quarters was:

	Four quarters ended								
	July 31, 2018	April 30, 2018	January 31, 2018	October 31, 2017	July 31, 2017	April 30, 2017	January 31, 2017	October 31, 2016	July 31, 2016
	(in thousands, unaudited)								
Term license revenue	\$ 303,964	\$ 258,954	\$ 272,328	\$ 253,792	\$ 258,322	\$ 237,919	\$ 220,494	\$ 210,278	\$ 208,430
Total maintenance revenue	77,337	75,460	73,568	71,041	68,643	66,958	64,776	62,451	59,931
Total four-quarter recurring revenue	\$ 381,301	\$ 334,414	\$ 345,896	\$ 324,833	\$ 326,965	\$ 304,877	\$ 285,270	\$ 272,729	\$ 268,361

## **Operating Cash Flows and Capital Expenditures**

We monitor our cash flows from operating activities and used for capital expenditures, as a key measure of our overall business performance, which enables us to analyze our financial performance without the effects of certain non-cash items such as depreciation and amortization and stock-based compensation expenses. Additionally, operating cash flows takes into account the impact of changes in deferred revenue, which reflects the receipt of cash payment for products before they are recognized as revenue. Our operating cash flows are significantly impacted by the timing of invoicing and collections of accounts receivable, the size of our annual bonus payment, as well as payments of payroll and other taxes. As a result, our operating cash flows fluctuate significantly on a year-over-year basis. Cash provided by our operations were \$140.5 million, \$137.2 million, and \$99.9 million for fiscal years 2018, 2017 and 2016, respectively. Additionally, cash flows used for capital expenditures were \$12.0 million, \$6.7 million, and \$7.1 million for fiscal years 2018, 2017, and 2016, respectively. Our capital expenditures consisted of purchases of property and equipment, most of which was computer hardware, software, capitalized software development costs, and leasehold improvements. For a further discussion of our operating cash flows, see “Liquidity and Capital Resources-Cash Flows”.

## **Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in conformity with generally accepted accounting principles in the United States of America (“U.S. GAAP”). Accounting policies, methods and estimates are an integral part of the preparation of our consolidated financial statements in accordance with U.S. GAAP and, in part, are based upon management’s current judgments. Those judgments are normally based on knowledge and experience with regard to past and current events and assumptions about future events. Certain accounting policies, methods and estimates are particularly sensitive because of their significance to our consolidated financial statements and because of the possibility that future events affecting them may differ markedly from management’s current judgments. While there are a number of significant accounting policies, methods and estimates affecting our consolidated financial statements which are described in Note 1 “The Company and a Summary of Significant Accounting Policies” to our consolidated financial statements, areas that are particularly significant include:

- Revenue recognition policies; and
- Business combinations.

## **Revenue Recognition**

We enter into arrangements to deliver multiple products or services (multiple-elements). For a substantial majority of our sales, we apply software revenue recognition rules and allocate the total revenue among elements based on vendor-specific objective evidence (“VSOE”) of the fair value of each element. We recognize revenue on a net basis excluding indirect taxes, such as sales tax and value added tax, collected from customers and remitted to government authorities.

Revenue is derived from three sources:

- (i) License fees, related to term (or time-based) licenses, cloud-based subscriptions (also referred to as “subscriptions”), and perpetual software licenses;
- (ii) Maintenance fees associated with term or perpetual licenses relate to email and phone support, bug fixes and unspecified software updates, and upgrades released when, and if, available during the maintenance term; and
- (iii) Services fees from professional services related to implementation of our software, reimbursable travel, and training provided to our customers.

VSOE of fair value does not exist for our software licenses. Therefore, we allocate revenue to software licenses using the residual method. Under the residual method, the amount recognized for license fees is the difference between the total fixed and determinable fees and the VSOE of fair value for the undelivered elements under the arrangement.

The VSOE of fair value for elements of an arrangement is based upon the normal pricing and discounting practices for those elements when sold separately. VSOE of fair value for maintenance is established using the stated maintenance renewal rate in the customer’s contract. For term licenses with duration of one year or less, no VSOE of fair value for maintenance exists. VSOE of fair value for services is established if a substantial majority of historical stand-alone selling prices for a service fall within a reasonably narrow price range.

If the undelivered elements are all service elements and VSOE of fair value does not exist for one or more service element, the total arrangement fee is recognized ratably over the longest service period starting at software delivery, assuming all the related services have been made available to the customer.

Our subscription revenue is generally recognized ratably over the term of the arrangement, typically at the point in time our provisioning process has been completed and access has been made available to the customer.

As noted above, we generally invoice fees for licenses and maintenance to our customers in annual or, in certain cases, quarterly installments payable in advance. The fees related to maintenance are recognized over the period the maintenance is provided.

Substantially all of our professional services engagements are billed on a time and materials basis and are typically not considered essential to the functionality of the software. The related revenue and costs are recognized in the period incurred. In select situations, we will contract our professional services on a fixed fee basis, where we generally recognize services revenue on a proportional performance basis as the performance obligations are completed.

When professional services are sold with a license arrangement we evaluate whether those services are essential to the functionality of the software. In the limited cases where professional services are deemed to be essential to the functionality of the software and separate accounting for the services is not permitted, the arrangement is accounted for using contract accounting until the essential services are complete.

Deferred revenue represent amounts that are billed to or collected from creditworthy customers for which one or more of the revenue recognition criteria has not been met. The deferred revenue balance does not represent the total contract value of annual or multi-year, non-cancellable arrangements.

Effective August 1, 2018, we have adopted ASU No. 2014-09, "Revenue from Contracts with Customers (ASC 606)". Under this new accounting standard, our revenue in the future will be recognized differently than in the past. For example, our term licenses require payments to be made annually or quarterly in advance and are subject to extended payment terms. Currently under ASC 605, revenue associated with term software licenses are recognized in the earlier of the period in which the payments are due or are actually made. Under ASC 606, we will be required to recognize the revenue under term licenses not when payments are made or due, but when control of the software license is transferred to the customer, which occurs at or near the time a contract with a customer is executed. As a result, under ASC 606, contractually obligated payments allocated to the software license under a term license that we reasonably expect to collect would be recognized upon delivery.

### ***Business Combinations***

Accounting for business combinations requires us to make significant estimates and assumptions, especially at the acquisition date with respect to the valuation of the tangible and intangible assets acquired and liabilities assumed. We use our best estimates and assumptions to accurately assign fair value to the tangible and intangible assets acquired and liabilities assumed at the acquisition date. Goodwill is calculated as the difference between the acquisition-date fair value of the consideration transferred and the values assigned to the assets acquired and liabilities assumed. Examples of critical estimates in valuing certain of the intangible assets and goodwill we have acquired include but are not limited to: future expected cash flows from subscription and support contracts, professional services contracts, other customer contracts and acquired developed technologies; the acquired company's existing customer and partner relationship, as well as assumptions about the period of time the acquired intangible assets will continue to be used in our offerings; uncertain tax positions and tax related valuation allowances assumed, if any; and discount rates.

Our estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and subject to refinement and, as a result, actual results may differ from estimates. During the measurement period, which may be up to one year from the acquisition date, if new information is obtained about facts and circumstances that existed as of the acquisition date, we may record adjustments to the fair value of these assets and liabilities, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired and liabilities assumed, whichever comes first, any subsequent adjustments are recorded to our consolidated statements of operations.

### **Recent Accounting Pronouncements**

See Note 1 "The Company and Summary of Significant Accounting Policies" in the Notes to the Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K, for a full description of recent accounting pronouncements, including the expected dates of adoption, which is incorporated herein by reference.

## Results of Operations

The following table sets forth our results of operations for the years presented. The data has been derived from the Consolidated Financial Statements contained in this Annual Report on Form 10-K which, in the opinion of our management, reflect all adjustments, consisting only of normal recurring adjustments, necessary to fairly present the financial position and results of operations for the years presented. The operating results for any period should not be considered indicative of results for any future period.

	Fiscal years ended July 31,					
	2018	As a % of Total Revenue	2017	As a % of Total Revenue	2016	As a % of Total Revenue
(in thousands except percentages)						
<b>Revenue:</b>						
License and other	\$ 315,776	47 %	\$ 271,462	53 %	\$ 219,751	52%
Maintenance	77,337	12	68,643	13	59,931	14
Services	267,954	41	174,179	34	144,764	34
Total revenue	661,067	100	514,284	100	424,446	100
<b>Cost of revenue:</b>						
License and other	35,452	5	17,046	3	7,184	2
Maintenance	14,783	2	13,397	3	11,547	3
Services	246,472	38	161,116	31	133,103	31
Total cost of revenue	296,707	45	191,559	37	151,834	36
<b>Gross profit:</b>						
License and other	280,324	42	254,416	50	212,567	50
Maintenance	62,554	10	55,246	10	48,384	11
Services	21,482	3	13,063	3	11,661	3
Total gross profit	364,360	55	322,725	63	272,612	64
<b>Operating expenses:</b>						
Research and development	171,657	26	130,323	26	112,496	26
Sales and marketing	124,117	19	109,239	21	92,765	22
General and administrative	75,916	11	56,551	11	50,914	12
Total operating expenses	371,690	56	296,113	58	256,175	60
Income (loss) from operations	(7,330)	(1)	26,612	5	16,437	4
Interest income	13,281	2	5,867	1	4,850	1
Interest expense	(6,442)	(1)	(13)	—	—	—
Other income (expense), net	509	—	811	—	(505)	—
Income before provision for income taxes	18	—	33,277	6	20,782	5
Provision for income taxes	19,683	3	12,053	2	5,806	1
Net income (loss)	\$ (19,665)	(3)%	\$ 21,224	4 %	\$ 14,976	4%

## Comparison of the Fiscal Years Ended July 31, 2018 and 2017

### Revenue

We derive our revenue primarily from licensing our software applications, providing maintenance support, and delivering professional services. Additionally, a small but growing portion of our revenue is derived from subscriptions of our cloud-delivered software.

We adopted ASU No. 2014-09, "Revenue from Contracts with Customers (ASC 606)" effective August 1, 2018, the beginning of our fiscal year 2019. Refer to Note 1 of the Notes to Consolidated Financial Statements included in Item 8 of this Form 10-K for further details on our evaluation of the potential impact of ASC 606 as well as a description of our accounting policy related to revenue recognition.

### Licenses and Other



A substantial majority of our license and other revenue consists of term license fees. We also recognize revenue from sales of cloud-based subscriptions and perpetual licenses. Our term license revenue is primarily generated through annual license fees that recur during the term of the contract. Since fiscal year 2017, a majority of our term licenses have been sold with a two year committed term with optional annual renewals. Under existing accounting guidance that is effective through July 31, 2018, term license revenue is generally recognized upon the earlier of when payment is due or cash is received from our customers as a result of extended payment terms in the contract. Under ASC 606 which is effective beginning in our fiscal year 2019, term license revenue will generally be fully recognized upon delivery of the software, which accelerates the timing of revenue recognition compared to existing guidance.

Subscription revenue is recognized ratably over the term of the arrangement, beginning at the point in time our provisioning process has been completed and access has been made available to the customer. The initial term of such arrangements can range up to five years or more as they are not generally limited to a two year initial term like our term software licenses. Subscription agreements also contain optional annual renewals commencing upon the expiration of the initial contract term.

In a limited number of cases, we license our software on a perpetual basis or our term licenses provide the customer with the option to purchase a perpetual license at the end of the initial contract term, which we refer to as a perpetual buyout right. Perpetual license revenue is generally recognized upon delivery.

We generally price our software based on the amount of direct written premiums, or DWP, that will be managed by our software. A majority of our term license customers are billed either annually or quarterly in advance, and we currently bill our cloud-based subscription customers similarly. We invoice our perpetual license customers either in full at contract signing or on an installment basis.

#### Maintenance

Our maintenance revenue is generally recognized over the committed maintenance term. Our maintenance fees are typically priced as a fixed percentage of the associated license fees. We invoice a substantial majority of our customers annually in advance.

#### Services

Our services revenue is primarily derived from implementation services performed for our customers, reimbursable travel expenses and training fees. A substantial majority of our services engagements generate revenue on a time and materials basis and revenue is recognized upon delivery of our services.

	Fiscal years ended July 31,				Change	
	2018		2017		(\$)	(%)
	Amount	% of total revenue	Amount	% of total revenue		
(in thousands, except percentages)						
Revenue:						
License and other	\$ 315,776	47%	\$ 271,462	53%	\$ 44,314	16%
Maintenance	77,337	12	68,643	13	8,694	13
Services	267,954	41	174,179	34	93,775	54
Total revenue	\$ 661,067	100%	\$ 514,284	100%	\$ 146,783	29%

#### License and Other Revenue

Our license and other revenue primarily consists of term license revenue, and, to a lesser extent, subscriptions and perpetual licenses. In certain periods prior to August 1, 2018, our reported license revenue was positively impacted by early receipt of payments due in future periods and negatively impacted by early payments received in preceding periods. Effective with our adoption of ASC 606 on August 1, 2018, license revenue under term licenses will be recognized upon delivery for the entire initial term rather than annually upon the earlier of receipt or when the payment is due. While term licenses remain our predominant licensing model, we anticipate subscriptions to grow as a percentage of annual sales in future periods. Due to the ratable recognition of subscription revenue, growth in subscription revenue will lag behind the growth of subscription sales and will impact the comparative growth of our reported revenue.

	Fiscal years ended July 31,					
	2018		2017		Change	
	Amount	% of license and other revenue	Amount	% of license and other revenue	(\$)	(%)
(In thousands, except percentages)						
<b>License and other revenue:</b>						
Term and other	\$ 303,963	96%	\$ 258,322	95%	\$ 45,641	18 %
Perpetual	11,813	4	13,140	5	(1,327)	(10)
Total license and other revenue	\$ 315,776	100%	\$ 271,462	100%	\$ 44,314	16 %

The \$45.6 million increase in our term and other revenue was primarily driven by net increases in revenue resulting from the timing of invoices from new and existing customers that affected revenue recognition, escalating annual fees from existing orders, recently acquired customers, and increased adoption of most subscription offerings in our InsurancePlatform, including InsuranceSuite, data and analytics, and digital engagement applications.

Perpetual license revenue accounted for approximately 4% of total license and other revenue. We anticipate that revenue from the sale and delivery of perpetual licenses will continue to represent a small percentage of our total license and other revenue. Nevertheless, we expect perpetual license revenue to remain volatile across quarters due to the large amount of perpetual revenue that may be generated from a single customer order.

In the fourth quarter of our fiscal year 2018, we recognized approximately \$0.3 million of revenue as a result of payments received in advance of due dates which were to occur in the following fiscal year, compared to approximately \$6.1 million of early payments received in the fourth fiscal quarter of 2017. The net impact of early payments to license and other revenue was approximately \$5.8 million less in fiscal year 2018. In future periods under the new revenue recognition guidance effective August 1, 2018, the timing of payments received will not affect the timing of revenue on term licenses.

#### *Maintenance Revenue*

The \$8.7 million increase in our maintenance revenue reflects our growing term customer base. Subscription arrangements include maintenance as part of the subscription service and are not priced or reported separately. As a result, an increase in the mix of subscription orders in the future will reduce the growth in maintenance revenue.

#### *Services Revenue*

The \$93.8 million increase in our services revenue was primarily driven by a net increase of \$62.0 million in billings from new and existing customer engagements performed during fiscal year 2018, and \$26.4 million in professional services billings relating to engagements from our recently acquired products and services.

Services revenue for fiscal years 2017 and 2016 excluded \$12.6 million and \$5.1 million, respectively, of services billings deferred in such years which were associated with our work for our customer, MetLife, in connection with its implementation of InsuranceSuite Cloud. In May 2017, all services were completed and accepted and we began to recognize the previously deferred revenue and costs ratably over a term of approximately two years from the acceptance date. In fiscal years 2018 and 2017, \$10.7 million and \$2.7 million was recognized related to this project, respectively.

Historically, we have relied on our network of third-party SI partners to facilitate new sales and implementations of our products. We believe this model will continue to serve us well and we intend, in the future, to continue to expand our network of SI partners and the number of trained consultants with whom we work.

While not essential to the functionality of the cloud-delivered subscription software, for a period of time implementations of InsuranceNow or InsuranceSuite Cloud may require greater levels of participation by our services professionals than is currently necessary for on-premise versions of our products. With respect to InsuranceSuite Cloud, our obligation to manage the platform in production requires us to have a greater familiarity with its configuration and integrations. As a result, we intend to control implementation work until effective processes have been established to reduce any risk we face in managing a production environment for a system we have not implemented. At the time of acquisition, ISCS had few third-party resources to assist with implementations of InsuranceNow. While we are actively qualifying and training consultants from existing and new partners to assist with such implementations, we have taken, and for the foreseeable future we expect to take, primary responsibility for InsuranceNow implementations.

As we gain experience with the deployment and maintenance of cloud solutions, we intend to leverage our SI partners more effectively and, over time, replicate more closely the necessary effort associated with on-premise implementations. However, we anticipate service revenue to maintain at current levels as a percentage of total revenue in fiscal year 2019.

We also expect modestly higher levels of variability in our service revenue. As we continue to expand into new markets and new product categories, we have, and we expect to, enter into contracts that may require us to delay the recognition of service revenue and associated costs until we are able to meet certain contractual obligations, including customer acceptance criteria or the delivery of new products. This has in the past, and may in the future, result in volatility in our reported services revenue and cost of revenue.

### *Deferred Revenue*

	As of July 31,			
	2018	2017	Change	
	Amount	Amount	(\$)	(%)
(In thousands, except percentages)				
Deferred revenue:				
Deferred license and other revenue	\$ 43,672	23,727	\$ 19,945	84%
Deferred maintenance revenue	54,554	47,727	6,827	14
Deferred services revenue	39,670	39,681	(11)	—
<b>Total deferred revenue</b>	<b>\$ 137,896</b>	<b>\$ 111,135</b>	<b>\$ 26,761</b>	<b>24%</b>

### *Deferred License and Other Revenue*

The \$19.9 million increase in deferred license and other revenue was a result of an \$11.8 million increase due to term license billings related to new and existing contracts that will be recognized ratably, primarily related to annual renewals of term licenses, as well as an \$8.1 million increase in subscription contracts, primarily as a result of the acquisition of Cyence.

### *Deferred Maintenance Revenue*

The \$6.8 million increase in deferred maintenance revenue was primarily driven by the timing of the recognition of revenue in excess of new billings, and reflects the seasonal nature of our billings of maintenance revenue. Additionally, subscription arrangements include maintenance as part of the subscription service and are not priced or reported separately. As a result, an increase in the mix of subscription orders in the future will reduce the growth in maintenance revenue and may impact the growth in deferred maintenance revenue.

### *Deferred Services Revenue*

Deferred services revenue remained relatively flat as the amount of new services billings which are being deferred were offset by the recognition of previously deferred billings that were recognized upon completion or going live of the projects. These projects mainly consisted of ongoing InsuranceNow implementations related to acquired contracts.

Deferred services revenue at July 31, 2018 and 2017 included \$7.0 million and \$17.7 million of services revenue associated with MetLife's implementation of InsuranceSuite Cloud that was deferred as a result of our agreement to develop specific functionality. We began to recognize these previously deferred revenue and costs ratably over an approximate term of two years beginning in May 2017, when the project was completed.

Generally, our deferred revenue consists only of amounts that have been invoiced, but not yet recognized as revenue. As a result, deferred revenue and change in deferred revenue represent incomplete measures of the strength of our business and are not necessarily indicative of our future performance. However, the transition to a greater mix of subscription orders will likely result in higher deferred revenue.

### **Cost of Revenue and Gross Profit**

Our total cost of revenue and gross profit are variable and depend on the type of revenue earned in each period.

Our cost of license and other revenue primarily consists of headcount and related employee costs for our production services employees, cloud infrastructure costs, amortization of our acquired intangible assets, and royalty fees paid to third parties. Our cost of maintenance revenue consists of headcount and related employee costs for our technical support team. Our cost of services revenue primarily consists of headcount and related employee costs for our professional service employees and contractors and travel-related costs. In the instances where we have primary responsibility for the delivery of services, subcontractor fees are expensed as cost of service. In each case, personnel costs include stock-based compensation and allocated overhead.

We allocate overhead such as IT support, information security, facility, and other administrative costs to all functional departments based on headcount. As such, general overhead expenses are reflected in cost of revenue and each functional operating expense.

	Fiscal years ended July 31,					
	2018		2017		Change	
	Amount	% of total revenue	Amount	% of total revenue	(\$)	(%)
(In thousands, except percentages)						
<b>Cost of revenue:</b>						
License and other	\$ 35,452	5%	\$ 17,046	3%	\$ 18,406	108%
Maintenance	14,783	2	13,397	3	1,386	10
Services	246,472	38	161,116	31	85,356	53
<b>Total cost of revenue</b>	<b>\$ 296,707</b>	<b>45%</b>	<b>\$ 191,559</b>	<b>37%</b>	<b>\$ 105,148</b>	<b>55%</b>
<b>Includes stock-based compensation of:</b>						
Cost of license and other revenue	\$ 1,002		\$ 373		\$ 629	
Cost of maintenance revenue	1,886		1,694		192	
Cost of services revenue	21,856		18,622		3,234	
<b>Total</b>	<b>\$ 24,744</b>		<b>\$ 20,689</b>		<b>\$ 4,055</b>	

The \$18.4 million increase in our cost of license and other revenue was primarily attributable to increases of \$10.0 million related to the amortization of acquired intangible assets, and \$5.9 million related to increased headcount related expenses and cloud infrastructure costs incurred in order to support the growth of our subscription and cloud offerings. We anticipate higher cost of license and other revenue as we continue to invest in our cloud operations.

Cost of maintenance revenue increased by \$1.4 million primarily due to the increase in staff required to support our term and perpetual license customers.

Our cost of services revenue increased by \$85.4 million due to new and existing customer engagements relating to the implementation of InsuranceNow and InsuranceSuite Cloud, which in aggregate resulted in increases in headcount related expenses of \$57.4 million, increases in expenses for billable third-party consultants and sub-contractors of \$20.4 million, and \$7.4 million associated with an engagement to deliver services in 2019 for which no additional revenue will be generated.

Cost of services revenue for fiscal year 2017 was partially offset by net deferrals of \$8.7 million of implementation costs related to our customer, MetLife, in connection with its implementation of InsuranceSuite Cloud. In May 2017, all services were completed and accepted and we began to recognize those previously deferred costs ratably over a term of approximately two years from the acceptance date. In fiscal years 2018 and 2017, \$5.2 million and \$1.2 million of cost was recognized related to this project, respectively.

We had 838 professional service employees and 121 technical support and licensing operations employees at July 31, 2018 compared to 730 professional services employees and 95 technical support and licensing operations employees at July 31, 2017.

#### Gross Profit

	Fiscal years ended July 31,					
	2018		2017		Change	
	Amount	margin %	Amount	margin %	(\$)	(%)
(In thousands, except percentages)						
<b>Gross profit:</b>						
License and other	\$ 280,324	89%	\$ 254,416	94%	\$ 25,908	10%
Maintenance	62,554	81	55,246	80	7,308	13
Services	21,482	8	13,063	7	8,419	64
<b>Total gross profit</b>	<b>\$ 364,360</b>	<b>55%</b>	<b>\$ 322,725</b>	<b>63%</b>	<b>\$ 41,635</b>	<b>13%</b>

Our gross margin decreased to 55% for fiscal year 2018, as compared to 63% for fiscal year 2017, primarily due to changes in the mix between higher gross margin license and other revenue and lower gross margin services revenue in addition to lower license and other margins. The decline in our license and other margin is primarily attributable to the increase in our costs associated with amortization of acquired intangible assets, headcount, and cloud infrastructure costs incurred in order to support the growth of our subscription and cloud operations. These decreases were partially offset by slightly improved services margins compared to the same period a year ago.

We intend to continue to invest in our cloud operations as our subscription revenue increases, which will impact license and other margins. Finally, we also anticipate that our costs associated with the amortization of intangible assets will continue to contribute to lower margins.

### Operating Expenses

Our operating expenses consist of research and development, sales and marketing, and general and administrative expenses. The largest components of our operating expenses are compensation and benefit expenses for our employees, including stock-based awards and, to a lesser extent, professional services, and allocated general overhead expenses. We allocate overhead such as IT support, information security, facility, and other administrative costs to all functional departments based on headcount. As a result, general overhead expenses are reflected in cost of revenue and each functional operating expense.

	Fiscal years ended July 31,				Change	
	2018		2017		(\$)	(%)
	Amount	% of total revenue	Amount	% of total revenue		
	(In thousands, except percentages)					
<b>Operating expenses:</b>						
Research and development	\$ 171,657	26%	\$ 130,323	26%	\$ 41,334	32%
Sales and marketing	124,117	19	109,239	21	14,878	14
General and administrative	75,916	11	56,551	11	19,365	34
<b>Total operating expenses</b>	<b>\$ 371,690</b>	<b>56%</b>	<b>\$ 296,113</b>	<b>58%</b>	<b>\$ 75,577</b>	<b>26%</b>
<b>Includes stock-based compensation of:</b>						
Research and development	\$ 25,440		\$ 18,123		\$ 7,317	
Sales and marketing	18,387		16,663		1,724	
General and administrative	21,043		16,319		4,724	
<b>Total</b>	<b>\$ 64,870</b>		<b>\$ 51,105</b>		<b>\$ 13,765</b>	

#### Research and Development

Our research and development expenses primarily consist of costs incurred for compensation and benefit expenses for our technical staff, including stock-based awards and allocated overhead, as well as professional services costs.

The \$41.3 million increase in research and development expenses was primarily due to increases in our headcount and related employee expenses of \$43.4 million, partially offset by the capitalization of internal-use software development costs of \$2.9 million during fiscal year 2018, related to the development of new cloud-based technology applications.

Our research and development headcount was 749 as of July 31, 2018 compared with 581 as of July 31, 2017. The increase in headcount reflects our continued investment in the development of our products, and includes 71 employees gained through our Cyence acquisition.

We expect our research and development expenses to continue to increase in absolute dollars as we continue to hire in research and development, and continue to dedicate internal resources to develop, improve, and expand the functionality of our solutions. Research and development expenses may also increase if we pursue additional acquisitions.

#### Sales and Marketing

Our sales and marketing expenses primarily consist of costs incurred for compensation and benefit expenses for our sales and marketing employees, including stock-based awards, commissions and allocated overhead. It also includes travel expenses, professional services for marketing activities, and amortization of certain acquired intangibles.

The \$14.9 million increase in sales and marketing expenses was primarily due to the net increases in headcount and related employee expenses of \$8.1 million and increased amortization expense associated with recently acquired intangible assets of \$5.4 million.

Our sales and marketing headcount was 329 as of July 31, 2018 compared with 298 as of July 31, 2017.

We expect our sales and marketing expenses to continue to increase in absolute dollars as we continue to invest in sales and marketing activities to support our business growth and objectives.

### General and Administrative

Our general and administrative expenses consist primarily of compensation and benefit expenses, including stock-based awards, as well as professional services, and allocated overhead costs related to our executive, finance, human resources, information technology, corporate development, and legal functions.

The \$19.4 million increase in our general and administrative expenses was primarily attributable to \$9.7 million of costs associated with the acquisition of Cyence and costs related to the investment in our corporate infrastructure, including fees associated with a new global finance enterprise resource planning system and other costs associated with the adoption of new accounting standards and to support our growth, and \$9.5 million increased costs for our headcount and related employee expenses.

Our general and administrative headcount was 255 as of July 31, 2018 compared with 189 as of July 31, 2017. The increase in headcount was required to support the growth of our business.

We expect that our general and administrative expenses will increase in absolute dollars as we continue to invest in personnel and corporate infrastructure and systems required to support our strategic initiatives, the growth of our business, and our compliance and reporting obligations.

### Other Income (Expense)

	Fiscal years ended July 31,		Change	
	2018	2017		
	Amount	Amount	(\$)	(%)
(In thousands, except percentages)				
Interest income	\$ 13,281	\$ 5,867	\$ 7,414	126 %
Interest expense	\$ (6,442)	\$ (13)	\$ (6,429)	49,454 %
Other income	\$ 509	\$ 811	\$ (302)	(37)%

#### Interest Income

Interest income represents interest earned on our cash, cash equivalents, and investments.

Interest income increased by \$7.4 million for fiscal year 2018. The increase in our interest income is associated with the increase in our investment portfolio primarily as a result of proceeds of approximately \$220.9 million related to the common stock offering and \$387.2 million related to the convertible note offering in March 2018 and, to a lesser extent, higher yields on our cash equivalents and investments.

#### Interest Expense

Interest expense represents interest expense associated with the \$400.0 million aggregate principal amount of our Convertible Senior Notes that were issued in March 2018.

Interest expense was \$6.4 million for fiscal year 2018 primarily due the non-cash interest expense of \$4.5 million related to the amortization of debt discount and issuance costs, and stated interest of \$1.9 million associated with the Convertible Senior Notes issued in March 2018.

#### Other Income (Expense), Net

Other income (expense), net consists primarily of foreign exchange gains and losses resulting from fluctuations in foreign exchange rates on receivables and payables denominated in currencies other than the U.S. dollar.

Other income decreased by \$0.3 million, as compared to the prior fiscal year. We realized a net currency exchange gain of \$0.5 million in fiscal year 2018 as compared to a net currency exchange gain of \$0.8 million in fiscal year 2017 as a result of less favorable exchange rate movements for transactions denominated in the British Pound, Euro, Australian Dollar, Canadian Dollar, Japanese Yen, Brazilian Real, Malaysian Ringgit, and Argentine Peso.

### Provision for Income Taxes

We are subject to taxes in the United States as well as other tax jurisdictions or countries in which we conduct business. Earnings from our non-U.S. activities are subject to local country income tax and may be subject to current U.S. income tax.

	Fiscal years ended July 31,						
	2018		2017		Change		
	Amount	Amount	Amount	Amount	(\$)	(%)	
	(In thousands, except percentages)						
Provision for income taxes	\$	19,683	\$	12,053	\$	7,630	63%
Effective tax rate		*		36%			

\* not meaningful

We recognized an income tax provision of \$19.7 million for fiscal year 2018 compared to \$12.1 million for fiscal year 2017, which was primarily due to the increase in tax due to the remeasurement of U.S. deferred taxes as a result of the Tax Act, and permanent differences for non-deductible executive compensation and acquisition-related expenses offset by tax benefits related to research and development credits and excess tax benefits. The effective tax rate of 109,350% for fiscal year 2018, differs from the statutory U.S. Federal income tax rate of 26.9% mainly due to the remeasurement of U.S. deferred taxes as a result of the Tax Act, changes in valuation allowance, and permanent differences for stock-based compensation, including excess tax benefits, research and development credits, the tax rate differences between the United States and foreign countries, foreign withholding taxes, certain non-deductible expenses including executive compensation, and acquisition-related expenses.

## Comparison of the Fiscal Years Ended July 31, 2017 and 2016

### Revenue

	Fiscal years ended July 31,								
	2017		2016		Change				
	Amount	% of total revenue	Amount	% of total revenue	(\$)	(%)			
	(in thousands, except percentages)								
Revenue:									
License and other	\$	271,462	53%	\$	219,751	52%	\$	51,711	24%
Maintenance		68,643	13		59,931	14		8,712	15
Services		174,179	34		144,764	34		29,415	20
Total revenue	\$	514,284	100%	\$	424,446	100%	\$	89,838	21%

### License and Other Revenue

The \$51.7 million increase in our license and other revenue was primarily driven by increased adoption of most offerings in our InsurancePlatform, including InsuranceSuite, data and analytics and digital engagement applications.

	Fiscal years ended July 31,								
	2017		2016		Change				
	Amount	% of license revenue	Amount	% of license revenue	(\$)	(%)			
	(In thousands, except percentages)								
License and other revenue:									
Term and other	\$	258,322	95%	\$	208,430	95%	\$	49,892	24%
Perpetual		13,140	5		11,321	5		1,819	16
Total license and other revenue	\$	271,462	100%	\$	219,751	100%	\$	51,711	24%

The \$49.9 million increase in our term and other revenue was primarily driven by term licenses with new and existing customers, and net increases in revenue of \$7.4 million resulting from the timing of invoices and corresponding due dates, payments received in advance of corresponding due dates, and other contractual terms that affected revenue recognition from existing orders.

Perpetual license revenue accounted for approximately 5% of total license and other revenue.

In the fourth fiscal quarter of fiscal year 2017, we recognized approximately \$6.1 million of revenue as a result of payments received in that fiscal year in advance of due dates which fell in the following fiscal year, resulting in approximately \$3.4 million of net benefit to revenue of early payments recognized in fiscal year 2017. Similarly, in the fourth quarter of fiscal year 2016, we recognized approximately \$2.7 million of revenue as a result of early payments received in advance of due dates which were in fiscal year 2017. For the fiscal year 2016, the net benefit to revenue of early payments was approximately \$2.7 million.

### *Maintenance Revenue*

The \$8.7 million increase in our maintenance revenue reflects our growing customer base and increased term and perpetual license revenue.

### *Services Revenue*

The \$29.4 million increase in our services revenue was primarily driven by a net increase in billings from new and existing customer engagements performed during fiscal year 2017 and included \$17.8 million in billings associated with engagements from our recently acquired products and services.

Services revenue for fiscal years 2017 and 2016 excluded \$12.6 million and \$5.1 million, respectively, of services billings deferred in such years which were associated with our work for our customer, MetLife, in connection with its implementation of Guidewire InsuranceSuite Cloud. All services revenue and direct services costs were deferred on this project, as part of our agreement to develop new digital portal functionality in conjunction with that implementation. In May 2017, all services were completed and accepted and we began to recognize those previously deferred revenue and costs ratably over a term of approximately two years from the acceptance date.

### *Deferred Revenue*

	As of July 31,			
	2017	2016	Change	
	Amount	Amount	(\$)	(%)
	(In thousands, except percentages)			
Deferred revenue:				
Deferred license and other revenue	\$ 23,727	\$ 19,841	\$ 3,886	20%
Deferred maintenance revenue	47,727	38,928	8,799	23
Deferred services revenue	39,681	11,246	28,435	253
<b>Total deferred revenue</b>	<b>\$ 111,135</b>	<b>\$ 70,015</b>	<b>\$ 41,120</b>	<b>59%</b>

### *Deferred License and Other Revenue*

The \$3.9 million increase in deferred license and other revenue was primarily due to the combined net impact from increases in deferrals of amounts associated with subscription contracts that are recognized on a ratable basis, increases in license billings related to new contracts executed during fiscal year 2017 which will be recognized when contractual obligations are met, partially offset by the recognition of billings recognized based on timing of payments and upon meeting certain contractual obligations.

### *Deferred Maintenance Revenue*

The \$8.8 million increase in deferred maintenance revenue was primarily driven by the combined net impact of increased billings during the fiscal year that was partially offset by revenue recognized from new and existing orders.

### *Deferred Services Revenue*

Deferred services revenue was \$39.7 million as of July 31, 2017, which included \$17.7 million of service revenue associated with MetLife's implementation of InsuranceSuite Cloud that was deferred as a result of our agreement to develop specific functionality. We began to recognize the previously deferred revenue and costs ratably over an approximate term of two years beginning in May 2017, when the project was completed.

The \$28.4 million increase in deferred services revenue was primarily driven by a \$12.6 million increase in deferred service billings related to the MetLife implementation in fiscal year 2017 and a \$11.7 million increase in deferred services billings associated with ongoing InsuranceNow implementations related to acquired contracts which are being deferred until customer acceptance and then recognized ratably over the remaining contract term.



### Cost of Revenue and Gross Profit

	Fiscal years ended July 31,					
	2017		2016		Change	
	Amount	% of total revenue	Amount	% of total revenue	(\$)	(%)
(In thousands, except percentages)						
<b>Cost of revenue:</b>						
License and other	\$ 17,046	3%	\$ 7,184	2%	\$ 9,862	137%
Maintenance	13,397	3	11,547	3	1,850	16
Services	161,116	31	133,103	31	28,013	21
<b>Total cost of revenue</b>	<b>\$ 191,559</b>	<b>37%</b>	<b>\$ 151,834</b>	<b>36%</b>	<b>\$ 39,725</b>	<b>26%</b>
<b>Includes stock-based compensation of:</b>						
Cost of license and other revenue	\$ 373		\$ 433		\$ (60)	
Cost of maintenance revenue	1,694		1,491		203	
Cost of services revenue	18,622		17,878		744	
<b>Total</b>	<b>\$ 20,689</b>		<b>\$ 19,802</b>		<b>\$ 887</b>	

The \$39.7 million increase in cost of revenue was driven, in part, by an increase of \$9.9 million in our costs of license and other revenue. The increase in our cost of license and other revenue was primarily attributable to increases of \$7.5 million related to the amortization of acquired intangible assets and \$2.2 million related to increased headcount and related expenses as we grew our subscription and cloud operations staff.

Cost of maintenance revenue increased by \$1.9 million due primarily to increases in headcount and related expenses and increases from consulting expenses.

Cost of services revenue increased by \$28.0 million primarily as a result of a \$25.4 million increase in our compensation and related headcount expenses, and a \$13.8 million increase in our costs for billable third-party consultants and sub-contractors and related expenses, partially offset by net deferrals of \$11.8 million of implementation costs related to MetLife's implementation of InsuranceSuite Cloud and implementation costs associated with acquired ISCS customers for which associated revenue is being deferred until the projects go live. All services delivered to MetLife in connection with InsuranceSuite Cloud were completed and accepted in May 2017. As a result, beginning in May 2017, we began to recognize previously deferred costs ratably over approximately two years from the acceptance date.

We had 730 professional service employees and 95 technical support and licensing operations employees at July 31, 2017 compared to 573 professional services employees and 69 technical support and licensing operations employees at July 31, 2016. The increase in employees included the 128 professional service, technical support and licensing operations employees hired on a permanent basis as part of the ISCS acquisition that we completed on February 16, 2017.

	Fiscal years ended July 31,					
	2017		2016		Change	
	Amount	margin %	Amount	margin %	(\$)	(%)
(In thousands, except percentages)						
<b>Gross profit:</b>						
License and other	\$ 254,416	94%	\$ 212,567	97%	\$ 41,849	20%
Maintenance	55,246	80	48,384	81	6,862	14
Services	13,063	7	11,661	8	1,402	12
<b>Total gross profit</b>	<b>\$ 322,725</b>	<b>63%</b>	<b>\$ 272,612</b>	<b>64%</b>	<b>\$ 50,113</b>	<b>18%</b>

Our gross margin decreased to 63% for fiscal year 2017, as compared to 64% for fiscal year 2016, primarily due to growing costs associated with license and other revenue as we invest more in our emerging cloud business. In addition, the decrease in our gross margin was also attributable to the effect from implementation for MetLife of InsuranceSuite Cloud.

## Operating Expenses

	Fiscal years ended July 31,					
	2017		2016		Change	
	Amount	% of total	Amount	% of total	(\$)	(% )
		revenue		revenue		
(In thousands, except percentages)						
<b>Operating expenses:</b>						
Research and development	\$ 130,323	26%	\$ 112,496	26%	\$ 17,827	16%
Sales and marketing	109,239	21	92,765	22	16,474	18
General and administrative	56,551	11	50,914	12	5,637	11
<b>Total operating expenses</b>	<b>\$ 296,113</b>	<b>58%</b>	<b>\$ 256,175</b>	<b>60%</b>	<b>\$ 39,938</b>	<b>16%</b>
<b>Includes stock-based compensation of:</b>						
Research and development	\$ 18,123		\$ 15,555		\$ 2,568	
Sales and marketing	16,663		15,090		1,573	
General and administrative	16,319		15,684		635	
<b>Total</b>	<b>\$ 51,105</b>		<b>\$ 46,329</b>		<b>\$ 4,776</b>	

### Research and Development

The \$17.8 million increase in research and development expenses was primarily due to increased compensation and related headcount expenses of \$19.6 million, which was partially offset by the capitalization of internal use software development costs of \$1.1 million, during both the third and fourth quarters of our fiscal year 2017, related to the development of a new cloud-based technology application. Our research and development headcount was 581 as of July 31, 2017 compared with 464 as of July 31, 2016. The increase in headcount reflects our continued investment in all applications that comprise the Guidewire InsurancePlatform and related content, and includes 58 employees gained through our acquisitions.

### Sales and Marketing

The \$16.5 million increase in sales and marketing expenses was primarily due to increased compensation and related headcount expenses of \$12.2 million, increased sales commissions of \$2.4 million and increases in our expense from the amortization of acquired intangible assets of \$2.3 million. The increase in our compensation and related headcount expenses was a result of our continued investment in sales and marketing personnel and activities required to support our business growth and objectives. The increase in our commission expenses was a result of increases in our sales and bookings. The increase in the amortization expense from acquired intangible assets is primarily related to our acquisitions of First Best and ISCS, Inc., in the first and third quarters of our fiscal year 2017. Our sales and marketing headcount was 298 as of July 31, 2017 compared with 267 as of July 31, 2016. The increase in headcount was required to support the growth in our revenue base.

### General and Administrative

The \$5.6 million increase in general and administrative expenses was primarily due to increased expenses from third-party consultation and professional services of \$3.4 million and increases in our compensation and related headcount expenses of \$2.2 million. The increases in these costs were primarily a result of our continued investment in our corporate infrastructure and support services and include fees associated with our implementation costs for a new accounting software application, and to a lesser extent, increased costs for third-party consultants and professional services resulting from the acquisitions of First Best and ISCS, Inc. in the first and third quarters of our fiscal year 2017. Our general and administrative headcount was 189 as of July 31, 2017 compared with 163 as of July 31, 2016. The increase in headcount was required to support the growth of our business.

## Other Income (Expenses)

	Fiscal years ended July 31,					
	2017		2016		Change	
	Amount		Amount		(\$)	(% )
(In thousands, except percentages)						
Interest income	\$ 5,867		\$ 4,850		\$ 1,017	21 %
Interest expense	\$ (13)		\$ —		\$ (13)	100 %
<b>Other income (expenses), net</b>	<b>\$ 811</b>		<b>\$ (505)</b>		<b>\$ 1,316</b>	<b>(261)%</b>

*Interest Income*

Interest income increased by \$1.0 million for fiscal year 2017 primarily due to higher yields on our cash equivalents and investments.

*Other Income (Expense), Net*

Other income (expense), net increased by \$1.3 million, as compared to the prior fiscal year as we realized a net currency exchange gain of \$0.8 million resulting from favorable exchange rate movements for transactions denominated in British Pound, Euro and Canadian Dollar, particularly during the fourth fiscal quarter, as opposed to the net currency exchange loss of \$0.5 million resulting from unfavorable foreign exchange rate movements for the fiscal year ended July 31, 2016.

***Provision for Income Taxes***

	Fiscal years ended July 31,					
	2017		2016		Change	
	Amount	Amount	(\$)	(%)		
	(In thousands, except percentages)					
Provision for income taxes	\$ 12,053	\$ 5,806	\$ 6,247	108%		
Effective tax rate	36%	28%				

We recognized an income tax provision of \$12.1 million for fiscal year 2017 compared to \$5.8 million for fiscal year 2016. The increase in our provision for income taxes for fiscal year 2017 was primarily due to an increase in pre-tax net income, as compared to fiscal year 2016. Our effective income tax rate increased to 36% for fiscal year 2017 compared to 28% for fiscal year 2016. The increase in our effective income tax rate was primarily a result of lower research tax credits generated in fiscal year 2017.

## Quarterly Results of Operations

The following table sets forth our selected unaudited quarterly financial information for each of the eight fiscal quarters ended July 31, 2018. In management's opinion, the data below has been prepared on the same basis as the audited consolidated financial statements and reflect all necessary adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the data. The results of historical periods are not necessarily indicative of the results to be expected for a full year or any future period.

	Fiscal quarters ended							
	July 31, 2018	April 30, 2018	January 31, 2018	October 31, 2017	July 31, 2017	April 30, 2017	January 31, 2017	October 31, 2016
	(unaudited) (in thousands, except per share amounts)							
Total revenue	\$ 248,639	\$ 140,469	\$ 163,788	\$ 108,171	\$ 181,100	\$ 123,436	\$ 115,621	\$ 94,127
Total cost of revenue	91,723	74,321	67,769	62,894	57,261	51,468	40,811	42,019
Total gross profit	156,916	66,148	96,019	45,277	123,839	71,968	74,810	52,108
Income (loss) from operations	55,237	(29,187)	(665)	(32,715)	41,048	(4,339)	8,205	(18,302)
Net income (loss)	\$ 83,426	\$ (48,622)	\$ (45,555)	\$ (8,914)	\$ 26,927	\$ (1,819)	\$ 3,974	\$ (7,858)
Income (loss) per share - basic	\$ 1.04	\$ (0.62)	\$ (0.59)	\$ (0.12)	\$ 0.36	\$ (0.02)	\$ 0.05	\$ (0.11)
Income (loss) per share - diluted	\$ 1.02	\$ (0.62)	\$ (0.59)	\$ (0.12)	\$ 0.36	\$ (0.02)	\$ 0.05	\$ (0.11)

Our quarterly results of operations may fluctuate significantly due to a variety of factors, many of which are outside of our control, making our results of operations variable and difficult to predict. Such factors include those discussed above and those set forth in "Risk Factors—We may experience significant quarterly and annual fluctuations in our results of operations due to a number of factors" and "Risk Factors—Seasonal sales patterns and other variations related to our revenue recognition may cause significant fluctuations in our results of operations and cash flows and may prevent us from achieving our quarterly or annual forecasts, which may cause our stock price to decline" in Item 1A of Part I of this Annual Report on Form 10-K. One or more of these factors may cause our results of operations to vary widely. As such, we believe that our quarterly results of operations may vary significantly in the future and that sequential quarterly comparisons of our results of operations may not be meaningful and should not be relied upon as an indication of future performance.

**Liquidity and Capital Resources**

Our principal sources of liquidity are as follows:

	July 31, 2018	July 31, 2017	July 31, 2016
	(in thousands)		
Cash, cash equivalents, and investments	\$ 1,258,100	\$ 687,788	\$ 735,802
Working capital	\$ 997,319	\$ 515,624	\$ 588,589

**Cash, Cash Equivalents, and Investments**

Our cash, cash equivalents, and investments are primarily comprised of cash and liquid investments with remaining maturities of 90 days or less from the date of purchase, commercial paper and money market funds. Substantially all of our investments are comprised of corporate debt securities, U.S. government securities and agency securities, commercial paper and non-U.S. government securities, which include state, municipal and foreign government securities.

As of July 31, 2018, approximately \$39.5 million of our cash and cash equivalent were domiciled in various foreign tax jurisdictions. While we have no current plans to repatriate these funds to the United States, we may repatriate foreign earnings that have been taxed in the United States in the future to the extent that the repatriation is not restricted by local laws or there are no substantial incremental costs associated with such repatriation.

**Cash Flows**

Our cash flows from operations are significantly impacted by timing of invoicing and collections of accounts receivable, annual bonus payment, as well as payments of payroll and other taxes. We expect that we will continue to generate positive cash flows from operations on an annual basis, although this may fluctuate significantly on a quarterly basis. In particular, we typically use more cash during the first fiscal quarter ended October 31, as we generally pay cash bonuses to our employees for the prior fiscal year during that period and pay seasonally higher sales commissions from increased customer orders booked in our fourth fiscal quarter.

We believe that our existing cash and cash equivalents and sources of liquidity will be sufficient to fund our operations for at least the next 12 months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the expansion of our sales and marketing activities, the timing and extent of our spending to support our research and development efforts, and expansion into other markets. We also anticipate investing in, or acquiring complementary businesses, applications or technologies, which may require the use of significant cash resources and may require additional financing.

The following summary of cash flows for the periods indicated has been derived from our consolidated financial statements included elsewhere in this Annual Report on Form 10-K:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Net cash provided by operating activities	\$ 140,459	\$ 137,160	\$ 99,900
Net cash used in investing activities	\$ (537,584)	\$ (113,342)	\$ (101,253)
Net cash provided by financing activities	\$ 573,000	\$ 14,630	\$ 13,454

**Cash flows from Operating Activities**

Net cash provided by operating activities increased by \$3.3 million in fiscal year 2018 as compared to fiscal year 2017. This increase in operating cash was primarily attributable to a \$22.1 million increase in net income after excluding the impact of non-cash charges such as deferred taxes, stock-based compensation expense, depreciation and amortization expense, and other non-cash items, partially offset by a \$18.8 million increase in cash used in working capital activity as compared to the same period a year ago.

Net cash provided by operating activities increased by \$37.3 million in fiscal year 2017 as compared to fiscal year 2016. The increase in operating cash was primarily attributable to a \$22.1 million increase in net income after excluding the impact of non-cash charges such as stock-based compensation, depreciation and amortization expense, deferred taxes and other non-cash items, and a \$15.1 million net increase in cash provided by working capital activity as compared to the same period a year ago.

### **Cash flows from Investing Activities**

Our investing activities consist primarily of purchases and sales of short-term and long-term investments, capital expenditures to purchase property and equipment, acquisitions and changes in our strategic equity investment. In the future, we expect we will continue to invest in capital expenditures to support our expanding operations.

Net cash used in investing activities was \$537.6 million in fiscal year 2018, as compared to \$113.3 million net cash used in fiscal year 2017. The increase in net cash used in investing activities was primarily due to an increase of \$481.1 million in net cash outflows from sales and purchases of marketable securities, and a \$5.3 million increase in capital expenditures. Investing activities also included the use of \$130.1 million of cash to acquire Cyence in fiscal year 2018, and \$187.6 million of cash to acquire ISCS and FirstBest in fiscal year 2017. During fiscal year 2017, we also made a \$4.7 million additional investment in a privately held company.

Net cash used in investing activities was \$113.3 million in fiscal year 2017, as compared to \$101.3 million in fiscal year 2016. The increase in net cash used in investing activities was primarily due to \$154.1 million cash used for the acquisition of ISCS and \$33.5 million used for the acquisition of FirstBest, as compared to \$39.5 million cash used for the acquisition of EagleEye in fiscal year 2016. During fiscal year 2017, we also made a \$4.7 million additional investment in a privately held company. These increases in cash used were partially offset by an increase of \$140.2 million in net cash inflows from sales and purchases of marketable securities, and a small decrease of \$0.4 million in capital expenditures.

### **Cash flows from Financing Activities**

Our financing activities consist primarily of public debt and equity offerings and cash receipts from the exercise of stock options.

Net cash provided by financing activities was \$573.0 million in fiscal year 2018, as compared to \$14.6 million in fiscal year 2017. The increase of \$558.4 million in net cash provided by financing activities was primarily due to \$387.2 million and \$220.9 million of cash raised from issuances of debt and equity, respectively. This increase was partially offset by the purchase of a capped call option for \$37.2 million and fewer options exercised in fiscal year 2018.

Net cash provided by financing activities was \$14.6 million in fiscal year 2017, as compared to \$13.5 million in fiscal year 2016. The increase of \$1.2 million in net cash provided by financing activities was primarily a result of the impact of excess tax benefits.

Excess tax benefits and deficiencies previously classified as financing activities have been classified as operating activities on the condensed consolidated statement of cash flows as a result of our adoption of ASU 2016-09 during the first quarter of fiscal year 2018. There were no excess tax benefits or deficiencies in financing activities during fiscal year 2018.

### **Contractual Obligations**

The following summarizes our contractual obligations as of July 31, 2018:

	Payments due by period				Total
	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years	
	(in thousands)				
Long-term debt <sup>(1)</sup>	\$ 5,028	\$ 10,000	\$ 10,000	\$ 410,000	\$ 435,028
Operating lease obligations <sup>(2)</sup>	10,718	25,328	25,802	85,156	147,004
Royalty obligations <sup>(3)</sup>	1,761	799	—	—	2,560
Purchase commitments <sup>(4)</sup>	60,298	9,549	253	—	70,100
Total	\$ 77,805	\$ 45,676	\$ 36,055	\$ 495,156	\$ 654,692

- (1) Long-term debt consists of principal and interest payments on our Convertible Senior Notes. The \$400 million in principal will be due in March 2025.
- (2) Operating lease agreements primarily represent our obligations to make payments under our non-cancellable lease agreements for our corporate headquarters and worldwide offices through 2028.
- (3) Royalty obligations primarily represent our obligations under our non-cancellable agreements related to certain revenue-generating agreements.
- (4) Purchase commitments consist of agreements to purchase goods and services, entered into in the ordinary course of business. These represent commitments for which a penalty could be imposed if the agreement was canceled for any reason other than an event of default as described by the agreement.

Additionally, we have unrecognized tax benefits of \$10.3 million primarily associated with our U.S. Federal and California research and development tax credits as of July 31, 2018. We are unable to estimate when any cash settlement with a taxing authority might occur.

### **Off-Balance Sheet Arrangements**

Through July 31, 2018, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

### **Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates. We do not hold or issue financial instruments for trading purposes.

#### ***Interest Rate Sensitivity***

Our exposure to market risk for changes in interest rates relates primarily to our cash, cash equivalents, and investments as of July 31, 2018, and 2017. Our cash, cash equivalents, and investments as of July 31, 2018 and 2017 were \$1,258.1 million and \$687.8 million, respectively, and consisted primarily of cash, corporate bonds, U. S. agency debt securities, commercial paper, money market funds, and municipal debt securities. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of the interest rates in the United States. However, because of the short-term nature of our interest-bearing securities, a ten percent change in market interest rates would not be expected to have a material impact on our consolidated financial condition or results of operations.

#### ***Foreign Currency Exchange Risk***

Our results of operations and cash flows are subject to notable fluctuations due to changes in foreign currency exchange rates, particularly changes in the Argentine Peso, Australian Dollar, Brazilian Real, British Pound, Canadian Dollar, Euro, Japanese Yen, and Polish Zloty. The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. Although we believe our operating activities act as a natural hedge for a substantial portion of our foreign currency exposure because we typically collect revenue and incur costs in the currency in the location in which we provide our services, our contracts with our customers are long term in nature so it is difficult to predict if our operating activities will provide a natural hedge in the future. Additionally, changes in foreign currency exchange rates can affect our financial results due to transaction gains or losses related to revaluing certain current asset and current liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. For the fiscal year ended July 31, 2018, we recorded a net foreign currency gain of \$0.5 million as other income in our consolidated statements of operations due to declines in strength of foreign currencies against the United States Dollar. For the fiscal year ended July 31, 2017, we recorded a foreign currency gain of \$0.8 million as other income in our consolidated statements of operations as a result of movements in foreign currencies against the United States Dollar. We will continue to experience fluctuations in foreign currency exchange rates, and if a ten percent change in foreign exchange rates occurs in the future, a similar impact would result as recorded to fiscal years 2018 and 2017. As our international operations grow, we will continue to assess our approach to managing our risk relating to fluctuations in currency rates.

### **Fair Value of Financial Instruments**

We do not have material exposure to market risk with respect to investments in financial instruments, as our investments consist primarily of highly liquid investments purchased with a remaining maturity of two years or less. We do not use derivative financial instruments for speculative or trading purposes. However, this does not preclude our adoption of specific hedging strategies in the future.



**Item 8. Financial Statements and Supplemental Data**

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES  
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The supplementary financial information required by this Item 8 is included in Item 7 under the caption "Quarterly Results of Operations."

## Report of Independent Registered Public Accounting Firm

The Stockholders and Board of Directors  
Guidewire Software, Inc.:

### *Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting*

We have audited the accompanying consolidated balance sheets of Guidewire Software, Inc. and subsidiaries (the Company) as of July 31, 2018 and 2017, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended July 31, 2018, and the related notes (collectively, the consolidated financial statements). We also have audited the Company's internal control over financial reporting as of July 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of July 31, 2018 and 2017, and the results of its operations and its cash flows for each of the years in the three-year period ended July 31, 2018, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of July 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

### *Change in Accounting Principle*

As discussed in note 1 to the consolidated financial statements, the Company changed its method of accounting for share-based payments due to the adoption of FASB Accounting Standards Update 2016-09, *Compensation - Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting*.

### *Basis for Opinions*

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting appearing under Item 9A. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### *Definition and Limitations of Internal Control Over Financial Reporting*

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and

expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

We have served as the Company's auditor since 2006.  
Santa Clara, California  
September 18, 2018

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except for share data)

	July 31, 2018	July 31, 2017
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 437,140	\$ 263,176
Short-term investments	630,008	310,027
Accounts receivable, net of allowances of \$1,062 and \$0, respectively	124,849	79,433
Prepaid expenses and other current assets	30,510	26,604
Total current assets	1,222,507	679,240
Long-term investments	190,952	114,585
Property and equipment, net	18,595	14,376
Intangible assets, net	95,654	71,315
Deferred tax assets, net	87,482	37,430
Goodwill	340,877	141,851
Other assets	22,525	20,104
<b>TOTAL ASSETS</b>	<b>\$ 1,978,592</b>	<b>\$ 1,078,901</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 30,635	\$ 13,416
Accrued employee compensation	60,135	48,882
Deferred revenue, current	114,138	91,243
Other current liabilities	20,280	10,075
Total current liabilities	225,188	163,616
Convertible senior notes, net	305,128	—
Deferred revenue, noncurrent	23,758	19,892
Other liabilities	774	2,112
Total liabilities	554,848	185,620
Commitments and contingencies (Note 7)		
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock, par value \$0.0001 per share—500,000,000 shares authorized as of July 31, 2018 and 2017; 80,611,698 and 75,007,625 shares issued and outstanding as of July 31, 2018 and 2017, respectively	8	8
Additional paid-in capital	1,297,979	830,014
Accumulated other comprehensive loss	(7,748)	(5,796)
Retained earnings	133,505	69,055
Total stockholders' equity	1,423,744	893,281
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 1,978,592</b>	<b>\$ 1,078,901</b>

*See accompanying Notes to Consolidated Financial Statements.*

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except share and per share amounts)

	Fiscal years ended July 31,		
	2018	2017	2016
<b>Revenue:</b>			
License and other	\$ 315,776	\$ 271,462	\$ 219,751
Maintenance	77,337	68,643	59,931
Services	267,954	174,179	144,764
Total revenue	661,067	514,284	424,446
<b>Cost of revenue:</b>			
License and other	35,452	17,046	7,184
Maintenance	14,783	13,397	11,547
Services	246,472	161,116	133,103
Total cost of revenue	296,707	191,559	151,834
<b>Gross profit:</b>			
License and other	280,324	254,416	212,567
Maintenance	62,554	55,246	48,384
Services	21,482	13,063	11,661
Total gross profit	364,360	322,725	272,612
<b>Operating expenses:</b>			
Research and development	171,657	130,323	112,496
Sales and marketing	124,117	109,239	92,765
General and administrative	75,916	56,551	50,914
Total operating expenses	371,690	296,113	256,175
Income (loss) from operations	(7,330)	26,612	16,437
Interest income	13,281	5,867	4,850
Interest expense	(6,442)	(13)	—
Other income (expense), net	509	811	(505)
Income before provision for income taxes	18	33,277	20,782
Provision for income taxes	19,683	12,053	5,806
Net income (loss)	\$ (19,665)	\$ 21,224	\$ 14,976
<b>Net income (loss) per share:</b>			
Basic	\$ (0.25)	\$ 0.29	\$ 0.21
Diluted	\$ (0.25)	\$ 0.28	\$ 0.20
<b>Shares used in computing net income (loss) per share:</b>			
Basic	77,709,592	73,994,577	72,026,694
Diluted	77,709,592	75,328,343	73,765,960

*See accompanying Notes to Consolidated Financial Statements.*

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(in thousands)**

	As of July 31,		
	2018	2017	2016
Net income (loss)	\$ (19,665)	\$ 21,224	\$ 14,976
Other comprehensive income (loss):			
Foreign currency translation adjustments	(1,567)	1,179	(562)
Unrealized (loss) gain on available-for-sale securities, net of tax benefit (expense) of \$233, \$234, and \$(187), respectively	(363)	(231)	288
Reclassification adjustment for realized (gain) loss on available-for-sale securities, included in net income	(22)	(151)	24
Other comprehensive income (loss)	(1,952)	797	(250)
Comprehensive income (loss)	<u>\$ (21,617)</u>	<u>\$ 22,021</u>	<u>\$ 14,726</u>

*See accompanying Notes to Consolidated Financial Statements.*

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except for share data)

	Common stock		Additional paid-in capital	Accumulated other comprehensive income (loss)	Retained Earnings	Total Stockholders' Equity
	Shares	Amount				
<b>Balance as of July 31, 2015</b>	<b>71,005,738</b>	<b>\$ 7</b>	<b>\$ 662,869</b>	<b>\$ (6,343)</b>	<b>\$ 32,855</b>	<b>\$ 689,388</b>
Issuance of common stock upon exercise of stock options	652,832	—	7,840	—	—	7,840
Issuance of common stock upon restricted stock unit ("RSU") release	1,408,746	—	—	—	—	—
Shares withheld for taxes related to net share settlement	(27,397)	—	(1,488)	—	—	(1,488)
Stock-based compensation	—	—	66,409	—	—	66,409
Tax benefit from the exercise of stock options and vesting of RSUs	—	—	7,060	—	—	7,060
Net income	—	—	—	—	14,976	14,976
Foreign currency translation adjustment	—	—	—	(562)	—	(562)
Unrealized gain on available-for-sale securities, net of tax	—	—	—	288	—	288
Reclassification adjustment for realized loss included in net income	—	—	—	24	—	24
<b>Balance as of July 31, 2016</b>	<b>73,039,919</b>	<b>\$ 7</b>	<b>\$ 742,690</b>	<b>\$ (6,593)</b>	<b>\$ 47,831</b>	<b>\$ 783,935</b>
Issuance of common stock upon exercise of stock options	594,936	—	5,563	—	—	5,563
Issuance of common stock upon RSU release	1,372,770	1	(1)	—	—	—
Stock-based compensation	—	—	72,695	—	—	72,695
Tax benefit from the exercise of stock options and vesting of RSUs	—	—	9,067	—	—	9,067
Net income	—	—	—	—	21,224	21,224
Foreign currency translation adjustment	—	—	—	1,179	—	1,179
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(231)	—	(231)
Reclassification adjustment for realized gain, included in net income	—	—	—	(151)	—	(151)
<b>Balance as of July 31, 2017</b>	<b>75,007,625</b>	<b>\$ 8</b>	<b>\$ 830,014</b>	<b>\$ (5,796)</b>	<b>\$ 69,055</b>	<b>\$ 893,281</b>
Issuance of common stock upon exercise of stock options	150,924	—	2,013	—	—	2,013
Issuance of common stock upon RSU release	1,255,605	—	—	—	—	—
Stock-based compensation	—	—	89,176	—	—	89,176
Issuance of common stock for Cyence acquisition	1,568,973	—	117,457	—	—	117,457
Public offering, net of issuance cost	2,628,571	—	220,948	—	—	220,948
Equity component of convertible senior notes, net of issuance cost	—	—	74,562	—	—	74,562
Purchase of capped calls	—	—	(37,200)	—	—	(37,200)
Net loss	—	—	—	—	(19,665)	(19,665)
Foreign currency translation adjustment	—	—	—	(1,567)	—	(1,567)
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(363)	—	(363)
Reclassification adjustment for realized gain on available-for-sale securities, included in net income	—	—	—	(22)	—	(22)
Adoption of new accounting standard (ASU 2016-09)	—	—	1,009	—	84,115	85,124
<b>Balance as of July 31, 2018</b>	<b>80,611,698</b>	<b>\$ 8</b>	<b>\$ 1,297,979</b>	<b>\$ (7,748)</b>	<b>\$ 133,505</b>	<b>\$ 1,423,744</b>

*See accompanying Notes to Consolidated Financial Statements.*

**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Fiscal years ended July 31,		
	2018	2017	2016
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income (loss)	\$ (19,665)	\$ 21,224	\$ 14,976
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	35,611	18,725	8,842
Amortization of debt discount and issuance costs	4,512	—	—
Stock-based compensation	89,614	71,794	66,131
Excess tax benefit from stock-based compensation	—	(9,067)	(7,102)
Charges to bad debt and revenue reserves	1,062	—	—
Deferred income tax	15,336	(1,227)	(4,568)
Amortization of premium on available-for-sale securities, and other non-cash items	(1,418)	1,462	2,516
Changes in operating assets and liabilities:			
Accounts receivable	(40,832)	(9,750)	(75)
Prepaid expenses and other assets	(2,783)	(9,463)	(7,668)
Accounts payable	16,794	1,311	603
Accrued employee compensation	9,230	7,138	4,114
Other liabilities	8,858	8,211	5,993
Deferred revenue	24,140	36,802	16,138
Net cash provided by operating activities	<u>140,459</u>	<u>137,160</u>	<u>99,900</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchases of available-for-sale securities	(859,657)	(462,035)	(652,017)
Sales and maturities of available-for-sale securities	464,143	547,630	597,405
Purchase of property and equipment	(9,398)	(5,886)	(7,111)
Capitalized software development costs	(2,613)	(784)	—
Strategic investment	—	(4,677)	—
Acquisitions of business, net of cash acquired	(130,059)	(187,590)	(39,530)
Net cash used in investing activities	<u>(537,584)</u>	<u>(113,342)</u>	<u>(101,253)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from issuance of convertible senior notes, net of issuance costs	387,239	—	—
Proceeds from issuance of common stock, net of issuance costs	220,948	—	—
Purchase of capped calls	(37,200)	—	—
Proceeds from issuance of common stock upon exercise of stock options	2,013	5,563	7,840
Taxes remitted on restricted stock units vested	—	—	(1,488)
Excess tax benefit from exercise of stock options and vesting of restricted stock units	—	9,067	7,102
Net cash provided by financing activities	<u>573,000</u>	<u>14,630</u>	<u>13,454</u>
Effect of foreign exchange rate changes on cash and cash equivalents	(1,911)	1,146	(881)
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>173,964</u>	<u>39,594</u>	<u>11,220</u>
<b>CASH AND CASH EQUIVALENTS—Beginning of period</b>	<u>263,176</u>	<u>223,582</u>	<u>212,362</u>
<b>CASH AND CASH EQUIVALENTS—End of period</b>	<u>\$ 437,140</u>	<u>\$ 263,176</u>	<u>\$ 223,582</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>			
Cash paid for income taxes, net of tax refunds	\$ 4,744	\$ 3,700	\$ 3,907
<b>SUPPLEMENTAL DISCLOSURES OF NONCASH INVESTING AND FINANCING ACTIVITIES:</b>			
Accruals for purchase of property and equipment	\$ 1,508	\$ 1,376	\$ 882
Accruals for capitalized software development costs	\$ 189	\$ 171	\$ —

*See accompanying Notes to Consolidated Financial Statements.*



**GUIDEWIRE SOFTWARE, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## **1. The Company and Summary of Significant Accounting Policies**

### **Company**

Guidewire Software, Inc., a Delaware corporation, was incorporated on September 20, 2001. Guidewire Software, Inc. together with its subsidiaries (the “Company”) provides a technology platform which consists of three key elements: core transaction processing, data management and analytics, and digital engagement. The Company’s technology platform supports core insurance operations, including underwriting and policy administration, claim management and billing, enables new insights into data that can improve business decision making and supports digital sales, service and claims experiences for policyholders, agents, and other key stakeholders. The Company’s customers are primarily property and casualty insurance carriers.

### **Public Offerings**

In March 2018, the Company completed a public offering of 2,628,571 shares of its common stock, including the sale of shares in connection with the underwriters’ exercise in full of their option to purchase additional shares of common stock from the Company. The public offering price of the shares sold in the offering was \$87.50 per share. No shares were sold by the Company’s stockholders in this public offering. Concurrently, the Company completed a sale of \$400.0 million aggregate principal amount of 1.25% Convertible Senior Notes due 2025 (the “Convertible Senior Notes”), including amounts sold in connection with the underwriters’ exercise in full of their option to purchase additional Convertible Senior Notes. Net of offering expenses and underwriting discounts (“issuance costs”), the Company received net proceeds of approximately \$220.9 million related to the common stock offering and \$387.2 million related to the convertible note offering.

### **Basis of Presentation and Consolidation**

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”). The consolidated financial statements include the accounts of Guidewire Software, Inc. and its wholly-owned subsidiaries. All inter-company balances and transactions have been eliminated in consolidation.

### **Use of Estimates**

The preparation of the accompanying consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions about future events that affect the amounts of assets and liabilities reported, disclosures about contingent assets and liabilities, and reported amounts of revenue and expenses. Significant items subject to such estimates include, but are not limited to, revenue recognition, the useful lives of property and equipment and intangible assets, allowance for doubtful accounts, valuation allowance for deferred tax assets, stock-based compensation, annual bonus attainment, income tax uncertainties, fair value of convertible senior notes, investments and acquired assets and assumed liabilities including deferred revenue, valuation of goodwill and intangible assets, determination of software development costs to be capitalized, and contingencies. These estimates and assumptions are based on management’s best estimates and judgment. Management regularly evaluates its estimates and assumptions using historical experience and other factors; however, actual results could differ from these estimates.

### **Reclassification**

Certain prior period balances have been reclassified to conform to the current period presentation in the Company’s consolidated financial statements and the accompanying notes.

### **Foreign Currency**

The functional currency of the Company’s foreign subsidiaries is their respective local currency. The Company translates all assets and liabilities of foreign subsidiaries to U.S. dollars at the current exchange rate as of the applicable balance sheet date. Revenue and expenses are translated at the average exchange rate prevailing during the period in which the transactions occur. The effects of foreign currency translations are recorded in accumulated other comprehensive income/loss as a separate component of stockholders’ equity in the accompanying consolidated statements of stockholders’ equity. Transaction gains and losses that arise from exchange rate fluctuations on transactions denominated in a currency other than the local functional currency are recorded as other income (expense) in the consolidated statements of operations.

## **Cash and Cash Equivalents**

Cash and cash equivalents are comprised of cash and highly liquid investments with remaining maturities of 90 days or less at the date of purchase. Cash equivalents primarily consist of commercial paper and money market funds.

## **Investments**

Management determines the appropriate classification of investments at the time of purchase based upon management's intent with regard to such investments. All investments are classified as available-for-sale.

The Company classifies investments as short-term when they have remaining contractual maturities of one year or less from the balance sheet date, and as long-term when the investments have remaining contractual maturities of more than one year from the balance sheet date. All investments are recorded at fair value with unrealized holding gains and losses included in accumulated other comprehensive income (loss).

## **Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the related assets. Maintenance and repairs that do not extend the life or improve an asset are expensed in the period incurred.

The estimated useful lives of property and equipment are as follows:

Computer hardware	3 years
Purchased software	3 years
Furniture and fixtures	3 years
Leasehold improvements	Shorter of the lease term or estimated useful life

## **Software Development Costs**

For qualifying costs incurred for computer software developed for internal use, the Company begins to capitalize its costs to develop software when preliminary development efforts are successfully completed, management has authorized and committed project funding, it is probable that the project will be completed, and the software will be used as intended. These capitalized costs are amortized to expense over the estimated useful lives of the related assets, generally estimated to be three years. Costs incurred prior to meeting these capitalization criteria and costs incurred for training and maintenance are expensed as incurred and recorded in research and development expense on the Company's consolidated statements of operations. Capitalized software development costs are recorded in property and equipment on the Company's consolidated balance sheets.

## **Business Combinations**

The Company uses its best estimates and assumptions to assign fair value to the tangible and intangible assets acquired and liabilities assumed at the acquisition date. Goodwill is calculated as the difference between the acquisition-date fair value of the consideration transferred and the values assigned to the assets acquired and liabilities assumed. The Company's estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and subject to refinement and, as a result, actual results may differ from estimates. During the measurement period, which may be up to one year from the acquisition date, if new information is obtained about facts and circumstances that existed as of the acquisition date, the Company may record adjustments to the fair value of these assets and liabilities, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired and liabilities assumed, whichever comes first, subsequent adjustments, if any, are recorded to the Company's consolidated statements of operations.

## **Impairment of Long-Lived Assets, Intangible Assets and Goodwill**

The Company evaluates its long-lived assets, consisting of property and equipment and intangible assets, for indicators of possible impairment when events or changes in circumstances indicate that the carrying amount of certain assets may not be recoverable. Impairment exists if the carrying amounts of such assets exceed the estimates of future net undiscounted cash flows expected to be generated by such assets. Should impairment exist, the impairment loss would be measured based on the excess carrying value of the assets over the estimated fair value of the assets. The Company has not written down any of its long-lived assets as a result of impairment during any of the periods presented.

The Company tests goodwill for impairment annually, during the fourth quarter of each fiscal year, and in the interim whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company evaluates qualitative

factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. In performing the qualitative assessment, the Company considers events and circumstances, including but not limited to, macroeconomic conditions, industry and market considerations, cost factors, overall financial performance, changes in management or key personnel, changes in strategy, changes in customers, changes in the composition or carrying amount of a reporting unit's net assets and changes in the price of the Company's common stock. If, after assessing the totality of events or circumstances, the Company determines that it is more likely than not that the fair value of the Company's single reporting unit is greater than its carrying amount, then the two-step goodwill impairment test is not performed. There have been no goodwill impairments during any of the periods presented.

### **Convertible Senior Notes**

In March 2018, the Company issued \$400.0 million aggregate principal amount of 1.25% Convertible Senior Notes due 2025. The Company accounts for the liability and equity components of the issued Convertible Senior Notes separately. The carrying amount of the equity component, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the Convertible Senior Notes as a whole. This difference represents a debt discount that is amortized to interest expense using the effective interest method over the term of the Convertible Senior Notes. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The equity component of the Convertible Senior Notes is recorded as the difference between the initial proceeds less the fair value of the liability component and will not be remeasured as long as it continues to meet the requirements for equity classification. The equity component is net of issuance costs and recorded in additional paid in capital.

### **Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash, cash equivalents, investments and accounts receivable. The Company maintains its cash, cash equivalents and investments with high quality financial institutions. The Company is exposed to credit risk for cash held in financial institutions in the event of a default to the extent that such amounts recorded on the balance sheet are in excess of amounts that are insured by the Federal Deposit Insurance Corporation ("FDIC").

No customer individually accounted for 10% or more of the Company's revenue for the years ended July 31, 2018, 2017 and 2016. As of July 31, 2018, no customer accounted for 10% or more of the Company's total accounts receivable. As of July 31, 2017, one customer individually accounted for 11% of the Company's total accounts receivable.

### **Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable are recorded at invoiced amounts and do not bear interest. The Company does not require collateral, performs ongoing credit evaluations of its customers and provides for expected losses. The Company maintains an allowance for doubtful accounts based upon the expected collectability of its accounts receivable. The expectation of collectability is based on historical loss patterns, the number of days that billings are past due, and an evaluation of the potential risk of loss associated with delinquent accounts.

### **Revenue Recognition**

The Company enters into arrangements to deliver multiple products or services (multiple-elements). For a substantial majority of its sales, the Company applies software revenue recognition rules and allocates the total revenue among elements based on vendor-specific objective evidence ("VSOE") of the fair value of each element. The Company recognizes revenue on a net basis excluding indirect taxes, such as sales tax and value added tax, collected from customers and remitted to government authorities.

Revenue is derived from three sources:

- (i) License fees, related to term (or time-based) licenses, cloud-based subscriptions (also referred to as "subscriptions"), and perpetual software licenses;
- (ii) Maintenance fees associated with term or perpetual licenses relate to email and phone support, bug fixes and unspecified software updates, and upgrades released when, and if, available during the maintenance term; and
- (iii) Services fees from professional services relate to implementation of the Company's software, reimbursable travel, and training provided to our customers.

Revenue is recognized when all of the following criteria are met:

- *Persuasive evidence of an arrangement exists.* Evidence of an arrangement consists of a written contract signed by both the customer and management prior to the end of the period.

- *Delivery or performance has occurred.* The Company's software is delivered electronically to the customer. Delivery is considered to have occurred when the Company provides the customer access to the software along with login credentials.
- *Fees are fixed or determinable.* The Company assesses whether a fee is fixed or determinable at the outset of the arrangement, primarily based on the payment terms associated with the transaction. Fees from term licenses are invoiced in advance in annual or quarterly installments over the term of the agreement beginning on the effective date of the license and represent extended payment terms. A significant majority are invoiced annually. As a result, term license fees are not considered to be fixed and determinable until they become due or payment is received. Perpetual license fees are generally due between 30 and 60 days from delivery of software. We offer extended payment terms in limited cases.
- *Collectability is probable or reasonably assured.* Collectability is assessed on a customer-by-customer basis, based primarily on creditworthiness as determined by credit checks and analysis, as well as customer payment history. Payment terms generally range from 30 to 90 days from invoice date. If it is determined prior to revenue recognition that collection of an arrangement fee is not probable, revenue is deferred until collection becomes probable or reasonably assured, or cash is collected, assuming all other revenue recognition criteria are satisfied.

VSOE of fair value does not exist for the Company's software licenses; therefore, the Company allocates revenue to software licenses using the residual method. Under the residual method, the amount recognized for license fees is the difference between the total fixed and determinable fees and the VSOE of fair value for the undelivered elements under the arrangement.

The VSOE of fair value for elements of an arrangement is based upon the normal pricing and discounting practices for those elements when sold separately. VSOE of fair value for maintenance is established using the stated maintenance renewal rate in the customer's contract. For term licenses with duration of one year or less, no VSOE of fair value for maintenance exists. VSOE of fair value for services is established if a substantial majority of historical stand-alone selling prices for a service fall within a reasonably narrow price range.

If the undelivered elements are all service elements and VSOE of fair value does not exist for one or more service element, the total arrangement fee is recognized ratably over the longest service period starting at software delivery, assuming all the related services have been made available to the customer.

The Company's subscriptions are recognized ratably over the term of the arrangement typically upon provisioning the products.

As noted above, the Company generally invoices fees for licenses and maintenance to its customers in annual or, in certain cases, quarterly installments payable in advance. The fees related to maintenance are recognized over the period the maintenance is provided.

Substantially all of the Company's professional services engagements are billed on a time and materials basis and are typically not considered essential to the functionality of the software. The related revenue and costs are recognized in the period incurred. In select situations, the Company will contract our professional services on a fixed fee basis, where we generally recognize services revenue on a proportional performance basis as the performance obligations are completed.

When professional services are sold with a license arrangement the Company evaluates whether those services are essential to the functionality of the software. In the limited cases where professional services are deemed to be essential to the functionality of the software and separate accounting for the services is not permitted, the arrangement is accounted for using contract accounting until the essential services are complete.

Deferred revenue represent amounts, which are billed to or collected from creditworthy customers for which one or more of the revenue recognition criteria have not been met. The deferred revenue balance does not represent the total contract value of annual or multi-year, non-cancellable arrangements.

### **Sales Commissions**

Sales commissions are recognized as an expense when earned by the sales representative, generally occurring at the time the customer order is signed. Substantially all of the effort by the sales force is expended through the time of closing the sale, with limited to no involvement thereafter.

## **Warranties**

The Company generally provides a warranty for its software products and services to its customers for periods ranging from 3 to 12 months. The Company's software products are generally warranted to be free of defects in materials and workmanship under normal use and to substantially perform as described in published documentation. The Company's services are generally warranted to be performed in a professional manner and to materially conform to the specifications set forth in the related customer contract. In the event there is a failure of such warranties, the Company generally will correct the problem or provide a reasonable workaround or replacement product. If the Company cannot correct the problem or provide a workaround or replacement product, then the customer's remedy is generally limited to refund of the fees paid for the nonconforming product or services. Warranty expense has been insignificant to date.

## **Advertising Costs**

Advertising costs are expensed as incurred and amounts incurred were not material during the years ended July 31, 2018, 2017 and 2016.

## **Stock-Based Compensation**

The Company accounts for stock-based compensation using the fair value method, which requires the Company to measure the stock-based compensation based on the grant-date fair value of the awards and recognize the compensation expense over the requisite service period. The Company recognizes compensation expense net of actual forfeitures. To date, the Company has granted or assumed stock options, restricted stock awards ("RSAs"), time-based restricted stock units ("RSUs"), performance-based restricted stock units ("PSUs"), and restricted stock units that may be earned subject to the Company's total shareholder return ranking relative to the software companies in the S&P Software and Services Select Industry Index ("S&P Index") for a specified performance period or specified performance periods, service periods, and in select cases, subject to certain performance conditions ("TSR PSUs"). RSAs, RSUs, PSUs, and TSR PSUs are collectively referred to as "Stock Awards".

The fair value of the Company's RSAs, RSUs and PSUs equal the market value of the Company's common stock on the date of grant. These awards are subject to time-based vesting, which generally occurs over a period of four years. The Company recognizes compensation expense for awards which contain only service conditions on a straight-line basis over the requisite service period, which is generally the vesting period of the respective awards. The Company recognizes the compensation cost for awards that contain either a performance condition, market conditions, or both using the graded vesting method.

The fair value of the Company's Stock Options and TSR PSUs are estimated at the grant date using the Black-Scholes model and Monte Carlo simulation method, respectively. The assumptions utilized in this simulation require judgments and estimates. Changes in these inputs and assumptions could affect the measurement of the estimated fair value and the related compensation expense related to these stock options and stock awards. Compensation expense associated with these TSR PSUs will be recognized over the vesting period regardless of whether the market condition is ultimately satisfied; however, the expense will be reversed if a grantee terminates prior to satisfying the requisite service period. For TSR PSUs containing an additional performance condition, a portion of the expense may fluctuate depending on the achievement of the performance conditions. All TSR PSUs will vest at the end of a three-year period.

## **Income Taxes**

Income taxes are accounted for under the asset and liability method. Under this method, the Company determines deferred tax assets and liabilities on the basis of the differences between the financial statement carrying amounts and tax basis of existing assets and liabilities by using enacted tax rates in effect for the year in which the difference is expected to reverse. All deferred tax assets and liabilities are classified as non-current on the consolidated balance sheets. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance against deferred tax assets is recorded when it is more likely than not that some portion or all of such deferred tax assets will not be realized and is based on the positive and negative evidence about the future including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations.

The effective tax rate in any given financial statement period may differ materially from the statutory rate. These differences may be caused by changes in tax regulations and resulting changes in the deferred tax valuation allowance, changes in the mix and level of income or losses, changes in the expected outcome of tax audits, as well as permanent differences for stock-based compensation, including excess tax benefits, research and development credits, the tax rate differences between the United States and foreign countries, foreign withholding taxes, certain non-deductible expenses including executive compensation, and acquisition-related expenses.

The Company records interest and penalties related to unrecognized tax benefits as income tax expense in its consolidated statement of operations.

## Recently Adopted Accounting Pronouncements

### ***Compensation, Stock Compensation (ASC 718): Improvements on Employee Share-Based Payment Accounting***

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2016-09, Compensation, Stock Compensation (ASC 718): Improvements on Employee Share-Based Payment Accounting (“ASU 2016-09”), which simplifies several aspects of the accounting for employee share-based payment transactions for both public and nonpublic entities, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. The Company adopted ASU 2016-09 on August 1, 2017. As a result of this adoption, previously unrecognized tax benefits of \$85.7 million were recorded as deferred tax assets net of valuation allowance of \$0.6 million, on a modified retrospective approach with a net cumulative effect adjustment to opening retained earnings of \$85.1 million. The Company elected to account for forfeitures based on actuals, as they occur, and using a modified retrospective transition method, recorded a cumulative-effect adjustment of \$1.0 million to decrease the Company’s opening retained earnings balance as of the adoption date. For the year ended July 31, 2018, the provision for income taxes included tax benefits of \$9.1 million related to the tax effects of settled stock-based awards.

## Recent Accounting Pronouncements Not Yet Adopted

### ***Revenue from Contracts with Customers (ASC 606): Revenue Recognition***

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (ASC 606) (“ASU 2014-09”), which provides guidance for revenue recognition. This ASU affects any entity that either enters into contracts with customers to transfer goods or services or enters into contracts for the transfer of non-financial assets. This ASU will supersede the revenue recognition requirements in ASC 605, Revenue Recognition, and most industry-specific guidance.

In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers: Deferral of the Effective Date, which deferred the effective date of this standard. As a result, ASU 2014-09 and related amendments will be effective for the Company for its fiscal year beginning August 1, 2018, including interim periods within that fiscal year. The FASB issued ASU No. 2016-08, Principal Versus Agent Consideration (or Reporting Revenue Gross versus Net) in March 2016, ASU No. 2016-10, Identifying Performance Obligations and Licensing in April 2016, and ASU No. 2016-12, Narrow-Scope Improvements and Practical Expedients in May 2016. These amendments clarified certain aspects of ASU 2014-09 and have the same effective date as ASU 2014-09.

The Company will adopt these ASUs (collectively, ASC 606) on August 1, 2018 under the Modified Retrospective Method.

The Company has evaluated the potential impact of ASC 606 on its revenue recognition policy and practices and has concluded that ASC 606 will impact the pattern of its revenue recognition associated with its software licenses and, to a lesser extent, cloud-based subscriptions. The Company’s term licenses require payments to be made annually or quarterly in advance and are subject to extended payment terms. Currently under ASC 605, revenue associated with term software licenses is recognized in the earlier of the period in which the payments are due or are actually made. Under ASC 606, the Company will be required to recognize term license revenue associated with such payments not when they are made or due, but when control of the software license is transferred to the customer, which occurs at or near the time a contract with a customer is executed. As a result, under ASC 606, contractually obligated payments allocated to the software license under a term license that the Company reasonably expects to collect would be recognized upon delivery. In conjunction with its evaluation of this new standard, the Company began revising its contracting practices and amending existing agreements with certain customers primarily by shortening the initial, non-refundable term of its licenses. Since fiscal year 2017, a majority of new term license contracts have a two-year initial term with subsequent one-year auto renewal options.

The Company currently anticipates that the impact of ASC 606 on its cloud-based subscriptions, will be more limited than for term license arrangements and will impact, primarily, those cloud-based subscriptions that contractually provide for increasing annual subscription payments during the term of the arrangement. Under ASC 606, revenue on these types of cloud-based arrangements will be recognized ratably throughout the committed term.

While the Company is still evaluating the impact of the change to the timing of revenue recognition, the Company expects to have a balance sheet impact at the date of adoption of approximately \$29 million to \$39 million recorded as a reduction primarily to deferred revenue and an increase to un-billed contract revenue. Another significant provision under ASC 606 includes the capitalization and amortization of costs associated with obtaining a contract, most significantly sales commissions. The amortization period for the Company’s deferred costs will be recognized over the estimated period of benefit, which is estimated to be five years. The Company expects there to be a balance sheet impact at the date of adoption recognizing the deferred sales commission capitalization costs of approximately \$11 million to \$17 million. We will continue to monitor additional changes, modifications, clarifications or interpretations of ASC 606, which may impact current expectations.

### ***Leases (ASC 842): Accounting for Leases***

In February 2016, the FASB issued ASU No. 2016-02, Leases (ASC 842) (“ASU 2016-02”), which requires lessees to put most leases on their balance sheets but recognize the expenses on their income statements in a manner similar to current practice. ASU 2016-02 states that a lessee would recognize a lease liability for the obligation to make lease payments and a right-to-use asset for the right to use the underlying asset for the lease term. The standard will be effective for the Company beginning August 1, 2019. While the Company is currently evaluating the impact this update will have on its consolidated financial statements, it expects ASU 2016-02 to have a significant impact on recorded assets and liabilities.

**Financial Instruments (ASC 825): Recognition and Measurement of Financial Assets and Financial Liabilities**

In January 2016, the FASB issued ASU 2016-01, Financial Instruments (ASC 825) (“ASU 2016-01”), which impacts certain aspects of recognition, measurement, presentation and disclosure of financial instruments. Under ASU 2016-01, unconsolidated non-equity method investments shall be measured at fair value. If such investments do not have a readily determinable fair value, an election may be made to measure them at cost after considering observable price changes for similar instruments. The standard will be effective for the Company beginning August 1, 2018. The Company does not expect the impact this update will have on its strategic equity investment in a privately-held company to be significant.

Other recent accounting pronouncements that are or will be applicable to the Company did not, or are not expected to, have a material impact on the Company’s present or future financial statements.

**2. Fair Value of Financial Instruments**

Available-for-sale investments within cash equivalents and investments consist of the following:

	July 31, 2018			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
	(in thousands)			
U.S. Government agency securities	\$ 9,000	\$ —	\$ (27)	\$ 8,973
Commercial paper	471,966	4	(141)	471,829
Corporate bonds	432,234	69	(763)	431,540
U.S. Government bonds	89,986	—	(55)	89,931
Foreign government bonds	9,306	7	(1)	9,312
Certificate of deposit	81,985	53	(8)	82,030
Money market funds	90,766	—	—	90,766
Total	<u>\$ 1,185,243</u>	<u>\$ 133</u>	<u>\$ (995)</u>	<u>\$ 1,184,381</u>

	July 31, 2017			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
	(in thousands)			
U.S. Government agency securities	\$ 22,662	\$ —	\$ (66)	\$ 22,596
Commercial paper	147,371	2	(34)	147,339
Corporate bonds	258,334	157	(146)	258,345
U.S. Government bonds	67,164	—	(185)	66,979
Certificate of deposit	27,498	29	—	27,527
Money market funds	96,313	—	—	96,313
Total	<u>\$ 619,342</u>	<u>\$ 188</u>	<u>\$ (431)</u>	<u>\$ 619,099</u>

The following table shows the gross unrealized losses and fair value of the Company's investments with unrealized losses, aggregated by investment category and length of time that individual securities have been in an unrealized loss position:

	July 31, 2018					
	Less Than 12 Months		12 Months or Greater		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(in thousands)					
U.S. Government agency securities	\$ 6,974	\$ (24)	\$ 1,999	\$ (3)	\$ 8,973	\$ (27)
Commercial paper	144,342	(141)	—	—	144,342	(141)
Corporate bonds	307,590	(755)	13,497	(8)	321,087	(763)
U. S. Government bonds	65,013	(11)	19,948	(44)	84,961	(55)
Foreign government bonds	766	(1)	—	—	766	(1)
Certificate of deposit	23,734	(8)	—	—	23,734	(8)
Total	\$ 548,419	\$ (940)	\$ 35,444	\$ (55)	\$ 583,863	\$ (995)

As of July 31, 2018, the Company had 188 investments in a gross unrealized loss position. The unrealized losses on its available-for-sale securities were primarily a result of unfavorable changes in interest rates subsequent to the initial purchase of these securities. The Company does not intend to sell, nor does it believe it will need to sell, these securities before recovering the associated unrealized losses. The Company does not consider any portion of the unrealized losses at July 31, 2018 to be other-than-temporarily impaired, nor are any unrealized losses considered to be credit losses. The Company has recorded the securities at fair value in its consolidated balance sheets, with unrealized gains and losses reported as a component of accumulated other comprehensive loss. The amount of realized gains and losses reclassified into earnings are based on the specific identification of the securities sold. The realized gains and losses from sales of securities in the periods presented were not material.

The following table summarizes the contractual maturities of the Company's available-for-sale investments measured at fair value:

	July 31, 2018		
	Less Than 12 Months	12 to 24 Months	Total
	(in thousands)		
U.S. Government agency securities	\$ 1,999	\$ 6,974	\$ 8,973
Commercial paper	465,030	6,799	471,829
Corporate bonds	280,249	151,291	431,540
U.S. Government bonds	89,931	—	89,931
Foreign government bonds	4,448	4,864	9,312
Certificate of deposit	61,006	21,024	82,030
Money market funds	90,766	—	90,766
Total	\$ 993,429	\$ 190,952	\$ 1,184,381

### ***Fair Value Measurement***

The Company classifies cash equivalents, short-term investments and long-term investments within Level 1 or Level 2 in the fair value hierarchy because the Company uses quoted market prices or alternative pricing sources and models utilizing observable market inputs to determine their fair value.

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The Company uses a three-tier fair value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

Level 1 - Unadjusted quoted prices in active markets for identical assets or liabilities;



Level 2 - Inputs other than quoted prices that are observable but do not qualify as a Level 1 quoted price, unadjusted quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data; and

Level 3 - Unobservable inputs that are supported by little or no market activity, which require the Company to develop its own assumptions.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The carrying value of the Company's accounts receivable, accounts payable and accrued liabilities approximates their fair value due to the short-term nature of these instruments.

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

The Company obtains the fair value of its Level 2 financial instruments, which are not in active markets, from a third-party professional pricing service using quoted market prices for identical or comparable instruments, rather than direct observations of quoted prices in active markets. The Company's professional pricing service gathers observable inputs for all of its fixed income securities from a variety of industry data providers (e.g. large custodial institutions) and other third-party sources. Once the observable inputs are gathered, all data points are considered and an average price is determined.

The Company validates the quoted market prices provided by its primary pricing service by comparing their assessment of the fair values of our Level 2 investment portfolio balance against the fair values of its Level 2 investment portfolio balance provided by its investment managers. The Company's investment managers use similar techniques to its professional pricing service to derive pricing as described above.

The Company did not have any Level 3 financial assets or liabilities as of July 31, 2018, or 2017.

#### Available-for-sale investments

The following tables summarize the Company's available-for-sale investments measured at fair value on a recurring basis, by level within the fair value hierarchy:

	July 31, 2018			
	Level 1	Level 2	Level 3	Total
	(in thousands)			
<b>Cash equivalents:</b>				
Commercial paper	\$ —	\$ 269,654	\$ —	\$ 269,654
Corporate bonds	—	3,001	—	3,001
Money market funds	90,766	—	—	90,766
<b>Total Cash equivalents</b>	<b>90,766</b>	<b>272,655</b>	<b>—</b>	<b>363,421</b>
<b>Short-term investments:</b>				
U.S. Government agency securities	—	1,999	—	1,999
Commercial paper	—	195,376	—	195,376
U.S. Government bonds	—	89,931	—	89,931
Foreign government bonds	—	4,448	—	4,448
Corporate bonds	—	277,248	—	277,248
Certificate of deposit	—	61,006	—	61,006
<b>Total Short-term investments</b>	<b>—</b>	<b>630,008</b>	<b>—</b>	<b>630,008</b>
<b>Long-term investments:</b>				
U.S. Government agency securities	—	6,974	—	6,974
Certificate of deposit	—	21,024	—	21,024
Corporate bonds	—	151,291	—	151,291
Commercial paper	—	6,799	—	6,799
Foreign government bonds	—	4,864	—	4,864
<b>Total Long-term investments</b>	<b>—</b>	<b>190,952</b>	<b>—</b>	<b>190,952</b>
<b>Total</b>	<b>\$ 90,766</b>	<b>\$ 1,093,615</b>	<b>\$ —</b>	<b>\$ 1,184,381</b>

	July 31, 2017			
	Level 1	Level 2	Level 3	Total
	(in thousands)			
<b>Cash and cash equivalents:</b>				
Commercial paper	\$ —	\$ 98,174	\$ —	\$ 98,174
Money market funds	96,313	—	—	96,313
<b>Total Cash equivalents</b>	<b>96,313</b>	<b>98,174</b>	<b>—</b>	<b>194,487</b>
<b>Short-term investments:</b>				
U.S. Government agency securities	—	20,583	—	20,583
Commercial paper	—	49,165	—	49,165
U. S. Government bonds	—	47,105	—	47,105
Foreign government bonds	—	—	—	—
Corporate bonds	—	170,654	—	170,654
Certificate of deposit	—	22,520	—	22,520
<b>Total Short-term investments</b>	<b>—</b>	<b>310,027</b>	<b>—</b>	<b>310,027</b>
<b>Long-term investments:</b>				
U.S. Government agency securities	—	2,013	—	2,013
Certificate of deposit	—	5,007	—	5,007
Corporate bonds	—	87,691	—	87,691
U.S. Government bonds	—	19,874	—	19,874
Foreign government bonds	—	—	—	—
<b>Total Long-term investments</b>	<b>—</b>	<b>114,585</b>	<b>—</b>	<b>114,585</b>
<b>Total</b>	<b>\$ 96,313</b>	<b>\$ 522,786</b>	<b>\$ —</b>	<b>\$ 619,099</b>

#### *Convertible Senior Notes*

The carrying value of the Convertible Senior Notes was \$310.5 million before consideration of issuance costs, which approximates their fair value at July 31, 2018. In accounting for the issuance of the notes, the Company separated the notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated conversion feature. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the par value of the notes as a whole.

The Company estimates the fair value of the Convertible Senior Notes using commonly accepted valuation methodologies and market-based risk measurements that are indirectly observable, such as credit risk (Level 2). The Company carries the Convertible Senior Notes at face value less unamortized debt discount and issuance costs on its consolidated balance sheet, and presents the fair value for required disclosure purposes only. For further information on the Convertible Senior Notes see Note 6.

### 3. Acquisitions

The Company's acquisitions during fiscal years 2018 and 2017 were all accounted for as business combinations. U.S. GAAP requires the Company to recognize separately from goodwill the assets acquired and the liabilities assumed at the acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred over the net of the acquisition date fair value of the assets acquired and the liabilities assumed. The Company utilized the discounted cash flow methodology and the profit allocation methodology under the income approach to estimate the fair values of the intangible assets. The acquired intangible assets are amortized over their estimated useful lives. The Company used the cost build-up approach to estimate the fair value of deferred revenue by estimating the costs related to fulfilling the obligation plus an additional markup for an assumed operating margin to reflect the profit a third party would expect to make on the costs incurred. These fair value measurements were based on significant inputs that were not observable in the market and thus represents a Level 3 measurement. The valuation models were based on estimates of future operating projections of the acquired business and rights to sell new products containing the acquired technology as well as judgments on the discount rates used and other variables. The Company developed forecasts based on a number of factors including future revenue and operating cost projections, a discount rate that is representative of the weighted average cost of capital, in addition to royalty and long-term sustainable growth rates based on market analysis.

#### *Fiscal Year 2018*

##### *Cyence Acquisition*

On November 1, 2017, the Company completed its acquisition of Cyence, Inc. ("Cyence") for an aggregate consideration of approximately \$260.3 million, including approximately 146.6 million in cash, and equity consideration valued at approximately \$113.7 million of newly issued Guidewire common stock and options, net of certain adjustments including a net working capital adjustment (the "Cyence Acquisition"). Through the acquisition, the Company gained a cloud-based data listening and risk analytics technology offering for the property and casualty insurance ("P&C") industry which enables underwriting new and evolving risks, such as cyber risk. The results of Cyence's operations have been included in the Company's results of operations since November 1, 2017, the date of acquisition.

As part of the acquisition, the Company assumed certain Cyence compensation agreements, including RSAs and stock options with an estimated fair value of \$37.6 million. Based on the service period related to the period prior to the acquisition date, \$18.2 million was allocated to the purchase price, and \$19.4 million relating to post-acquisition services will be recorded as operating expenses over the remaining requisite service periods. RSAs were valued based on the November 1, 2017 grant date value, and the estimated fair value of the stock options assumed by the Company was determined using the Black-Scholes option pricing model.

The adjustments reflected herein to determine the purchase consideration are preliminary and may change as the Company finalizes these adjustments during the measurement period based on new information as it becomes available. The measurement period will end no later than October 31, 2018. The preliminary purchase consideration is as follows (in thousands):

Cash consideration paid at close	\$	146,651
Equity issued to shareholders		102,493
Issuance of replacement awards		11,205
<b>Total preliminary purchase consideration</b>	<b>\$</b>	<b>260,349</b>

In conjunction with the preliminary purchase price allocation, the Company determined that Cyence's separately identifiable intangible assets were developed technology, customer contracts and related relationships, order backlog, and trade names. The valuation method used was in accordance with the Company's policy, practice, and experience as described above. The valuation models were based on estimates of future operating projections of Cyence and rights to sell new products containing the acquired technology as well as judgments on the discount rates used and other variables. The Company developed forecasts based on a number of factors including future revenue and operating cost projections, a discount rate that is representative of the weighted average cost of capital, in addition to royalty and long-term sustainable growth rates based on a market analysis. The Company amortizes the acquired intangibles over their estimated useful lives as set forth in the table below.

The allocation of purchase price is preliminary pending the final valuation of intangible and tangible assets acquired and liabilities assumed, certain acquired deferred tax assets and completion of certain statutory tax filing requirements and is therefore subject to potential future measurement period adjustments. The preliminary allocation of the purchase consideration is as follows:

	<b>Preliminary Purchase Price Allocation</b>	<b>Estimated Useful Lives</b>
	<b>(in thousands)</b>	<b>(in years)</b>
Acquired assets, net of assumed liabilities	\$ 9,620	
Developed technology	28,400	5
Customer contracts and related relationships	17,700	5
Order backlog	3,200	2
Trademarks	2,500	7
Goodwill	198,929	
<b>Total preliminary purchase consideration</b>	<b>\$ 260,349</b>	

The goodwill of \$198.9 million arising from the Cyence Acquisition consists largely of the acquired workforce and the opportunity to expand the Company's customer base. The goodwill recognized is not expected to be deductible for income tax purposes.

Cyence's post-acquisition results of operations were included in the Company's results of operations. Since the acquisition date of November 1, 2017 through July 31, 2018, total revenue and net loss of Cyence was \$11.0 million and \$20.3 million, respectively. The Company incurred \$5.2 million of total acquisition-related costs that were recognized in general and administrative expenses in fiscal year 2018.

#### *Unaudited Pro Forma Financial Information*

The following unaudited pro forma financial information presents the combined results of operations for the Company and Cyence for the fiscal years ended July 31, 2018 and 2017, after giving effect to the Cyence Acquisition as if it had occurred on August 1, 2016. The unaudited pro forma financial information includes adjustments to give effect to pro forma events that are directly attributable to the business combination and factually supportable. The unaudited pro forma financial information presented includes the business combination accounting effects resulting from the acquisition, including adjustments for the amortization of intangible assets, stock-based compensation, deferred revenue, and transaction costs on August 1, 2016 with a corresponding reduction of these amounts in the period originally recognized.

The unaudited pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the results of operations that would have been realized if the Cyence acquisition had been completed on August 1, 2016, nor does it purport to project the results of operations of the combined company in future periods. The unaudited pro forma financial information does not give effect to any anticipated integration costs related to the acquired company. Consequently, actual results will differ from the unaudited pro forma financial information.

The unaudited pro forma financial information is as follows (in thousands):

	<b>Fiscal years ended July 31,</b>	
	<b>2018</b>	<b>2017</b>
Pro forma revenue	\$ 665,999	\$ 524,102
Pro forma net loss	\$ (22,618)	\$ (9,891)
Pro forma net loss per share -- basic and diluted	\$ (0.29)	\$ (0.13)

The pro forma revenue and net loss reflects material, nonrecurring adjustments, such as transaction, transition and integration-related charges (including legal, accounting and other professional fees, and retention bonuses) that resulted from the acquisition.

#### *Fiscal Year 2017*

### ISCS Acquisition

On February 16, 2017, the Company completed its acquisition of ISCS, Inc., a privately-held company that provides a cloud-based, all-in-one system for policy administration, billing and claims management to P&C insurers (“ISCS Acquisition”). The purchase price of the ISCS Acquisition was \$160 million, subject to certain preliminary adjustments including a net working capital adjustment, which resulted in cash consideration paid of \$154.9 million. The fair value of all assets acquired and liabilities assumed was finalized in the fiscal quarter ended April 30, 2018. A portion of the consideration has been placed into an escrow account as partial security to satisfy any potential claims, including the indemnification liability for state sales taxes. The ISCS Acquisition is intended to enhance the Company’s ability to serve those P&C insurers that prefer a cloud-based, all-in-one platform that offers policy, billing, and claims management functionality. Total acquisition costs of \$1.1 million were expensed as incurred, and recorded as general and administrative expenses in the accompanying consolidated statement of operations in fiscal year 2017. The results of ISCS’ operations have been included in the Company’s results of operations since February 16, 2017, the acquisition date.

In connection with the ISCS Acquisition, the Company recorded an indemnification asset of \$1.6 million, which represents the selling security holders’ obligation under the Agreement and Plan of Merger to indemnify the Company for unpaid state sales taxes. The indemnification asset was recognized on the same basis as the corresponding liability, which is based on its estimated fair value as of the date of acquisition.

The ISCS Acquisition was accounted for as a business combination. As part of the purchase price allocation, the Company determined that ISCS’s separately identifiable intangible assets were developed technology, customer contracts and related relationships, and order backlog. The valuation method used was in accordance with the Company’s policy, practice, and experience as described above. The allocation of the purchase consideration was as follows:

	<u>Total Purchase Price Allocation</u>	<u>Estimated Useful Lives</u>
	(in thousands)	(in years)
Acquired assets, net of assumed liabilities	\$ 4,530	
Developed technology	43,300	4
Customer contracts and related relationships	7,000	9
Order backlog	3,500	4
Deferred tax assets	171	
Goodwill	96,431	
Total preliminary purchase price	<u>\$ 154,932</u>	

The goodwill of \$96.4 million arising from the ISCS Acquisition consists largely of the acquired workforce, expected synergies and the opportunity to expand the Company’s customer base. The goodwill recognized is expected to be deductible for income tax purposes.

### FirstBest Acquisition

On August 31, 2016, the Company acquired all of the outstanding equity interests of FirstBest Systems, Inc. (the “FirstBest Acquisition”), a privately-held provider of underwriting management systems and related applications for P&C insurers. Total consideration for the FirstBest Acquisition was \$37.8 million which included amounts placed into escrow to cover future potential claims. The fair value of all assets acquired and liabilities assumed was finalized in the fiscal quarter ended October 31, 2017. The Company believes that the FirstBest Acquisition will enable the expansion of its insurance platform by providing insurers in the U.S. and Canada writing complex commercial, specialty, and workers’ compensation lines greater support for their risk assessment and decision-making processes. Total acquisition costs of \$1.2 million were expensed as incurred and recorded as general and administrative expenses in the accompanying consolidated statement of operations, of which, \$0.9 million were expensed as incurred during the year ended July 31, 2017 and \$0.3 million were expensed as incurred during the year ended July 31, 2016.

The FirstBest Acquisition was accounted for as a business combination. As part of the purchase price allocation, the Company determined that FirstBest’s separately identifiable intangible assets were developed technology, customer contracts and related relationships, and order backlog. The valuation method used was in accordance with the Company’s policy, practice and experience as described above. The allocation of the purchase consideration was as follows:

	Total Purchase Price Allocation	Estimated Useful Lives
	(in thousands)	(in years)
Acquired assets, net of assumed liabilities	\$ 2,518	
Developed technology	8,000	5
Customer contracts and related relationships	6,500	9
Order backlog	900	3
Deferred tax assets, net	4,406	
Goodwill	15,434	
<b>Total purchase price</b>	<b>\$ 37,758</b>	

The goodwill of \$15.4 million arising from the acquisition consists largely of the acquired workforce, expected synergies and the opportunity to expand the Company's customer base. The goodwill recognized is not expected to be deductible for income tax purposes.

#### 4. Balance Sheet Components

##### *Property and Equipment, net*

Property and equipment consist of the following:

	(in thousands)	
	July 31, 2018	July 31, 2017
Computer hardware	\$ 24,879	\$ 21,408
Purchased software	4,664	3,855
Capitalized software development costs	3,978	1,065
Furniture and fixtures	4,217	3,253
Leasehold improvements	10,751	8,251
Total property and equipment	48,489	37,832
Less accumulated depreciation	(29,894)	(23,456)
Property and equipment, net	\$ 18,595	\$ 14,376

As of July 31, 2018 and 2017, no property and equipment was pledged as collateral against borrowings. Amortization of leasehold improvements is included in depreciation expense. Depreciation expense was \$7.7 million, \$6.6 million and \$6.5 million for the years ended July 31, 2018, 2017 and 2016, respectively.

During the third fiscal quarter of fiscal year 2017, the Company began to capitalize software development costs for technology applications that the Company will offer solely as cloud-based subscriptions. The amount capitalized as of July 31, 2018 and 2017 was \$4.0 million and \$1.1 million, respectively, primarily comprised of compensation and related headcount costs for employees who were directly associated with the software development projects. During the fiscal year ended July 31, 2018, the Company began to amortize the technology applications that were ready for their intended use. The Company recognized approximately \$0.4 million in amortization expense in cost of revenue, license and other on the accompanying consolidated statements of operations during the fiscal year ended July 31, 2018. There was no such amortization during the fiscal years ended July 31, 2017 and 2016.

##### *Other Assets*

The Company's other assets of \$22.5 million and \$20.1 million at July 31, 2018 and 2017, respectively, include the strategic equity investment in a privately-held company, which was accounted for using the cost method of accounting. Strategic investments are non-marketable equity securities, in which the Company does not have a controlling interest or the ability to exert significant influence. These investments do not have a readily determinable market value. Under the cost method of accounting, the non-marketable securities are carried at cost and are adjusted only for other-than temporary impairments, certain distributions and additional investments. Accordingly, if the Company were to disclose the fair value of the investment, the fair value measurement would be Level 3 in the valuation hierarchy. The Company assesses the investment for impairment when events or changes in circumstances indicate that its carrying amount may not be recoverable. As of July 31, 2018 and 2017, there were no indicators that the strategic equity investment with carrying value of \$10.7 million was impaired.

### Goodwill and Intangible Assets

Changes in the carrying amount of goodwill for the periods presented is as follows (in thousands):

Goodwill - July 31, 2016	\$	30,080
FirstBest Acquisition		15,434
ISCS Acquisition		96,337
Goodwill - July 31, 2017	\$	141,851
Cyence Acquisition		198,929
Changes in carrying value		97
Goodwill - July 31, 2018	\$	340,877

The Company's intangible assets are amortized over their estimated useful lives. Intangible assets consist of the following:

	July 31, 2018			July 31, 2017		
	Cost	Accumulated Amortization	Net Book Value	Cost	Accumulated Amortization	Net Book Value
	(in thousands)					
Intangible assets:						
Acquired technology	\$ 93,600	\$ 34,189	59,411	\$ 65,200	\$ 14,710	\$ 50,490
Customer contracts and related relationships	35,700	6,633	29,067	18,000	1,683	16,317
Partner relationships	200	52	148	200	30	170
Trademarks	2,500	268	2,232	—	—	—
Order backlog	8,700	3,904	4,796	5,500	1,162	4,338
Total	<u>\$ 140,700</u>	<u>\$ 45,046</u>	<u>\$ 95,654</u>	<u>\$ 88,900</u>	<u>\$ 17,585</u>	<u>\$ 71,315</u>

Amortization expense was \$27.5 million, \$12.1 million and \$2.3 million during the years ended July 31, 2018, 2017 and 2016, respectively. The estimated future aggregate amortization expense for existing intangible assets as of July 31, 2018, based on their current useful lives, is as follows (in thousands):

Fiscal year ending July 31,	
2019	\$ 29,112
2020	26,834
2021	19,965
2022	11,143
2023	3,799
Thereafter	4,801
Total future amortization expense	<u>\$ 95,654</u>

### Allowance for Doubtful Accounts

Allowance for Doubtful Accounts consists of the following (in thousands):

Allowance for Doubtful Accounts as of July 31, 2017	\$ —
Charges to bad debt and revenue reserves	1,062
Write-offs, net	—
Allowance for Doubtful Accounts as of July 31, 2018	<u>\$ 1,062</u>

### Accrued Employee Compensation

Accrued employee compensation consists of the following:

	July 31, 2018		July 31, 2017	
	(in thousands)			
Accrued bonuses	\$	31,273	\$	26,581
Accrued commission		7,287		5,228
Accrued vacation		13,132		10,873
Accrued salaries, payroll taxes and benefits		8,443		6,200
Total	\$	60,135	\$	48,882

### **Deferred Revenue**

Deferred revenue, current and non-current, consists of the following:

	July 31, 2018		July 31, 2017	
	(in thousands)			
Deferred revenue, current:				
Deferred license and other revenue	\$	42,235	\$	21,018
Deferred maintenance revenue		52,010		46,562
Deferred services revenue		19,893		23,663
Total deferred revenue, current	\$	114,138	\$	91,243
Deferred revenue, non-current		23,758		19,892
Total	\$	137,896	\$	111,135

### **Accumulated Other Comprehensive Loss**

Changes in accumulated other comprehensive loss was as follows:

	Foreign Currency Items		Unrealized gain (loss) on available-for-sale securities		Total	
	(in thousands)					
Balance as of July 31, 2016	\$	(6,809)	\$	216	\$	(6,593)
Foreign currency translation adjustments		1,179		(465)		714
Unrealized loss on available-for-sale securities		—		(151)		(151)
Tax effect		—		234		234
Balance as of July 31, 2017		(5,630)		(166)		(5,796)
Foreign currency translation adjustments		(1,567)		(596)		(2,163)
Unrealized loss on available-for-sale securities		—		(22)		(22)
Tax effect		—		233		233
Balance as of July 31, 2018	\$	(7,197)	\$	(551)	\$	(7,748)

## **5. Net Income (Loss) per Share**

The Company calculates basic earnings per share by dividing the net income (loss) by the weighted average number of shares of common stock outstanding for the period. The diluted earnings per share is computed by giving effect to all potential dilutive common stock equivalents outstanding for the period. For purposes of this calculation, options to purchase common stock and stock awards are considered to be common stock equivalents.



The following table sets forth the computation of the Company's basic and diluted net income per share for the years ended July 31, 2018, 2017 and 2016:

	Fiscal years ended July 31,		
	2018	2017	2016
(in thousands, except share and per share amounts)			
<b>Numerator:</b>			
Net income (loss)	\$ (19,665)	\$ 21,224	\$ 14,976
<b>Net income (loss) per share:</b>			
Basic	\$ (0.25)	\$ 0.29	\$ 0.21
Diluted	\$ (0.25)	\$ 0.28	\$ 0.20
<b>Denominator:</b>			
Weighted average shares used in computing net income (loss) per share:			
Basic	77,709,592	73,994,577	72,026,694
Weighted average effect of dilutive stock options	—	544,520	859,855
Weighted average effect of dilutive Stock Awards	—	789,246	879,411
Diluted	77,709,592	75,328,343	73,765,960

The following weighted shares outstanding of potential common stock were excluded from the computation of diluted net income (loss) per share for the periods presented because including them would have been antidilutive:

	Fiscal years ended July 31,		
	2018	2017	2016
Stock options to purchase common stock	597,476	24,128	77,737
Restricted Stock Awards	3,161,157	88,582	22,994

Since the Company has the intent and ability to settle the principal amount of the Convertible Senior Notes in cash and any excess in shares of the Company's common stock, the Company uses the treasury stock method for calculating any potential dilutive effect of the conversion spread on diluted net income per share, if applicable. The conversion spread will have a dilutive impact on net income per share of common stock when the average market price of the Company's common stock for a given period exceeds the conversion price of \$113.75 per share for the Convertible Senior Notes. Since the Convertible Senior Notes were issued, the Company's weighted average common stock price has remained below the conversion price of the Convertible Senior Notes.

## 6. Convertible Senior Notes

In March 2018, the Company offered and sold \$400.0 million aggregate principal amount of its 1.25% Convertible Senior Notes due 2025, including the underwriters' exercise in full of their option to purchase an additional \$40.0 million of the Convertible Senior Notes. The Convertible Senior Notes were issued in accordance with the Indenture, dated as of March 13, 2018, between the Company and U.S. Bank National Association, as trustee (the "Trustee") (the "Base Indenture"), as amended and supplemented by the First Supplemental Indenture, dated as of March 13, 2018, between the Company and the Trustee (together with the Base Indenture, the "Indenture"). The net proceeds from the issuance of the Convertible Senior Notes were \$387.2 million, after deducting issuance costs.

The Convertible Senior Notes are unsecured obligations of the Company, and interest is payable semi-annually in arrears at a rate of 1.25% per year, on March 15 and September 15 of each year, beginning on September 15, 2018. The Convertible Senior Notes will mature on March 15, 2025 unless repurchased, redeemed, or converted prior to such date. Prior to the close of business on the business day immediately preceding October 15, 2024, the Convertible Senior Notes are convertible at the option of holders during certain periods, upon satisfaction of certain conditions. On or after October 15, 2024, the Convertible Senior Notes are convertible at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The Convertible Senior Notes will have an initial conversion rate of 8.7912 shares of common stock per \$1,000 principal (equivalent to an initial conversion price of approximately \$113.75 per share of its common stock). The conversion rate is subject to customary adjustments upon the occurrence of certain events but will not be adjusted for any accrued and unpaid interest. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of its common stock or a combination of cash and shares of its common stock, at its election.

The Company may redeem the Convertible Senior Notes, at its option, on or after March 20, 2022, at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid interest if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the 3 trading days immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the notice of redemption was provided. No sinking fund is provided for the Notes. Upon the occurrence of a fundamental change (as defined in the Indenture) prior to the maturity date, holders may require the Company to repurchase all or a portion of the Notes for cash at a price equal to 100% of the principal amount of the notes to be repurchased, plus any accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The Convertible Senior Notes rank senior in right of payment to any of the Company's indebtedness that is expressly subordinated in right of payment to the Convertible Senior Notes, and equal in right of payment to any of its indebtedness that is not so subordinated. The Convertible Senior Notes are effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) and any preferred equity of its current or future subsidiaries.

In accounting for the issuance of the Convertible Senior Notes, the Company separated the Convertible Senior Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the par value of the Convertible Senior Notes as a whole. The excess of the principal amount of the Convertible Senior Notes over its carrying amount is amortized to interest expense using the effective interest method over the term of the Convertible Senior Notes. The equity component of the Convertible Senior Notes is recorded as the difference between the initial proceeds less the fair value of the liability component and will not be remeasured as long as it continues to meet the requirements for equity classification. The equity component is net of issuance costs and recorded as additional paid-in capital in stockholders' equity.

The net carrying value of the liability component, unamortized debt discount and issuance costs of the Convertible Senior Notes was as follows:

	<b>July 31, 2018</b>
	<b>(in thousands)</b>
Principal	\$ 400,000
Less: unamortized debt discount and issuance costs	
Unamortized debt discount	85,343
Debt issuance cost	9,529
Net carrying amount	<u>\$ 305,128</u>

The following table sets forth the interest expense recognized related to the Convertible Senior Notes:

	<b>Fiscal Year Ended July 31,</b>
	<b>2018</b>
	<b>(in thousands)</b>
Contractual interest expense	\$ 1,903
Amortization of debt discount	4,134
Amortization of debt issuance costs	378
Total	<u>\$ 6,415</u>
Effective interest rate of the liability component	5.53%

### ***Capped Call***

The Company paid \$37.2 million to purchase capped calls with certain financial institutions pursuant to capped call confirmations (the “Capped Calls”). The Capped Calls have an initial strike price of \$113.75 per share, subject to certain adjustments, which corresponds to the initial conversion price of the Notes. The Capped Calls have initial cap prices of \$153.13 per share, subject to certain adjustments. The Capped Calls cover, subject to anti-dilution adjustments, 3.5 million shares of common stock. By entering into the Capped Calls, the Company expects to reduce the potential dilution to its common stock (or, in the event the conversion is settled in cash, to reduce its cash payment obligation) in the event that at the time of conversion its stock price exceeds the conversion price under the Convertible Senior Notes. The Capped Calls are subject to either adjustment or termination upon the occurrence of specified extraordinary events affecting the Company, including a merger event, tender offer, and a nationalization, insolvency, or delisting involving the Company. Additionally, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including change in law, insolvency filing, and hedging disruptions. The Capped Calls were recorded as a reduction of the Company’s additional paid-in capital in the accompanying condensed consolidated balance sheets.

## 7. Commitments and Contingencies

The Company’s contractual obligations and commitments as of July 31, 2018 are as follows:

Fiscal Year Ending July 31,	Lease Obligations <sup>(1)</sup>	Royalty Obligations <sup>(2)</sup>	Purchase Commitments <sup>(3)</sup>	Long-Term Debt <sup>(4)</sup>	Total
	(in thousands)				
2019	\$ 10,718	\$ 1,761	\$ 60,298	\$ 5,028	\$ 77,805
2020	10,713	698	8,181	5,000	24,592
2021	14,615	101	1,368	5,000	21,084
2022	13,295	—	253	5,000	18,548
2023	12,507	—	—	5,000	17,507
2024 and thereafter	85,156	—	—	410,000	495,156
<b>Total</b>	<b>\$ 147,004</b>	<b>\$ 2,560</b>	<b>\$ 70,100</b>	<b>\$ 435,028</b>	<b>\$ 654,692</b>

(1) Operating lease agreements primarily represent our obligations to make payments under our non-cancellable lease agreements for our corporate headquarters and worldwide offices through 2028.

(2) Royalty obligations primarily represent our obligations under our non-cancellable agreements related to software used in certain revenue-generating agreements.

(3) Purchase commitments consist of agreements to purchase services, entered into in the ordinary course of business. These represent commitments for which a penalty could be imposed if the agreement was canceled for any reason other than an event of default as described by the agreement.

(4) Long-term debt consists of principal and interest payments on the Company’s Convertible Senior Notes. The \$400 million in principal will be due in March 2025.

### Leases

The Company leases certain facilities and equipment under operating leases. Lease expense for all worldwide facilities and equipment, which is being recognized on a straight-line basis over terms of the various leases, was \$8.7 million, \$6.8 million and \$5.7 million during the years ended July 31, 2018, 2017, and 2016, respectively.

In December 2017, the Company entered into a new lease agreement for its future headquarters facility. The lease term is expected to commence on December 1, 2018, for a period of 10.5 years. Total payments committed under the lease are \$126.7 million. In connection with this lease agreement, the Company also entered into an irrevocable stand-by letter of credit to guarantee the \$1.8 million security deposit.

### Legal Proceedings

From time to time, the Company is involved in various legal proceedings and receives claims, arising from the normal course of business activities. The Company has determined that no provision for liability nor disclosure is required related to any claim against the Company because: (a) there is not a reasonable possibility that a loss exceeding amounts already recognized (if any) may be incurred with respect to such claim; (b) a reasonably possible loss or range of loss cannot be estimated; or (c) such estimate

is immaterial. Accordingly, the Company has not recorded any accrual for claims as of July 31, 2018 and 2017. The Company expenses legal fees in the period in which they are incurred.

### ***Indemnification***

The Company sells software licenses and services to its customers under contracts (“Software License”). Each Software License contains the terms of the contractual arrangement with the customer and generally includes certain provisions for defending the customer against any claims that the Company’s software infringes upon a patent, copyright, trademark, or other proprietary right of a third-party. Software Licenses also indemnify the customer against losses, expenses, and liabilities from damages that may be assessed against the customer in the event the Company’s software is found to infringe upon such third-party rights.

The Company has not had to reimburse any of its customers for losses related to indemnification provisions and no material claims against the Company were outstanding as of July 31, 2018 and 2017. For several reasons, including the lack of prior indemnification claims and the lack of a monetary liability limit for certain infringement cases under various Software Licenses, the Company cannot estimate the amount of potential future payments, if any, related to indemnification provisions.

The Company has also agreed to indemnify its directors and executive officers for costs associated with any fees, expenses, judgments, fines and settlement amounts incurred by any of these persons in any action or proceeding to which any of these persons is, or is threatened to be, made a party by reason of the person’s service as a director or officer, including any action by the Company, arising out of that person’s services as the Company’s director or officer or that person’s services provided to any other company or enterprise at the Company’s request. The Company maintains director and officer insurance coverage that may enable the Company to recover a portion of any future amounts paid.

## **8. Stockholders’ Equity and Stock-Based Compensation**

### ***Equity Incentive Plans***

On September 14, 2011, the Company’s Board of Directors adopted the 2011 Stock Plan (“2011 Plan”) for the purpose of granting equity-based incentive awards as compensation tools to motivate the Company’s workforce. The Company had initially reserved 7,500,000 shares of its common stock for the issuance of awards under the 2011 Plan. The 2011 Plan provides that the number of shares reserved and available for issuance under the plan will automatically increase each January 1, beginning on January 1, 2013, by up to 5% of the outstanding number of shares of the Company’s common stock on the immediately preceding December 31. This number is subject to adjustment in the event of a stock split, stock dividend or other defined changes in the Company’s capitalization.

In addition, the Company has equity awards outstanding from its other equity incentive plans, the 2006 Stock Plan, the 2009 Stock Plan and the 2010 Restricted Stock Unit Plan, which were discontinued for the purposes of making new grants upon the adoption of the 2011 Plan.

The Company requires that employees sell a portion of the shares that they receive upon the vesting of RSUs in order to cover any required withholding taxes (“sell-to-cover”).

### ***Stock-Based Compensation Expense***

Stock-based compensation cost related to Stock Awards and stock options is included in the Company’s consolidated statements of operations as follows:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Total stock-based compensation	\$ 89,176	\$ 72,695	\$ 66,409
Net impact of deferred stock-based compensation	438	(901)	(278)
Total stock-based compensation expense	<u>\$ 89,614</u>	<u>\$ 71,794</u>	<u>\$ 66,131</u>
Stock-based compensation expense was charged to the following categories:			
Cost of license and other revenue	\$ 1,002	\$ 373	\$ 433
Cost of maintenance revenue	1,886	1,694	1,491
Cost of services revenue	21,856	18,622	17,878
Research and development	25,440	18,123	15,555
Sales and marketing	18,387	16,663	15,090
General and administrative	21,043	16,319	15,684
Total stock-based compensation expense	89,614	71,794	66,131
Tax benefit from stock-based compensation	24,481	23,014	20,092
Total stock-based compensation expense, net of tax effect	<u>\$ 65,133</u>	<u>\$ 48,780</u>	<u>\$ 46,039</u>

As of July 31, 2018, total unrecognized stock-based compensation cost for our options and Stock Awards was as follows:

	Unrecognized Expense	Weighted Average Expected Recognition Period
	(in thousands)	(in years)
Stock Options	\$ 5,832	2.2
Stock Awards	152,037	2.2
	<u>\$ 157,869</u>	

### Stock Awards

A summary of the Company's Stock Awards activity under the Company's equity incentive plans is as follows:

	Stock Awards Outstanding		
	Number of Stock Awards	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value <sup>(1)</sup>
			(in thousands)
Balance as of July 31, 2015	2,882,674	\$ 42.65	\$ 170,222
Granted	1,586,192	54.99	
Released	(1,408,746)	41.21	\$ 78,763
Canceled	(332,396)	46.71	
Balance as of July 31, 2016	2,727,724	50.08	\$ 167,673
Granted	1,542,235	61.22	
Released	(1,372,770)	49.38	\$ 81,427
Canceled	(263,104)	53.53	
Balance as of July 31, 2017	2,634,085	56.62	\$ 190,076
Granted	1,814,084	79.65	
Released	(1,260,758)	56.92	\$ 103,957
Canceled	(255,256)	63.66	
Balance as of July 31, 2018	2,932,155	\$ 69.43	\$ 252,752
Expected to vest as of July 31, 2018	<u>2,932,155</u>	<u>\$ 69.43</u>	<u>\$ 252,752</u>

<sup>(1)</sup> Aggregate intrinsic value at each fiscal year end represents the total market value of Stock Awards at the Company's closing stock price of \$86.20, \$72.16 and \$61.47 on July 31, 2018, 2017 and 2016, respectively. Aggregate intrinsic value for released Stock Awards represents the total market value of released Stock Awards at date of release.

Certain executives and employees of the Company received PSUs and TSR PSUs in addition to RSUs. The PSUs included performance-based conditions and vest over a four-year period. The TSR PSUs are subject to total shareholder return rankings relative to the software companies in the S&P Index for a specified performance period or specified performance periods, and vest at the end of three years. In select cases, certain TSR PSUs are also subject to performance-based conditions.

RSAs are issued and outstanding upon grant; however, vesting is based on continued employment. The weighted average grant date fair value is based on the market value of our common stock on the date of grant.

The Company recognized stock-based compensation of \$19.1 million, \$9.4 million and \$6.9 million that were related to these performance-based and market-based stock awards in fiscal years 2018, 2017 and 2016, respectively.

### Stock Options

Stock option activity under the Company's equity incentive plans is as follows:

	Number of Stock Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (1) (in thousands)
Balance as of July 31, 2015	1,822,062	\$ 14.29	4.9	\$ 81,548
Granted	10,000	54.00		
Exercised	(652,832)	12.01		\$ 29,186
Canceled	(20,658)	40.86		
Balance as of July 31, 2016	1,158,572	15.45	4.0	\$ 53,316
Granted	—	—		
Exercised	(594,936)	9.35		\$ 30,636
Canceled	(8,000)	2.74		
Balance as of July 31, 2017	555,636	22.17	4.0	\$ 27,777
Granted <sup>(2)</sup>	137,057	10.23		
Exercised	(150,924)	13.32		\$ 10,710
Canceled	(4,705)	40.05		
Balance as of July 31, 2018	537,064	\$ 21.45	4.3	\$ 34,774
Vested and expected to vest as of July 31, 2018	537,064	\$ 21.45	4.3	\$ 34,774
Exercisable as of July 31, 2018	443,782	\$ 23.04	3.5	\$ 28,028

<sup>(1)</sup> Aggregate intrinsic value at each fiscal year end represents the difference between the Company's closing stock price of \$86.20, \$72.16 and \$61.47 on July 31, 2018, 2017 and 2016 and the exercise price of the option, respectively. Aggregate intrinsic value for exercised options represents the difference between the Company's stock price at date of exercise and the exercise price.

<sup>(2)</sup> Represents options assumed through the Cyence acquisition on November 1, 2017.

### Valuation of Awards

#### TSR PSUs

The fair values of the TSR PSUs were estimated at the grant date using Monte Carlo simulation model which included the following assumptions:

	Fiscal years ended July 31,		
	2018	2017	2016
Expected term (in years)	2.88	2.66 - 2.88	*
Risk-free interest rate	1.44%	0.89% - 1.34%	*
Expected volatility of the Company	28%	30.2% - 31.5%	*
Average expected volatility of the peer companies in the S&P Index	34.7%	36.9% - 37.0%	*
Expected dividend yield	—%	—%	*

\* There were no TSR PSUs granted during the fiscal year ended July 31, 2016.

The number of TSR PSUs that may ultimately vest will vary based on the relative performance of the Company's total shareholder return rankings relative to the software companies in the S&P Index for a specified performance period or periods. The Monte Carlo methodology incorporates into the valuation all possible outcomes, including that the Company's relative performance may result in no shares vesting. As a result, stock-based compensation expense is recognized regardless of the ultimate achievement of the plan's performance metrics. The expense will be reversed only in the event that a grantee is terminated prior to satisfying the requisite service period.

For a subset of TSR PSUs, the number of shares that may ultimately vest will vary based on the achievement of certain Company specific financial performance metrics in addition to the Company's total shareholder return condition noted above. As a result, the expense recognized will fluctuate based on the Company's estimated financial performance relative to the target financial performance metrics.

### Stock Options

The per share fair value of each stock option was determined using the Black-Scholes option-pricing model with the following assumptions:

	Fiscal years ended July 31,		
	2018	2017	2016
Expected life (in years)	1.27	*	4.9
Risk-free interest rate	1.48%	*	1.5%
Expected volatility	24.12%	*	38.8%
Expected dividend yield	—%	*	—%
Weighted average fair value of options granted	\$67.90	*	\$19.18

\* There were no options granted during the fiscal year ended July 31, 2017.

### Common Stock Reserved for Issuance

As of July 31, 2018 and 2017, the Company was authorized to issue 500,000,000 shares of common stock with a par value of \$0.0001 per share and, of these, 80,611,698 and 75,007,625 shares of common stock were issued and outstanding, respectively. As of July 31, 2018 and 2017, the Company had reserved shares of common stock for future issuance as follows:

	July 31, 2018	July 31, 2017
Exercise of stock options to purchase common stock	537,064	555,636
Vesting of restricted stock units	2,932,155	2,634,085
Shares available for grant under stock plans	21,592,494	18,453,674
Total common stock reserved for issuance	25,061,713	21,643,395

## 9. Income Taxes

On December 22, 2017, the Tax Act was enacted into law which changed U.S. tax law, including, but not limited to: (1) reducing the U.S. Federal corporate income tax rate from 35% to 21%; (2) requiring companies to pay a one-time transition tax on certain unrepatriated earnings of foreign subsidiaries; (3) generally eliminating U.S. Federal corporate income taxes on dividends from foreign subsidiaries; (4) capitalizing R&D expenses which are amortized over five to 15 years; and (5) other changes to how foreign and domestic earnings are taxed.

As a result of the Company's fiscal year being a non-calendar year, the lower U.S. statutory Federal income tax rate resulted in a blended U.S. Federal statutory rate of 26.9% for the Company's fiscal year 2018. For the year ended July 31, 2018, the Company recognized provisional effects from the Tax Act, which include remeasurements of U.S. deferred tax assets and liabilities based on the rates at which they are expected to reverse and recorded a net charge of \$35.0 million on Federal net deferred tax assets. In addition, as a result of changes in tax law under the Tax Act, the Company recorded a benefit of \$6.1 million related to the change of valuation allowance against certain deferred tax assets that are more likely than not to be realized. The Company concluded that no tax will be due related to the one-time transition tax on the deemed repatriation of deferred foreign income.



The Tax Act includes a provision to tax global intangible low-taxed income (“GILTI”) of foreign subsidiaries and a base erosion abuse tax measure that taxes certain payments between a U.S. corporation and its foreign subsidiaries. These provisions of the Tax Act will be effective for the Company beginning August 1, 2018. Under U.S. GAAP, the Company can make an accounting policy election to either treat taxes due on the GILTI inclusion as a current period expense or factor such amounts into our measurement of deferred taxes. The Company has elected the current period expense method. The SEC staff issued Staff Accounting Bulletin No. 118 which provides for a measurement period of up to one year after the enactment date of the Tax Act to finalize the related income tax impacts. The Company expects to complete the accounting for the Tax Act during this measurement period.

The Company’s income before provision for income taxes for the years ended July 31, 2018, 2017 and 2016 is as follows:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Domestic	\$ (5,207)	\$ 26,474	\$ 11,209
International	5,225	6,803	9,573
Income before provision for income taxes	<u>\$ 18</u>	<u>\$ 33,277</u>	<u>\$ 20,782</u>

The provision for income taxes consisted of the following:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Current:			
U.S. Federal	\$ 2,047	\$ 7,793	\$ 4,936
State	249	1,974	1,006
Foreign	2,203	3,595	4,350
Total current	<u>4,499</u>	<u>13,362</u>	<u>10,292</u>
Deferred:			
U.S. Federal	16,820	(686)	(4,867)
State	(1,328)	(429)	631
Foreign	(308)	(194)	(250)
Total deferred	<u>15,184</u>	<u>(1,309)</u>	<u>(4,486)</u>
Total provision for income taxes	<u>\$ 19,683</u>	<u>\$ 12,053</u>	<u>\$ 5,806</u>

Differences between income taxes calculated using the statutory Federal income tax rate of 26.9% in the fiscal year ended July 31, 2018 and 35% in the fiscal years ended July 31, 2017 and 2016 and the provision for income taxes are as follows:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Statutory Federal income tax	\$ 5	\$ 11,647	\$ 7,274
State taxes, net of Federal benefit	(859)	900	1,261
Share-based compensation	(8,715)	2,517	2,670
Non-deductible officers' compensation	3,229	959	—
Foreign income taxed at different rates	1,022	(819)	(1,190)
Research tax credits	(5,822)	(2,377)	(3,827)
Re-measurement of U.S. deferred taxes	34,979	—	—
Non-deductible acquisition costs	1,270	270	354
Domestic production activity deduction	—	(1,514)	(1,189)
Permanent differences and others	666	470	453
Change in valuation allowance	(6,092)	—	—
Total provision for income taxes	<u>\$ 19,683</u>	<u>\$ 12,053</u>	<u>\$ 5,806</u>

The tax effects of temporary differences that gave rise to significant portions of deferred tax assets and liabilities are as follows:

	As of July 31,	
	2018	2017
	(in thousands)	
Accruals and reserves	\$ 12,129	\$ 11,612
Stock-based compensation	7,658	8,519
Deferred revenue	3,688	3,848
Property and equipment	1,268	1,189
Net operating loss carryforwards	53,885	16,720
Tax credits	60,450	11,919
Total deferred tax assets	139,078	53,807
Less valuation allowance	28,310	12,583
Net deferred tax assets	110,768	41,224
Less deferred tax liabilities:		
Intangible assets	11,461	3,794
Convertible debt	11,567	—
Unremitted foreign earnings	258	—
Total deferred tax liabilities	23,286	3,794
Deferred tax assets, net	87,482	37,430
Less foreign deferred revenue	69	—
Total net deferred tax assets	\$ 87,413	\$ 37,430

The Company adopted ASU 2016-09 effective August 1, 2017 and recorded \$85.7 million of deferred tax assets related to excess tax benefits from share-based award activity as of July 31, 2017, which was offset by an increase to the valuation allowance of \$0.6 million.

As a result of the Company's convertible note offering in March 2018, the Company recorded a net deferred tax liability ("DTL") of \$11.7 million. The initial DTL was recorded as a reduction to additional paid in capital.

The Company considered both positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies, historic book profit/loss, prior taxable income/loss, and results of future operations, and determined that a valuation allowance was not required for a significant portion of its deferred tax assets. A valuation allowance of \$28.3 million and \$12.6 million remained as of July 31, 2018 and 2017, respectively. The increase of \$15.7 million in valuation allowances in the current year relate primarily to net operating losses and income tax credits incurred in certain tax jurisdictions for which no tax benefit was recognized.

As of July 31, 2018, the Company had U. S. Federal, California and other states net operating loss ("NOL") carryforwards of \$207.0 million, \$66.2 million, and \$105.7 million, respectively. The U. S. Federal and California NOL carryforwards will start to expire in 2027 and 2019, respectively.

As of July 31, 2018, the Company had research and development tax credit ("R&D credit") carryforwards of the following (in thousands):

U.S. Federal	\$ 33,074
California	28,531
Total R&D credit carryforwards	\$ 61,605

The U.S. Federal R&D credit will start to expire in 2023. California R&D tax credits have no expiration.

Federal and California laws impose restrictions on the utilization of net operating loss carryforwards and R&D credit carryforwards in the event of a change in ownership of the Company, which constitutes an "ownership change" as defined by Internal Revenue Code Sections 382 and 383. The Company experienced an ownership change in the past that does not materially impact the availability of its net operating losses and tax credits. However, should there be an ownership change in the future, the Company's ability to utilize existing carryforwards could be substantially restricted.

The Company provides U.S. income taxes on the earnings of foreign subsidiaries, unless the subsidiaries' earnings are considered indefinitely reinvested outside the United States. As of July 31, 2018, the Company has recorded a provisional estimate for U.S. income taxes on undistributed earnings from foreign subsidiaries of \$0.3 million. The Company may repatriate foreign earnings that have been taxed in the United States in the future to the extent that the repatriation is not restricted by local laws or there are no substantial incremental costs associated with such repatriation.

### **Unrecognized Tax Benefits**

Activity related to unrecognized tax benefits is as follows:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
Unrecognized tax benefit - beginning of period	\$ 9,346	\$ 7,687	\$ 6,109
Gross increases - prior period tax positions	729	712	177
Gross decreases - prior period tax positions	(878)	(691)	(216)
Gross increases - current period tax positions	1,124	1,638	1,617
Unrecognized tax benefit - end of period	<u>\$ 10,321</u>	<u>\$ 9,346</u>	<u>\$ 7,687</u>

During the year ended July 31, 2018, the Company's unrecognized tax benefits increased by \$1.0 million, primarily associated with the Company's U.S. Federal and California R&D tax credits. As of July 31, 2018, the Company had unrecognized tax benefits of \$5.4 million that, if recognized, would affect the Company's effective tax rate. An estimate of the range of possible change within the next 12 months cannot be made at this time.

The Company or one of its subsidiaries files income taxes in the U.S. Federal jurisdiction and various state and foreign jurisdictions. If the Company utilizes net operating losses or tax credits in future years, the U.S. Federal, state and local, and non-U.S. tax authorities may examine the tax returns covering the period in which the net operating losses and tax credits arose. As a result, the Company's tax returns in the U.S. and California remain open to examination from fiscal years 2002 through 2018. As of July 31, 2018, the Company has no income tax audits in progress in the U.S. or foreign jurisdictions.

### **10. Defined Contribution and Other Post-retirement Plans**

The Company's employee savings and retirement plan in the United States is qualified under Section 401(k) of the Internal Revenue Code. Employees on the Company's U.S. payroll are automatically enrolled when they meet eligibility requirements, unless they decline participation. Upon enrollment employees are provided with tax-deferred salary deductions and various investment options. Employees may contribute up to 60% of their eligible salary up to the statutory prescribed annual limit. The Company matches employees' contributions up to \$5,000 per participant per calendar year. Certain of the Company's foreign subsidiaries also have defined contribution plans in which a majority of its employees participate and the Company makes matching contributions. The Company's contributions to its 401(k) and foreign subsidiaries' plans were \$8.7 million, \$7.1 million and \$5.5 million for the fiscal years ended July 31, 2018, 2017 and 2016, respectively.

### **11. Segment Information**

The Company operates in one segment. The Company's chief operating decision maker (the "CODM"), its Chief Executive Officer, manages the Company's operations on a consolidated basis for purposes of allocating resources. When evaluating the Company's financial performance, the CODM reviews separate revenue information for the Company's license, maintenance and professional services offerings, while all other financial information is reviewed on a consolidated basis. All of the Company's principal operations and decision-making functions are located in the United States.

Revenue by country and region based on the billing address of the customer is as follows:

	Fiscal years ended July 31,		
	2018	2017	2016
	(in thousands)		
United States	\$ 416,961	\$ 301,155	\$ 230,935
Canada	45,591	50,981	44,717
Other Americas	20,571	19,447	18,114
Total Americas	483,123	371,583	293,766
United Kingdom	36,653	32,554	34,031
Other EMEA	79,197	48,727	41,914
Total EMEA	115,850	81,281	75,945
Total APAC	62,094	61,420	54,735
Total revenue	\$ 661,067	\$ 514,284	\$ 424,446

No country other than those listed above accounted for more than 10% of revenue during the years ended July 31, 2018, 2017 and 2016.

The Company's long-lived assets, including goodwill and intangibles, net by geographic region are as follows:

	July 31, 2018	July 31, 2017
	(in thousands)	
Americas	\$ 449,588	\$ 224,667
EMEA	5,491	2,747
APAC	47	128
Total	\$ 455,126	\$ 227,542

**Item 9. Changes in and Disagreements with Accountant on Accounting and Financial Disclosure**

None.

**Item 9A. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a- 15(e) and 15d- 15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of such date, our disclosure controls and procedures were effective.

***Management’s Annual Report on Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting as defined in Rule 13a-15(f) or 15d-15(f) of the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, and includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of July 31, 2018, using the criteria set forth in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission’s 2013 framework. Based on this assessment and those criteria, management concluded that our internal control over financial reporting was effective as of July 31, 2018.

Our internal control over financial reporting has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which appears in Part II, Item 8 of this Form 10-K.

***Inherent Limitations of Internal Controls***

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

***Changes in Internal Control over Financial Reporting***

We implemented a new global finance Enterprise Resource Planning (“ERP”) system, during the second quarter of our 2018 fiscal year for the purpose of our corporate operations including general ledger, procurement, payment and reporting functions. We expect to implement modules for our order management and revenue recognition functions by the end of the first

quarter of our fiscal year 2019. Our new ERP system is intended to provide us with enhanced transactional processing and management tools compared to our legacy system and to enhance internal control over financial reporting. We have taken the necessary steps to monitor and maintain appropriate internal control over financial reporting during this period of system change and will continue that through the implementation of remaining modules. Additionally, we will continue to evaluate the operating effectiveness of related controls during subsequent periods.

There were no changes in our internal control over financial reporting, other than the implementation of a new ERP system, identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act in our fiscal year 2018 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

**PART III**

**Item 10. *Directors, Executive Officers and Corporate Governance***

We have adopted a Code of Business Conduct and Ethics that applies to all of our directors, officers and employees, including our principal executive officer and principal financial officer. The Code of Business Conduct and Ethics is posted on our investor relations website.

We will post any amendments to, or waivers from, a provision of this Code of Business Conduct and Ethics by posting such information on our investor relations website.

The other information required by this item will be contained in our definitive proxy statement to be filed with the Securities and Exchange Commission in connection with our 2018 annual meeting of stockholders (the "Proxy Statement"), which is expected to be filed not later than 120 days after the end of our fiscal year ended July 31, 2018, and is incorporated in this report by reference.

**Item 11. *Executive Compensation***

The information required by this item will be set forth in the Proxy Statement and is incorporated herein by reference.

**Item 12. *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information required by this item will be set forth in the Proxy Statement and is incorporated herein by reference.

**Item 13. *Certain Relationships and Related Transactions, and Director Independence***

The information, if any, required by this item will be set forth in the Proxy Statement and is incorporated herein by reference.

**Item 14. *Principal Accountant Fees and Services***

The information required by this item will be set forth in the Proxy Statement and is incorporated herein by reference.

**PART IV**

**Item 15.        *Exhibits and Financial Statement Schedules***

(a) The following documents are filed as part of this report:

1. Consolidated Financial Statements

See Index to Consolidated Financial Statements at Item 8 herein.

2. Financial Statement Schedules

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes herein.

3. Exhibits

See the Exhibit Index immediately following the signature page of this Annual Report on Form 10-K.



## Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: September 18, 2018

### GUIDEWIRE SOFTWARE, INC.

By: /s/ Curtis Smith  
 Curtis Smith  
 Chief Financial Officer  
 (Principal Financial and Accounting Officer)

### POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Marcus S. Ryu, Curtis Smith, and Winston King, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his or her true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Marcus S. Ryu</u> Marcus S. Ryu	President, Chief Executive Officer and Director (Principal Executive Officer)	September 18, 2018
<u>/s/ Curtis Smith</u> Curtis Smith	Chief Financial Officer (Principal Financial and Accounting Officer)	September 18, 2018
<u>/s/ Peter Gassner</u> Peter Gassner	Director (Chairman of the Board)	September 18, 2018
<u>/s/ Andrew Brown</u> Andrew Brown	Director	September 18, 2018
<u>/s/ Craig Conway</u> Craig Conway	Director	September 18, 2018
<u>/s/ Guy Dubois</u> Guy Dubois	Director	September 18, 2018
<u>/s/ Paul Lavin</u> Paul Lavin	Director	September 18, 2018
<u>/s/ Clifton Thomas Weatherford</u> Clifton Thomas Weatherford	Director	September 18, 2018

**EXHIBIT INDEX**

The exhibits listed below are filed or incorporated by reference as part of this Annual Report on Form 10-K.

<b>Exhibit Number</b>	<b>Description</b>	<b>Incorporated by Reference From Form</b>	<b>Incorporated by Reference From Exhibit Number</b>	<b>Date Filed</b>
<a href="#">2.1</a>	Agreement and Plan of Reorganization, by and among Guidewire Software, Inc., Cyence Inc., Caesar Acquisition Sub I, Inc., Caesar Acquisition Sub II, LLC and Shareholder Representative Services LLC dated October 5, 2017.	8-K	2.1	November 2, 2017
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation.	10-Q	3.1	March 14, 2012
<a href="#">3.2</a>	Amended and Restated Bylaws.	8-K	3.1	December 5, 2016
<a href="#">4.1</a>	Form of Common Stock certificate of the Registrant.	S-1/A	4.1	January 9, 2012
<a href="#">4.2</a>	Indenture, dated as of March 13, 2018, by and between Guidewire Software, Inc. and U.S. Bank National Association.	8-K	4.1	March 13, 2018
<a href="#">4.3</a>	First Supplemental Indenture, dated as of March 13, 2018, by and between Guidewire Software, Inc. and U.S. Bank National Association.	8-K	4.2	March 13, 2018
<a href="#">4.4</a>	Form of 1.25% Convertible Senior Note Due March 15, 2025.	8-K	4.3	March 13, 2018
<a href="#">10.1</a>	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.	S-1/A	10.1	October 28, 2011
<a href="#">10.2</a>	2006 Stock Plan and forms of agreements thereunder.	S-1	10.2	September 2, 2011
<a href="#">10.3</a>	2009 Stock Plan and forms of agreements thereunder.	S-1	10.3	September 2, 2011
<a href="#">10.4</a>	2010 Restricted Stock Unit Plan and forms of agreements thereunder.	S-1	10.4	September 2, 2011
<a href="#">10.5</a>	2011 Stock Plan and forms of agreements thereunder.	S-1/A	10.5	December 13, 2011
<a href="#">10.6</a>	Form of Executive Agreement.	10-K	10.6	September 17, 2014
<a href="#">10.7</a>	Senior Executive Incentive Bonus Plan.	S-1/A	10.12	December 13, 2011
<a href="#">10.8</a>	Lease Agreement between Parkside Towers, L.P. and the Registrant dated as of December 5, 2011.	S-1/A	10.13	December 13, 2011
<a href="#">10.9</a>	Form of Performance-Based Restricted Stock Unit Award Agreement under the 2011 Stock Plan.	10-Q	10.9	December 2, 2015
<a href="#">10.10</a>	Form of Capped Call Confirmation.	8-K	10.1	March 13, 2018
<a href="#">10.11</a>	Lease Agreement between Bay Meadows Station 2 Investors, LLC and the Registrant dated as of December 18, 2017.	Filed herewith	—	—
<a href="#">12.1</a>	Statement Regarding the Computation of Ratio of Earnings to Fixed Charges for the Years Ended July 31, 2013, 2014, 2015, 2016 and 2017, and the Six Months Ended January 31, 2018.	S-3	12.1	March 7, 2018
<a href="#">21.1</a>	Subsidiaries of the Registrant.	Filed herewith	—	—

<a href="#">23.1</a>	Consent of KPMG LLP, Independent Registered Public Accounting Firm.	Filed herewith	—	—
<a href="#">31.1</a>	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act.	Filed herewith	—	—
<a href="#">31.2</a>	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act.	Filed herewith	—	—
<a href="#">32.1*</a>	Certification of the Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act.	Furnished herewith	—	—
101.INS	XBRL Instance Document.	Filed herewith	—	—
101.SCH	XBRL Taxonomy Extension Schema Document.	Filed herewith	—	—
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.	Filed herewith	—	—
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	Filed herewith	—	—
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	Filed herewith	—	—
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.	Filed herewith	—	—

\* The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certifications will not be deemed to be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates it by reference.

**BAY MEADOWS STATION**  
**STATION 2**  
**2850 SOUTH DELAWARE STREET SAN MATEO, CALIFORNIA**

**LEASE**

**by and between**

**BAY MEADOWS STATION 2 INVESTORS, LLC**  
**a Delaware limited liability company**

**("Landlord")**

**and**

**GUIDEWIRE SOFTWARE, INC., a Delaware corporation**

**("Tenant")**

**dated**

**December \_\_, 2017**

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Exhibits:

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 Tenant Improvement Agreement Exhibit E Rules and Regulations

Exhibit F Rooftop Work Rules and Regulations Exhibit G LEED Design/Operational Requirements Exhibit H Rent Abatement  
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**BASIC LEASE INFORMATION**

**Lease Date:** December \_\_, 2017

**Tenant:** Guidewire Software, Inc., a Delaware corporation

**Tenant's Notice Address:**

**Prior To Term Commencement Date:** Guidewire Software, Inc.  
1001 E. Hillsdale Blvd., Suite 800  
Foster City, CA 94404  
Attn: General Counsel  
  
With a copy to: Guidewire Software, Inc.  
1001 E. Hillsdale Blvd., Suite 800  
Foster City, CA 94404  
Attn: Gwen Waddell

**From And After Term Commencement Date:**

Guidewire Software, Inc.  
2850 South Delaware Street  
San Mateo, CA 94403  
Attn: General Counsel

With a copy to: Guidewire Software, Inc.  
2850 South Delaware Street  
San Mateo, CA 94403  
Attn: Gwen Waddell

**Tenant Contact:** Gwen Waddell **Phone Number:** 650-389-7814

**Fax Number:** 650-357-9101

**Landlord:** Bay Meadows Station 2 Investors, LLC, a Delaware limited liability company

**Landlord's Notice Address:** Bay Meadows Station 2 Investors, LLC  
c/o Wilson Meany  
Four Embarcadero Center, Suite 3300  
San Francisco, California 94111

Attn: Elizabeth Billante

With a copy to:

Stockbridge Real Estate Funds  
Four Embarcadero Center, Suite 3300  
San Francisco, California 94111  
Attn: Stephen Pilch

**Landlord's Rent Remittance Address:** Bay Meadows Station 2 Investors, LLC  
c/o Wilson Meany  
Four Embarcadero Center, Suite 3330  
San Francisco, California 94111

**Project:** The commercial project to be constructed by Landlord located in San Mateo, California, to be comprised of five (5) office buildings which may include ground floor retail space, a school building, retail space within certain non-commercial buildings, subterranean parking facilities under certain office buildings, a parking garage (the "**Parking Garage**") and Common Areas (as defined in Paragraph 4.1), as depicted on **Exhibit B**.

**Building:** The approximately 189,103 rentable square foot building to be constructed by Landlord within the Project, having an address of 2850 South Delaware Street and commonly known as Station 2, as depicted on **Exhibit A**.

**Premises:** Approximately 179,496 rentable square feet comprised of the first (1<sup>st</sup>) floor lobby area (as depicted with shading on **Exhibit A**) and the entirety of the second (2<sup>nd</sup>), third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) floors of the Building, known as Suites 200, 300 and 400, as depicted on **Exhibit A**.

**Delivery Date:** The date that Landlord delivers possession of the Premises to Tenant with the Base Building Improvements Substantially Complete as more fully described in the Tenant Improvement Agreement attached as **Exhibit D**, which date is anticipated to be December 1, 2018.

**Term Commencement Date:** The earlier to occur of (i) the date Tenant commences business operations in any portion of the Premises and (ii) the date that is two hundred seventy (270) days after the Delivery Date.

**Term:** Approximately one hundred twenty six (126) months, commencing on the Term Commencement Date and, unless terminated earlier in accordance with this Lease, ending on the Expiration Date.

**Expiration Date:** The last day of the one hundred twenty sixth (126<sup>th</sup>) full calendar month following the Term Commencement Date.

**Base Rent Commencement Date:** The date that is one hundred eighty (180) days after the Term Commencement Date.

**Base Rent:**

Period	Monthly Base Rent Per Square Foot	Monthly Base Rent
Base Rent Commencement Date to the last day of the 12 <sup>th</sup> full calendar month following the Term Commencement Date	\$5.05	\$906,454.80
First day of the 13 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 24 <sup>th</sup> full calendar month following the Term Commencement Date	\$5.20	\$933,379.20
First day of the 25 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 36 <sup>th</sup> full calendar month following the Term Commencement Date	\$5.36	\$962,098.56
First day of the 37 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 48 <sup>th</sup> full calendar month following the Term Commencement Date	\$5.52	\$990,817.92
First day of the 49 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 60 <sup>th</sup> full calendar month following the Term Commencement Date	\$5.69	\$1,021,332.24
First day of the 61 <sup>st</sup> full calendar month following the Term Commencement Date to the last day of the 72 <sup>nd</sup> full calendar month following the Term Commencement Date	\$5.86	\$1,051,846.56

First day of the 73 <sup>rd</sup> full calendar month following the Term Commencement Date to the last day of the 84 <sup>th</sup> full calendar month following the Term Commencement Date	\$6.04	\$1,084,155.84
First day of the 85 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 96 <sup>th</sup> full calendar month following the Term Commencement Date	\$6.22	\$1,116,465.12
First day of the 97 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 108 <sup>th</sup> full calendar month following the Term Commencement Date	\$6.41	\$1,150,569.36
First day of the 109 <sup>th</sup> full calendar month following the Term Commencement Date to the last day of the 120 <sup>th</sup> full calendar month following the Term Commencement Date	\$6.60	\$1,184,673.60
First day of the 121 <sup>st</sup> full calendar month following the Term Commencement Date to the last day of the Expiration Date	\$6.80	\$1,220,572.80
Extension Options	To be determined pursuant to Paragraph 3.2	

**Prepaid Base Rent and Tenant's Proportionate Share of Estimated Operating Expenses:**

Nine Hundred Six Thousand Four Hundred Fifty Four and 80/100 Dollars (\$906,454.80) as prepaid Base Rent and Two Hundred Fifteen Thousand Three Hundred Ninety Five and 20/100 Dollars (\$215,395.20) as prepaid Tenant's Proportionate Share of Estimated Operating Expenses.

**Security Deposit:**

One Million Eight Hundred Twelve Thousand Nine Hundred Nine and 60/100 Dollars (\$1,812,909.60), as more fully described in Paragraph 20 of this Lease.

**Permitted Use:** General office use and other uses incidental

thereto to the extent permitted by Applicable Laws and the CC&R's and consistent with the standards of a first-class mixed use office and retail building, as further described in Paragraph 4.1 and as



limited in Paragraph 4.2.

**Parking:** 2.75 parking spaces per 1,000 rentable square feet of the Premises, of which approximately 2.4 parking spaces per 1,000 rentable square feet of the Premises shall be provided in the subterranean parking facility under the parcel of land upon which the Building is constructed (the "**Building's Subterranean Parking Facility**") and the remaining 0.35 parking spaces per 1,000 rentable square feet of the Premises shall be provided on an unassigned, non-exclusive basis in a surface lot parking area within the Project or the Parking Garage to be constructed, all at no additional charge.

**Tenant's Proportionate Share:** 100%, except with respect to certain Cost Pools for which other tenants of the Building or the Project shall contribute and for which Tenant's Proportionate Share shall be less than 100%, as more fully described in Paragraph 7.3.

**Landlord's Broker:** Newmark Knight Frank (Bob Garner, Jack Troedson and Josh Rowell)

**Tenant's Broker:** Newmark Knight Frank (Jon Mackey, John Kraft, Andrew Hueser)

**Space Plan Allowance:** Twenty Six Thousand Nine Hundred Twenty Four and 40/100 Dollars (\$26,924.40), being \$0.15 per rentable square foot of the Premises, subject to the terms of the Tenant Improvement Agreement.

**Tenant Improvement Allowance:** Fifteen Million Two Hundred Fifty Seven Thousand One Hundred Sixty and 00/100 Dollars (\$15,257,160.00), being Eighty Five and 00/100 Dollars (\$85.00) per rentable square foot of the Premises, subject to the terms of the Tenant Improvement Agreement.

**Business Day:** Monday through Friday of each week, exclusive of New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("**Holidays**"). Landlord may designate additional Holidays that are commonly recognized by other Comparable Buildings.

**Building Business Hours:** 7:00 a.m. to 6:00 p.m. on Business Days.

The foregoing Basic Lease Information is incorporated into and made a part of this Lease. The Lease includes **Exhibits A through I**, all of which are incorporated herein and made a part of this Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above

and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Basic Lease Information and the Lease, the latter shall control.

## LEASE

THIS LEASE is made as of the Lease Date set forth in the Basic Lease Information, by and between BAY MEADOWS STATION 2 INVESTORS, LLC, a Delaware limited liability company ("**Landlord**"), and GUIDEWIRE SOFTWARE, INC., a Delaware corporation (hereinafter called "**Tenant**").

### 1. PREMISES

Landlord leases to Tenant and Tenant leases from Landlord upon the terms and conditions hereinafter set forth the Premises. All corridors and restroom facilities located on each floor of the Premises shall be considered part of the Premises. The Premises shall be part of the Building to be constructed by Landlord pursuant to the terms of this Lease and part of the Project, as and to the extent constructed by Landlord. Tenant acknowledges that it has had an opportunity to verify the calculation of the rentable square footage of the area as depicted on the Building Plans (as defined in the Tenant Improvement Agreement ) for the Building. On or before the date that is ninety (90) days after the Delivery Date, Landlord shall measure the rentable square feet of the Premises in accordance with the Office Buildings: Methods of Measurement and Calculating Rentable Area (ANSI/BOMA Z65.1 – 2010, Method B), as interpreted by Landlord's architect. As provided in Paragraph 40.7, the Roof Top Area shall not be included in the calculation of the rentable square feet of the Premises for purposes of the payment of Base Rent or the calculation of percentages or figures based on rentable square footage but shall be included in the term "Premises" for all other purposes. Within one hundred twenty (120) days after the Delivery Date, Tenant may, at its election, cause the Premises to be measured by Tenant's Architect (as defined in the Tenant Improvement Agreement) or another licensed architect reasonably acceptable to Landlord, at Tenant's cost, in accordance with the method of measurement described in this Paragraph. If Tenant determines that the rentable square footage of the Premises as constructed varies from the rentable square footage of the Premises as measured by Landlord, Tenant may deliver written results of its measurement to Landlord. At such time as the rentable square footage is agreed upon or otherwise resolved, Landlord and Tenant shall execute an amendment to this Lease memorializing the rentable square footage of the Premises and amending, as necessary, the amount of Base Rent payable by Tenant, the amount of the Letter of Credit, the amount of the Tenant Improvement Allowance and such other amounts and other terms hereof that are affected by the rentable square footage of the Premises. Until the rentable square footage of the Premises is agreed upon or otherwise resolved hereunder, Tenant's monthly payments of Base Rent shall be calculated on the basis of the approximate rentable square footage set forth in the Basic Lease Information. Within thirty (30) days following such agreement or resolution, Tenant shall pay to Landlord, or Landlord shall pay to Tenant, the amount of any deficiency or excess, as the case may be, in the Base Rent previously paid. Landlord and Tenant acknowledge that physical changes may occur from time to time in the Premises or Building, which may result in an adjustment in Tenant's Proportionate Share, as provided in Paragraph 7.1.

### 2. DELIVERY, POSSESSION AND LEASE COMMENCEMENT

#### 2.1 Delivery of Premises.

**2.1.1 Landlord's Delivery.** Landlord shall deliver possession of the Premises to Tenant on the Delivery Date. Tenant shall accept such delivery of the Premises, without representation or warranty by Landlord and with no obligation of Landlord to perform any construction or other work of improvement upon the Premises, or contribute to the cost of any of the foregoing, except as expressly set forth in this Lease, including in the Tenant Improvement Agreement. Except as set forth in Paragraph

10.2 herein and the Tenant Improvement Agreement, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the

Building, or the Project, the suitability of the Premises for Tenant's use, the condition, capacity or performance of the Base Building Improvements or the identity of other tenants or potential tenants of the Project. Tenant's possession of the Premises as of the Delivery Date shall be pursuant to all of the terms, conditions and covenants of the Lease notwithstanding the later commencement of the Term and the later obligation to commence paying Base Rent and Tenant's Proportionate Share of Operating Expenses. If Landlord fails to deliver the Premises to Tenant with the Base Building Improvements Substantially Completed on or before February 1, 2019 (the "**First Outside Delivery Date**"), then, as Tenant's sole remedy (except as provided below), the Base Rent Commencement Date shall be extended by one (1) day for each day that delivery of the Premises with the Base Building Improvements Substantially Completed occurs after the First Outside Delivery Date. Upon Tenant's request from time to time, Landlord shall provide Tenant with updates regarding the Delivery Date and progress of the Base Building Improvements. On or before October 1, 2018, Landlord shall provide written notice to Tenant of Landlord's reasonable estimate of the actual Delivery Date (the "**Delivery Date Notice**"). If (a) Landlord fails to deliver the Premises to Tenant with the Base Building Improvements Substantially Completed on or before May 1, 2019 (the "**Final Outside Delivery Date**"), or (b) Landlord's Delivery Date Notice specifies that the Delivery Date will occur after the Final Outside Delivery Date, then in either event Tenant shall have the right, in its sole discretion as its sole remedy (except as provided above), to terminate this Lease upon written notice to Landlord (i) to be exercised by Tenant on or before May 31, 2019 but prior to delivery of the Premises with the Base Building Improvements Substantially Completed with respect to Tenant's termination right described in clause (a) or (ii) to be exercised by Tenant on or before October 31, 2018 but prior to delivery of the Premises with the Base Building Substantially Completed with respect to Tenant's termination right described in clause (b). The First Outside Delivery Date and the Final Outside Delivery Date shall each be extended by the number of days that delivery of the Premises with the Base Building Improvements Substantially Completed is delayed due to Force Majeure Events. Within five (5) days following Tenant's exercise of its termination right under this Paragraph 2.1, Landlord shall return to Tenant the Security Deposit and prepaid Base Rent and Tenant's Proportionate Share of Estimated Operating Expense paid by Tenant

**2.1.2 Tenant's Access if Delivery Delayed.** If (a) Landlord is unable to deliver the Premises to Tenant with the Base Building Improvements Substantially Completed on or before the Final Outside Delivery Date and (b) Tenant does not elect to terminate the Lease pursuant to its rights under Paragraph 2.1.1, Landlord shall allow Tenant access to the Premises prior to the date on which the Base Building Improvements are Substantially Completed for purposes of commencing the construction of an agreed-upon scope of the Tenant Improvements at such time as Landlord determines in good faith that such access by Tenant and the commencement of the construction of such portion of the Tenant Improvements will not unreasonably interfere with or unreasonably delay Landlord's Substantial Completion of the Base Building Improvements. Although ultimately the completion of the Base Building Improvements is to have priority over the commencement of the Tenant Improvements, it is the parties' intentions to cooperate and coordinate in good faith such that completion of all of work is optimized. Prior to entering the Premises pursuant to this Paragraph 2.1.2, Tenant shall obtain from Landlord written authorization confirming the date of such entry and the scope of such Tenant Improvement Work to be performed. Tenant's access to the Premises pursuant to this Paragraph 2.1.2 shall be pursuant to all of the applicable terms, covenants and conditions of this Lease, including, without limitation, Tenant's insurance obligations contained in Paragraph 8.2 and Tenant's indemnity obligations contained in Paragraph 8.5, but specifically excluding the obligation to pay Base Rent and Tenant's Proportionate Share of Operating Expenses for any entry or possession before the Term Commencement Date.

**2.2 Commencement Date Letter.** Upon Landlord's request, Tenant shall promptly execute and return to Landlord one or more "**Commencement Date Letters**" in the form attached hereto as **Exhibit C**, as applicable, in which Tenant shall agree, among other things, to the acceptance of the





Premises, to the acknowledgement of the Delivery Date and to the determination of the Term Commencement Date and the Base Rent Commencement Date, in accordance with the terms of this Lease, but Tenant's failure or refusal to do so shall not negate Tenant's acceptance of the Premises or affect determination of the Term Commencement Date. For sake of clarity, Landlord may deliver a Commencement Date Letter upon delivery of the Premises and a separate Commencement Date Letter upon commencement of the Term.

### 3. TERM

**3.1 Initial Term.** The term of this Lease (the "**Term**") shall commence on the Term Commencement Date and continue in full force and effect for the Term of this Lease as provided in the Basic Lease Information or until this Lease is terminated as otherwise provided herein. If the Term Commencement Date is a date other than the first day of the calendar month, the Term shall be the number of months of the length of Term in addition to the remainder of the calendar month following the Term Commencement Date. This Lease shall be a binding contractual obligation effective upon execution and delivery hereof by Landlord and Tenant, notwithstanding the later commencement of the Term.

#### 3.2 Tenant's Option to Extend.

**3.2.1 Extension Options.** Landlord hereby grants to Tenant two (2) consecutive options to extend the Term (the "**First Extension Option**" and the "**Second Extension Option**," respectively, and each, an "**Extension Option**," and collectively, the "**Extension Options**") for successive periods of five (5) years each (the "**First Extension Term**" and the "**Second Extension Term**," respectively, and each, an "**Extension Term**") commencing on the first day following the Expiration Date, on the terms and subject to the conditions set forth in this Paragraph; provided, however, that (a) an Extension Option shall be exercised, if at all, only with respect to the entire Premises; (b) the Second Extension Option may be exercised only if the First Extension Option has been duly exercised; and (c) if Tenant is in monetary or material non-monetary default beyond applicable notice and cure periods under any of the terms, covenants or conditions of this Lease either at the time Tenant exercises an Extension Option or upon the commencement of the applicable Extension Term, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in this Lease, the right to terminate such Extension Option and to unilaterally nullify Tenant's exercise of such Extension Option, in which event this Lease shall expire on the then-current Expiration Date, unless sooner terminated pursuant to the terms hereof, and Tenant shall have no further rights under this Lease to renew or extend the Term.

**3.2.2 Exercise.** Tenant shall exercise an Extension Option, if at all, by giving Landlord unconditional, irrevocable written notice of such election not earlier than four hundred fifty (450) days and not later than three hundred sixty (360) days prior to the Expiration Date (as the same may have been extended), the time of such exercise being of the essence (the "**Exercise Period**"). Subject to the provisions of this Paragraph 3.2, upon the giving of such notice, this Lease and the Term shall be extended without execution or delivery of any other or further documents, with the same force and effect as if the applicable Extension Term had originally been included in the Term.

**3.2.3 Conditions.** If Tenant exercises an Extension Option pursuant to Paragraph 3.2.2, all of the terms, covenants and conditions of this Lease shall continue in full force and effect during the applicable Extension Term, including provisions regarding payment of Additional Rent, which shall remain payable on the terms herein set forth, except that (a) the Base Rent during an Extension Term shall be as determined in accordance with Paragraph 3.2.4, (b) Tenant shall continue to possess and occupy the Premises in their existing condition, "as is," as of the commencement of such Extension Term, and, subject to and without limiting Landlord's repair, maintenance and other obligations



under this Lease, Landlord shall have no obligation to repair, remodel, improve or alter the Premises, to perform any other construction or other work of improvement upon the Premises, or to provide Tenant with any construction or refurbishing allowance whatsoever, and (c) Tenant shall have no further rights to extend the Term after the expiration of the Second Extension Term.

**3.2.4 Prevailing Market Rent.** The Base Rent payable by Tenant for the Premises during an Extension Term shall be the Prevailing Market Rate (as defined below) for the Premises, valued as of the commencement of such Extension Term, determined in the manner hereinafter provided. As used herein, the term "**Prevailing Market Rate**" shall mean the annual Base Rent that a willing tenant would pay, and that a willing landlord would accept, at arm's length, for space comparable to the Premises within other comparable first class office buildings having more than two (2) stories located in the area including and bounded by South San Francisco to the north and Sunnyvale to the south (the "**Comparable Buildings**"), based upon binding lease transactions for tenants in Comparable Buildings ("**Comparable Leases**"). Comparable Leases shall include renewal and new non-renewal tenancies, but shall exclude subleases and leases of space subject to another tenant's expansion rights. Rent rates payable under Comparable Leases shall be adjusted to account for variations between this Lease and the Comparable Leases with respect to: (a) the length of the Extension Term compared to the lease term of the Comparable Leases; (b) the rental structure, including, without limitation, rental rates per rentable square foot (including whether gross or net, and if gross, adjusting for base year or expense stop), additional rental, all other payments and escalations; (c) the size of the Premises compared to the size of the premises of the Comparable Leases; (d) the location, floor levels and efficiencies of the floor(s) of the Premises compared to the premises of the Comparable Lease; (e) free rent, moving expenses and other cash payments, allowances or other monetary concessions affecting the rental rate; (f) the age and quality of construction of the Building compared to the Comparable Building; (g) the leasehold improvements and/or allowances, including the amounts thereof in renewal leases, and taking into account, in the case of renewal leases (including this Lease), the value of existing leasehold improvements to the renewal tenant, (h) access and proximity to Caltrain, (i) the amenities available to tenants in the Building compared to amenities available to tenants in Comparable Buildings; (j) the energy efficiencies and environmental elements of the Building compared to Comparable Buildings, including improvements required for the U.S. Green Building Council's Leadership in Energy and Environmental Design ("**LEED**") certification, (k) the brokerage commissions and (l) the availability of parking, the parking ratio and parking charges.

**3.2.5 Landlord's Proposal.** Not later than one hundred eighty (180) days prior to the commencement of an Extension Term, provided Tenant has given valid notice of exercise of the applicable Extension Option, Landlord shall deliver to Tenant a good faith written proposal of the Prevailing Market Rate for the Premises for such Extension Term. Within thirty (30) days after receipt of Landlord's proposal, Tenant shall notify Landlord in writing (a) that Tenant accepts Landlord's proposal or (b) that Tenant elects to submit the determination of Prevailing Market Rate to arbitration in accordance with Paragraph 3.2.6. If Tenant does not give Landlord a timely notice in response to Landlord's proposal, Landlord's proposal of Prevailing Market Rate for the applicable Extension Term shall be deemed rejected.

### **3.2.6 Arbitration.**

(a) If Tenant timely elects to submit the determination of Prevailing Market Rate to arbitration or is deemed to have rejected Landlord's determination, Landlord and Tenant shall first negotiate in good faith in an attempt to determine the Prevailing Market Rate for the applicable Extension Term. If Landlord and Tenant are able to agree within thirty (30) days following the delivery of Tenant's notice to Landlord electing arbitration or deemed rejection, then such agreement shall constitute a

determination of Prevailing Market Rate for purposes of this Paragraph, and the parties shall immediately execute an amendment to this Lease stating the Prevailing Market Rate and the Base Rent for the

applicable Extension Term. If Landlord and Tenant are unable to agree on the Prevailing Market Rate within such negotiating period, then within fifteen (15) days after the expiration of such negotiating period, the parties shall meet and concurrently deliver to each other their respective written estimates of Prevailing Market Rate for the applicable Extension Term, supported by the reasons therefor (each, a "**Determination**"). Landlord's Determination may be more or less than its initial proposal of Prevailing Market Rate. If either party fails to deliver its Determination in a timely manner, then the Prevailing Market Rate shall be the amount specified by the other party. The Prevailing Market Rate shall be determined as set forth below, each party being bound to its Determination and such Determinations establishing the only two choices available to the Arbitration Panel (as hereinafter defined).

(b) Within ten (10) days after the parties exchange Landlord's and Tenant's Determinations, the parties shall each appoint an arbitrator who shall be a licensed California real estate broker with at least ten (10) years' experience in leasing commercial office space in Comparable Buildings immediately prior to his or her appointment, and be familiar with the rentals then being charged in the Comparable Buildings. The parties may appoint the real estate brokers who assisted them in making their Determinations as their respective arbitrators. If either Landlord or Tenant fails to timely appoint an arbitrator, then the Prevailing Market Rate for the applicable Extension Term shall be the Determination of the other party.

(c) Within twenty (20) days following their appointment, the two arbitrators so selected shall appoint a third, similarly-qualified, independent arbitrator who has not had any prior business relationship with either party (the "**Independent Arbitrator**"). If an Independent Arbitrator has not been so selected by the end of such twenty (20) day period, then either party, on behalf of both, may request such appointment by the local office of the American Arbitration Association (or any successor thereto), or in the absence, failure, refusal or inability of such entity to act, then either party may apply to the presiding judge for the San Mateo Superior Court, for the appointment of such an Independent Arbitrator, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment.

(d) Within five (5) days following notification of the identity of the Independent Arbitrator so appointed, Landlord and Tenant shall submit copies of Landlord's Determination and Tenant's Determination to the three arbitrators (the "**Arbitration Panel**"). The Arbitration Panel, by majority vote, shall select either Landlord's Determination or Tenant's Determination as the Base Rent for the applicable Extension Term, and shall have no right to propose a middle ground or to modify either of the two proposals or the provisions of this Lease. The Arbitration Panel shall attempt to render a decision within fifteen (15) Business Days after appointment of the Independent Arbitrator. In any case, the Arbitration Panel shall render a decision within forty-five (45) days after appointment of the Independent Arbitrator.

(e) The decision of the Arbitration Panel shall be final and binding upon the parties, and may be enforced in accordance with the provisions of California law. In the event of the failure, refusal or inability of any member of the Arbitration Panel to act, a successor shall be appointed in the manner that applied to the selection of the member being replaced.

(f) Each party may submit any written materials to the Arbitration Panel within five (5) Business Days after selection of the Independent Arbitrator. No witnesses or oral testimony (i.e. no hearing) shall be permitted in connection with the Arbitration Panel's decision unless agreed to by both parties. No ex parte communications shall be permitted between any member of the Arbitration Panel and either Landlord or Tenant following appointment of the Arbitrator Panel until

conclusion of the arbitration process. The members of the Arbitration Panel are authorized to walk both the Premises and any space in Comparable Buildings (to the extent access is made available).

(g) Each party shall pay the fees and expenses of the arbitrator designated by such party, and one-half of the fees and expenses of the Independent Arbitrator and the expenses incident to the proceedings (excluding attorneys' fees and similar expenses of the parties which shall be borne separately by each of the parties).

**3.2.7 Rent Payment Before Resolution.** Until the matter is resolved by agreement between the parties or a decision is rendered in any arbitration commenced pursuant to this Paragraph 3.2, Tenant's monthly payments of Base Rent shall be in an amount equal to the average of Landlord's Determination and Tenant's Determination. Within ten (10) Business Days following the resolution of such dispute by the parties or the decision of the arbitrators, as applicable, Tenant shall pay to Landlord, or Landlord shall pay to Tenant, the amount of any deficiency or excess, as the case may be, in the Base Rent previously paid.

**3.2.8 Rights Personal to Original Tenant.** Tenant's right to exercise each of the Extension Options is personal to, and may be exercised only by, Guidewire Software, Inc. ("**Original Tenant**") or any Permitted Assignee, and only so long as the Original Tenant or any Permitted Assignee occupies at least two full floors of the Premises. If Original Tenant shall have assigned this Lease (other than to a Permitted Assignee) or shall have subleased more than one full floor of the Premises at the time an Extension Option is exercised, then Tenant's right to exercise such Extension Option shall simultaneously terminate and be of no further force or effect. No assignee (other than a Permitted Assignee) or subtenant shall have any right to exercise the Extension Options granted herein.

#### 4. USE

**4.1 General.** Tenant shall use the Premises for the permitted use specified in the Basic Lease Information ("**Permitted Use**") and for no other purpose. Uses incidental to a general office use in the Premises may include (a) storage areas for records, furniture, equipment, and supplies of the type customarily used by office building tenants, (b) kitchen, lunchroom, vending area, lounge, or break areas, (c) training centers, meetings, and conference rooms, (d) gym, exercise facilities and game rooms, and (e) printing, mail handling, duplicating, reproduction, photographic word processing, data processing, communications, and such other communication technology areas as customarily needed by office building tenants, except as limited by Paragraph 4.2 and provided that such uses described in clauses (a) through (e) are consistent with the usage of a Comparable Building, comply with Applicable Laws, the Recorded Documents (as defined in Paragraph 4.2), and the Rules and Regulations (as defined in Paragraph 5) and do not result in an increase in any costs (including costs of insurance) or liabilities to Landlord, unless Tenant agrees to pay the same. Tenant acknowledges that the prohibition on a change in use contained in this Paragraph 4.1 is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable by Landlord against Tenant. Tenant and Tenant's subtenants and their respective employees, agents, customers, visitors, invitees, licensees, concessionaires, and contractors (each a "**Tenant Party**" and collectively, "**Tenant Parties**") shall have the nonexclusive right to use, in common with other parties occupying the Building or Project, the portions of the Building or Project that are designated from time to time by Landlord for such common use (the "**Common Areas**"), subject to the terms of this Lease and the Rules and Regulations. Landlord reserves the right, without notice or liability to Tenant, and without the same constituting an actual or constructive eviction, to alter or modify the Common Areas from time to time, including the location and configuration thereof, and the amenities and facilities which Landlord may determine to provide from time to time, provided that no such alterations or modifications materially and adversely impair Tenant's use of or access to the Premises or the Project, and provided that, in connection therewith, Landlord shall perform such alterations or modifications in a commercially reasonable manner.

**4.2 Limitations.** Tenant shall not do anything in or about the Premises or the Building that (a) violates any Applicable Laws, any provision of the Recorded Documents, or any of the Rules and Regulations; (b) is prohibited by a standard form of fire insurance policy or that materially increases the rate of fire or other insurance on the Building or any of its contents; (c) unreasonably interferes with or disturbs other occupants of the Building; or (d) constitutes waste or a nuisance. Without limiting the generality of the foregoing, the Premises shall not be used for a place of public accommodation under the Americans With Disabilities Act. The provisions of this Paragraph 4.2 are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Building. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building or Project with any of the above-referenced rules or any other terms or provisions of such tenant's or occupant's lease or other contract. As used herein, "**Recorded Documents**" means all easement agreements, cost sharing agreements, covenants, conditions, and restrictions, and all similar agreements affecting the Project, whether now or hereafter recorded against the Project, including the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for the Delaware Street Properties at Bay Meadows dated January 23, 2013 and recorded January 24, 2013 as Document Number 2013-012341, as amended (the "**CC&R's**").

**4.3 Compliance with Applicable Laws.** Tenant shall at its sole cost and expense strictly comply with all existing or future applicable municipal, state and federal and other governmental statutes, rules, requirements, regulations, laws and ordinances, including zoning ordinances and regulations, approvals and conditions to approvals, and all covenants, easements and restrictions within the Recorded Documents governing and relating to (a) the use, occupancy or possession of the Premises, (b) Tenant Systems, (c) the use of the Common Areas, or (d) the use, storage, generation or disposal of Hazardous Materials (hereinafter defined) (collectively "**Applicable Laws**"). Tenant shall at its sole cost and expense obtain any and all licenses, permits, or other government approvals necessary for Tenant's use of the Premises. Tenant shall at its sole cost and expense promptly comply with the requirements of any board of fire underwriters or other similar body now or hereafter constituted. Tenant shall not do or permit anything to be done in, on, under or about the Project or bring or keep anything which will in any way increase the rate of any insurance upon the Premises, Building or Project or upon any contents therein or cause a cancellation of said insurance or otherwise affect said insurance in any manner. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord and Landlord Parties harmless from and against any Loss arising out of the failure of Tenant to comply with any Applicable Law. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease.

#### **4.4 Hazardous Materials.**

**4.4.1 Prohibition Against Hazardous Material.** Tenant shall not cause, or allow any Tenant Party to cause, any Hazardous Materials (as defined below) to be handled, used, generated, stored, released or disposed of in, on, under or about the Premises, the Building or the Project or surrounding land or environment in violation of any Applicable Laws. Tenant must obtain Landlord's written consent prior to the introduction of any Hazardous Materials onto the Project. Notwithstanding the foregoing, Tenant may handle, store, use and dispose of products containing small quantities of Hazardous Materials for general office purposes (such as toner for copiers) to the extent customary and necessary for the Permitted Use of the Premises; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building, or Project or surrounding land or environment. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord and the Landlord Parties harmless from and against any and all Losses directly or indirectly arising out of or



related to the use, generation, handling, storage, release, or disposal of Hazardous Materials by Tenant or any of Tenant Parties in, on, under or about the Premises, the Building or the Project or surrounding land

or environment (even though the same may be permissible under all Applicable Laws or the provisions of this Lease), which indemnity shall include, without limitation, damages for personal or bodily injury, property damage, damage to the environment or natural resources occurring on or off the Premises, losses attributable to diminution in value or adverse effects on marketability, the cost of any investigation, monitoring, government oversight, repair, removal, remediation, restoration, abatement, and disposal, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the expiration or earlier termination of this Lease. Neither the consent by Landlord to the use, generation, storage, release or disposal of Hazardous Materials nor the strict compliance by Tenant with all Applicable Laws pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification pursuant to this Paragraph 4.4.1. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**4.4.2 Landlord Notification and Inspection.** Tenant shall immediately notify Landlord in writing of any Hazardous Materials contamination of any portion of the Project of which Tenant becomes aware, whether or not caused by Tenant. Landlord shall have the right at all reasonable times and if Landlord determines in good faith that Tenant may not be in compliance with this Paragraph 4.4 to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions, the costs of all such inspections, tests and investigations to be borne by Tenant if it is determined that Tenant was not in compliance with this Paragraph.

**4.4.3 Third Party Hazardous Materials.** If it is determined that the materials incorporated into the Premises contain Hazardous Materials that are not in compliance with Applicable Law as of the Lease Date, then Landlord shall not be liable to Tenant for any damages, but as Tenant's sole remedy, Landlord, at no cost to Tenant (including as Operating Expenses), shall perform such work or take such other action as may be necessary to remediate the non-compliant condition of the materials. If any Hazardous Materials are discovered to have been present in the Premises as of the date of this Lease in violation of Applicable Laws, then Landlord, at Landlord's expense (without pass through as an Operating Expense), shall diligently remove or otherwise remediate such condition, as required by Applicable Laws. Further, in no event shall Tenant be required to clean up, remove or remediate any Hazardous Materials in, on, or about the Premises, that were not brought upon, produced, treated, stored, used, discharged or disposed of by Tenant or Tenant Parties (collectively, "**Third Party Hazardous Materials**"), except to the extent that any hazard posed by such Third Party Hazardous Materials is exacerbated by the negligent acts or omissions or willful misconduct of Tenant or Tenant Parties. Landlord, at Landlord's expense (without pass through as an Operating Expense), shall remove or otherwise remediate any Third Party Hazardous Materials, as required by Applicable Laws. In addition, Landlord shall indemnify, protect, defend (with counsel reasonably acceptable to Tenant) and hold harmless Tenant from and against (i) any fine or cost or expense (including reasonable legal expenses and consultants' fees) ("**Remediation Cost**") that Tenant may incur as a result of any Remedial Work required of Tenant by a governmental authority resulting from the introduction, production, use, generation, storage, treatment, disposal, discharge, release or other handling or disposition of any Third Party Hazardous Materials, and (ii) any Losses asserted against Tenant or any Tenant Party arising from any injury or death of any person or damage to or destruction of any property occurring as a result of any such Third Party Hazardous Materials; provided, however, that the foregoing indemnity obligation shall not apply to any Remediation Cost or Claim to the extent arising from the negligence or willful misconduct of any Tenant Party, or to the extent that any hazard posed by such Third Party Hazardous Materials is exacerbated by, or the cost of the Remedial Work is increased as a result of, the negligent acts or omissions or willful misconduct of Tenant or Tenant Parties.

**4.4.4 Definitions.** As used in this Lease, "**Hazardous Materials**" shall include, but not be limited to, hazardous, toxic and radioactive materials and wastes, flammables, explosives or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under

any federal, state and local laws and ordinances relating to the protection of the environment including those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any Applicable Law.

**4.5 Transportation Demand Management Plan.** Tenant shall participate in the Transportation Management Association ("**TMA**") responsible for implementing and administering the Transportation Demand Management Plan ("**TDMP**") for the Project and shall reasonably cooperate with Landlord and comply with those elements of the TDMP that are applicable to the Building or to Tenant's occupancy and use of the Premises. Tenant acknowledges that Operating Expenses shall include expenses and assessments related to the TMA and TDMP. Neither this Paragraph nor any other provision of this Lease is intended to or shall create any rights or benefits in any other person, firm, company, governmental entity or the public.

**4.6 Accessibility.** To Landlord's actual knowledge, the property being leased pursuant to this Lease has not undergone inspection by a Certified Access Specialist (CASp). The foregoing verification is included in this Lease solely for the purpose of complying with California Civil Code Section 1938 and will not in any manner affect Landlord's and Tenant's respective responsibilities for compliance with construction-related accessibility standards as provided under this Lease. Landlord makes no representations, express or implied, as to the compliance of the Premises or the Project with applicable construction-related accessibility standards. As specified in California Civil Code Section 1938: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Tenant shall be solely responsible for (a) any CASp inspection fees, if Tenant elects to obtain a CASp inspection, and (b) any costs related to addressing and/or correcting any violations of construction-related accessibility standards within the Premises identified by such CASp inspection.

**4.7 Alcoholic Beverages.** If Tenant shall at any time serve or permit the consumption of alcoholic beverages in the Premises, Tenant shall, at its sole cost and expense, provide and maintain all licenses and/or permits required by Applicable Laws and shall at all times comply with Applicable Laws related to the service of alcoholic beverages. Tenant, at its expense, shall maintain appropriate liquor liability insurance in accordance with Paragraph 8.2. All alcohol served or permitted within the Premises shall be consumed within the Premises only, and in no event may Tenant serve or permit the consumption of alcohol outside of the Premises.

## **5. RULES AND REGULATIONS**

Tenant shall faithfully observe and comply with the building rules and regulations attached hereto as **Exhibit E** (the "**Rules and Regulations**") and any other reasonable rules and regulations and any modifications or additions thereto which Landlord may from time to time prescribe in writing for the purpose of maintaining the proper care, cleanliness, safety, traffic flow and general order of the Premises or the Building or the Project. Tenant shall cause Tenant Parties to comply with such Rules and Regulations. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building or Project with any of such Rules and Regulations, any other tenant's or occupant's lease or any Applicable Laws. In the event of any conflict or inconsistency between the Rules



and Regulations and the terms and conditions of this Lease, the terms and conditions of this Lease shall control.

## 6. RENT

**6.1 Base Rent.** Commencing on the Base Rent Commencement Date and continuing throughout the Term of this Lease, Tenant shall pay to Landlord and Landlord shall receive, without notice or demand Base Rent as specified in the Basic Lease Information, payable in monthly installments in advance on or before the first day of each calendar month, in lawful money of the United States, without deduction or offset whatsoever, at the Landlord's Rent Remittance Address specified in the Basic Lease Information or to such other place as Landlord may from time to time designate in writing. At Landlord's election, and upon written notice to Tenant, all payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by Electronic Fund Transfer of immediately available federal funds, at such place, within the continental United States, as Landlord may from time to time designate to Tenant in writing. Base Rent for the first full month due on the Base Rent Commencement Date shall be paid by Tenant upon Tenant's execution of this Lease. If the obligation for payment of Base Rent commences on a day other than the first day of a month, then Base Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Base Rent Commencement Date. The Base Rent payable by Tenant hereunder is subject to adjustment as provided elsewhere in this Lease, as applicable. As used herein, the term "**Base Rent**" shall mean the Base Rent specified in the Basic Lease Information as it may be so adjusted from time to time. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations.

**6.2 Additional Rent.** All monies other than Base Rent required to be paid by Tenant hereunder, including, but not limited to, Tenant's Proportionate Share of Operating Expenses, as specified in Paragraph 7 of this Lease, charges to be paid by Tenant under Paragraph 15, the interest and late charge described in Paragraphs 27.4 and 27.5, and any monies spent by Landlord pursuant to Paragraph 30, shall be considered additional rent ("**Additional Rent**"). Except as otherwise provided herein, all items of Additional Rent shall be paid within 30 days after Landlord's request for payment. "**Rent**" shall mean Base Rent and Additional Rent.

**6.3 Rent Abatement Purchase.** Landlord and Tenant acknowledge that the Lease provides to Tenant a period from the Term Commencement Date to the Base Rent Commencement Date (the "**Rent Abatement Period**") during which Tenant is in possession of the Premises without an obligation to pay Base Rent. The abated Base Rent that would have been paid during the Rent Abatement Period is set forth on **Exhibit H** and is based on the same square footage rental rate as payable on the Base Rent Commencement Date (the "**Rent Abatement**"). At any time during the Rent Abatement Period, upon notice to Tenant, Landlord shall have the right to purchase any Rent Abatement relating to the remaining Rent Abatement Period by paying to Tenant an amount equal to the Rent Abatement Purchase Price. As used herein, "**Rent Abatement Purchase Price**" shall mean the Rent Abatement remaining during the Rent Abatement Period as of the date of payment of the Rent Abatement Purchase Price by Landlord. If Landlord exercises its right to purchase the Rent Abatement effective as of a date other than the 1<sup>st</sup> day of any month during the Rent Abatement Period, the Rent Abatement Purchase Price shall be prorated for the period of time in which the right to purchase is exercised and Tenant shall pay Base Rent on a prorated basis for the remaining days in such month after the effective date of the exercise of such purchase right. For the avoidance of doubt, in no event shall Tenant's aggregate obligation to pay Base Rent during the remaining Rent Abatement Period following the purchase of the Rent Abatement be in excess of (a) the amount of Base Rent due under the Lease for such remaining Rent Abatement Period and (b) the amount of the Rent Abatement Purchase Price paid by Landlord to Tenant.



## 7. OPERATING EXPENSES

**7.1 Operating Expenses.** Commencing on the Term Commencement Date, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of Operating Expenses (defined below) in the manner set forth below. Tenant's Proportionate Share of Operating Expenses is in addition to the Base Rent required to be paid hereunder. Landlord and Tenant acknowledge that if physical changes are made to the Premises or Building or the configuration of either, Landlord may at its discretion reasonably adjust Tenant's Proportionate Share to reflect the change provided that Tenant's Proportionate Share does not increase. "**Operating Expenses**" shall mean all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay, because of or in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Project (as determined in a reasonable manner) other than those expenses and costs which are specifically attributable to Tenant or which are expressly made the financial responsibility of Landlord or specific tenants of the Building or Project pursuant to this Lease. Operating Expenses shall include, but are not limited to, the following:

(a) All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, traffic management assessments and other impositions, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind (including fees "in-lieu" of any such tax or assessment) which are now or hereafter assessed, levied, charged, confirmed, or imposed by any public authority upon the Project, its operations or the Rent (or any portion or component thereof), or any tax, assessment or fee imposed in substitution, partially or totally, of any of the above (the "**Real Property Taxes**"). Real Property Taxes shall also include any taxes, assessments, reassessments, or other fees or impositions with respect to the development, leasing, management, maintenance, alteration, repair, use or occupancy of the Project or any portion thereof, including, without limitation, by or for Tenant, and all increases therein or reassessments thereof whether the increases or reassessments result from increased rate and/or valuation (whether upon a transfer of the Project or any portion thereof or any interest therein or for any other reason).

(b) All insurance premiums and costs, including, but not limited to, any deductible amounts, premiums and other costs of insurance incurred by Landlord, including for the insurance coverage set forth in Paragraph 8.1 herein or deemed necessary or advisable in the reasonable judgment of Landlord or required by any Security Holder, all in such amounts as Landlord determines to be appropriate; provided, however, that the amount of any deductible under any earthquake insurance shall not exceed five percent (5%) of the insurable value of the Building and any such deductible expended on improvements that would be properly classified as capital expenditures shall be amortized over the estimated useful life of the improvements constructed or restored with the deductible as determined in accordance with sound real estate accounting and management principles, together with interest on the unamortized balance at a rate per annum equal to eight percent (8%) charged at the time such capital improvements are constructed.

(c) The costs of repairs (including the replacement of parts and components which are obsolete or cannot be repaired in an economically feasible manner) and general maintenance of the Project, including the systems and equipment of the Project and components thereof.

(d) The costs for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, sewer service, communications service, power and other energy related utilities





required in connection with the operation, maintenance and repair of the Project, including water charges and sewer rents or fees.

(e) The costs of any capital improvements made by Landlord or capital assets acquired by Landlord required under or to comply with any Applicable Laws first enacted or interpreted to be applicable to the Project after the Delivery Date or any insurance requirements, such cost or allocable portion to be amortized over the full useful life thereof determined in accordance with generally acceptable accounting principles, together with interest on the unamortized balance at a rate per annum equal to eight percent (8%) charged at the time such capital improvements or capital assets are constructed or acquired;

(f) The costs of any capital improvements made by Landlord or capital assets acquired by Landlord after the Term Commencement Date for the protection of the health and safety of the occupants of the Project, for the replacement of Base Building Systems or components thereof, or that are reasonably intended to reduce other Operating Expenses, such cost or allocable portion thereof to be amortized over the full useful life thereof determined in accordance with generally acceptable accounting principles, together with interest on the unamortized balance at a rate per annum equal to eight percent (8%).

(g) The payments under or for any Recorded Document relating to the sharing of costs for the Project.

(h) The costs of maintaining, managing, reporting, commissioning, and recommissioning the Building or any part thereof that was designed and built to be sustainable and conform with the U.S. EPA's Energy Star® rating system, the LEED rating system and other third party rating systems.

(i) The costs incurred in connection with any government-mandated transportation demand management programs or similar program, including the funding of the TMA.

(j) All rental or acquisition costs of supplies, tools, materials and equipment used in connection with the operation, maintenance, management and repair of the Project.

(k) The costs of security, alarm, janitorial, engineering, pest control, landscaping, window cleaning, elevator maintenance and other services required for the operation, maintenance, management and repair of the Project.

(l) Salaries, wages, bonuses and other compensation (including hospitalization, medical, surgical, retirement plan, pension plan, union dues, parking privileges, life insurance, including group life insurance, welfare and other fringe benefits, and vacation, holidays and other paid absence benefits) relating to employees of Landlord or its agents engaged in the management, operation, repair, or maintenance of the Project; payroll, social security, workers' compensation, unemployment and similar taxes with respect to such employees; and the cost of uniforms (including the cleaning, replacement and pressing thereof) provided to such employees;

(m) Property management office rent or rental value management office rent.

(n) The costs of the operation, repair, replacement and maintenance of the parking areas in the Project ("**Parking Facilities**") including the Parking Garage, the Building's Subterranean Parking Facility, and surface parking areas.



(o) Fees and other costs, including consulting fees, legal fees and accounting fees, of contractors and consultants incurred in connection with the operation, maintenance and repair of the Project.

(p) Management fees incurred in connection with the management of the Project. The above enumeration of services and

facilities shall not be deemed to impose an obligation on

Landlord to make available or provide such services or facilities except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to make the same available or provide the same. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that it shall be responsible for providing adequate security for its use of the Project and that Landlord shall have no obligation or liability with respect thereto, except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to provide the same.

If the rentable square footage of the Building and/or Project is not fully occupied during any fiscal year of the Term as determined by Landlord, an adjustment shall be made in Landlord's discretion in computing the Operating Expenses for such year so that Tenant pays an equitable portion of all variable items (e.g., utilities, janitorial services and other component expenses that are affected by variations in occupancy levels) of Operating Expenses, as reasonably determined by Landlord; provided, however, that in no event shall Landlord be entitled to collect in excess of one hundred percent (100%) of the total Operating Expenses from all of the tenants in the Building or Project, as the case may be.

**7.2 Operating Expenses Exclusions.** Operating Expenses shall not include (a) depreciation on the Building; (b) debt service, rental under any ground or underlying lease, or interest, principal, points and fees on any mortgage or other debt instrument encumbering the Building (except that, as provided in Paragraph 7.1 above, Landlord may include interest in the amortization of certain capital expenditures); (c) legal expenses incurred in negotiating leases, collecting rents, evicting tenants or costs incurred in legal proceedings with or against any tenant or to enforce the provisions of any lease, (d) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of the Building to be demised to tenants; (e) advertising expenses relating to vacant space; (f) real estate brokers' or other leasing commissions; (g) costs for which Landlord is reimbursed by insurance or condemnation proceeds, other tenants or any other source, and Landlord shall use commercially reasonable efforts to pursue claims under existing warranties and/or guaranties or against other responsible third parties to pay such costs; provided, that, the cost of pursuing such claims shall be included in Operating Expenses; (h) any bad debt loss, rent loss, or reserves for bad debt loss or rent loss; (i) costs incurred in connection with the operation of the business of the entity constituting Landlord, as distinguished from the costs of operating the Building, including accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building; (j) Landlord's political or charitable contributions; (k) the cost of any "tenant relations" parties, events or promotions; (l) insurance which is not customarily carried by institutional owners of Comparable Buildings; (m) costs to repair or replace the Project resulting from any insured casualty (except commercially reasonable deductibles under Landlord's insurance policies may be included in Operating Expenses to the extent permitted pursuant to Paragraph 7.1(b)); (n) repairs, alterations, additions, improvements or replacements made to rectify or correct any defect in the design, materials or workmanship of the Project (as opposed to the cost of normal repair, maintenance and replacement expected in light of the specifications of the applicable construction materials and equipment) or to comply with any Applicable Laws in effect as of the Substantial Completion Date (based on the current interpretation thereof by applicable governmental entity(ies) as of the Substantial Completion Date);

(o) repairs, alterations, additions, improvements or replacements made to rectify or correct damage caused by the gross negligence or willful misconduct of Landlord or any of Landlord's employees, agents, or contractors; (p) salaries, wages, bonuses and other compensation (including hospitalization, medical,

surgical, retirement plan, pension plan, union dues, parking privileges, life insurance, including group life insurance, welfare and other fringe benefits, and vacation, holidays and other paid absence benefits) relating to managers, officers, directors, or executives of Landlord that are above the rank of general manager (or similar title); (q) fines, penalties or interest incurred due to violation by Landlord of the terms and conditions of any lease or any Applicable Laws or due to violation by any other tenant in the Project of the terms and conditions of any lease or any Applicable Laws; (r) interest, penalties or other costs arising out of Landlord's failure to make timely payment of its obligations, including failure to make timely payment of taxes; (s) costs incurred to test, survey, cleanup, contain, abate, remove, or otherwise remedy Hazardous Materials or mold from the Project (except that Operating Expenses shall include costs incurred in connection with the prudent operation and maintenance of the Building, such as monitoring air quality); (t) costs incurred to correct defective equipment installed in the Project (as opposed to the cost of normal repair, maintenance and replacement expected in light of the specifications of the applicable equipment); (u) acquisition costs of any artwork; (v) Community Facilities District No. 2008-1 (Bay Meadows) assessment; (w) inheritance or estate taxes imposed upon or assessed against the interest of any person in the Project, documentary transfer taxes, or taxes computed upon the basis of the net income of any owners of any interest in the Project (provided, however, that the reference to documentary transfer taxes in this clause shall not be deemed to exclude from Operating Expenses any increase in the Real Property Taxes resulting from a reassessment of the Building or Property upon the sale or transfer thereof); (x) capital expenditures not described in Paragraphs 7.1(b), 7.1(e) or 7.1(f); and (y) any costs for the design or construction of the Building or the Project. Tenant's Proportionate Share of the management fees for the Building shall not exceed three percent (3%) of the Base Rent. If it shall not be lawful for Tenant to reimburse Landlord for all or any part of such taxes, the monthly rental payable to Landlord under this Lease shall be revised to net Landlord the same net rental after imposition of any such taxes by Landlord as would have been payable to Landlord prior to the payment of any such taxes.

**7.3 Method of Allocation of Operating Expenses; Cost Pools.** Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses for the Project among different portions or occupants of the Project (the "**Cost Pools**"). Such Cost Pools shall include, but shall not be limited to, the office space tenants of a particular office building and the retail space tenants of a particular building or of the Project. The Operating Expenses allocated to any Cost Pool shall be allocated and charged to the tenants and occupants within such Cost Pool in an equitable manner, in Landlord's reasonable discretion. The Operating Expenses allocated to each building shall include all Operating Expenses attributable solely to such building and a portion of the Project-wide Operating Expenses attributable to the Project as a whole (and not to a particular building) in accordance with this Paragraph 7.3.

**7.3.1** Operating Expenses which relate to a specific building within the Project and not to any other building (including without limitation, separately metered electrical costs and repair and maintenance costs of any building), shall be entirely allocated to such specific building. Accordingly, the cost of the maintenance and repairs set forth in Paragraph 10.1 with respect to the Building, the premiums and costs for insurance covering the Building, and the Real Property Taxes assessed against the Building and the parcel of land upon which the Building is located shall be entirely allocated to the Building.

**7.3.2** If Landlord incurs Operating Expenses for the Building together with one or more other improvements having commercial entitlements in the Project or if Landlord incurs Operating Expenses for the Project as a whole and not to any specific improvement in the Project, whether pursuant to the CC&R's or other common area agreement, such shared amounts shall be equitably prorated and apportioned between the Building and such other improvements in the Project, in Landlord's reasonable discretion. The Cost Pool for Project-wide Operating Expenses may include costs to maintain, repair and

replace the Common Areas (including the landscaping, sprinkler systems, driveways, curbs, sidewalks, lighting, and utilities expenses), the cost of security for the Common Areas, the management of the

Common Areas and the premiums and costs of insurance covering the entire Project and shall be allocated based on the rentable square footage of all improvements having commercial entitlements within the Project. As such, allocation of such Cost Pool shall be based on the rentable square footage of the Building as a percentage of the rentable square footage of all improvements having commercial entitlements. Until such time as any improvement having commercial entitlements is constructed, the rentable square footage of such improvement for purposes of the allocation of Project-wide Operating Expenses shall be deemed to be the Entitled Square Footage (as defined in the CC&R's) of such improvement.

**7.3.3** The Parking Facilities included in a Cost Pool for which Tenant shall be allocated a share shall include the Building's Subterranean Parking Facility, surface parking areas, and the parking areas within the Parking Garage to the extent Landlord has identified such Parking Facilities as available for use by Tenant pursuant to Paragraph 37 (the "**Included Parking Facilities**"). The Cost Pool for the Included Parking Facilities shall include the Real Property Taxes assessed against the Included Parking Facilities, the Operating Expenses relating to the operation, management, maintenance, repair, and replacement of the Included Parking Facilities (including the Base Building Systems of such Included Parking Facilities), the utilities expenses for the Included Parking Facilities, and the premiums and costs of insurance covering the Included Parking Facilities and shall be allocated based on parking space allocations.

**7.4 Payment of Estimated Operating Expenses.** "**Estimated Operating Expenses**" for any particular year shall mean Landlord's estimate of the Operating Expenses for such fiscal year made with respect to such fiscal year as hereinafter provided. Landlord shall have the right from time to time to revise its fiscal year and interim accounting periods so long as the periods as so revised are reconciled with prior periods in a reasonable manner. During the last month of each fiscal year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Operating Expenses for the ensuing fiscal year. Tenant shall pay Tenant's Proportionate Share of the Estimated Operating Expenses with installments of Base Rent for the fiscal year to which the Estimated Operating Expenses applies in monthly installments on the first day of each calendar month during such year, in advance. Such payment shall be construed to be Additional Rent for all purposes hereunder. Tenant's Proportionate Share of the Estimated Operating Expenses for the first full month due on the Term Commencement Date shall be paid by Tenant upon Tenant's execution of this Lease. If at any time during the course of the fiscal year, Landlord determines that Operating Expenses are projected to vary from the then Estimated Operating Expenses by more than five percent (5%), Landlord may, by written notice to Tenant, revise the Estimated Operating Expenses for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such fiscal year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Operating Expenses for such year, such revised installment amounts to be Additional Rent for all purposes hereunder.

**7.5 Computation of Operating Expense Adjustment.** "**Operating Expense Adjustment**" shall mean the difference between Estimated Operating Expenses and actual Operating Expenses for any fiscal year determined as hereinafter provided. Within one hundred twenty (120) days after the end of each fiscal year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a statement of actual Operating Expenses for the fiscal year just ended, accompanied by a computation of Operating Expense Adjustment (the "**Annual Statement**"). If such Annual Statement shows that Tenant's payment based upon Estimated Operating Expenses is less than Tenant's Proportionate Share of Operating Expenses, then Tenant shall pay to Landlord the difference within thirty (30) days after receipt of such statement, such payment to constitute Additional Rent for all purposes hereunder. If such Annual Statement shows that Tenant's payments of Estimated Operating Expenses exceed Tenant's Proportionate Share of Operating Expenses, then (provided that Tenant is not in default under this Lease) Landlord shall pay to Tenant the difference within thirty (30) days after delivery of such statement to Tenant. If this Lease has





been terminated or the Term hereof has expired prior to the date of such statement, then the Operating Expense Adjustment shall be paid by the appropriate party within thirty (30) days after the date of delivery of the statement. Should this Lease commence or terminate at any time other than the first day of the fiscal year, Tenant's Proportionate Share of the Operating Expense Adjustment shall be prorated based on a month of 30 days and the number of calendar months during such fiscal year that this Lease is in effect. Landlord's failure to provide any notices or statements within the time periods specified in Paragraphs 7.3 or 7.4 shall in no way excuse Tenant from its obligation to pay Tenant's Proportionate Share of Operating Expenses. Tenant shall have ninety (90) days after receipt of an Annual Statement to notify Landlord in writing that Tenant disputes the correctness of the Annual Statement ("**Expense Claim**"). If Tenant does not object in writing to an Annual Statement within said ninety (90) day period, such Annual Statement shall be final and binding upon Tenant. If Tenant delivers an Expense Claim to Landlord within said ninety (90) day period, the parties shall promptly meet and attempt in good faith to resolve the matters set forth in the Expense Claim. If the parties are unable to resolve the matters set forth in the Expense Claim within thirty (30) days after Landlord's receipt of the Expense Claim ("**Expense Resolution Period**"), then Tenant shall have the right to examine Landlord's Records, subject to the terms and conditions set forth in Paragraph 7.7 below. This Paragraph 7.5 shall survive the expiration or earlier termination of this Lease.

**7.6 Net Lease.** This shall be a triple net Lease and Base Rent shall be paid to Landlord absolutely net of all costs and expenses, except as specifically provided to the contrary in this Lease. The provisions for payment of Operating Expenses and the Operating Expense Adjustment are intended to pass on to Tenant and reimburse Landlord for all costs and expenses of the nature described in Paragraph 7.1 incurred in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Project.

**7.7 Review of Landlord's Books and Records.** Provided that Tenant has timely delivered an Expense Claim to Landlord, an Independent CPA (as defined below) shall have the right, at Tenant's cost and expense, to examine, inspect, and copy the records of Landlord concerning Operating Expenses ("**Landlord's Records**") for the fiscal year in question (an "**Independent Review**"). Such examination shall take place upon reasonable prior written notice, at the offices of Landlord's property manager, during normal business hours, no later than sixty (60) days after expiration of the Expense Resolution Period. Within thirty (30) days after expiration of the Expense Resolution Period, Tenant shall provide Landlord with a list of five (5) independent, certified public accounting firms that are not currently providing, and have not within the three (3) previous years provided, services to Landlord or Tenant. All of the firms shall be nationally or regionally recognized firms and have experience in representing owners of commercial office buildings. Within thirty (30) days after receipt of the list of accounting firms from Tenant, Landlord shall choose one of the five (5) firms by written notice to Tenant, which firm is referred to herein as the "**Independent CPA**". The Independent CPA shall be compensated on an hourly basis. The inspection of Landlord's Records must be completed within twenty (20) Business Days after such records are made available to the Independent CPA. Tenant agrees to keep, and to cause the Independent CPA to keep, all information obtained by Tenant or the Independent CPA confidential, and Landlord may require all persons inspecting Landlord's Records to sign a confidentiality agreement prior to making Landlord's Records available to them. In no event shall Tenant be permitted to examine Landlord's Records or to dispute any Annual Statement unless Tenant has paid and continues to pay all Rent (including the amount disputed in the Expense Claim) when due. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the fiscal year in question exceeded Tenant's Percentage Share of Operating Expenses or for such fiscal year, Landlord shall at Landlord's option either (a) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (b)

pay the excess to Tenant within thirty (30) days after delivery of such statement, except that after the expiration or earlier termination of this Lease, Landlord shall pay the

excess to Tenant. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such fiscal year were less than Tenant's Percentage Share of Operating Expenses for the fiscal year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. If the Independent Review shows that Operating Expenses included in the Annual Statement for the fiscal year in question exceeded actual Operating Expenses by more than five percent (5%) , then Landlord shall reimburse Tenant for all reasonable, out-of-pocket costs incurred by Tenant for the Independent Review, not to exceed Ten Thousand Dollars (\$10,000). Landlord shall retain Landlord's Records for the greater of (x) two (2) years after the expiration of the applicable fiscal year to which such Landlord's Records relate and (y) the resolution of any dispute between Landlord and Tenant regarding Operating Expenses for the applicable fiscal year. This Paragraph 7.6 shall survive the expiration or earlier termination of this Lease.

## **8. INSURANCE AND INDEMNIFICATION**

**8.1 Landlord's Insurance.** All insurance maintained by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control. Landlord shall keep in force throughout the Term commercial general liability insurance for the Common Areas in such amounts and with such deductibles as Landlord determines in its reasonable discretion from time to time in accordance with sound and reasonable risk management principles, and all risk or special form coverage insuring the Landlord and the Building for the full replacement cost, with such deductibles as Landlord determines in its reasonable discretion from time to time in accordance with sound and reasonable risk management principles. The cost of all such insurance is included in Operating Expenses, subject to Paragraph 7. Landlord shall not be obligated to insure, and shall have no responsibility whatsoever for any damage to, any furniture, machinery, goods, inventory or supplies, or other personal property or fixtures which Tenant may keep or maintain in the Premises, or the Tenant Improvements or any Alterations made by or for Tenant during the Term.

**8.2 Tenant's Insurance.** Tenant shall procure at Tenant's sole cost and expense and keep in effect from the date of this Lease and at all times until the end of the Term the following:

**8.2.1 Property Insurance.** Property insurance at least as broad as the most commonly available Insurance Services Office (ISO) special form causes of loss ("all risk") policy form CP 10 30 covering all personal property and fixtures of Tenant and all Tenant Improvements and Alterations within the Premises made by or for Tenant, insuring such property for the full replacement value of such property and naming Landlord and the Landlord Parties and any other party reasonably designated by Landlord as loss payee with respect to the Tenant Improvements and Alterations.

**8.2.2 Business Income Insurance and Extra Expenses Coverage.** Loss of income insurance and extra expense coverage in amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Tenant, or attributable to prevention of access to the Premises as a result of such perils, including all rental expenses and other payment obligations of Tenant under this Lease for a period of one year.

**8.2.3 Liability Insurance.** Commercial general liability insurance (and commercial umbrella insurance, if necessary to provide required limits), at least as broad as the Insurance Services Office (ISO) occurrence policy form CG 00 01, or a substitute form providing equivalent coverage as reasonably approved by Landlord, with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate, covering the insured against claims of bodily injury, broad form property damage and personal and advertising injury and including coverage for, premises and products/completed operations (including the use of owned and non-owned equipment), damage to rented



premises, and blanket contractual liability (including tort liability of another party and Tenant's liability for injury or death to persons and damage to property set forth in Paragraph 8.3 below).

**8.2.4 Automobile Liability.** Business automobile liability coverage of all owned, non-owned or hired motor vehicles with coverage at least as broad as the Insurance Services Office (ISO) business automobile coverage form with limits not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

**8.2.5 Liquor Liability.** Liquor liability coverage, which insurance shall be in form and with coverage limits reasonably acceptable to Landlord based on the extent of Tenant's service of alcoholic beverages as may be permitted by Landlord as an ancillary use of the Premises.

**8.2.6 Workers' Compensation and Employers' Liability Insurance.** Workers' compensation insurance as required by any Applicable Law, and employers' liability insurance in amounts not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident; One Million Dollars (\$1,000,000) policy limit for bodily injury by disease; and One Million Dollars (\$1,000,000) each employee for bodily injury by disease, and waiver by Tenant's insurer of any right of subrogation against Landlord and Landlord's property manager by reason of payment under such coverage.

**8.3 General Insurance Requirements.** All policies of liability insurance so obtained and maintained, including any umbrella liability insurance policies, shall (a) be carried in the name of Tenant, (b) name Landlord, any Security Holder and Landlord's reasonably designated agents as additional insureds, pursuant to an endorsement providing coverage at least as broad as ISO form CG 2010 11/85 or equivalent (which shall permit any such additional insureds to recover attorneys' fees and costs as the prevailing party in any dispute with the insurer), (c) be the primary insurance providing coverage for Landlord (any other liability insurance maintained by Landlord to be excess and non-contributing), (d) contain a cross-liability endorsement stating that the rights of insureds shall not be prejudiced by one insured making a claim or commencing an action against another insured, (e) include severability of interest clauses, products-completed operations and coverage of independent contractors, and (f) include breach of conditions coverage in favor of Landlord and the other additional insureds. The insurance requirements in this Paragraph 8 shall not in any way limit, in either scope or amount, the indemnity obligations separately owed by Tenant to Landlord under this Lease, or the liability of Tenant for nonperformance of its obligations or for loss or damage for which Tenant is responsible hereunder. No endorsement limiting or excluding a required coverage is permitted. Such insurance policies required to be carried by Tenant or duly executed certificates of insurance with respect thereto, shall be delivered to Landlord prior to the date that Tenant occupies the Premises for any reason, and evidence of renewals of such policies shall be delivered to Landlord prior to the expiration of each respective policy term. All Tenant's insurance shall provide that the insurer agrees to endeavor not to cancel the policy without at least thirty (30) days' prior written notice to Tenant (except in the event of a cancellation as a result of nonpayment, in which event the insurer shall give Tenant at least ten (10) days' prior notice). Tenant shall notify Landlord within ten (10) days following receipt of any such notice of cancellation or any material modification of any policy of insurance applicable to the Premises required under this Paragraph. If (a) at any time during the Term the amount or coverage of insurance which Tenant is required to carry under Paragraph 8.2 is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by tenants leasing space in Comparable Buildings which are similar to and operated for similar purposes as the Premises or (b) Tenant's use of the Premises should change with or without Landlord's consent, Landlord shall have the right to require Tenant to reasonably increase the amount or reasonably change the types of insurance coverage required under Paragraph 8.2, but not

more than once in any 3 year period with respect changes requested by Landlord pursuant to clause (a). All insurance policies required to be carried by Tenant under this Lease shall be written by companies

rated A- VIII or better in Best's Insurance Guide and authorized to do business in the state in which the Building is located. Payment of any deductibles shall be the sole responsibility of Tenant. Tenant shall deliver to Landlord on or before the Delivery Date, and thereafter at least thirty (30) days before the expiration dates of the expired policies, a certificate of insurance providing evidence of the insurance coverage required under this Paragraph 8. If Tenant shall fail to procure such insurance, or to deliver such certificates, Landlord may, at Landlord's option and in addition to Landlord's other remedies in the Event of a Default by Tenant hereunder, procure the same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent.

**8.4 Vendor Insurance.** In addition to the insurance Tenant is required to carry under this Lease, Landlord may require Tenant's service providers, contractors and major vendors to carry such insurance as Landlord shall reasonably determine to be necessary, and reasonably satisfactory evidence of such insurance shall be delivered to Landlord prior to entry into the Building by such service providers, contractors and major vendors.

**8.5 Tenant Indemnification.** Tenant shall indemnify, defend by counsel reasonably acceptable to Landlord, protect and hold Landlord, Wilson Meany, L.P. and their respective directors, shareholders, investment managers, partners, lenders, members, managers, contractors, affiliates, employees, trustees, principals, beneficiaries, officers, mortgagees and agents (each a "**Landlord Party**" and collectively, the "**Landlord Parties**") harmless from and against any and all claims, liabilities, losses, costs, loss of rents, liens, damages, injuries or expenses, including reasonable attorneys' and consultants' fees and court costs, demands, causes of action, or judgments (collectively, "Losses"), directly or indirectly arising out of or related to: (a) the use or occupancy or manner of use or occupancy of the Premises (including the Roof Top Area) by Tenant or any Tenant Party; or (b) any injury or death of any person or damage to or destruction of property occurring in the Premises (including the Roof Top Area), from any cause whatsoever; or (c) any injury or death of any person or damage to or destruction of property occurring in, on or about the Building or Project or in the vicinity of the Building or Project, including the Common Areas and Parking Facilities, to the extent such injury, death or damage is caused by the negligence or willful misconduct of Tenant or any Tenant Parties; or (d) Tenant's use of the roof of the Building pursuant to Paragraph 38. The foregoing indemnity by Tenant shall not be applicable to claims to the extent arising from the gross negligence or willful misconduct of Landlord or any Landlord Party. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of, or damage to any person or property or business loss in or about the Premises, Building or Project by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct) and, without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement or other portion of the Premises, Building or Project, or caused by gas, fire, oil or electricity in, on or about the Premises, Building or Project, acts of God or of third parties, or any matter outside of the reasonable control of Landlord. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease.

## **9. WAIVER OF SUBROGATION**

Landlord and Tenant hereby waive and release any and all rights of recovery against the other party, including officers, employees, agents and authorized representatives (whether in contract or tort) of such other party, that arise or result from any and all loss of or damage to any property of the waiving party located within or constituting part of the Building, including the Premises, to the extent of amounts payable under a standard ISO Commercial Property insurance policy, or such additional property coverage as the waiving party may carry (with a commercially reasonable deductible), whether or not the party suffering the loss or damage actually carries any insurance, recovers under any insurance or self- insures the loss or damage. Each party shall have their property insurance policies issued in such form as





to waive any right of subrogation as might otherwise exist. This mutual waiver is in addition to any other waiver or release contained in this Lease.

## 10. LANDLORD'S REPAIRS AND MAINTENANCE

**10.1 Landlord Obligations.** Landlord shall maintain in first class condition and repair, reasonable wear and tear excepted, each of the following (a) the structural and non-structural portions of the roof of the Building, including the roof coverings; (b) the foundations, columns, footings, load-bearing walls, sub-flooring, and all pipes and conduits to the point of entry into the Building; (c) the exterior walls of the Building, including, without limitation, any painting, sealing, patching and waterproofing of such walls, provided, however, that Landlord shall have no obligation to maintain any part of the storefront of the premises of any tenant in the Project; (d) the Building's ventilating and air circulation system and equipment, the plumbing, sewer, drainage, electrical, fire protection, elevator, life safety and security systems and equipment and other mechanical, electrical and communications systems and equipment (collectively, the "**Base Building Systems**") (excluding Tenant Systems, as defined below); (e) the elevators and (f) the pavement, landscaping, sprinkler systems, sidewalks, driveways, curbs, and lighting systems in the Common Areas (including the Parking Facilities). The term "exterior walls" as used herein shall not include windows, glass or plate glass, doors, special store fronts or office entries. Landlord's cost of performing such maintenance and repairs under this Paragraph 10.1 shall be included in Operating Expenses to the extent permitted pursuant to Paragraph 7. Notwithstanding the foregoing, if any such repair or maintenance is necessary due to the negligence or willful misconduct of Tenant or any Tenant Party, Tenant shall pay the cost of such work to the extent such costs are not covered by insurance, warranties or guaranties. Tenant shall immediately give Landlord written notice of any defect or need of repairs in such components of the Building for which Landlord is responsible, after which Landlord shall have a reasonable opportunity and the right to enter the Premises at all reasonable times to repair same. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance, and there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project or to fixtures, appurtenances or equipment in the Building.

**10.2 Warranty.** Landlord shall deliver the Premises with the Base Building Systems, the structural elements of the Premises and the foundation of the Building in good working order and repair. If, during the one (1) year period following the Delivery Date, it is determined that any of the Base Building Systems are not in good working order and repair, then Landlord shall not be liable to Tenant for any damages, but Landlord, at no cost to Tenant (including as Operating Expenses), shall promptly take such other action as may be necessary to place the applicable Base Building System in the good working condition and cure any such defects in the materials or workmanship of the structural elements of the Premises or the foundation of the Building; provided, however, that if Tenant does not give Landlord written notice of any deficiency of any of the Base Building Systems or any defect in the structural elements of the Premises or the foundation of the Building within one (1) year after the Delivery Date, Landlord shall not be responsible for correcting such condition pursuant to this Paragraph 10.2 but rather such condition shall be corrected as otherwise provided in the Lease and the cost of performing such correction shall be included in Operating Expenses, to the extent permitted pursuant to Paragraph 7 or performed by Tenant as required under Paragraph 11. Landlord's warranty hereunder does not cover the cost of normal repair, maintenance or replacement expected in light of the specifications of the applicable construction materials, equipment or system.

**10.3 Waiver.** Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

## **11. TENANT'S REPAIRS AND MAINTENANCE**

Tenant shall at all times during the Term, at Tenant's expense, maintain all parts of the Premises, including the Tenant Improvements and any Alterations, in a first class, good, clean and secure condition and promptly make all necessary repairs and replacements, with materials and workmanship of the same character, kind and quality as the original, including, without limitation, the following: (a) interior and exterior glass, windows, plate glass, window frames, window casements (including the repairing, resealing, cleaning and replacing of windows); (b) interior and exterior doors, door frames and door closers; (c) interior lighting (including, without limitation, light bulbs and ballasts); (d) interior demising walls and partitions (including painting and wall coverings), (e) all Tenant Systems; and (f) all Lines (defined in Paragraph 38.1). Tenant shall be responsible for providing regular janitorial service to the Premises on Business Days in accordance with the standards of Comparable Buildings. As used herein, "**Tenant Systems**" means all of the following, to the extent the same are installed by or on behalf of Tenant, and exclusively serve the Premises and are located in (or on the roof of) the Building: all heating, ventilation, air-conditioning, plumbing, sewer, drainage, electrical, fire/life-safety, security and other systems and equipment, including all electrical facilities, equipment and appliances, including lighting fixtures, lamps, fans, exhaust equipment or systems, and electrical motors, whenever and by whomever installed or paid for. Without limiting the foregoing, Tenant, at its expense, shall (i) keep the Tenant Systems in as good working order and condition as exists upon its installation (or, if later, on the date Tenant takes possession of the Premises), subject to normal wear and tear and damage resulting from Casualty; (ii) maintain in effect, with a contractor reasonably approved by Landlord, a contract for the maintenance and repair of the Tenant Systems (which contract shall require the contractor, at least once every three (3) months, to (x) inspect such Tenant Systems and provide to Tenant a report of any defective conditions, together with any recommendations for maintenance, repair or parts-replacement, all in accordance with the manufacturer's recommendations, and (y) replace filters, oil and lubricate machinery, replace parts, adjust drive belts, change oil and perform other preventive maintenance, including annual maintenance of duct work and interior unit drains, and annual caulking of sheet metal and re-caulking of jacks and vents); (iii) follow all reasonable recommendations of such contractor; and (iv) promptly provide to Landlord a copy of such contract and each report issued thereunder. If access to the roof of the Building is required in order to perform any of Tenant's obligations under this Paragraph

11, such access shall be subject to such reasonable rules and procedures as Landlord may impose, including the provisions of Paragraph 38 and the Rooftop Work Rules and Regulations, and Tenant shall maintain the affected portion of the roof in a clean and orderly condition and shall not interfere with use

of the roof by Landlord or any other tenant or licensee. In addition, Tenant shall, at its expense, promptly repair any damage to the Premises, the Building or the Project resulting from or caused by any negligence

or willful misconduct of Tenant or Tenant Parties to the extent such damage is not covered by insurance, warranties or guaranties. If at any time during the last two (2) years of the Term, Tenant determines that any Tenant Systems are in need of a capital repair or replacement that is not a result of Tenant's failure to comply with the repair and maintenance obligations of Tenant set forth in this Paragraph 11 and the cost of such repair or replacement is in excess of Two Hundred Fifty Thousand Dollars (\$250,000), then

Tenant may notify Landlord of same in writing. If Tenant so notifies Landlord, then Landlord shall promptly cause such repair or replacement (whether an item is repaired or replaced shall be determined by Landlord in its reasonable discretion) to be made, subject to reimbursement by Tenant as follows: The entire cost incurred by Landlord with respect to such work, together with interest thereon at Landlord's costs of funds per annum, shall be amortized over the useful life of the capital repair or replacement in

accordance with generally accepted accounting principles, and the monthly amortized cost (together with interest on the unamortized balance at a rate per annum equal to eight percent (8%)) shall be an Operating

Expense to be paid by Tenant under this Lease until the earlier of the Expiration Date or the date that the entire cost of such work and interest thereon has been reimbursed to Landlord.

## 12. ALTERATIONS

**12.1 Landlord's Approval.** Tenant shall not make, or allow to be made, any alterations, physical additions, improvements or partitions, including without limitation the attachment of any fixtures or equipment, in, about or to the Premises ("**Alterations**") without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld with respect to proposed Alterations which: (a) comply with all Applicable Laws; (b) are, in Landlord's reasonable opinion, compatible with the Building or the Project and the Base Building Systems, and will not cause the Building or Project or Base Building Systems to be required to be modified to comply with any Applicable Laws (including, without limitation, the Americans With Disabilities Act); and (c) will not interfere with the use and occupancy of any other portion of the Building or Project by any other tenant or its invitees. Specifically, but without limiting the generality of the foregoing, Landlord shall have the right to reasonably approve all plans and specifications for the proposed Alterations, construction means and methods, all appropriate permits and licenses, any contractor or subcontractor to be employed on the work of Alterations, and the time for performance of such work, and may impose reasonable rules and regulations for contractors and subcontractors performing such work. Landlord may, in its sole discretion, specify engineers, general contractors, subcontractors, and architects to perform work affecting the Base Building Systems. Tenant shall also supply to Landlord any documents and information reasonably requested by Landlord in connection with Landlord's consideration of a request for approval hereunder. No review or consent by Landlord of or to any proposed Alteration or additional work shall constitute a waiver of Tenant's obligations under this Paragraph 12, nor constitute any warranty or representation that the same complies with all applicable Laws, for which Tenant shall at all times be solely responsible. Tenant shall reimburse Landlord for all out-of-pocket, reasonable costs which Landlord may incur in connection with granting approval to Tenant for any such Alterations, including any costs or expenses which Landlord may incur in electing to have outside architects and engineers review said plans and specifications. Tenant shall also pay to Landlord a fee for its review of plans and its management and supervision of the progress of the work in an amount equal to three percent (3%) of the cost of any Alterations (other than for Minor Alterations). The Tenant Improvements constructed pursuant to the Tenant Improvement Agreement shall not be deemed to be Alterations hereunder.

**12.2 Minor Alterations.** Notwithstanding the foregoing, Landlord's consent shall not be required for any Minor Alterations (as defined below), provided that Tenant shall provide Landlord at least ten (10) days' notice prior to commencing such Minor Alterations, and such Minor Alterations shall otherwise comply with the provisions of this Paragraph 12. As used herein, a "**Minor Alteration**" is any Alteration that satisfies all of the following criteria: (a) is not visible from the exterior of the Premises or Building; (b) will not affect the Base Building Systems or structural portions of the Building (including exterior walls and shear walls); and (c) does not cost more than Fifty Thousand Dollars (\$50,000) per project, provided that interior carpeting and painting shall be deemed a Minor Alteration.

**12.3 Required Documentation.** Subsequent to obtaining Landlord's consent and prior to commencement of the Alterations, Tenant shall deliver to Landlord any building or other permit required by Applicable Laws in connection with the Alterations. In addition, Tenant shall require its general contractor to carry and maintain the following insurance at no expense to Landlord, and Tenant shall furnish Landlord with satisfactory evidence thereof prior to the commencement of construction:

(a) commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage, including personal injury and death, and

contractor's protective liability, and products and completed operations coverage; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each

accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) business auto coverage form covering automobile liability, code 1 "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers' compensation insurance as required by any Applicable Law, and employers' liability insurance in amounts not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident, One Million Dollars (\$1,000,000) aggregate disease coverage and One Million Dollars (\$1,000,000) each employee for bodily injury by disease; and (d) except in the case of Minor Alterations, and unless Tenant or its contractor carries such coverage itself, "builder's risk" insurance in an amount reasonably approved by Landlord covering the Alterations, it being understood and agreed that the Alterations (which, for purposes of this Paragraph 12.3, shall exclude the Tenant Improvements) shall be insured by Tenant pursuant to Paragraph 8.2 of this Lease immediately upon completion thereof. The contractor's commercial general insurance policy shall be endorsed to add Landlord as an additional insured with respect to liability arising out of work performed by or for Tenant's general contractor, to specify that such insurance is primary and that any insurance or self-insurance maintained by Landlord shall not contribute with it.

**12.4 Construction of Alterations.** Tenant shall cause all Alterations to be accomplished in a first-class, good and workmanlike manner, and to comply with all Applicable Laws, Paragraph 28 hereof, the Project Labor Agreement (defined below) and the Construction Rules and Regulations set forth in Schedule 3 to the Tenant Improvement Agreement. Tenant shall at Tenant's sole expense, perform any additional work required under Applicable Laws due to the Alterations hereunder. All Alterations shall be made in accordance with the plans and specifications reasonably approved in writing by Landlord and shall be designed and diligently constructed in a good and workmanlike manner and in compliance with all Applicable Laws. Tenant shall cause any Alterations to be made in such a manner and at such times so that any such work shall not unreasonably disrupt or unreasonably interfere with the use or occupancy of other tenants or occupants of the Project.

**12.5 Completion of Alterations.** Promptly following completion of any Alterations (excluding Alterations that do not require a building permit), Tenant shall (a) furnish to Landlord "as built" plans therefor, and (b) cause a timely notice of completion to be recorded in the Office of the Recorder of the County of San Mateo in accordance with Civil Code Section 3093 or any successor statute. All trash which may accumulate in connection with Tenant's construction activities shall be removed by Tenant or its contractor at reasonable intervals at no expense to Landlord from the Premises and the Building.

**12.6 Removal and Restoration.** By written notice to Tenant given at the time of Landlord's approval of any Alterations (or, as to Minor Alteration, within ten (10) days following Tenant's request for Landlord's determination), Landlord may require Tenant, at Tenant's sole expense, to remove such Alterations prior to the Expiration Date or any earlier termination of this Lease, to restore the Premises to substantially their configuration and condition before the Alterations were made, and to repair any damage to the Premises caused by such removal. If Landlord does not deliver such removal notice to Tenant within the time period specified herein, then Tenant shall not be required to remove such Alterations. The removal, restoration and repair work described above shall be performed and paid for in accordance with the provisions of Paragraph 36.

**12.7 Taxes.** In addition to and wholly apart from Tenant's obligation to pay Tenant's Proportionate Share of Operating Expenses, Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against its

fixtures or personal property, on the value of Alterations within the Premises, and on Tenant's interest pursuant to this Lease, or any increase in any of the foregoing based on such Alterations. To the extent



that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

### 13. SIGNS

#### 13.1 Tenant's Signage.

**13.1.1 Exterior Monument Signage.** Subject to the terms and conditions set forth in this Paragraph 13, Tenant shall have the right, at Tenant's sole cost and expense, to install a sign identifying Tenant on the exterior monument sign to be constructed by Landlord for the identification of tenants of the Building (the "**Exterior Monument Signage**"), provided that (a) such signage shall comply with the Building's standard signage program and guidelines and with all Applicable Laws and (b) the name, logo, typeface and graphic format of such signage shall be subject to Landlord's prior approval.

**13.1.2 Building Top Signage.** Subject to the terms and conditions set forth in this Paragraph 13, Tenant shall have the exclusive right, at Tenant's sole cost and expense, to install two (2) backlit, Building top signs identifying Tenant on the east and west sides of the Building ("**Building Top Signage**") to the extent permitted by Applicable Laws and in a location designated by Landlord. Landlord shall have the right to approve the name, logo, material, typeface, graphic format, proportions, precise location, size, content, design of the Building Top Signage. Landlord shall also have the right to reasonably approve the location of all penetrations and runs, cabling installations, and means of affixing or mounting the Building Top Signage to the Building. Any electrical power required for the Building Top Signage shall be charged to Tenant. Tenant shall pay all federal, state and local taxes applicable to the Building Top Signage. Tenant assumes all liability and risks relating to damage to the Building Top Signage from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or its agents. Any access to the roof by Tenant shall be subject to the provisions of Paragraph 38 and Rooftop Work Rules and Regulations attached hereto as **Exhibit F**.

**13.1.3 Building Lobby Signage.** Subject to the terms and conditions set forth in this Paragraph 13, Tenant shall have the right, at Tenant's sole cost and expense, to install tenant-identification signage on an interior wall in the lobby located on the first floor of the Building in a location reasonably approved by Landlord ("**Building Lobby Signage**") provided that (a) such signage shall be consistent with the design of the Building's lobby and comply with all Applicable Laws and (b) the name, logo, typeface and graphic format of such signage shall be subject to Landlord's prior approval.

**13.1.4 Building Directory.** Landlord shall include Tenant's name in the electronic Building directory located in the lobby of the Building.

**13.1.5 Interior Signage.** Tenant shall not (a) affix any window or door lettering, sign, decoration or advertising matter, or any type of sunscreen, tinting, film, solar screen, window covering or similar product to any window or door glass of the Premises, or (b) erect or install any other sign, awning, window or door lettering, placard, decoration or advertising media of any type that is visible from the exterior of the Premises or the Building without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion.

**13.2 Governmental Approvals.** Tenant, at Tenant's expense, shall be responsible for obtaining all required permits and approvals for each of Tenant's Exterior Monument Signage, Building Top Signage and Building Lobby Signage (collectively, "**Tenant's Signs**"). Tenant's Signs must comply with all Applicable Laws. Landlord, at no cost to Landlord, shall cooperate with Tenant to obtain all required

permits and approvals for Tenant's Signs. Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's Signs, Landlord has made no representations or warranties to Tenant with

respect to the probability of obtaining such permits and approvals, nor the availability or exact location of the Building Top Signage, and the failure of Tenant to obtain such permits and approvals shall not delay the Term Commencement Date or release Tenant from any obligations under this Lease.

**13.3 Maintenance and Removal.** Any Tenant's Sign, once approved by Landlord, shall be installed and removed only in strict compliance with Landlord's approval and Applicable Laws, at Tenant's expense, using a contractor first approved by Landlord to install same. Tenant, at its sole expense, shall maintain Tenant's Signs in good condition and repair during the Term. Landlord may remove any signs (not first approved in writing by Landlord), advertisements, banners, placards or pictures so placed by Tenant on or within the Premises, the Building, the Common Areas or the Project and charge to Tenant the cost of such removal, together with any costs incurred by Landlord to repair any damage caused thereby, including any cost incurred to restore the surface upon which such sign was so affixed to its original condition. Prior to the expiration or earlier termination of this Lease, Tenant shall remove all of Tenant's Signs, repair any damage caused thereby, and restore the surface upon which the sign was affixed to its original condition, all to Landlord's reasonable satisfaction, upon the expiration or earlier termination of this Lease.

**13.4 Assignment and Subleasing.** The right to install Tenant's Signs granted in this Paragraph 13 shall not be assigned or subleased separate from a Transfer of the Lease and then only if permitted pursuant to Paragraph 13.5.

**13.5 Rights Personal to Original Tenant; Occupancy.** Tenant's right to install Tenant's Building Top Signage is personal to the Original Tenant and its Permitted Assignee under this Lease. No assignee (other than a Permitted Assignee) or subtenant shall have any right to install any Building Top Signage. In addition, if at any time Tenant leases less than two (2) full floors of the Building, Tenant's exclusive right to Tenant's Building Top Signage shall be terminated.

#### **14. ENTRY BY LANDLORD**

**14.1 Right of Entry.** After at least 24 hours' prior notice, except in emergencies where no such notice shall be required, Landlord and Landlord's agents and representatives, shall have the right to enter the Premises to inspect the same, to clean, to perform such work as may be permitted or required hereunder, to make repairs, improvements or alterations to the Premises, Building or Project as may be permitted or required hereunder, to deal with emergencies, to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Project or to exhibit the Premises to prospective tenants (but only during the last 12 months of the Term), purchasers or encumbrancers ; provided, however, that Landlord shall use commercially reasonable efforts not to unreasonably interfere with Tenant's business operations and shall abide by Tenant's reasonable security measures. Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof. At any time within twelve (12) months prior to the expiration of the Term or following any earlier termination of this Lease or agreement to terminate this Lease, Landlord shall have the right to erect on the Premises, Building and/or Project a suitable sign indicating that the Premises are available for lease.

**14.2 Waiver of Claims.** Tenant acknowledges that Landlord, in connection with Landlord's activities under this Paragraph 14, may, among other things, erect scaffolding or other necessary

structures in the Project, temporarily limit access to portions of the Project, including portions of the Common Areas, or perform work to the Building and/or within the Project, which work may create noise, dust, vibration, odors or leave debris in the Project. Landlord shall exercise commercially reasonable efforts to minimize interference with the conduct of Tenant's business in the Premises in performing activities under this Paragraph 14, but Tenant hereby agrees that such activities shall not: constitute an actual or constructive eviction of Tenant; entitle Tenant to any abatement of Rent; make Landlord liable to Tenant for any direct or indirect injury to or interference with Tenant's business; or entitle Tenant to any compensation or damages for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements, or for any inconvenience or annoyance resulting from such activities, provided that Landlord complies with its obligations under this Paragraph 14.

## 15. SERVICES AND UTILITIES

**15.1 Services and Utilities Provided by Landlord.** Subject to the Rules and Regulations, Landlord shall furnish or arrange for the applicable utility provider to furnish to the Premises, (a) water for lavatory and drinking purposes, (b) electricity, (c) during Building Business Hours (except on Holidays) ventilation as provided by the Base Building Systems, and (d) elevator service, which shall mean service either by nonattended automatic elevators or elevators with attendants, or both, at the option of Landlord. Tenant acknowledges that Tenant has reviewed and accepts the type and capacity of the utilities (including water and electricity) and services being supplied or furnished to the Premises as described in Schedule 1 of the Tenant Improvement Agreement as being sufficient for use of the Premises for reasonable and normal office use and as being suitable for the Permitted Use and Tenant's intended operations in the Premises. In addition, Tenant has reviewed and approved the LEED Design/Operational Requirements set forth in **Exhibit G** applicable to the Premises. Tenant agrees to keep and cause to be kept closed all window covering when necessary because of the sun's position, and Tenant also agrees at all times to cooperate fully with Landlord and to abide by all of the reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Base Building Systems. Wherever heat-generating machines, excess lighting or equipment are used in the Premises which affect the temperature otherwise maintained by the ventilation system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

**15.2 Controls.** Tenant shall not without written consent of Landlord use any apparatus, equipment or device in the Premises, including without limitation, computers, electronic data processing machines, copying machines, and other machines, using excess lighting or using electric current, water, or any other resource in excess of or which will in any way increase the amount of electricity, water, or any other resource being furnished or supplied for the use of the Premises as described in Schedule 1 of the Tenant Improvement Agreement and the Building plans for reasonable and normal office use, in each case as of the date Tenant takes possession of the Premises and as determined by Landlord, or which will require additions or alterations to or interfere with the Building power distribution systems; nor connect with electric current, except through existing electrical outlets in the Premises or water pipes, any apparatus, equipment or device for the purpose of using electrical current, water, or any other resource. If Tenant shall require water or electric current or any other resource in excess of that being furnished or supplied for the use of the Premises as described in Schedule 1 of the Tenant Improvement Agreement and the Building plans, Tenant shall first procure the written consent of Landlord which Landlord may refuse, to the use thereof. Tenant shall pay directly to Landlord upon demand as an addition to and separate from payment of Operating Expenses the cost of all such additional resources, energy, utility service and meters (and of installation, maintenance and repair thereof and of any additional circuits or

other equipment necessary to furnish such additional resources, energy, utility or service). Landlord may add to the separate or metered charge a recovery of additional expense incurred in keeping account of the

excess water, electric current or other resource so consumed. Following receipt of Tenant's request to do so, Landlord shall use good faith efforts to restore any service specifically to be provided under Paragraph

15 that becomes unavailable and which is in Landlord's reasonable control to restore; provided, however, that, except as provided herein, Landlord shall in no case be liable for any damages directly or indirectly resulting from nor shall the Rent or any monies owed Landlord under this Lease herein reserved be abated by reason of: (a) the installation, use or interruption of use of any equipment used in connection with the furnishing of any such utilities or services, or any change in the character or means of supplying or providing any such utilities or services or any supplier thereof; (b) the failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by Force Majeure Events, or otherwise or because of any interruption of service due to Tenant's use of water, electric current or other resource in excess of that being supplied or furnished for the use of the Premises as of the date Tenant takes possession of the Premises; (c) the inadequacy, limitation, curtailment, rationing or restriction on

use of water, electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or Project, whether by Applicable Law or otherwise; or (d) the partial or total unavailability of any such utilities or services to the Premises or the Building or the diminution in the quality or quantity thereof, whether by Applicable Law or otherwise; or (e) any interruption in Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord. Landlord shall further have no obligation to protect or preserve any apparatus, equipment or device installed by Tenant in the Premises, including without limitation by providing any heating or air conditioning. Landlord shall be entitled to cooperate voluntarily and in a reasonable manner with the efforts of national, state or local governmental agencies or utility suppliers in reducing energy or other resource consumption. The obligation to make services available hereunder shall be subject to the limitations of any such voluntary, reasonable program. In addition, Landlord reserves the right to change the supplier or provider of any such utility or service from time to time. Tenant shall have no right to contract with or otherwise obtain any electrical or other such service for or with respect to the Premises or Tenant's operations therein from any supplier or provider of any such service. Tenant shall cooperate with Landlord and any supplier or provider of such services designated by Landlord from time to time to facilitate the delivery of such services to Tenant at the Premises and to the Building and Project, including without limitation allowing Landlord and Landlord's suppliers or providers, and their respective agents and contractors, reasonable access to the Premises for the purpose of installing, maintaining, repairing, replacing or upgrading such service or any equipment or machinery associated therewith.

**15.3 Utility Meters and Charges.** Tenant shall, as a component of the Tenant Improvement Work and at Tenant's sole cost and expense, cause meters to be installed in the Premises that measure the use of water, electricity, and gas within the Premises. Commencing on the Delivery Date, Tenant shall pay, upon demand, Tenant's Proportionate Share of all charges for utilities furnished to the Building until such time as the utilities for the Premises have been separately metered. Upon Tenant's installation of the meters, Tenant shall thereafter pay directly to the provider all charges for utilities furnished to the Premises that have been separately metered. All sums payable under this Paragraph 15 shall constitute Additional Rent hereunder.

**15.4 Reserved .**

**15.5 Services Providers.** Tenant may contract separately with providers of telecommunications or cellular products, systems or services for the Premises, provided, however, that any such provider is subject to Landlord's prior approval, which shall not be unreasonably withheld. Even though such products, systems or services may be installed or provided by such providers in the Building, in consideration for Landlord's permitting such providers to provide such services to Tenant,

Tenant agrees that Landlord and the Landlord Parties shall in no event be liable to Tenant or any Tenant Party for any damages of any nature whatsoever arising out of or relating to the products, systems or



services provided by such providers (or any failure, interruption, defect in or loss of the same) or any acts or omissions of such providers in connection with the same or any interference in Tenant's business caused thereby. Tenant waives and releases all rights and remedies against Landlord and the Landlord Parties that are inconsistent with the foregoing.

**15.6 Consumption Data.** Tenant acknowledges that Landlord is subject to the requirements of California's Nonresidential Building Energy Use Disclosure Program, as more particularly specified in California Public Resources Code Sections 25402.10 et seq. and regulations adopted pursuant thereto, which requires owners of all nonresidential buildings in California with a total gross floor area measuring 5,000 square feet or more to participate in the U.S. Environmental Protection Agency's ENERGY STAR® Portfolio Manager, a rating system for comparing the energy use of buildings; and to disclose specified benchmarking data and ratings for the most recent 12-month period in connection with any transaction by which the building is sold, financed or leased in its entirety. All such disclosures, whether made pursuant to the foregoing statute and regulations or other Applicable Laws now existing or hereafter adopted, are collectively referred to herein as "**Required Energy Disclosures**". Tenant acknowledges that future Required Energy Disclosures made during the Term of this Lease (and for at least one year thereafter) will be based, in part, on Tenant's energy usage within the Building, records of which are required to be maintained, and transmitted to the ENERGY STAR® Portfolio Manager system, by electric and gas utilities companies. Tenant hereby authorizes (and agrees that Landlord shall have the authority to authorize) any electric or gas utility company providing service to the Building to disclose, from time to time, so much of the data collected and maintained by it regarding Tenant's energy consumption data as may be necessary to cause the Building to participate in the ENERGY STAR® Portfolio Manager system and similar programs. Tenant further authorizes Landlord to disclose information concerning energy use by Tenant, either individually or in combination with the energy use of other tenants, as applicable, in connection with any Required Energy Disclosures (including data relating to carbon dioxide emissions associated with the operation of the Building), whenever Landlord determines, in good faith, that such disclosure is reasonably necessary to comply with Applicable Laws. Tenant shall, within ten (10) business days after request by Landlord, provide consumption data in a form reasonably required by Landlord for (a) any utility billed directly to Tenant or any subtenant or licensee of Tenant; and (b) any submetered or separately metered utility supplied to the Premises, which Landlord is not responsible for reading. Further, if Tenant utilizes separate service providers from those of Landlord, Tenant hereby consents to Landlord obtaining the consumption data directly from such service providers and, within ten (10) business days after written request, Tenant shall execute and deliver to Landlord and the service providers such written releases as the service providers may request evidencing Tenant's consent to deliver the consumption data to Landlord. Landlord shall not be required to notify Tenant of the making of Required Energy Disclosures; provided, however, that to the extent disclosure to Tenant is required by Applicable Laws, such disclosure may be satisfied by making Required Energy Disclosures available for review by Tenant in the Building management office. Tenant hereby releases Landlord from any Losses arising out of, resulting from, or otherwise relating to the making of any Required Energy Disclosures.

**15.7 Interruption of Utilities.** There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever, for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair, in cooperation with governmental request or directions, or any other cause whatsoever, unless caused by the negligence or willful misconduct of Landlord or its employees, agents or contractors. Any interruption or discontinuance of service shall not, except as otherwise provided by Applicable Laws, be deemed an eviction or disturbance of Tenant's use and possession of the Premises, or any part thereof, nor shall it render Landlord liable to Tenant for any injury, loss or damage by abatement of rent or otherwise, nor shall it relieve Tenant from performance of Tenant's obligations under this Lease.



## 16. SECURITY SERVICES AND ACCESS CONTROL

**16.1 Security Services.** Landlord shall have the right from time to time to adopt such policies, procedures and programs as it shall, in Landlord's reasonable discretion, deem necessary or appropriate for the security of the Project taking into consideration policies, procedures and programs adopted for Comparable Buildings and the character of the surrounding community. Tenant shall reasonably cooperate with Landlord in the enforcement of, and shall comply with, the policies, procedures and programs reasonably adopted by Landlord insofar as the same pertain to Tenant or any Tenant Parties. Tenant acknowledges that the safety and security devices, services and programs provided by Landlord from time to time, if any, may not prevent theft or other criminal acts, or insure the safety of persons or property, and Tenant expressly assumes the risk that any safety device, service or program may not be effective or may malfunction or be circumvented. Except to the extent damages are caused by the gross negligence or willful misconduct of Landlord, Landlord shall not be liable in any manner to Tenant or any other Tenant Parties for any acts (including criminal acts) of others, or for any direct, indirect, or consequential damages, or any injury or damage to, or interference with, Tenant's business, including, but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, or other loss or damage, bodily injury or death, related to any malfunction, circumvention or other failure of any security services which Landlord may provide pursuant to this Paragraph 16.1, or for the failure of any of the foregoing security services to prevent bodily injury, death, or property damage, or loss, or to apprehend any person suspected of causing such injury, death, damage or loss.

**16.2 Access.** Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days a week. Tenant assumes responsibility for controlling access to the Premises and may install its own security system pursuant to Paragraph 16.3, provided that Landlord shall at all times have access to the Premises in the event of an emergency and as necessary to provide the services and perform the obligations of Landlord under this Lease.

**16.3 Tenant's Security Equipment.** Tenant shall have the right to (a) institute such security measures entirely within the Premises as it may determine in its sole discretion, at Tenant's sole cost and expense and at no cost to Landlord, including the installation of key-card systems, security lighting and video monitoring equipment and (b) install key-card systems to the Premises from the internal stairwells of the Common Areas adjacent to the Premises (collectively, "**Tenant's Security Equipment**"), subject to all Applicable Laws, fire rating requirements and any so-called "fail safe open" requirements. The use of the internal stairwells pursuant to this Paragraph 16.3 shall not impair any existing approvals concerning the existing use and construction of the stairwells. At Tenant's sole cost, Tenant shall be permitted to tie Tenant's Security Equipment into the Base Building Systems if requested by Tenant provided that (i) Tenant's Security Equipment is compatible with the Base Building Systems and (ii) Tenant's Security System does not materially and adversely interfere with the Base Building Systems. Landlord must have the ability, at all times, to access the stairwells and to activate any such Tenant Security Equipment; provided, however, that, except in the event of an emergency, Landlord shall not deactivate Tenant's Security System, whether in connection with inspection, maintenance or repair of the Building's fire/life safety system or otherwise, without providing reasonable prior notice to Tenant. Tenant shall keep and maintain any Tenant's Security Equipment in good working order, condition and repair throughout the Term. In no event shall Tenant be entitled to any credit against Rent (including Tenant's Proportionate Share of Operating Expenses) or to any exclusions from Operating Expenses in the determination of Tenant's Proportionate Share of Operating Expenses as a result of Tenant's election to provide security measures or equipment to its Premises. Prior to the expiration or earlier termination of this Lease, Tenant shall, upon written request by Landlord, remove the Tenant's Security Equipment and

associated wiring and repair any damage to the Premises or the Building caused by such removal. Tenant acknowledges and agrees that Tenant's use of the stairwell and the installation, operation and maintenance

of the Tenant's Security Equipment shall be at Tenant's sole risk and Landlord shall have no liability whatsoever in connection therewith.

## 17. SUBORDINATION AND NON-DISTURBANCE

Subject to the terms and conditions of this Paragraph 17, this Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or the land upon which the Building and Project are situated, or both; and (b) any mortgage or deed of trust which may now exist or be placed upon the Building, the Project and/or the land upon which the Building or the Project are situated, or said ground leases or underlying leases, or Landlord's interest or estate in any of said items which is specified as security (such leases, mortgages and deeds of trust are referred to herein, collectively, as "**Superior Interests**"), and all advances made upon the security of such mortgages or deeds of trust, provided that the subordination of the Lease to a holder of any such Superior Interest (each, a "**Security Holder**") shall be conditioned upon Tenant's receipt from any such Security Holder of a non-disturbance agreement in a commercially reasonable form conforming with the terms of this Paragraph 17, unless the Superior Holder requires in writing that this Lease be superior thereto. Upon any termination or foreclosure (or any delivery of a deed in lieu of foreclosure) of any Superior Interest, Tenant, upon request, shall attorn to the Security Holder or foreclosure sale purchaser or any successor thereto and shall recognize such party as the lessor hereunder provided such Security Holder, purchaser or successor thereto accepts all of the terms, covenants and conditions of this Lease and agrees not to disturb Tenant's occupancy so long as there is no Event of Default hereunder. Tenant agrees with Security Holder that if Security Holder or any foreclosure sale purchaser or successor thereto shall succeed to the interest of Landlord under this Lease, such Security Holder, purchaser or any successor thereto shall not be (i) liable for any action or omission of any Landlord under this Lease arising prior to such Security Holder, purchaser or successor acquiring title to and possession of the Premises, or (ii) subject to any offsets, defenses or counterclaims which Tenant might have against any prior Landlord, or (iii) bound by any Rent which Tenant might have paid for more than the current month to any prior Landlord, or (iv) bound by any material modification or amendment of this Lease not consented to by such Security Holder, purchaser or any successor thereto. Within ten (10) Business Days after request by Landlord, Tenant covenants and agrees to execute and deliver commercially reasonable instruments evidencing such subordination of this Lease to any such Superior Interest, and such attornment, as may be required by Landlord or by the Security Holder of such Superior Interest. Concurrently with the execution of this Lease, Landlord, Tenant and the Security Holder of the Superior Interest encumbering the Building have entered into a Subordination, Non-Disturbance and Attornment Agreement.

## 18. FINANCIAL STATEMENTS

If at any time Tenant is not a publicly traded company, at Landlord's request from time to time, Tenant shall deliver to Landlord within ten (10) business days after Landlord's request therefor a copy, certified by an officer of Tenant as being a true and correct copy, of Tenant's most recent audited financial statement. In addition, if at any time Tenant is not a publicly traded company, upon Landlord's reasonable request, Tenant will provide Landlord within ten (10) business days after request therefor, copies of Tenant's most recent unaudited financial statements reflecting Tenant's financial situation (including without limitation balance sheets, statements of profit and loss, and changes in financial condition). If at any time Tenant is not a publicly traded company, Tenant agrees to deliver to any lender, prospective lender, purchaser or prospective purchaser designated by Landlord such financial statements of Tenant as may be reasonably requested by such lender or purchaser. Tenant hereby authorizes

Landlord to obtain one or more credit reports on Tenant at any time (but not more than once per calendar year), and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

## 19. ESTOPPEL CERTIFICATE

Tenant agrees from time to time, within ten (10) business days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, that this Lease has not been modified (or stating all modifications, written or oral, to this Lease), the date to which Rent has been paid, the unexpired portion of this Lease, that there are, to Tenant's actual knowledge, no current defaults by Landlord or Tenant under this Lease (or specifying any such defaults), that the leasehold estate granted by this Lease is the sole interest of Tenant in the Premises and/or the land at which the Premises are situated, and such other matters pertaining to this Lease as may be reasonably requested by Landlord or any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or Project or any interest therein. Failure by Tenant to execute and deliver such certificate shall constitute an acceptance of the Premises and acknowledgment by Tenant that the statements included are true and correct without exception. Tenant agrees that if Tenant fails to execute and deliver such certificate within such ten (10) business day period, Landlord may execute and deliver such certificate on Tenant's behalf and that such certificate shall be binding on Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or Project or any interest therein. The parties agree that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease, and shall be an Event of Default if Tenant fails to fully comply or makes any material misstatement in any such certificate.

## 20. SECURITY DEPOSIT

**20.1 Delivery of Letter of Credit.** Within 10 days following the execution and delivery of this Lease, Tenant shall deliver to Landlord, as protection for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer (or which Landlord reasonably estimates that it may suffer) as a result of any Event of Default by Tenant under this Lease, an irrevocable and unconditional negotiable standby letter of credit (the "**Letter of Credit**") in an amount of One Million Eight Hundred Twelve Thousand Nine Hundred Nine and 60/100 Dollars (\$1,812,909.60) (the "**Letter of Credit Amount**"), payable upon presentation to an operating retail branch located in the San Francisco Bay Area, running in favor of Landlord and issued by a solvent, nationally recognized bank with assets in excess of Forty Billion Dollars (\$40,000,000,000) and with a long term rating from Standard and Poor's Professional Rating Service of A or a comparable rating from Moody's Professional Rating Service or higher, under the supervision of the Superintendent of Banks of the State of California. The Letter of Credit shall (a) be "callable" at sight, irrevocable and unconditional, (b) be maintained in effect, whether through renewal (pursuant to a so-called "evergreen provision") or extension, for the period from the Delivery Date, until the date (the "**LC Expiration Date**") that is sixty (60) days after the Expiration Date (as the same may be extended), and Tenant shall deliver to Landlord a new Letter of Credit, certificate of renewal or extension amendment at least sixty (60) days prior to the expiration of the Letter of Credit then held by Landlord, without any action whatsoever on the part of Landlord, (c) be fully transferrable by Landlord, its successors and assigns, (d) be payable to Landlord, Security Holder or their assignees (the "**Beneficiary**"); (e) require that any draw on the Letter of Credit shall be made only upon receipt by the issuer of a letter signed by a purported authorized representative of the Beneficiary certifying that the Beneficiary is entitled to draw on the Letter of Credit pursuant to this Lease; (f) permit partial draws and multiple presentations and drawings; and (g) be otherwise subject to the Uniform Customs and Practices for Documentary Credits (2007-Rev) or International Chamber of Commerce Publication #600. In addition to the foregoing, the form and terms of the Letter of Credit and the bank issuing the same (the "**Bank**") shall be acceptable to Landlord and Security Holder, in their respective reasonable discretion, provided that Landlord hereby approves Silicon Valley Bank as an

issuing Bank and the form letter of credit attached hereto as **Exhibit I** for the issuance of the initial Letter of Credit. If Landlord notifies Tenant in writing that the Bank which issued the Letter of Credit has



become financially unacceptable because the above requirements are not met or the Bank has filed bankruptcy or reorganization proceedings or is placed into a receivership or conservatorship, or the financial condition of the Bank has changed in any other materially adverse way, then Tenant shall have thirty (30) days to provide Landlord with a substitute Letter of Credit complying with all of the requirements of this Paragraph 20. If Tenant does not so provide Landlord with a substitute Letter of Credit within such thirty (30) day period, then Beneficiary shall have the right to draw upon the then current Letter of Credit. In addition to Beneficiary's rights to draw upon the Letter of Credit as otherwise described in this Paragraph 20, Beneficiary shall have the right to draw down an amount up to the face amount of the Letter of Credit if any of the following shall have occurred or be applicable: (i) an Event of Default of Tenant has occurred; (ii) an event has occurred which, with the passage of time or giving of notice or both, would constitute an Event of Default of Tenant where Landlord is prevented from, or delayed in, giving such notice because of a bankruptcy or other insolvency proceeding; (iii) this Lease is terminated by Landlord due to an Event of Default by Tenant; (iv) Tenant has filed a voluntary petition under the U.S. Bankruptcy Code or any state bankruptcy code (collectively, "**Bankruptcy Code**"), (v) an involuntary petition has been filed against Tenant under the Bankruptcy Code, or (vi) the Bank has notified Landlord that the Letter of Credit will not be renewed or extended through the LC Expiration Date and Tenant has not provided a replacement Letter of Credit that satisfies the requirements of this Paragraph 20 within thirty (30) days prior to the expiration of the Letter of Credit. The Letter of Credit will be honored by the Bank regardless of whether Tenant disputes Landlord's right to draw upon the Letter of Credit. Tenant shall be responsible for paying the Bank's fees in connection with the issuance of any Letter of Credit, certificate of renewal or extension amendment.

**20.2 Transfer of Letter of Credit.** The Letter of Credit shall provide that Landlord, its successors and assigns, may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer (one or more times) all or any portion of its interest in and to the Letter of Credit to another party, person or entity. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Letter of Credit, in whole or in part, to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor arising after such transfer, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole or any portion of said Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the Bank such applications, documents and instruments as may be necessary to effectuate such transfer, and Tenant shall be responsible for paying the Bank's transfer and processing fees in connection therewith.

**20.3 In General.** If for any reason the amount of the Letter of Credit becomes less than the Letter of Credit Amount, Tenant shall, within ten (10) Business Days thereafter, either provide Landlord with a cash security deposit equal to such difference or provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total Letter of Credit Amount or an amendment to the existing Letter of Credit to increase the Letter of Credit Amount by the deficiency), and any such additional (or replacement) letter of credit or letter of credit amendments shall comply with all of the provisions of this Paragraph 20, and if Tenant fails to comply with the foregoing, then, notwithstanding anything to the contrary contained in Paragraph 20.1 above, the same shall constitute an incurable default by Tenant under this Lease (without the need for any additional notice and/or cure period). Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. Without limiting the generality of the foregoing, if the Letter of Credit expires earlier than the LC Expiration Date, Landlord will accept a renewal thereof (such renewal letter of credit to be in effect and delivered to

Landlord, as applicable, not later than thirty (30) days prior to the expiration of the Letter of Credit), which shall be irrevocable and automatically renewable as above provided through the LC Expiration

Date upon the same terms as the expiring Letter of Credit or such other terms as may be acceptable to Landlord in its reasonable discretion. However, if the Letter of Credit is not timely renewed, or if Tenant fails to maintain the Letter of Credit in the amount and in accordance with the terms set forth in this Paragraph 20, Beneficiary shall have the right to present the Letter of Credit to the Bank in accordance with the terms of this Paragraph 20, and the proceeds of the Letter of Credit may be applied by Landlord against any Rent payable by Tenant under this Lease that is not paid when due (subject to applicable notice and cure periods) and/or to pay for all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach or default by Tenant under this Lease (subject to applicable notice and cure periods), including, but not limited to, all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Any unused proceeds shall constitute the property of Landlord and need not be segregated from Landlord's other assets. Landlord agrees to pay to Tenant within sixty (60) days after the Expiration Date the amount of any proceeds of the Letter of Credit received by Landlord and not applied against any Rent payable by Tenant under this Lease that was not paid when due or used to pay for any losses and/or damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as a result of any breach or default by Tenant under this Lease (including, but not limited to, all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code); provided, however, that if prior to the LC Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

**20.4 Application of Letter of Credit.** Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the Letter of Credit upon the occurrence of any breach or default on the part of Tenant under this Lease. If Tenant shall breach any provision of this Lease or otherwise be in default hereunder, in each case beyond applicable notice and cure periods, Landlord may, but without obligation to do so, and without notice to Tenant, draw upon the Letter of Credit, in part or in whole, to cure any breach or default of Tenant and/or to compensate Landlord for any and all damages of any kind or nature sustained or that Landlord reasonably estimates that it will sustain resulting from Tenant's breach or default, including, but not limited to, all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. The use, application or retention of the Letter of Credit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any Applicable Laws, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, and the use, application or retention of the Letter of Credit shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Tenant agrees and acknowledges that (a) the Letter of Credit constitutes a separate and independent contract between Landlord and the Bank, (b) Tenant is not a third party beneficiary of such contract, and (c) in the event Tenant becomes a debtor under any chapter of the Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the U.S. Bankruptcy Code or otherwise.

**20.5 Security Deposit.** Any proceeds drawn under the Letter of Credit and not applied as set forth above shall be held by Landlord as a security deposit (the "**Deposit**"). No trust relationship is

created herein between Landlord and Tenant with respect to the Deposit, and Landlord shall not be required to keep the Deposit separate from its general accounts. The Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the provisions of this Lease to be performed or observed by Tenant. If Tenant fails to pay any Rent, or otherwise defaults with respect to any provision of this Lease, beyond any applicable notice and cure period, Landlord may (but shall not be obligated to), and without prejudice to any other remedy available to Landlord, use, apply or retain all or any portion of the Deposit for the payment of any Rent in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby, including, without limitation, prospective damages and damages recoverable pursuant to California Civil Code Section 1951.2. Tenant waives the provisions of California Civil Code Section 1950.7 (except subsection (b)), or any similar or successor laws now or hereinafter in effect, that restrict Landlord's use or application of the Deposit, or that provide specific time periods for return of the Deposit. Without limiting the generality of the foregoing, Tenant expressly agrees that if Landlord terminates this Lease due to an Event of Default or if Tenant terminates this Lease in a bankruptcy proceeding, Landlord shall be entitled to hold the Deposit until the amount of damages recoverable pursuant to California Civil Code Section 1951.2 is finally determined. If Landlord uses or applies all or any portion of the Deposit as provided above, Tenant shall within ten (10) days after demand therefor, deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall, at Landlord's option, be an Event of Default under this Lease. At any time that Landlord is holding proceeds of the Letter of Credit pursuant to this Paragraph

20.5, Tenant may deposit a Letter of Credit that complies with all requirements of this Paragraph 20, in which event Landlord shall return the Deposit to Tenant within ten (10) days after receipt of the Letter of Credit. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or so much thereof as has not previously been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days following the later of the expiration of the Term or Tenant's vacation and surrender of the Premises in accordance with the requirements of this Lease. Landlord's return of the Deposit or any part thereof shall not be construed as an admission that Tenant has performed all of its obligations under this Lease. Upon termination of Landlord's interest in this Lease, if Landlord transfers the Deposit (or the amount of the Deposit remaining after any permitted deductions) to Landlord's successor in interest, and thereafter notifies Tenant of such transfer and the name and address of the transferee, then Landlord shall be relieved of any further liability with respect to the Deposit.

**20.6 Reduction Following Rent Payments.** Notwithstanding any provision of this Lease to the contrary, the Letter of Credit Amount may be reduced to the amount of One Million Two Hundred Twenty Thousand Five Hundred Seventy Two and 80/100 Dollars (\$1,220,572.80) (the amount of the Base Rent for the last month of the initial Term) on the first day of the third (3<sup>rd</sup>) anniversary of the Term Commencement Date (the "**LC Reduction Date**"), provided that Tenant delivers to Landlord a replacement or amended Letter of Credit satisfying each and all of the requirements set forth in this Paragraph 20 and provided, however, that in no event shall any such reduction be permitted hereunder if a monetary Event of Default or a material non-monetary Event of Default shall have occurred during the period preceding any LC Reduction Date (the "**Performance LC Reduction Condition**"). If the Performance LC Reduction Condition is satisfied, and provided that Tenant tenders the replacement or amended Letter of Credit to Landlord in the form required herein, Landlord shall exchange the Letter of Credit then held by Landlord for the replacement Letter of Credit tendered by Tenant or accept and acknowledge the amendment to the Letter of Credit then held by Landlord, as applicable.

## **21. LIMITATION OF TENANT'S REMEDIES**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) SHALL BE LIMITED

TO THE LESSER OF (A) THE INTEREST OF LANDLORD IN THE BUILDING AND PARCEL OF LAND ON WHICH THE BUILDING IS LOCATED, OR (B) THE EQUITY INTEREST LANDLORD WOULD HAVE IN THE BUILDING AND PARCEL OF LAND ON WHICH THE BUILDING IS LOCATED IF THE SAME WERE ENCUMBERED BY THIRD PARTY DEBT IN AN AMOUNT EQUAL TO 70% OF THE VALUE OF THE PROPERTY, AND ANY RENT, INCOME OR PROCEEDS THEREFROM. TENANT SHALL LOOK SOLELY TO LANDLORD'S INTEREST IN THE BUILDING AND SUCH PARCEL OF LAND AND ANY RENT, INCOME OR PROCEEDS THEREFROM FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD PARTY. NEITHER LANDLORD NOR ANY LANDLORD PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD PARTY BE LIABLE TO TENANT FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND ANY MORTGAGEE(S) OF LANDLORD WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT. ANY LIEN OBTAINED TO ENFORCE ANY SUCH JUDGMENT AND ANY LEVY OF EXECUTION THEREON SHALL BE SUBJECT AND SUBORDINATE TO ANY LIEN, MORTGAGE OR DEED OF TRUST ON THE BUILDING AND PARCEL OF LAND ON WHICH THE BUILDING IS LOCATED. UNDER NO CIRCUMSTANCES SHALL TENANT HAVE THE RIGHT TO OFFSET AGAINST OR RECOUP RENT OR OTHER PAYMENTS DUE AND TO BECOME DUE TO LANDLORD HEREUNDER EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPHS 24.1 AND 25.8 OF THIS LEASE, WHICH RENT AND OTHER PAYMENTS SHALL BE ABSOLUTELY DUE AND PAYABLE HEREUNDER IN ACCORDANCE WITH THE TERMS HEREOF.

## 22. ASSIGNMENT AND SUBLETTING

**22.1 Restriction on Transfers.** Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed beyond fifteen (15) Business Days following Landlord's receipt of a Notice of Proposed Transfer pursuant to Paragraph 22.2 below: (a) assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, by operation of law or otherwise; (b) sublet the Premises or any part thereof; or (c) permit the use of the Premises by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any Person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**").

**22.2 Notice of Proposed Transfer; Standards of Approval.** If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing ("**Notice of Proposed Transfer**"). Any such Notice of Proposed Transfer shall include: (a) the proposed effective date which shall not be less than fifteen (15) Business Days after the date of Tenant's Notice of Proposed Transfer, (b) the portion of the Premises to be Transferred (herein called the "**Subject Space**"), (c) the terms of the proposed Transfer and the consideration therefor, the name and address of the proposed Transferee, a copy of all documentation pertaining to the proposed Transfer, and an estimated calculation of the Transfer Premium (as defined in Paragraph 22.3 below) in connection with such Transfer, (d) financial statements of the proposed Transferee for the three (3) year period immediately preceding the Notice of Proposed Transfer (or, if the proposed Transferee has been in existence for less than three (3) years, for such shorter period as may be applicable) certified by an officer, partner or owner thereof and any other information reasonably necessary to enable Landlord to determine the financial responsibility (including, without limitation, bank references and contacts at other of Tenant's funding sources) of the proposed Transferee,

and a description of the nature of such Transferee's business and proposed use of the Subject Space, and (e) such other information as Landlord may reasonably require. Landlord shall give Tenant



written notice of its approval or disapproval of a proposed Transfer within fifteen (15) Business Days after receipt of the Notice of Proposed Transfer (including the information required above). Without limiting the grounds on which it may be reasonable for Landlord to withhold its consent to a proposed Transfer, Tenant acknowledges that Landlord may reasonably withhold its consent in the following instances: (i) if there exists an Event of Default by Tenant of its obligations under this Lease; (ii) if the Transferee is a governmental or quasi-governmental agency, foreign or domestic; (iii) if the Transferee is an existing tenant in the Project unless Landlord does not have space currently or coming available in the Project comparable to the Premises (or that portion being subleased) in size, location and floor level that will satisfy the existing tenant's facility and timing needs; (iv) if Tenant has not demonstrated to Landlord's reasonable satisfaction that the Transferee is financially capable of complying with the obligations of such Transfer; (v) if, in Landlord's sole judgment, the Transferee's business, use and/or occupancy of the Premises would (A) violate any of the terms of this Lease or the lease of any other tenant in the Project, (B) not be comparable to and compatible with the types of use by other tenants in the Project, or (C) require any Alterations which would reduce the value of the existing leasehold improvements in the Premises; (vi) in the case of a sublease, it would result in more than six (6) occupancies within the Premises; or (vii) the Transferee has submitted to Landlord a bona fide offer (or

Transferee has submitted a bona fide offer during the six (6) month period immediately preceding the date of the Notice of Proposed Transfer) to lease space in the Project unless Landlord does not have space currently or coming available in the Project comparable to the Premises (or that portion being subleased)

in size, location and floor level that will satisfy the prospective Transferee's facility and timing needs. Any Transfer made without complying with this Paragraph shall, at Landlord's option, be null, void and of no effect, and/or shall constitute an Event of Default under this Lease.

Whether or not Landlord shall grant consent, Tenant shall pay, within thirty (30) days after written request by Landlord, any reasonable out-of-pocket legal fees incurred by Landlord in connection with any proposed Transfer.

**22.3 Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay Landlord fifty percent (50%) of any Transfer Premium derived by Tenant from such Transfer. "**Transfer Premium**" shall mean all rent, additional rent or other consideration paid by such Transferee for the Transfer (including, but not limited to, payments in excess of fair market value for Tenant's trade fixtures, equipment and other tangible personal property, but excluding any intangible property) in excess of the Rent payable by Tenant under this Lease (on a monthly basis during the Term, and on a per rentable square foot basis, if less than all of the Premises is transferred), after deducting Permitted Transfer Costs. As used herein, "**Permitted Transfer Costs**" means the actual costs incurred and paid by Tenant for (a) any leasing commissions (not to exceed commissions typically paid the San Mateo office market at the time of such Transfer), (b) improvement allowances provided to the Transferee or improvement costs, and (c) reasonable legal fees and expenses paid in connection with documenting, reviewing and approving the Transfer, all as reasonably incurred by Tenant in connection with the Transfer. If Tenant shall enter into multiple Transfers, the Transfer Premium payable to Landlord shall be calculated independently with respect to each Transfer. The Transfer Premium due Landlord hereunder shall be paid within fifteen (15) days after Tenant receives any Transfer Premium from the Transferee. Landlord or its authorized representatives shall have the right at all reasonable times upon reasonable prior notice to review the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. The parties acknowledge that no Transfer Premium shall be payable in connection with a Transfer to a Permitted Transferee.

**22.4 Terms of Consent.** If Landlord consents to a Transfer: (a) the terms and conditions of this Lease, including among other things, Tenant's liability for the Subject Space, and Rent with respect thereto, shall in no way be deemed to have been released, waived or modified, (b) such consent shall not be deemed consent to any further Transfer by either Tenant or the Transferee, (c) no Transferee (other

than a Permitted Transferee) shall succeed to any rights provided in this Lease or any amendment hereto to extend the Term, expand the Premises, lease additional space or any other rights being deemed

personal to Tenant, (d) Tenant shall deliver to Landlord promptly after execution, an executed copy of all documentation pertaining to the Transfer, and (e) Tenant shall furnish upon Landlord's request a complete statement, certified by Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer. Each Transferee under an assignment of this Lease, other than Landlord, must expressly assume all of the provisions, covenants and conditions of this Lease on the part of Tenant thereafter to be kept and performed. No subtenant shall have the right to further Transfer its interest in the Subject Space, except in accordance with this Paragraph 22.

**22.5 Landlord's Recapture Right.** Notwithstanding anything to the contrary contained in this Paragraph 22, in the event that Tenant contemplates a Transfer, Tenant shall give Landlord notice (the "**Intention to Transfer Notice**") of such contemplated Transfer (whether or not the contemplated Transferee or the terms of such contemplated Transfer have been determined); provided, however, that Landlord hereby acknowledges and agrees that Tenant shall have no obligation to deliver an Intention to Transfer Notice hereunder, and Landlord shall have no right to recapture space with respect to, (a) a sublease of less than the entire Premises, or (b) a Permitted Transfer. The Intention to Transfer Notice shall specify the contemplated date of commencement of the Contemplated Transfer (the "**Contemplated Effective Date**"), and the contemplated length of the term of such contemplated Transfer, and shall specify that such Intention to Transfer Notice is delivered to Landlord pursuant to this Paragraph 22.5 in order to allow Landlord to elect to recapture the Premises for the remainder of the Term. Thereafter, Landlord shall have the option, by giving written notice to Tenant (the "**Recapture Notice**") within fifteen (15) Business Days after receipt of any Intention to Transfer Notice, to recapture the Premises. Any recapture under this Paragraph 22.5 shall cancel and terminate (or suspend if not for the remainder of the Term) this Lease with respect to the Premises as of the Contemplated Effective Date. If Landlord declines, or fails to elect in a timely manner, to recapture the Premises under this Paragraph 22.5, then, subject to the other terms of this Paragraph 22, for a period of six (6) months (the "**Six Month Period**") commencing on the last day of such fifteen (15) Business Day period, Landlord shall not have any right to recapture the Premises with respect to any Transfer made during the Six Month Period; provided however, that any such Transfer shall be subject to the remaining terms of this Paragraph 22. If such a Transfer is not so consummated within the Six Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any Transfer of the Premises consummated within such Six Month Period), Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect any contemplated Transfer, as provided above in this Paragraph 22.5.

**22.6 Certain Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include (a) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a general partner or fifty percent (50%) or more of the partners, or a transfer of fifty percent (50%) or more of partnership interests, or the dissolution of the partnership; (b) if Tenant is a limited liability company, the withdrawal or change, voluntary, involuntary, or by operation of law, of fifty percent (50%) or more of the members, or a transfer of fifty percent (50%) or more of the membership interests, or the dissolution of the limited liability company; and (c) if Tenant is a corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of fifty percent (50%) or more of the voting shares of Tenant (other than transfers to immediate family members by reason of gift or death), or the sale, mortgage, hypothecation or pledge of more than an aggregate of fifty percent (50%) or more of Tenant's net assets. No issuance of stock of Tenant in a public offering or sale on a public stock exchange of Tenant's stock shall be deemed to be a "Transfer" for purposes of this Lease or subject to the terms and conditions of this Paragraph 22.

**22.7 Permitted Transfers.** Notwithstanding anything to the contrary contained in this Paragraph 22, as long as no Event of Default by Tenant is continuing, Tenant may assign this Lease or sublet any portion of the Premises (hereinafter collectively referred to as a "Permitted Transfer") to (a) an

affiliate of Tenant (an entity which is Controlled by, Controls, or is under common Control with, Tenant), (b) any successor entity to Tenant by way of merger, consolidation or other non-bankruptcy corporate reorganization, (c) an entity which acquires multiple assets of Tenant, or (d) an entity acquiring and continuing Tenant's business operations at or from the Premises (a "Permitted Transferee"); provided that (i) at least ten (10) Business Days prior to the Transfer (or ten (10) Business Days after the Transfer if prior notice of such Transfer is prevented by Applicable Laws or confidentiality restrictions), Tenant notifies Landlord of such Transfer, and supplies Landlord with any documents or information reasonably requested by Landlord regarding such Transfer or Permitted Transferee, including, but not limited to, copies of the sublease or instrument of assignment and copies of documents establishing to the reasonable satisfaction of Landlord that the transaction in question is one permitted under this Paragraph 22.7, (ii) at least ten (10) Business Days prior to the Transfer (or ten (10) Business Days after the Transfer if prior notice of such Transfer is prevented by Applicable Laws or confidentiality restrictions), Tenant furnishes Landlord with a written document executed by the proposed Permitted Transferee in which, in the case of an assignment, such entity assumes all of Tenant's obligations under this Lease thereafter to be performed, and, in the case of a sublease, such entity agrees to sublease the Subject Space subject to this Lease,

(iii) other than in the case of a sublease of a portion of the Premises to an affiliate, the affiliate or successor entity must have a net worth (computed in accordance with generally accepted accounting principles, except that intangible assets such as goodwill, patents, copyrights, and trademarks shall be excluded in the calculation ("Net Worth")) at the time of the Transfer that is at least equal to the Net Worth of Tenant immediately prior to such Transfer, and (iv) any such proposed Transfer is not, whether in a single transaction or in a series of transactions, entered into as a subterfuge to evade the obligations and restrictions relating to Transfers set forth in this Paragraph 22.7. "Control," as used in this Paragraph

22.7, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity. For purposes of this Lease, the term "Permitted Assignee" shall mean a Permitted Transferee to whom Tenant assigns all of its right, title and interest in and to this Lease, and which assumes all of Tenant's obligations under this Lease.

**22.8 Tenant Remedies.** Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld, conditioned, or delayed its consent under this Paragraph

22 or otherwise has breached or acted unreasonably under this Paragraph 22, Tenant's sole remedies shall be declaratory judgment and an injunction for the relief sought, or an action for compensatory monetary damages, and Tenant hereby waives all other remedies, including, without limitation, any right provided under California Civil Code Section 1995.310 or other Applicable Laws to terminate this Lease.

## 23. AUTHORITY

**23.1 Authority.** Landlord represents and warrants that it has full right and authority to enter into this Lease and to perform all of Landlord's obligations hereunder and that all persons signing this Lease on its behalf are authorized to do. Tenant represents and warrants that Tenant has full right and authority to enter into this Lease, and to perform all of Tenant's obligations hereunder, and that all persons signing this Lease on its behalf are authorized to do so.

**23.2 OFAC.** Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224

(September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and

Blocked Persons." If the foregoing representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

## 24. CONDEMNATION

**24.1 Condemnation Resulting in Termination.** If the whole or any substantial part of the Premises should be taken or condemned for any public use under any Applicable Law, or by right of eminent domain, or by private purchase in lieu thereof, and the taking would prevent or materially interfere with the Permitted Use of the Premises, either party shall have the right to terminate this Lease at its option. If any material portion of the Building is taken or condemned for any public use under any Applicable Law, or by right of eminent domain, or by private purchase in lieu thereof, Landlord may terminate this Lease at its option. In either of such events, the Rent shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises shall have occurred.

**24.2 Condemnation Not Resulting in Termination.** If a portion of the Project of which the Premises are a part should be taken or condemned for any public use under any Applicable Law, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Permitted Use of the Premises, and this Lease is not terminated as provided in Paragraph 24.1 above, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving Landlord credit for all sums received or to be received by Tenant by the condemning authority. Notwithstanding anything to the contrary contained in this Paragraph, if the temporary (i.e., not more than 180 days) use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the unexpired Term.

**24.3 Award.** Landlord shall be entitled to (and Tenant shall assign to Landlord) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value of any unexpired portion of this Lease, except as expressly provided in this Lease. Notwithstanding the foregoing, any compensation specifically and separately awarded Tenant for Tenant's personal property and moving costs, shall be and remain the property of Tenant.

**24.4 Waiver of CCP §1265.130.** Each party waives the provisions of California Civil Code Procedure Section 1265.130 allowing either party to petition the superior court to terminate this Lease as a result of a partial taking.

## 25. CASUALTY DAMAGE

**25.1 Landlord's Restoration Obligation.** If any portion of the Building shall be damaged or destroyed by fire or other casualty (collectively, "Casualty"), Tenant shall give immediate written notice thereof to Landlord. Unless this Lease is terminated as provided in Paragraph 25.3 or Paragraph 25.4, Landlord shall, to the extent that insurance proceeds are available to Landlord therefor, proceed to repair and restore the damage ("**Landlord's Restoration Work**"), with reasonable diligence and promptness, given the nature of the damage to be repaired, to substantially the same condition existing prior to the

Casualty except for modifications required by zoning and building codes and other Applicable Laws and subject to reasonable delays for insurance adjustments, compliance with zoning laws, building codes, and



other Applicable Laws and Force Majeure Events. Landlord's Restoration Work does not include repair and restoration of the Tenant Improvements or subsequent Alterations made by Tenant or repair and restoration to Tenant's equipment, furniture, furnishings, trade fixtures or personal property. Unless this Lease is terminated as provided in Paragraph 25.3 or Paragraph 25.4, if and to the extent that any damaged Tenant Improvements or Alterations must be removed in order for Landlord to effect Landlord's Restoration Work or to eliminate any hazard or nuisance resulting from such damaged Tenant Improvements or Alterations, then, after Landlord gives Tenant access for that purpose, Tenant shall proceed with reasonable diligence, given the nature of the work, to remove such damaged Tenant Improvements or Alterations in accordance with Applicable Laws, subject to reasonable delays for insurance adjustments and Force Majeure Events.

**25.2 Landlord's Repair Notice.** Landlord, as soon as reasonably possible but in any event within sixty (60) days after the date of the Casualty, shall deliver a written notice to Tenant ("**Landlord's Casualty Notice**") indicating Landlord's election (a) to perform Landlord's Restoration Work, including Landlord's good faith estimate (which shall be based on Landlord's consultation with a qualified, independent, experienced and reputable architect and/or general contractor experienced in similar types of Landlord's Restoration Work) of the number of days (assuming no unusual delays in the receipt of insurance proceeds, no overtime or other premiums, and no Force Majeure Event) measured from the date of the Casualty that will be required for Landlord to substantially complete Landlord's Restoration Work (the "**Estimated Restoration Period**") or (b) to terminate this Lease pursuant to Paragraph 25.3 as of the date specified in Landlord's Casualty Notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the date of such notice, unless Tenant exercised its right to terminate this Lease pursuant to Paragraph 25.4.

**25.3 Landlord's Termination Right.** In the event of any of the following circumstances, Landlord may elect either to terminate this Lease or to perform Landlord's Restoration Work, as more particularly described in Paragraph 25.1:

(a) If Landlord's Restoration Work cannot, in Landlord's good faith estimate (as determined in accordance with Paragraph 25.2), be completed within one (1) year following the date of the Casualty (assuming no unusual delays in the receipt of insurance proceeds, no overtime or other premiums, and no Force Majeure Event), or

(b) If the Casualty occurs during the last twelve (12) months of the Term and cannot be repaired within 30 days; provided, however, that Landlord may not terminate this Lease pursuant to this Paragraph 25.3(b) if Tenant, at the time of such damage, has the right to extend the Term pursuant to Paragraph 3.2, and Tenant exercises such Extension Option not later than the earlier to occur of (i) the last day of the then applicable Exercise Period set forth in Paragraph 3.2.2 or (b) thirty (30) days following the delivery to Tenant of Landlord's Casualty Notice, or

(c) If the Casualty is not covered by the insurance Landlord is required to carry under this Lease or any insurance Landlord actually carries and the cost of Landlord's Restoration Work will exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (exclusive of any deductible); provided, however, that Landlord may not terminate this Lease pursuant to this Paragraph 25.3(c), if (a) Tenant agrees, within fifteen (15) days after its receipt of Landlord's Casualty Notice, to fund the amount in excess of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and (b) within fifteen (15) days thereafter, Tenant shall promptly deposit the excess in a construction trust account set up by Landlord in a financial or other institution selected by Landlord (subject to Tenant's reasonable approval), in which event Landlord shall proceed with Landlord's Restoration Work as if the Casualty had been insured.

Landlord's withdrawals from the trust account shall be proportionate and concurrent to Landlord's schedule of payments to its contractors and paid in payment of such contractor's bills, or

(d) If insurance proceeds sufficient to complete Landlord's Restoration Work are not available due to the exercise of legal rights of any Security Holder to collect such proceeds, or

(e) If because of Applicable Laws Landlord's Restoration Work cannot be completed except in a substantially different structural or architectural form than existed before the Casualty.

**25.4 Tenant's Termination Rights.** In the event of any Casualty and if Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease as provided above, Tenant may elect to terminate this Lease upon the occurrence of any of the following circumstances, in which event Tenant must make such election to terminate this Lease by giving Landlord written notice of such election not later than thirty (30) days after Tenant's receipt of Landlord's Casualty Notice:

(a) Landlord's good faith estimate of the Estimated Restoration Period required to complete Landlord's Restoration Work as set forth in Landlord's Casualty Notice is greater than one (1) year from the date of the Casualty, or

(b) The Casualty occurs during the last twelve (12) months of the Term and cannot be repaired within 30 days.

The effective date of any given termination shall be specified in Tenant's termination notice, and shall not be earlier than the date of such notice or later than sixty (60) days after the date of such notice.

**25.5 Tenant's Restoration Obligations.** Unless this Lease is terminated as provided in Paragraph 25.3 or Paragraph 25.4, in the event of a Casualty, Tenant shall, to the extent that insurance proceeds are available to Tenant therefor (or would have been available to Tenant had Tenant carried the insurance required to be carried pursuant to this Lease and complied with the terms of such insurance policies), restore the Tenant Improvements to substantially the same condition existing prior to the Casualty except for modifications required by zoning and building codes and other Applicable Laws. Tenant shall otherwise have no duty or obligation to restore any of the Alterations or Tenant's equipment, furniture, furnishings, trade fixtures or personal property therein, it being agreed that, subject to the preceding sentence, Tenant shall be permitted to restore the Premises to a condition different from that existing prior to the Casualty. Tenant shall proceed with reasonable diligence, given the nature of the work, to effect such restoration in a good and workmanlike manner and in accordance with applicable Laws, subject to Force Majeure Events. If this Lease is terminated as provided in Paragraph 25.3 or Paragraph 25.4, Tenant, no later than the expiration or sooner termination of this Lease, shall remove the damaged Tenant Improvements, Alterations and Tenant's equipment, furniture, furnishings, trade fixtures or personal property unless the Building is to be razed and/or demolished, in which case Tenant shall have no obligation to remove any such improvements or personal property.

**25.6 Insurance Proceeds.** In the event of any damage to the Premises or the Building (or any equipment, furniture, furnishings, trade fixtures or personal property therein) from any Casualty, Landlord shall be entitled to the full proceeds of any insurance coverage carried by Landlord in connection with such loss or damage, and Tenant shall be entitled to the full proceeds of any insurance coverage carried by Tenant in connection with such loss or damage; provided, however, in the event Tenant shall exercise any right to terminate this Lease as a result of a Casualty in accordance with Paragraph 25.4, Tenant shall have the obligation to remit to Landlord, from (and to the extent of) the proceeds of any of Tenant's insurance covering same, an amount equal to the unamortized cost of the Tenant Improvements to the extent paid for by the Tenant Improvement Allowance (or other allowances afforded Tenant by Landlord hereunder with respect to construction of improvements to any portion of the damaged Premises) if

Landlord advises Tenant that Landlord intends in good faith to restore the Building to substantially the condition and substantially the same use existing prior to such loss or damage.

**25.7 Landlord not Liable for Business Interrupt.** Notwithstanding any provision in this Lease to the contrary, Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair, restoration or rehabilitation of any portion of the Premises or the Building as a result of any damage from a Casualty; provided that the foregoing shall not be deemed to excuse or otherwise modify Landlord's continuing obligation to perform Landlord's Restoration Work, all as and to the extent otherwise provided in this Paragraph 25.

**25.8 Rent Abatement.** If Landlord or Tenant does not elect to terminate this Lease under Paragraph 25.3 or Paragraph 25.4, this Lease shall remain in full force and effect provided that Tenant shall be entitled to a reduction of Base Rent and Tenant's Proportionate Share of Operating Expenses in proportion that the areas of the Premises rendered untenable bears to the total rentable area of the Premises during the period beginning with the date such rentable area becomes untenable and Tenant ceases to use such rentable area for the normal conduct of its business and ending five (5) Business Days after Substantial Completion of Landlord's Restoration Work. For purposes of this Paragraph 25 the term "**Substantial Completion**" or "**Substantially Complete**" shall have the same meaning as provided in the Tenant Improvement Agreement with respect to Substantial Completion of the Base Building Improvements.

**25.9 Casualty Prior to Completion of Initial Improvements.** The terms and provisions of this Paragraph 25 shall apply to any damage to the Building caused as a result of a Casualty, regardless of whether such damage occurs prior to or after the Term Commencement Date.

**25.10 Waiver.** This Paragraph 25 shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises or the Building. As a material inducement to Landlord entering into this Lease, Tenant hereby waives any rights it may have under Sections 1932, 1933(4), 1941 or 1942 of the Civil Code of California with respect to any destruction of the Premises, Landlord's obligation for tenantability of the Premises and Tenant's right to make repairs and deduct the expenses of such repairs, or under any similar law, statute or ordinance now or hereafter in effect.

**25.11 Tenant Improvements, Alterations and Personal Property.** In the event of any damage or destruction of the Premises or the Building, under no circumstances shall Landlord be required to repair any injury or damage to, or make any repairs to or replacements of, Tenant Improvements, Alterations or Tenant's equipment, furniture, furnishings, trade fixtures or personal property.

## **26. HOLDING OVER**

Any holding over after the expiration or other termination of this Lease with the written consent of Landlord delivered to Tenant shall be construed to be a tenancy from month to month at the Base Rent in effect on the date of such expiration or termination on the terms, covenants and conditions herein specified so far as applicable. Any holding over after the expiration or other termination of this Lease without the written consent of Landlord shall be construed to be a tenancy at sufferance on all the terms set forth herein, except that Base Rent shall be an amount equal to one hundred fifty percent (150%) of the Base Rent payable by Tenant immediately prior to such holding over. Acceptance by Landlord of Rent after the expiration or termination of this Lease shall not constitute a consent by Landlord to any such tenancy from month to month or result in any other tenancy or any renewal of the term hereof. Tenant acknowledges that if Tenant holds over without Landlord's consent, such holding over may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Premises. Therefore, if Tenant fails to surrender the Premises upon the expiration or other termination of this Lease, then, in addition to any other liabilities to Landlord accruing therefrom, Tenant

shall protect, defend, indemnify and hold Landlord harmless from all Losses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant

founded upon such failure to surrender and any lost profits to Landlord resulting therefrom, provided that Landlord gives Tenant at least 30 days' prior written notice of any such losses or damages. The provisions of this Paragraph are in addition to, and do not affect, Landlord's right to reentry or other rights hereunder or provided by law.

## **27. DEFAULT**

**27.1 Events of Default.** The occurrence of any of the following events (each and "Event of Default") shall constitute a breach of this Lease by Tenant:

**27.1.1 Abandonment.** Abandonment of the Premises.

**27.1.2 Nonpayment of Rent.** Tenant fails to pay any Base Rent or any Additional Rent as and when such rent becomes due and payable where such failure continues for three (3) Business Days after written notice from Landlord to Tenant.

**27.1.3 Hazardous Materials.** Tenant fails to perform or breaches any agreement or covenant to be performed or observed by Tenant under Paragraph 4.4 above and such failure or breach continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of ten (10) days, an Event of Default shall not exist as long as Tenant commences the curing of such failure or breach within such period of ten (10) days and, having so commenced, thereafter prosecutes such cure with diligence and dispatch to completion as soon as may be reasonably practicable thereafter.

**27.1.4 Estoppel and Financial Statements.** Tenant fails to deliver the financial statements or the estoppel certificate to Landlord or a Landlord's mortgagee or beneficiary under a deed of trust, as the case may be, within the time periods required by Paragraph 18 and Paragraph 19 where such failure continues for two (2) Business Days after written notice from Landlord to Tenant.

**27.1.5 Other Covenants.** Tenant fails to perform or breaches any agreement or covenant of this Lease to be performed or observed by Tenant (except for those described in Paragraphs 27.1.1 through 27.1.4 above) as and when performance or observance is due and such failure or breach continues for more than thirty (30) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within thirty (30) days after Landlord gives written notice thereof to Tenant and, having so commenced, thereafter prosecutes such cure with diligence and dispatch to completion as soon as may be reasonably practicable thereafter.

**27.1.6 Bankruptcy.** Tenant or any guarantor of this Lease (or, if Tenant is a partnership or consists of more than one person or entity, any partner of the partnership or such other person or entity) (i) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, which is not dismissed within 60 days, (ii) makes an assignment for the benefit of its creditors, (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to such person or entity or with respect to any substantial part of their respective property, or (iv) takes action for the purpose of any of the foregoing; or





**27.1.7 Receivership.** Without consent by Tenant or any guarantor of this Lease (or, if Tenant is a partnership or consists of more than one person or entity, any partner of the partnership or such other person or entity), a court or government authority enters an order, and such order is not vacated within sixty (60) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to such person or entity or with respect to any substantial part of their respective property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of such person or entity; or

**27.1.8 Attachment.** This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within sixty (60) days.

## **27.2 Landlord's Remedies Upon Default.**

**27.2.1 Termination.** If an Event of Default occurs, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of all unpaid Rent which had been earned at the time of termination;

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

(c) The worth at the time of award of the amount by which all unpaid Rental for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in clauses (a) and (b) above shall be computed by allowing interest at the Applicable Interest Rate. The "worth at the time of award" of the amount referred to in clause (c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For purposes of computing the amount of Rental hereunder that would have accrued after the time of award, the amounts of Tenant's obligations to pay increases in Operating Expenses shall be projected based upon the average rate of increase, if any, in such items from the Term Commencement Date through the time of award.

**27.2.2 Continuation After Default.** Even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession under Paragraph 27.2.1 hereof. Landlord shall have the remedy described in California Civil Code Section 1951.4 ("Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable

limitations"), or any successor code section. Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may enforce all of Landlord's rights and

remedies under this Lease, including the right to recover Rent as it becomes due. Acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver under application of Landlord to protect Landlord's interest under this Lease or other entry by Landlord upon the Premises shall not constitute an election to terminate Tenant's right to possession.

**27.3 Waiver of Forfeiture.** Tenant hereby waives California Code of Civil Procedure Section 1179, California Civil Code Section 3275, and all such similar laws now or hereinafter enacted which would entitle Tenant to seek relief against forfeiture in connection with any termination of this Lease, provided that this waiver shall not be effective with respect to the first (but only the first) non-monetary Event of Default that results in the termination of this Lease.

**27.4 Late Charge.** In addition to its other remedies, Landlord shall have the right without notice or demand to add to the amount of any payment required to be made by Tenant hereunder, and which is not paid and received by Landlord on or before the date due, an amount equal to five percent (5%) of the delinquent amount, or \$150.00, whichever amount is greater to compensate Landlord for the loss of the use of the amount not paid and the administrative costs caused by the delinquency, the parties agreeing that Landlord's damage by virtue of such delinquencies would be extremely difficult and impracticable to compute and the amount stated herein represents a reasonable estimate thereof. Any waiver by Landlord of any late charges or failure to claim the same shall not constitute a waiver of other late charges or any other remedies available to Landlord. Notwithstanding anything to the contrary set forth herein, Tenant shall not be liable for the late charge set forth in this Paragraph 27.4 with respect to the first delinquency by Tenant in any calendar year, provided that Tenant shall pay any such delinquent amount within five (5) Business Days after receipt of notice of such delinquency from Landlord. No other notices will be required during the following twelve (12) months for a late charge to be incurred.

**27.5 Interest.** Interest shall accrue on all sums not paid when due hereunder at the lesser of (a) the maximum interest rate per year allowed by Applicable Laws, or (b) a rate equal to the sum of two (2) percentage points over the publicly announced reference rate charged on such due date by the San Francisco Main Office of Wells Fargo (or if Wells Fargo ceases to exist, the largest bank then headquartered in the State of California) ("**Applicable Interest Rate**") from the due date until paid.

**27.6 Remedies Cumulative.** All of Landlord's rights, privileges and elections or remedies are cumulative and not alternative, to the extent permitted by law and except as otherwise provided herein.

**27.7 Replacement of Statutory Notice Requirements.** When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notice required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by this Paragraph 27 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

## **28. LIENS**

Tenant shall at all times keep the Premises and the Project free from liens arising out of or related to work or services performed, materials or supplies furnished or obligations incurred by or on behalf of Tenant or in connection with work made, suffered or done by or on behalf of Tenant in or on the Premises or Project. If Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to

all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such

lien. All sums paid by Landlord on behalf of Tenant and all expenses incurred by Landlord in connection therefor shall be payable to Landlord by Tenant on demand with interest at the Applicable Interest Rate as Additional Rent. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Premises, the Project and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give Landlord not less than ten (10) Business Days prior written notice of the commencement of any work in the Premises or Project which could lawfully give rise to a claim for mechanics' or materialmen's liens to permit Landlord to post and record a timely notice of non-responsibility, as Landlord may elect to proceed or as the law may from time to time provide, for which purpose, if Landlord shall so determine, Landlord may enter the Premises. Tenant shall not remove any such notice posted by Landlord without Landlord's consent, and in any event not before completion of the work which could lawfully give rise to a claim for mechanics' or materialmen's liens.

## **29. TRANSFERS BY LANDLORD**

In the event of a sale or conveyance by Landlord of the Building or a foreclosure by any creditor of Landlord, the same shall operate to release Landlord from any liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, to the extent required to be performed after the passing of title to Landlord's successor-in-interest. In such event, Tenant agrees to look solely to the responsibility of the successor-in-interest of Landlord under this Lease with respect to the performance of the covenants and duties of "Landlord" to be performed after the passing of title to Landlord's successor-in-interest. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. Landlord's successor(s)-in-interest shall not have liability to Tenant with respect to the failure to perform any of the obligations of "Landlord," to the extent required to be performed prior to the date such successor(s)-in-interest became the owner of the Building.

## **30. RIGHT OF LANDLORD TO PERFORM TENANT'S COVENANTS**

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Base Rent, required to be paid by Tenant hereunder or shall fail to perform any other act on Tenant's part to be performed hereunder, including Tenant's obligations under Paragraph 11 hereof, and such failure shall continue for fifteen (15) days after notice thereof by Landlord, in addition to the other rights and remedies of Landlord, Landlord may make any such payment and perform any such act on Tenant's part. In the case of an emergency, no prior notification by Landlord shall be required. Landlord may take such actions without any obligation and without releasing Tenant from any of Tenant's obligations. All sums so paid by Landlord and all incidental costs incurred by Landlord and interest thereon at the Applicable Interest Rate, from the date of payment by Landlord, shall be paid to Landlord on demand as Additional Rent.

## **31. WAIVER**

If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, or constitute a course of dealing contrary to the expressed terms of this Lease. The acceptance of Rent by Landlord (including, without limitation, through any "lockbox") shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Rent. Failure by Landlord to enforce any of the terms, covenants or

conditions of this Lease for any length of time shall not be deemed to waive or decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term,

covenant or condition contained in this Lease may only be made by a written document signed by Landlord, based upon full knowledge of the circumstances.

## **32. NOTICES**

Each provision of this Lease or of any Applicable Laws with reference to sending, mailing, or delivery of any notice or the making of any payment by Landlord or Tenant to the other shall be deemed to be complied with when and if the following steps are taken:

**32.1 Rent.** All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at Landlord's Remittance Address set forth in the Basic Lease Information, or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay Rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such Rent and other amounts have been actually received by Landlord.

**32.2 Other.** All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and either personally delivered, sent by commercial overnight courier, mailed, certified or registered, postage prepaid or sent by facsimile with confirmed receipt (and with an original sent by commercial overnight courier), and in each case addressed to the party to be notified at the Notice Address for such party as specified in the Basic Lease Information or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the notifying party. Notices shall be deemed served upon receipt or refusal to accept delivery. Tenant appoints as its agent to receive the service of all default notices and notice of commencement of unlawful detainer proceedings the person in charge of or apparently in charge of occupying the Premises at the time, and, if there is no such person, then such service may be made by attaching the same on the main entrance of the Premises.

**32.3 Required Notices.** Tenant shall immediately notify Landlord in writing of any notice of a violation or a potential or alleged violation of any Applicable Law that relates to the Premises or the Project, or of any inquiry, investigation, enforcement or other action that is instituted or threatened by any governmental or regulatory agency against Tenant or any other occupant of the Premises, or any claim that is instituted or threatened by any third party that relates to the Premises or the Project.

## **33. ATTORNEYS' FEES**

If Landlord places the enforcement of this Lease, or any part thereof, or the collection of any Rent due, or to become due hereunder, or recovery of possession of the Premises in the hands of an attorney, Tenant shall pay to Landlord, upon demand, Landlord's reasonable attorneys' fees and court costs, whether incurred without trial, at trial, appeal or review. In any action which Landlord or Tenant brings to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

## **34. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent assignment is approved by Landlord as provided hereunder, Tenant's assigns.

### 35. FORCE MAJEURE

For purposes of this Lease, a "**Force Majeure Event**" means a delay or interruption caused by strikes and lockouts (provided that such strikes and/or lockouts affect all or a material part of the work force available to perform the work or service in question in Comparable Buildings (and not, for example, only certain individual companies or firms)), power failure (i.e., a failure by the electric utility company to provide power to the Building, and not a malfunction of the electrical system at the Building, unless such malfunction is the result of a power failure, power surge or like event), governmental restrictions, regulations, controls, actions or inaction, condemnations, riots, insurrections, acts of terrorism, war, fire or other casualty, acts of God, or other reasonably unforeseeable circumstances not within the control of the party or its agents delayed in performing work or doing acts required under the terms of this Lease, but only, in each case, to the extent that such event or occurrence actually so delays such performance of work or other acts required hereunder. If either party is unable to perform or delayed in performing any of its obligations under this Lease to the extent due to a Force Majeure Event, such party shall not be in default under this Lease; provided, however, that nothing contained in this Paragraph 35 shall (a) extend the time at which Tenant is entitled to an abatement of any Rents or to terminate this Lease pursuant to any express abatement or termination right under this Lease except as expressly provided in Paragraph 2, or (b) permit Tenant to holdover in the Premises after the expiration or earlier termination of this Lease

### 36. SURRENDER OF PREMISES

Tenant shall, upon expiration or sooner termination of this Lease, surrender the Premises to Landlord in the same condition as existed on the date Tenant commenced business operations therein, including, but not limited to, all interior walls cleaned, all interior painted surfaces cleaned, all holes in walls repaired, all carpets cleaned, and all floors cleaned, and free of any Tenant-introduced marking or painting, all to the reasonable satisfaction of Landlord and in compliance with the provisions of Paragraphs 11, 12 and 13, reasonable wear and tear and Casualty excepted. Tenant shall remove all of its debris from the Project. At or before the time of surrender, Tenant shall comply with the terms of Paragraph 12 with respect to the removal of Alterations to the Premises, Paragraph 13 with respect to the removal of Tenant's Signs, and Section 10 of the Tenant Improvement Agreement with respect to the removal of Tenant Improvements. To the extent any such provisions of this Lease or the Tenant Improvement Agreement require Tenant to remove Alterations, Tenant's Signs or Tenant Improvements, Tenant, at Tenant's expense, shall remove such items and perform such repair and restoration work prior to the expiration or upon the earlier termination of this Lease. If the Premises are not so surrendered at the expiration or sooner termination of this Lease and the cost to perform the obligations to render the Premises in the required condition is more than Two Hundred Fifty Thousand Dollars (\$250,000.00), the provisions of Paragraph 26 hereof shall apply. All keys to the Premises or any part thereof shall be surrendered to Landlord upon expiration or sooner termination of the Term. Tenant and Landlord shall meet at least thirty (30) days prior to vacating the Premises for a joint inspection of the Premises at the time of vacating, but nothing contained herein shall be construed as an extension of the Term or as a consent by Landlord to any holding over by Tenant. In the event of Tenant's failure to participate in such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall conclusively be deemed correct for purposes of determining Tenant's responsibility for repairs and restoration. Any delay caused by Tenant's failure to carry out its obligations under this Paragraph 36 beyond the term hereof where the cost to perform the obligations to render the Premises in the required condition is more than Two Hundred Fifty Thousand Dollars (\$250,000.00), shall constitute unlawful and illegal possession of Premises under Paragraph 26 hereof. Any personal property of any kind remaining in the Premises after the expiration or sooner termination of this Lease shall become the personal property of Landlord. Tenant hereby relinquishes all right, title and interest in the personal property and agrees that Landlord may



dispose of the personal property as it sees fit in its sole discretion. Tenant waives the provisions of California Civil Code Sections 1980 *et seq.* and 1993 *et seq.* governing the disposal of lost or abandoned

property, and releases Landlord and Landlord Parties from any and all Losses, whether now known or unknown, arising out of or relating to disposal of personal property remaining in the Premises after the expiration or sooner termination of this Lease.

## **37. PARKING**

**37.1 Parking Rights.** Commencing on the Term Commencement Date, Tenant and Tenant Parties shall have the right to use, at no additional charge, the number of parking spaces for passenger- size automobiles specified in the Basic Lease Information (a) on an exclusive basis, the spaces located in the Building's Subterranean Parking Facility and (b) on an unreserved, nonexclusive, first come, first served basis, the remaining number of parking spaces within the Parking Facilities as identified from time to time by Landlord for use in common by tenants of the Building or the Project. Parking for Tenant and Tenant Parties for up to 2.4 spaces per 1,000 rentable square feet of the Premises shall be included in the Building's Subterranean Parking Facility. Landlord shall have the right to change the designation of parking areas (but not those in the Building's Subterranean Parking Facility) in which Tenant and Tenant Parties may park the remaining 0.35 spaces per 1,000 rentable square feet of the Premises that are not provided in the Subterranean Parking Facility as additional improvements to the Project or other physical changes or configurations of the Project are made. The parking rights granted under this Paragraph 37 are personal to Tenant and are not transferable except in connection with a Transfer of the Lease. Upon the expiration or earlier termination of this Lease, Tenant's rights with respect to all parking spaces shall immediately terminate. Tenant and the other Tenant Parties shall not interfere with the rights of Landlord or others entitled to similar use of the Parking Facilities.

**37.2 Compliance with Parking Rules.** The Parking Facilities shall be subject to the reasonable control and management of Landlord, who may, from time to time, establish, modify and enforce reasonable rules and regulations with respect thereto. If parking spaces are not assigned pursuant to the terms of this Lease, Landlord reserves the right at any time to reasonably assign parking spaces, and Tenant shall thereafter be responsible to insure that its officers and employees park in the designated areas. Landlord reserves the right to change, reconfigure, or rearrange the Parking Facilities, to reconstruct or repair any portion thereof, and to temporarily restrict the use of any Parking Facility and do such other acts in and to such areas as Landlord deems necessary or desirable, without such actions being deemed an eviction of Tenant or a disturbance of Tenant's use of the Premises, and without Landlord being deemed in default hereunder, provided that Landlord shall use commercially reasonable efforts (without any obligation to engage overtime labor or commence any litigation) to minimize the extent and duration of any resulting interference with Tenant's parking rights and provided further that the number of Tenant's parking spaces is not reduced. Landlord may, in its sole discretion, convert any Parking Facility to a reserved and/or controlled parking facility, or operate the Parking Facility (or a portion thereof) as a tandem, attendant assisted and/or valet parking facility. Landlord may delegate its responsibilities with respect to any Parking Facility to a parking operator, in which case such parking operator shall have all the rights of control and management granted to Landlord. In such event, Landlord may direct Tenant, in writing, to enter into a commercially reasonable parking agreement directly with the operator of the Parking Facility.

**37.3 Electric Vehicle Parking.** Landlord shall install for Tenant's exclusive use (or cause to be installed) in the Building's Subterranean Parking Facility, four (4) dual head electric vehicle chargers, to allow for charging up to eight (8) electric vehicles. In addition, within a reasonable period after Tenant's request, Landlord shall install (or cause to be installed) a conduit and panel to accommodate four (4) additional dual head electric vehicle chargers in the Building's Subterranean Parking Facility; provided, however, such additional dual head electric vehicle chargers shall be installed at Tenant's sole cost and expense and in accordance with Paragraph 12 hereof.



**37.4 Waiver of Liability.** Landlord shall not be liable for any damage of any nature to, or any theft of, vehicles, or contents thereof, in or about the Parking Facility.

### **38. ROOF TOP EQUIPMENT**

**38.1 License.** Subject to the applicable terms and conditions contained in this Lease (including Paragraph 12 and this Paragraph 38), Tenant shall have a license (the "**License**"), at no additional charge to Tenant, to install, operate, maintain and use, during the Term: (a) non-revenue producing solar panels and satellite or wireless communications equipment to serve Tenant's business in the Premises (collectively, "**Rooftop Equipment**") on the roof of the Building, in a specific location reasonably designated by Landlord (the "**License Area**"); and (b) connections for the Rooftop Equipment for (i) electrical wiring to the Building's existing electrical supply and (ii) cable or similar connection necessary to connect the Rooftop Equipment with Tenant's related equipment located in the Premises. The routes or paths for such wiring and connections shall be through the Building's existing risers, conduits and shafts, subject to reasonable space limitations and Landlord's reasonable requirements for use of such areas, and in all events subject to Landlord's reasonable approval of plans and installation pursuant to other provisions of this Lease, including Paragraph 27 above (such routes or paths are collectively referred to as the "**Cable Path**" and all such electrical and other connections are referred to, collectively, as the "**Connections**"). The Rooftop Equipment and Connections are collectively referred to as the "**Equipment**." All costs associated with the design, fabrication, engineering, permitting, installation, screening, maintenance, repair and removal of the Rooftop Equipment shall be borne solely by Tenant.

**38.2 Interference.** Without limiting the generality of any other provision hereof, Tenant shall install, maintain and operate the Equipment in a manner so as to not cause any electrical, electromagnetic, radio frequency or other material interference with the use and operation of any: (a) television or radio equipment in or about the Project; (b) transmitting, receiving or master television, telecommunications or microwave antennae equipment currently or hereafter located in any portion of the Project; or (c) radio communication system now or hereafter used or desired to be used by Landlord (and, to the extent commercially reasonable, any future licensee or tenant of Landlord, but only provided that the same does not impair the functionality of Tenant's Equipment). Upon notice of any such interference, Tenant shall immediately cooperate with Landlord to identify the source of the interference and shall, within twenty- four (24) hours, if requested by Landlord, cease all operations of the Equipment (except for intermittent testing as approved by Landlord, which approval shall not be unreasonably withheld) until the interference has been corrected to the reasonable satisfaction of Landlord, unless Tenant reasonably establishes prior to the expiration of such twenty-four (24) hour period that the interference is not caused by the Equipment, in which case Tenant may operate its Equipment pursuant to the terms of this Lease. Tenant shall be responsible for all costs associated with any tests deemed reasonably necessary to resolve any and all interference as set forth in this Paragraph. If any such interference caused by Tenant has not been corrected within ten (10) days after notice to Tenant, Landlord may (i) require Tenant to remove the specific Equipment causing such interference, or (ii) eliminate the interference at Tenant's expense. If the equipment of any other party causes interference with the Equipment, Tenant shall reasonably cooperate with such other party to resolve such interference in a mutually acceptable manner.

**38.3 Roof Repairs.** If Landlord desires to perform roof repairs and/or roof replacements to the Building (the "**Roof Repairs**"), Landlord shall give Tenant at least ten (10) Business Days' prior written notice of the date Landlord intends to commence such Roof Repairs (except in the event of an emergency, in which event Landlord shall furnish Tenant with reasonable notice in light of the circumstances), along with a description of the work scheduled to be performed, where it is scheduled to

be performed on the roof, and an estimate of the time frame required for that performance. Tenant shall, within ten (10) Business Days following receipt of such notice, undertake such measures as it deems

suitable to protect the Equipment from interference by Landlord, its agents, contractors or employees, in the course of any Roof Repairs.

**38.4 Rules and Regulations.** Without limiting the applicable provisions of this Lease, Tenant's use of the roof of the Building for the installation, operation, maintenance and use of the Equipment shall be subject to the terms and conditions contained in the Rooftop Work Rules and Regulations attached hereto as **Exhibit F**.

**38.5 Rights Personal to Original Tenant.** Tenant's rights under this Paragraph 38 are personal to the Original Tenant (and its Permitted Assignee), and shall not be transferable or assignable, whether voluntarily or involuntarily, whether by operation of law or otherwise, either in connection with an assignment of this Lease (other than to a Permitted Assignee) or a sublease of all or part of the Premises (other than to a Permitted Assignee). Any purported transfer of any license hereunder (other than to a Permitted Assignee) shall be void and a material default under this Lease.

## **39. COMMUNICATIONS AND COMPUTER LINES**

**39.1 Tenant's Rights.** Tenant may install, maintain, replace, remove or use any communications or computer wires, cables and related devices (collectively the "**Lines**") at the Building in or serving the Premises, provided: (a) Tenant shall obtain Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed), and use an experienced and qualified contractor approved in writing by Landlord (not to be unreasonably withheld, conditioned or delayed), and comply with all of the other provisions of Paragraph 15, (b) any such installation, maintenance, replacement, removal or use shall comply with all Applicable Laws and good work practices, and shall not interfere with the use of any then existing Lines at the Building, (c) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Building, as determined in Landlord's reasonable opinion, (d) if Tenant at any time uses any equipment that may create an electromagnetic field exceeding the normal insulation ratings of ordinary twisted pair riser cable or cause radiation higher than normal background radiation, the Lines therefor (including riser cables) shall be appropriately insulated to prevent such excessive electromagnetic fields or radiation, (e) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove existing Lines located in or serving the Premises, (f) Tenant's rights shall be subject to the rights of any regulated telephone company, and (g) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any Applicable Laws or represent a dangerous or potentially dangerous condition (whether such Lines were installed by Tenant or any other party), within five (5) Business Days after notice.

**39.2 Landlord's Rights.** Landlord may (but shall not have the obligation to): (a) install new Lines at the Building, (b) create additional space for Lines at the Building, and (c) reasonably direct, monitor and/or supervise the installation, maintenance, replacement and removal of, the allocation and periodic re-allocation of available space (if any) for, and the allocation of excess capacity (if any) on, any Lines now or hereafter installed at the Building by Landlord, Tenant or any other party (but Landlord shall have no right to monitor or control the information transmitted through such Lines). Such rights shall not be in limitation of other rights that may be available to Landlord pursuant to this Lease or by law or otherwise.

**39.3 Removal; Line Problems.** Tenant shall remove all Lines installed by or for Tenant within or serving the Premises upon expiration or sooner termination of this Lease, unless Landlord notifies

Tenant at least thirty (30) days prior to expiration of this Lease or within ten (10) days after the earlier termination of this Lease that Tenant may leave all or any portion of the Lines in place. Any Lines

not required to be removed pursuant to this Paragraph 39.3 shall, at Landlord's option, become the property of Landlord (without payment by Landlord). If Tenant fails to remove such Lines as required hereunder, or violates any other provision of this Paragraph 39.3, Landlord may, after five (5) Business Days' written notice to Tenant, remove such Lines or remedy such other violation, at Tenant's expense (without limiting Landlord's other remedies available under this Lease or Applicable Laws). Tenant shall not, without the prior written consent of Landlord in each instance, grant to any third party a security interest or lien in or on the Lines, and any such security interest or lien granted without Landlord's written consent shall be null and void. Landlord shall have no liability for damages arising from, and Landlord does not warrant that the Tenant's use of any Lines will be free from the following (collectively called "**Line Problems**"): (a) any eavesdropping or wire-tapping by unauthorized parties, (b) any failure of any Lines to satisfy Tenant's requirements, or (c) any shortages, failures, variations, interruptions, disconnections, loss or damage caused by the installation, maintenance, replacement, use or removal of Lines by or for other tenants or occupants at the Building, by any failure of the environmental conditions or the power supply for the Building to conform to any requirements for the Lines or any associated equipment, or any other problems associated with any Lines by any other cause. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. In addition, in no event shall Landlord be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems.

#### **40. USE OF AND IMPROVEMENT TO ROOF TOP AREA**

**40.1 Exclusive Use.** Subject to the terms and conditions set forth in Paragraph 12 and this Paragraph 40, Tenant shall have the exclusive right to improve the area on the roof of the Building as designated on **Exhibit A-1** (the "**Roof Top Area**") for the exclusive use by Tenant and Tenant's employees and guests. If at any time Tenant leases less than two (2) full floors of the Building and Tenant has not previously improved the Roof Top Area as permitted by this Paragraph 40, Tenant's rights to the Roof Top Area shall immediately become nonexclusive and Landlord shall have the right to make the Roof Top Area available for use by other tenants of the Building.

**40.2 Improvements to the Roof Top Area.** Subject to obtaining all governmental permits and approvals and subject to the restrictions and conditions set forth in this Paragraph 40, Tenant, at Tenant's expense, may improve the Roof Top Area for use as a roof top deck with improvements and furnishings of a quality consistent with that of Comparable Buildings. The plans and specifications for improvements to the Roof Top Area shall be subject to the prior written approval of Landlord, not to be unreasonably withheld, and Tenant shall comply with the provisions of Paragraph 12 in connection with any Alterations to the Roof Top Area unless the Alterations to the Roof Top Area are included in the Tenant Improvements approved pursuant to the Tenant Improvement Agreement. Except to the extent included in the Base Building Improvements, any improvements to the roof required for use as a deck shall be at Tenant's sole cost and expense. Tenant acknowledges that Landlord may withhold its approval of any proposed plans that would adversely affect the structural elements of the Building or any warranties relating to Building, including the roof. Landlord makes no representations or warranties regarding, the likelihood of or conditions to obtaining permits for, or the estimated costs of improving, furnishing or maintaining, the Roof Top Area for use as a deck, and Tenant shall conduct its own investigation with respect to such matters.

**40.3 Protection of Building.** Tenant shall, at Tenant's sole cost and expense, protect the Building from damage, and shall perform all Alterations, installations, repairs and maintenance and use the Roof Top Area in a manner so as to keep in full force and effect any warranties concerning the



Building. In all cases, Tenant shall use the roofing contractor designated by Landlord to perform any penetration or other work that may affect the integrity of the Building, including the integrity of the roof

and the roof warranty. Tenant shall not at any time exceed the maximum load capacity of the Roof Top Area or use or access any portion of the roof not included within the Roof Top Area. Any damage to the Building or any other portions of the Project resulting from Tenant's Alterations, installation, construction, maintenance, or use of the Roof Top Area, including but not limited to, leakage, water damage or damage to the roof membrane, shall be repaired by Landlord, at Tenant's expense, except to the extent covered by insurance, warranties or guaranties. Tenant shall reimburse Landlord for any costs and expenses so incurred by Landlord within thirty (30) days after Landlord's written request and copies of invoices therefor. Landlord reserves the right to temporarily deny or restrict access to the Roof Top Area from time to time as is reasonably necessary or appropriate in connection with the performance of Landlord's maintenance and repair obligations under this Lease.

**40.4 Use and Maintenance.** Tenant, at Tenant's expense, shall comply with all Applicable Laws relating to the construction, Alterations, installation, maintenance, operation and use to and of the Roof Top Area and such reasonable rules and regulations as may be promulgated from time to time by Landlord. Tenant agrees not to (a) cause, maintain or permit any nuisance in, on, or about the Roof Top Area, (b) create any safety hazard, or (c) permit music, noises, odors, lights, or other installations or activities that would unreasonably annoy or interfere with any other occupants of the Project or otherwise be inconsistent with first class office buildings. Without limiting the generality of the foregoing, Tenant expressly agrees not to permit any smoking or cooking on the Roof Top Area. Tenant shall be permitted to use the Roof Top Area for receptions and events at which alcoholic beverages are served so long as Tenant at all times maintains commercially appropriate liquor liability insurance. Tenant, at Tenant's expense, shall at all times maintain the Roof Top Area and all elements thereof in a first class condition and repair. Tenant shall provide janitorial service for the Roof Top Area to the standards of Comparable Buildings Area and suitable receptacles for collecting trash on the Roof Top Area.

**40.5 Furnishings.** Landlord shall have reasonable rights of approval and control over all visual and aesthetic elements of the Roof Top Area. Without limiting the generality of the foregoing, the furniture used on the Roof Top Area shall be subject to the prior approval of Landlord, which approval shall not be unreasonably withheld. Tenant shall not place any planter boxes, space heaters, wind barriers or other similar installations on the Roof Top Area without the prior approval of Landlord, which approval shall not be unreasonably withheld. All furniture and other personal property shall be adequately attached or otherwise installed so as not to create a safety hazard.

**40.6 Costs.** Tenant shall reimburse Landlord within thirty (30) days after request for any and all additional or increased costs incurred by Landlord as a result of or in connection with the Roof Top Area, including, but not limited to, additional insurance premiums, additional taxes or assessments, or additional janitorial or trash removal costs.

**40.7 Lease Provisions.** So long as Tenant has exclusive rights to the Roof Top Area, the term "Premises" shall include the Roof Top Area for all purposes of this Lease (other than the payment of Base Rent and the calculation of percentages and figures based upon the rentable area of the Premises, including Tenant's Proportionate Share). Without limiting the generality of the foregoing, Tenant shall cause the insurance required pursuant to Paragraph 8 to cover its use of the Roof Top Area, Tenant's use, installation, repair and maintenance of the Roof Top Area shall be in compliance with Paragraph 4.3, and Tenant agrees that the indemnification contained in Paragraph 8 shall apply to the use, installation, repair and maintenance of the Roof Top Area. Tenant assumes all liability and risk related to its use of the Roof Top Area and damage to the Roof Top Area or personal property thereon from any cause whatsoever, including, but not limited to, theft, vandalism or damage by the elements.

## 41. RESERVED

## 42. MISCELLANEOUS

**42.1 General.** The term "Tenant" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their respective successors, executors, administrators and permitted assigns, according to the context hereof.

**42.2 Time.** Time is of the essence regarding this Lease and all of its provisions.

**42.3 Choice of Law.** This Lease shall in all respects be governed by the laws of the State of California.

**42.4 Entire Agreement.** This Lease, together with its Exhibits, addenda and attachments and the Basic Lease Information, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its Exhibits, addenda and attachments and the Basic Lease Information.

**42.5 Modification.** This Lease may not be modified except by a written instrument signed by the parties hereto.

**42.6 Severability.** If, for any reason whatsoever, any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

**42.7 Recordation.** Tenant shall not record this Lease or a short form memorandum hereof.

**42.8 Examination of Lease.** Submission of this Lease to Tenant does not constitute an option or offer to lease and this Lease is not effective otherwise until execution and delivery by both Landlord and Tenant.

**42.9 Accord and Satisfaction.** No payment by Tenant of a lesser amount than the total Rent due nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies. All offers by or on behalf of Tenant of accord and satisfaction are hereby rejected in advance.

**42.10 Easements.** Landlord may grant easements on the Project and dedicate for public use portions of the Project without Tenant's consent; provided that no such grant or dedication shall materially interfere with Tenant's Permitted Use of the Premises. Upon Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord documents, instruments, maps and plats necessary to effectuate Tenant's covenants hereunder.

**42.11 Project Labor Agreement.** The Project is subject to the Project Labor Agreement (as defined below) requiring contractors to be bound by the terms and conditions of the Project Labor Agreement for certain Covered Work as defined therein. In furtherance of the foregoing, contractors and subcontractors of Tenant, prior to commencement of on-site construction by that contractor or subcontractor, shall execute an Agreement to be Bound in the form required by the Project Labor

Agreement and provide a copy to Landlord of such executed Agreement to be Bound prior to the commencement of any work. For purposes hereof, the "**Project Labor Agreement**" means that certain

Project Labor Agreement for Bay Meadows Phase II Project originally entered into on November 16, 2004, as amended. Tenant acknowledges that Landlord has provided to Tenant a copy of the Project Labor Agreement.

**42.12 Drafting and Determination Presumption.** The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against Landlord because Landlord drafted this Lease. Except as otherwise specifically set forth in this Lease, with respect to any consent, determination or estimation of Landlord required or allowed in this Lease or requested of Landlord, Landlord's consent, determination or estimation shall be given or made solely by Landlord in Landlord's good faith opinion, whether or not objectively reasonable. If Landlord fails to respond to any request for its consent within the time period, if any, specified in this Lease, Landlord shall be deemed to have disapproved such request.

**42.13 Exhibits.** The Basic Lease Information, and the Exhibits, addenda and attachments attached hereto are hereby incorporated herein by this reference and made a part of this Lease as though fully set forth herein.

**42.14 No Light, Air or View Easement.** Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building shall in no way affect this Lease or impose any liability on Landlord.

**42.15 No Third Party Benefit.** This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third party benefit.

**42.16 Quiet Enjoyment.** Upon payment by Tenant of the Rent, and upon the observance and performance of all of the other covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to all of the other terms and conditions of this Lease. Landlord shall not be liable for any hindrance, interruption, interference or disturbance by other tenants or third persons, nor shall Tenant be released from any obligations under this Lease because of such hindrance, interruption, interference or disturbance.

**42.17 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original.

**42.18 Multiple Parties.** If more than one person or entity is named herein as Tenant, such multiple parties shall have joint and several responsibility to comply with the terms of this Lease.

**42.19 Prorations.** Any Rent or other amounts payable to Landlord by Tenant hereunder for any fractional month shall be prorated based on a month of 30 days. As used herein, the term "**fiscal year**" shall mean the calendar year or such other fiscal year as Landlord may deem appropriate.

### **43. JURY TRIAL WAIVER; JUDICIAL REFERENCE**

EACH PARTY HERETO (WHICH INCLUDES ANY ASSIGNEE, SUCCESSOR HEIR OR PERSONAL REPRESENTATIVE OF A PARTY) SHALL NOT SEEK A JURY TRIAL, HEREBY WAIVES TRIAL BY JURY, AND HEREBY FURTHER WAIVES ANY OBJECTION TO VENUE IN

THE COUNTY IN WHICH THE BUILDING IS LOCATED, AND AGREES AND CONSENTS TO PERSONAL JURISDICTION OF THE COURTS OF THE STATE IN WHICH THE PROPERTY IS

LOCATED, IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER ON ANY MATTER 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 ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE, WHETHER ANY OF THE FOREGOING IS BASED ON THIS LEASE OR ON TORT LAW. EACH PARTY REPRESENTS THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL CONCERNING THE EFFECT OF THIS PARAGRAPH 43. THE PROVISIONS OF THIS PARAGRAPH 43 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

IF THE JURY WAIVER PROVISIONS OF THIS PARAGRAPH 43 ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THEN THE FOLLOWING PROVISIONS SHALL APPLY. IT IS THE DESIRE AND INTENTION OF THE PARTIES TO AGREE UPON A MECHANISM AND PROCEDURE UNDER WHICH CONTROVERSIES AND DISPUTES ARISING OUT OF THIS LEASE OR RELATED TO THE PREMISES WILL BE RESOLVED IN A PROMPT AND EXPEDITIOUS MANNER. ACCORDINGLY, EXCEPT WITH RESPECT TO ACTIONS FOR UNLAWFUL OR FORCIBLE DETAINER OR WITH RESPECT TO THE PREJUDGMENT REMEDY OF ATTACHMENT, ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBSIDIARIES OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, SHALL BE HEARD AND RESOLVED BY A REFEREE UNDER THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 — 645.1, INCLUSIVE (AS SAME MAY BE AMENDED, OR ANY SUCCESSOR STATUTE(S) THERETO) (THE "**REFEREE SECTIONS**"). ANY FEE TO INITIATE THE JUDICIAL REFERENCE PROCEEDINGS AND ALL FEES CHARGED AND COSTS INCURRED BY THE REFEREE SHALL BE PAID BY THE PARTY INITIATING SUCH PROCEDURE (EXCEPT THAT IF A REPORTER IS REQUESTED BY EITHER PARTY, THEN A REPORTER SHALL BE PRESENT AT ALL PROCEEDINGS WHERE REQUESTED AND THE FEES OF SUCH REPORTER – EXCEPT FOR COPIES ORDERED BY THE OTHER PARTIES – SHALL BE BORNE BY THE PARTY REQUESTING THE REPORTER); PROVIDED HOWEVER, THAT ALLOCATION OF THE COSTS AND FEES, INCLUDING ANY INITIATION FEE, OF SUCH PROCEEDING SHALL BE ULTIMATELY DETERMINED IN ACCORDANCE WITH THE ATTORNEYS' FEES PROVISIONS OF THIS LEASE. THE VENUE OF THE PROCEEDINGS SHALL BE IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED. WITHIN 10 DAYS OF RECEIPT BY ANY PARTY OF A WRITTEN REQUEST TO RESOLVE ANY DISPUTE OR CONTROVERSY PURSUANT TO THIS PARAGRAPH 43, THE PARTIES SHALL AGREE UPON A SINGLE REFEREE WHO SHALL TRY ALL ISSUES, WHETHER OF FACT OR LAW, AND REPORT A FINDING AND JUDGMENT ON SUCH ISSUES AS REQUIRED BY THE REFEREE SECTIONS. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN SUCH 10 DAY PERIOD, THEN ANY PARTY MAY THEREAFTER FILE A LAWSUIT IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED FOR THE PURPOSE OF APPOINTMENT OF A REFEREE UNDER THE REFEREE SECTIONS. IF THE REFEREE IS APPOINTED BY THE COURT, THE REFEREE SHALL BE A NEUTRAL AND IMPARTIAL RETIRED JUDGE WITH SUBSTANTIAL EXPERIENCE IN THE RELEVANT MATTERS TO BE DETERMINED, FROM JAMS/ENDISPUTE, INC., THE AMERICAN ARBITRATION ASSOCIATION OR SIMILAR MEDIATION/ARBITRATION ENTITY. THE PROPOSED REFEREE MAY BE CHALLENGED BY

ANY PARTY FOR ANY OF THE GROUNDS LISTED IN THE REFEREE SECTIONS. THE REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES OF FACT AND LAW AND



REPORT HIS OR HER DECISION ON SUCH ISSUES, AND TO ISSUE ALL RECOGNIZED REMEDIES AVAILABLE AT LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS BEFORE THE REFEREE, INCLUDING AN AWARD OF ATTORNEYS' FEES AND COSTS IN ACCORDANCE WITH THIS LEASE. THE REFEREE SHALL NOT, HOWEVER, HAVE THE POWER TO AWARD PUNITIVE DAMAGES, NOR ANY OTHER DAMAGES WHICH ARE NOT PERMITTED BY THE EXPRESS PROVISIONS OF THIS LEASE, AND THE PARTIES HEREBY WAIVE ANY RIGHT TO RECOVER ANY SUCH DAMAGES. THE PARTIES SHALL BE ENTITLED TO CONDUCT ALL DISCOVERY AS PROVIDED IN THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE, WITH RIGHTS TO REGULATE DISCOVERY AND TO ISSUE AND ENFORCE SUBPOENAS, PROTECTIVE ORDERS AND OTHER LIMITATIONS ON DISCOVERY AVAILABLE UNDER CALIFORNIA LAW. THE REFERENCE PROCEEDING SHALL BE CONDUCTED IN ACCORDANCE WITH CALIFORNIA LAW (INCLUDING THE RULES OF EVIDENCE), AND IN ALL REGARDS, THE REFEREE SHALL FOLLOW CALIFORNIA LAW APPLICABLE AT THE TIME OF THE REFERENCE PROCEEDING. THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE, AND SHALL

PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE OR CONTROVERSY IN ACCORDANCE WITH THE TERMS OF THIS PARAGRAPH 43. IN THIS REGARD, THE PARTIES AGREE THAT THE PARTIES AND THE REFEREE SHALL USE BEST EFFORTS TO ENSURE THAT (A) DISCOVERY BE CONDUCTED FOR A PERIOD NO LONGER THAN 6 MONTHS FROM THE DATE THE REFEREE IS APPOINTED, EXCLUDING MOTIONS REGARDING DISCOVERY, AND (B) A TRIAL DATE

BE SET WITHIN 9 MONTHS OF THE DATE THE REFEREE IS APPOINTED. IN ACCORDANCE WITH SECTION 644 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, THE DECISION OF THE REFEREE UPON THE WHOLE ISSUE MUST STAND AS THE DECISION OF THE COURT, AND UPON THE FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE IF THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. ANY DECISION OF THE REFEREE AND/OR JUDGMENT OR OTHER ORDER ENTERED THEREON SHALL BE APPEALABLE TO THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH DECISION, JUDGMENT, OR ORDER WOULD BE APPEALABLE IF RENDERED BY A JUDGE OF THE SUPERIOR COURT IN WHICH VENUE IS PROPER HEREUNDER. THE REFEREE SHALL IN HIS/HER STATEMENT OF DECISION SET FORTH HIS/HER FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH THE CODE OF CIVIL PROCEDURE. NOTHING IN THIS PARAGRAPH 43 SHALL PREJUDICE THE RIGHT OF ANY PARTY TO OBTAIN PROVISIONAL RELIEF OR OTHER EQUITABLE REMEDIES FROM A COURT OF COMPETENT JURISDICTION AS SHALL OTHERWISE BE AVAILABLE UNDER

THE CODE OF CIVIL PROCEDURE AND/OR APPLICABLE COURT RULES. [REMAINDER OF PAGE INTENTIONALLY LEFT

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IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Lease Date set forth in the Basic Lease Information.

LANDLORD    TENANT

**BAY MEADOWS STATION 2 INVESTORS, LLC**, a Delaware  
limited liability company

By: Name: Title:

Dated: , 2017

**GUIDEWIRE SOFTWARE, INC.**  
a Delaware corporation

By: Name: Title:

Dated: , 2017

## Subsidiaries of the Registrant

Subsidiary	Country or Jurisdiction
Guidewire Software Pty Ltd.	Australia
Guidewire Servicos de Software Services do Brazil Ltda	Brazil
Guidewire Software Canada Ltd.	Canada
Guidewire Software (Beijing) Co. Ltd.	China
Guidewire Software France S.A.S	France
Guidewire Software GmbH	Germany
Cyence India Private Limited	India
Guidewire Software (Ireland) Limited.	Ireland
Guidewire Software (Italy) S.r.l.	Italy
Guidewire Software Japan K.K.	Japan
Guidewire Software Poland Sp. z o.o.	Poland
Guidewire Software Spain, S.L.	Spain
Guidewire Software (Switzerland) GmbH	Switzerland
Guidewire Software (UK) Limited	United Kingdom
ISCS Analytics, LLC	United States (California)
Cyence LLC	United States (Delaware)
EagleEye Analytics, LLC	United States (Delaware)
FirstBest Systems, LLC	United States (Delaware)
Millbrook, Inc.	United States (Pennsylvania)
SM Insurance Solutions LLC	United States (Delaware)

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Guidewire Software, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-223478, 333-216530, 333-209906, 333-202541, 333-194290, 333-187004, and 333-179799) on Form S-8, and in the registration statements (Nos. 333-223487, 333-221298, 333-191856, and 333-191834) on Form S-3 of Guidewire Software, Inc. of our report dated September 18, 2018, with respect to the consolidated balance sheets of Guidewire Software, Inc. and subsidiaries as of July 31, 2018 and 2017, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended July 31, 2018, and the related notes (collectively, the "consolidated financial statements"), and the effectiveness of Guidewire Software, Inc.'s internal control over financial reporting as of July 31, 2018, which report appears in the July 31, 2018 annual report on Form 10-K of Guidewire Software, Inc. Our report refers to a change in the method of accounting for share-based payments due to the adoption of FASB Accounting Standards Update 2016-09, Compensation - Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting.

/s/ KPMG LLP

Santa Clara, California  
September 18, 2018

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF  
THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Marcus S. Ryu, certify that:

1. I have reviewed this Annual Report on Form 10-K of Guidewire Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 18, 2018

By: /s/ MARCUS S. RYU

Marcus S. Ryu

President and Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF  
THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Curtis Smith, certify that:

1. I have reviewed this Annual Report on Form 10-K of Guidewire Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 18, 2018

By: /s/ Curtis Smith

Curtis Smith

Chief Financial Officer

(Principal Financial and Accounting Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Guidewire Software, Inc. for the year ended July 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Marcus S. Ryu, as Chief Executive Officer of Guidewire Software, Inc., hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge, the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Guidewire Software, Inc.

Date: September 18, 2018

By: /s/ Marcus S. Ryu

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Marcus S. Ryu

President and Chief Executive Officer

(Principal Executive Officer)

In connection with the Annual Report on Form 10-K of Guidewire Software, Inc. for the year ended July 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Curtis Smith, as Chief Financial Officer of Guidewire Software, Inc., hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge, the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Guidewire Software, Inc.

Date: September 18, 2018

By: /s/ Curtis Smith

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Curtis Smith

Chief Financial Officer

(Principal Financial and Accounting Officer)