

**FIRST AMENDMENT TO OFFICE LEASE BETWEEN
SANTA ANA CA I SGF, LLC AND THE CITY OF SANTA ANA**

THIS FIRST AMENDMENT TO OFFICE LEASE (this “First Amendment”) is entered into as of _____, 2023 (the “Effective Date”) by and between **SANTA ANA CA I SGF, LLC**, a Delaware limited liability company (“Landlord”), and **THE CITY OF SANTA ANA**, a charter city and municipal corporation (“Tenant”).

WITNESSETH:

WHEREAS, Landlord, as successor-in-interest to CF SANTANA, LLC, a Delaware limited liability company, and Tenant entered into that certain Office Lease No. A-2017-264 dated October 7, 2017, Tenant Estoppel Certificate No. A-2017-264-01 dated February 8, 2018, and Exhibit B Notice of Lease Term Dates No. A-2017-264-02 dated February 16, 2018 (hereinafter collectively referred to as the “Lease”), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord that certain premises identified as Suite 200 containing approximately 19,321 rentable square feet of office space (the “Premises”) in the building located at 801 Civic Center Drive, Santa Ana, CA 92701 (the “Building”);

WHEREAS, Landlord and Tenant desire to amend the Lease to set a new Term of the Lease, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the aforesaid premises and the other agreements and covenants hereafter set forth and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into this First Amendment as if fully set forth herein. As used herein the term “Lease” shall mean the Lease as amended by this First Amendment.

2. **Definitions.** All capitalized terms used in this First Amendment shall have the meanings assigned to them in the Lease unless otherwise specified herein.

3. **Term.** The Initial Term as defined by Section 3, Basic Lease Provisions, of the Lease is hereby for a period of One Hundred Twenty (120) full calendar months, commencing on July 1, 2023 and expiring on June 30, 2033 (the “Term”).

Tenant shall have the right to extend the Term for two (2) sixty (60) month periods, in accordance with Section 3.2.2, Standard Lease Provisions, of the Lease.

4. **Base Rent.** Commencing on July 1, 2023, Tenant shall pay Base Rent in the following amounts:

<u>Dates</u>	<u>Annual Base Rent</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Rental Rate per RSF</u>
7/1/2023 – 6/30/2024	\$544,852.20	\$45,404.35	\$2.35

7/1/2024 – 6/30/2025	\$561,197.77	\$46,766.48	\$2.42
7/1/2025 – 6/30/2026	\$578,033.70	\$48,169.47	\$2.49
7/1/2026 – 6/30/2027	\$595,374.71	\$49,614.56	\$2.57
7/1/2027 – 6/30/2028	\$613,235.95	\$51,103.00	\$2.64
7/1/2028 – 6/30/2029	\$631,633.03	\$52,636.09	\$2.72
7/1/2029 – 6/30/2030	\$650,582.02	\$54,215.17	\$2.81
7/1/2030 – 6/30/2031	\$670,099.48	\$55,841.62	\$2.89
7/1/2031 – 6/30/2032	\$690,202.47	\$57,516.87	\$2.98
7/1/2032 – 6/30/2033	\$710,908.54	\$59,242.38	\$3.07

5. Base Year. The “Base Year” is hereby amended to reflect calendar year 2023.

6. Subsection 14.1, Waiver of Liability and Indemnification, of the Standard Lease Provisions, is hereby amended as follows:

Except to the extent caused by the gross negligence of Landlord or its agents, contractors or employees, Tenant hereby waives all claims and causes of action against Landlord and all of the other Landlord Parties for any damage to persons or property (including, without limitation, loss of profits and intangible, property) in any way relating to Tenant's use and occupancy of the Premises from any cause whatsoever, including, without limitation fire, explosion, falling plaster, steam, gas, air contaminants or emissions, electricity, electrical or electronic emanations or disturbance, water, rain or snow or leaks from any part the Building or from the pipes, appliances, equipment or plumbing works or from the roof, street or sub-surface or from any other place or caused by dampness, vandalism, malicious mischief. Tenant shall indemnify, defend, protect and hold harmless Landlord and each of the Landlord Parties from and against any and all Claims that arise out of, are occasioned by or are in any way attributable to: (a) the use or occupancy of the Premises or any portion of the Project by Tenant, (b) the acts or omissions of Tenant or any Tenant Party, (c) any default of this Lease by Tenant, or (d) any litigation or other proceedings between Tenant and any third party; provided that Tenant shall not be required to so indemnify, defend or hold Landlord or any of the other Landlord Parties harmless to the extent that any such Claims arise out of the gross negligence or willful misconduct of Landlord, its agents or employees.

7. Tenant Improvements. Landlord consents to (but does not require) Tenant's completion of certain improvements to the Premises (collectively, the “Tenant Improvements”), subject to the terms and conditions of Exhibit A attached hereto and made a part hereof.

8. As-Is Condition. Tenant accepts the Premises in its “AS-IS, WHERE-IS” condition as of the Effective Date, and Landlord makes no representation or warranty concerning the condition of the Leased Premises and has no obligation to construct, remodel, improve, repair, decorate or paint the Premises or any improvement on or a part of the Premises, except as may be otherwise set forth in the Lease. Tenant represents that (a) it has been in possession of the Premises pursuant to the Lease, (b) it has inspected the Premises prior to execution of this First Amendment, (c) it is not relying on any statement, representation or warranty of Landlord, its employees or agents, and (d) is fully satisfied with the condition of the Premises.

9. Parking. Section 2.3.2(c)(ii) is hereby deleted in its entirety and replaced with the following:

“Notwithstanding the foregoing, each calendar month during the Term, Landlord shall provide to Tenant, without charge: (A) a number of Short Term Project Parking Validations (defined below) equal to the product of thirty (30) and the number of days in such calendar month (during the Term) and (B) a number of Long Term Project Parking Validations (defined below) equal to the product of one hundred eighty (180) and the number of days in such calendar month (during the Term), in each case to be used only by Tenant's Business Customers for parking in the Parking Facilities without charge; provided that (x) Landlord shall not, at any time during the Term, be required under this Section 2.3.2(c)(ii) to provide a number of Project Parking Validations in any calendar month in excess of a number equal to the product of two hundred ten (210) and the number of days in such calendar month (during the Term) and (y) any Project Parking Validations provided by Landlord with respect to any particular calendar month that are not used during such calendar month shall, at the election of Landlord, either: (1) become null and void (and be returned to Landlord) or (2) be credited against Landlord's obligations to provide Project Parking Validations under this Section 2.3.2(c)(ii) for subsequent calendar months. No Project Parking Validations provided by Landlord to Tenant under this Section 2.3.2(c)(E) shall be used to accommodate parking, without charge, by any particular Tenant's Business Customer(s), for a period in excess of three (3) hours on any day without Landlord's prior approval (and Tenant shall not provide any particular Tenant's Business Customer more than one Project Parking Validation on any particular day). "Short Term Project Parking Validations" means Project Parking Validations permitting Persons using such Project Parking Validations to park in the Parking Facilities for up to twenty (20) minutes without charge. "Long Term Project Parking Validations" means Project Parking Validations permitting Persons using such Project Parking Validations to park in the Parking Facilities for up to one (1) hour without charge.”

10. No Default. Each of Landlord and Tenant hereby affirm to each other that as of the Effective Date no breach, default, event of default, or other act, error, or omission which, with the giving of notice or passage of time or both would constitute a breach, default, or event of default by such party has occurred and is continuing under the Lease beyond any applicable notice or cure period.

11. Affirmation of Lease Terms. Except as modified by this First Amendment, Landlord and Tenant hereby ratify the Lease and agree that the Lease shall remain unchanged and shall continue in full force and effect. In the event there is any conflict between the terms of the Lease and the terms set forth in this First Amendment, the terms specifically set out in this First Amendment shall control. From and after the Effective Date, any and all references to “the Lease” or “this Lease” in the Lease shall mean the Lease as modified by this First Amendment.

12. Mutual Authorization Representation. Each of Landlord and Tenant hereby represent and warrant to each other that: (a) this First Amendment (and each term and provision hereof) has been duly and appropriately authorized and executed by such party through proper written corporate or limited liability company action and approval; and (b) no additional consent, agreement, or approval is required with respect hereto.

13. Brokerage. Landlord and Tenant each represent that they had no dealings with any real estate broker, finder, or other person with respect to this First Amendment in any manner, other than Lee & Associates Newport Beach, Inc. representing Tenant ("Tenant's Broker") and Newmark representing Landlord ("Landlord's Broker" and collectively with Tenant's Broker, the "Brokers"). Landlord shall pay Brokers a leasing commission in connection with this First Amendment pursuant to separate agreement. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorney's fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this First Amendment or its negotiation by reason of the act of Tenant. Landlord shall indemnify Tenant and hold Tenant harmless from any cost, expense or liability (including costs of suit and reasonable attorney's fees) for any compensation, commission or fees claimed by any real estate broker or agent in connection with this First Amendment or its negotiation by reason of the act of Landlord.

14. Miscellaneous. The submission of an unsigned copy of this First Amendment to Tenant shall not constitute an offer. This First Amendment (a) shall be binding upon an inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns, (b) may be executed in two or more counterparts, all of which together shall constitute but one and the same agreement, (c) shall be governed by and construed in accordance with the laws of the State of California and both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement, (d) shall constitute the entire agreement between the parties relating to the subject matter hereof, all prior negotiations, agreements, and understandings (not including the Lease, as amended), whether oral or written, being hereby superseded and terminated, and (e) shall become effective and binding only upon execution and delivery by both Landlord and Tenant. The execution of facsimiles, including the use of electronic signatures, of this First Amendment shall be binding on the parties hereto.

17. E-SIGN and Counterparts. Landlord and Tenant agree: (a) that a party's electronic signature with respect to this Lease has been executed or adopted by the signatory with the intent to sign, and be bound by, this Lease; (b) delivery of this Lease via electronic transmission or other electronic means shall be valid delivery for all purposes; (c) this Lease and any additional information incidental hereto may be maintained as electronic records; (d) photocopies, facsimile transmissions, electronic images and other copies of this Lease and/or its signature pages, shall be valid, binding, effective and enforceable the same as originals for all purposes, and may be so admitted in any judicial proceeding, regulatory proceeding or arbitration, and in making proof of this Lease it shall be unnecessary to produce the original hereof or any or all original signature pages; and (e) each party agrees to take any and all reasonable actions, if any, as may be necessary or as may be reasonably requested by any other party to this Lease to further evidence such party's intent to be bound by the provisions of this Lease and to ensure compliance with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001, et seq., the Uniform Electronic Transactions Act as incorporated into applicable law, and any other applicable law pertaining to electronic signatures.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment to be effective as of the date first set forth above.

ATTEST:

CITY OF SANTA ANA (TENANT):

Jennifer L. Hall
City Clerk

Kristine Ridge
City Manager

APPROVED AS TO FORM:

LANDLORD:

SONIA R. CARVALHO

SANTA ANA CA I SGF, LLC,
a Delaware limited liability company

City Attorney



By: Jose Montoya, Assistant City Attorney

By: 

Name: Della Wegman

Title: Authorized Signatory

RECOMMENDED FOR APPROVAL:

Mike Garcia
Executive Director
Community Development Agency

Mike Garcia - Executive Director Community Development Agency

[SIGNATURE PAGE TO FIRST AMENDMENT TO OFFICE LEASE]

EXHIBIT A**WORK LETTER**

THIS WORK LETTER (this "**Work Letter**") is attached to and incorporated into the First Amendment. Supplementing the provisions of the Lease (as amended by the First Amendment), but without limiting those provisions, Landlord and Tenant agree as follows with respect to the Tenant Improvements to be installed in the Premises.

1. **Purpose.** This Work Letter establishes responsibilities for the design and construction of the Tenant Improvements as well as the allocation of the costs of the Tenant Improvements. The terms, conditions, and requirements of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

2. **Definitions.** The following defined terms used in this Work Letter shall have the meanings set forth below. Unless provided to the contrary herein, any other capitalized term that is not defined in this Work Letter shall have the meaning given to that term in the Lease.

(a) "**Approved Working Drawings**" is defined in **Section 3(c)** hereof.

(b) "**Building Systems**" means the structural portions of the Building, the common area restrooms, elevators, the Building's HVAC, mechanical, electrical, plumbing, and fire and life safety systems and equipment (including, but not limited to, the fire alarm and fire sprinklers).

(c) "**Contractor**" means the general contractor engaged by Landlord for performance of the Landlord Work pursuant to **Section 4** hereof.

(d) "**Cost Proposal**" is defined in **Section 5(a)** hereof.

(e) "**Days**" means, unless otherwise indicated, calendar days.

(f) "**Landlord Coordination Fee**" means a fee equal to five percent (5%) of the hard and soft costs of the Landlord Work charged by Landlord for its services in managing the design and construction of the Tenant Improvements, and such fee will be included in the cost of the Landlord Work and deducted from the Tenant Allowance.

(g) "**Landlord's Representative**" means Dana Duarte as the only person authorized to act for Landlord pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other communication from or on behalf of Landlord in connection with this Work Letter unless such communication is in writing from Landlord's Representative. Landlord may change the Landlord's Representative at any time upon not less than five (5) days' advance written notice to Tenant.

(h) "**Landlord Work**" means all work necessary and appropriate to complete the Tenant Improvements in accordance with this Work Letter and the Lease.

(i) **"Over-Allowance Amount"** is defined in Section 10(d) hereof.

(j) **"Permits"** is defined in Section 6(a) hereof.

(k) **"Punch List Work"** means those minor corrections of construction or decoration details, and minor mechanical adjustments, that are required to cause any applicable portion of the Tenant Improvements as constructed to conform to the Approved Plans in all material respects and that do not materially interfere with Tenant's use or occupancy of the Building and the Premises.

(l) **"Space Plan"** is defined in Section 3(a) hereof.

(m) **"Space Plan Allowance"** shall be Zero and 15/100 Dollars (\$0.15) per rentable square foot of the Premises (i.e., up to \$2,898.15), based on 19,321 rentable square feet of the Premises, and shall be included in the Tenant Allowance and deducted therefrom.

(n) **"Substantial Completion"** of the Tenant Improvements shall be deemed to have occurred on the date that: (i) all Landlord Work has been performed in accordance with the terms of this Work Letter, other than any Punch List Work; and (ii) if required, Landlord has obtained and delivered to Tenant a permanent or temporary certificate of occupancy ("COO") with respect to the Premises, except to the extent the same cannot be obtained by reason of the incompleteness of installations or other work that is the responsibility of Tenant (such as, but not limited to, the installation and making operational of Tenant's systems and telecommunications equipment), in which case Landlord shall obtain the same within a reasonable time after the same can be obtained.

(o) **"Tenant Allowance"** shall be Twenty-Eight and 00/100 Dollars (\$28.00) per rentable square foot of the Premises (i.e., up to \$540,988.00), based on 19,321 rentable square feet of the Premises.

(p) **"Tenant Contractor"** or **"Tenant Contractors"** means any employees, agents, contractors, consultants, subcontractors, mechanics, suppliers and invitees of Tenant, whether or not directly employed by Tenant, each of whom shall be reasonably approved by Landlord before they may work in the Building.

(q) **"Tenant Delay"** means a delay caused by any of the following:

(i) Tenant's failure to timely approve the Working Drawings or any other matter requiring Tenant's approval;

(ii) a breach by Tenant of the terms of this Work Letter or the Lease;

(iii) Tenant's request for changes in any of the Working Drawings, but only if such a request actually causes a delay to Substantial Completion of the Premises;

(iv) Tenant's requirement for: (A) materials, components, finishes, or improvements which are different from, or not included in, Landlord's standard tenant improvement items for the Building (which have been provided to Tenant and of which Tenant acknowledges receipt); or (B) materials that are not available in a commercially reasonable time given the estimated date of Substantial Completion of the Premises, but only to the extent that such a requirement actually causes a delay to Substantial Completion of the Premises; or

(v) any other acts or omissions of Tenant, or of any of the Tenant Contractors, their agents, or employees that continue more than one (1) day after written notice thereof by Landlord.

(r) **“Tenant FF&E Allowance:** means a portion of the Tenant Allowance in the amount of up to Ten and 00/100 Dollars (\$10.00) per rentable square foot of the Premises (i.e., up to \$193,210.00), which Tenant may use for Tenant's furniture, fixtures and equipment to be purchased and installed in the Premises and any costs of data cabling and IT infrastructure in connection with Tenant's furniture, fixtures and equipment.

(s) **“Tenant's Representative”** means the Executive Director, Community Development, or the Economic Development Manager or their designee (either such individual acting alone) as the only person[s] authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry, or other communication from or on behalf of Tenant in connection with this Work Letter unless such communication is in writing from Tenant's Representative. Tenant may change the Tenant's Representative[s] at any time upon not less than five (5) days' advance written notice to Landlord.

(t) **“Working Drawings”** is defined in Section 3(b) hereof.

3. **Plan Approval.**

(a) Prior to commencement of the Landlord Work, Landlord and Tenant shall approve detailed space plans (collectively, the **“Space Plan”**) for the construction of the Tenant Improvements, which space plans shall be prepared by Landlord's architect and subject to Tenant's reasonable approval within ten (10) days after receipt thereof.

(b) Promptly following Tenant's approval of the Space Plan, Landlord shall cause its architect and engineers to prepare and deliver to Tenant detailed specifications and engineered working drawings for the Tenant Improvements shown on the Space Plan, with such modifications to the Space Plan as shall be necessary to comply with the requirements of the Building Systems of the Building (the **“Working Drawings”**).

(c) Tenant shall approve or disapprove the Working Drawings in writing within fourteen (14) business days after receipt. Tenant may only disapprove the Working Drawings to the extent such Working Drawings are inconsistent with the Space Plan and only if Tenant delivers to Landlord, within such fourteen (14) business day period, specific changes proposed by Tenant which are consistent with the Space Plan. If any such revisions are timely and properly proposed by Tenant, Landlord shall cause its architect and

engineers to revise the Working Drawings to incorporate such revisions and submit the same for Tenant's approval in accordance with the foregoing provisions, and the parties shall follow the foregoing procedures for approving the Working Drawings until the same are finally approved by Landlord and Tenant. Upon Landlord's and Tenant's written approval of the Working Drawings, including any agreed changes pursuant to Sections 5 and 6, the same shall be known as the "**Approved Working Drawings**".

4. **Construction Contracts.** Landlord shall enter into a construction contract for the performance of the Landlord Work with the Contractor. Landlord shall use commercially reasonable efforts to obtain at least three (3) bids from each trade (other than mechanical, electrical, plumbing, and fire/life safety, for each of which Landlord shall require all work to be performed by Landlord's approved subcontractor for such trade) and shall select the lowest qualified bidder unless otherwise approved by Tenant in writing. Landlord shall require its Contractor to exercise reasonable efforts to avoid disruption of Tenant's business and to protect the health & safety of Tenant, its employees and its guests. This shall include, at a minimum, using all feasible methods to minimize danger, noise, vibration, fumes, dust and other pollution, and to the extent practicable, perform work outside of normal business hours.

5. **Cost Estimate.**

(a) Landlord shall provide Tenant with a cost proposal in accordance with the Approved Working Drawings, which cost proposal shall include, as nearly as possible, the cost of the Tenant Improvements (the "**Cost Proposal**"). The Cost Proposal shall be provided to Tenant on an open book basis (i.e., Landlord shall make available to Tenant the economic terms of the construction agreement with the Contractor (including, without limitation, the cost of labor and materials, contractor fees and permit fees), as well as all bids received by Landlord for the Landlord Work, and reasonable documentation supporting Landlord's estimate of plan preparation costs and all other costs of the Landlord Work).

(b) Within ten (10) days of the receipt of the same, Tenant shall either: (i) approve the Cost Proposal; or (ii) have a one-time right to propose modifications to the Working Drawings so that the Cost Proposal does not exceed the amount of the Tenant Allowance. With the exception of the City's one-time right to modify as provided in this section, any proposed changes to the Working Drawings (other than changes that make the Working Drawings conform to the Space Plan) shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord approves the proposed revisions: (A) Landlord shall have the Working Drawings revised in accordance with the approved revisions; and (B) Landlord shall submit a revised Cost Proposal to Tenant. Tenant shall notify Landlord in writing within ten (10) days whether it desires to proceed with such revisions. If Tenant fails to approve such revisions and revised Cost Proposal within such ten (10) day period; such failure shall be deemed to be a Tenant Delay. Any delays arising from further changes to the Working Drawings requested by Tenant shall be deemed to be Tenant Delays.

(c) Tenant's final written approval of the Cost Proposal and the Approved Working Drawings shall be authorization by Tenant for Landlord to purchase all materials

set forth in the Cost Proposal and to promptly commence the construction of the Tenant Improvements in accordance with the Approved Working Drawings.

6. **Performance of the Landlord Work.**

(a) Landlord shall cause the Contractor to obtain all applicable building permits for construction of the Landlord Work (collectively, the “**Permits**”), and to perform the Landlord Work in a good and workmanlike manner and in compliance with the Permits and all applicable Laws in effect at the time of construction. All costs associated with obtaining Permits will be deducted from the Tenant Allowance.

(b) If any local governmental agency requires revisions to the Approved Working Drawings, Tenant shall be deemed to have approved any adjustments to the Approved Working Drawings and the Cost Proposal resulting therefrom. If any Authority issuing Permits for the construction of the Tenant Improvements shall impose terms or conditions upon the construction thereof that: (i) are inconsistent with Landlord's obligations hereunder; (ii) increase the cost of constructing the Tenant Improvements; or (iii) will materially delay the construction of the Tenant Improvements, Landlord and Tenant shall reasonably and in good faith seek means by which to mitigate or eliminate any such adverse terms and conditions.

7. **Change Requests.** No changes to the Approved Working Drawings or the agreed Cost Proposal may be made without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. If Tenant requests a change that would directly or indirectly delay the Substantial Completion of the Tenant Improvements, Landlord shall not be obligated to make such change unless Tenant agrees in writing that such delay (in the amount reasonably determined by Landlord) is a Tenant Delay. If Tenant requests a change to the Approved Working Drawings that increases the agreed Cost Proposal, Landlord shall not be obligated to make such change unless Tenant agrees in writing to pay any such increase in costs in accordance with Section 10.

8. **Substantial Completion.** When Landlord's architect certifies that the Landlord Work is Substantially Complete, Landlord shall notify Tenant thereof in writing. Tenant's Representative and Landlord's Representative shall at a mutually convenient date and time [but in no event later than ten (10) days after such notice] conduct a joint walk-through of the Premises in order to review the Tenant Improvements. Based upon said walk-through, Landlord's Representative and Tenant's Representative shall prepare a list of Punch List Work and, subject to Force Majeure, Tenant Delays and other causes beyond Landlord's reasonable control, Landlord shall complete the Punch List Work items within thirty (30) days after such joint walk-through. In the event of any dispute as to whether Landlord has Substantially Completed the Tenant Improvements, the City will be afforded an opportunity to provide input before the Landlord's architect renders a final decision on the dispute. The decision of Landlord's architect shall be final and binding on the parties. Tenant agrees that, at the request of Landlord from time to time after the initial inspection, Tenant shall initial such punch list or execute revised lists of Punch List Work to reflect completion or partial completion of prior Punch List Work.

9. **Access by Tenant.** Subject to the terms hereof and provided that Tenant and its agents do not interfere with the Contractor's work in the Building and the Premises, Landlord shall allow Tenant and any of the Tenant Contractors access to the applicable portions of the Premises at least ten (10) days prior to the Substantial Completion of the Landlord Work for the purpose of installing equipment and/or fixtures (including Tenant's data and telephone equipment) and Tenant's furniture in the Premises. Prior to Tenant's entry into the Premises, Tenant shall submit a schedule to Landlord and the Contractor, for their approval, which schedule shall detail the Tenant Contractors accessing the Premises and the timing and purpose of such entry. In connection with any such entry, Tenant acknowledges and agrees that all Tenant Contractors shall fully cooperate, work in harmony with and not, in any manner, materially interfere with Landlord or Landlord's contractors (including the Contractor), agents, or representatives in performing work in the Building and the Premises, or in performing any inspections, or interfere with the general operation of the Building. If at any time any of the Tenant Contractors shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and Tenant fails to immediately institute and maintain corrective actions as directed by Landlord, then Landlord may revoke Tenant's entry rights (as to an individual Tenant Contractor, or as to all Tenant Contractors, as Landlord shall deem appropriate). Tenant acknowledges and agrees that any such entry into and occupancy of the Premises or any portion thereof by Tenant or any Tenant Contractor shall be deemed to be subject to all the terms, covenants, conditions, and provisions of the Lease, excluding only the covenant to pay Rent (until the occurrence of the Lease Commencement Date).

10. **Cost Allocation.**

(a) Provided this Lease is in full force and effect, and Tenant is not in default thereunder beyond any applicable notice and cure period, Landlord shall pay (i) the costs of Space Plan in an amount up to, but not exceeding, the Space Plan Allowance, and (ii) the costs of the Tenant Work in an amount up to, but not exceeding, the Tenant Allowance. Landlord shall deduct the Landlord Coordination Fee of the Tenant Improvements from the Tenant Allowance.

(b) In no event shall Landlord be obligated to pay for the costs of any of Tenant's furniture, computer systems, telephone systems, equipment, or other personal property (whether or not such items may be depicted on the Approved Working Drawings) that exceed the Tenant FF&E Allowance. Eligible costs that exceed the Tenant FF&E Allowance shall be borne by Tenant.

(c) In the event that all costs associated with the Space Plan and design, permitting, and construction of the Tenant Improvements, including the Landlord Coordination Fee, exceeds the Space Plan Allowance and/or the Tenant Allowance, as applicable, the amount of such excess (the "**Over-Allowance Amount**") shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord. Tenant shall not be responsible for the Over-Allowance Amount if caused by Landlord or Landlord Contractor's own negligence, willful misconduct, or delay.

(d) Tenant shall not be entitled to receive (in cash or as a credit against any rental or otherwise) any portion of the Tenant Allowance not used to pay for the costs of the design, permitting, and construction of the Tenant Improvements.

11. **Miscellaneous.**

(a) All Tenant Improvements to be performed by Landlord (and any installations in the Premises as set forth in the Approved Working Drawings, or otherwise) shall use Building-standard specifications, materials, finishes, and supplies, unless otherwise specified in the Approved Working Drawings. Landlord, in its sole discretion, may substitute items, materials, or finishes with other items, materials, or finishes of comparable kind and quality. Landlord, at its sole option, may also change mechanical plans and specifications where necessary for the installation or modification of the Building Systems to accommodate the Tenant Improvements, provided that any such changes shall not materially and adversely affect Tenant's use and occupancy of the Demised Premises for the Permitted Use.

(b) Tenant acknowledges that the timely completion of the Tenant Improvements is of the utmost importance to Landlord and Tenant. Accordingly, Tenant hereby agrees to fully and diligently cooperate with all reasonable requests by Landlord in connection with or related to the design and construction of the Tenant Improvements and the completion of the permitting process and, in connection therewith, Tenant shall respond to Landlord's requests for information and/or approvals, except as specifically set forth herein to the contrary, within two (2) days following request by Landlord. Landlord and Tenant, and such other parties as may be useful or appropriate, shall meet on a scheduled basis to be determined by Landlord's Representative and Tenant's Representative, to discuss progress in connection with the same.

(c) If at any time on or before the Substantial Completion of the Landlord Work, Tenant is in default under this Work Letter or under the Lease, which default remains uncured after the expiration of applicable notice and cure periods, then: (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to instruct the Contractor to cease the construction of the Landlord Work (in which case, Tenant shall be responsible for the Tenant Delay caused by such work stoppage); and (ii) all other obligations of Landlord under the terms of this Work Letter shall be suspended until such time as such default is fully and finally cured.

(d) Landlord hereby assigns to Tenant all warranties by Contractor relating to the Tenant Improvements, which assignment shall be on a non-exclusive basis such that the warranties may be enforced by Landlord and/or Tenant; such warranties shall be for a twelve (12) month period.

(e) Any portion of the Tenant Allowance not used within thirty-six (36) months of the Effective Date of this First Amendment shall be forfeited with no further obligation by Landlord with respect thereto. In no event shall Tenant be entitled to apply any unused portion of the Tenant Allowance towards future payments of Base Rent and/or, except as expressly set forth herein, purchase of Tenant's furniture, fixtures and equipment.