

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **August 28, 2018**

**JAGUAR HEALTH, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**001-36714**  
(Commission File Number)

**46-2956775**  
(IRS Employer Identification No.)

**201 Mission Street, Suite 2375  
San Francisco, California**  
(Address of principal executive offices)

**94105**  
(Zip Code)

Registrant's telephone number, including area code: **(415) 371-8300**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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.

**Item 1.01 Entry into a Material Definitive Agreement.**

**Office Lease**

On August 28, 2018, Jaguar Health, Inc. (the "Company") entered into an Office Lease Agreement (the "Lease") with CA-Mission Street Limited Partnership, a Delaware limited partnership ("Landlord"), to extend the Company's lease for approximately 6,311 square feet of office space located at 201 Mission Street, Suite 2375, San Francisco, California (the "Premises"). The term of the Lease will begin on September 1, 2018 and will expire on September 30, 2020, unless earlier terminated in accordance therewith. The base rent under the Lease will be as follows:

<b>Period During Lease Term</b>	<b>Monthly Base Rent</b>	
<b>Month 1 — Month 12</b>	\$	38,391.92
<b>Month 13 — Month 24</b>	\$	39,543.67
<b>Month 25</b>	\$	40,729.98

The Company shall also pay Landlord as additional rent the Company's proportionate share of operating charges for each calendar year (or partial year) of the term of the Lease. In addition, concurrently with the execution of this Lease, the Company is required to deliver to the Landlord a standby, unconditional, irrevocable, transferable letter of credit, naming Landlord as beneficiary, as collateral for the full performance by the Company of all of its obligations under the Lease and for all losses and damages Landlord may suffer as a result of the Company's failure to comply with one or more provisions of the Lease.

### **Letter of Credit and Warrant**

To satisfy the letter of credit requirement in the Lease as described above, Pacific Capital Management, LLC (the "LC Facilitator"), one of the Company's existing shareholders, caused its financial institution to issue a letter of credit in the amount of \$475,000 (the "Letter of Credit") on behalf of the Company in favor of Landlord pursuant to the terms of the Landlord Letter of Credit & Warrant Issuance Agreement, dated August 28, 2018, by and between the Company and the LC Facilitator ("LOC Agreement"). In consideration of the LC Facilitator causing a Letter of Credit from LC Facilitator's financial institution to be issued to the Landlord, the Company issued to the LC Facilitator a five-year warrant (the "Warrant") to purchase 670,586 shares of the Company's voting common stock, par value \$0.0001 per share (the "Common Stock"), subject to adjustment for reclassification or change of the Common Stock, stock splits, dividends, distributions or changes to the exercise price of the Warrant in accordance with the terms of the Warrant. The Warrant is exercisable commencing after the 7-month anniversary date of issuance, and the exercise price of the Warrant is the lower of (i) \$0.85 per share and (ii) the average of the closing sales price of the Common Stock for the 30 consecutive trading days commencing on September 4, 2018.

On or before the earlier to occur of (x) the one year anniversary date of the issuance of the Warrant and (y) within ten (10) business days of the Company receiving in the aggregate since the date of the issuance of the Warrant no less than \$6 million of unrestricted cash from a business development transaction or transactions (excluding from this \$6 million unrestricted cash threshold for the avoidance of doubt any revenues from the sale of Mytesi and any cash allocated to the repayment of debt then outstanding and owed by the Company or its wholly-owned subsidiary, Napo Pharmaceuticals, Inc. ("Napo") and excluding cash otherwise legally or contractually obligated for special projects, expenses or activities by the Company or Napo; and for additional clarity, excluding any cash received by the Company or Napo from lenders or from the sale of the Company's equity related instruments), the Company will cause the Letter of Credit to be released and replaced by a new letter of credit not provided or guaranteed by LC Facilitator. Likewise, if the Company has not received on a consolidated basis with Napo at least \$5 million of gross proceeds in the aggregate from any source (in the form of debt or equity or debt or equity like instruments or any combination thereof) since the date of the issuance of the Warrant and on, or before, October 1, 2018, then within ten (10) business days thereafter the Company will cause LC Facilitator's exposure under the Letter of Credit to be reduced by \$122,000, whether pursuant to a release of LC Facilitator of such amount under the Letter of Credit, replacement or modification of the Letter of Credit in whole or in part, partial replacement or additional collateral in favor of LC Facilitator or otherwise.

The foregoing summary of the terms of the Warrant, the Lease and the LOC Agreement do not purport to be complete and are qualified in its entirety by reference to the Warrant, the Lease and the LOC Agreement, copies of which are filed as Exhibits 4.1, 10.1 and 10.2, respectively, to this Form 8-K and are incorporated herein by reference.

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### **Item 9.01 Financial Statements and Exhibits.**

#### *(d) Exhibits*

<u>Exhibit No.</u>	<u>Description</u>
4.1	<a href="#"><u>Common Stock Warrant, dated August 28, 2018, by and between Jaguar Health, Inc. and the holder named therein.</u></a>
10.1	<a href="#"><u>Office Lease Agreement, dated August 30, 2018, between Jaguar Health, Inc. and CA-Mission Street Limited Partnership.</u></a>
10.2	<a href="#"><u>Landlord Letter of Credit &amp; Warrant Issuance Agreement, dated August 28, 2018, by and between Jaguar Health, Inc. and the letter of credit facilitator named therein.</u></a>

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### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

#### **JAGUAR HEALTH, INC.**

Date: September 4, 2018

By: /s/ Karen S. Wright  
Name: Karen S. Wright  
Title: Chief Financial Officer

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THIS WARRANT AND THE SHARES OF CAPITAL STOCK WHICH MAY BE PURCHASED PURSUANT TO THE EXERCISE OF THIS WARRANT HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT AND THE OFFER AND SALE OF SUCH SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF SUCH REGISTRATION OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH SALE, OFFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE SECURITIES ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS.

No. 2018-1

Issue Date: August 28, 2018

Void after August 28, 2023, or earlier if terminated in accordance with Section 9 of this Warrant

JAGUAR HEALTH, INC.

COMMON STOCK WARRANT

THIS CERTIFIES THAT, for value received, **Pacific Capital Management, LLC** (together with its permitted assignees, the "**Holder**"), is entitled to subscribe for and purchase at the exercise price per share established pursuant to Section 1(a) below (the "**Exercise Price**") commencing after the seven (7) month anniversary date of the "**Issue Date**" and until the "**Expiration Date**" (as defined in Section 9 below) (the "**Exercise Period**") that number of shares of the fully paid and nonassessable shares of Common Stock, par value \$0.0001 per share (the "**Common Stock**") of Jaguar Health, Inc., a Delaware corporation (the "**Company**") set forth on the signature page hereto (as adjusted pursuant to Section 3 hereof), subject to the provisions and upon the terms and conditions hereinafter set forth. The shares purchasable upon exercise of this Warrant, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "**Warrant Stock**." This Warrant (the "**Warrant**") is issued pursuant to the terms of that certain Landlord Letter of Credit & Warrant Issuance Agreement dated as of August 28, 2018 (the "**Agreement**") by and between the Company and the original Holder hereof. Capitalized terms used but not defined herein shall have the meaning therefor set forth in the Agreement. This Warrant shall be subject to all of the terms and conditions of the Agreement (including but not limited to the investor representations set forth in Section 3 of the Agreement).

1. Exercise Price; Method of Exercise; Payment.

(a) Exercise Price. "**Exercise Price**" means, subject to adjustment under Section 3 below, the lower of (i) Eighty Five Cents (\$0.85) per Warrant Stock share and (ii) the average of the "Closing Sale Prices" (as defined below in Section 1. (c)) of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the thirty (30) consecutive trading days commencing on September 4, 2018.

(b) Cash Exercise. Subject to Sections 9 and 10 hereof and Exhibit B attached hereto, the purchase rights represented by this Warrant may be exercised by the Holder, in whole or in part, by the surrender of this Warrant (with the notice of exercise form attached hereto as Exhibit A duly executed) at the principal office of the Company, and by the payment to the Company, by certified cashier's or other check acceptable to the Company or wire transfer, of an amount equal to the aggregate Exercise Price of the shares of Warrant Stock being purchased.

(c) Cashless Exercise. Subject to Sections 9 and 10 hereof and Exhibit B attached hereto, the Holder may in lieu of a cash exercise, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise," in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the ten (10) trading days ending five (5) trading days immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, "**Closing Sale Price**" means, for any security as of any date, the last trade price for such security on the principal trading market of the security, as reported by Bloomberg Financial Markets, or, if the principal trading market of the security begins to operate on an extended hours basis and does not designate the last trade price then the last trade price of such security prior to 4:00 p.m., New York City Time, as reported by Bloomberg, Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no closing bid price is reported for such security by Bloomberg Financial Markets, the average of the bid prices and asked prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as determined by the Company's Board of Directors in good faith. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) Maximum Exercise. Notwithstanding any other provision hereof, the Holder shall not be permitted to exercise all or any portion of this Warrant, if as a result of such exercise the holder would then become a "ten percent beneficial owner" (as defined in Rule 16a-2 under the Securities Exchange Act of 1934, as amended) of Common Stock. For greater certainty, this Warrant shall not be exercisable by the Holder or redeemed by the Company, if, after giving effect to such exercise, the Holder, together with its affiliates and any other persons acting as a group together with the Holder or any of the Holder's affiliates, would in aggregate beneficially own, or exercise control or direction over that number of voting securities of the Company

which is 9.99% or greater of the total issued and outstanding voting securities of the Company, immediately after giving effect to such exercise (the “**Beneficial Ownership Limitation**”). The Holder, upon notice to the Company, may increase the Beneficial Ownership Limitation; provided, however, that any increase in the Beneficial Ownership Limitation shall not become effective until the 61<sup>st</sup> day after such notice is delivered to the Company. For purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act.

(e) **Stock Certificates.** In the event of any exercise of the rights represented by this Warrant, certificates for the Warrant Stock so purchased shall be delivered to the Holder within a reasonable time and, unless this Warrant has been fully exercised or has expired, a new Warrant representing the shares with respect to which this Warrant shall not have been exercised shall also be issued to the Holder within such time.

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2. **Stock Fully Paid; Reservation of Stock.** All of the Warrant Stock issuable upon the exercise of the rights represented by this Warrant will, upon issuance and receipt of the Exercise Price therefor, be fully paid and nonassessable, and free from all preemptive rights, rights of first refusal, taxes, liens and charges with respect to the issue thereof, except as may be set forth in the Company’s Bylaws or any contractual agreement to which the Holder or the Warrant Stock may be subject. During the period within which the rights represented by this Warrant may be exercised, the Company shall at all times have authorized and reserved for issuance sufficient shares of its Warrant Stock and other stock, securities and property to provide for the exercise of the rights represented by this Warrant.

3. **Adjustment of Exercise Price and Number of Shares.** Subject to the provisions of Section 9 hereof, the Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this **Section 3** as follows:

(a) **Reclassification.** In case of any reclassification or change of the Common Stock (other than a change in par value, or as a result of a subdivision or combination or dividend or as otherwise as adjusted under this Section 3), the Company shall execute a new Warrant, providing that the holder of this Warrant shall have the right to exercise such new Warrant, and procure upon such exercise and payment of the same aggregate Exercise Price, in lieu of the shares of Common Stock theretofore issuable upon exercise of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification or change by a holder of an equivalent number of shares of Common Stock. Such new Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this **Section 3**. Except for a Liquidation Event (as defined in Section 9), the provisions of this subsection (a) shall similarly apply to successive reclassifications and changes.

(b) **Stock Splits and Combinations.** If the Company, at any time while this Warrant is outstanding (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, or (iii) combines its outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this **Section 3(b)** shall become effective immediately after the effective date of such subdivision or combination.

(c) **Pro Rata Distributions.** If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) any other asset (in each case, “**Distributed Property**”), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Stock shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Stock shares had the Holder been the record holder of such Warrant Stock shares immediately prior to such record date.

(d) **Number of Warrant Stock Shares.** Simultaneously with any adjustment to the Exercise Price pursuant to this **Section 3**, the number of Warrant Stock Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Stock Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

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4. **Notice of Adjustments.** Whenever the number of shares of Warrant Stock purchasable hereunder or the Exercise Price thereof shall be adjusted pursuant to Section 3 hereof, the Company shall provide notice to the holder of this Warrant setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the number of shares of Warrant Stock which may be purchased and the Exercise Price therefor after giving effect to such adjustment.

5. **Fractional Shares.** No fractional shares of Common Stock will be issued in connection with any exercise hereunder. In lieu of such fractional shares the Company shall make a cash payment therefor based upon the fair market value of the Warrant Stock then in effect as determined by the Company.

6. **Restrictions Upon Transfer.**

(a) The Company need not register a transfer of this Warrant unless the conditions specified in the legends on the front page hereof are satisfied and the transferee has agreed in writing to be subject to the terms and conditions of this Warrant, including transferee acknowledging in writing that it meets the investor suitability criteria set forth in this Warrant and Exhibit B attached hereto. Subject to the satisfaction of such conditions, any transfer of this Warrant and all rights hereunder, in whole or in part (but not less than 25% of the Warrant Stock originally exercisable under this Warrant being transferred), shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company, or the office or agency designated by the Company, together with a written assignment of this Warrant substantially in the form of **Exhibit C** hereto duly executed by Holder and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall, subject to the conditions set forth in this Section, execute and deliver a new Warrant in the name of the assignee, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled.

(b) The Company shall prepare, issue and deliver at its own expense (other than transfer taxes) the new Warrant or Warrants under this Section 6.

7. Restrictive Legends.

(a) The shares of Warrant Stock issuable upon exercise of this Warrant (unless registered under the Securities Act of 1933, as amended (the “**Securities Act**”)) shall be stamped or imprinted with legends in substantially the following form:

**THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT AND THE OFFER AND SALE OF SUCH SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY STATE SECURITIES LAWS. SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF SUCH REGISTRATION OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH SALE, OFFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION.**

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(b) The Company need not register a transfer of shares of Warrant Stock bearing the restrictive legends set forth in this Section 7, unless the conditions specified in such legends are satisfied. The Company may also instruct its transfer agent not to register the transfer of the shares of Warrant Stock, unless all of the conditions specified in the legends set forth in this Section 7 are satisfied.

8. Rights of Stockholders. No holder of this Warrant shall be entitled, as a Warrant holder, to vote or receive dividends or be deemed the holder of Common Stock or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until the Warrant shall have been exercised and the shares of Warrant Stock purchasable upon the exercise hereof shall have become deliverable, as provided herein.

9. Expiration of Warrant. This Warrant shall expire and shall no longer be exercisable immediately prior to the first to occur of the following (the “Expiration Date”):

(a) at 5:00 p.m., Pacific time, on August 28, 2023;

(b) the closing of a merger, reorganization, tender offer or similar transaction involving the Company or its securities with or into another entity in which the holders of voting securities of the Company immediately prior to such transaction will hold less than 50% of the voting securities of the surviving entity immediately following such transaction as a result of shares held prior to such transaction;

(c) the closing of a sale or license of all or substantially all of the assets of the Company; and

(d) a “Liquidation Event” as defined in the Company’s Certificate of Designation of Series A Convertible Participating Preferred

Stock

Each of 9(b) through (d), collectively, a “Liquidation Event.”

10. Notices, Etc. Any notice, request or other communications required or permitted hereunder shall be in writing and shall be deemed duly given if given in the manner provided in the Purchase Agreement to the address specified therein or to such other address that the Company or the Holder may specify pursuant to the terms thereof.

11. Governing Law, Headings. This Warrant shall be construed and enforced in accordance with and governed by the laws of the State of Delaware with venue for all purposes in the State of Delaware. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.

12. Amendment and Waiver. This Warrant may be amended or modified, and the obligations of the Company and the rights of each Holder under this Warrant may be waived, amended or terminated, only upon the written consent of the Company and the Holder.

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13. Holder Representations & Warranties. Holder hereby represents and warrants to the Company as follows in addition to Holder’s representations and warranties under Section of the Agreement:

(a) Holder understands that no public market currently exists for the Warrant or Warrant Stock (collectively, the “Securities”) and that there are no assurances that any such market will be created.

(b) Holder specifically acknowledges and understands that certificates representing the Securities will bear substantially all of the legends set forth in this Warrant.

(c) Holder has full power and authority to deliver these representations and warranties in relation to the Holder's purchase of the Securities.

(d) Holder is an "accredited" investor as that term is defined under Regulation D promulgated under the Securities Act of 1933, as amended (as more fully set forth on Annex I attached hereto) neither Holder nor any person or entity with whom Holder shares beneficial ownership of the Company's securities, is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act, attached hereto as Annex II.

(e) Holder acknowledges that the Company is relying on the accuracy of the above representations and is entitled to rely on the truth and accuracy of the foregoing representations and warranties and that the foregoing representations and warranties will survive Holder's admission as a Holder of the Company.

(f) Holder represents and warrants that the above acknowledgements, representations and agreements are true and accurate as of the date hereof.

*(Remainder of Page Intentionally Left Blank)*

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IN WITNESS WHEREOF, the Company and Holder have each caused this Warrant to be executed as set forth below.

**MAXIMUM NUMBER OF WARRANT STOCK SHARES: 670,586, as adjusted under Section 3 above.**

**JAGUAR HEALTH, INC.**

a Delaware corporation

By: /s/ Lisa A. Conte

Name: Lisa A. Conte

Title: President & CEO

**HOLDER:** Pacific Capital Management, LLC

Agreed & Accepted:

By: /s/ Jonathan Glaser

(Signature)

Jonathan Glaser, Managing Member

(Print Name & Title (if applicable))

*Signature Page to Jaguar Health Warrant*

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**EXHIBIT A**

**NOTICE OF EXERCISE**

TO: JAGUAR HEALTH, INC.  
Attention: Chief Financial Officer

The undersigned hereby elects to purchase \_\_\_\_\_ shares of Common Stock of JAGUAR HEALTH, INC. pursuant to the terms of the attached Warrant.

Method of Exercise (Please initial the applicable blank):

The undersigned elects to exercise the attached Warrant by means of a cash payment, and tenders herewith payment in full for the purchase price of the shares being purchased by wire transfer or cashier's check, together with all applicable transfer taxes, if any.

The undersigned hereby elects to exercise the attached Warrant pursuant to the terms of Section 1(c) of this Warrant, and to receive so many shares as a result as are properly calculated under that Section.

Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

The undersigned hereby represents and warrants that the aforesaid shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale, in connection with the distribution thereof, and that the undersigned has no present intention of distributing or reselling such shares. In support thereof, the undersigned agrees to execute an Investment Representation Statement in a form substantially similar to the form attached to the Warrant as Exhibit B.

The undersigned hereby agrees that it shall not sell, offer, pledge, contract to sell, grant any option or contract to purchase, purchase any option or contract to sell, grant any right or warrant to purchase, lend or otherwise transfer or encumber, directly or indirectly, any securities of the Company as set forth in the Warrant.

\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

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## EXHIBIT B

### INVESTMENT REPRESENTATION STATEMENT

PURCHASER :  
COMPANY : JAGUAR HEALTH, INC.  
SECURITY : COMMON STOCK ISSUED UPON EXERCISE OF THE WARRANT  
AMOUNT : SHARES  
DATE : , 20

In connection with the purchase of the above referenced shares (the "Securities"), the undersigned represents to the Company the following:

The undersigned is aware of the Company's business affairs and financial condition, and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. The undersigned is purchasing these Securities for its own account for investment purposes only and not with a view to, or for the resale in connection with, any "distribution" thereof for purposes of the Securities Act of 1933, as amended (the "**Securities Act**").

The undersigned understands that offer and sale of the Securities have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the undersigned's investment intent as expressed herein. In this connection, the undersigned understands that, in the view of the Securities and Exchange Commission (the "**SEC**"), the statutory basis for such exemption may be unavailable if this representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future.

The undersigned further understands that the Securities must be held indefinitely unless the offer and sale of the Securities are subsequently registered under the Securities Act or unless an exemption from registration is otherwise available. Moreover, the undersigned understands that the Company is under no obligation to register the offer and sale of the Securities. In addition, the undersigned understands that the certificate evidencing the Securities will be imprinted with a legend which prohibits the transfer of the Securities unless the offer and sale of the Securities are registered or such registration is not required in the opinion of counsel for the Company.

The undersigned is familiar with the provisions of Rule 144, promulgated pursuant to the Securities Act, which, in substance, permits limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions.

The Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires, among other things, the existence of a public market for the Securities, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sales being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of Securities being sold during any three-month period not exceeding specified limitations.

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The undersigned further understands that in the event that all of the applicable requirements of Rule 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

The undersigned hereby ratifies and confirms all of the original Holder's representations and warranties set forth in Section 14 of the Warrant, including but not limited to that the undersigned is an "Accredited Investor" as set forth in the Warrant and is not a "Bad Actor" as set forth in the Warrant and if the undersigned is not a United States person as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the

“Code”)), Holder hereby represents that Holder has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of the Warrant, including (i) the legal requirements within its jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any government or other consents that may need to be obtained in connection with such purchase, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. Holder’s purchase and payment for and continued beneficial ownership of the Warrant Stock will not violate any applicable securities or other laws of Holder’s jurisdiction. Holder acknowledges that no representations or warranties, oral or written, have been made by the Company or any agent thereof in connection with Holder’s exercise of this Warrant.

\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

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### EXHIBIT C

#### FORM OF TRANSFER

##### (To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the attached Warrant to purchase \* shares of Common Stock of JAGUAR HEALTH, INC. (the “Company”), to which the attached Warrant relates, and appoints all executive officers of the Company as Attorney to transfer such right on the books of JAGUAR HEALTH, INC., with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

\_\_\_\_\_  
(Address)

Signed in the presence of:  
\_\_\_\_\_  
\_\_\_\_\_

\*Insert here the number of shares without making any adjustment for additional shares of Common Stock or any other stock or other securities or property or cash which, pursuant to the adjustment provisions of the Warrant, may be deliverable upon exercise.

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### ANNEX I

Holder is an “Accredited Investor” as that term is defined in Regulation D promulgated by the Securities and Exchange Commission. The term “Accredited Investor” under Regulation D refers to:

A person or entity who is a director or executive officer of the Company;

Any bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Exchange Act; insurance Corporation as defined in Section 2(13) of the Securities Act; investment Corporation registered under the Investment Corporation Act of 1940; or a business development Corporation as defined in Section 2(a)(48) of that Act; Small Business Investment Corporation licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance Corporation, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decision made solely by persons that are accredited investors;

Any private business development Corporation as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Securities offered, with total assets in excess of \$5,000,000;

Any natural person whose individual net worth, or joint net worth with that person’s spouse, exclusive of value of principal residence at the time of his purchase exceeds \$1,000,000;



Any natural person who had an individual income in excess of \$200,000 during each of the previous two years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

Any entity in which all of the equity owners are accredited investors.

As used in this Annex I, the term "net worth" means the excess of total assets over total liabilities. For the purpose of determining a person's net worth, the principal residence owned by an individual shall be excluded. As used herein, "income" means actual economic income, which may differ from adjusted gross income for income tax purposes. Accordingly, the undersigned should consider whether it should add any or all of the following items to its adjusted gross income for income tax purposes in order to reflect more accurately its actual economic income: Any amounts attributable to tax-exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or Keogh retirement plan, and alimony payments.

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## Annex II

### **Rule 506(d)(1)(i) to (viii) under the Securities Act of 1933, as amended**

(i) Has been convicted, within ten years before such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the Commission; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(ii) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the Commission; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(iii) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(A) At the time of such sale, bars the person from:

(1) Association with an entity regulated by such commission, authority, agency, or officer;

(2) Engaging in the business of securities, insurance or banking; or

(3) Engaging in savings association or credit union activities; or

(B) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale;

(iv) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, at the time of such sale:

(A) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(B) Places limitations on the activities, functions or operations of such person; or

(C) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(v) Is subject to any order of the Commission entered within five years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(A) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(vi) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(vii) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(viii) Is subject to a United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

**201 MISSION  
SAN FRANCISCO, CALIFORNIA**

**OFFICE LEASE AGREEMENT**

BETWEEN

CA-MISSION STREET LIMITED PARTNERSHIP, a Delaware limited partnership

("LANDLORD")

AND

JAGUAR HEALTH, INC., a Delaware corporation

("TENANT")

SUITE 2375

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The following exhibits and attachments are incorporated into and made a part of this Lease:

<b>Exhibit A</b>	Outline and Location of Premises
<b>Exhibit B</b>	Expenses, Taxes and Insurance Expenses
<b>Exhibit C</b>	[Intentionally Omitted]
<b>Exhibit D</b>	[Intentionally Omitted]
<b>Exhibit E</b>	Building Rules and Regulations
<b>Exhibit F</b>	Additional Provisions
<b>Exhibit G</b>	Parking Agreement
<b>Exhibit H</b>	Form of Letter of Credit
<b>Exhibit I</b>	Disability Access Notice

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**1. Basic Lease Information.**

1.01 “Building” means the building located at 201 Mission Street, San Francisco, California, commonly known as 201 Mission. “Rentable Area of the Building” is deemed to be 511,449 square feet.

1.02 “Premises” means the area shown on Exhibit A to this Lease. The Premises consists of a portion of the twenty-third (23rd) floor known as Suite 2375. The “Rentable Area of the Premises” is deemed to be 6,311 square feet. All Rentable Area referred to herein is calculated in accordance with the “Office Buildings: Standard Methods of Measuring and Calculating Rentable Area” published by the Building Owners and Managers Association International (BOMA Z65.1-2010) as interpreted and applied by Landlord’s measurement firm to the Building. Landlord and Tenant stipulate and agree that the Rentable Area of the Building and the Premises as set forth herein are correct. If and to the extent that the Premises is exclusively served by an exterior deck, such exterior deck shall not be deemed a portion of the Premises for the purposes of the calculation of the rentable area of the Premises for the payment of Base Rent, but such exterior deck shall be deemed a part of the Premises for the purpose of Tenant’s indemnity and insurance obligations set forth in this Lease.

1.03 “Base Rent”:

Months of Term	Annual Rate Per Rentable Square Foot	Monthly Base Rent
Month 1 – Month 12	\$ 73.00	\$ 38,391.92**
Month 13 – Month 24	\$ 75.19	\$ 39,543.67
Month 25	\$ 77.45	\$ 40,729.98

\*\* Subject to abatement pursuant to Section 4.02

All such Base Rent shall be payable by Tenant in accordance with the terms of this Lease.

1.04 “Tenant’s Share”: 1.24%

1.05 “Base Year” for Taxes (defined in Exhibit B): 2018; “Base Year” for Expenses (defined in Exhibit B): 2018; “Base Year” for Insurance Expenses (defined in Exhibit B): 2018.

1.06 “Term”: The period commencing on September 1, 2018 (the “Commencement Date”) and, unless terminated earlier in accordance with this Lease, ending on

September 30, 2020, which is the last day of the twenty-fifth (25th) full calendar month of the Term (the “Termination Date”).

1.07 “Parking Rights”: One (1) parking space.

1.08 [Intentionally Omitted]

1.09 “Letter of Credit Amount”: \$475,000.00 (See Exhibit F, Section 1).

1.10 “Guarantor(s)”: None.

1.11 “Broker(s)”: Jones Lang LaSalle, representing Landlord. Tenant is not represented by a broker.

1.12 “Permitted Use”: General office and administrative use.

1.13 “Notice Address(es)”:

Landlord:

Jones Lang LaSalle Americas, Inc.  
201 Mission Street, Suite 250  
San Francisco, California 94105  
Attn: General Manager

Tenant:

Jaguar Health, Inc.  
201 Mission Street, Suite 2375  
San Francisco, California 94105  
Attn: Karen Wright

and:

CA-Mission Street Limited Partnership  
c/o LaSalle Investment Management, Inc.  
One Front Street, Suite 2100  
San Francisco, California 94111  
Attn: Stacie Hill  
Email: Stacie.Hill@lasalle.com (which email notice to be sent concurrently with written notice)

With a copy to:

Shartsis Friese LLP  
One Maritime Plaza, 18th Floor  
San Francisco, California 94111  
Attn: Kathleen Keeler Bryski

**Rent Payments:** Rent shall be payable to “CA-Mission Street Limited Partnership” at the following address:

CA-Mission Street Limited Partnership  
Jones Lang LaSalle Americas as Agent  
39481 Treasury Center  
Chicago, IL 60694-9400

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**For payments made by wire/ACH:**

Bank:  
ABA:  
Acct. No.:

- 1.14 “**Business Day(s)**” are 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 office buildings in the area where the Building is located. “**Building Service Hours**” are 7:00 A.M. to 6:00 P.M. on Business Days (other than Holidays).
- 1.15 **[Intentionally Omitted]**
- 1.16 “**Property**” means the Building and the parcel(s) of land on which it is located and, at Landlord’s discretion, the parking facilities and other improvements, if any, serving the Building and the parcel(s) of land on which they are located.

**2. Lease Grant.**

The Premises are hereby leased to Tenant from Landlord for the Term, together with the right to use the Common Areas, subject to the terms and conditions of this Lease. For purposes of this Lease, “**Common Areas**” mean those certain areas and facilities of the Building and other improvements on the Property which are from time to time provided by Landlord for the use in common of tenants of the Building and their employees, clients, customers, licensees and invitees or for use by the public, which facilities and improvements include any and all common corridors, elevator foyers, the lobby, vending areas, bathrooms on multi-tenant floors, electrical and telephone rooms, mechanical rooms, janitorial areas and other similar facilities of the Building and any and all grounds, landscaped areas, outside sitting areas, sidewalks, walkways and pedestrianways.

**3. Possession.**

3.01 As-Is Delivery; Timing. Tenant is in possession of Suite 2375 per the terms of that certain sublease dated as of May 8, 2015 by and between Tenant, as subtenant, and Healthmine Inc., as successor in interest to SeeChange Health Management Company, Inc., a Delaware corporation, as sublandlord (the “**Sublease**”), which Sublease has been amended to terminate as of September 30, 2018, simultaneously with the termination of the master lease of Suite 2375 between sublandlord and Landlord. Pursuant to the terms of the Sublease, Suite 2375 consists of approximately 6,008 square feet of Rentable Area. Landlord has remeasured Suite 2375, and Landlord and Tenant agree that, as a result of such remeasurement, and effective as of September 1, 2018, Suite 2375 shall consist of 6,311 square feet of Rentable Area. The Rentable Area of Suite 2375 was remeasured in accordance with the standards set forth in Section 1.02 above. Tenant has been in possession of Suite 2375 pursuant to the terms of the Sublease, and therefor accepts Suite 2375 in its “as is” condition, without any agreements, representations, understandings or obligations on the part of Landlord to (i) perform any alterations, additions, repairs or improvements, except that Landlord shall professionally clean the carpets in the Premises within sixty (60) days after the Commencement Date. The carpet

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cleaning will be performed after Business Hours at a time mutually acceptable to Landlord and Tenant and Tenant shall be responsible for moving all furniture and materials from areas to be cleaned, (ii) fund or otherwise pay for any alterations, additions, repairs or improvements to the Expansion, or (iii) grant Tenant any free or abated rent, concessions, credits or contributions of money with respect to the Premises. Notwithstanding the provisions of Section 5.02 of this Lease to the contrary, Landlord shall have no obligation to correct any violations of Title III of the Americans with Disabilities Act with respect to Suite 2375.

3.02 One (1) Business Day following the later of delivery by Tenant to Landlord of an executed Lease, Tenant shall deliver (B) the prepaid Base Rent required pursuant to Section 4.01 below, (C) evidence of all insurance coverage required hereunder, and (D) the Letter of Credit.

**4. Rent.**

4.01 General. From and after the Commencement Date, Tenant shall pay Landlord, without any setoff or deduction, unless expressly set forth in this Lease, all Base Rent and Additional Rent due for the Term (collectively referred to as “**Rent**”). “**Additional Rent**” means all sums (exclusive of Base Rent) that Tenant is required to pay Landlord under this Lease. Tenant shall pay and be liable for all rental, sales and use taxes (but excluding income taxes), if any, imposed upon or measured by Rent. Base Rent and recurring monthly charges of Additional Rent shall be due and payable in advance on the first day of each calendar month without notice or demand, provided that the installment of Base Rent attributable to the first (1st) full calendar month of the Term following the Abatement Period shall be due concurrently with the execution of this Lease by Tenant. All other items of Rent shall be due and payable on or before thirty (30) days after billing by Landlord. Rent shall be made payable to the entity, and sent to the address, that Landlord designates and shall be made by

good and sufficient check or by other means acceptable to Landlord. Landlord may return to Tenant, at any time within fifteen (15) days after receiving same, any payment of Rent (a) made following any Default (irrespective of whether Landlord has commenced the exercise of any remedy), or (b) that is less than the amount due. Each such returned payment (whether made by returning Tenant's actual check, or by issuing a refund in the event Tenant's check was deposited) shall be conclusively presumed not to have been received or approved by Landlord. If Tenant does not pay any Rent when due hereunder, Tenant shall pay Landlord an administration fee in the amount of five percent (5%) of the past due amount. In addition, past due Rent shall accrue interest at a rate equal to the lesser of (i) twelve percent (12%) per annum or (ii) the maximum legal rate, and Tenant shall pay Landlord a fee for any checks returned by Tenant's bank for any reason. To ascertain whether any interest payable exceeds the legal limits imposed, any non-principal payment (including the administration fee) shall be considered to the extent permitted by Law to be an expense or a fee, premium or penalty, rather than interest. Landlord's acceptance of less than the correct amount of Rent shall be considered a payment on account of the oldest obligation due from Tenant hereunder, then to any current Rent then due hereunder, notwithstanding any statement to the contrary contained on or accompanying any such payment from Tenant. Rent for any partial month during the Term shall be prorated. No endorsement or statement on a check or letter accompanying payment shall be considered an accord and satisfaction. Accordingly, Tenant hereby waives the provisions of California Uniform Commercial Code §3311 (and any similar Law that would permit an accord and satisfaction contrary to the provisions of this Section 4.01). Any partial payment shall be treated as a payment on account, and Landlord may accept such payment without prejudice to Landlord's right to recover any balance due or to pursue any other remedy permitted by this Lease. No payment, receipt or acceptance of Rent following (a) any Default; (b) the

commencement of any action against Tenant; (c) termination of this Lease or the entry of judgment against Tenant for possession of the Premises; or (d) the exercise of any other remedy by Landlord, shall cure the Default, reinstate the Lease, grant any relief from forfeiture, continue or extend the Term, or otherwise affect or constitute a waiver of Landlord's right to or exercise of any remedy, including Landlord's right to terminate the Lease and recover possession of the Premises; provided, however, the full payment of all amounts required to cure any Monetary Default shall operate to cure said Default if paid within the time period provided in this Lease. The foregoing constitutes actual notice to Tenant of the provisions of California Code of Civil Procedure §1161.1(c).

4.02. Rent Abatement. Notwithstanding Section 4.01 above to the contrary, so long as Tenant is not in Default, Tenant shall be entitled to an abatement of Base Rent for the first full calendar month of the Term (the "**Abatement Period**"). The total amount of Base Rent abated during the Abatement Period is \$38,391.92 and is referred to herein as the "**Abated Rent**". If Tenant is in Monetary Default at any time, or in the event of any other Default where Landlord has elected to terminate the Lease, at Landlord's option, all Abated Rent credited to Tenant prior to the occurrence of the Default shall become due and payable to Landlord. If a Default of any nature occurs prior to the expiration of the Abatement Period, there will be no further abatement of Base Rent pursuant to this Section 4.02. No such recapture by Landlord of the Abated Rent pursuant to clause (a) above shall constitute a waiver of any Default of Tenant or any election of remedies by Landlord.

4.03. Additional Rent. Tenant shall pay Tenant's Share of Taxes, Insurance Expenses and Expenses in accordance with **Exhibit B** of this Lease. In addition, Tenant shall pay before delinquency any and all taxes levied or assessed and which become payable by Tenant (or directly or indirectly by Landlord) during the Term (excluding, however, state and federal personal or corporate income taxes measured by the net income of Landlord from all sources, capital stock taxes, and estate and inheritance taxes), whether or not now customary or within the contemplation of the parties hereto, which are based upon, measured by or otherwise calculated with respect to: (i) the gross or net rental income of Landlord under this Lease, including, without limitation, any gross receipts tax levied by any taxing authority (including without limitation the San Francisco Gross Receipts Tax and Business Registration Fees Ordinance (2012 Proposition E)), or any other gross income tax or excise tax levied by any taxing authority with respect to the receipt of the rental payable hereunder, except to the extent Landlord elects to include any of the foregoing in Taxes; (ii) the value of Tenant's equipment, furniture, fixtures or other personal property located in the Premises; (iii) the possession, lease, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; (iv) the value of any leasehold improvements, alterations or additions made in or to the Premises, regardless of whether title to such improvements, alterations or additions shall be in Tenant or Landlord; or (v) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

## 5. Compliance with Laws; Use.

5.01 Tenant's Compliance with Laws. The Premises shall be used for the Permitted Use and for no other use whatsoever. Tenant shall comply with all statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity whether in effect now or later, including the Americans with Disabilities Act ("**Law(s)**"), regarding the operation of Tenant's business and the use, condition, configuration and occupancy of the Premises. In addition, Tenant, at its sole cost and expense, will promptly comply with any Laws that relate to the "**Base Building**" (defined below) and/or any areas of the Building or the Property outside the

Premises, but only to the extent such obligations are triggered by Tenant's use of the Premises (other than for general office use) or Alterations or improvements in the Premises performed by or on behalf of Tenant, including the Tenant Improvements. "**Base Building**" shall mean the structural portions of the Building, the public restrooms and the Building mechanical, electrical, fire/life-safety and plumbing systems and equipment. Tenant shall promptly provide Landlord with copies of any notices it receives regarding an alleged violation of Law in connection with the Premises.

5.02 ADA Compliance. Landlord, at its sole cost and expense (except to the extent properly included in Expenses), shall be responsible for correcting any violations of Title III of the Americans with Disabilities Act with respect to the Common Areas. Landlord's obligation to correct any violations of Title III of the Americans with Disabilities Act with respect to the Premises shall be limited to violations that arise out of the condition of the Premises prior to the construction of the Tenant Improvements and the installation of any furniture, equipment and other personal property of Tenant. Notwithstanding the foregoing, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by Law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by Law. Notwithstanding the foregoing, Tenant, not Landlord, shall be responsible for the correction of any violations that arise out of or in connection with the specific nature of Tenant's business in the Premises (other than general office use) and/or the acts or omissions of Tenant, its agents, employees or contractors, Tenant's arrangement of any furniture, equipment or other property in the Premises, any repairs, or alterations performed by or on behalf of Tenant and any design or configuration of the Premises specifically requested by Tenant.

5.03 Density. Tenant shall not exceed the standard density limit for the Building (i.e., one (1) person per every 150 square feet of Rentable Area of the Premises (the “**Standard Density**”)).

5.04 Rules and Regulations. Tenant shall comply with the rules and regulations attached hereto as **Exhibit E** and such other reasonable rules and regulations adopted by Landlord from time to time, including rules and regulations for the performance of Alterations (defined in Section 9.03).

## 6. Security for Lease.

6.01 Letter of Credit. Tenant shall provide a Letter of Credit pursuant to the provisions of **Exhibit F** attached hereto.

## 7. Building Services.

7.01 Building Services. Landlord shall furnish Tenant with the following services: (a) water for use in the Base Building lavatories and in any kitchen/coffee room located within the Premises; (b) heat and air conditioning in season during Building Service Hours, although (i) Tenant shall have the right to receive HVAC service during hours other than Building Service Hours by paying Landlord’s then standard charge for additional HVAC service (current charges are set forth below) and providing such prior notice as is reasonably specified by Landlord (Landlord’s charge for additional HVAC service shall be based on a minimum of four (4) hours of usage), and (ii) if Tenant is permitted to connect any supplemental HVAC units to the Building’s condenser water loop or chilled water line, such permission shall be conditioned upon Landlord having adequate excess capacity from time to time and such connection and use shall

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be subject to Landlord’s reasonable approval and reasonable restrictions imposed by Landlord, and Landlord shall have the right to charge Tenant a connection fee and/or a monthly usage fee, as reasonably determined by Landlord; (c) janitorial service on Business Days; (d) elevator service; (e) electricity in accordance with the terms and conditions of Section 7.02; (f) access to the Building for Tenant and its employees twenty-four (24) hours per day/7 days per week, subject to the terms of this Lease and such protective services or monitoring systems, if any, as Landlord may reasonably impose, including, without limitation, sign-in procedures and/or presentation of identification cards; and (g) such other services as Landlord reasonably determines are necessary or appropriate for the Property. If Landlord, at Tenant’s request, provides any services which are not Landlord’s express obligation under this Lease, including, without limitation, any repairs which are Tenant’s responsibility pursuant to Section 9 below, Tenant shall pay Landlord, or such other party designated by Landlord, the cost of providing such service plus a reasonable administrative charge.

HVAC service during hours other than Building Service Hours requires at least twenty-four (24) hours prior notice to Landlord, and can be requested for either “Economizer” service, or for “fan only” service. Full HVAC service during hours other than Building Service Hours requires at least one (1) week prior notice to Landlord. There is a four (4) hour minimum for after-hours HVAC service. Landlord’s charges for such services as of the Effective Date are as follows:

Economizer:	\$85.00 per hour, plus a \$25.00 programming fee
Full HVAC:	\$180.00 per hour on weeknights, plus engineering and labor costs
Full HVAC:	\$230.00 per hour on weekends/Holidays, plus engineering and labor costs

7.02 Electricity. Electricity used by Tenant in the Premises shall be paid for by Tenant through inclusion in Expenses (except as provided for excess usage). Without the consent of Landlord, Tenant’s use of electrical service shall not exceed Building standard usage, per square foot, as reasonably determined by Landlord, based upon the Building standard electrical design load. Landlord shall have the right to measure electrical usage by commonly accepted methods, including the installation of measuring devices such as submeters and check meters. If it is determined that Tenant is using electricity in such quantities or during such periods as to cause the total cost of Tenant’s electrical usage, on a monthly, per-rentable-square-foot basis, to materially exceed that which Landlord reasonably deems to be standard for the Building, Tenant shall pay Landlord Additional Rent for the cost of such excess electrical usage and, if applicable, for the cost of purchasing and installing the measuring device(s).

7.03 Service Failure. Landlord’s failure to furnish, or any interruption, diminishment or termination of services due to the application of Laws, the failure of any equipment, the performance of maintenance, repairs, improvements or alterations, utility interruptions or the occurrence of an event of Force Majeure (defined in Section 26.04) (collectively a “**Service Failure**”) shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services. However, if the Premises, or a material portion of the Premises, are made untenable for a period in excess of five (5) consecutive Business Days (and the Premises are not being used by Tenant) as a result of a Service Failure that is reasonably within the control of Landlord to

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correct, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the sixth (6th) consecutive Business Day of the Service Failure and ending on the day the service has been restored. If the entire Premises have not been rendered untenable by the Service Failure, the amount of abatement shall be equitably prorated.

## 8. Leasehold Improvements.

All improvements in and to the Premises, including any Alterations (defined in Section 9.03) (collectively, “**Leasehold Improvements**”) shall remain upon the Premises at the end of the Term without compensation to Tenant, provided that Tenant, at its expense, shall remove all Cable (defined in Section 9.01 below). In addition, Landlord, by written notice delivered to Tenant at least 30 days prior to the Termination Date, may require Tenant, at Tenant’s expense, to remove any Alterations; provided in all cases Tenant shall remove all Cable (defined below) prior to the Termination Date (the Cable and such other items collectively are referred to as “**Required Removables**”). Required Removables shall include, without limitation, internal stairways, raised

floors, personal baths and showers, vaults, supplemental HVAC units (and associated mechanical infrastructure), rolling file systems and structural alterations and modifications and specialized non-standard office improvements (game room, bowling alley, etc.). Notwithstanding the foregoing, Tenant, at the time it requests approval for a proposed Alteration, including any initial Alterations or Tenant Improvements, may request in writing that Landlord advise Tenant whether the improvement is a Required Removable. In such event, if Landlord approves the Alteration(s) in question, Landlord shall advise Tenant concurrently with such approval as to which portions of the proposed Alterations or other improvements are Required Removables. Required Removables shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables to Landlord's satisfaction. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's expense.

## 9. Repairs and Alterations.

9.01 **Tenant's Obligations.** Tenant, at its sole cost and expense, shall perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and keep the Premises in good condition and repair, reasonable wear and tear excepted. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor covering; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) Alterations; (f) supplemental air conditioning units, kitchens, including hot water heaters, plumbing, and similar facilities exclusively serving the Premises, whether such items are installed by Tenant or are currently existing in the Premises and whether such items are located within or outside of the Premises; and (g) electronic, fiber, phone and data cabling and related equipment installed by or for the exclusive benefit of Tenant (collectively, "**Cable**"). All repairs and other work performed by Tenant or its contractors, including that involving Cable, shall be subject to the terms of Section 9.03 below. If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs and Tenant shall pay the reasonable cost of the repairs, together with an administrative charge equal to ten percent (10%) of the cost of the repairs.

9.02 **Landlord's Obligations.** Landlord shall keep and maintain in good repair and working order and perform maintenance upon the: (a) Base Building; (b) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building in general (the "**Building**

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**Systems**"); (c) Common Areas; (d) roof of the Building; (e) exterior windows of the Building; and (f) elevators. 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 any similar or successor Laws now or hereafter in effect.

9.03 **Alterations.** Tenant shall not make alterations, repairs, additions or improvements or install any Cable (collectively referred to as "**Alterations**") without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonably withheld or delayed. However, Landlord's consent shall not be required for any Alteration that satisfies all of the following criteria (a "**Cosmetic Alteration**"): (a) is of a cosmetic nature such as painting, wallpapering, hanging pictures and installing carpeting; (b) is not visible from the exterior of the Premises or Building; (c) will not affect the Base Building (defined in Section 5); (d) does not require work to be performed inside the walls or above the ceiling of the Premises; (e) will not create excessive noise or result in the dispersal of odors or debris (including dust or airborne particulate matter); (f) costs less than \$35,000.00; and (g) does not require the issuance of a construction permit. Cosmetic Alterations shall be subject to all the other provisions of this Section 9.03. Prior to starting any work, Tenant shall furnish Landlord with detailed plans and specifications (which shall be in CAD format if requested by Landlord) prepared by a duly licensed architect or engineer; names of contractors reasonably acceptable to Landlord (provided that Landlord may designate specific contractors with respect to Base Building, Building Systems and vertical Cable, as may be described more fully below); required permits and approvals; evidence of contractor's and subcontractor's insurance in form and amounts reasonably required by Landlord; and any security for performance in amounts reasonably required by Landlord. Landlord may designate specific contractors with respect to oversight, installation, repair, connection to, and removal of vertical Cable. All Cable shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Cable with wire) to show Tenant's name, suite number, and the purpose of such Cable (i) every 6 feet outside the Premises (specifically including, but not limited to, the electrical room risers and any Common Areas), and (ii) at the termination point(s) of such Cable. All changes to plans and specifications must also be submitted to Landlord for its approval. Alterations shall be constructed in a good and workmanlike manner using materials of a quality reasonably approved by Landlord, and Tenant shall ensure that no Alteration impairs any Building system or Landlord's ability to perform its obligations hereunder. Landlord's consent shall be deemed to have been reasonably withheld if the proposed Alterations could (a) affect any structural component of the Building; (b) be visible from or otherwise affect any portion of the Building other than the interior of the Premises; (c) affect the Base Building or any Building Systems; (d) result in Landlord being required under any Laws to perform any work that Landlord could otherwise avoid or defer; (e) result in an increase in the demand for utilities or services that Landlord is required to provide (whether to Tenant or to any other tenant in the Building); (f) cause an increase in any Insurance Expenses; (g) result in the disturbance or exposure of, or damage to, any ACM or other Hazardous Material (defined below); or (h) violate or result in a violation of any Law, Rule or requirement under this Lease. Tenant shall reimburse Landlord for any sums paid by Landlord for third party examination of Tenant's plans for non-Cosmetic Alterations. In addition, Tenant shall pay Landlord a fee for Landlord's oversight and coordination of any non-Cosmetic Alterations equal to ten percent (10%) of the cost of the Alterations. Landlord may require a deposit of its estimated fees in advance of performing any review. Neither the payment of any such fees or costs, nor the monitoring, administration or control by Landlord of any contractor or any part of the Alterations shall be deemed to constitute any express or implied warranty or representation that any Alteration was properly designed or constructed, nor shall it create any liability on the part of Landlord. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with

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Law. Upon completion of any Alteration, Tenant shall (a) furnish Landlord with "as-built" plans (in CAD format, if requested by Landlord) for non-Cosmetic Alterations, (b) cause a timely notice of completion to be recorded in the Office of the Recorder of the county in which the Building is located, in accordance with California Civil Code § 8182 or any successor statute; and (c) deliver to Landlord evidence of full payment and unconditional final lien waivers for all labor, services and materials furnished in connection therewith. By way of clarification, any cubicles that Tenant places in the Premises that are not affixed to the walls, ceiling or floor are Tenant's personal property and not Alterations.

## 10. Entry by Landlord.

Landlord may enter the Premises to inspect, show or clean the Premises or to perform or facilitate the performance of repairs, alterations or additions to the Premises or any portion of the Building. Except in emergencies or to provide services, Landlord shall provide Tenant with prior notice of entry at least twenty four (24) hours in advance, which notice may be delivered by telephone or by email, and shall use reasonable efforts to minimize any interference with Tenant's use of the Premises. If necessary, Landlord may temporarily close all or a portion of the Premises to perform repairs, alterations and additions.



However, except in emergencies, Landlord will not close the Premises if the work can reasonably be completed on weekends and after Building Service Hours. Entry by Landlord shall not constitute a constructive eviction or entitle Tenant to an abatement or reduction of Rent.

## 11. Assignment and Subletting.

11.01 Restrictions on Transfer. Tenant shall not assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Premises (collectively or individually, a “**Transfer**”) without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed if Landlord does not exercise its recapture rights under Section 11.02. Without limitation, Landlord’s consent shall not be considered unreasonably withheld if the proposed transferee is a governmental entity or an occupant of the Building, or if the proposed transferee, whether or not an occupant of the Building, is in discussions with Landlord regarding the leasing of space within the Building, and Landlord has, or reasonably expects to have within six (6) months after such time, comparable space available in the Building reasonably sufficient to meet the proposed transferee’s requirements. If the entity(ies) which directly or indirectly controls the voting shares/rights of Tenant (other than through the ownership of voting securities listed on a recognized securities exchange) changes at any time, such change of ownership or control shall constitute a Transfer. Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any similar or successor Laws, now or hereafter in effect, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable Laws, on behalf of the proposed transferee. Any Transfer in violation of this Section shall, at Landlord’s option, be deemed a Default by Tenant and shall be voidable by Landlord. In no event shall any Transfer, including a Permitted Transfer, release or relieve Tenant from any obligation under this Lease, and Tenant shall remain primarily liable for the performance of the Tenant’s obligations under this Lease, as amended from time to time.

11.02 Request Procedure; Recapture. Tenant shall provide Landlord with financial statements (prepared in accordance with generally accepted accounting principles), a reasonably determined calculation of excess rent (described in Section 11.03 below) and company information for the proposed transferee (or, in the case of a change of ownership or control, for the proposed new controlling entity(ies)), a fully executed copy of the proposed

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assignment, sublease or other Transfer documentation and such other information as Landlord may reasonably request. Within thirty (30) days after receipt of the required information and documentation, Landlord shall either: (a) consent to the Transfer by execution of Landlord’s form of consent agreement; (b) reasonably refuse to consent to the Transfer in writing; or (c) in the event of an assignment of Tenant’s interest in this Lease or subletting of more than thirty-five percent (35%) of the Rentable Area of the Premises, recapture the portion of the Premises that Tenant is proposing to Transfer. If Landlord exercises its right to recapture, this Lease shall automatically be amended (or terminated if the entire Premises is being assigned or sublet) to delete the applicable portion of the Premises effective on the proposed effective date of the Transfer, although Landlord may require Tenant to execute a reasonable amendment or other document reflecting such reduction or termination. Concurrently with Tenant’s request for a proposed Transfer, Tenant shall pay Landlord a review fee of \$1,500.00 for Landlord’s review of any requested Transfer, regardless of whether consent is granted, and thereafter Tenant shall be obligated to pay all reasonable costs incurred by Landlord in preparing the documents for any requested Transfer, including but not limited to Landlord’s attorneys’ fees.

11.03 Transfer Premium. Tenant shall pay Landlord fifty percent (50%) of all rent and other consideration which Tenant receives as a result of a Transfer that is in excess of the Rent payable to Landlord for the portion of the Premises and Term covered by the Transfer. Tenant shall pay Landlord for Landlord’s share of the excess within thirty (30) days after Tenant’s receipt of the excess. In determining the excess due Landlord, Tenant may deduct from the excess, on a straight-line basis, the following reasonable and customary expenses directly incurred by Tenant attributable to the Transfer: commercially reasonable attorneys’ fees and brokerage commissions.

11.04 Additional Restrictions. Notwithstanding anything to the contrary contained in this Section 11, neither Tenant nor any other person having a right to possess, use, or occupy (for convenience, collectively referred to in this subsection as “**Use**”) the Premises shall enter into any lease, sublease, license, concession or other agreement for Use of all or any portion of the Premises which provides for rental or other payment for such Use based, in whole or in part, on the net income or profits derived by any person that leases, possesses, uses, or occupies all or any portion of the Premises (other than an amount based on a fixed percentage or percentages of receipts or sales), and any such purported lease, sublease, license, concession or other agreement shall be absolutely void and ineffective as a transfer of any right or interest in the Use of all or any part of the Premises.

11.05 Collection of Rent. If Tenant’s interest in this Lease is assigned, Landlord may elect to collect Rent directly from the assignee. If the Premises or any part thereof is sublet or used or occupied by anyone other than Tenant, Landlord may, after any Default(s) by Tenant (or if Tenant becomes insolvent or rejects this Lease or any relevant sublease under section 365 of the Bankruptcy Code), collect from the subtenant or occupant all amounts due from such party to Tenant. Tenant hereby authorizes and directs any assignee or subtenant (a “**Transferee**”) to make payments of rent or other consideration directly to Landlord upon receipt of any notice from Landlord requesting such action. Landlord may apply all such amounts collected to Rent due or coming due hereunder, and no such collection or application shall be deemed a waiver of any of Landlord’s rights or remedies hereunder, or the acceptance by Landlord of such party as a permitted Transferee, or the release of Tenant or any Guarantor from any of its obligations under or in connection with this Lease. The consent by Landlord to any Transfer shall not relieve Tenant from obtaining the express written consent of Landlord to any other Transfer. The listing of any name other than that of Tenant on any door of the Premises or on any directory or in any elevator in the Building, or otherwise, or the acceptance of Rent for the

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Premises from any entity other than Tenant shall not operate to vest in the person so named any right or interest in this Lease or in the Premises, or be deemed to constitute, or serve as a substitute for, or any waiver of, any consent of Landlord required under this Section 11.

11.06 Permitted Transfers. So long as Tenant is not entering into the Permitted Transfer for the purpose of avoiding or otherwise circumventing the remaining terms of this Section 11, Tenant may assign its entire interest in this Lease, without the consent of Landlord, to (i) an affiliate, subsidiary, or parent of Tenant, or a corporation, partnership or other legal entity wholly owned by Tenant (collectively, an “**Affiliated Party**”), or (ii) a successor to Tenant by purchase, merger, consolidation or reorganization, provided that all of the following conditions are satisfied (each such Transfer a “**Permitted Transfer**”): (1) Tenant is not in Default; (2) Tenant gives Landlord written notice at least thirty (30) days prior to the effective date of the proposed Permitted Transfer; and (3) with respect to a purchase, merger, consolidation or reorganization or any other Permitted Transfer which results in Tenant ceasing to exist as a separate legal entity, (a) Tenant’s successor shall own all or substantially all of the assets of Tenant, and (b) Tenant’s successor shall have a net worth which is

at least equal to the greater of Tenant's net worth at the date of this Lease or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement. As used herein, (A) "parent" shall mean a company which owns a majority of Tenant's voting equity; (B) "subsidiary" shall mean an entity wholly owned by Tenant or at least 51% of whose voting equity is owned by Tenant; and (C) "affiliate" shall mean an entity controlled by, controlling or under common control with Tenant. Notwithstanding the foregoing, if any parent, affiliate or subsidiary to which this Lease has been assigned or transferred subsequently sells or transfers its voting equity or its interest under this Lease other than to another parent, subsidiary or affiliate of the original Tenant named hereunder, such sale or transfer shall be deemed to be a Transfer requiring the consent of Landlord hereunder.

## 12. Liens.

Tenant shall not permit mechanics' or other liens to be placed upon or otherwise encumber the Property, Premises or Tenant's leasehold interest in connection with any work or service done or purportedly done by or for the benefit of Tenant or its transferees, or the Premises. Tenant shall give Landlord notice at least fifteen (15) days prior to the commencement of any work in the Premises to afford Landlord the opportunity, where applicable, to post and record notices of non-responsibility. Tenant, within ten (10) days of notice from Landlord, shall fully discharge any lien by settlement, by payment of the claim, posting a proper bond, or by insuring over the lien in the manner prescribed by the applicable lien Law and, if Tenant fails to do so, Tenant shall be deemed in Default and, in addition to any other remedies available to Landlord as a result of such Default, Landlord, at its option (without any duty to investigate the validity of the lien or other encumbrance), may bond, insure over or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees.

## 13. Indemnity and Waiver of Claims.

13.01 **Indemnity.** Except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Related Parties (defined below), Tenant shall indemnify, protect, defend and hold Landlord and all Landlord Related Parties harmless against and from all liabilities, obligations, losses, damages, penalties, claims, actions, costs, charges and

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expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by Law) (collectively referred to as "**Losses**"), which may be imposed upon, incurred by or asserted against Landlord or any Landlord Related Parties by any third party and arising out of or in connection with any damage or injury occurring in the Premises or any acts or omissions (including violations of Law) of Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, employees and agents (each a "**Tenant Related Party**") or any of Tenant's transferees, contractors, invitees or licensees in or about the Property (inclusive of any Common Areas). Tenant hereby waives all claims against and releases Landlord and its trustees, members, principals, beneficiaries, partners, officers, directors, employees, Mortgagees (defined in Section 23) and agents (the "**Landlord Related Parties**") from all claims for any injury to or death of persons, damage to property or business loss in any manner related to (a) Force Majeure, (b) acts of third parties, (c) the bursting or leaking of any tank, water closet, drain or other pipe, (d) the inadequacy or failure of any security or protective services, personnel or equipment, or (e) any matter not within the reasonable control of Landlord. The indemnities provided in this Section 13.01 shall survive the expiration or earlier termination of this Lease.

13.02 **Hazardous Materials.** "**Environmental Laws**" means all Laws pertaining to (a) protection of health against environmental hazards; (b) the protection of the environment, including air, soils, wetlands, and surface and underground water, from contamination by any substance that may have any adverse health effect; (c) underground storage tank regulation or removal; (d) protection or regulation of natural resources; (e) protection of wetlands or wildlife; (f) management, regulation and disposal of solid and hazardous wastes; (g) radioactive materials; (h) biologically hazardous materials; (i) indoor air quality; (j) the manufacture, possession, presence, use, generation, storage, transportation, treatment, release, emission, discharge, disposal, abatement, cleanup, removal, remediation or handling of any Hazardous Materials. Environmental Laws include the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., as well as all similar state and local Laws. "**Hazardous Material**" means any substance the release of or the exposure to which is prohibited, limited or regulated by any Environmental Law, or which poses a hazard to human health because of its toxicity or other adverse effect, including (a) any "oil," as defined by the Federal Water Pollution Control Act and regulations promulgated thereunder (including crude oil or any fraction of crude oil); (b) any radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §2011 et seq.; (c) *Stachybotris chartarum* and other molds; (d) asbestos containing materials ("**ACM**") in any form or condition; and (e) polychlorinated biphenyls ("**PCBs**") and any substances or compounds containing PCBs.

- (a) Tenant shall not use, store or permit Hazardous Materials to be present on or about the Premises. Notwithstanding the foregoing, Tenant may keep and use, solely for maintenance and administrative purposes, small amounts of ordinary cleaning and office supplies customarily used in business offices (such as, for example, glass cleaner, carpet spot remover, and toner for Tenant's business equipment in use on the Premises), provided that Tenant complies with all Environmental Laws relating to the use, storage or disposal of all such supplies. With respect to the presence of Hazardous Materials in or about the Premises that are stored, used or permitted by Tenant or any Tenant Related Party, Tenant

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shall provide to Landlord on January 1st of each calendar year during the Term, or upon request from Landlord, Material Safety Data Sheets (MSDS) in compliance with Hazard Communication Standards of the Occupational Safety & Health Administration.

- (b) If the use, storage or possession of Hazardous Materials by Tenant or any Tenant Related Party on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises or the Building, Tenant agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (a) the requirements of all Environmental Laws, and any governmental authority responsible for the enforcement of any Environmental Laws; and (b) any additional requirements of Landlord that are necessary, in Landlord's sole discretion, to protect the value of the Premises and the Building. Landlord shall also have

the right, but not the obligation, to take whatever action with respect to any such Hazardous Materials that it deems necessary, in Landlord's sole discretion, to protect the value of the Premises and the Building. All costs and expenses paid or incurred by Landlord in the exercise of such right shall be payable by Tenant upon demand.

- (c) Upon reasonable notice to Tenant, Landlord may inspect the Premises for the purpose of determining whether there exists on the Premises any Hazardous Materials or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. The right granted to Landlord herein to perform inspections shall not create a duty on Landlord's part to inspect the Premises, or liability on the part of Landlord for Tenant's use, storage or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on or about the Premises by Tenant or any Tenant Related Party, and in a condition that complies with all Environmental Laws.
- (d) Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all claims, damages, liabilities, fines, judgments, penalties, costs, losses (including loss in value of the Premises or the Building, the loss of rentable or usable space, any adverse effect on marketability of the Building or any space therein, and all sums paid for settlement of claims), costs incurred in connection with any site investigation or any cleanup, removal or restoration mandated by any governmental authority, and expenses (including attorneys' fees, consultant and expert fees) to the extent attributable to (i) any Hazardous Materials placed on or about the Building by Tenant or any Tenant Related Party, or on or about the Premises by any party other than Landlord, at any time during the Term, or (ii) Tenant's failure to comply with any of its obligations under this Section 13.02, all of which shall survive the expiration or earlier termination of this Lease.

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## 14. Insurance.

14.01 Tenant's Insurance. From and after the date Tenant first has access to the Premises, Tenant shall maintain the following insurance ("**Tenant's Insurance**"):

- (a) Commercial General Liability Insurance applicable to the Premises and its appurtenances written on an occurrence (rather than "claims made") basis, covering the Premises and all operations of Tenant in or about the Premises against claims for bodily injury, death, property damage, advertising injury and products liability and to include contractual liability coverage insuring Tenant's indemnification obligations under this Lease, to be in combined single limits of not less than \$1,000,000 each occurrence for bodily injury, death and property damage, \$2,000,000 for products/completed operations aggregate, \$2,000,000 for personal injury, and to have general aggregate limits of not less than \$2,000,000 (per location) and Umbrella Liability Insurance in an amount not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate. The general aggregate limits under the Commercial General Liability insurance policy or policies shall apply separately to the Premises and to Tenant's use thereof (and not to any other location or use of Tenant) and such policy shall contain an endorsement to that effect. The certificate of insurance evidencing the form of policy shall specify all endorsements required herein and shall specify on the face thereof that the limits of such policy apply separately to the Premises.
- (b) Insurance covering any of the items included in any equipment maintained by Tenant, as well as trade fixtures, merchandise, movable partitions, furniture and other personal property from time to time in, on or upon the Premises ("**Tenant's Property**"), and all Leasehold Improvements, in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against perils included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy, and including earthquake sprinkler leakage coverage;
- (c) Workers' Compensation Insurance in amounts required by Law;
- (d) Employers Liability Coverage of at least \$500,000.00 per occurrence (with \$500,000.00 disease coverage per employee);
- (e) if Tenant owns or leases any vehicles, automobile liability coverage for all vehicles owned or leased by Tenant in an amount not less than \$1,000,000.00 per accident; and
- (f) business interruption coverage in an amount equal to 100% of Tenant's estimated gross revenues from the Premises for a twelve (12) month period.

All policies of the insurance provided for in this Section 14.01 above shall be issued in form acceptable to Landlord by insurance companies with a rating and financial size of not less than A:XII in the most current available "Best's Insurance Reports", and licensed to do business in the state of California. Each and every such policy:

- (i) shall designate Landlord (as well as Landlord's managing agent, asset manager, and any mortgagee of Landlord and any other party reasonably designated by

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Landlord) as an additional insured, except with respect to the insurance described in clauses (c) and (d) above;

- (ii) shall be delivered in its entirety (or, in lieu thereof, a certificate in form and substance satisfactory to Landlord) to each of Landlord and any such other parties in interest prior to any entry by Tenant or Tenant's employees or contractors onto the Premises and thereafter within five (5) days after the inception (or renewal) of each new policy, and as often as any such policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent;
- (iii) shall contain a provision that the insurer will give to Landlord at least thirty (30) days' notice in writing (and ten (10) days in the case of non-payment) in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of

insurance; and

- (iv) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry.

In addition, Landlord shall be named as a loss payee with respect to Tenant's Property insurance on the Leasehold Improvements. Tenant will be responsible for the payment of any deductible amount under any policy of insurance maintained by Tenant. Tenant shall additionally carry and maintain such other types of insurance coverage in such reasonable amounts as may be reasonably requested from time to time by Landlord.

14.02 Landlord's Insurance. Landlord shall maintain so called All Risk property insurance on the Building in amounts reasonably determined by Landlord to be necessary, together with such other insurance coverage as Landlord, in its reasonable judgment, may elect to maintain; Landlord may elect to self-insure with respect to any such coverage.

## 15. Subrogation.

Landlord and Tenant hereby waive and release, and shall cause their respective insurance carriers to waive and release, any and all rights of recovery, claims, actions or causes of action against the other for any loss or damage with respect to Tenant's Property, Leasehold Improvements, the Building, the Premises, or any contents thereof, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance. The parties agree that the foregoing waiver shall be binding upon their respective property and business income insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) each party shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy.

## 16. Casualty Damage.

16.01 Casualty; Completion Estimate; Termination. If, as a result of fire or other casualty (each, a "Casualty"), all or any portion of the Premises becomes untenable or inaccessible, Landlord, with reasonable promptness, shall cause a general contractor selected by Landlord to provide Landlord with a written estimate of the amount of time required, using standard working methods, to substantially complete the repair and restoration of the Premises and any Common

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Areas necessary to provide access to the Premises ("**Completion Estimate**"). Landlord shall promptly forward a copy of the Completion Estimate to Tenant. If the Completion Estimate indicates that the Premises or any Common Areas necessary to provide access to the Premises cannot be made tenantable within 210 days from the date of the Casualty (when such repairs are made without the payment of overtime or other premiums), then either party shall have the right to terminate this Lease upon written notice to the other within ten (10) days after Landlord's delivery of the Completion Estimate. Tenant, however, shall not have the right to terminate this Lease if the Casualty was caused by the gross negligence or intentional misconduct of Tenant or any Tenant Related Parties. In addition, Landlord, by notice delivered to Tenant within ninety (90) days after the date of the Casualty, shall have the right to terminate this Lease if the Building or Property shall be damaged by Casualty, whether or not the Premises are affected, and one or more of the following conditions is present: (1) in Landlord's reasonable judgment, repairs cannot reasonably be completed within two hundred ten (210) days from the date the repairs are started (when such repairs are made without the payment of overtime or other premiums); (2) any Mortgagee requires that the insurance proceeds or any portion thereof be applied to the payment of the mortgage debt; (3) the damage is not fully covered by Landlord's insurance policies; (4) Landlord decides to rebuild the Building or Common Areas so that they will be substantially different structurally or architecturally; or (5) the damage occurs during the last twenty-four (24) months of the Term.

16.02 Restoration. If this Lease is not terminated, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, restore the Premises and Common Areas. Such restoration shall be to substantially the same condition that existed prior to the Casualty, except for modifications required by Law or any other modifications to the Common Areas deemed desirable by Landlord. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's Insurance with respect to any Leasehold Improvements performed by or for the benefit of Tenant; provided if the estimated cost to repair such Leasehold Improvements exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, the excess cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repairs. Within 15 days of demand, Tenant shall also pay Landlord for any additional excess costs that are determined during the performance of the repairs to such Leasehold Improvements, provided that Tenant shall have the reasonable opportunity to reduce the scope of the Leasehold Improvements to reduce or eliminate the payment of such excess costs. In no event shall Landlord be required to spend more for the restoration of the Premises and Common Areas than the proceeds received by Landlord, whether insurance proceeds under Landlord's insurance or insurance proceeds or other amounts received from Tenant. Landlord shall not be liable for any inconvenience to Tenant, or injury to Tenant's business resulting in any way from the Casualty or the repair thereof. Provided that Tenant is not in Default, during any period of time that all or a material portion of the Premises is rendered untenable as a result of a Casualty, the Rent shall abate for the portion of the Premises that is untenable and not used by Tenant.

16.03 Waiver. The provisions of this Section 16, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or the Property, and any Laws, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any similar or successor Laws now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises or the Property.

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## 17. Condemnation.

Either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "**Taking**"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or Property which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building. The

terminating party shall provide written notice of termination to the other party within 45 days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent and Tenant's Share shall be appropriately adjusted to account for any reduction in the square footage of the Building or Premises. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds are expressly waived by Tenant, provided, however, Tenant may file a separate claim for Tenant's Property and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the amount of Landlord's award. If only a part of the Premises is subject to a Taking and this Lease is not terminated, Landlord, with reasonable diligence, will restore the remaining portion of the Premises as nearly as practicable to the condition immediately prior to the Taking. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

## 18. Events of Default.

In addition to any other default specifically described in this Lease, each of the following occurrences shall be a "**Default**": (a) Tenant's failure to pay any portion of Rent when due, if the failure continues for three (3) Business Days after written notice to Tenant ("**Monetary Default**"); (b) Tenant's failure (other than a Monetary Default) to comply with any term, provision, condition or covenant of this Lease, if the failure is not cured within thirty (30) days after written notice to Tenant provided, however, if Tenant's failure to comply cannot reasonably be cured within thirty (30) days, Tenant shall be allowed additional time (not to exceed 90 days) as is reasonably necessary to cure the failure so long as Tenant begins the cure within fifteen (15) days and diligently pursues the cure to completion; (c) Tenant permits a Transfer without Landlord's required approval or otherwise in violation of Section 11 of this Lease; (d) Tenant or any Guarantor becomes insolvent, makes a transfer in fraud of creditors, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts when due or forfeits or loses its right to conduct business; (e) the leasehold estate is taken by process or operation of Law; (f) in the case of any ground floor or retail Tenant, Tenant does not take possession of or abandons or vacates all or any portion of the Premises; or (g) Tenant is in default beyond any notice and cure period under any other lease or agreement at the Building or Property. If Tenant, by repeating substantially the same act or omission, breaches a particular provision of this Lease and Landlord notifies Tenant of such breach, on three (3) or more occasions during any twelve (12) month period, then Tenant's subsequent breach of such provision by commission of substantially the same act or omission shall be, at Landlord's option, an incurable Default by Tenant and Tenant shall lose any renewal and/or expansion options. All notices sent under this Section shall be in satisfaction of, and not in addition to, notice required by Law. Tenant acknowledges that its obligation to pay Rent hereunder is a condition as well as a covenant, and that such obligation is independent of any and all covenants of Landlord hereunder. Tenant shall not interpose any counterclaim of whatever nature or description in any summary proceeding commenced by Landlord for non-payment of Rent. Tenant waives any rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and

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1179, or under any other applicable present or future Law, if Tenant is evicted or Landlord takes possession of the Premises by reason of any Default.

## 19. Remedies.

19.01 General. Upon the occurrence of any Default under this Lease, whether enumerated in Section 18 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever (and without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligations, except for those notices specifically required pursuant to the terms of Section 18 or this Section 19, and waives any and all other notices or demand requirements imposed by applicable Law):

- (a) Terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to the sum of the following:
  - (i) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;
  - (ii) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;
  - (iii) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided;
  - (iv) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and
  - (v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "Worth at the Time of Award" of the amounts referred to in parts (i) and (ii) above, shall be computed by allowing interest at an annual rate equal to the lesser of (A) the maximum rate permitted by Law, or (B) the Prime Rate plus five percent (5%). For purposes hereof, the "Prime Rate" shall be annual interest rate publicly announced as its prime or base rate by a federally insured bank selected by Landlord in the State of California. The "Worth at the Time of Award" of the amount referred to in part (iii), 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 1%;

- (b) Employ the remedy described in California Civil Code § 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). Accordingly, if Landlord does not elect to

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terminate this Lease on account of any Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due; or

(c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above in Section 19.01(a).

19.02 Requirements for Landlord Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

19.03 Waiver. TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE LEASE TERM OR THEREAFTER PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH.

THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE. IF THE JURY WAIVER PROVISIONS OF THIS SECTION 19.03 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 Section 26.02 below. 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 Section 19.03, 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

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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 Section 19.03. 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 Section 19.03 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.

19.04 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable Law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon any Default shall not be deemed or construed to constitute a waiver of such Default.

19.05 Landlord's Rights. If Tenant is in Default of any of its non-monetary obligations under the Lease, Landlord shall have the right to perform such obligations. Tenant shall reimburse Landlord for the cost of such performance upon demand together with an administrative charge equal to ten percent (10%) of the cost of the work performed by Landlord.

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19.06 Written Agreement. No act of Landlord or of any Landlord Related Party, including Landlord's acceptance of the keys to the Premises, shall constitute Landlord's acceptance of a surrender or abandonment of the Premises by Tenant prior to the expiration of the Term unless such acceptance is

expressly acknowledged by Landlord in a written agreement executed by both parties.

19.07 Severability. This Section 19 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

## 20. Landlord Default; Limitation of Liability.

20.1 Landlord Default. Landlord shall be in default hereunder (a “**Landlord Default**”) if Landlord has not commenced and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform, which notice must be delivered by Tenant in strict accordance with the notice provisions of Section 24. In no event shall Tenant have the right to terminate or rescind this Lease as a result of any Landlord Default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant’s remedies for any Landlord Default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will (i) use reasonable efforts to mitigate its damages and losses arising from any Landlord Default, and (ii) give the Mortgagee (defined below), if any, notice and a reasonable time to cure any default by Landlord.

20.2 Limitation of Liability. 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 PROPERTY, OR (B) THE EQUITY INTEREST LANDLORD WOULD HAVE IN THE PROPERTY IF THE PROPERTY WERE ENCUMBERED BY THIRD PARTY DEBT IN AN AMOUNT EQUAL TO 70% OF THE VALUE OF THE PROPERTY. AS USED HEREIN, “INTEREST OF LANDLORD IN THE PROPERTY” SHALL INCLUDE RENTS, INSURANCE PROCEEDS, PROCEEDS FROM ANY TAKING, AND PROCEEDS OF SALE. TENANT SHALL LOOK SOLELY TO LANDLORD’S INTEREST IN THE PROPERTY FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD RELATED PARTY. NEITHER ANY LIMITED PARTNER OF LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD RELATED 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 THE MORTGAGEE(S) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES (DEFINED IN SECTION 23 BELOW), WRITTEN NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT, AND LANDLORD SHALL NOT BE IN DEFAULT UNDER THIS LEASE UNLESS LANDLORD AND THE MORTGAGEE(S) HAVE FAILED TO CURE OR COMMENCE TO CURE OF SUCH ALLEGED DEFAULT WITHIN THE PERIOD SET FORTH IN SECTION 20.1 ABOVE.

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## 21. Relocation.

Landlord, at its expense, at any time before or during the Term, may relocate Tenant from the Premises to space of reasonably comparable size and substantially similar finishes and configuration (“**Relocation Space**”) within the Building upon sixty (60) days’ prior written notice to Tenant, provided that the Relocation Space shall be located no lower than the eighteenth (18th) floor of the Building. From and after the date of the relocation, the Base Rent and Tenant’s Share shall be adjusted based on the rentable area of the Relocation Space. Landlord shall pay Tenant’s reasonable costs of relocation which amount shall include all costs for moving Tenant’s furniture, equipment, supplies and other personal property.

## 22. Holding Over.

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease, occupancy of the Premises after termination shall be that of a tenancy at sufferance. Tenant’s occupancy shall be subject to all the terms and provisions of this Lease, and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to, for the first thirty (30) days of such holdover period, the greater of (a) 150% of the sum of the Base Rent and Additional Rent in effect immediately preceding such termination or (b) the fair market rent for the Premises, as determined in good faith by Landlord, and for any period beyond such thirty (30) day period, the greater of (a) 200% of the sum of the Base Rent and Additional Rent in effect immediately preceding such termination or (b) the fair market rent for the Premises, as determined in good faith by Landlord. No holdover by Tenant or payment by Tenant after the termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. If Landlord is unable to deliver possession of the Premises to a new tenant or to perform improvements for a new tenant as a result of Tenant’s holdover, Tenant shall be liable for any and all damages, fees, and/or costs incurred or to be incurred (including consequential damages) that Landlord suffers from the holdover.

## 23. Subordination to Mortgages; Estoppel Certificate.

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a “**Mortgage**”). The party having the benefit of a Mortgage shall be referred to as a “**Mortgagee**”. This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall execute Mortgagee’s standard form subordination agreement in favor of the Mortgagee. As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. Upon request, Tenant, without charge, shall attorn to any successor to Landlord’s interest in this Lease. Tenant shall, within ten (10) Business Days after receipt of a written request from Landlord, execute and deliver a subordination agreement and/or estoppel certificate to those parties as are reasonably requested by the other (including a Mortgagee or prospective purchaser). Without limitation, such estoppel certificate may include a certification as to the status of this Lease, the existence of any defaults and the amount of Rent that is due and payable. Tenant acknowledges its obligation to pay an administration fee at a daily rate of \$50.00 for each day that Tenant is late in providing any such subordination agreement or estoppel certificate (or a daily rate of \$100.00 for both), commencing on the eleventh (11th) Business Day following Landlord’s request therefor. If Tenant has not provided any such subordination agreement or estoppel certificate within twenty (20) days following Landlord’s written request therefor, Tenant hereby appoints Landlord as Tenant’s attorney-in-fact, which

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appointment is coupled with an interest, to execute, acknowledge and deliver any such subordination agreement or estoppel certificate for and on behalf of Tenant, without any liability on the part of Landlord for the accuracy of any information contained therein, and Tenant shall thereupon be deemed to have acknowledged the accuracy of all information set forth therein for the benefit of Landlord, any current or prospective Mortgagee, or any prospective purchaser of any interest of Landlord in the Building. However, if any such party is unwilling to rely on such subordination agreement or estoppel certificate from Landlord (or if Landlord is unwilling for any reason to execute such subordination agreement or estoppel certificate as attorney-in-fact for Tenant), the daily administration fee described herein shall continue until such time as Tenant has provided the subordination agreement or estoppel certificate as originally requested. Upon written request by Tenant, Landlord will use reasonable efforts to obtain a subordination, non-disturbance and attornment agreement (“SNDA”) for the benefit of Tenant from any future Mortgagee whereby the Mortgagee agrees to recognize the rights of Tenant under this Lease in the event of a foreclosure of the Mortgage held by such Mortgagee on such Mortgagee’s then current standard form of agreement. “Reasonable efforts” of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Mortgagee. Landlord’s failure to obtain a SNDA for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder.

#### **24. Notice.**

All demands, approvals, consents or notices (collectively referred to as a “**notice**”) shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party’s respective Notice Address(es) set forth in Section 1; provided, however, notices sent by Landlord regarding general Building operational matters may be posted in the Building mailroom or the general Building newsletter or sent via e-mail to the e-mail address provided by Tenant to Landlord for such purpose. In addition, if the Building is closed (whether due to emergency, governmental order or any other reason), then any notice address at the Building shall not be deemed a required notice address during such closure, and, unless Tenant has provided an alternative valid notice address to Landlord for use during such closure, any notices sent during such closure may be sent via e-mail or in any other practical manner reasonably designed to ensure receipt by the intended recipient. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

#### **25. Surrender of Premises.**

At the termination of this Lease or Tenant’s right of possession, Tenant shall remove Tenant’s Property and any and all Required Removables from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. If Tenant fails to remove any of Tenant’s Property or Required Removables, or to restore the Premises to the required condition as of the date of termination of this Lease or Tenant’s right to possession of the Premises, Landlord, at Tenant’s sole cost and expense, shall be entitled (but not obligated) to remove and/or store Tenant’s Property and Required Removables, as the case

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may be, and/or perform such restoration of the Premises. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant’s Property. Tenant shall pay Landlord the expenses and storage charges incurred. If Tenant fails to remove Tenant’s Property from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant’s Property to be abandoned and, at Landlord’s option, title to Tenant’s Property shall vest in Landlord or Landlord may dispose of Tenant’s Property in any manner Landlord deems appropriate.

#### **26. Miscellaneous.**

26.01 Governing Law; Construction. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of California. In addition to any methods of service of process provided for under applicable law, all service of process in any proceeding in any California state or United States court sitting in the county where the Premises are located, may be made by certified or registered mail, return receipt requested, to the Tenant’s Notice Address, and service so made shall be complete upon receipt; except that if Tenant shall refuse to accept delivery, service shall be deemed complete on the date such delivery was attempted and refused.

26.02 Attorneys’ Fees. If Landlord utilizes the services of an attorney due to Tenant’s failure to pay Rent when due or otherwise comply with the provisions of this Lease, then Tenant shall be required to pay Additional Rent in an amount equal to the actual attorneys’ fees and costs actually incurred by Landlord in connection therewith irrespective of whether any legal action or proceeding may be commenced or filed by Landlord. If any such work is performed by in-house counsel for Landlord, the value of such work shall be determined at a reasonable hourly rate for comparable outside counsel; provided, however, such fees shall be recoverable with respect to legal work performed by Landlord’s in-house counsel only to the extent that such work is not duplicative of legal work performed by outside counsel representing Landlord in such matter. Notwithstanding the foregoing, in any action or proceeding between Landlord and Tenant, including any appellate or alternative dispute resolution proceeding, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys’ fees actually incurred. Any such fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

26.03 No Waiver. No failure by either party to declare a default immediately upon its occurrence, nor any delay by either party in taking action for a default, nor Landlord’s acceptance of Rent with knowledge of a Default by Tenant, shall constitute a waiver of the Default, nor shall it constitute an estoppel.

26.04 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of Landlord (“**Force Majeure**”).

26.05 Landlord Transfer. Landlord shall have the right to transfer and assign its rights and obligations under this Lease and in the Building and Property. Upon transfer, Landlord shall be

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released from any further obligations hereunder and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations, provided that any successor pursuant to a voluntary, third party transfer (but not as part of an involuntary transfer resulting from a foreclosure or deed in lieu thereof) shall have assumed Landlord's obligations under this Lease.

26.06 No Offer. Landlord has delivered a copy of this lease to Tenant for Tenant's review only and the delivery of it does not constitute an offer to Tenant or an option. Tenant represents that it has dealt directly with and only with Tenant's Broker as a broker in connection with this Lease. Tenant shall defend, indemnify and hold Landlord and the Landlord Related Parties harmless from all claims of any other brokers claiming to have represented Tenant in connection with this Lease. Landlord shall defend, indemnify and hold Tenant and the Tenant Related Parties harmless from all claims of any brokers claiming to have represented Landlord in connection with this Lease. Landlord shall pay a commission to Landlord's Broker pursuant to a separate written agreement between Landlord and Landlord's Broker.

26.07 Building Standard Signage. Landlord, at Landlord's cost, shall provide "Building Standard" signage at the main lobby directory, 23rd floor elevator lobby, and at the entrance to the Premises identifying Tenant; any replacements of or changes to such signage shall be at Tenant's sole cost and expense. Tenant shall not place or permit to be placed any lights, decorations, banners, signs, window or door lettering, advertising media, or any other item that can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Subject to the foregoing, Tenant shall have the right to install custom signage in the Premises; any such signage shall be a Required Removable. By no later than the Termination Date (or earlier the date of any earlier termination of this Lease), Tenant shall repair any damage to the Premises or the Building caused by any installation, maintenance or removal of signage, all at Tenant's expense. If any such items are installed without Landlord's consent, or are not timely removed, or repairs are not timely made, Landlord shall have the right (but not the obligation) to remove any or all of such items and/or repair any such damage or injury, all at Tenant's sole cost and expense.

26.08 Time is of the Essence. Time is of the essence of each and every term, condition and provision of this Lease in which time of performance is a factor. The parties agree that notwithstanding any Law to the contrary, Landlord has no duty to notify Tenant that Tenant has failed to give any notice that Tenant has the right to give under the Lease, including notice of the exercise of any option.

26.09 Quiet Enjoyment. Tenant may peacefully have, hold and enjoy the Premises, subject to the terms of this Lease, provided Tenant pays the Rent and fully performs all of its covenants and agreements. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building.

26.10 Reservation of Rights. This Lease does not grant any rights to light or air over or about the Building. Landlord excepts and reserves exclusively to itself any and all rights not specifically granted to Tenant under this Lease. Landlord reserves the right to make changes to the Property, Building and Common Areas as Landlord deems appropriate.

26.11 Joint and Several Liability. If Tenant comprises more than one person, all such persons shall be jointly and severally liable for payment of Rent and the performance of Tenant's obligations hereunder. If Tenant is a partnership, all current and future general partners of Tenant shall be jointly and severally liable for such obligations. No individual partner

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or other person shall be deemed to be released from its obligations hereunder except to the extent any such release is expressly set forth in a written agreement executed by Landlord in the exercise of its sole discretion. If there is more than one Tenant or if Tenant is comprised of more than one party or entity, requests or demands from any one person or entity comprising Tenant shall be deemed to have been made by all such persons or entities. Notices to any one person or entity shall be deemed to have been given to all persons and entities.

26.12 Tenant Representations. Tenant represents, warrants and covenants that:

(a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control;

(b) Tenant and its principals are not engaged, and will not engage, in this transaction, directly or indirectly, on behalf of, or instigating or facilitating, and will not instigate or facilitate, this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation; and

(c) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under the Lease.

26.13 Severability. If any term or provision of this Lease shall to any extent be void or unenforceable, the remainder of this Lease shall not be affected.

26.14 OFAC Compliance. Tenant represents and warrants to Landlord, and agrees, that each individual executing this Lease on behalf of Tenant is authorized to do so on behalf of Tenant and that the entity(ies) or individual(s) constituting Tenant or Guarantor or which may own or control Tenant or Guarantor or which may be owned or controlled by Tenant or Guarantor are not and at no time will be (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treasury.gov/ofac/downloads/t11sdn.pdf> or any replacement website or other replacement official publication of such list.

26.15 Interpretation of Lease. This Lease has been negotiated at arms' length between persons knowledgeable in business and real estate matters who have had the opportunity to confer with counsel in the negotiation hereof. Accordingly, any rule of law or legal decision that would require interpretation of this Lease against the party that drafted it is not applicable and is waived, and this Lease shall be given a fair and reasonable interpretation in accordance with the meaning of its terms. References in this Lease to articles, sections, paragraphs or exhibits pertain to articles, sections, paragraphs and exhibits of this Lease unless otherwise specified. The word "including" means "including, without limitation." The word "or" means "and/or" unless the context clearly indicates an obligation to choose one of two or more alternatives. The word "person" includes legal entities as well as natural persons. The word "may" means "may, but shall not be required to." Unless otherwise expressly specified in the applicable provisions, the phrase "at any time" means "at any time and

All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require. Any reference to any specific statute, ordinance or other Law shall be deemed to include any amendments thereto, or any successor or similar Law addressing the same subject matter.

26.16 Confidentiality. The terms of this Lease and the details of its negotiation constitute confidential information pertaining to the Building that is proprietary to Landlord. Tenant acknowledges that its disclosure of any of such information could adversely affect the ability of Landlord to negotiate other leases and impair Landlord’s relationship with other tenants. Accordingly, Tenant agrees that it shall keep (and shall cause its employees, agents, principals and all other Tenant Related Parties to keep) all such information confidential and shall not disclose all or any portion thereof to any person except: (a) as and to the extent required by Law; and (b) to bona fide prospective assignees or sublessees of Tenant, or to Tenant’s attorneys, tax and financial advisors, lenders and investors, to the extent such persons have a need to know and as necessary for the conduct of Tenant’s business, provided that such persons also first agree in writing to keep all such information confidential for the benefit of Landlord.

26.17 No Memorandum. Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant, by any Tenant Related Party, or by any other person except Landlord. Any such recording in violation of this Section 26.16 shall constitute a Default.

26.18 Financial Statements. If at any time Tenant’s financial statements are no longer available online to the general public, within ten (10) days after written request from Landlord from time to time during the Term, Tenant shall provide Landlord with current financial statements and a statement of Tenant’s cash flow setting forth Tenant’s financial condition and net worth for the most recent quarter, including balance sheets and statements of profits and losses. Such statements shall be prepared by an independent accountant and certified by Tenant’s president, chief executive officer or chief financial officer. Landlord shall keep such financial information confidential and shall only disclose such information to Landlord’s lenders, consultants, purchasers or investors, or other agents (who shall be subject to the same confidentiality obligations) on a need to know basis in connection with the administration of this Lease.

26.19 Effective Date. This Lease shall only become effective and binding upon full execution hereof by Landlord and delivery of a signed copy to Tenant. This Lease may be executed in one or more counterparts, and each of which, so executed, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. This Lease may be executed in so-called “pdf” format and each party has the right to rely upon a pdf counterpart of this Lease signed by the other party to the same extent as if such party had received an original counterpart.

26.20 Entire Agreement. This Lease constitutes the final, complete and exclusive statement among the parties hereto, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and, subject to the provisions herein, inures to the benefit of their respective heirs, representatives, successors and assigns. No party has been induced to enter into this Lease by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Lease. Any agreement made after the date of this Lease is ineffective to modify, waive, or terminate this Lease, in whole or in part, unless

such agreement is in writing, signed by the parties to this Lease, and specifically states that such agreement modifies this Lease.

26.21 Certified Access Specialist Disclosure. The following notice is given pursuant to 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.”

The Premises have not been issued a disability access inspection certificate or undergone inspection by a Certified Access Specialist (“CASp”). Landlord and Tenant hereby agree that if Tenant elects to perform a CASp inspection of the Premises, Tenant will provide written notice to Landlord, and Landlord may elect, in Landlord’s sole discretion, to retain a CASp to perform the inspection. If Landlord does not so elect, the time and manner of the CASp inspection is subject to the prior written approval of Landlord. In either event, the payment of the fee for the CASp inspection shall be borne by Tenant. The cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises shall be allocated as provided in Section 5 of this Lease.

26.22 Access Notice Disclosure. In accordance with Chapter 38 of the San Francisco Administrative Code, the Disability Access Obligations Notice attached hereto as **Exhibit I** (the “**Access Notice**”) is incorporated herein by this reference. **Execution of this Lease by the parties hereto shall be deemed to constitute and represent the parties’ acknowledgement and execution of the Access Notice, notwithstanding that such Access Notice may not be separately executed.** Section 5 of this Lease sets forth the parties’ respective obligations regarding the performance of and payment for disability access improvements. Further, each party shall use reasonable efforts to notify the other of alterations the notifying party may make to or affecting the Premises or Building that might impact accessibility under federal and state disability access laws. Such notification regarding alterations shall in no event be construed to limit Tenant’s obligations or to expand Tenant’s rights under this Lease (including, without limitation, Section 9 of this Lease), and, without limiting the generality of the foregoing, in no event shall such notification be deemed to constitute any notice required to be given by Tenant to Landlord under any other provision of this Lease.

26.23 Energy Disclosure. If at any time during the Term, the Building is not a “covered building” as defined in California Public Resources Code Section 25402.10 and the regulations to be adopted pursuant thereto, and if at such time Tenant is permitted to contract directly for the provision of electricity, gas and/or water services to the Premises with the third-party provider thereof (all in Landlord’s sole and absolute discretion), Tenant shall promptly, but in no event more than ten (10) Business Days following its receipt of each and every invoice for such items from the applicable provider, provide Landlord with a

copy of each such invoice. Tenant acknowledges that pursuant to California Public Resources Code Section 25402.10 and the regulations to be adopted pursuant thereto (collectively the “**Energy Disclosure Requirements**”), Landlord may be required to disclose information concerning Tenant’s energy usage at the Building to certain third parties, including, without limitation, prospective

purchasers, lenders and tenants of the Building (the “**Tenant Energy Use Disclosure**”). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 26.22 shall survive the expiration or earlier termination of this Lease.

**[SIGNATURES ARE ON THE FOLLOWING PAGE]**

Landlord and Tenant have executed this Lease as of the Effective Date.

**LANDLORD:**

CA-MISSION STREET LIMITED PARTNERSHIP, a Delaware limited partnership

By: NAPI REIT TRS, INC., a Maryland corporation  
Its: General Partner

By: /s/ Kathy A. Broderick  
Name: Kathy A. Broderick  
Title: Secretary & Treasurer

**TENANT:**

JAGUAR HEALTH, INC.,  
a Delaware corporation

By: /s/ Lisa A. Conte  
Name: Lisa A. Conte  
Its: Chief Executive Officer

**Tenant’s Tax ID Number (SSN or FEIN):**

**REQUIREMENTS FOR TENANT EXECUTION OF LEASE**

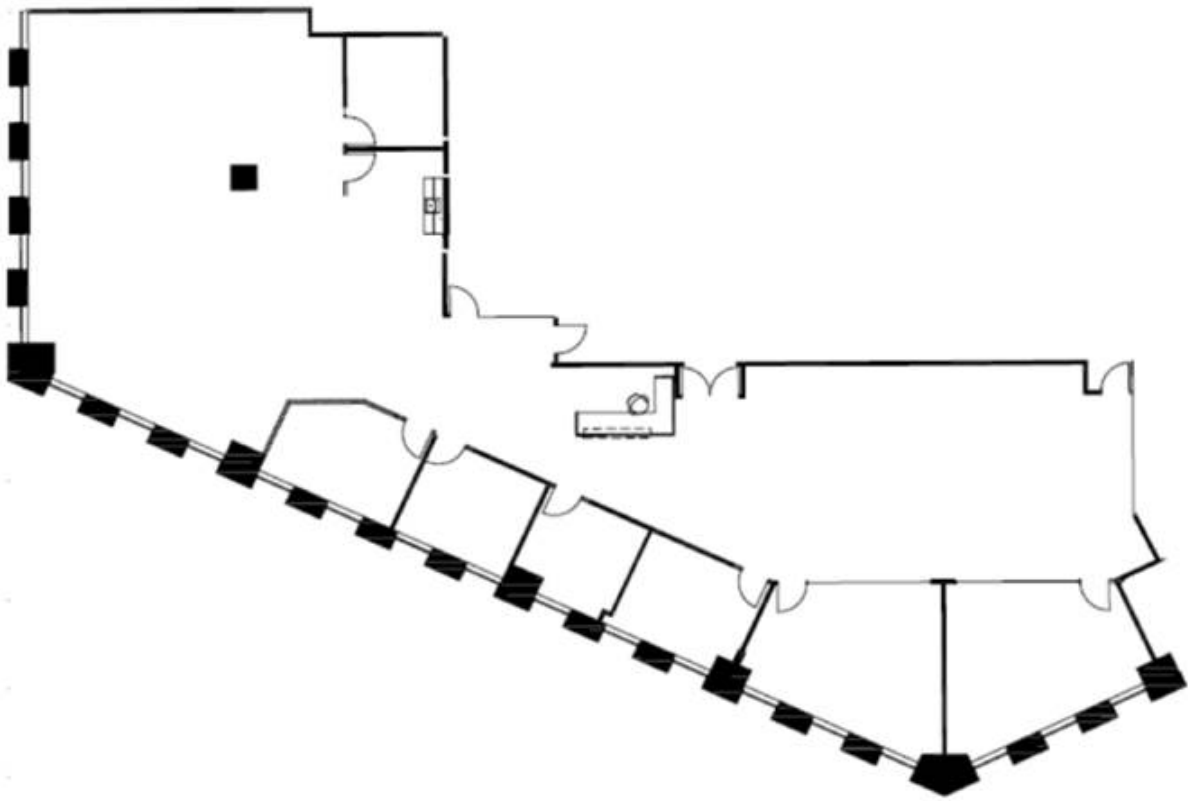
**If Tenant is foreign (non-California) corporation**, the following conditions must be satisfied:

- (A) Tenant shall provide Landlord a copy of a corporate resolution signed by all directors of the corporation and in a form reasonably acceptable to Landlord authorizing the person or persons designated to sign the Lease to do so.
- (B) Tenant shall provide Landlord a certificate from the Secretary of State of the Tenant’s state of incorporation confirming that Tenant is in good standing and qualified to do business in its state of incorporation, and Tenant shall also provide a certificate from the California Secretary of State confirming that Tenant is qualified to do business in California.

**EXHIBIT A**

**OUTLINE AND LOCATION OF PREMISES**

This Exhibit is attached to and made a part of the Office Lease Agreement (the “**Lease**”) by and between CA-MISSION STREET LIMITED PARTNERSHIP (“**Landlord**”) and JAGUAR HEALTH, INC., a Delaware corporation (“**Tenant**”) for space in the Building located at 201 Mission Street, San Francisco, California.



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**EXHIBIT B****EXPENSES, TAXES AND INSURANCE EXPENSES**

This Exhibit is attached to and made a part of the Office Lease Agreement (the “**Lease**”) by and between CA-MISSION STREET LIMITED PARTNERSHIP (“**Landlord**”) and JAGUAR HEALTH, INC., a Delaware corporation (“**Tenant**”) for space in the Building located at 201 Mission Street, San Francisco, California.

**1. Payments.**

1.01 Commencing as of the first (1<sup>st</sup>) day of the calendar year following the Base Year (each such calendar year or any portion thereof during the Term being referred to herein as an “**Adjustment Year**”), Tenant shall pay Tenant’s Share of the amount, if any, by which Expenses (defined below) for each applicable Adjustment Year exceed Expenses for the Base Year (the “**Expense Excess**”) and also the amount, if any, by which Taxes (defined below) for each applicable Adjustment Year exceed Taxes for the Base Year (the “**Tax Excess**”) and the amount, if any, by which Insurance Expenses (defined below) for each applicable Adjustment Year exceed Insurance Expenses for the Base Year (the “**Insurance Expense Excess**”). If Expenses, Taxes or Insurance Expenses in any Adjustment Year decrease below the amount of Expenses, Taxes or Insurance Expenses for the Base Year, Tenant’s Share of Expenses, Taxes or Insurance Expenses, as the case may be, for such Adjustment Year shall be \$0. Landlord shall provide Tenant with a good faith estimate of the Expense Excess, the Tax Excess and the Insurance Expense Excess for each Adjustment Year. On or before the first day of each month, Tenant shall pay to Landlord a monthly installment equal to one-twelfth of Tenant’s Share of Landlord’s estimate of the Expense Excess, Tax Excess and the Insurance Expense Excess. If Landlord determines that any such estimate was incorrect by a material amount, Landlord may provide Tenant with a revised estimate. After its receipt of the revised estimate, Tenant’s monthly payments of the applicable category of expense shall be based upon the revised estimate. If Landlord does not provide Tenant with an estimate of the Expense Excess, the Tax Excess or the Insurance Expense Excess for any Adjustment Year by December 15<sup>th</sup> of the immediately preceding calendar year, Tenant shall continue to pay monthly installments based on the estimate for the previous calendar year if such year was an Adjustment Year, until Landlord provides Tenant with an estimate for the then current Adjustment Year. Upon delivery of such estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the estimate for the previous calendar year. Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after receipt of the applicable estimate. Any overpayment shall be refunded to Tenant within (30) days or credited against the next due future installment(s) of Additional Rent.

1.02 As soon as is practical following the end of each Adjustment Year, Landlord shall furnish Tenant with a statement (each, a “**Final Statement**”) of the actual Expenses and Expense Excess, actual Taxes and Tax Excess and actual Insurance Expenses and Insurance Expense Excess for the applicable Adjustment Year. If the estimated Expense Excess, estimated Tax Excess or Insurance Excess for the applicable Adjustment Year is more than the actual Expense Excess, the actual Tax Excess or the actual Insurance Expense Excess, as the case may be, for such Adjustment Year, Landlord shall apply any overpayment by Tenant against Additional Rent due or next becoming due; provided, however, if the Term expires before the determination of the overpayment, Landlord shall refund any overpayment to Tenant after first deducting any amount of Rent due. If the estimated Expense Excess, estimated Tax Excess or estimated Insurance Expense Excess for the applicable Adjustment Year is less than

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the actual Expense Excess, actual Tax Excess or actual Insurance Expense Excess, as the case may be, for such Adjustment Year, Tenant shall pay Landlord, within thirty (30) days after Tenant's receipt of the applicable Final Statement, any underpayment for the applicable Adjustment Year.

## 2. Expenses.

2.01 "**Expenses**" means all costs and expenses incurred in each calendar year during the Term in connection with operating, maintaining, repairing, and managing the Building and the Property. Expenses include, without limitation: (a) all labor and labor related costs, including wages, salaries, bonuses, taxes, insurance, uniforms, training, retirement plans, pension plans and other employee benefits for service personnel engaged in the operation, maintenance and security of the Building and the direct costs of training such employees limiting such charges only to amounts reasonably estimated by the Landlord to be directly allocable to services rendered by the employees and personnel for the benefit of the Building; (b) management fees of all income (excluding such management cost recovery) derived from the Building, including without limitation, all Rent hereunder, all rent and other payments derived from other tenants in the Building, parking revenues and other revenues derived from licensees of any other part of or right in the Building; (c) the cost of equipping, staffing and operating an on-site and/or off-site management office for the Building, provided if the management office services one or more other buildings or properties, the shared costs and expenses of equipping, staffing and operating such management office(s) shall be equitably prorated and apportioned between the Building and the other buildings or properties; (d) accounting costs; (e) the cost of services; (f) rental and purchase cost of parts, supplies, tools and equipment; (g) electricity, gas and other utility costs; and (h) the amortized cost of capital improvements (as distinguished from replacement parts or components installed in the ordinary course of business) made subsequent to the Base Year which are: (1) performed primarily to reduce current or future operating expense costs, upgrade Building security or otherwise materially improve the operating efficiency of the Property; or (2) required to comply with any Laws that are enacted, or first interpreted to apply to the Property, after the date of the Lease. The cost of any such included capital improvements shall be amortized by Landlord over the lesser of the Payback Period (defined below) or the useful life of the capital improvement as reasonably determined by Landlord. The amortized cost of capital improvements may, at Landlord's option, include actual or imputed interest at the rate that Landlord would reasonably be required to pay to finance the cost of the capital improvement. "**Payback Period**" means the reasonably estimated period of time that it takes for the cost savings resulting from a capital improvement to equal the total cost of the capital improvement. Landlord, by itself or through an affiliate, shall have the right to directly perform, provide and be compensated for any services under the Lease. If Landlord incurs Expenses for the Building or Property together with one or more other buildings or properties, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shared costs and expenses shall be equitably prorated and apportioned between the Building and Property and the other buildings or properties.

2.02 Anything to the contrary contained in Section 2.01 notwithstanding, Expenses shall not include: (i) the cost of capital improvements (except as set forth above); (ii) depreciation; (iii) principal or interest payments, fees, charges or other costs of mortgage and other non-operating debts of Landlord; (iv) the cost of repairs or other work to the extent Landlord is reimbursed by insurance or condemnation proceeds, any contractor, manufacturer or supplier warranty of service contract or any other costs for which Landlord has been reimbursed or receives a credit refund or discount for same; (v) all costs in connection with leasing space in the Building, including brokerage commissions; lease concessions, rental abatements and construction

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allowances granted to specific tenants; (vi) costs incurred in connection with the sale, financing or refinancing of the Building; (vii) fines, interest and penalties incurred due to the late payment of Taxes or Expenses; (viii) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (ix) any penalties or damages that Landlord pays to Tenant under this Lease or to other tenants in the Building under their respective leases; (x) reserves of any kind, including, but not limited to replacement reserves, and reserves for bad debts or lost rent or any similar charge not involving the payment of money to third parties; (xi) capital improvements (as distinguished from replacement parts or components installed in the ordinary course of business) made subsequent to the Base Year which are required to comply with any Laws that were in effect prior to the date of the Lease, including any penalties or damages incurred due to non-compliance; and (xii) costs incurred to comply with laws relating to the removal of Hazardous Materials in existence in the Building or the Property prior to the Delivery Date, and of such a nature that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions that it then existed, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto; and costs incurred to remove, remedy, contain, or treat Hazardous Materials, which Hazardous Material are brought into the Building or onto the Property after the Effective Date by Landlord and are of such a nature, at that time, that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state, and under the conditions, that they then exist in the Building or the Property, would have then required the removal of such Hazardous Materials or other remedial or containment action with respect thereto (except that the cost of handling, treatment, containing, removing or abating Hazardous Materials related to the ordinary general repair and maintenance of the Building or Property, for example, the removal of and disposal of oil from Building machinery in the course of typical Building maintenance and not as a response to any action of any tenant or occupant of the Building or release of Hazardous Materials, may be included in Operating Expenses).

3. "**Taxes**" shall mean: (a) all real property taxes and other assessments on the Building and/or Property, including, but not limited to, gross receipts taxes (including without limitation the San Francisco Gross Receipts Tax and Business Registration Fees Ordinance (2012 Proposition E)), assessments for special improvement districts and building improvement districts, governmental charges, fees and assessments for police, fire, traffic mitigation or other governmental service of purported benefit to the Property, taxes and assessments levied in substitution or supplementation in whole or in part of any such taxes and assessments and the Property's share of any real estate taxes and assessments under any reciprocal easement agreement, common area agreement or similar agreement as to the Property; (b) all personal property taxes for property that is owned by Landlord and used in connection with the operation, maintenance and repair of the Property (equitably adjusted with respect to any such personal property that is used by Landlord in connection with the operation, maintenance and repair of properties other than the Property); and (c) all costs and fees incurred in connection with the seeking of reductions in any tax liabilities described in (a) and (b), including, without limitation, any costs incurred by Landlord for compliance, review and appeal of tax liabilities. Without limitation, Taxes shall not include any income, capital levy, transfer, capital stock, gift, estate or inheritance tax. If a change is obtained for Taxes for the Base Year, Taxes for the Base Year shall be restated and the Tax Excess for all Adjustment Years shall be recomputed. Tenant shall pay Landlord the amount of Tenant's Share of any such increase in the Tax Excess within thirty (30) days after Tenant's receipt of a statement from Landlord.

4. "**Insurance Expenses**" shall mean the amount paid or incurred by Landlord (i) in insuring all or any portion of the Property under policies of insurance and/or commercially reasonable self-

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insurance, which may include commercial general liability insurance, property insurance, worker's compensation insurance, rent interruption insurance, contingent liability and builder's risk insurance, and any insurance as may from time to time be maintained by Landlord and (ii) for deductible payments under any insured claims. If Landlord does not carry earthquake or terrorism insurance ("**Earthquake/Terrorism Insurance**") during the Base Year, but obtains Earthquake/Terrorism Insurance subsequent to the Base Year, then the initial annual premium for such Earthquake/Terrorism Insurance shall be included in Insurance Expenses, and Insurance Expenses for that year and in any year subsequent to the first year in which Landlord obtains such Earthquake/Terrorism Insurance shall include only the increases in the annual premium over the annual premium Landlord would have paid for the Earthquake/Terrorism Insurance had such insurance been included in the Base Year at the price that would have been charged for such insurance in the Base Year.

5. "**Occupancy Adjustment**". If at any time during a calendar year (or portion thereof), including the Base Year, the Building is less than ninety-five percent (95%) occupied or Landlord is not supplying services to at least 95% of the total Rentable Area of the Building, Expenses and Insurance Expenses shall be determined as if the Building had been 95% occupied and Landlord had been supplying services to 95% of the Rentable Area of the Building during such calendar year. Notwithstanding the foregoing, Landlord may calculate the extrapolation of Expenses and Insurance Expenses under this Section based on 100% occupancy and service so long as such percentage is used consistently for each year of the Term. The extrapolation of Expenses and Insurance Expenses under this Section shall be performed in accordance with the methodology specified by the Building Owners and Managers Association or other generally accepted industry practices.

6. **Cost Pools**. Landlord shall have the right, from time to time, to equitably allocate some or all of the Expenses and/or Insurance Expenses among different portions or occupants of the Building (the "**Cost Pools**"), in Landlord's discretion. Such Cost Pools may, for example, include, but shall not be limited to, the office space tenants of the Building and the retail space tenants. The Expenses and/or Insurance Expenses allocable to each such Cost Pool shall be allocated to such Cost Pool and charged to the tenants within such Cost Pool in an equitable manner.

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**EXHIBIT C**

**[INTENTIONALLY OMITTED]**

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**EXHIBIT D**

**[INTENTIONALLY OMITTED]**

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**EXHIBIT E**

**BUILDING RULES AND REGULATIONS**

This Exhibit is attached to and made a part of the Office Lease Agreement (the "**Lease**") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("**Landlord**") and JAGUAR HEALTH, INC., a Delaware corporation ("**Tenant**") for space in the Building located at 201 Mission Street, San Francisco, California.

The following rules and regulations shall apply, where applicable, to the Premises, the Building, the parking facilities (if any), the Property and the appurtenances. In the event of a conflict between the following rules and regulations and the remainder of the terms of the Lease, the remainder of the terms of the Lease shall control.

1. Sidewalks, doorways, vestibules, halls, stairways and other similar areas shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises. No rubbish, litter, trash, or material shall be placed, emptied, or thrown in those areas. At no time shall Tenant permit Tenant's employees to loiter in Common Areas or elsewhere about the Building or Property.
2. Plumbing fixtures and appliances shall be used only for the purposes for which designed and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed in the fixtures or appliances.
3. No signs, advertisements or notices shall be painted or affixed to windows, doors or other parts of the Building, except those of such color, size, style and in such places as are first approved in writing by Landlord. All tenant identification and suite numbers at the entrance to the Premises shall be installed by Landlord, at Tenant's cost and expense, using the standard graphics for the Building. Except in connection with the hanging of lightweight pictures and wall decorations, no nails, hooks or screws shall be inserted into any part of the Premises or Building except by the Building maintenance personnel without Landlord's prior approval, which approval shall not be unreasonably withheld.
4. Landlord may provide and maintain in the first floor (main lobby) of the Building an alphabetical directory board or other directory device listing tenants and no other directory shall be permitted unless previously consented to by Landlord in writing.
5. Tenant shall not place any lock(s) on any door in the Premises or Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, and Landlord shall have the right at all times to retain and use keys or other access codes or devices to all locks within and into the Premises. A reasonable number of keys to the locks on the entry doors in the Premises shall be furnished by Landlord to Tenant at Tenant's cost and Tenant shall not make any duplicate keys. All keys shall be returned to Landlord at the expiration or early termination of the Lease.

6. All contractors, contractor's representatives and installation technicians performing work in the Building shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, and shall be required to comply with Landlord's standard rules, regulations, policies and procedures, which may be revised from time to time.

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7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of merchandise or materials requiring the use of elevators, stairways, lobby areas or loading dock areas, shall be performed in a manner and restricted to hours reasonably designated by Landlord. Tenant shall obtain Landlord's prior approval by providing a detailed listing of the activity, including the names of any contractors, vendors or delivery companies, which approval shall not be unreasonably withheld. Tenant shall assume all risk for damage, injury or loss in connection with the activity.
8. Landlord shall have the right to approve the weight, size, or location of heavy equipment or articles in and about the Premises, which approval shall not be unreasonably withheld; provided that approval by Landlord shall not relieve Tenant from liability for any damage in connection with such heavy equipment or articles.
9. Tenant shall not: (a) make or permit any improper, objectionable or unpleasant noises or odors in the Building, or otherwise interfere in any way with other tenants or persons having business with them; (b) solicit business or distribute or cause to be distributed, in any portion of the Building, handbills, promotional materials or other advertising; or (c) conduct or permit other activities in the Building that might, in Landlord's sole opinion, constitute a nuisance.
10. No animals, except those assisting individuals with disabilities in accordance with applicable law, shall be brought into the Building or kept in or about the Premises.
11. No inflammable, explosive or dangerous fluids or substances shall be used or kept by Tenant in the Premises, Building or about the Property, except for those substances as are typically found in similar premises used for general office purposes and are being used by Tenant in a safe manner and in accordance with all applicable Laws. Tenant shall not, without Landlord's prior written consent, use, store, install, spill, remove, release or dispose of, within or about the Premises or any other portion of the Property, any asbestos-containing materials or any solid, liquid or gaseous material now or subsequently considered toxic or hazardous under the provisions of 42 U.S.C. Section 9601 et seq. or any other applicable environmental Law which may now or later be in effect. Tenant shall comply with all Laws pertaining to and governing the use of these materials by Tenant and shall remain solely liable for the costs of abatement and removal.
12. Tenant shall not use or occupy the Premises in any manner or for any purpose which might injure the reputation or impair the present or future value of the Premises or the Building. Tenant shall not use, or permit any part of the Premises to be used for lodging, sleeping or for any illegal purpose.
13. Tenant shall not take any action which would violate Landlord's labor contracts or which would cause a work stoppage, picketing, labor disruption or dispute or interfere with Landlord's or any other tenant's or occupant's business or with the rights and privileges of any person lawfully in the Building ("**Labor Disruption**"). Tenant shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of Landlord, immediately terminate any work in the Premises that gave rise to the Labor Disruption, until Landlord gives its written consent for the work to resume. Tenant shall have no claim for damages against Landlord or any of the Landlord Related Parties nor shall the Commencement Date of the Term be extended as a result of the above actions.

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14. Tenant shall not install, operate or maintain in the Premises or in any other area of the Building, electrical equipment that would overload the electrical system beyond its capacity for proper, efficient and safe operation as determined solely by Landlord. Tenant shall not furnish cooling or heating to the Premises, including, without limitation, the use of electric or gas heating devices, without Landlord's prior written consent. Tenant shall not use more than its proportionate share of telephone lines and other telecommunication facilities available to service the Building.
15. Tenant shall not operate or permit to be operated a coin or token operated vending machine or similar device (including, without limitation, telephones, lockers, toilets, scales, amusement devices and machines for sale of beverages, foods, candy, cigarettes and other goods), except for machines for the exclusive use of Tenant's employees and invitees.
16. Bicycles and other vehicles are not permitted inside the Building or on the walkways outside the Building, except in areas designated by Landlord.
17. Landlord may from time to time adopt systems and procedures for the security and safety of the Building and Property, its occupants, entry, use and contents. Tenant, its agents, employees, contractors, guests and invitees shall comply with Landlord's systems and procedures.
18. Landlord shall have the right to prohibit the use of the name of the Building or any other publicity by Tenant that in Landlord's sole opinion may impair the reputation of the Building or its desirability. Upon written notice from Landlord, Tenant shall refrain from and discontinue such publicity immediately.
19. Neither Tenant nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking in the Common Areas, unless a portion of the Common Areas have been declared a designated smoking area by Landlord, nor shall the above parties allow smoke from the Premises to emanate into the Common Areas or any other part of the Building. Landlord shall have the right to designate the Building (including the Premises) as a non-smoking building.
20. Landlord shall have the right to designate and approve standard window coverings for the Premises and to establish rules to assure that the Building presents a uniform exterior appearance. Tenant shall ensure, to the extent reasonably practicable, that window coverings are closed on windows in the Premises while they are exposed to the direct rays of the sun.

21. Deliveries to and from the Premises shall be made only at the times in the areas and through the entrances and exits reasonably designated by Landlord. Tenant shall not make deliveries to or from the Premises in a manner that might interfere with the use by any other tenant of its premises or of the Common Areas, any pedestrian use, or any use which is inconsistent with good business practice.
22. The work of cleaning personnel shall not be hindered by Tenant after 5:30 P.M., and cleaning work may be done at any time when the offices are vacant. Windows, doors and fixtures may be cleaned at any time. Tenant shall provide adequate waste and rubbish receptacles to prevent unreasonable hardship to the cleaning service.

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23. Window coverings shall be closed when the effect of sunlight would impose unnecessary loads on the air conditioning system.
24. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Premises. Landlord shall make adjustments in thermostats on call from Tenant.
25. In no event will Tenant allow the Premises to be occupied by more than one (1) person per one hundred fifty (150) rentable square feet, nor will Tenant install equipment in the Premises of a type or at a level which adversely affects the temperature range maintained by the Building's heating and air conditioning system.
26. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein and will use commercially reasonable efforts to apply such rules and regulations consistently to all tenants of the Building.
27. Tenants have the non-exclusive right to use the bicycle storage area located on the lower level of the Building (the "**Bicycle Storage Area**"). Such right to use the Bicycle Storage Area is conditioned upon compliance with all rules and regulations which are prescribed from time to time for the orderly operation and use of the Bicycle Storage Area, including any rules and regulations posted in the Bicycle Storage Area, and cooperation in ensuring that tenant's employees and visitors also comply with all such rules and regulations. Landlord reserves the right to prohibit the use of the Bicycle Storage Area in the event of a default by tenant under the terms of its lease or any related document. Tenant's use of the Bicycle Storage Area shall be at tenant's sole risk and tenant acknowledges and agrees that Landlord shall have no liability whatsoever for damage to the bicycles of tenant, its employees and/or visitors, or for other personal injury or property damage or theft relating to or connected with the bicycle storage rights granted herein or any of tenant's, its employee's and/or visitors' use of the Bicycle Storage Area. Landlord specifically reserves the right to change the location, size, configuration, design, layout and all other aspects of the Bicycle Storage Area at any time and tenant acknowledges and agrees that Landlord may, without incurring any liability to tenant and without any abatement of rent, from time to time, on a temporary basis, or on a permanent basis, close, close-off or restrict access to the Bicycle Storage Area. The right to use the Bicycle Storage Area may not be assigned or in any other way transferred to any other person or entity. Tenant acknowledges that the waiver of claims and indemnification provided in Section 13.01 of the Lease apply to the use of the Bicycle Storage Area by Tenant, its employees and invitees.
28. Tenants have the non-exclusive right to use the shower facilities located on the lower level of the Building (the "**Shower Facilities**"). Such right to use the Shower Facilities is conditioned upon compliance with all rules and regulations which are prescribed from time to time for the orderly operation and use of the Shower Facilities, including any rules and regulations posted in the Shower Facilities, and cooperation in ensuring that tenant's employees and visitors also comply with all such rules and regulations. Landlord reserves the right to prohibit the use of the Shower Facilities in the event of a default by tenant under the terms of its lease or any related document. Tenant's use of the Shower Facilities shall be at tenant's sole risk and tenant acknowledges and agrees that Landlord shall have no liability whatsoever to tenant, its employees and/or visitors for personal injury or property damage or theft relating to or connected with the rights granted herein with

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respect to the Shower Facilities or any of tenant's, its employee's and/or visitors' use of the Shower Facilities. Landlord specifically reserves the right to change the location, size, configuration, design, layout and all other aspects of the Shower Facilities at any time and tenant acknowledges and agrees that Landlord may, without incurring any liability to tenant and without any abatement of rent, from time to time, on a temporary basis, or on a permanent basis, close, close-off or restrict access to the Shower Facilities. The right to use the Shower Facilities may not be assigned or in any other way transferred to any other person or entity. The Shower Facilities may be used during normal business hours only, Holidays excepted. No towel service or other accoutrements such as soap or shampoo will be provided for the use of the Shower Facilities, and no such items or any other items of personal property shall remain within the Shower Facilities after each use thereof. Tenant acknowledges that the waiver of claims and indemnification provided in Section 13.01 of the Lease apply to the use of the Shower Facilities by Tenant, its employees and invitees.

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## EXHIBIT F

### ADDITIONAL PROVISIONS

This Exhibit is attached to and made a part of the Office Lease Agreement (the "**Lease**") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("**Landlord**") and JAGUAR HEALTH, INC., a Delaware corporation ("**Tenant**") for space in the Building located at 201 Mission Street, San Francisco, California.

1. Letter of Credit.



(a) General Provisions. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord, as collateral for the full performance by Tenant of all of its obligations under the Lease and for all losses and damages Landlord may suffer as a result of Tenant's failure to comply with one or more provisions of the Lease, including, but not limited to, any post lease termination damages under section 1951.2 of the California Civil Code, a standby, unconditional, irrevocable, transferable letter of credit (the "**Letter of Credit**") in the form of **Exhibit H** to the Lease and containing the terms required herein, in the face amount of \$475,000.00 (the "**Letter of Credit Amount**"), naming Landlord as beneficiary, issued (or confirmed) by a financial institution headquartered in the United States and acceptable to Landlord (the "**Issuing Bank**"), permitting multiple and partial draws thereon from a location in San Francisco, California (or, alternatively, permitting draws via overnight courier or facsimile), and otherwise in form acceptable to Landlord in its sole discretion. The list of acceptable Issuing Banks is attached to this Lease as **Exhibit H-1**. The Letter of Credit shall be "callable" at sight, permit partial draws and multiple presentations and drawings, and be otherwise subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev), International Chamber of Commerce Publication #500, or the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. In the event of an assignment by Tenant of its interest in the Lease (and irrespective of whether Landlord's consent is required for such assignment), the acceptance of any replacement or substitute letter of credit by Landlord from the assignee shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the attorney's fees incurred by Landlord in connection with such determination shall be payable by Tenant to Landlord within ten (10) Business Days of billing. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, amendment, renewal, amendment or extension) in the Letter of Credit Amount through the date (the "**Final LC Expiration Date**") that is the later to occur of (x) the date that is ninety (90) days after the scheduled expiration of the Term and (y) the date that is ninety (90) days after Tenant vacates the Premises and completes any restoration or repair obligations. In furtherance of the foregoing, the Letter of Credit shall contain a so-called "evergreen provision," whereby the Letter of Credit will automatically be renewed unless at least sixty (60) days' prior written notice of non-renewal is provided by the Issuing Bank to Landlord; provided, however, that any final expiration date identified in the Letter of Credit, beyond which the Letter of Credit shall not automatically renew, shall not be earlier than the Final LC Expiration Date. If the Letter of Credit held by Landlord expires earlier than the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the Issuing Bank), Tenant shall deliver a new or amended Letter of Credit or certificate of renewal or extension to Landlord not later than thirty (30) days prior to the expiration date of the Letter of Credit then held by Landlord. Any renewal, amended or replacement Letter of Credit shall comply with all of the provisions of this Section 2. The Letter of Credit shall be transferable by the beneficiary (with all transfer costs being the responsibility of Tenant). Neither Landlord nor its successors or

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assigns will be bound by any assignment or encumbrance or attempted assignment or attempted encumbrance of the Letter of Credit by Tenant in violation of this Section 2.

(b) Drawings under Letter of Credit. Landlord, or its then managing agent, without prejudice to any other remedy provided in the Lease or by Law, 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) such amount is due to Landlord under the terms and conditions of the Lease; or (ii) Tenant is in Default, or would be in Default but Landlord is precluded under applicable Law from delivering a notice of default to Tenant, or (iii) Tenant has filed a voluntary petition under the U.S. Bankruptcy Code or any State bankruptcy code (collectively, "**Bankruptcy Code**"), or (iv) an involuntary petition has been filed against Tenant under the Bankruptcy Code, or (v) Tenant executes an assignment for the benefit of creditors, or (vi) Tenant is placed into receivership or conservatorship, or becomes subject to similar proceedings under Federal or State law, or (vii) the Issuing Bank has notified Landlord that the Letter of Credit will not be renewed or extended through the Final LC Expiration Date or (viii) Tenant fails to timely provide a replacement Letter of Credit pursuant to Section 2(a) above (the events described in clauses (iii), (iv), (v) and (vi) above, collectively, being referred to herein as an "**Insolvency Event**"). Upon any such draw, Landlord may use all or any part of the proceeds as set forth in this Section 2.

(c) Use of Proceeds by Landlord. The proceeds of any draw upon the Letter of Credit which are not used to pay for damages suffered by Landlord (or which Landlord reasonably estimates it will suffer) as described above (the "**Unused Proceeds**") shall constitute Landlord's sole and separate property (and not Tenant's property or the property of Tenant's bankruptcy estate). Landlord may immediately upon any draw permitted hereunder (and without notice to Tenant except as may be expressly provided in the Lease) apply or offset the proceeds of the Letter of Credit: (i) against any Rent payable by Tenant under the Lease that is not paid when due; (ii) against all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it may suffer as a result of Tenant's failure to comply with one or more provisions of the Lease, including any damages arising under section 1951.2 of the California Civil Code following termination of the Lease; (iii) against any costs incurred by Landlord permitted to be reimbursed pursuant to the Lease (including attorneys' fees) that have not been timely paid by Tenant; and (iv) against any other amount that Landlord may spend or become obligated to spend by reason of Tenant's breach for which Landlord shall be entitled to seek reimbursement in accordance with the Lease. Tenant (i) agrees that (A) Tenant has no property interest whatsoever in the Unused Proceeds, and (B) the Unused Proceeds shall not be deemed to be or treated as a "security deposit" under the Security Deposit Laws (defined below), and (ii) waives all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Any Unused Proceeds shall be paid by Landlord to Tenant (x) upon receipt by Landlord of a replacement Letter of Credit in the full Letter of Credit Amount, which replacement Letter of Credit shall comply in all respects with the requirements of this Section 2, or (y) within thirty (30) days after the Final LC Expiration Date; provided, however, that if prior to the Final LC Expiration Date any Insolvency Event occurs, then Landlord shall not be obligated to make such payment of the Unused Proceeds until either all preference issues relating to payments under the Lease have been resolved and any bankruptcy or reorganization case has been dismissed, in any case pursuant to a final court order not subject to appeal or any stay pending appeal.

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(d) Additional Covenants of Tenant.

(i) Replacement of Letter of Credit if Issuing Bank No Longer Satisfactory to Landlord. If, at any time during the Term, Landlord determines that (A) the Issuing Bank is closed for any reason, whether by the Federal Deposit Insurance Corporation ("**FDIC**"), by any other governmental authority, or otherwise, or (B) the Issuing Bank fails to meet any of the following three ratings standards as to its unsecured and senior, long-term debt obligations (not supported by third party credit enhancement): (x) "A2" or better by Moody's Investors Service, or its successor, (y) "A" or better by Standard & Poor's Rating Service, or its successor; or (z) "A" or better by Fitch Ratings, or its successor, or (C) the Issuing Bank is no longer considered to be well capitalized under the "Prompt Corrective Action" rules of the FDIC (as disclosed by the Issuing Bank's Report of Condition and Income (commonly known as the "Call Report") or otherwise), or (D) the Issuing Bank has been placed into receivership by the FDIC, or has entered into any other form of regulatory or governmental receivership, conservatorship or other similar regulatory or governmental proceeding, or is otherwise declared insolvent or downgraded by the FDIC or other governmental authority (any of the foregoing, an "**Issuing Bank Credit Event**"), then, within ten (10) calendar days following Landlord's notice to Tenant, Tenant shall deliver to Landlord a new Letter of Credit meeting the terms of this Section 2 issued by an issuing bank

meeting Landlord's credit rating standards and otherwise acceptable to Landlord, in which event, Landlord shall return to Tenant the previously held Letter of Credit. If Tenant fails to timely deliver such replacement Letter of Credit to Landlord, such failure shall be deemed a Default by Tenant under the Lease, without the necessity of additional notice or the passage of additional grace periods, entitling Landlord to draw upon the Letter of Credit.

(ii) **Replacement of Letter of Credit Upon Draw.** If, as result of any application or use by Landlord of all or any part of the Letter of Credit, the amount of the Letter of Credit plus any Unused Proceeds then held by Landlord shall be less than the Letter of Credit Amount, Tenant shall, within five (5) days thereafter, provide Landlord with additional Letter(s) of Credit in an amount equal to the deficiency (or a replacement or amended Letter of Credit in the total Letter of Credit Amount), and any such additional (or replacement or amended) Letter of Credit shall comply with all of the provisions of this Section 2; notwithstanding anything to the contrary contained in the Lease, if Tenant fails to timely comply with the foregoing, the same shall constitute a Default by Tenant under this Lease, without the necessity of additional notice or the passage of additional grace periods.

(e) **Nature of Letter of Credit.** Landlord and Tenant (1) acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or be treated as a "security deposit" and any Law applicable to security deposits in the commercial context including Section 1950.7 of the California Civil Code, as such section now exists or as may be hereafter amended or succeeded ("**Security Deposit Laws**"), (2) acknowledge and agree that the Letter of Credit (including any renewal thereof or substitute therefor or any proceed thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (3) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of Law, now or hereafter in effect, which (i) establish the time frame by which Landlord must refund a security deposit under lease, and/or (ii) provide that Landlord may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed

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that Landlord may, in addition, claim those sums specified in this Section 2 above and/or those sums reasonably necessary to (a) compensate Landlord for any loss or damage caused by Tenant's breach of the Lease or the acts or omission of Tenant or any other Tenant Related Parties, including any damages Landlord suffers following termination of the Lease, or (b) compensate Landlord for any and all damages arising out of, or incurred in connection with, the termination of this Lease including, without limitation, those specifically identified in Section 1951.2 of the California Civil Code, all to the extent Landlord is entitled to recover the same from Tenant pursuant to the terms of the Lease.

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## EXHIBIT G

### PARKING AGREEMENT

This Exhibit (the "**Parking Agreement**") is attached to and made a part of the Office Lease Agreement (the "**Lease**") by and between CA-MISSION STREET LIMITED PARTNERSHIP ("**Landlord**") and JAGUAR HEALTH, INC. ("**Tenant**") for space in the Building located at 201 Mission Street, San Francisco, California.

1. During the Term, Tenant has the right to lease from Landlord and Landlord agrees to lease to Tenant one (1) parking space (the "**Space**") for the use of Tenant and Tenant's clients and their respective employees in the surface parking lot servicing the Building (the "**Parking Lot**"), located adjacent to the Building on the southeast side. Tenant's rights under this Parking Agreement are contingent upon Tenant delivering not less than ten (10) days' written notice to Landlord stating its election to lease the Space, provided that Landlord may permit Tenant to lease the Space prior to the passage of such ten (10)-day period if such Space is readily available. Tenant may elect not to lease the Space by delivering written notice to Landlord, and such termination will be effective on the last day of the calendar month during which Tenant delivers such notice, provided that if Landlord receives such notice less than three (3) days prior to the last day of the month, then such termination shall be effective on the last day of the following calendar month. If, following any such termination described in the foregoing sentence, Tenant may elect to re-lease the Space (subject to availability) under the terms and conditions hereof by delivering written notice of such election to Landlord. In addition to the Space described above, Tenant may lease from Landlord additional spaces in the Parking Lot on a month-to-month basis, subject to the availability, and subject to the terms and conditions of this Parking Agreement. The rent for such additional spaces and for the Space (referred to collectively herein as the "**Spaces**") as of the Effective Date is \$425.00 per month for each Space; said rate is subject to adjustment from time to time in Landlord's sole but reasonable discretion. Such charges, if any, shall be payable in advance to Landlord or such other entity as designated by Landlord, and shall be sent concurrent with Tenant's payment of monthly Base Rent to the address Landlord designates from time to time. Except as otherwise set forth herein below, no deductions from such charges, if any, shall be made for days on which the Parking Lot is not used by Tenant.

2. Tenant shall at all times comply with all applicable ordinances, rules, regulations, codes, laws, statutes and requirements of all federal, state, county and municipal governmental bodies or their subdivisions respecting the use of the Parking Lot. Landlord reserves the right to adopt, modify and enforce reasonable rules ("**Rules**") governing the use of the Parking Lot from time to time. Landlord shall provide Tenant with one (1) parking pass for each of the Spaces, provided that Landlord shall have the right to require Tenant to place a deposit on each such parking pass and to pay a fee for any lost or damaged parking pass. Landlord may refuse to permit any person who violates such Rules to park in the Parking Lot, and any violation of the Rules shall subject the car to removal from the Parking Lot following reasonable notice. Tenant shall comply with and cause its employees to comply with all the Rules as well as all reasonable additions and amendments thereto.

3. Unless specified to the contrary above, the Spaces hereunder shall be provided on a non-designated "first-come, first-served" basis. Landlord reserves the right to assign other specific parking spaces, and to reserve other parking spaces for visitors, small cars, handicapped persons and for other tenants, guests of tenants or other parties, which assignment and reservation or spaces may be relocated as determined by Landlord from time to time, and Tenant

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and persons designated by Tenant hereunder shall not park in any such location designated for such assigned or reserved parking spaces.

4. Tenant shall not store or permit its employees to store any automobiles in the Parking Lot without the prior written consent of the operator. Except for emergency repairs, Tenant and its employees shall not perform any work on any automobiles while located in the Parking Lot. If it is necessary for Tenant or its employees to leave an automobile in the Parking Lot overnight, Tenant shall provide the operator with prior notice thereof designating the license plate number and model of such automobile.

5. Landlord shall have the right to temporarily close the Parking Lot, or certain areas therein in order to perform necessary repairs, maintenance and improvements to the Parking Lot, and in such events, Landlord shall refund any prepaid parking fee hereunder for any Spaces affected by such closure, prorated on a per diem basis.

6. **LANDLORD SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS USING THE PARKING LOT OR AUTOMOBILES OR OTHER PROPERTY THEREIN, IT BEING AGREED THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE USE OF THE SPACES SHALL BE AT THE SOLE RISK OF TENANT AND ITS EMPLOYEES. WITHOUT LIMITING THE FOREGOING, TENANT HEREBY VOLUNTARILY RELEASES, DISCHARGES, WAIVES AND RELINQUISHES ANY AND ALL ACTIONS OR CAUSES OF ACTION FOR PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING TO TENANT ARISING AS A RESULT OF PARKING IN THE PARKING LOT, OR ANY ACTIVITIES INCIDENTAL THERETO, WHEREVER OR HOWEVER THE SAME MAY OCCUR, AND FURTHER AGREES THAT TENANT WILL NOT PROSECUTE ANY CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE AGAINST LANDLORD OR ANY OF THE LANDLORD RELATED PARTIES FOR ANY SAID CAUSES OF ACTION. IN ALL EVENTS, TENANT AGREES TO LOOK FIRST TO ITS INSURANCE CARRIER AND TO REQUIRE THAT TENANT’S EMPLOYEES LOOK FIRST TO THEIR RESPECTIVE INSURANCE CARRIERS FOR PAYMENT OF ANY LOSSES SUSTAINED IN CONNECTION WITH ANY USE OF THE PARKING LOT. TENANT HEREBY WAIVES ON BEHALF OF ITS INSURANCE CARRIERS ALL RIGHTS OF SUBROGATION AGAINST LANDLORD OR LANDLORD RELATED PARTIES.**

7. Tenant shall not assign its rights under this Parking Agreement or sublease any Space without the consent of Landlord. Landlord shall have the right to terminate this Parking Agreement with respect to any Space that Tenant desires to sublet or assign its rights thereto.

8. Landlord hereby reserves the right to enter into a management agreement or lease with another entity for the operation of the Parking Lot (“Operator”). In such event, Tenant, upon request of Landlord, shall enter into a parking agreement upon substantially the same terms hereunder with the Operator and pay the Operator the monthly charge established hereunder, and Landlord shall have no liability for claims arising through acts or omissions of the Operator. It is understood and agreed that the identity of the Operator may change from time to time during the Term. In connection therewith, any parking lease or agreement entered into between Tenant and any Operator shall be freely assignable by such Operator or any successors thereto.

**EXHIBIT H**

**FORM OF LETTER OF CREDIT**

**Irrevocable Standby Letter Of Credit**

**Number:** \_\_\_\_\_  
**Issue Date:** \_\_\_\_\_

BENEFICIARY

**CA-MISSION STREET LIMITED PARTNERSHIP**  
c/o LaSalle Investment Management  
333 W. Wacker Drive, Suite 2300  
Chicago, IL 60606  
Attention: Denise Harrison

APPLICANT

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

LETTER OF CREDIT ISSUE AMOUNT

USD \_\_\_\_\_

EXPIRY  
DATE: \_\_\_\_\_

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT, WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT (THE “LETTER OF CREDIT”) IN YOUR FAVOR IN THE AMOUNT OF USD ( ) AVAILABLE WITH US AT OUR ABOVE OFFICE BY PAYMENT AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS:

- 1. A DRAFT DRAWN ON US AT SIGHT MARKED “DRAWN UNDER BANK, STANDBY LETTER OF CREDIT NO. .”
- 2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.
- 3. BENEFICIARY’S DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY WORDED AS FOLLOWS:

“THE AMOUNT OF THE ACCOMPANYING DRAFT REPRESENTS FUNDS DUE AND OWING TO US PURSUANT TO THE TERMS OF THAT CERTAIN LEASE DATED (PLEASE PROVIDE DATE OF THE LEASE) BY AND BETWEEN , AS LANDLORD, AND , AS TENANT, (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED) OR ANY OTHER AGREEMENT BETWEEN SUCH PARTIES RELATED TO THE LEASE.

THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON . IT IS A CONDITION OF THIS LETTER OF CREDIT THAT SUCH EXPIRATION DATE SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT WRITTEN AMENDMENT, FOR ONE

Exhibit H - 1

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YEAR PERIODS, BUT NOT BEYOND (THE "FINAL EXPIRY DATE") UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE WE SEND WRITTEN NOTICE TO YOU AT YOUR ADDRESS ABOVE BY OVERNIGHT COURIER OR REGISTERED MAIL WITH COPY OF SUCH NOTICE SHALL ALSO BE SENT BY OVERNIGHT COURIER OR REGISTERED MAIL TO SHARTSIS FRIESE LLP, ONE MARITIME PLAZA, 18TH FLOOR, SAN FRANCISCO, CALIFORNIA 94111, ATTENTION: KATHLEEN KEELER BRYSKI (UNLESS THIS LETTER OF CREDIT HAS BEEN TRANSFERRED) THAT WE ELECT NOT TO EXTEND THE EXPIRATION DATE OF THIS LETTER OF CREDIT BEYOND THE DATE SPECIFIED IN SUCH NOTICE.

UPON OUR SENDING YOU SUCH NOTICE OF THE NON-EXTENSION OF THE EXPIRATION DATE OF THIS LETTER OF CREDIT, YOU MAY ALSO DRAW UNDER THIS LETTER OF CREDIT, ON OR BEFORE THE EXPIRATION DATE SPECIFIED IN SUCH NOTICE, BY PRESENTATION OF THE FOLLOWING DOCUMENTS TO US AT OUR ABOVE ADDRESS:

1. A DRAFT DRAWN ON US AT SIGHT MARKED "DRAWN UNDER BANK, STANDBY LETTER OF CREDIT NO. ."
2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.
3. BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY WORDED AS FOLLOWS:

"BENEFICIARY HAS RECEIVED NOTIFICATION FROM BANK, THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED PAST ITS CURRENT EXPIRATION DATE. THE UNDERSIGNED FURTHER CERTIFIES THAT (I) AS OF THE DATE OF THIS STATEMENT, BENEFICIARY HAS NOT RECEIVED A LETTER OF CREDIT OR OTHER INSTRUMENT ACCEPTABLE TO IT AS A REPLACEMENT; AND (II) BENEFICIARY HAS NOT RELEASED FROM ITS OBLIGATIONS TO BENEFICIARY IN CONNECTION WITH THAT CERTAIN LEASE DATED (PLEASE PROVIDE LEASE DATE) BETWEEN , AS LANDLORD, AND , AS TENANT, (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED).

MULTIPLE AND PARTIAL DRAWING(S) ARE PERMITTED UNDER THIS LETTER OF CREDIT; PROVIDED, HOWEVER, THAT THE TOTAL AMOUNT OF ANY PAYMENT(S) MADE UNDER THIS LETTER OF CREDIT WILL NOT EXCEED THE TOTAL AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE TRANSFEREE AND ONLY IN THE FULL AMOUNT AVAILABLE TO BE DRAWN UNDER THE LETTER OF CREDIT AT THE TIME OF SUCH TRANSFER. ANY SUCH TRANSFER MAY BE EFFECTED ONLY THROUGH BANK, AND ONLY UPON PRESENTATION TO US AT OUR PRESENTATION OFFICE SPECIFIED HEREIN OF A DULY EXECUTED TRANSFER REQUEST IN THE FORM ATTACHED HERETO AS EXHIBIT A, WITH INSTRUCTIONS THEREIN IN BRACKETS COMPLIED WITH, TOGETHER WITH THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENTS THERETO. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE ORIGINAL OF THIS LETTER OF CREDIT,

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AND WE SHALL DELIVER SUCH ORIGINAL TO THE TRANSFEREE. ALL CHARGES IN CONNECTION WITH ANY TRANSFER OF THIS LETTER OF CREDIT ARE FOR THE APPLICANT'S ACCOUNT, PROVIDED THAT PAYMENT OF ANY TRANSFER FEE SHALL NOT BE A CONDITION PRECEDENT TO THE EFFECTIVENESS OF THE TRANSFER.

WE ARE SUBJECT TO VARIOUS LAWS, REGULATIONS AND EXECUTIVE AND JUDICIAL ORDERS (INCLUDING ECONOMIC SANCTIONS, EMBARGOES, ANTI-BOYCOTT, ANTI-MONEY LAUNDERING, ANTI-TERRORISM, AND ANTI-DRUG TRAFFICKING LAWS AND REGULATIONS) OF THE U.S. AND OTHER COUNTRIES THAT ARE ENFORCEABLE UNDER APPLICABLE LAW. WE WILL NOT BE LIABLE FOR OUR FAILURE TO MAKE, OR OUR DELAY IN MAKING, PAYMENT UNDER THIS LETTER OF CREDIT OR FOR ANY OTHER ACTION WE TAKE OR DO NOT TAKE, OR ANY DISCLOSURE WE MAKE, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT (INCLUDING, WITHOUT LIMITATION, ANY REFUSAL TO TRANSFER THIS LETTER OF CREDIT) THAT IS REQUIRED BY SUCH LAWS, REGULATIONS, OR ORDERS.

WE HEREBY ENGAGE WITH YOU THAT EACH DEMAND PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TOGETHER WITH THE DOCUMENTS SPECIFIED IN THIS LETTER OF CREDIT AT OUR OFFICE LOCATED AT , ATTENTION: ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE. ALTERNATIVELY, YOU MAY MAKE DEMAND FOR PAYMENT BY FACSIMILE TRANSMISSION AT: ( ) - AND SIMULTANEOUSLY UNDER TELEPHONE ADVICE TO: ( ) - , ATTENTION: WITH ORIGINAL OF DRAW DOCUMENTS TO FOLLOW BY OVERNIGHT COURIER SERVICE, PROVIDED, HOWEVER, THE BANK WILL DETERMINE HONOR OR DISHONOR ON THE BASIS OF PRESENTATION BY FACSIMILE ALONE, AND WILL NOT EXAMINE THE ORIGINALS. DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THIS LETTER OF CREDIT WILL BE DULY HONORED WITHIN TWO (2) BUSINESS DAYS AFTER PRESENTATION.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT OR AGREEMENT REFERENCED HEREIN OTHER THAN THE STIPULATED ICC RULES AND GOVERNING LAWS.

CANCELLATION PRIOR TO EXPIRATION: YOU MAY RETURN THIS LETTER OF CREDIT TO US FOR CANCELLATION PRIOR TO ITS EXPIRATION PROVIDED THAT THIS LETTER OF CREDIT IS ACCOMPANIED BY YOUR WRITTEN AGREEMENT TO ITS CANCELLATION. SUCH WRITTEN AGREEMENT TO CANCELLATION SHOULD SPECIFICALLY REFERENCE THIS LETTER OF CREDIT BY NUMBER,

CLEARLY INDICATE THAT IT IS BEING RETURNED FOR CANCELLATION AND BE SIGNED BY A PERSON IDENTIFYING THEMSELVES AS AUTHORIZED TO SIGN FOR YOU.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

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Very Truly Yours,

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

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EXHIBIT A

LETTER OF CREDIT NO.

TRANSFER REQUEST OF \_\_\_\_\_ BANK,

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER:

DATE: \_\_\_\_\_  
TO: \_\_\_\_\_

\_\_\_\_\_ BANK,

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY OF THE ABOVE DESCRIBED LETTER OF CREDIT (THE "TRANSFEROR") HEREBY IRREVOCABLY TRANSFERS ALL ITS RIGHTS UNDER THE LETTER OF CREDIT AS AMENDED TO THIS DATE (THE "CREDIT") TO THE FOLLOWING TRANSFEREE (THE "TRANSFEREE"):

\_\_\_\_\_  
NAME OF TRANSFEREE

\_\_\_\_\_  
ADDRESS

BY THIS TRANSFER, ALL RIGHTS OF TRANSFEROR IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE, AND THE TRANSFEREE SHALL BE THE SOLE BENEFICIARY OF THE LETTER OF CREDIT, POSSESSING ALL RIGHTS PERTAINING THERETO, INCLUDING, BUT NOT LIMITED TO, SOLE RIGHTS RELATING TO THE APPROVAL OF ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. YOU ARE HEREBY IRREVOCABLY INSTRUCTED TO ADVISE FUTURE AMENDMENT(S) OF THE LETTER OF CREDIT TO THE TRANSFEREE WITHOUT THE TRANSFEROR'S CONSENT OR NOTICE TO THE TRANSFEROR.

ENCLOSED ARE THE ORIGINAL LETTER OF CREDIT AND THE ORIGINAL(S) OF ALL AMENDMENTS TO DATE.

THE TRANSFEROR WARRANTS TO YOU THAT THIS TRANSFER AND THE TRANSACTION(S) HEREUNDER WILL NOT CONTRAVENE ANY FEDERAL LAWS OR REGULATIONS OF THE UNITED STATES NOR THE LAWS OR REGULATIONS OF ANY STATE THEREOF. PLEASE NOTIFY THE TRANSFEREE OF THIS TRANSFER AND OF THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT AS TRANSFERRED. THIS TRANSFER WILL BECOME EFFECTIVE UPON \_\_\_\_\_ BANK'S WRITTEN NOTIFICATION TO THE TRANSFEREE THAT SUCH TRANSFER WAS EFFECTED.

\_\_\_\_\_  
(TRANSFEROR'S NAME)

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BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

THE BANK SIGNING BELOW GUARANTEES THAT THE TRANSFEROR'S SIGNATURE IS GENUINE AND THAT THE INDIVIDUAL SIGNING THIS TRANSFER REQUEST HAS THE AUTHORITY TO DO SO:

\_\_\_\_\_  
(BANK'S NAME)

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

[A CORPORATE NOTARY ACKNOWLEDGMENT OR A CERTIFICATE OF AUTHORITY WITH CORPORATE SEAL IS ACCEPTABLE IN LIEU OF A BANK GUARANTEE]

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**EXHIBIT H-1**

**ACCEPTED ISSUING BANKS**

- Bank of America
- BB&T Co.
- Fifth Third Bank
- JPMorgan Chase Bank
- Northern Trust Bank
- PNC Bank
- US Bank, N.A.
- Wells Fargo Bank
- Bridge Bank

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**EXHIBIT I**

**DISABILITY ACCESS OBLIGATIONS UNDER  
SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38**

Before you, as the Tenant, enter into the lease document to which this Exhibit is attached (whether a new lease or an amendment to an existing lease) with us, the Landlord, for premises in the building located in San Francisco, CA and more particularly described in the Lease (the "**Property**"), please be aware of the following important information about the Lease:

**You May Be Held Liable for Disability Access Violations on the Property.** Even though you are not the owner of the Property, you, as the Tenant, as well as the Property owner, may still be subject to legal and financial liabilities if the leased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering into the lease document to make sure that you understand your obligations under Federal and State disability access laws. The Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the Administrative Code in your requested language; a copy of such Notice is attached hereto in satisfaction of such obligation. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call 415-554-6134.

**The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property.** Under the laws of the City of San Francisco, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the leased Property. The Lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased Property that might impact accessibility under Federal and State disability access laws. You may wish to review those provisions with your attorney prior to entering the lease to make sure that you understand your obligations under the Lease.

**PLEASE NOTE:** The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits.

By signing below, each party confirms that it has read and understood this Notice.

LANDLORD:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I-1

ACCESS INFORMATION NOTICE: ENGLISH

**PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS**

**Professional by Order of Small Business (OSB) A or B (ADA)**  
 - median annual of sales  
 - high number of employees

**Notice**  
 1. You received a notice (1) notifying you of the notice and your obligations under the ADA, and (2) providing you with the notice and your obligations under the ADA.  
 2. The business has opened a branch.

**Request**  
 Request estimated legal number of the City of San Francisco to provide you with the notice and your obligations under the ADA.

**Request/Instructor**  
 Request/Instructor (ADA) to provide you with the notice and your obligations under the ADA.

**Compliance**  
 Compliance is a non-negotiable requirement as not only will your business be held responsible to follow by tenants, but you also get a growing market of services, including with many students and persons with disabilities. Compliance is a non-negotiable requirement as not only will your business be held responsible to follow by tenants, but you also get a growing market of services, including with many students and persons with disabilities.

**COMPLIANCE VS. LAWSUIT**

**BUSINESS RESOURCES**  
 Office of Small Business Development  
 415 Market Street, Suite 1000  
 San Francisco, CA 94102  
 415.694.6300 www.sfbdc.org

**BUSINESS RESOURCES**  
 Department of Justice (ADA) Civil Rights  
 1414 North 17th Street  
 Washington, DC 20546  
 202.453.7812 www.ada.gov

**A Guide to Disabled Accessibility Compliance**  
 Small Business Commission Access Information Notice

**DISABLED ACCESSIBILITY**

**THE STATE OF ACCESS LAWS**  
 There are two different bodies of law in California that regulate disability access: a state building code, and a federal civil rights law. The state building code requirements for access are located in the California Code of Regulations, Title 24, Part 2, and are commonly referred to as Title 24.

**THE AMERICAN WITH DISABILITIES ACT OF 1990 (ADA)** is a sweeping federal civil rights law that prohibits discrimination against people with disabilities in many areas. Title II of the ADA covers equal access accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The United States Department of Justice (DOJ) enforces the ADA. Being compliant to the regulations of one law does not relieve your responsibility to be compliant with the other set of laws.

**NON-Compliance**  
 If the building is not compliant with California Title 24, the owner must comply with the ADA. If the building is not compliant with Title 24, the owner must also comply with the ADA. If the building is not compliant with Title 24, the owner must also comply with the ADA. If the building is not compliant with Title 24, the owner must also comply with the ADA.

**Who is Required to Remove Barriers?**  
 Barriers are defined by the ADA as obstacles to accessibility. Such obstacles make it difficult — sometimes impossible — for people with disabilities to use the things and services in the public. You are responsible for removing barriers to the things and services in the public. You are responsible for removing barriers to the things and services in the public. You are responsible for removing barriers to the things and services in the public.

**Ready, Accessible**  
 Ready, Accessible means that your business is ready to be accessed by people with disabilities. Ready, Accessible means that your business is ready to be accessed by people with disabilities. Ready, Accessible means that your business is ready to be accessed by people with disabilities.

**This document is intended as a general technical guidance. It is NOT legal advice and does not replace the professional advice of a professional that is authorized, CAGP or industry knowledgeable in ADA requirements. Call your attorney for more information.**

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### LOW BARRIERS

- A. Seating: Chairs: height and stability
- B. Floor: covered by soft cover of the correct height and thickness: 2" - 1/2" even if the floor is carpeted
- C. Door: Clearances
- D. Door: Hardware

### MEDIUM BARRIERS

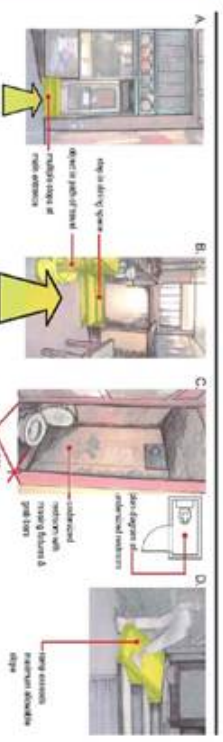
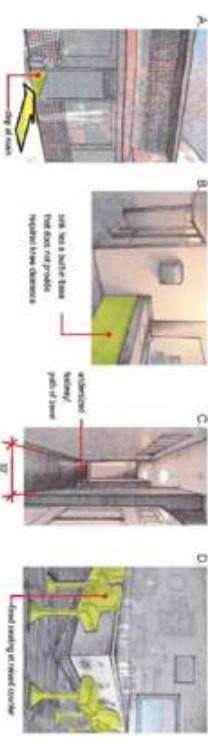
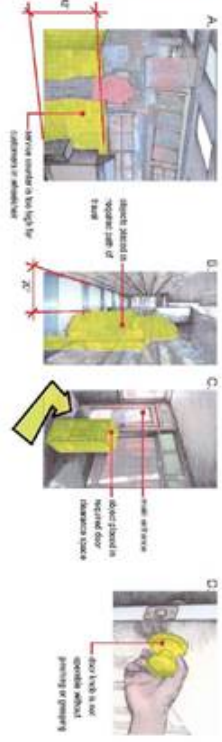
- A. Sign: at Entrance
- B. Restroom: WADA: Clear space
- C. Unobstructed Path: of Travel
- D. No Access to Stairs

### HIGH BARRIERS

- A. Multiple Steps: at Entrance
- B. Step: in Change/Collector Space
- C. Unobstructed Path: of Travel
- D. Ramp: Sloped: Maximum Slope Allowed

### ADA COMPLIANCE

- A. Consider: Entry
- B. Path: of Travel: Clearances
- C. Compliance: Conditions
- D. Compliance: Factors



### COMMON MISCONCEPTIONS

Let's correct some common misconceptions or "generalizations" that are often heard about accessibility. The first is that "ADA is a checklist." This is incorrect because ADA is a set of principles that guide the design of accessible environments. It is not a checklist of items to be checked off. The second is that "ADA is only for people in wheelchairs." This is incorrect because ADA applies to a wide range of people, including those with visual, hearing, and cognitive disabilities. The third is that "ADA is only for public buildings." This is incorrect because ADA applies to a wide range of facilities, including private businesses and places of public accommodation.

Setting the standard will reduce the risk of non-compliance. The first is that "ADA is a checklist." This is incorrect because ADA is a set of principles that guide the design of accessible environments. It is not a checklist of items to be checked off. The second is that "ADA is only for people in wheelchairs." This is incorrect because ADA applies to a wide range of people, including those with visual, hearing, and cognitive disabilities. The third is that "ADA is only for public buildings." This is incorrect because ADA applies to a wide range of facilities, including private businesses and places of public accommodation.

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**LANDLORD LETTER OF CREDIT & WARRANT ISSUANCE AGREEMENT**

**THIS LANDLORD LETTER OF CREDIT & WARRANT ISSUANCE AGREEMENT** (the “Agreement”) is deemed to be effective as of August 28, 2018 (the “Effective Date”), by and among Jaguar Health, Inc., a Delaware corporation (the “Company”), and the undersigned letter of credit facilitator identified on the signature page hereto (the “LC Facilitator”).

**RECITALS**

A. Subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, in consideration of LC Facilitator causing a Letter of Credit from LC Facilitator’s financial institution to be issued to the Company’s landlord as set forth in this Agreement, the Company desires to issue to LC Facilitator, and LC Facilitator desires to acquire from the Company, a Warrant in form and substance attached hereto as Exhibit A (the “Warrant”), all as more fully set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual agreements, covenants, representations and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each LC Facilitator hereby agree as follows:

**1. Issuance of Letter of Credit & Warrant.**

**a. Issuance of Letter of Credit.** Subject to the terms and conditions of this Agreement, including fulfillment of the conditions set forth in Section 5 below, at the Closing (as defined below) LC Facilitator shall cause its financial institution identified on the signature page hereto to issue a Letter of Credit in the amount of Four Hundred Seventy-Five Thousand Dollars (\$475,000) on behalf of the Company in favor of the Company’s landlord, CA-Mission Street Limited Partnership, a Delaware limited partnership (the “Landlord”) in accordance with the terms and conditions set forth on Exhibit B attached hereto (the “Letter of Credit”) pursuant to the Company’s lease with its Landlord for the premises located at 201 Mission Street, Suite 2375, San Francisco, CA (the “Lease”) to secure Company’s obligations under the Lease as specified under the Letter of Credit and Lease.

**b. Issuance of Warrant.** In accordance with the terms of this Agreement, including fulfillment of the conditions set forth in Section 5 below, at the Closing the Company shall issuance the Warrant to LC Facilitator. The consummation of the transactions contemplated herein (the “Closing”) shall take place at the offices of Reed Smith LLP, 1510 Page Mill Road, Suite 110, Palo Alto, California, 94304 (or remotely via the exchange of documents and signatures) on such date specified by the Company at least one (1) Business Day after all conditions set forth in Section 5 are satisfied. If the Closing has not occurred on, or before, August 31, 2018, either the Company or LC Facilitator may terminate this Agreement by providing written notice to the other Party. For the purposes of this Agreement, “Business Day” means a day other than Saturday, Sunday or any day on which banks located in the State of New York or the City of London are authorized or obligated to close.

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**c. Potential Letter of Credit Reduction/Replacement.** On or before the earlier to occur of (x) the one year anniversary date of the Closing and (y) within ten (10) business days of the Company receiving in the aggregate since the date of the Closing no less than Six Million Dollars (\$6 Million) of unrestricted cash from a business development transaction or transactions (excluding from this \$6 Million unrestricted cash threshold for the avoidance of doubt any revenues from the sale of Mytesi and any cash allocated to the repayment of debt then outstanding and owed by the Company or its wholly owned subsidiary, Napo Pharmaceuticals, Inc. (“Napo”) and excluding cash otherwise legally or contractually obligated for special projects, expenses or activities by the Company or Napo; and for additional clarity, excluding any cash received by the Company or Napo from lenders or from the sale of the Company’s equity related instruments), the Company shall cause the Letter of Credit to be released and replaced by a new letter of credit not provided or guaranteed by LC Facilitator. Likewise, if the Company has not received on a consolidated basis with Napo at least \$5,000,000 of gross proceeds in the aggregate from any source in the form of debt or equity or debt or equity like instruments or any combination thereof) since the Closing and on, or before, October 1, 2018, then within ten (10) business days thereafter the Company shall cause LC Facilitator’s exposure under the Letter of Credit to be reduced by One Hundred Twenty-Two Thousand Dollars (\$122,000) whether pursuant to a release of LC Facilitator of such amount under the Letter of Credit, replacement or modification of the Letter of Credit in whole or in part, partial replacement or additional collateral in favor of LC Facilitator or otherwise.

**2. Company’s Representations and Warranties.** The Company hereby represents and warrants to LC Facilitator as of the Effective Date and as of the Closing as follows, subject to any exceptions as are disclosed prior to the Closing in the Company’s reports, schedules, forms, statements and other documents filed by the Company under the Securities Act of 1933, as amended (the “Securities Act”) and the Exchange Act of 1934, as amended (the “Exchange Act”), including pursuant to Section 13(a) or 15(d) thereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Reports”), which SEC Reports as filed prior to the Effective Date shall be deemed a part hereof and shall qualify any representation or warranty otherwise made herein to the extent of the disclosures contained in the SEC Reports as filed prior to the Effective Date:

**a. Organization, Good Standing and Qualification.** The Company is a corporation duly organized and validly existing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement and issue the Warrant, and to carry out the provisions of this Agreement and to carry on its business as presently conducted. The Company is duly qualified and is authorized to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on the Company or its business.

**b. Authorization; Binding Obligations.** All corporate action on the part of the Company, its officers, directors and shareholders necessary for the authorization of this Agreement and the Warrant, the performance of all obligations of the Company hereunder at the Closing, and the sale, issuance and delivery of the Warrant pursuant hereto has been taken or will be taken prior to the Closing.

c. **No Conflict.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate or result in a breach of or constitute a default under any contract or agreement to which the Company is a party or by which it is bound, (ii) conflict with or result in a breach of or constitute a default under any provision of the certificate of incorporation or bylaws (or other charter documents) of the Company, or (iii) violate or result in a breach of or constitute a default under any judgment, order, decree, rule or regulation of any court or governmental agency to which the Company is subject.

d. **SEC Reports; Financial Statements.** The Company has filed all SEC Reports required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the one year preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material). The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

e. **Absence of Litigation.** Neither the Company nor any of its directors is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency and is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body. Except as set forth in the SEC Reports, no such proceedings, investigation or inquiry are pending or, to the Company's knowledge, threatened against the Company, and, to the Company's knowledge, there are no circumstances likely to give rise to any such proceedings.

f. **Intellectual Property.** The Company has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with its business and which the failure to so have could have a material adverse effect (collectively, the "Intellectual Property Rights"). To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights.

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g. **Valid Issuance.** The Warrant and underlying securities issued hereunder will be duly and validly issued, fully paid and non-assessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and under applicable state and federal securities laws.

3. **LC Facilitator Representations and Warranties.** LC Facilitator represents and warrants as of the Closing as follows:

a. **Requisite Power and Authority.** LC Facilitator has all necessary power and authority under all applicable provisions of law to execute and deliver this Agreement and to carry out its provisions. All action on LC Facilitator's part required for the lawful execution and delivery of this Agreement has been or will be taken prior to the Closing.

b. **Own Account.** LC Facilitator is acquiring the Warrant and underlying securities (collectively, the "Shares") as principal for its own account and not with a view to, or for resale in connection with, any distribution thereof in the United States, and LC Facilitator has no present intention of selling or distributing any Shares in the United States. LC Facilitator understands that the Shares have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment as expressed herein.

c. **Access to Data.** LC Facilitator has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management and to obtain any additional information which LC Facilitator has deemed necessary or appropriate for deciding whether or not to purchase the Shares, including an opportunity to receive, review and understand the information regarding the Company's financial statements, capitalization and other business information contained in the SEC Reports as LC Facilitator deems prudent. Such LC Facilitator acknowledges that no representations or warranties, oral or written, have been made by the Company or any agent thereof except as set forth in this Agreement.

d. **No Fairness Determination.** LC Facilitator is aware that no federal, state or other agency has made any finding or determination as to the fairness of the investment, nor made any recommendation or endorsement of the Shares.

e. **Knowledge And Experience.** LC Facilitator has such knowledge and experience in financial and business matters, including investments in other start-up companies, that such entity or individual is capable of evaluating the merits and risks of the investment in the Shares and it is able to bear the economic risk of such investment. LC Facilitator is an "accredited" investor as that term is defined under Regulation D promulgated under the Securities Act. Further, LC Facilitator has such knowledge and experience in financial and business matters that such individual is capable of utilizing the information made available in connection with the offering of the Shares, of evaluating the merits and risks of an investment in the Shares and of making an informed investment decision with respect to the Shares. Neither LC Facilitator, nor any person or entity with whom LC Facilitator will share beneficial ownership of the Shares, is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act.

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f. **General Solicitation.** LC Facilitator is not, to LC Facilitator's knowledge, acquiring the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

g. **Residence.** LC Facilitator's principal place of business or residence is and its investment decisions are made in the jurisdiction identified in the address or other jurisdiction set forth on the signature page.

**h.** LC Facilitator has access to and has reviewed the SEC reports which are available at the SEC's website to the extent LC Facilitator deemed appropriate.

**4. Restrictions on Transfer.**

**a.** Each instrument evidencing the Shares which LC Facilitator may purchase hereunder and any other securities issued upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event (unless no longer required in the opinion of the counsel for the Company) shall be imprinted with a legend substantially in the following form:

**THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS PURSUANT TO EXEMPTIONS IN THE VARIOUS JURISDICTIONS WHERE THEY ARE BEING SOLD.**

**5. Conditions to Closing.**

**a.** The obligation of FC Facilitator to consummate the transactions contemplated herein at the Closing is subject to the satisfaction on or before the date of the Closing of the following conditions, all or any of which may be waived in writing by LC Facilitators to consummate the transaction so contemplated:

**i.** Performance. The Company shall have performed all obligations, covenants and agreements herein required to be performed by the Company on or prior to the Closing.

**ii.** Proceedings. All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby to be consummated at or prior to the Closing and all documents incidental thereto or required to be delivered prior to or at the Closing will be reasonably satisfactory in form and substance to LC Facilitator.

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**iii.** Suits/Proceedings. No action, suit, proceeding or investigation by or before any court, administrative agency or other governmental authority shall have been instituted or threatened to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

**iv.** Authorization of Issuance. The Company's board of directors will have authorized the issuance and sale by it to LC Facilitator pursuant to this Agreement of the Warrant.

**v.** Consents and Approvals. The Company shall have obtained any and all consents (including all governmental or regulatory consents, approvals or authorizations required in connection with the valid execution and delivery of this Agreement), permits and waivers necessary or appropriate for consummation of the transactions contemplated by this Agreement.

**vi.** Representations and Warranties. The representations and warranties of the Company contained in this Agreement that are not qualified by materiality or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of the Company contained in this Agreement that are qualified by materiality or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date.

**b.** The obligation of the Company to consummate the transactions contemplated herein at the Closing is subject to the satisfaction on or before the date of the Closing of the following conditions, all or any of which may be waived in writing by the Company as to its obligation to consummate the transaction so contemplated:

**i.** Performance. LC Facilitator shall have performed all obligations, covenants and agreements herein required to be performed by LC Facilitator on or prior to the Closing.

**ii.** Instruments and Documents. All instruments and documents required to carry out this Agreement or incidental thereto shall be reasonably satisfactory to the Company and its counsel.

**iii.** Suits/Proceedings. No action, suit, proceeding or investigation by or before any court, administrative agency or other governmental authority shall have been instituted or threatened to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

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**iv.** Representations and Warranties. The representations and warranties of LC Facilitator contained in this Agreement that are not qualified by materiality or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of LC Facilitator contained in this Agreement that are qualified by materiality or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date.

## 6. Registration Rights.

**a.** The Company hereby agrees that, within ninety (90) days after the Closing, the Company shall file a shelf registration statement (or such other form available to the Company, the "Registration Statement") with the U.S. Securities and Exchange Commission ("Commission") with respect to the Registrable Securities. The Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, and shall use its commercially reasonable efforts to keep such Registration Statement continuously effective under the Securities Act during the entire Effectiveness Period (as such term is defined below along with any other terms used in this Section 6).

**b.** Notwithstanding anything in this Section to the contrary, the Company may, on no more than two occasions during any 12-month period, delay or suspend the effectiveness of the Registration Statement for up to 60 days on each occasion (a "Delay Period") if the board of directors of the Company determines in good faith that (i) effectiveness of the Registration Statement must be suspended in accordance with the rules and regulations under the Securities Act or that (ii) the disclosure of material non-public information ("Pending Developments") at such time would be detrimental to the Company and its subsidiaries, taken as a whole. Notwithstanding the foregoing, the Company shall use its reasonable best efforts to ensure that the Registration Statement is declared effective and its permitted use is resumed following a Delay Period as promptly as practicable.

**c.** All fees and expenses incident to the performance of or compliance with this Section by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement.

**d.** As used in this Section, the following terms have the respective meanings:

"Effectiveness Period" means, the period commencing on the Registration Statement Effective Date and ending on the earlier of (i) the time as all of the Registrable Securities covered by such Registration Statement have been sold (either pursuant to a Registration Statement or otherwise) by the Holder, or (ii) the time as all of the remaining Registrable Securities are eligible to be sold by the Holder without compliance with the volume limitations or public information requirements of Rule 144.

"Holder" means LC Facilitator so long as LC Facilitator holds Registrable Securities.

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"Registrable Securities" means: (i) the securities exercisable under the Warrant and (ii) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event, or any price adjustment as a result of such stock splits, reverse stock splits or similar events with respect to any of the securities referenced in (i).

"Registration Statement Effective Date" means the date on which the Registration Statement is first declared effective by the Commission.

## 7. Miscellaneous.

**a. Survival.** The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby for a period of one year.

**b. Successors and Assigns.** Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

**c. Entire Agreement.** This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between the parties with respect to the subject matters herein, and supersede and replace any prior agreements and understandings, whether oral or written between and among them with respect to such matters. The provisions of this Agreement after the Closing may be waived, altered, amended or repealed, in whole or in part, only upon the written consent of the Company and LC Facilitator.

**d. Title and Subtitles.** The titles of the Sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

**e. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**f. Applicable Law.** This Agreement shall be governed by and construed in accordance with laws of the State of California, applicable to contracts between California residents entered into and to be performed entirely within the State of California.

**g. Venue.** Any action, arbitration, or proceeding arising directly or indirectly from this Agreement or any other instrument or security referenced herein shall be litigated or arbitrated, as appropriate, in the County of San Francisco, in the State of California.

**h. Notices.** All notices and other communications provided for or permitted hereunder shall be made by hand-delivery, telecopier, or overnight air courier guaranteeing next day delivery at the address set forth on the signature pages hereof to the LC Facilitators and with respect to the Company at its principal place of business. All such notices and communications shall be deemed to have been duly given at the time delivered by hand, if personally delivered; when receipt acknowledged, if telecopied; and the next business day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. The parties may change

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the addresses to which notices are to be given by giving five days prior written notice of such change in accordance herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first set forth above.

**COMPANY:**

Address for Notice:

**JAGUAR HEALTH, INC.**

201 Mission Street, Suite 2375  
San Francisco, CA 94105  
Fax: (415) 371-8311

By: /s/ Lisa A. Conte  
Name: Lisa A. Conte  
Title: CEO and President

With a copy to (which shall not constitute notice):

Donald C. Reinke, Esq.  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOR LC FACILITATORS FOLLOW]

*Signature Page*

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed by their respective authorized signatories as of the day and year first set forth above.

Name of LC Facilitator: Pacific Capital Management, LLC

Signature of Authorized Signatory of LC Facilitator: /s/ Jonathan Glaser

Name of Authorized Signatory: Jonathan Glaser

Title of Authorized Signatory: Managing Member

Email Address of Authorized Signatory: jmg@jmgcapital.com

Facsimile Number of Authorized Signatory: 310-601-2850

Address for Notice to LC Facilitator:  
11601 Wilshire Blvd, Ste 1925  
Los Angeles, CA 90025

Address for Delivery of Warrant to LC Facilitator (if not same as address for notice):

EIN/Tax ID Number:

Closing Date: 08/28/2018

*Signature Page*

**EXHIBIT A (FORM OF WARRANT)**

**EXHIBIT B (LETTER OF CREDIT)**