

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

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended October 31, 2003

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 000-23262

**CMGI, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction of  
incorporation or organization)

**425 Medford Street  
Charlestown, Massachusetts**  
(Address of principal executive offices)

**04-2921333**  
(I.R.S. Employer  
Identification No.)

**02129**  
(Zip Code)

**(617) 886-4500**

(Registrant's telephone number, including area code)

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

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

As of December 8, 2003, there were 396,371,195 shares of the registrant's Common Stock, \$.01 par value per share, outstanding.

---

CMGI, INC.

FORM 10-Q

INDEX

	<u>Page Number</u>
<b>Part I. FINANCIAL INFORMATION</b>	
Item 1.	
Condensed Consolidated Financial Statements	
<a href="#">Condensed Consolidated Balance Sheets—October 31, 2003 and July 31, 2003 (unaudited)</a>	3
<a href="#">Condensed Consolidated Statements of Operations—Three months ended October 31, 2003 and 2002 (unaudited)</a>	4
<a href="#">Condensed Consolidated Statements of Cash Flows—Three months ended October 31, 2003 and 2002 (unaudited)</a>	5
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	6
Item 2.	
<a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	15
Item 3.	
<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	30
Item 4.	
<a href="#">Controls and Procedures</a>	30
<b>Part II. OTHER INFORMATION</b>	
Item 1.	
<a href="#">Legal Proceedings</a>	31
Item 2.	
<a href="#">Changes in Securities and Use of Proceeds</a>	31
Item 6.	
<a href="#">Exhibits and Reports on Form 8-K</a>	32
<a href="#">SIGNATURE</a>	33
<a href="#">EXHIBIT INDEX</a>	34

**CMGI, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(In thousands, except share and per share amounts)**  
**(Unaudited)**

	<u>October 31,</u> <u>2003</u>	<u>July 31,</u> <u>2003</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 267,730	\$ 196,916
Available-for-sale securities	1,943	79,151
Accounts receivable, trade, net of allowance for doubtful accounts of \$853 and \$996 at October 31, 2003 and July 31, 2003, respectively	53,902	55,209
Inventories	33,214	30,475
Prepaid expenses and other current assets	36,002	35,356
Current assets of discontinued operations	1,851	1,876
	<u>394,642</u>	<u>398,983</u>
Total current assets	394,642	398,983
Property and equipment, net	6,822	8,598
Investments in affiliates	18,799	19,470
Goodwill	22,122	22,122
Other assets	5,291	6,093
Non-current assets of discontinued operations	75	75
	<u>\$ 447,751</u>	<u>\$ 455,341</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current installments of long-term debt	\$ 6,035	\$ 6,622
Accounts payable	37,387	39,254
Current portion of accrued restructuring	8,685	9,268
Accrued income taxes	98,480	95,653
Accrued expenses	32,621	28,956
Other current liabilities	665	1,081
Current liabilities of discontinued operations	142	214
	<u>184,015</u>	<u>181,048</u>
Total current liabilities	184,015	181,048
Long-term debt, less current installments	1,646	1,673
Long-term portion of accrued restructuring	9,403	10,878
Other long-term liabilities	13,215	12,460
Non-current liabilities of discontinued operations	1,811	1,805
Minority interest	2,746	465
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.01 par value per share. Authorized 5,000,000 shares; zero issued or outstanding at October 31, 2003 and July 31, 2003	—	—
Common stock, \$0.01 par value per share. Authorized 1,400,000,000 shares; issued and outstanding 396,367,786 at October 31, 2003 and 395,591,493 shares at July 31, 2003	3,964	3,956
Additional paid-in capital	7,297,407	7,296,230
Deferred compensation	(803)	—
Accumulated deficit	(7,066,900)	(7,096,760)
	<u>1,247</u>	<u>43,586</u>
Accumulated other comprehensive income	1,247	43,586
Total stockholders' equity	234,915	247,012
	<u>\$ 447,751</u>	<u>\$ 455,341</u>

See accompanying notes to interim unaudited condensed consolidated financial statements

**CMGI, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(In thousands, except per share amounts)**  
**(Unaudited)**

	Three Months Ended October 31,	
	2003	2002
Net revenue	\$ 94,888	\$ 113,222
<b>Operating expenses:</b>		
Cost of revenue	87,410	104,363
Research and development	—	332
Selling	1,197	2,087
General and administrative	11,637	22,121
Amortization of stock-based compensation	102	55
Restructuring, net	1,686	165
Total operating expenses	102,032	129,123
Operating loss	(7,144)	(15,901)
<b>Other income (expense):</b>		
Interest income	974	1,167
Interest (expense) recovery, net	(396)	26,887
Other gains (losses), net	42,144	(57,540)
Equity in income (losses) of affiliates, net	44	(515)
Minority interest	(2,281)	65
	40,485	(29,936)
Income (loss) from continuing operations before income taxes	33,341	(45,837)
Income tax expense	2,989	856
Income (loss) from continuing operations	30,352	(46,693)
<b>Discontinued operations, net of income taxes:</b>		
Loss from discontinued operations	(491)	(46,891)
Net income (loss)	\$ 29,861	\$ (93,584)
Basic earnings (loss) per share:		
Earnings (loss) from continuing operations	\$ 0.08	\$ (0.12)
Loss from discontinued operations	—	(0.12)
Net earnings (loss)	\$ 0.08	\$ (0.24)
Diluted earnings (loss) per share:		
Earnings (loss) from continuing operations	\$ 0.07	\$ (0.12)
Loss from discontinued operations	—	(0.12)
Net earnings (loss)	\$ 0.07	\$ (0.24)
Shares used in computing basic earnings (loss) per share:	395,735	392,682
Shares used in computing diluted earnings (loss) per share:	402,535	392,682

See accompanying notes to interim unaudited condensed consolidated financial statements

**CMGI, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(in thousands)**  
**(Unaudited)**

	Three Months Ended October 31,	
	2003	2002
<b>Cash flows from operating activities of continuing operations:</b>		
Net income (loss)	\$ 29,861	\$ (93,584)
Loss from discontinued operations	(491)	(46,891)
	<u>30,352</u>	<u>(46,693)</u>
<b>Adjustments to reconcile net income (loss) to cash used for continuing operations:</b>		
Depreciation and amortization	2,303	2,848
Non-operating (gains) losses, net	(42,144)	23,958
Equity in (income) losses of affiliates	(44)	515
Non-cash restructuring charges	594	—
Minority interest	2,281	(65)
<b>Changes in operating assets and liabilities, excluding effects from acquired and divested subsidiaries:</b>		
Trade accounts receivable	1,307	(6,135)
Inventories	(2,739)	177
Prepaid expenses and other current assets	(511)	(13,169)
Accounts payable, accrued restructuring and expenses	(20)	4,444
Refundable and accrued income taxes, net	2,841	702
Other assets and liabilities	1,141	20,643
	<u>(4,639)</u>	<u>(12,775)</u>
Net cash used for operating activities of continuing operations	(4,639)	(12,775)
<b>Cash flows from investing activities of continuing operations:</b>		
Additions to property and equipment	(1,196)	(2,179)
Net proceeds from sales and maturities of (purchases of) available-for-sale securities, net	77,721	(10,259)
Cash impact of divestitures of subsidiaries	—	(583)
Net investments in affiliates	—	257
	<u>76,525</u>	<u>(12,764)</u>
Net cash provided by (used for) investing activities of continuing operations	76,525	(12,764)
<b>Cash flows from financing activities of continuing operations:</b>		
Repayments of long-term debt	(614)	(394)
Proceeds from issuance of common stock	74	97
	<u>(540)</u>	<u>(297)</u>
Net cash used for financing activities of continuing operations	(540)	(297)
Net cash used for discontinued operations	(532)	(14,573)
Net increase (decrease) in cash and cash equivalents	70,814	(40,409)
Cash and cash equivalents at beginning of period	196,916	196,099
Cash and cash equivalents at end of period	<u>\$ 267,730</u>	<u>\$ 155,690</u>

See accompanying notes to interim unaudited condensed consolidated financial statements

**CMGI, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**A. BASIS OF PRESENTATION**

The accompanying condensed consolidated financial statements have been prepared by CMGI, Inc. (together with its consolidated subsidiaries, "CMGI" or the "Company") in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, consisting only of those of a normal recurring nature, necessary for a fair presentation of the Company's financial position, results of operations and cash flows at the dates and for the periods indicated. While the Company believes that the disclosures presented are adequate to make the information not misleading, these condensed consolidated financial statements should be read in conjunction with the audited financial statements and related notes for the year ended July 31, 2003 which are contained in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") on October 20, 2003. The results for the three-month period ended October 31, 2003 are not necessarily indicative of the results to be expected for the full fiscal year. Certain prior year amounts in the condensed consolidated financial statements have been reclassified in accordance with US GAAP to conform to the current year presentation. Discontinued operations reporting has been applied for certain of the Company's subsidiaries that have been disposed of (see note F).

Marketable securities held by the Company, which meet the criteria for classification as trading securities, are carried at fair value. Unrealized holding gains and losses on securities classified as trading are recorded as a component of "Other gains (losses), net" in the accompanying condensed consolidated statements of operations.

**B. NEW ACCOUNTING PRONOUNCEMENTS**

In January 2003, the Financial Accounting Standards Board (FASB) issued Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities" ("VIEs"). This Interpretation addresses the consolidation of variable interest entities in which the equity investors lack one or more of the essential characteristics of a controlling financial interest or where the equity investment at risk is not sufficient for the entity to finance its activities without subordinated financial support from other parties. The Interpretation applies to VIEs created after January 31, 2003 and to VIEs in which an interest is acquired after that date. Effective January 31, 2004, it also applies to VIEs in which an interest is acquired before February 1, 2003. The Company may apply the Interpretation prospectively with a cumulative effect adjustment as of January 31, 2004, or by restating previously issued financial statements with a cumulative effect adjustment as of the beginning of the first year restated. In October 2003, the FASB issued FASB Staff Position (FSP) 46-6, "Effective Date of FASB Interpretation 46, Consolidation of Variable Interest Entities." This FSP deferred the effective date for applying the provisions of FIN 46 for interests in variable interest entities or potential variable interest entities created before February 1, 2003. This statement delayed the effective date of FIN 46 for the Company until the quarter ending January 31, 2004. The Company is currently evaluating the applicability of the requirements of FIN 46.

In May 2003, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 150, "Accounting For Certain Financial Instruments with Characteristics of Both Liabilities and Equity", which establishes standards for how an issuer of financial instruments classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) if, at inception, the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception, variations in something other than the fair value of the issuer's equity shares or variations inversely related to changes in the fair value of the issuer's equity shares. This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. On November 7, 2003 the FASB deferred the classification and measurement provisions of SFAS No. 150 as they apply to certain mandatory redeemable non-controlling interests. This deferral is expected to remain in effect while these provisions are further evaluated by the FASB. The Company has not entered into or modified any financial instruments covered by this statement after May 31, 2003 and the application of this standard is not expected to have a material impact on the Company's financial position or results of operations.

**C. STOCK-BASED COMPENSATION**

The Company accounts for its stock compensation plans under the provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123"). As permitted by SFAS No. 123, the Company measures compensation cost in accordance with Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees" and related interpretations. Accordingly, no accounting recognition is given to stock options granted at fair market value until they are exercised. Upon exercise,

**CMGI, INC. AND SUBSIDIARIES**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

net proceeds, including tax benefits realized, are credited to equity. The following table illustrates the pro forma effect on net income (loss) and earnings (loss) per share if the Company had applied the fair value recognition provisions of SFAS No. 123.

	For the Three Months Ended October 31,	
	2003	2002
	(in thousands, except per share amounts)	
Net income (loss)	\$ 29,861	\$ (93,584)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(38,685)	(66,523)
Pro-forma net loss	\$ (8,824)	\$ (160,107)
Basic—as reported	\$ 0.08	\$ (0.24)
Basic—pro-forma	\$ (0.02)	\$ (0.41)
Diluted—as reported	\$ 0.07	\$ (0.24)
Diluted—pro-forma	\$ (0.02)	\$ (0.41)

The fair value of each stock option is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

	For the Three Months Ended October 31,	
	2003	2002
Risk-free interest rate	2.7%	2.7%
Expected dividend yield	0.0%	0.0%
Expected volatility	103.5%	130.1%
Expected life (years)	4.6	4.1
Weighted average fair value of options granted during the period	\$ 1.19	\$ 0.39

**D. OTHER GAINS (LOSSES), NET**

The following table reflects the components of “Other gains (losses), net”:

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
Gain on sales of marketable securities	\$ 42,603	\$ —
Loss on sale of Equilibrium Technologies, Inc.	—	(3,527)
Impairment of investment in Signatures SNI, Inc.	—	(14,056)
Loss on mark-to-market adjustment for trading security	—	(31,016)
Loss on impairment of investments in affiliates	(567)	(6,175)
Loss on impairment of marketable securities	(27)	(200)
Other, net	135	(2,566)
	\$ 42,144	\$ (57,540)

During the three-months ended October 31, 2003, the Company sold marketable securities for total proceeds of approximately \$77.7 million and recorded a net pre-tax gain of approximately \$42.6 million on these sales. These sales primarily consisted of approximately 1.0 million shares of Loudeye Corp. common stock for proceeds of approximately \$2.3 million and approximately 3.2 million shares of Overture Services, Inc. common stock sold by the Company’s AltaVista subsidiary for total proceeds of approximately \$75.4 million. The Company also recorded impairment charges of approximately \$0.6 million for other than temporary declines in the carrying value of certain investments in affiliates. These charges were primarily associated with investments made by CMGI@Ventures IV, LLC.

**CMGI, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

During the three months ended October 31, 2002, the Company sold its interests in its majority-owned subsidiary Equilibrium Technologies, Inc. (“Equilibrium”) to a group led by the management of Equilibrium and recorded a pre-tax loss of approximately \$3.5 million. The Company also recorded a \$31.0 million loss on the mark-to-market adjustment of a trading security and recorded impairment charges of approximately \$20.3 million. The impairment charges recorded during the period included a \$14.1 million charge for an other than temporary decline in the carrying value of the Company’s investment in Signatures SNI, Inc. (“Signatures”) and impairment charges of approximately \$6.2 million for other than temporary declines in the carrying value of certain investments in affiliates. These charges were primarily associated with investments made by CMGI@Ventures IV, LLC.

**E. RESTRUCTURING CHARGES**

The following table summarizes the activity in the restructuring accrual for the three months ended October 31, 2003:

	Employee Related Expenses	Contractual Obligations	Asset Impairments	Total
	(in thousands)			
Accrued restructuring balance at July 31, 2003	\$ 1,535	\$ 18,611	\$ —	\$ 20,146
Q1 Restructuring	345	941	504	1,790
Restructuring adjustments	—	(104)	—	(104)
Cash charges	(1,451)	(1,793)	—	(3,244)
Non-cash charges	—	—	(504)	(504)
Accrued restructuring balance at October 31, 2003	\$ 429	\$ 17,655	\$ —	\$ 18,084

The Company anticipates that the remaining restructuring accruals will be settled by December 2012. It is expected that the payments of employee-related expenses will be substantially completed by January 31, 2004. The remaining contractual obligations primarily relate to facility leases obligations for vacant space resulting from the cessation of operations of certain of the Company’s subsidiaries in prior periods and the restructuring of excess plant capacity within the U.S. operations of the Company’s SalesLink subsidiary.

The net restructuring charges for the three months ended October 31, 2003 and 2002 would have been allocated as follows had the Company recorded the expense and adjustments within the functional department of the restructured activities:

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
Cost of revenue	\$ (104)	\$ —
Selling	—	9
General and administrative	1,790	156
	\$ 1,686	\$ 165

The Company’s restructuring initiatives involved strategic decisions to exit certain businesses and to reposition certain on-going businesses of the Company. Restructuring charges consisted primarily of contract terminations, severance charges and facility and equipment charges incurred as a result of the cessation of operations of certain subsidiaries and actions taken at remaining subsidiaries and at the Company’s corporate headquarters to increase operational efficiencies, improve margins and further reduce expenses. Severance charges included employee termination costs as a result of workforce reductions. Employees affected by the restructurings were notified both through direct personal contact and by written notification. The contract



**CMGI, INC. AND SUBSIDIARIES****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

terminations primarily consisted of costs to exit facility and equipment leases, less estimated sub-lease income and to terminate bandwidth and other vendor contracts. The asset impairment charges primarily related to the write-off of property and equipment.

During the three months ended October 31, 2003, the Company recorded net restructuring charges of approximately \$1.7 million. These charges include a \$0.6 million charge related to a hosting services contract that the Company is no longer utilizing, as it represented excess capacity. The reduction in hosting services required to support the business is primarily the result of the divestiture of several subsidiaries in fiscal 2003. Also during the period, the Company recorded a charge of \$0.3 million related to a workforce reduction of 17 employees, a charge of \$0.5 million to write-off certain software and hardware related assets no longer being utilized by the Company, and a \$0.4 million charge related to equipment and facility lease obligations under which the Company expects to realize no future economic benefit.

During the three months ended October 31, 2002, the Company recorded a net restructuring charge of approximately \$0.2 million at its corporate headquarters. The restructuring charge related primarily to equipment lease obligations assumed by the Company in connection with its sale of Equilibrium.

**F. DISCONTINUED OPERATIONS**

During fiscal year 2003 the Company's divestitures of Engage, NaviSite, Yesmail and Tallán, the asset sales by uBid and AltaVista and the cessation of operations by ProvisionSoft met the criteria for discontinued operations accounting. Accordingly, uBid, which was previously included in the eBusiness and Fulfillment segment, Tallán, Yesmail, AltaVista, ProvisionSoft and Engage, which were previously included in the Enterprise Software and Services segment and NaviSite, which was previously included in the Managed Application Services segment, have been reported as discontinued operations in the condensed consolidated financial statements for all periods presented.

During the quarter ended October 31, 2003, the Company recorded a loss from discontinued operations of \$0.5 million primarily as a result of residual operating costs associated with the discontinued operations of AltaVista, Yesmail and uBid subsequent to divestiture.

Summarized financial information for the discontinued operations of Engage, NaviSite Yesmail, Tallán, uBid, AltaVista and ProvisionSoft are as follows:

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
Results of operations:		
Net revenue	\$ —	\$ 77,292
Total expenses	(491)	(109,842)
Net loss	(491)	(32,550)
Gain on sale of NaviSite	—	2,291
Loss on sale of Engage	—	(16,632)
Net loss from discontinued operations	\$(491)	\$ (46,891)

**CMGI, INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

	<u>October 31, 2003</u>	<u>July 31, 2003</u>
	(in thousands)	
Financial position:		
Current assets	\$ 1,851	\$ 1,876
Property and equipment, net	—	—
Other assets	75	75
Total liabilities	(1,953)	(2,019)
Net liabilities of discontinued operations	\$ (27)	\$ (68)

**G. SEGMENT INFORMATION**

Based on the information provided to the Company's chief operating decision-maker for purposes of making decisions about allocating resources and assessing performance, the Company now reports one operating segment, eBusiness and Fulfillment, which includes the results of operations of the Company's SalesLink and SL Supply Chain Services International Corp. subsidiaries.

In addition to its one current operating segment, the Company reported an Enterprise Software and Services segment (that consists of the operations of Equilibrium, CMGI Solutions and Nascent), a Portals segment (that consists of the operations of MyWay and iCast) and a Managed Application Services segment (that consists of the operations of NaviPath, ExchangePath, 1stUp, and Activate), as these entities did not meet the aggregation criteria under SFAS No. 131 with respect to the Company's current reporting segments. The historical results of these companies will continue to be reported in the Enterprise Software and Services, Portals and Managed Application Services segments, respectively, as will any residual results from operations that exist through the cessation of operations of these entities, each of which have been divested or substantially wound down.

Management evaluates segment performance based on segment net revenue, operating loss and "Non-GAAP operating income/(loss)", which is defined as the operating income/(loss) excluding net charges related to in-process research and development, depreciation, long-lived asset impairment, restructuring, and amortization of intangible assets and stock-based compensation. The Company believes that its Non-GAAP operating income/(loss) measure provides investors with a useful supplemental measure of the Company's operating performance by excluding the impact of one-time gains/(losses), non-cash charges, and restructuring activities. Historically, the Company has recorded significant one-time gains/(losses), and impairment and restructuring charges and therefore management uses Non-GAAP operating income/(loss) to assist in evaluating the Company's operating performance. These Non-GAAP results should be evaluated in light of the Company's financial results prepared in accordance with US GAAP.

"Other" includes certain corporate infrastructure expenses, which are not identifiable to the operations of the Company's operating business segments. "Other" primarily consists of directors and officer's insurance costs; costs associated with maintaining certain of the Company's information technology systems and certain corporate administrative functions such as legal and finance, as well as certain administrative costs related to the Company's venture capital entities.

One customer based in the U.S. accounted for approximately 75% and 74% of CMGI's consolidated net revenue for the three months ended October 31, 2003 and 2002, respectively.

CMGI, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Summarized financial information of the Company's continuing operations by business segment is as follows:

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
<b>Net revenue:</b>		
eBusiness and Fulfillment	\$94,723	\$112,859
Enterprise Software and Services	—	227
Managed Application Services	165	136
	<u>\$94,888</u>	<u>\$113,222</u>
<b>Operating income (loss):</b>		
eBusiness and Fulfillment	\$ 812	\$ 282
Enterprise Software and Services	—	(966)
Managed Application Services	161	136
Other	(8,117)	(15,353)
	<u>\$ (7,144)</u>	<u>\$ (15,901)</u>
<b>Non-GAAP operating income (loss):</b>		
eBusiness and Fulfillment	\$ 2,190	\$ 1,741
Enterprise Software and Services	—	(911)
Managed Application Services	161	136
Other	(5,506)	(13,854)
	<u>\$ (3,155)</u>	<u>\$ (12,888)</u>
	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
GAAP operating loss	\$(7,144)	\$(15,901)
Adjustments:		
Depreciation	2,201	2,793
Amortization of stock-based compensation	102	55
Restructuring	1,686	165
Non-GAAP operating loss	<u>\$ (3,155)</u>	<u>\$ (12,888)</u>

Revenue is attributed to geographic areas based on the customer's shipped-to location. The Company's revenue by region as a percentage of total consolidated revenue was as follows:

	Three Months Ended	
	October 31, 2003	October 31, 2002
United States	40%	57%
Foreign Regions:		
Asia/Pacific & Pacific Rim	11%	12%
Europe	43%	26%
Canada, Mexico and Latin America	5%	4%
Rest of the World	1%	1%
	<u>100%</u>	<u>100%</u>

## CMGI, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For the three months ended October 31, 2003, The Netherlands and the United Kingdom, which are within the Europe region, accounted for 26% and 12%, respectively, of the Company's consolidated revenues.

For the three months ended October 31, 2002, The Netherlands, which is within the Europe region, accounted for 19% of the Company's consolidated revenues and Singapore, which is within the Asia/Pacific & Pacific Rim region, accounted for 11% of the Company's consolidated revenues.

**H. EARNINGS PER SHARE**

The Company calculates earnings per share in accordance with SFAS No. 128, "Earnings per Share." Basic earnings per share is computed based on the weighted average number of common shares outstanding during the period. The dilutive effect of common stock equivalents and unvested restricted stock are included in the calculation of diluted earnings per share only when the effect of their inclusion would be dilutive. For the three months ended October 31, 2003, approximately 6.9 million weighted average common stock equivalents were included in denominator of the calculation of dilutive earnings per share. For the three months ended October 31, 2002, approximately 2.9 million common stock equivalent shares were excluded from the denominator in the diluted loss per share calculation as their inclusion would have been antidilutive.

If a subsidiary has dilutive stock options, unvested restricted stock, or warrants outstanding, diluted earnings per share is computed by first deducting from net income (loss), the income attributable to the potential exercise of the dilutive stock options or warrants of the subsidiary. The effect of income attributable to dilutive subsidiary stock equivalents was immaterial for the three months ended October 31, 2003 and 2002, respectively.

**I. COMPREHENSIVE LOSS**

The components of comprehensive loss, net of income taxes, are as follows:

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
Net income (loss)	\$ 29,861	\$(93,584)
Net unrealized holding gain arising during period	487	5,844
Reclassification adjustment for net realized (gains) losses included in net income (loss)	(42,576)	200
	(42,089)	6,044
Foreign currency translation adjustment arising during period	(250)	(4,022)
Comprehensive loss	\$(12,478)	\$(91,562)

The components of accumulated other comprehensive income are as follows:

	October 31, 2003	July 31, 2003
	(in thousands)	
Net unrealized holding gains	\$ 1,476	\$43,565
Cumulative foreign currency translation adjustment	(229)	21
	\$ 1,247	\$43,586

## CMGI, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

## J. CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS SUPPLEMENTAL INFORMATION

	Three Months Ended October 31,	
	2003	2002
	(in thousands)	
Cash paid for interest	\$ 141	\$ 155
Cash paid for income taxes	\$ 178	\$ 132
Cash received for Federal income tax refunds	\$ —	\$ 24
Common stock issued in settlement of contractual obligation	\$ 205	\$ —
Restricted stock grant to certain executives and employees	\$ 850	\$ —

There were no significant non-cash investing activities during the three months ended October 31, 2003 and 2002, respectively.

## K. INVENTORIES

Inventories at October 31, 2003 and July 31, 2003 consisted of the following:

	October 31, 2003	July 31, 2003
	(in thousands)	
Raw Materials	\$ 27,781	\$ 25,583
Work-in-process	—	15
Finished Goods	8,287	7,031
	36,068	32,629
Less: Inventory Reserve	(2,854)	(2,154)
	\$ 33,214	\$ 30,475

## L. CONTINGENCIES

In August 2001, Jeffrey Black, a former employee of AltaVista Company, filed a complaint in Superior Court of the State of California (Santa Clara County) in his individual capacity as well as in his capacity as a trustee of two family trusts against the Company and AltaVista alleging certain claims arising out of his relationship with the Company and AltaVista and the termination of Mr. Black's employment with AltaVista. In March 2002, the court ordered the entire case to binding arbitration in California. In August 2002, Mr. Black submitted the matter to the American Arbitration Association. Mr. Black's statement of damages in the arbitration proceeding sought monetary damages in excess of \$16 million. In connection with Overture's acquisition of AltaVista's business, Overture agreed to assume any liability of AltaVista with respect to this action. On May 15, 2003, Mr. Black was given leave by the court to file a third amended complaint naming Overture as a defendant as successor in interest to AltaVista. An arbitration hearing was held in August 2003. Closing arguments in the arbitration were held on October 20, 2003. On November 19, 2003, the arbitrator awarded Mr. Black \$449,770 from CMGI and AltaVista, jointly and severally. Subsequently, Mr. Black requested that the arbitrator modify certain aspects of the award and increase the award by up to \$121,000. CMGI and AltaVista opposed Mr. Black's request to increase the award. The arbitrator's decision on Mr. Black's request is expected to be issued during December 2003.

On January 17, 2002, Sean Barger, a former employee and principal stockholder of Equilibrium Technologies, Inc. ("Equilibrium"), filed a complaint in Superior Court of the State of California (San Francisco County) in his individual capacity against the Company, AltaVista, David S. Andonian, Andrew J. Hajducky III, and David S. Wetherell alleging certain claims arising out of the Company's acquisition of Equilibrium in January 2000. As set forth in the complaint, Mr. Barger alleged, among other things, (1) violation of state securities statutes, (2) fraudulent inducement, deceit, and fraud, (3) negligent misrepresentation, (4) unfair competition and (5) breach of fiduciary duty. Mr. Barger claimed an unspecified amount of damages. On October 29, 2002, Mr. Barger amended his complaint to allege, among other things, personal jurisdiction over the individual defendants. On January 27, 2003, Mr. Barger again amended his complaint to add allegations pertaining to the breach of fiduciary

**CMGI, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

duty claim. The Court subsequently dismissed without leave to amend Mr. Barger's claim for breach of fiduciary duty. In connection with Overture's acquisition of AltaVista's business, Overture agreed to assume any liability of AltaVista with respect to this action. On December 11, 2003, the parties resolved this matter on mutually agreeable terms.

On September 24, 2003, the Official Committee of Unsecured Creditors of Engage, Inc. (the "Creditors Committee") filed a complaint against the Company in the U.S. Bankruptcy Court (Massachusetts, Western Division). The complaint was amended on November 6, 2003. In the amended complaint, the Creditors Committee asserted the following causes of action: (i) re-characterization of debt as equity, (ii) equitable subordination, (iii) invalidation of a release, (iv) fraudulent transfer, (v) preferential transfers, (vi) illegal redemption of shares, (vii) turnover of property of estate, (viii) alter ego, (ix) breach of contract, (x) breach of covenant of good faith and fair dealing, (xi) promissory estoppel, (xii) unjust enrichment, (xiii) unfair and deceptive trade practices under Massachusetts General Laws §93A, and (xiv) declaration with respect to scope and extent of security interests. The Creditors Committee seeks monetary damages and other relief, including cancellation of a \$2.0 million promissory note, return of \$2.5 million in cash, certain other unspecified amounts and a finding that the Company is liable for Engage's debt. The Company believes that these claims are without merit and intends to vigorously defend this matter.

The Company is also a party to litigation which it considers routine and incidental to its business. Management does not expect the results of any of these actions to have a material adverse effect on the Company's business, results of operation or financial condition.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The matters discussed in this report contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended, that involve risks and uncertainties. All statements other than statements of historical information provided herein may be deemed to be forward-looking statements. Without limiting the foregoing, the words "believes", "anticipates", "plans", "expects" and similar expressions are intended to identify forward-looking statements. Factors that could cause actual results to differ materially from those reflected in the forward-looking statements include, but are not limited to, those discussed in this section under the heading "Factors That May Affect Future Results" and elsewhere in this report and the risks discussed in the Company's other filings with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief or expectation only as of the date hereof. The Company undertakes no obligation to publicly revise these forward-looking statements to reflect events or circumstances that arise after the date hereof.

**Basis of Presentation**

The Company reports one current operating segment, eBusiness and Fulfillment. The eBusiness and Fulfillment segment includes the results of operations of the Company's subsidiary, SalesLink and its wholly-owned subsidiary SL Supply Chain Services International Corp. (SalesLink). The Other category represents certain corporate cash and cash equivalents, available-for-sale securities, certain other assets and liabilities, corporate administrative expenses, including certain administration costs related to the results of operations of the Company's venture capital entities.

In addition to its one current operating segment, the Company continues to report an Enterprise Software and Services segment (that consists of the operations of Equilibrium, CMGI Solutions and Nascent), a Portals segment (that consists of the operations of MyWay and iCAST) and a Managed Application Services segment (that consists of the operations of NaviPath, ExchangePath, 1stUp, and Activate), as these entities do not meet the aggregation criteria under SFAS No. 131 with respect to the Company's current reporting segments. The historical results of these companies will continue to be reported in the Enterprise Software and Services, Portals and Managed Application Services segments, respectively, as will any residual results from operations that exist through the cessation of operations of these entities, each of which has been divested or substantially wound down.

During fiscal year 2003 the Company's divestitures of Engage, Navisite, Yesmail and Tallán, the asset sales by uBid and AltaVista and the cessation of operations by Provisionsoft met the criteria for discontinued operations accounting. Accordingly, uBid, which was previously included in the eBusiness and Fulfillment segment, and Tallán, Yesmail, AltaVista, ProvisionSoft and Engage, which were previously included in the Enterprise Software and Services segment and NaviSite, which was previously included in the Managed Application Services segment have been reported as discontinued operations in the condensed consolidated financial statements for all periods presented.

Certain amounts for prior periods in the accompanying condensed consolidated financial statements, and in the discussion below, have been reclassified to conform to current period presentations.

In accordance with accounting principles generally accepted in the United States of America, all significant intercompany transactions and balances have been eliminated in consolidation. Accordingly, segment results reported by the Company exclude the effect of transactions between the Company and its subsidiaries and between the Company's subsidiaries.

[Table of Contents](#)

**Results of Operations**

Three months ended October 31, 2003 compared to the three months ended October 31, 2002

**Net Revenue:**

	Three Months Ended October 31, 2003	As a % of Total Net Revenue	Three Months Ended October 31, 2002	As a % of Total Net Revenue	\$ Change	% Change
(in thousands)						
eBusiness and Fulfillment	\$ 94,723	100%	\$ 112,859	100%	\$ (18,136)	(16)%
Enterprise Software and Services	—	—	227	—	(227)	(100)%
Managed Application Services	165	—	136	—	29	21%
<b>Total</b>	<b>\$ 94,888</b>	<b>100%</b>	<b>\$ 113,222</b>	<b>100%</b>	<b>\$ (18,334)</b>	<b>(16)%</b>

The decrease in revenue within the eBusiness and Fulfillment segment during the three months ended October 31, 2003, as compared to the same period in the prior year, was primarily the result of decreased revenue contributions from SalesLink. Net revenue at SalesLink declined as compared to the same period in the prior fiscal year, primarily due to lower order volumes for U.S. supply chain management services. These declines are largely the result of the continued difficult economic climate for many of the major OEMs that comprise a large part of the revenue base for SalesLink. Sales to one customer comprised approximately 76% and 74% of eBusiness and Fulfillment segment revenue for the three months ended October 31, 2003 and October 31, 2002, respectively. The decrease in revenue within the Enterprise Software and Services segment was the result of the Company's sale during the first quarter of fiscal year 2003 of Equilibrium.

**Cost of Revenue:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
(in thousands)						
eBusiness and Fulfillment	\$ 87,410	92%	\$ 104,348	92%	\$ (16,938)	(16)%
Enterprise Software and Services	—	—	15	7%	(15)	(100)%
<b>Total</b>	<b>\$ 87,410</b>	<b>92%</b>	<b>\$ 104,363</b>	<b>92%</b>	<b>\$ (16,953)</b>	<b>(16)%</b>

Cost of revenue consists primarily of expenses related to the cost of products purchased for sale or distribution as well as salaries and benefit expenses, consulting and contract labor costs, fulfillment and shipping costs, and applicable facilities costs. The Company's cost of revenue decreased as a result of lower revenues in the three months ended October 31, 2003 as compared to the same period in the prior fiscal year. Cost of revenue as a percentage of net revenue remained flat at approximately 92% and the Company's gross margins were approximately 8% for each of the three-month periods ended October 31, 2003 and 2002. The decrease in cost of revenue within the Enterprise Software and Services segment was the result of the Company's sale of Equilibrium during the first quarter of fiscal year 2003.

**Research and Development Expenses:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
(in thousands)						
Enterprise Software and Services	\$ —	—	\$ 332	146%	\$ (332)	(100)%
<b>Total</b>	<b>\$ —</b>	<b>—</b>	<b>\$ 332</b>	<b>146%</b>	<b>\$ (332)</b>	<b>(100)%</b>

Research and development expenses consist primarily of personnel and related costs to design, develop, enhance, test and deploy the Company's products and services either prior to the development efforts reaching technological feasibility or once the product had reached the maintenance phase of its life cycle. The Company did not incur any research and development expenses during the first quarter of fiscal year 2004 due to the Company's sale of Equilibrium during the first quarter of fiscal year 2003. The Company's current operating businesses within the eBusiness and Fulfillment segment are not involved in any research and development activities and the Company does not expect to incur any significant research and development expenditures in the foreseeable future.



[Table of Contents](#)

**Selling Expenses:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
(in thousands)						
eBusiness and Fulfillment	\$ 1,194	1%	\$ 910	1%	\$ 284	31%
Enterprise Software and Services	—	—	464	204%	(464)	(100)%
Other	3	—	713	—	(710)	(100)%
<b>Total</b>	<b>\$ 1,197</b>	<b>1%</b>	<b>\$ 2,087</b>	<b>2%</b>	<b>\$ (890)</b>	<b>(43)%</b>

Selling expenses consist primarily of advertising and other general marketing related expenses, compensation and employee-related expenses, sales commissions, facilities costs, and travel costs. Selling expenses decreased during the three months ended October 31, 2003, as compared to the same period in the prior fiscal year, by approximately 43%. The decrease was primarily due to headcount reductions, reductions in marketing campaigns at the Company's corporate headquarters, and the Company's sale of Equilibrium during the first quarter of fiscal year 2003.

The increase in selling expenses within the eBusiness and Fulfillment segment was primarily attributable to increased sales and marketing efforts at the Company's SalesLink subsidiary. The decrease within the Enterprise Software and Services segment was primarily the result of the Company's sale of Equilibrium during the first quarter of fiscal year 2003.

Selling expense within the Other category for the three months ended October 31, 2002 was primarily related to the Company's amended sponsorship arrangement with the owners of the New England Patriot's stadium.

**General and Administrative Expenses:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
(in thousands)						
eBusiness and Fulfillment	\$ 5,411	6%	\$ 7,319	6%	\$ (1,908)	(26)%
Enterprise Software and Services	—	—	382	168%	(382)	(100)%
Managed Application Services	4	2%	—	—	4	100%
Other	6,222	—	14,420	—	(8,198)	(57)%
<b>Total</b>	<b>\$ 11,637</b>	<b>12%</b>	<b>\$ 22,121</b>	<b>20%</b>	<b>\$ (10,484)</b>	<b>(47)%</b>

General and administrative expenses consist primarily of compensation and other employee-related costs, facilities costs, bad debt expense, depreciation expense and fees for professional services. General and administrative expenses decreased by 47% during the three months ended October 31, 2003, as compared to the same period in the prior fiscal year. This decrease was primarily attributable to a reduction in headcount and related expenses at the Company's corporate headquarters and its SalesLink subsidiary in connection with restructuring activities designed to reduce the overall cost structure of the Company. General and administrative costs related to the Company's IT infrastructure, insurance programs, and real estate commitments were also significantly reduced in the first quarter of fiscal year 2004 as compared to the same period of the prior fiscal year.

The decrease in general and administrative expenses within the eBusiness and Fulfillment segment was primarily the result of a reduction in headcount and related expenses at SalesLink as a result of restructuring activities designed to reduce the overall cost structure of the business. The decrease in general and administrative expenses within the Enterprise Software and Services segment was primarily the result of the Company's sale of Equilibrium during the first quarter of fiscal year 2003.

The general and administrative expenses within the Other category primarily reflect the cost of the Company's directors and officers insurance and costs associated with certain corporate administrative functions such as legal and finance which are not fully allocated to the Company's subsidiary companies, and administration costs related to the Company's venture capital entities. General and administrative expenses decreased compared to the same period in the prior fiscal year, primarily as a result of restructuring initiatives at the Company's corporate headquarters that were designed to reduce the overall cost structure of the Company. These restructuring initiatives primarily included headcount reductions, a substantial downsizing of the Company's IT infrastructure and the write-off of unutilized office space and equipment that resulted from the overall downsizing of the Company's corporate infrastructure. Additionally, during the first quarter of fiscal year 2004, the Company realized lower costs related to its insurance programs, principally directors and officers insurance, as compared to the same period of the prior fiscal year.

[Table of Contents](#)

**Amortization of Stock-Based Compensation:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
			(in thousands)			
Other	\$ 102	—	\$ 55	—	\$ 47	85%
<b>Total</b>	<b>\$ 102</b>	<b>—</b>	<b>\$ 55</b>	<b>—</b>	<b>\$ 47</b>	<b>85%</b>

The increase in amortization of stock based compensation during the three months ended October 31, 2003, primarily relates to the amortization of deferred compensation associated with a grant of an aggregate of 535,000 shares of restricted CMGI common stock to certain executives and employees of the Company during the quarter ended October 31, 2003. The restricted stock shares are subject to certain terms and conditions and vest over a three-year period.

**Restructuring, net:**

	Three Months Ended October 31, 2003	As a % of Segment Net Revenue	Three Months Ended October 31, 2002	As a % of Segment Net Revenue	\$ Change	% Change
			(in thousands)			
eBusiness and Fulfillment	\$ (104)	—	\$ —	—	\$ (104)	(100)%
Other	1,790	—	165	—	1,625	985%
<b>Total</b>	<b>\$ 1,686</b>	<b>2%</b>	<b>\$ 165</b>	<b>—</b>	<b>\$ 1,521</b>	<b>922%</b>

During the three months ended October 31, 2003, the Company recorded net restructuring charges of approximately \$1.7 million. These charges included a \$0.6 million charge related to a hosting services contract that the Company is no longer utilizing, as it represented excess capacity. The reduction in hosting services required to support the Company's businesses is primarily the result of the divestiture of several subsidiaries in fiscal 2003. Also during the period, the Company recorded a charge of \$0.3 million related to a workforce reduction of 17 employees, a charge of \$0.5 million to write-off certain software and hardware related assets no longer being utilized by the Company, and a \$0.4 million charge related to facility and equipment lease obligations, less estimated sub-lease income under which the Company expects to realize no future economic benefit.

During the three months ended October 31, 2002, the Company recorded a net restructuring charge of approximately \$0.2 million at its corporate headquarters. The restructuring charge related primarily to equipment lease obligations assumed by the Company in connection with its sale of Equilibrium.

The Company may incur additional restructuring charges during fiscal 2004 related to facility and equipment lease obligations, and further reductions in workforce.

**Other Income/Expense:**

Interest income decreased \$0.2 million to \$1.0 million for the three months ended October 31, 2003 from \$1.2 million for the same period in the prior fiscal year. The decrease in interest income is a result of lower interest rates in the first quarter of fiscal year 2004 as compared to the same period in the prior fiscal year, partially offset by a higher average cash balance during the first quarter of fiscal year 2004.

Interest expense totaled \$0.4 million for the three months ended October 31, 2003, as compared to a net benefit of \$26.9 million for the same period in the prior fiscal year. Interest expense for the three months ended October 31, 2003 primarily relates to interest expense on the Company's stadium obligation, in connection with the Company's amended sponsorship arrangement with the owners of the New England Patriot's stadium as well as interest expense on a term loan of the Company's SalesLink subsidiary. For the three months ended October 31, 2002, the interest recovery of \$26.9 million primarily related to a favorable market value adjustment due to the decrease in value of the obligation to the former holders of the Series C Preferred Stock (the "Holders"). In connection with the repurchase of the outstanding shares of its Series C Preferred Stock in November 2001, the Company incurred an obligation to deliver approximately 448.3 million shares of its PCCW stock holdings to the Holders no later than December 2, 2002. On December 2, 2002, the Company fulfilled its obligation to deliver approximately 448.3 million shares of PCCW to the Holders. Prior to the satisfaction of the obligation to deliver the shares, the Company had accounted for the 448.3 million shares of PCCW stock as a trading security and the liability related to the obligation to deliver the PCCW stock as a current note payable, both of which were carried at market value. Changes in the fair value of the PCCW stock and the note payable have been recorded in the condensed consolidated statements of operations as Other gains (losses), net and as adjustments to interest (expense), recovery, net, respectively. The fair market value adjustment of the note payable through October 31, 2002 resulted in a \$31.0 million decrease to interest expense, offset by a loss of \$31.0 million on the fair value adjustment of the trading security, which was included in Other gains (losses), net. The \$31.0 decrease in expense during the quarter ended October 31, 2002 was partially offset by interest expense of \$3.7 million related to cash payments to the former holders of the Series C Preferred Stock due to the delayed delivery obligation with respect to the PCCW shares.

## [Table of Contents](#)

Other gains (losses), net totaled \$42.1 million for the three months ended October 31, 2003 as compared to \$(57.5) million in the same period of the prior fiscal year. Other gains (losses), net, for the three months ended October 31, 2003 primarily consisted of a \$40.5 million gain by the Company's AltaVista subsidiary on the sale of approximately 3.2 million shares of Overture Services, Inc. common stock, and a gain of approximately \$2.0 million by the Company on its sale of approximately 1.0 million shares of Loudeye Corp. common stock during the period. During the three months ended October 31, 2002, Other gains (losses), net primarily consisted of a loss of approximately \$31.0 million related to the fair value adjustment on the Company's trading security PCCW, a \$14.1 million impairment charge for an other than temporary decline in the carrying value of the Company's investment in Signatures SNI, Inc. ("Signatures"), and impairment charges of approximately \$6.2 million for other than temporary declines in the carrying value of certain investments in affiliates, primarily investments made by CMGI@Ventures IV, LLC. Additionally, the Company recorded a loss of approximately \$3.5 million on the sale of its subsidiary Equilibrium during the three months ended October 31, 2002.

Equity in income (losses) of affiliates, net, resulted from the Company's minority ownership in certain investments that are accounted for under the equity method. Under the equity method of accounting, the Company's proportionate share of each affiliate's operating income (losses) is included in equity in income (losses) of affiliates. Equity in income (losses) of affiliates increased to approximately \$0.04 million for the three months ended October 31, 2003, from \$(0.5) million for the same period in fiscal year 2002, primarily as a result of net income recognized by certain of the affiliate companies.

Minority interest of approximately \$2.3 million for the three months ended October 31, 2003 was recorded in connection with a \$40.5 million realized gain by AltaVista on its sale of approximately 3.2 million shares of Overture Services, Inc. common stock during the period, as well as minority interest attributable to a joint venture in which SL Supply Chain holds a 50% interest.

### **Income Taxes:**

Income tax expense recorded for the three months ended October 31, 2003 was \$3.0 million. Exclusive of taxes provided for significant, unusual or extraordinary items that will be reported separately, the Company provides for income taxes on a year to date basis at an effective rate based upon its estimate of full year earnings. Income tax expense in the first quarter of fiscal year 2004 differs from the amount computed by applying the U.S. federal income tax rate of 35 percent to pre-tax income (loss), primarily as a result of valuation allowances recognized on deferred tax assets.

### **Discontinued Operations:**

During the quarter ended October 31, 2003, the Company recorded a loss from discontinued operations of \$0.5 million primarily as a result of residual operating costs associated with the discontinued operations of AltaVista, Yesmail and uBid subsequent to divestiture.

### **Liquidity and Capital Resources**

Historically, the Company has financed its operations and met its capital requirements primarily through funds generated from operations, the issuance of CMGI common stock, the sale of investments in subsidiary and affiliate entities and borrowings from lending institutions. As of October 31, 2003, the Company's primary sources of liquidity consisted of cash and cash equivalents of \$267.7 million and available-for-sale securities of \$1.9 million. Additionally, the Company's SalesLink subsidiary has a revolving bank credit facility of \$23.0 million and an outstanding \$5.9 million term loan. In July 2003, SalesLink amended its revolving credit facility and its term loan, which has a term ending in June 2004. Advances under the credit facility may be in the form of loans or letters of credit. As of October 31, 2003 SalesLink is in compliance with all of the financial covenants. These covenants include liquidity and profitability measures and restrictions that limit the ability of SalesLink to merge, acquire or sell assets without prior approval from the bank. At October 31, 2003, approximately \$12.3 million of SalesLink's credit facility had been reserved in support of outstanding letters of credit. The remaining available borrowings were \$10.7 million. The Company's working capital at October 31, 2003 was approximately \$210.6 million.

## [Table of Contents](#)

Net cash used for operating activities of continuing operations was \$4.6 million for the three months ended October 31, 2003 compared to \$12.8 million for the three months ended October 31, 2002. Cash used for operating activities of continuing operations represents net income (loss) as adjusted for non-cash items. During the three months ended October 31, 2003, non-cash items primarily included depreciation and amortization charges of \$2.3 million and non-operating gains, net of \$42.1 million. The non-operating gains included a \$40.5 million gain on the sale by AltaVista of approximately 3.2 million shares of Overture Services, Inc. common stock and a \$2.1 million gain on the sale of approximately 1.0 million shares of Loudeye Corp. common stock. During the three months ended October 31, 2002, non-cash items primarily included depreciation and amortization charges of \$2.9 million and non-operating losses, net of \$24.0 million.

Investing activities of continuing operations provided cash of \$76.5 million for the three months ended October 31, 2003 compared to cash used of \$12.8 million for the three months ended October 31, 2002. The \$76.5 million of cash provided from investing activities of continuing operations during the three months ended October 31, 2003 primarily included \$75.4 million in cash proceeds from AltaVista's sale of approximately 3.2 million shares of Overture Services, Inc. common stock and \$2.3 million of cash proceeds from the Company's sale of approximately 1.0 million shares of Loudeye Corp. common stock, partially offset by \$1.2 million in capital expenditures. The \$12.8 million of cash used for investing activities of continuing operations during the three months ended October 31, 2002 primarily included \$2.2 million of cash used for capital expenditures and \$10.3 million of cash used for the purchase of short-term government-backed securities.

Financing activities of continuing operations used cash of \$0.5 million and \$0.3 million for the three months ended October 31, 2003 and 2002, respectively. The \$0.5 million of cash used by financing activities of continuing operations during the three months ended October 31, 2003 includes \$0.1 million of proceeds from the issuance of common stock and \$0.6 million of payments of long-term debt. The \$0.3 million of cash used by financing activities of continuing operations during the three months ended October 31, 2002 included \$0.1 million of proceeds from the issuance of common stock and \$0.4 million of payments of long-term debt.

Cash used for discontinued operations totaled \$0.5 million and \$14.6 million for the three months ended October 31, 2003 and 2002, respectively.

The Company believes that its existing working capital will be sufficient to fund its operations, investments and capital expenditures for the foreseeable future. Should additional capital be needed to fund future investment and acquisition activity, the Company may seek to raise additional capital through offerings of the Company's stock, or through debt financing. There can be no assurance, however, that the Company will be able to raise additional capital on terms that are favorable to the Company, or at all.

### **Contractual Obligations**

The Company leases facilities and certain other machinery and equipment under various non-cancelable operating leases and executory contracts expiring through June 2015. In August 2000, the Company announced it had acquired the exclusive naming and sponsorship rights to the New England Patriots' new stadium for a period of fifteen years. In August 2002, the Company finalized an agreement with the owner of the stadium to amend the sponsorship agreement. Under the terms of the amended agreement, the Company relinquished the stadium naming rights and remains obligated for a series of annual payments of \$1.6 million per year through 2015. The Company's SalesLink subsidiary has a long-term debt arrangement with a bank. All borrowings under SalesLink's loan agreement mature on June 30, 2004. Future minimum payments as of October 31, 2003 are as follows:

	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years</u>	<u>4-5 years</u>	<u>After 5 years</u>
<b>Contractual Obligations</b>					
			(in thousands)		
Operating leases	\$ 42,543	\$ 9,391	\$ 14,363	\$ 7,440	\$ 11,349
Stadium obligations	19,200	1,600	3,200	3,200	11,200
Other contractual obligations	7,933	6,287	461	307	878
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Total	\$ 69,676	\$ 17,278	\$ 18,024	\$ 10,947	\$ 23,427
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>

Total future minimum lease payments have been reduced by future minimum sub-lease rentals of approximately \$2.1 million.

Total rent and equipment lease expense charged to continuing operations was approximately \$2.1 million for the three-months ended October 31, 2003.

## [Table of Contents](#)

From time to time the Company provides guarantees of payment to vendors doing business with certain of the Company's subsidiaries. These guarantees require that in the event that the subsidiary cannot satisfy its obligations with certain of its vendors, the Company will be required to settle the obligation. As of October 31, 2003, the Company had outstanding guarantees of subsidiary indebtedness totaling approximately \$6.2 million.

### **Critical Accounting Policies**

The discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition, inventories, investments, intangible assets, income taxes, restructuring, impairment of long-lived assets and contingencies and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. There can be no assurance that actual results will not differ from those estimates.

The Company has identified the accounting policies below as the policies most critical to its business operations and the understanding of our results of operations. The impact and any associated risks related to these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations where such policies affect our reported and expected financial results. Our critical accounting policies are as follows:

- Revenue recognition
- Excess and obsolete inventory
- Restructuring expenses
- Loss contingencies
- Accounting for impairment of long-lived assets, goodwill and other intangible assets
- Investments
- Income taxes

*Revenue Recognition.* The Company derives its revenue primarily from the sale of products and marketing distribution services, supply chain management services, and other services. Revenues are recognized as product is shipped and related services are performed in accordance with all applicable revenue recognition criteria. For these transactions, the Company applies the provisions of SEC Staff Accounting Bulletin No. 101, "Revenue Recognition." The Company recognizes revenue when there is persuasive evidence of an arrangement, title and risk of loss have passed, delivery has occurred or the services have been rendered, the sales price is fixed or determinable and collection of the related receivable is reasonably assured. The Company also applies the provisions of Emerging Issues Task Force (EITF) Issue No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent." The Company's application of EITF 99-19 includes evaluation of the terms of each major customer contract relative to a number of criteria that management considers in making its determination with respect to gross vs. net reporting of revenue for transactions with its customers. Management's criteria for making these judgments place particular emphasis on determining the primary obligor in a transaction and which party bears general inventory risk. The Company records all shipping and handling fees billed to customers as revenue, and related costs as cost of sales, when incurred, in accordance with EITF 00-10, "Accounting for Shipping and Handling Fees and Costs."

*Excess and Obsolete Inventory.* The Company records inventory reserves for estimated obsolescence or unmarketable inventory equal to the difference between the cost of the inventory and its estimated net realizable value based upon assumptions about future demand and market conditions. If actual future demand or market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

*Restructuring Expenses.* For restructuring plans implemented prior to December 31, 2002, the Company assessed the need to record restructuring charges in accordance with EITF No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)" (EITF 94-3). The Company

## [Table of Contents](#)

also applies EITF Issue No. 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination" and Staff Accounting Bulletin (SAB) No. 100, "Restructuring and Impairment Charges." In accordance with this guidance, management must execute an exit plan that will result in the incurrence of costs that have no future economic benefit. Also under the terms of EITF 94-3, a liability for the restructuring charges is recognized in the period management approves the restructuring plan. The Company records liabilities that primarily include the estimated severance and other costs related to employee benefits and certain estimated costs to exit equipment and facility lease obligations, bandwidth agreements and other service contracts. These estimates are based on the remaining amounts due under various contractual agreements, adjusted for any anticipated contract cancellation penalty fees or any anticipated or unanticipated event or changes in circumstances that would reduce these obligations. The settlement of these liabilities could differ materially from recorded amounts. In June 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" which addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies EITF 94-3. The statement requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. Examples of costs covered by the statement include lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operations, plant closing, or other exit or disposal activity. The provisions of this Statement have been applied by the Company to exit or disposal activities that were initiated after December 31, 2002.

*Loss Contingencies.* The Company is subject to the possibility of various loss contingencies arising in the ordinary course of business. The Company considers the likelihood of the loss or impairment of an asset or the incurrence of a liability as well as our ability to reasonably estimate the amount of loss in determining loss contingencies. An estimated loss contingency is accrued when it is probable that a liability has been incurred or an asset has been impaired and the amount of the loss can be reasonably estimated. The Company regularly evaluates the current information available to us to determine whether such accruals should be adjusted.

*Accounting for Impairment of Long-Lived Assets, Goodwill and Other Intangible Assets.* Through July 31, 2002, the Company recorded impairment charges as a result of management's ongoing business review and impairment analysis performed under its policy regarding impairment, utilizing the guidance in SFAS No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of" (SFAS No. 121). Where impairment indicators were identified, management evaluated whether the projected undiscounted cash flows were sufficient to cover the particular long-lived asset being reviewed. If the undiscounted cash flows were insufficient, management then determined the amount of the impairment charge by comparing the carrying value of long-lived assets to their fair value. On August 1, 2002, the Company adopted SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Under SFAS No. 144, the Company tests certain long-lived assets or group of assets for recoverability whenever events or changes in circumstances indicate that the Company may not be able to recover the asset's carrying amount. SFAS No. 144 defines impairment as the condition that exists when the carrying amount of a long-lived asset or group exceeds its fair value. When events or changes in circumstances dictate an impairment review of a long-lived asset or group, the Company evaluates recoverability by determining whether the undiscounted cash flows expected to result from the use and eventual disposition of that asset or group cover the carrying value at the evaluation date. If the undiscounted cash flows are not sufficient to cover the carrying value, the Company measures any impairment loss as the excess of the carrying amount of the long-lived asset or group over its fair value. Management predominantly uses third party valuation reports in its determination of fair value.

On August 1, 2002, the Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 142 requires the Company to evaluate its existing intangible assets and goodwill that were acquired in prior purchase business combinations, and to make any necessary reclassifications in order to conform with the new criteria in SFAS No. 141 for recognition apart from goodwill. Accordingly, the Company is required to reassess the useful lives and residual values of all identifiable intangible assets acquired in purchase business combinations, and make any necessary amortization period adjustments. In addition, to the extent an intangible asset is then determined to have an indefinite useful life, the Company is required to test the intangible asset for impairment in accordance with the provisions of SFAS No. 142. The Company's valuation methodology for assessing impairment requires management to make judgments and assumptions based on historical experience and projections of future operating performance. Management predominantly uses third party valuation reports to assist in its determination of the fair value of reporting units subject to impairment testing. If these assumptions differ materially from future results, the Company may record impairment charges in the future. Additionally, the Company's policy is to perform its annual impairment testing for all reporting units in the fourth quarter of each fiscal year. At October 31, 2003 the Company's carrying value of goodwill totaled \$22.1 million.

## [Table of Contents](#)

### *Investments*

Marketable securities held by the Company which meet the criteria for classification as available-for-sale are carried at fair value, net of a market discount to reflect any restrictions on transferability. Unrealized holding gains and losses on securities classified as available-for-sale are carried net of income taxes as a component of "Accumulated other comprehensive income (loss)" in the Condensed Consolidated Statements of Stockholders' Equity.

Marketable securities held by the Company which meet the criteria for classification as trading are carried at fair value. Changes in the market value of securities classified as trading are recorded as a component of "Other gains (losses), net" in the accompanying Condensed Consolidated Statements of Operations.

The Company also maintains interests in several privately held companies primarily through its various venture capital funds. These venture funds ("CMGI @Ventures") invest in early-stage technology companies. These equity investments are generally made in connection with a round of financing with other third-party investors. At October 31, 2003, the Company had approximately \$18.0 million of equity investments in privately held companies. Investments in which the Company's interest is less than 20% and which are not classified as available-for-sale securities are carried at the lower of cost or net realizable value unless it is determined that the Company exercises significant influence over the investee company, in which case the equity method of accounting is used. For those investments in which the Company's voting interest is between 20% and 50%, the equity method of accounting is generally used. Under this method, the investment balance, originally recorded at cost, is adjusted to recognize the Company's share of net earnings or losses of the investee company as they occur, limited to the extent of the Company's investment in, advances to and commitments for the investee. These adjustments are reflected in "Equity in income (losses) of affiliates" in the Company's Condensed Consolidated Statements of Operations.

The Company assesses the need to record impairment losses on investments and records such losses when the impairment of an investment is determined to be other than temporary in nature. The process of assessing whether a particular equity investment's net realizable value is less than its carrying cost requires a significant amount of judgment. In making this judgment, the Company carefully considers the investee's cash position, projected cash flows (both short and long-term), financing needs, recent financing rounds, most recent valuation data, the current investing environment, management/ownership changes, and competition. This valuation process is based primarily on information that the Company requests from these privately held companies and is not subject to the same disclosure and audit requirements as the reports required of U.S. public companies. As such, the reliability and accuracy of the data may vary. Based on the Company's evaluation, it recorded impairment charges related to its investments in privately held companies of \$0.6 million and \$6.2 million for the three-months ended October 31, 2003 and 2002, respectively. These impairment losses are reflected in "Other gains (losses), net" in the Company's Condensed Consolidated Statements of Operations.

Estimating the net realizable value of investments in privately held early-stage technology companies is inherently subjective and may contribute to significant volatility in our reported results of operations. For example, if the current weak investing environment continues throughout fiscal 2004, we may incur additional impairments to our equity investments in privately held companies, which could have an adverse impact on our future results of operations.

At the time an equity method investee sells its stock to unrelated parties at a price in excess of its book value, the Company's net investment in that affiliate increases. If at that time, the affiliate is not a newly formed, non-operating entity, or a research and development company, start-up or development stage company, and if there is no question as to the affiliate's ability to continue in existence, the Company records the increase as a gain in its Condensed Consolidated Statements of Operations.

### *Income Taxes*

Income taxes are accounted for under the provisions of SFAS No. 109, "Accounting for Income Taxes," using the asset and liability method whereby deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. SFAS No. 109 also requires that the deferred tax assets be reduced by a

## [Table of Contents](#)

valuation allowance, if based on the weight of available evidence, it is more likely than not that some portion or all of the recorded deferred tax assets will not be realized in future periods. This methodology requires estimates and judgments in the determination of the recoverability of deferred tax assets and in the calculation of certain tax liabilities. At October 31, 2003 and 2002, respectively, a full valuation allowance has been recorded against the gross deferred tax asset since management believes that after considering all the available objective evidence, both positive and negative, historical and prospective, with greater weight given to historical evidence, it is more likely than not that these assets will not be realized.

In addition, the calculation of the Company's tax liabilities involves dealing with uncertainties in the application of complex tax regulations in a multitude of jurisdictions. The Company records liabilities for estimated tax exposures in the U.S. and other tax jurisdictions. The settlement of these estimated liabilities could differ materially from recorded amounts.

### **Recent Accounting Pronouncements**

In January 2003, the FASB issued Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities" ("VIEs"). This Interpretation addresses the consolidation of variable interest entities in which the equity investors lack one or more of the essential characteristics of a controlling financial interest or where the equity investment at risk is not sufficient for the entity to finance its activities without subordinated financial support from other parties. The Interpretation applies to VIEs created after January 31, 2003 and to VIEs in which an interest is acquired after that date. Effective January 31, 2004, it also applies to VIEs in which an interest is acquired before February 1, 2003. The Company may apply the Interpretation prospectively with a cumulative effect adjustment as of January 31, 2004, or by restating previously issued financial statements with a cumulative effect adjustment as of the beginning of the first year presented. In October 2003, the FASB issued FASB Staff Position, or FSP 46-6, "Effective Date of FASB Interpretation 46, Consolidation of Variable Interest Entities." This FSP deferred the effective date for applying the provisions of FIN 46 for interests in variable interest entities or potential variable interest entities created before February 1, 2003. This statement delayed the effective date of FIN 46 for the Company until the quarter ending January 31, 2004. The Company is currently evaluating the applicability of the requirements of FIN 46.

In May 2003, the FASB issued SFAS No. 150, "Accounting For Certain Financial Instruments with Characteristics of Both Liabilities and Equity", which establishes standards for how an issuer of financial instruments classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) if, at inception, the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception, variations in something other than the fair value of the issuer's equity shares or variations inversely related to changes in the fair value of the issuer's equity shares. This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. On November 7, 2003 the FASB deferred the classification and measurement provisions of SFAS No. 150 as they apply to certain mandatory redeemable non-controlling interests. This deferral is expected to remain in effect while these provisions are further evaluated by the FASB. The Company has not entered into or modified any financial instruments covered by this statement after May 31, 2003 and the application of this standard is not expected to have a material impact on the Company's financial position or results of operations.

### **Factors That May Affect Future Results**

The Company operates in a rapidly changing environment that involves a number of risks, some of which are beyond the Company's control. Forward-looking statements in this document and those made from time to time by the Company through its senior management are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements concerning the expected future revenues or earnings or concerning projected plans, performance, or development of products and services, as well as other estimates related to future operations are necessarily only estimates of future results and there can be no assurance that actual results will not materially differ from expectations. Forward-looking statements represent management's current expectations and are inherently uncertain. CMGI does not undertake any obligation to update forward-looking statements. Factors that could cause actual results to differ materially from results anticipated in forward-looking statements include, but are not limited to, the following:

#### ***CMGI may not be profitable in the future and risks depleting its working capital.***

During the three months ended October 31, 2003, CMGI had an operating loss of approximately \$7.1 million. CMGI anticipates that it will continue to incur significant operating expenses in the future, including significant costs of revenue and general and administrative expenses. CMGI also has significant commitments and contingencies, including real estate leases, continuing stadium sponsorship obligations, and guarantees entered into by CMGI on behalf of itself and current and former operating companies. As a result, CMGI expects to continue to incur significant operating expenses and can give no assurance that it will achieve profitability or be capable of



## [Table of Contents](#)

sustaining profitable operations. CMGI may also use significant amounts of cash to fund growth and expansion of its operations, including through acquisition. CMGI may also incur significant costs and expenses in connection with pending and future litigation. At October 31, 2003, CMGI had a consolidated cash, cash equivalents and marketable securities balance of approximately \$269.7 million. If CMGI is unable to reach and sustain profitability, it risks depleting its working capital balances and its business will be materially adversely affected.

***CMGI derives substantially all of its revenue from a small number of supply chain management customers and adverse industry trends or the loss of any of those customers could significantly damage CMGI's business.***

CMGI derives substantially all of its revenue from the supply chain management services provided by SalesLink and SL Supply Chain. CMGI's business and future growth will depend in large part on the industry trend towards outsourcing supply chain management and other business processes. If this trend does not continue or declines, demand for CMGI's supply chain management services would decline and its financial results could suffer.

In addition, a limited number of customers account for substantially all of CMGI's consolidated net revenue and the loss of any one or more of these customers would cause its revenue to decline below expectations. One customer, Hewlett-Packard, accounted for approximately 75% and 74% of CMGI's consolidated net revenue for the three months ended October 31, 2003 and the fiscal year ended July 31, 2003, respectively. Nearly all of the revenues of SL Supply Chain are accounted for by sales to Hewlett-Packard and Microsoft and of Microsoft products. Similarly, nearly all of the revenues of SalesLink are accounted for by sales to a limited number of customers. CMGI currently does not have any agreements, which obligate any customer to buy a minimum amount of products or services from CMGI or any subsidiary, or to designate CMGI or any subsidiary as its sole supplier of any particular products or services. The loss of a significant amount of business with Hewlett-Packard or Microsoft, or any other key customer, would have a material adverse effect on CMGI. CMGI believes that it will continue to derive the vast majority of its operating revenue from sales to a small number of customers. There can be no assurance that CMGI's revenue from key customers will not decline in future periods.

In addition, SL Supply Chain has been designated as an Authorized Replicator (AR) for Microsoft under an agreement renewable on an annual basis. Such designation provides SL Supply Chain with a license to replicate Microsoft software products and documentation for customers who want to bundle licensed software with their hardware products. A failure to maintain AR status could result in reduced business and revenues for SL Supply Chain.

***CMGI may have problems raising money it needs in the future.***

CMGI from time to time seeks opportunities to provide capital to support CMGI's operations and growth through the selective sale of investments or minority or majority interests in subsidiaries or affiliates to outside investors. Historically, CMGI has generally financed its operations with proceeds from selling shares of stock of companies in which CMGI had invested directly or through its venture capital affiliates. The aggregate holdings and market value of the shares of stock held by CMGI has declined significantly over the past three years, due to market conditions and continued sales. At October 31, 2003, on a consolidated basis, CMGI held approximately \$1.9 million in available-for-sale securities. Market and other conditions largely beyond CMGI's control may affect its ability to engage in future sales of such securities, the timing of any such sales, and the amount of proceeds therefrom. Even if CMGI is able to sell any such securities in the future, CMGI may not be able to sell at favorable prices or on favorable terms. In addition, this funding source may not be sufficient in the future, and CMGI may need to obtain funding from outside sources. However, CMGI may not be able to obtain funding from outside sources. In addition, even if CMGI finds outside funding sources, CMGI may be required to issue to such outside sources securities with greater rights than those currently possessed by holders of CMGI's common stock. CMGI may also be required to take other actions, which may lessen the value of its common stock or dilute its common stockholders, including borrowing money on terms that are not favorable to CMGI or issuing additional shares of common stock. If CMGI experiences difficulties raising money in the future, its business will be materially adversely affected.

***A decline in the technology sector could reduce CMGI's revenue.***

A large portion of CMGI's supply chain management revenue comes from customers in the technology sector which is intensely competitive and highly volatile. Declines in the overall performance of the technology sector have in the past and could in the future adversely affect the demand for supply chain management services and reduce CMGI's revenues from such customers.

***The gross margins in our supply chain management business are low, which magnifies the impact of variations in revenue and operating costs on our financial results.***

As a result of intense price competition in the technology products marketplace, the gross margins in our supply chain management business are low, and we expect them to continue to be low in the future. Increased competition arising from industry consolidation and/or low demand for certain products may hinder our ability to maintain or improve our gross margins. These low gross margins magnify the impact of variations in revenue and operating costs on our financial results. A portion of our operating expenses is relatively fixed, and planned expenditures are based in part on anticipated orders that are forecasted with limited visibility of future demand. As a result, we may not be able to reduce our operating expenses as a percentage of revenue to mitigate any further reductions in gross margins in the future. If we cannot proportionately decrease our cost structure in response to competitive price pressures, our business and operating results could suffer.

***Because we generally sell to our supply chain management customers on a purchase order basis, we are subject to uncertainties and variability in demand by our customers, which could decrease revenue and adversely affect our financial results.***

We generally sell to our supply chain management customers on a purchase order basis rather than pursuant to long-term contracts or contracts with minimum purchase requirements. Consequently, our sales are subject to demand variability by our supply chain management customers. The level and timing of orders placed by these customers vary for a variety of reasons, including seasonal buying by end-users, the introduction of new technologies and general economic conditions. Customers submitting a purchase order may cancel, reduce or delay their orders. If we are unable to anticipate and respond to the demands of our supply chain management customers, we may lose customers because we have an inadequate supply of products, or we may have excess inventory, either of which may harm our business, financial position and operating results.

***A failure to meet customer expectations could result in lost revenues, increased expenses and negative publicity.***

CMGI's supply chain management customers face significant uncertainties in forecasting the demand for their products, and limitations on the size of its facilities, number of personnel and availability of materials could make it difficult for CMGI to meet customers' unforecasted demand for additional production. Any failure to meet customers' specifications, capacity requirements or expectations, could result in:

- delayed or lost revenue due to adverse customer reaction;

## [Table of Contents](#)

- requirements to provide additional services to a customer at no charge;
- negative publicity about CMGI, its operating companies and their services, which could adversely affect their ability to attract or retain customers; and
- claims for substantial damages against CMGI or its operating companies, regardless of their responsibility for such failure, which may not be covered by their insurance policies and which may not be limited by contractual terms of their engagement.

***If CMGI is not able to establish customer sites where requested, or if it fails to retain key customers at established sites, customer relationships, revenue and expenses could be seriously harmed.***

CMGI's supply chain management customers have, at times, requested that it add capacity or open a facility in locations near their sites. If CMGI or its operating companies elect not to add required capacity at sites near existing customers or establish sites near existing or potential customers, customers may decide to seek alternate service providers. In addition, if CMGI or its operating companies lose a significant customer of a particular site or open a site with the expectation of business that does not materialize, operations at that site could become uneconomical or significantly less efficient. Any of these events could have a material adverse effect on the business, expenses and revenues of CMGI or its operating companies.

***The success of the global operations of CMGI's operating companies is subject to special risks and costs.***

CMGI's operating companies intend to continue to expand their operations outside of the United States. This international expansion will require significant management attention and financial resources. The operations of CMGI's supply chain management operating companies are subject to numerous and varied regulations worldwide, some of which may have an adverse effect on CMGI's ability to develop its international operations. In addition, CMGI and its operating companies have limited experience in such international activities. Accordingly, CMGI and its operating companies will need to commit substantial time and development resources to customizing the products and services of its operating companies for selected international markets and to developing international sales and support channels.

CMGI expects that the sales of its operating companies will be denominated predominantly in United States dollars. As a result, an increase in the value of the United States dollar relative to other currencies may make the products and services of its operating companies more expensive and, therefore, potentially less competitive in international markets. As CMGI's operating companies increase their international sales, their total revenues may also be affected to a greater extent by seasonal fluctuations resulting from lower sales that typically occur during the summer months in Europe and other parts of the world.

***CMGI is subject to risks of operating internationally.***

CMGI's success depends, in part, on the Company's ability to manage and expand its international operations. Failure to expand its international sales and fulfillment activities could limit the Company's ability to grow.

The Company currently conducts business in Taiwan, Singapore, Ireland, The Netherlands and certain other foreign locations, in addition to the Company's North American operations. Sales outside the United States accounted for 60% and 43% of the Company's total revenue for the three months ended October 31, 2003 and 2002, respectively. Sales outside the United States accounted for 37%, 11% and 13% of the Company's total revenue for fiscal 2003, 2002, and 2001, respectively. There are certain risks inherent in conducting international operations, including:

- added fulfillment complexities in operations, including multiple languages, currencies, bills of materials and stock keeping units;
- exposure to currency fluctuations and repatriation complexities and delays;
- longer payment cycles;
- greater difficulties in accounts receivable collections;
- the complexity of ensuring compliance with multiple U.S. and foreign laws, particularly differing laws on intellectual property rights and export control; and
- labor practices, difficulties in staffing and managing foreign operations, political instability and potentially adverse tax consequences.

If CMGI is unable to manage these risks, our international sales may decline and our financial results may be adversely affected.

## [Table of Contents](#)

### ***International laws and regulations may result in unanticipated costs and litigation.***

CMGI's plans to expand international operations will increase the Company's exposure to international laws and regulations. Noncompliance with foreign laws and regulations, which are often complex and subject to variation and unexpected changes, could result in unexpected costs and potential litigation. For example, the governments of foreign countries might attempt to regulate the Company's products and services or levy sales or other taxes relating to its activities. In addition, foreign countries may impose tariffs, duties, price controls or other restrictions on foreign currencies or trade barriers, any of which could make it more difficult to conduct its business.

### ***CMGI and its operating companies depend on third-party software, systems and services.***

CMGI and its operating companies rely on products and services of third-party providers in their business operations. There can be no assurance that CMGI or its operating companies will not experience operational problems attributable to the installation, implementation, integration, performance, features or functionality of such third-party software, systems and services. Any interruption in the availability or usage of the products and services provided by third parties could have a material adverse effect on the business or operations of CMGI or its operating companies.

### ***CMGI depends on certain important employees, and the loss of any of those employees may harm CMGI's business.***

CMGI's performance is substantially dependent on the performance of its executive officers and other key employees, as well as management of its operating companies. The familiarity of these individuals with technology-related industries makes them especially critical to CMGI's success. In addition, CMGI's success is dependent on its ability to attract, train, retain and motivate high quality personnel, especially for its operating companies' management teams. The loss of the services of any of CMGI's executive officers or key employees may harm its business. CMGI's success also depends on its continuing ability to attract, train, retain and motivate other highly qualified technical and managerial personnel. Competition for such personnel is intense.

### ***There may be conflicts of interest among CMGI, CMGI's subsidiaries and their respective officers, directors and stockholders.***

Some of CMGI's officers and directors also serve as officers or directors of one or more of CMGI's subsidiaries. In addition, David S. Wetherell, CMGI's Chairman of the Board, has significant compensatory interests in certain of CMGI's @Ventures venture capital affiliates. As a result, CMGI, CMGI's officers and directors, and CMGI's subsidiaries and venture capital affiliates may face potential conflicts of interest with each other and with stockholders. Specifically, CMGI's officers and directors may be presented with situations in their capacity as officers, directors or management of one of CMGI's subsidiaries and venture capital affiliates that conflict with their fiduciary obligations as officers or directors of CMGI or of another subsidiary or affiliate.

### ***CMGI's strategy of expanding its business through acquisitions of other businesses and technologies presents special risks.***

CMGI intends to continue to expand its business in certain areas through the acquisition of businesses, technologies, products and services from other businesses. Acquisitions involve a number of special problems, including:

- the need to incur additional debt or use cash in order to consummate the acquisition;
- difficulty integrating acquired technologies, operations and personnel with the existing businesses;
- diversion of management attention in connection with both negotiating the acquisitions and integrating the assets;
- strain on managerial and operational resources as management tries to oversee larger operations;
- the funding requirements for acquired companies may be significant;
- exposure to unforeseen liabilities of acquired companies;
- increased risk of costly and time-consuming litigation, including stockholder lawsuits;
- potential issuance of securities in connection with an acquisition with rights that are superior to the rights of holders of CMGI's common stock, or which may have a dilutive effect on the common stockholders; and

## [Table of Contents](#)

CMGI may not be able to successfully address these problems. Moreover, CMGI's future operating results will depend to a significant degree on its ability to successfully integrate acquisitions and manage operations while also controlling expenses and cash burn.

***CMGI must develop and maintain positive brand name awareness.***

CMGI believes that establishing and maintaining its brand name and the brand names of its operating companies is essential to expanding its business and attracting new customers. CMGI also believes that the importance of brand name recognition will increase in the future as technology-related companies continue to differentiate themselves. Promotion and enhancement of CMGI's brand names will depend largely on its ability to provide consistently high-quality products and services. If CMGI is unable to provide high-quality products and services, the value of its brand names will suffer and CMGI's business prospects may be adversely affected.

***CMGI's quarterly results may fluctuate significantly.***

CMGI's operating results have fluctuated widely on a quarterly basis during the last several years, and it expects to experience significant fluctuations in future quarterly operating results. Many factors, some of which are beyond CMGI's control, have contributed to these quarterly fluctuations in the past and may continue to do so. Such factors include:

- demand for its products and services;
- timing of new product introductions or software releases by its customers or their competitors;
- payment of costs associated with its acquisitions, sales of assets and investments;
- timing of sales of assets and marketable securities;
- market acceptance of new products and services;
- seasonality;
- temporary shortages in supply from vendors;
- charges for impairment of long-lived assets in future periods;
- potential restructuring charges in connection with CMGI's continuing restructuring efforts;
- political instability or natural disasters in the countries in which it operates;
- specific economic conditions in the industries in which CMGI competes; and
- general economic conditions.

CMGI believes that period-to-period comparisons of its results of operations will not necessarily be meaningful and should not be relied upon as indicative of its future performance. It is also possible that in some fiscal quarters, CMGI's operating results will be below the expectations of securities analysts and investors. In such circumstances, the price of CMGI's common stock may decline.

***The price of CMGI's common stock has been volatile and may fluctuate based on the value of its assets.***

The market price of CMGI's common stock has been, and is likely to continue to be, volatile, experiencing wide fluctuations. In recent years, the stock market has experienced significant price and volume fluctuations, which have particularly impacted the market prices of equity securities of many companies providing technology-related products and services. Some of these fluctuations appear to be unrelated or disproportionate to the operating performance of such companies. Future market movements may adversely affect the market price of CMGI's common stock. In addition, should the market price of CMGI's common stock be below \$1.00 per share for an extended period, it risks Nasdaq delisting, which would have an adverse effect on CMGI's business. In order to maintain compliance with Nasdaq listing standards, CMGI may consider several strategies, including without limitation a reverse stock split.

## [Table of Contents](#)

In addition, a portion of CMGI's assets includes the equity securities of both publicly traded and privately held companies. The market price and valuations of the securities that CMGI holds may fluctuate due to market conditions and other conditions over which CMGI has no control. Fluctuations in the market price and valuations of the securities that CMGI holds in other companies may result in fluctuations of the market price of CMGI's common stock and may reduce the amount of working capital available to CMGI.

### ***CMGI's operating companies are subject to intense competition.***

The markets for the products and services of CMGI's operating companies are highly competitive and often lack significant barriers to entry, enabling new businesses to enter these markets relatively easily. Numerous well-established companies and smaller entrepreneurial companies are focusing significant resources on developing and marketing products and services that will compete with the products and services of CMGI's operating companies. The market for supply chain management products and services is very competitive, and the intensity of the competition is expected to continue to increase. Any failure to maintain and enhance the competitive position of CMGI's supply chain management operating companies will limit its ability to maintain and increase market share, which would result in serious harm to CMGI's business. Increased competition may also result in price reductions, reduced gross margins and loss of market share. In addition, many of the current and potential competitors of CMGI's operating companies have greater financial, technical, operational and marketing resources than those of CMGI's operating companies. CMGI's operating companies may not be able to compete successfully against these competitors. Competitive pressures may also force prices for supply chain management products and services down and such price reductions may reduce CMGI's revenues.

### ***To succeed, CMGI's operating companies must respond to the rapid changes in the technology sector.***

The markets for the technology-related products and services of CMGI's operating companies are characterized by:

- rapidly changing technology;
- evolving industry standards;
- frequent new product and service introductions;
- shifting distribution channels; and
- changing customer demands.

The success of CMGI's operating companies will depend on their ability to adapt to this rapidly evolving marketplace. They may not be able to adequately adapt their products and services or to acquire new products and services that can compete successfully. In addition, CMGI's operating companies may not be able to establish and maintain effective distribution channels.

### ***CMGI's operating companies could be subject to infringement claims and other liabilities.***

From time to time, CMGI's operating companies have been, and expect to continue to be, subject to third-party claims in the ordinary course of business, including claims of alleged infringement of intellectual property rights. Any such claims may damage the businesses of CMGI's operating companies by:

- subjecting them to significant liability for damages;
- resulting in invalidation of their proprietary rights;
- resulting in costly license fees in order to settle such claims;
- being time-consuming and expensive to defend even if such claims are not meritorious; and
- resulting in the diversion of management time and attention.

CMGI, INC. AND SUBSIDIARIES

PART I: FINANCIAL INFORMATION

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

The Company is exposed to equity price risks on the marketable portion of its equity securities. The Company's available-for-sale securities at October 31, 2003 primarily consisted of investments in companies in the Internet and technology industries which have experienced significant historical volatility in their stock prices. The Company typically does not attempt to reduce or eliminate its market exposure on these securities. A 20% adverse change in equity prices, based on a sensitivity analysis of the equity component of the Company's available-for-sale securities portfolio as of October 31, 2003, would result in an approximate \$0.4 million decrease in the fair value of the Company's available-for-sale securities.

The carrying values of financial instruments including cash and cash equivalents, accounts receivable, accounts payable and notes payable, approximate fair value because of the short maturity of these instruments. The carrying value of long-term debt approximates its fair value, as estimated by using discounted future cash flows based on the Company's current incremental borrowing rates for similar types of borrowing arrangements.

The Company from time to time uses derivative financial instruments primarily to reduce exposure to adverse fluctuations in interest rates on its borrowing arrangements. The Company does not enter into derivative financial instruments for trading purposes. As a matter of policy, derivative positions are used to reduce risk by hedging underlying economic or market exposure. The derivatives the Company uses are straightforward instruments with liquid markets. At October 31, 2003, the Company was primarily exposed to the London Interbank Offered Rate (LIBOR) and Euro Interbank Offered Rate (EURIBOR) interest rate on its outstanding borrowing arrangements. The Company did not have any derivative financial instruments during the three months ended October 31, 2003.

The Company has historically had very low exposure to changes in foreign currency exchange rates, and as such, has not used derivative financial instruments to manage foreign currency fluctuation risk. As the Company continues to expand its international operations, the Company may consider utilizing derivative instruments to mitigate the risk of foreign currency exchange rate fluctuations in the future.

**Item 4. Controls and Procedures**

**Disclosure Controls and Procedures.** The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act.

**Internal Control Over Financial Reporting.** There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**CMGI, INC. AND SUBSIDIARIES**

**PART II: OTHER INFORMATION**

**Item 1. Legal Proceedings**

In August 2001, Jeffrey Black, a former employee of AltaVista Company, filed a complaint in Superior Court of the State of California (Santa Clara County) in his individual capacity as well as in his capacity as a trustee of two family trusts against the Company and AltaVista alleging certain claims arising out of his relationship with the Company and AltaVista and the termination of Mr. Black's employment with AltaVista. In March 2002, the court ordered the entire case to binding arbitration in California. In August 2002, Mr. Black submitted the matter to the American Arbitration Association. Mr. Black's statement of damages in the arbitration proceeding sought monetary damages in excess of \$16 million. In connection with Overture's acquisition of AltaVista's business, Overture agreed to assume any liability of AltaVista with respect to this action. On May 15, 2003, Mr. Black was given leave by the court to file a third amended complaint naming Overture as a defendant as successor in interest to AltaVista. An arbitration hearing was held in August 2003. Closing arguments in the arbitration were held on October 20, 2003. On November 19, 2003, the arbitrator awarded Mr. Black \$449,770 from CMGI and AltaVista, jointly and severally. Subsequently, Mr. Black requested that the arbitrator modify certain aspects of the award and increase the award by up to \$121,000. CMGI and AltaVista opposed Mr. Black's request to increase the award. The arbitrator's decision on Mr. Black's request is expected to be issued during December 2003.

On January 17, 2002, Sean Barger, a former employee and principal stockholder of Equilibrium Technologies, Inc. ("Equilibrium"), filed a complaint in Superior Court of the State of California (San Francisco County) in his individual capacity against the Company, AltaVista, David S. Andonian, Andrew J. Hajducky, III, and David S. Wetherell alleging certain claims arising out of the Company's acquisition of Equilibrium in January 2000. As set forth in the complaint, Mr. Barger alleged, among other things, (1) violation of state securities statutes, (2) fraudulent inducement, deceit, and fraud, (3) negligent misrepresentation, (4) unfair competition and (5) breach of fiduciary duty. Mr. Barger claimed an unspecified amount of damages. On October 29, 2002, Mr. Barger amended his complaint to allege, among other things, personal jurisdiction over the individual defendants. On January 27, 2003, Mr. Barger again amended his complaint to add allegations pertaining to the breach of fiduciary duty claim. The Court subsequently dismissed without leave to amend Mr. Barger's claim for breach of fiduciary duty. In connection with Overture's acquisition of AltaVista's business, Overture agreed to assume any liability of AltaVista with respect to this action. On December 11, 2003, the parties resolved this matter on mutually agreeable terms.

On September 24, 2003, the Official Committee of Unsecured Creditors of Engage, Inc. (the "Creditors Committee") filed a complaint against the Company in the U.S. Bankruptcy Court (Massachusetts, Western Division). The complaint was amended on November 6, 2003. In the amended complaint, the Creditors Committee asserted the following causes of action: (i) re-characterization of debt as equity, (ii) equitable subordination, (iii) invalidation of a release, (iv) fraudulent transfer, (v) preferential transfers, (vi) illegal redemption of shares, (vii) turnover of property of estate, (viii) alter ego, (ix) breach of contract, (x) breach of covenant of good faith and fair dealing, (xi) promissory estoppel, (xii) unjust enrichment, (xiii) unfair and deceptive trade practices under Massachusetts General Laws §93A, and (xiv) declaration with respect to scope and extent of security interests. The Creditors Committee seeks monetary damages and other relief, including cancellation of a \$2.0 million promissory note, return of \$2.5 million in cash, certain other unspecified amounts and a finding that the Company is liable for Engage's debt. The Company believes that these claims are without merit and intends to vigorously defend this matter.

**Item 2. Changes in Securities and Use of Proceeds**

On August 22, 2003, in connection with the settlement of certain employment-related claims, the Company issued to a former employee of one of its former subsidiaries an aggregate of 133,333 shares of Common Stock. The shares of Common Stock were issued and sold in reliance on Section 4(2) of the Securities Act of 1933, as amended, as a sale by the Company not involving a public offering. No underwriters were involved with the issuance and sale of the shares of Common Stock.

---

[Table of Contents](#)

**Item 6. Exhibits and Reports on Form 8-K**

(a) Exhibits

The Exhibits listed in the Exhibit Index immediately preceding such Exhibits are filed with or incorporated by reference in this report.

(b) Reports on Form 8-K

<u>Date Filed or Furnished</u>	<u>Item No.</u>	<u>Description</u>
September 30, 2003 *	Item 12	On September 30, 2003, the Company furnished a copy of the Company's earnings release for its fiscal fourth quarter and fiscal year ended July 31, 2003. Consolidated financial statements for such periods were furnished with such report.

\* This furnished Form 8-K is not to be deemed filed or incorporated by reference into any filing.



**SIGNATURE**

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

Date: December 12, 2003

CMGI, Inc.

By:                      /s/ THOMAS OBERDORF

**Thomas Oberdorf  
Chief Financial Officer and Treasurer (Principal Financial and  
Accounting Officer)**

**EXHIBIT INDEX**

<u>Item</u>	<u>Description</u>
10.1	Amendment No. 1, dated as of October 28, 2003, to Amended and Restated Loan and Security Agreement, dated as of July 31, 2003, by and among SalesLink Corporation, InSolutions Incorporated, On-Demand Solutions, Inc., Pacific Direct Marketing Corp., SalesLink Mexico Holding Corp. and SL Supply Chain Services International Corp., as Borrowers, and LaSalle Bank National Association and Citizens Bank of Massachusetts, as Lenders.
10.2	Lease Agreement, dated October 31, 2003, between ProLogis-North Carolina Limited Partnership and SalesLink Corporation for premises located at Park 100 Industrial Center, Building 29, Indianapolis, Indiana.
10.3	Form of Restricted Stock Agreement, dated September 2, 2003, by and among the Registrant and each of George A. McMillan, Thomas Oberdorf, Peter L. Gray and Bryce C. Boothby, Jr.
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Chief Executive Officer Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Chief Financial Officer Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**FIRST AMENDMENT  
TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (this “**Amendment**”), dated as of October 28, 2003 is entered into among SALES LINK CORPORATION, a Delaware corporation, INSOLUTIONS INCORPORATED, a Delaware corporation, ON-DEMAND SOLUTIONS, INC., a Massachusetts corporation, PACIFIC DIRECT MARKETING CORP., a California corporation, SALES LINK MEXICO HOLDING CORP., a Delaware corporation, SL SUPPLY CHAIN SERVICES INTERNATIONAL CORP., a Delaware corporation (each herein called a “**Borrower**” and collectively, the “**Borrowers**”), the lenders party hereto (herein collectively called the “**Lenders**” and each individually called a “**Lender**”) and LASALLE BANK NATIONAL ASSOCIATION, as a Lender and as Agent for the Lenders.

**WITNESSETH:**

**WHEREAS**, Borrowers and Lenders are parties to that certain Amended and Restated Loan and Security Agreement, dated July 31, 2003 (the “**Existing Loan Agreement**” and as the Existing Loan Agreement is amended and modified by this Amendment, the “**Amended Loan Agreement**”);

**WHEREAS**, Borrowers have requested that Lenders modify the Existing Loan Agreement in certain respects; and

**WHEREAS**, the Lenders are willing to modify the Existing Loan Agreement in certain respects subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises contained herein and other good and valuable consideration, it is agreed that:

**SECTION 1**

**DEFINED TERMS**

Terms defined in the Existing Loan Agreement and not otherwise defined herein shall have the meaning ascribed to them therein.

SECTION 2

**AMENDMENT TO EXISTING LOAN AGREEMENT**

**Amendment to Eligible Collateral Location.** Exhibit G of the Existing Loan Agreement is hereby amended by deleting the exhibit in its entirety and substituting therefor Exhibit A attached hereto.

SECTION 3

**REPRESENTATIONS AND WARRANTIES**

Each Borrower hereby jointly and severally represents and warrants to Lenders that:

**3.1 Due Authorization, etc.** The execution and delivery of this Amendment and the performance of such Borrower's obligations under the Amended Loan Agreement are duly authorized by all necessary corporate action, do not require any filing or registration with or approval or consent of any governmental agency or authority, do not and will not conflict with, result in any violation of or constitute any default under any provision of its articles of incorporation or by-laws or that of any of its Subsidiaries or any material agreement or other document binding upon or applicable to it or any of its Subsidiaries (or any of their respective properties) or any material law or governmental regulation or court decree or order applicable to it or any of its Subsidiaries, and will not result in or require the creation or imposition of any Lien in any of its properties or the properties of any of its Subsidiaries pursuant to the provisions of any agreement binding upon or applicable to it or any of its Subsidiaries.

**3.2 Validity.** This Amendment has been duly executed and delivered by such Borrower and, together with the Amended Loan Agreement, are the legal, valid and binding obligations of such Borrower to the extent such Borrower is a party thereto, enforceable against such Borrower in accordance with their respective terms subject, as to enforcement only, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of the rights of creditors generally.

**3.3 Representations and Warranties.** The representations and warranties contained in Section 6 of the Existing Loan Agreement are true and correct on the date of this Amendment, except to the extent that such representations and warranties (a) solely relate to an earlier date or (b) have been changed by circumstances permitted by the Amended Loan Agreement.

## SECTION 4

### CONDITIONS PRECEDENT

The amendment set forth in Section 2 of this Amendment shall become effective upon satisfaction of all of the following conditions precedent:

**4.1 Receipt of Documents.** Agent shall have received all of the following, each in form and substance satisfactory to Agent:

(a) Amendment. A counterpart original of this Amendment duly executed by Borrowers.

(b) Secretary's Certificate. A certificate of the secretary or clerk of each Borrower dated the date of the execution of this Amendment or such other date as shall be acceptable to Agent, substantially in the form of Exhibit B to this Amendment.

(c) President's Certificate. A certificate of the president of each Borrower dated the date of the execution of this Amendment, substantially in the form of Exhibit C to this Amendment.

(d) Other. Such other documents as Agent may reasonably request.

**4.2 Other Conditions.** No Event of Default or Default shall have occurred and be continuing.

## SECTION 5

### MISCELLANEOUS

**5.1 Warranties and Absence of Defaults.** In order to induce Lenders to enter into this Amendment, each Borrower jointly and severally hereby warrants to Lenders, as of the date of the actual execution of this Amendment, (a) no Event of Default or Default has occurred which is continuing as of such date and (b) the representations and warranties in Section 3 of this Amendment are true and correct.

**5.2 Documents Remain in Effect.** Except as amended and modified by this Amendment, the Existing Loan Agreement and the other documents executed pursuant to the Existing Loan Agreement remain in full force and effect and each Borrower hereby ratifies, adopts and confirms its representations, warranties, agreements and covenants contained in, and obligations and liabilities under, the Existing Loan Agreement and the other documents executed pursuant to the Existing Loan Agreement.

**5.3 Reference to Loan Agreement.** On and after the effective date of this Amendment, each reference in the Amended Loan Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of like import, and each reference to the "Loan Agreement" in any Note and in any Loan Documents, or other agreements, documents or other instruments executed and delivered pursuant to the Amended Loan Agreement, shall mean and be a reference to the Amended Loan Agreement.

**5.4 Headings.** Headings used in this Amendment are for convenience of reference only, and shall not affect the construction of this Amendment.

**5.5 Counterparts.** This Amendment may be executed in any number of counterparts, and by the parties hereto on the same or separate counterparts, and each such counterpart, when executed and delivered, shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amendment.

**5.6 Expenses.** Borrowers agree to pay on demand all costs and expenses of Lenders (including reasonable fees, charges and disbursements of Lenders' attorneys) in connection with the preparation, negotiation, execution, delivery and administration of this Amendment and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith. In addition, Borrowers agree to pay, and save Lenders harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of this Amendment, the borrowings under the Amended Loan Agreement, and the execution and delivery of any instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith. All obligations provided in this Section 5.6 shall survive any termination of this Amendment or the Amended Loan Agreement.

**5.7 Governing Law.** This Amendment shall be a contract made under and governed by the internal laws of the State of Illinois. Wherever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable laws, but if any provision of this Amendment shall be prohibited by or invalid under such laws, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

**5.8 Successors.** This Amendment shall be binding upon Borrowers, Lenders and their respective successors and assigns, and shall inure to the benefit of Borrowers, Lenders and the successors and assigns of Lenders.

[signature page attached]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized and delivered at Chicago, Illinois as of the date first written above.

**BORROWERS:**

SALESLINK CORPORATION  
Delaware corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

INSOLUTIONS INCORPORATED  
a Delaware corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

ON-DEMAND SOLUTIONS, INC.  
a Massachusetts corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

PACIFIC DIRECT MARKETING CORP.  
a California corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

SALESLINK MEXICO HOLDING CORP.  
a Delaware corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

SL SUPPLY CHAIN SERVICES INTERNATIONAL CORP.  
a Delaware corporation

By:           /s/ Bryce C. Boothby, Jr.

Name: Bryce C. Boothby, Jr.  
Title: President

**LENDERS:**

LASALLE BANK NATIONAL ASSOCIATION,  
as a Lender and as Agent

By: /s/ David Bacon

---

Name: David Bacon  
Title: Vice President

CITIZEN'S BANK OF MASSACHUSETTS,  
as a Lender

By: /s/ David P. O'Connell

---

Name: David P. O'Connell  
Title: Banking Officer



**LEASE AGREEMENT**

THIS LEASE AGREEMENT is made this 31<sup>ST</sup> day of October, 2003, between ProLogis-North Carolina Limited Partnership ("Landlord"), and the Tenant named below.

**Tenant:** SalesLink Corporation

**Tenant's representative, address, and phone no.:** Tom Shiels  
425 Medford Street  
Charlestown, MA 02129-1420  
(617) 886-4800

**Premises:** That portion of the Building, containing approximately 64,000 rentable square feet, as determined by Landlord, as shown on Exhibit A.

**Project:** Park 100 Industrial Center, Building 29

**Building:** Park 100 Industrial Center, Building 29  
7955 Zionsville Road  
Indianapolis, IN 46268

**Tenant's Proportionate Share of Project:** 50.00%

**Tenant's Proportionate Share of Building:** 50.00%

**Lease Term:** Beginning on the Commencement Date and ending on the last day of the 63rd full calendar month thereafter.

**Commencement Date:** November 1, 2003

**Initial Monthly Base Rent:** See Addendum 1

**Base Year:** 2004

**Security Deposit:** \$14,880.00

**Broker:** Colliers Turley Martin Tucker

**Addenda:** 1. Base Rent Adjustments; 2. Construction (Allowance Amortized); 3. Cancellation Option; 4. Option to Expand at Existing Rate; 5. Right of First Refusal; 6. One Renewal Option at Market; 7. Miscellaneous Provisions; 8. HVAC Maintenance Contract; 9. Move-Out Conditions; 10. Assignment & Subletting Consent

**Exhibits:** A. Site Plan; B. Floor Plan; C. Initial Improvements Plan; D. Parking Plan

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. Except as provided in Paragraph 10, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 10 and any punchlist items agreed to in writing by Landlord and Tenant.

3. **Use.** The Premises shall be used only for the purpose of receiving, storing, shipping and selling (but limited to wholesale sales) products, materials and merchandise made and/or distributed by Tenant and for such other lawful purposes as may be incidental thereto; provided, however, with Landlord's prior written consent, Tenant may also use the Premises for light manufacturing. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Project. Outside storage, including without limitation, storage of trucks and other vehicles, is prohibited without Landlord's prior written consent. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements"). The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler credits. If any increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord. Any occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease (other than Base Rent, which, in accordance with Addendum 1 hereto, shall not be owed by Tenant until the fourth month after the Commencement Date).

4. **Base Rent.** Tenant shall pay Base Rent in the amount set forth above. Base Rent for the fourth month after the Commencement Date and the Security Deposit shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, subject to Addendum 1 hereto, monthly installments of Base Rent on or before the first day of each calendar month succeeding the fourth month after the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made, at Tenant's election, by check or Electronic Fund Transfer ("EFT") of immediately available federal funds at such place, within the continental United States, as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent or of estimated Excess Operating Expenses (as hereinafter defined) for more than 5 business days, Tenant shall pay to Landlord on demand a late charge equal to 8 percent of such delinquent sum. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Security Deposit.** The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of an Event of Default (hereinafter defined), Landlord may

use all or part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee; no interest shall accrue thereon. The Security Deposit shall be the property of Landlord, but shall be paid to Tenant when Tenant's obligations under this Lease have been completely fulfilled. Landlord shall be released from any obligation with respect to the Security Deposit upon transfer of this Lease and the Premises to a person or entity assuming Landlord's obligations under this Paragraph 5, (conditioned upon the Security Deposit also being transferred by Landlord to such transferee).

**6. Operating Expense Payments.** During each month of the Lease Term subsequent to the Base Year, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as reasonably estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Excess Operating Expenses for the Project. Payments thereof for any fractional calendar month shall be prorated. The term "Excess Operating Expenses" means Operating Expenses for the applicable year in excess of Operating Expenses for the Base Year. The term "Operating Expenses" means all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Project including, but not limited to costs of: Taxes (hereinafter defined) and fees payable to tax consultants and attorneys for consultation and contesting taxes; insurance; utilities; maintenance, repair and replacement of all portions of the Project, including without limitation, paving and parking areas, roads, roofs (including the roof membrane), alleys, and driveways, mowing, landscaping, snow removal, exterior painting, utility lines, heating, ventilation and air conditioning systems, lighting, electrical systems and other mechanical and building systems; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any association to which the Project is subject; property management fees payable to a property manager, including any affiliate of Landlord, or if there is no property manager, an administration fee of 15 percent of the total amount of Operating Expenses; security services, if any; trash collection, sweeping and removal; and additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant) or that are appropriate to the continued operation of the Project or the Building as a bulk warehouse facility in the market area, provided that the cost of additions or alterations that are required to be capitalized for federal income tax purposes shall be amortized on a straight line basis over a period equal to the lesser of the useful life thereof for federal income tax purposes or 10 years. Operating Expenses do not include costs, expenses, depreciation or amortization for capital repairs and capital replacements required to be made by Landlord under Paragraph 10 of this Lease, debt service under mortgages or ground rent under ground leases, costs of restoration to the extent of net insurance proceeds received by Landlord with respect thereto, leasing commissions, or the costs of renovating space for tenants.

If Tenant's total payments of Operating Expenses for any year are less than Tenant's Proportionate Share of Excess Operating Expenses for such year, then Tenant shall pay the difference to Landlord within 30 days after demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments. For purposes of calculating Tenant's Proportionate Share of Excess Operating Expenses, a year shall mean a calendar year except the last year, which shall end on the expiration of this Lease. For purposes of calculating Excess Operating Expenses for the last year of the Lease Term, Operating Expenses for the Base Year shall be reduced proportionately based upon the number of days that this Lease is in effect during such last year. With respect to Operating Expenses which Landlord allocates to the entire Project, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Project as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Project; and, with respect to Operating Expenses which Landlord allocates only to the Building, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Building as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Building. Landlord may equitably increase Tenant's Proportionate Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project or Building that includes the Premises or that varies with occupancy or use.

**7. Utilities.** Tenant shall pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. Landlord may cause at Tenant's expense any utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay its share of all charges for jointly metered utilities based upon consumption, as reasonably determined

by Landlord. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent. Tenant agrees to limit use of water and sewer for normal restroom use.

8. **Taxes.** Landlord shall pay all taxes, assessments and governmental charges (collectively referred to as "Taxes") that accrue against the Project during the Lease Term, which shall be included as part of the Operating Expenses charged to Tenant. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof. All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any net income taxes imposed on Landlord unless such net income taxes are in substitution for any real property taxes payable hereunder. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

9. **Insurance.** Landlord shall maintain all risk property insurance covering the full replacement cost of the Building. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. All such insurance shall be included as part of the Operating Expenses charged to Tenant. The Project or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Project or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; worker's compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial liability insurance, with a minimum limit of \$1,000,000 per occurrence and a minimum umbrella limit of \$1,000,000, for a total minimum combined general liability and umbrella limit of \$2,000,000 (together with such additional umbrella coverage as Landlord may reasonably require) for property damage, personal injuries, or deaths of persons occurring in or about the Premises. Landlord may from time to time require reasonable increases in any such limits. The commercial liability policies shall name Landlord as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to Landlord, not be cancelable unless 30 days' prior written notice shall have been given to Landlord (other than upon expiration or termination of this Lease), contain a hostile fire endorsement and a contractual liability endorsement and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). Such policies or certificates thereof shall be delivered to Landlord by Tenant upon commencement of the Lease Term and upon each renewal of said insurance.

The all risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

10. **Landlord's Repairs.** Landlord shall maintain, at its expense, the structural soundness of the roof, foundation, and exterior walls of the Building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 10 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levelers, or

office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph 10, after which Landlord shall have a reasonable opportunity to repair.

11. **Tenant's Repairs.** Landlord, at Tenant's expense as provided in Paragraph 6, shall maintain in good repair and condition the parking areas and other common areas of the Building, including, but not limited to driveways, alleys, landscape and grounds surrounding the Premises. Subject to Landlord's obligation in Paragraph 10 and subject to Paragraphs 9 and 15, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, dock and loading areas, truck doors, plumbing, water and sewer lines up to points of common connection, fire sprinklers and fire protection systems, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Term. Heating, ventilation and air conditioning systems and other mechanical and building systems serving the Premises shall be maintained at Tenant's expense pursuant to maintenance service contracts entered into by Tenant or, at Landlord's election, by Landlord. The scope of services and contractors under such maintenance contracts shall be reasonably approved by Landlord. At Landlord's request, Tenant shall enter into a joint maintenance agreement with any railroad that services the Premises. If Tenant fails to perform any repair or replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within 10 days after demand therefor. Subject to Paragraphs 9 and 15, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Project that results from damage caused by Tenant, its agents, contractors, or invitees and any repair that benefits only the Premises.

12. **Tenant-Made Alterations and Trade Fixtures.** Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, provided that such alteration does not materially affect the structure or the roof of the Building, modify the exterior of the Building, or modify the utility systems of the Project. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations. All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall reimburse Landlord for its reasonable costs in reviewing plans and specifications and in monitoring construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors. Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant-Made Alterations. Tenant shall repair any damage caused by such removal.

Tenant, at its own cost and expense and without Landlord's prior approval, may erect such shelves, bins, machinery and trade fixtures (collectively "Trade Fixtures") in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Upon surrender of the Premises, Tenant shall remove its Trade Fixtures and shall repair any damage caused by such removal.

13. **Signs.** Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering,

placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements, which approval shall not be unreasonably withheld, delayed or conditioned.

14. **Parking.** Tenant shall be entitled to park at least 55 automobiles in common with other tenants of the Project in those areas designated for nonreserved parking. Landlord may allocate parking spaces among Tenant and other tenants in the Project if Landlord determines that such parking facilities are becoming crowded. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties.

15. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is reasonably estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord reasonably estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

16. **Condemnation.** If any part of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking would prevent or materially interfere with Tenant's use of the Premises or in Landlord's judgment would materially interfere with or impair its ownership or operation of the Project, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant.

17. **Assignment and Subletting.** Without Landlord's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned pursuant to the provisions of Addendum 10 attached hereto), Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this paragraph, a transfer of the ownership interests controlling Tenant shall be deemed an assignment of this Lease unless such ownership interests are publicly traded or unless such transfer is to a Tenant Affiliate (as defined below). Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling Tenant, controlled by Tenant or under common control with Tenant (a "Tenant Affiliate"), without the prior written consent of Landlord. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with any assignment or sublease. Upon Landlord's receipt of Tenant's written request to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to

Tenant within 10 business days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease.

Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or sublettings). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder 50% of such excess rental and other excess consideration within 10 days following receipt thereof by Tenant.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

**18. Indemnification.** Except for intentional acts or omissions or the negligence of Landlord, its directors, officers, agents, employees, contractors, invitees or licensees, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Project and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Paragraph 18.

**19. Inspection and Access.** Upon reasonable prior notice to Tenant (except in the case of an emergency) and subject to and in compliance with any and all reasonable security procedures required of or by Tenant's customers (except in the case of an emergency), Landlord and its agents, representatives, and contractors may, upon prior notice to Tenant and with a Tenant designated by Tenant (except in the case of an emergency), enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Subject to the foregoing sentence, Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last year of the Lease Term, to prospective tenants. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

**20. Quiet Enjoyment.** If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

**21. Surrender.** Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Paragraphs 15 and 16 excepted. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without

limitation, indemnity obligations, payment obligations with respect to Excess Operating Expenses and all obligations concerning the condition and repair of the Premises.

22. **Holding Over.** If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to 150% of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for Tenant to retain possession of the Premises.

23. **Events of Default.** Each of the following events shall be an event of default (“Event of Default”) by Tenant under this Lease:

(i) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 5 business days from the date such payment was due.

(ii) Tenant or any guarantor or surety of Tenant’s obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a “proceeding for relief”); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(iii) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(iv) Tenant shall not occupy or shall vacate the Premises or shall fail to continuously operate its business at the Premises for the permitted use set forth herein, whether or not Tenant is in monetary or other default under this Lease. Tenant’s vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) insure that Tenant’s insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) insure that the Premises are secured and not subject to vandalism, and (c) insure that the Premises will be properly maintained after such vacation. Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

(v) There shall occur any assignment, subleasing or other transfer of Tenant’s interest in or with respect to this Lease except as otherwise permitted in this Lease.

(vi) Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 30 days after Tenant becomes aware that any such lien or encumbrance is filed against the Premises.

(vii) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 23, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days then after such period of time as is reasonably necessary not to exceed 90 days).



**24. Landlord's Remedies.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing Tenant's or any other occupant's property, repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs; and the excess of the then present value of the Base Rent and other amounts payable by Tenant under this Lease as would otherwise have been required to be paid by Tenant to Landlord during the period following the termination of this Lease measured from the date of such termination to the expiration date stated in this Lease, over the present value of any net amounts which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises for such period, taking into consideration the availability of acceptable tenants and other market conditions affecting leasing. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

If Landlord terminates Tenant's right of possession (but not this Lease), Landlord may, but shall be under no obligation to, relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such

terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

25. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

26. **Waiver of Jury Trial.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

27. **Subordination.** This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any first mortgage, now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees within a reasonable time after demand to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

28. **Mechanic's Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 30 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 30 day period.

29. **Estoppel Certificates.** Tenant agrees, from time to time, within 10 days after written request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default

hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate. Tenant hereby irrevocably appoints Landlord as its attorney in fact to execute on its behalf and in its name any such estoppel certificate if Tenant fails to execute and deliver the estoppel certificate within 10 days after Landlord's written request thereof.

**30. Environmental Requirements.** Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph 30, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph 30 shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Paragraph 30, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

**31. Rules and Regulations.** Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project.

32. **Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Project, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure.** Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord (“Force Majeure”).

34. **Entire Agreement.** This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers.** Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

37. **Miscellaneous.** (a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term “Tenant,” as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to the parties at their addresses below, and with a copy sent to Landlord at 14100 East 35th Place, Aurora, Colorado 80011 and a copy sent to Tenant’s outside counsel at Browne Rosedale & Lanouette LLP, 31 St. James Avenue, Suite 830, Boston, MA 02116, Facsimile: (617) 399-6930, Attention: Thomas B. Rosedale. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) At Landlord’s request from time to time Tenant shall furnish Landlord with true and complete copies (in all material respects) of its most recent annual and quarterly financial statements prepared by Tenant or Tenant’s accountants. Landlord hereby agrees to keep such financial information confidential in accordance with, and subject to the terms of, a separate written confidentiality agreement between Landlord and Tenant.

(f) Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(g) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(h) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(i) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(j) Any amount not paid by Tenant within 5 business days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or 12 percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(k) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of Tenant's and Landlord's obligations under this Lease.

(m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(n) In the event Landlord initiates litigation to enforce the terms and provisions of this Lease and is successful with such litigation in all matters, except for bankruptcy matters in which case success or failure of such action shall not apply, the Tenant in such action shall reimburse Landlord for any and all costs incurred by Landlord in prosecuting such action, including (without limitation) reasonable attorney's fees, filing fees, and court costs.

**38. Landlord's Lien/Security Interest.** Intentionally deleted.

**39. Limitation of Liability of Trustees, Shareholders, and Officers of ProLogis and SalesLink Corporation.** Any obligation or liability whatsoever of ProLogis, a Maryland real estate investment trust, or SalesLink Corporation, a Delaware corporation, which may arise at any time under this Lease or any obligation or liability which may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of, its trustees, directors, shareholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

SalesLink Corporation

By: /s/ Bryce C Boothby

Name: Bryce C. Boothby Jr.  
Title: President

Address:

425 Medford Street

Charlestown, MA 02129-1420

LANDLORD:

ProLogis-North Carolina Limited Partnership, a Delaware limited partnership

By: ProLogis-North Carolina (1) Incorporated, a Maryland corporation, its  
General Partner

By: /s/ Daryl H. Mechem

Name: Daryl H. Mechem  
Title: Senior Vice President

Address:

8102 Zionsville Road

Indianapolis, IN 46268

### Rules and Regulations

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or its agents, or used by them for any purpose other than ingress and egress to and from the Premises.
2. Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.
3. Except for seeing-eye dogs, no animals shall be allowed in the offices, halls, or corridors in the Project.
4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.
5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.
6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.
7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Except for the overnight parking of operative vehicles, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.
8. Tenant shall use reasonable best efforts to maintain the Premises free from rodents, insects and other pests.
9. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.
10. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.
11. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.
12. Except as otherwise permitted under the Lease, Tenant shall not permit storage outside the Premises, including without limitation, outside storage of non-operable trucks and other non-operable vehicles, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.
13. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.
14. No auction, public or private, will be permitted on the Premises or the Project.
15. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

16. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.
17. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.
18. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.
19. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.



ADDENDUM 1

BASE RENT ADJUSTMENTS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

Base Rent shall equal the following amounts for the respective periods set forth below:

<u>Months</u>	<u>Monthly Base Rent</u>
Commencement Date through Month 3	\$ 0.00*
Month 4 through Month 63	\$14,880.00

\* Tenant shall not be responsible for the payment of Base Rent during Months 1 through 3 of the Lease Term; provided, however, Tenant shall remain obligated for the payment of Operating Expenses during Months 1 through 3 of the Lease Term.

ADDENDUM 2

**CONSTRUCTION**  
(ALLOWANCE AMORTIZED)

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

(a) Landlord agrees to furnish or perform those items of construction and those improvements (the "Initial Improvements") specified below:

**General:**

1. All necessary labor, supervision, materials and equipment as necessary to complete the scope of work as described.
2. Architectural services as required for submittal to local building authorities.

**Office (Please refer to Exhibit C):**

1. Demolition of the existing interior office partitions and the existing first floor open office floor covering to accommodate the proposed floor layout.
2. Demolition of two (2) door openings in the existing concrete block walls to accommodate the proposed floor layout.
3. Demolition of a sanitary plumbing trench to connect the proposed sanitary plumbing fixtures to the existing sanitary plumbing main.
4. Forming, placing and finishing of a sanitary plumbing trench.
5. Structural support steel as required for the proposed roof-top HVAC equipment.
6. Furnishing and installing two (2) 48" base cabinets, three (3) 48" wall cabinets and twenty (20) lineal feet of plastic laminate countertops.
7. Furnishing and installing nine (9) prefinished birch doors in painted hollow metal doorframes. Relocation of the existing wood door frames to accommodate the new floor layout.
8. A new office/warehouse separation wall constructed to a height of 12'.
9. Construction of a 42" high drywall metal stud partition to form the security closet. Furnishing and installing 2-8' 12" deep melamime shelves and one (1) 12" 8' long plastic laminate countertop.
10. Construction of all new interior office partitions as shown.
11. Insulation of all new interior partitions with 3" batt insulation.
12. A new 2'x4' acoustical ceiling and tile through the new office area.
13. Furnishing and installing Landlord standard floor coverings throughout the entire first floor office areas.
14. Painting of the proposed office area with two (2) coats of a low sheen latex paint.
15. Furnishing and installing new baked enamel toilet partitions in the restrooms as shown.
16. Furnishing and installing ADA toilet accessories for the restrooms as proposed.
17. Installation of a new contingent of sprinkler piping and sprinkler heads in sizes and locations as required by code in the new office area.
18. Furnishing and installing eight (8) new water closets, six (6) new lavatories, two (2) urinals, one (1) 40-gallon hot water heater, one (1) drinking fountain, two (2) showers and one (1) double bowl stainless steel sink.

19. A new 6.5-ton capacity packaged roof top unit will be installed to provide heating and cooling for the proposed office area addition.
20. Furnishing and installing a new electrical panel in the existing office area to serve the proposed office addition.
21. Lighting for the office area will be provided through the use of 2'x4' lay-in type foot candles of lighting at three foot above the finished floor elevation.
22. Furnishing and installing duplex electrical outlets at the rate of one outlet per 120 square feet.
23. Furnishing and installing telephone/data boxes with pull strings in locations throughout the office.

**Warehouse:**

1. Furnishing and installing ten (10) chains hung 8' florescent light fixtures over the proposed assembly areas on a common switch located near the existing electrical panel.
2. Demolition and removal of an additional 2' in height of the existing precast wall panel containing an existing 8'x8' overhead door.
3. Demolition and removal of the existing exterior precast concrete door canopies at each location.
4. Furnishing and installing additional overhead door track and adding an additional section to the existing overhead door.
5. At the employee entry way leading into the locker room/security area, Landlord shall encase the stairway with drywall and apply two coats of white latex paint. This shall be done in an effort to brighten and improve the appearance of this employee entrance.

**Expanded Parking Area (please refer to Exhibit D):**

1. Furnishing civil design services as required to perform drainage calculations and completed civil documents as required for submittal to local building authorities.
2. ILP permit as required for paved area construction.
3. Mass excavation work to required pavement depth.
4. Finish grading of the slopes of the topsoil adjacent to the new paved area.
5. Placing and compacting 6" of No. 53 stone base.
6. Placing and compacting 2" of HAC binder course and 1" of HAC surface course.
7. Stripping of the new parking areas for twenty-seven (27) additional parking spaces.

Landlord shall pay for the Initial Improvements up to a maximum amount of \$150,000.00, and in no event shall Landlord have any obligation to pay for any costs of the Initial Improvements in excess of such amount. If the cost of the Initial Improvements exceeds such amount, such overage shall be borne by Tenant, and repaid to Landlord, together with interest at 11% per annum, in equal monthly installments over the Lease Term; provided, however, in no event shall Landlord be obligated to amortize any portion of such overage in excess of \$10,000.00, and any estimated overage in excess of such amount shall be paid by Tenant to Landlord before Landlord begins constructing the Initial Improvements. Upon completion the parties shall make an adjusting payment between them.

Landlord may collect a construction management fee, payable by Tenant within 30 days following receipt of Landlord's invoice from time to time throughout the period of construction of the Initial Improvements, which such fee shall be calculated based upon the scope of work of the Initial Improvements as described herein, taking into account costs generally payable for similar services within the market area in which the Project is located. All parties hereby acknowledge that such construction management fee shall not be included as part of the allowance for the Initial Improvements as set forth herein.

(b) If Tenant shall desire any changes, Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. Any and all costs of reviewing

any requested changes, and any and all costs of making any changes to the Initial Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense and shall be paid to Landlord upon demand and before execution of the change order.

(c) Landlord shall proceed with and complete the construction of the Initial Improvements. As soon as such improvements have been Substantially Completed, Landlord shall notify Tenant in writing of the date that the Initial Improvements were Substantially Completed. Such date, unless an earlier date is specified as the Commencement Date in this Lease or otherwise agreed to in writing between Landlord and Tenant, shall be the "Commencement Date," unless the completion of such improvements was delayed due to any act or omission of, or delay caused by, Tenant including, without limitation, Tenant's failure to approve plans, complete submittals or obtain permits within the time periods agreed to by the parties or as reasonably required by Landlord, in which case the Commencement Date shall be the date such improvements would have been completed but for the delays caused by Tenant. The Initial Improvements shall be deemed substantially completed ("Substantially Completed") when, in the opinion of the construction manager (whether an employee or agent of Landlord or a third party construction manager) ("Construction Manager"), the Premises are substantially completed except for punch list items which do not prevent in any material way the use of the Premises for the purposes for which they were intended. In the event Tenant, its employees, agents, or contractors cause construction of such improvements to be delayed, the date of Substantial Completion shall be deemed to be the date that, in the opinion of the Construction Manager, Substantial Completion would have occurred if such delays had not taken place. Without limiting the foregoing, Tenant shall be solely responsible for delays caused by Tenant's request for any changes in the plans, Tenant's request for long lead items or Tenant's interference with the construction of the Initial Improvements, and such delays shall not cause a deferral of the Commencement Date beyond what it otherwise would have been. After the Commencement Date Tenant shall, upon demand, execute and deliver to Landlord a letter of acceptance of delivery of the Premises. In the event of any dispute as to the Initial Improvements, including the Commencement Date, the certificate of the Construction Manager shall be conclusive absent manifest error.

(d) The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of rent by Tenant. Subject to applicable ordinances and building codes governing Tenant's right to occupy or perform in the Premises, Tenant shall be allowed to install its tenant improvements, machinery, equipment, fixtures, or other property on the Premises during the final stages of completion of construction provided that Tenant does not thereby interfere with the completion of construction or cause any labor dispute as a result of such installations, and provided further that Tenant does hereby agree to indemnify, defend, and hold Landlord harmless from any loss or damage to such property, and all liability, loss, or damage arising from any injury to the Project or the property of Landlord, its contractors, subcontractors, or materialmen, and any death or personal injury to any person or persons arising out of such installations, unless any such loss, damage, liability, death, or personal injury was caused by Landlord's negligence. Any such occupancy or performance in the Premises shall be in accordance with the provisions governing Tenant-Made Alterations and Trade Fixtures in the Lease, and shall be subject to Tenant providing to Landlord satisfactory evidence of insurance for personal injury and property damage related to such installations and satisfactory payment arrangements with respect to installations permitted hereunder. Delay in putting Tenant in possession of the Premises shall not serve to extend the term of this Lease or to make Landlord liable for any damages arising therefrom.

(e) Except for incomplete punch list items, Tenant upon the Commencement Date shall have and hold the Premises as the same shall then be without any liability or obligation on the part of Landlord for making any further alterations or improvements of any kind in or about the Premises.

ADDENDUM 3

CANCELLATION OPTION

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

In the event Tenant loses its contract with Personal Systems Group (PSG) for distribution in support of Hewlett-Packard's Indianapolis facility and provided no uncured Event of Default shall then exist and no condition shall then exist which with the passage of time or giving of notice, or both, would constitute an Event of Default, Tenant shall have the right at any time on or after August 1, 2006 to send Landlord written notice (the "Termination Notice") that Tenant has elected to terminate this Lease effective six (6) months thereafter.

If Tenant elects to terminate this Lease pursuant to the immediately preceding sentence, the effectiveness of such termination shall be conditioned upon Tenant paying to Landlord all unamortized Initial Improvements costs (for calculation purposes \$150,000.00 shall be fully amortized at 11% over the 63 month term) and unearned commissions (for calculation purposes, 6% of the gross rental proceeds) together with a sum equal to three (3) months gross rent payable contemporaneously with Tenant's delivery of the Termination Notice to Landlord. Such amount is consideration for Tenant's option to terminate and shall not be applied to rent or any other obligation of Tenant. Landlord and Tenant shall be relieved of all obligations accruing under this Lease after the effective date of such termination but not any obligations accruing under the Lease prior to the effective date of such termination.

OPTION TO EXPAND AT EXISTING RATE

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

(a) The following terms shall have the following meanings:

(i) The "Option Space" shall mean the adjacent and contiguous space to the Premises consisting of approximately 32,000 square feet commonly known as 7953 Zionsville Road, Indianapolis, Indiana 45268 and as shown on Exhibit B.

(ii) The "Option Space Commencement Date" shall mean 30 days following Landlord's receipt of Tenant's Notice (as defined below).

(b) Provided that as of the date Tenant exercises its rights hereunder, (x) Tenant is the Tenant originally named herein (or a Tenant Affiliate or a permitted assignee), (y) Tenant (or a Tenant Affiliate or a permitted assignee) actually occupies all of the Premises originally demised under this Lease and any premises added to the Premises, and (z) no uncured Event of Default or event which but for the passage of time or the giving of notice, or both, would constitute an Event of Default has occurred and is continuing, Tenant shall have the option to include the Option Space as part of the Premises commencing on the Option Space Commencement Date. If Tenant exercises its right to include the Option Space as part of the Premises, Tenant shall lease the Option Space upon all the terms and conditions of the Lease, including the Base Rent provided therein; provided, however, Tenant shall not be entitled to any allowances, credits, or abatements with respect thereto, and provided, further, that Landlord shall pay for certain improvements to the Option Space, as mutually agreed upon by the parties, up to a maximum amount of \$10,000, and except that Landlord shall deliver all building and mechanical systems servicing the Option Space in good working order, including (without limitation) the dock levelers and HVAC.

(c) In addition to its obligation to pay Base Rent (as determined herein), Tenant shall reimburse and pay Landlord with respect to the Option Space in the same manner as set forth in the Lease with respect to Operating Expenses and other items reimbursable by Tenant. Effective as of the Option Space Commencement Date, Tenant's Proportionate Share shall be redetermined by Landlord's architect or construction manager based upon the total floor area of the Premises (including the Option Space) in proportion to the total floor area in the Building and the Project.

(d) If Tenant desires to exercise its option for the Option Space, Tenant must deliver 30 days' prior written notice of the effective date of such exercise to Landlord at any time during the Lease Term ("Tenant's Notice"), subject to the Right of First Refusal as set forth in Addendum 5 attached hereto. Time shall be of the essence with respect to the giving of Tenant's Notice. If Tenant exercises its Right of First Refusal, or declines such space as specified thereunder, Tenant's rights under this Addendum shall be null and void.

(e) Except as otherwise set forth herein, Tenant agrees to accept the Option Space in its condition and state of repair existing as of the Option Space Commencement Date and understands and agrees that Landlord shall not be required to perform any work, supply any materials, or incur any expense to prepare such space for Tenant's occupancy.

RIGHT OF FIRST REFUSAL

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALES LINK CORPORATION

(a) "Offered Space" shall mean the adjacent and contiguous space to the Premises consisting of approximately 32,000 square feet commonly known as 7953 Zionsville Road, Indianapolis, Indiana 46268 and as shown on Exhibit B.

(b) Provided that Tenant has not exercised its Option to Expand pursuant to the provisions of Addendum 4 attached hereto, and provided further that as of the date of the giving of Landlord's Notice, (x) Tenant is the Tenant originally named herein (or a Tenant Affiliate or a permitted assignee), (y) Tenant (or a Tenant Affiliate or a permitted assignee) actually occupies all of the Premises originally demised under this Lease and any premises added to the Premises, and (z) no uncured Event of Default or event which but for the passage of time or the giving of notice, or both, would constitute an Event of Default has occurred and is continuing, if at any time during the Lease Term any lease for any portion of the Offered Space shall expire and if Landlord intends to enter into a lease (the "Proposed Lease") for such Offered Space with anyone (a "Proposed Tenant") other than the tenant then occupying such space (or its affiliates) Landlord shall first offer to Tenant the right to lease the Offered Space upon all the terms and conditions of the Proposed Lease, except that Landlord shall pay for certain improvements to the Offered Space, as mutually agreed upon by the parties, up to a maximum amount of \$10,000, and except that Landlord shall deliver all building and mechanical systems servicing the Offered Space in good working order, including (without limitation) the dock levelers and HVAC.

(c) Such offer shall be made by Landlord to Tenant in a written notice (hereinafter called the "Offer Notice") which offer shall designate the space being offered and shall specify the terms for such Offered Space which shall be the same as those set forth in the Proposed Lease. Tenant may accept the offer set forth in the Offer Notice by delivering to Landlord an unconditional acceptance (hereinafter called "Tenant's Notice") of such offer within 10 business days after delivery by Landlord of the Offer Notice to Tenant. Time shall be of the essence with respect to the giving of Tenant's Notice. If Tenant does not accept (or fails to timely accept) an offer made by Landlord pursuant to the provisions of this Addendum with respect to the Offered Space designated in the Offer Notice, Landlord shall be under no further obligation with respect to such space by reason of this Addendum. In order to send the Offer Notice, Landlord does not need to have negotiated a complete lease with the Proposed Tenant but may merely have agreed upon the material economic terms for the Proposed Lease, and Tenant must make its decision with respect to the Offered Space as long as it has received a description of such material economic terms.

(d) Tenant must accept all Offered Space offered by Landlord at any one time if it desires to accept any of such Offered Space and may not exercise its right with respect to only part of such space. In addition, if Landlord desires to lease more than just the Offered Space to one tenant, Landlord may offer to Tenant pursuant to the terms hereof all such space which Landlord desires to lease, and Tenant must exercise its rights hereunder with respect to all such space and may not insist on receiving an offer for just the Offered Space.

ONE RENEWAL OPTION AT MARKET

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALES LINK CORPORATION

(a) Provided that as of the time of the giving of the Extension Notice and the Commencement Date of the Extension Term, (x) Tenant is the Tenant originally named herein (or a Tenant Affiliate or a permitted assignee), (y) Tenant (or a Tenant Affiliate or a permitted assignee) actually occupies all of the Premises initially demised under this Lease and any space added to the Premises, and (z) no uncured Event of Default exists or would exist but for the passage of time or the giving of notice, or both; then Tenant shall have the right to extend the Lease Term for an additional term of 3 years (such additional term is hereinafter called the "Extension Term") commencing on the day following the expiration of the Lease Term (hereinafter referred to as the "Commencement Date of the Extension Term"). Tenant shall give Landlord notice (hereinafter called the "Extension Notice") of its election to extend the term of the Lease Term at least 6 months, but not more than 12 months, prior to the scheduled expiration date of the Lease Term.

(b) The Base Rent payable by Tenant to Landlord during the Extension Term shall be the greater of (i) the Base Rent applicable to the last year of the initial Lease Term and (ii) the then prevailing market rate for comparable space in the Project and comparable buildings in the vicinity of the Project, taking into account the size of the Lease, the length of the renewal term, market escalations and the credit of Tenant. The Base Rent shall not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for such premises (including, without limitation, brokerage commissions, costs of improvements, rent concessions or lost rental income during any vacancy period). In the event Landlord and Tenant fail to reach an agreement on such rental rate and execute the Amendment (defined below) at least 6 months prior to the expiration of the Lease, then Tenant's exercise of the renewal option shall be deemed withdrawn and the Lease shall terminate on its original expiration date.

(c) The determination of Base Rent does not reduce the Tenant's obligation to pay or reimburse Landlord for Operating Expenses and other reimbursable items as set forth in the Lease, and Tenant shall reimburse and pay Landlord as set forth in the Lease with respect to such Operating Expenses and other items with respect to the Premises during the Extension Term without regard to any cap on such expenses set forth in the Lease.

(d) Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the Extension Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term; provided, however, Tenant shall have no further right to any allowances, credits or abatements or any options to expand, contract, renew or extend the Lease.

(e) If Tenant does not give the Extension Notice within the period set forth in paragraph (a) above, Tenant's right to extend the Lease Term shall automatically terminate. Time is of the essence as to the giving of the Extension Notice.

(f) Landlord shall have no obligation to refurbish or otherwise improve the Premises for the Extension Term. The Premises shall be tendered on the Commencement Date of the Extension Term in "as-is" condition.

(g) If the Lease is extended for the Extension Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto (the "Amendment").

(h) If Tenant exercises its right to extend the term of the Lease for the Extension Term pursuant to this Addendum, the term "Lease Term" as used in the Lease, shall be construed to include, when practicable, the Extension Term except as provided in (d) above.



ADDENDUM 7

MISCELLANEOUS PROVISIONS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

Landlord shall warrant the existing HVAC system serving the Premises throughout the first 12 months of the primary Lease Term. Warranty shall require Landlord to cover the costs associated with the repair and or replacement of major HVAC components in excess of \$1,000.00 per unit, per occurrence. Warranty shall be valid for defects or failures in materials or workmanship only. Warranty shall not cover damage due to Tenant negligence. Negligence shall include, but not be limited to, Tenant's failure to comply with the terms of the required HVAC maintenance e contract outlined in Paragraph 11 and Addendum 7 of this Lease.

HVAC MAINTENANCE CONTRACT

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

Paragraph 11, captioned "TENANT REPAIRS," is revised to include the following:

Tenant agrees to enter into and maintain through the term of the Lease, a regularly scheduled preventative maintenance/service contract for servicing all hot water, heating and air conditioning systems and equipment within the Premises. Landlord requires a qualified HVAC contractor perform this work. A certificate must be provided to the Landlord upon occupancy of the leased Premises.

The service contract must become effective within thirty (30) days of occupancy, and service visits should be performed on a quarterly basis. Landlord suggests that Tenant send the following list to a qualified HVAC contractor to be assured that these items are included in the maintenance contract:

1. Adjust belt tension;
2. Lubricate all moving parts, as necessary;
3. Inspect and adjust all temperature and safety controls;
4. Check refrigeration system for leaks and operation;
5. Check refrigeration system for moisture;
6. Inspect compressor oil level and crank case heaters;
7. Check head pressure, suction pressure and oil pressure;
8. Inspect air filters and replace when necessary;
9. Check space conditions;
10. Check condensate drains and drain pans and clean, if necessary;
11. Inspect and adjust all valves;
12. Check and adjust dampers;
13. Run machine through complete cycle.

MOVE-OUT CONDITIONSATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

Per Paragraph 21, Tenant is obligated to check and address prior to move-out of the Premises the following items. Landlord expects to receive the Premises in a well maintained condition, with normal wear and tear of certain areas acceptable. The following list is designed to assist Tenant in the move-out procedures but is not intended to be all inclusive.

1. All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.
2. All truck doors and dock levelers should be serviced and placed in good operating order. This would include the necessary replacement of any dented truck door panels and adjustment of door tension to insure proper operation. All door panels which are replaced need to be painted to match the Building standard.
3. All structural steel columns in the warehouse and office should be inspected for damage. Repairs of this nature should be pre-approved by the Landlord prior to implementation.
4. Heating/air-conditioning systems should be placed in good working order, including the necessary replacement of any parts to return the unit to a well maintained condition. This includes warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition.
5. All holes in the sheet rock walls should be repaired prior to move-out.
6. The carpets and vinyl tiles should be in a clean condition and should not have any holes or chips in them. Landlord will accept normal wear on these items provided they appear to be in a maintained condition.
7. Facilities should be returned in a clean condition which would include cleaning of the coffee bar, restroom areas, windows, and other portions of the space.
8. The warehouse should be in broom clean condition with all inventory and racking removed. There should be no protrusion of anchors from the warehouse floor and all holes should be appropriately patched. If machinery/equipment is removed, the electrical lines should be properly terminated at the nearest junction box.
9. All exterior windows with cracks or breakage should be replaced.
10. The Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
11. Items that have been added by the Tenant and affixed to the Building will remain the property of Landlord, unless agreed otherwise. This would include but is not limited to mini-blinds, air conditioners, electrical, water heaters, cabinets, flooring, etc. Please note that if modifications have been made to the space, such as the addition of office areas, Landlord retains the right to have the Tenant remove these at Tenant's expense.
12. All electrical systems should be left in a safe condition that conforms to code. Bare wires and dangerous installations should be corrected prior to move-out.

- 
13. All plumbing fixtures should be in good working order, including the water heater. Faucets and toilets should not leak.
  14. All dock bumpers must be left in place and well secured.

ASSIGNMENT AND SUBLETTING (CONSENT)

ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED OCTOBER 31, 2003, BETWEEN  
PROLOGIS-NORTH CAROLINA LIMITED PARTNERSHIP  
and  
SALESLINK CORPORATION

(a) Landlord shall not unreasonably withhold, delay or condition its consent to Tenant's request for permission to assign the Lease or sublease all or part of the Premises. It shall be reasonable for the Landlord to withhold its consent to any assignment or sublease in any of the following instances:

- (i) The assignee does not have a net worth calculated according to generally accepted accounting principles at least equal to the greater of the net worth of Tenant immediately prior to such assignment or the net worth of the Tenant at the time it executed the Lease;
- (ii) The intended use of the Premises by the assignee or sublessee is not reasonably satisfactory to Landlord;
- (iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Project;
- (iv) Occupancy of the Premises by the assignee or sublessee would, in Landlord's opinion, violate any agreement binding upon Landlord or the Project with regard to the identity of tenants, usage in the Project, or similar matters;
- (v) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Project;
- (vi) The assignment or sublease is to another tenant in the Project and is at rates which are below those charged by Landlord for comparable space in the Project;
- (vii) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease; or
- (viii) The proposed assignee or sublessee is a government entity.

The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease.

- (b) Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease.
- (c) Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may reasonably request.
- (d) Landlord may revoke its consent immediately and without notice if, as of the effective date of the assignment or sublease, an uncured Event of Default under the Lease exists on such effective date of the assignment or sublease.
- (e) Intentionally deleted.

CMGI, Inc.

Restricted Stock Agreement  
Granted Under 2000 Stock Incentive Plan

AGREEMENT made as of the 2nd day of September, 2003 (the "Grant Date") between CMGI, Inc., a Delaware corporation (the "Company"), and [ ] (the "Participant").

For past services rendered and other valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. Grant of Shares.

The Company hereby grants to the Participant, subject to the terms and conditions set forth in this Agreement and in the Company's 2000 Stock Incentive Plan (the "Plan"), [ ] shares (the "Shares") of common stock, \$0.01 par value, of the Company ("Common Stock"). The Participant agrees that the Shares shall be subject to forfeiture as set forth in Section 2 of this Agreement and the restrictions on transfer set forth in Section 3 of this Agreement.

2. Forfeiture.

(a) In the event that the Participant ceases to be employed by the Company for any reason or no reason, with or without cause, prior to September 2, 2006, all of the Unvested Shares (as defined below) shall be forfeited.

"Unvested Shares" means the total number of Shares multiplied by the Applicable Percentage at the time the Participant ceases to be employed by the Company. The "Applicable Percentage" shall be (i) 100% during the 12-month period ending September 1, 2004, (ii) 66.67% during the 12-month period ending September 1, 2005, (iii) 33.33% during the 12-month period ending September 1, 2006 and (iv) zero after September 1, 2006.

(b) For purposes of this Agreement, employment with the Company shall include employment with a parent or subsidiary of the Company.

3. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively "transfer") any Shares, or any interest therein, that would be Unvested Shares if the Participant were to cease to be employed by the Company at the time of the transfer, except that the Participant may transfer such Shares (i) to or for the benefit of any spouse, children, parents, uncles, aunts, siblings, grandchildren and any other relatives approved by the Board of Directors (collectively, "Approved Relatives") or to a trust established solely for the benefit of the Participant and/or Approved Relatives, provided that such Shares shall remain subject to this Agreement (including without limitation the forfeiture provisions of Section 2 and the restrictions on transfer set forth in this Section 3) and such

permitted transferee shall, as a condition to such transfer, deliver to the Company a written instrument confirming that such transferee shall be bound by all of the terms and conditions of this Agreement or (ii) as part of the sale of all or substantially all of the shares of capital stock of the Company (including pursuant to a merger or consolidation), provided that, in accordance with the Plan, the securities or other property received by the Participant in connection with such transaction shall remain subject to this Agreement.

#### 4. Escrow.

The Participant shall, upon the execution of this Agreement, execute Joint Escrow Instructions in the form attached to this Agreement as Exhibit A. The Joint Escrow Instructions shall be delivered to the Assistant Secretary of the Company, as escrow agent thereunder. The Participant shall deliver to such escrow agent a stock assignment duly endorsed in blank, in the form attached to this Agreement as Exhibit B, and hereby instructs the Company to deliver to such escrow agent, on behalf of the Participant, the certificate(s) evidencing the Shares issued hereunder. Such materials shall be held by such escrow agent pursuant to the terms of such Joint Escrow Instructions.

#### 5. Restrictive Legends.

All certificates representing Shares shall have affixed thereto a legend in substantially the following form, in addition to any other legends that may be required under federal or state securities laws:

“The shares of stock represented by this certificate are subject to restrictions on transfer and a risk of forfeiture as set forth in a certain Restricted Stock Agreement between the corporation and the registered owner of these shares (or his or her predecessor in interest), and such Agreement is available for inspection without charge at the office of the Secretary of the corporation.”

#### 6. Provisions of the Plan.

(a) This Agreement is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Agreement.

(b) As provided in the Plan, upon the occurrence of a Reorganization Event (as defined in the Plan), all rights of the Company hereunder shall inure to the benefit of the Company's successor and shall apply to the cash, securities or other property which the Shares were converted into or exchanged for pursuant to such Reorganization Event in the same manner and to the same extent as they applied to the Shares under this Agreement. If, in connection with a Reorganization Event, a portion of the cash, securities and/or other property received upon the conversion or exchange of the Shares is to be placed into escrow to secure indemnification or similar obligations, the mix between the vested and unvested portion of such cash, securities and/or other property that is placed into escrow shall be the same as the mix between the vested and unvested portion of such cash, securities and/or other property that is not subject to escrow.

7. Withholding Taxes; Section 83(b) Election.

(a) The Participant acknowledges and agrees that the Company has the right to deduct from payments of any kind otherwise due to the Participant any federal, state or local taxes of any kind required by law to be withheld with respect to the lapse or partial lapse of the risk of forfeiture.

(b) The Participant has reviewed with the Participant's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. The Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) shall be responsible for the Participant's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Participant understands that it may be beneficial in many circumstances to elect to be taxed at the time the Shares are granted rather than when and as the risk of forfeiture lapses by filing an election under Section 83(b) of the Code with the I.R.S. within 30 days from the date of grant.

THE PARTICIPANT ACKNOWLEDGES THAT IT IS THE PARTICIPANT'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO FILE TIMELY THE ELECTION UNDER SECTION 83(b), EVEN IF THE PARTICIPANT REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE PARTICIPANT'S BEHALF.

8. Miscellaneous.

(a) No Rights to Employment. The Participant acknowledges and agrees that the vesting of the Shares pursuant to Section 2 hereof is earned only by continuing service as an employee at the will of the Company (not through the act of being hired or being granted shares hereunder). The Participant further acknowledges and agrees that the transactions contemplated hereunder and the vesting schedule set forth herein do not constitute an express or implied promise of continued engagement as an employee or consultant for the vesting period, for any period, or at all.

(b) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(c) Waiver. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors of the Company.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 3 of this Agreement.



(e) Notice. All notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery or five days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party hereto at the address shown beneath his or its respective signature to this Agreement, or at such other address or addresses as either party shall designate to the other in accordance with this Section 8(e).

(f) Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) Entire Agreement. This Agreement and the Plan constitute the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.

(h) Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Participant.

(i) Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of Delaware without regard to any applicable conflicts of laws.

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

CMGI, Inc.

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

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

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

\_\_\_\_\_  
[Name of Participant]

Address: \_\_\_\_\_  
\_\_\_\_\_

Joint Escrow Instructions

September 2, 2003

Assistant Secretary  
CMGI, Inc.  
425 Medford Street  
Charlestown, MA 02129

Dear Sir:

As Escrow Agent for CMGI, Inc., a Delaware corporation, and its successors in interest under the Restricted Stock Agreement (the "Agreement") of even date herewith, to which a copy of these Joint Escrow Instructions is attached (the "Company"), and the undersigned person ("Holder"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of the Agreement in accordance with the following instructions:

1. Appointment. Holder irrevocably authorizes the Company to deposit with you any certificates evidencing Shares (as defined in the Agreement) to be held by you hereunder and any additions and substitutions to said Shares. For purposes of these Joint Escrow Instructions, "Shares" shall be deemed to include any additional or substitute property. Holder does hereby irrevocably constitute and appoint you as his attorney-in-fact and agent for the term of this escrow to execute with respect to such Shares all documents necessary or appropriate to make such Shares negotiable and to complete any transaction herein contemplated. Subject to the provisions of this paragraph 1 and the terms of the Agreement, Holder shall exercise all rights and privileges of a stockholder of the Company while the Shares are held by you.

2. Forfeiture.

Upon any forfeiture of the Shares pursuant to the Agreement, the Company shall give to Holder and you a written notice of forfeiture. Holder and the Company hereby irrevocably authorize and direct you to deliver the forfeited Shares to the Company in accordance with the terms of said notice.

3. Withdrawal. The Holder shall have the right to withdraw from this escrow any Shares that are not Unvested Shares (as defined in the Agreement).

#### 4. Duties of Escrow Agent.

(a) Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

(b) You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact of Holder while acting in good faith and in the exercise of your own good judgment, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

(c) You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or Company, excepting only orders or process of courts of law, and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree of any court, you shall not be liable to any of the parties hereto or to any other person, firm or Company by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(d) You shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

(e) You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder and may rely upon the advice of such counsel.

(f) Your rights and responsibilities as Escrow Agent hereunder shall terminate if (i) you cease to be Assistant Secretary of the Company or (ii) you resign by written notice to each party. In the event of a termination under clause (i), your successor as Assistant Secretary shall become Escrow Agent hereunder; in the event of a termination under clause (ii), the Company shall appoint a successor Escrow Agent hereunder.

(g) If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

(h) It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such dispute shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

(i) These Joint Escrow Instructions set forth your sole duties with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into these Joint Escrow Instructions against you.

(j) The Company shall indemnify you and hold you harmless against any and all damages, losses, liabilities, costs, and expenses, including attorneys' fees and disbursements, for anything done or omitted to be done by you as Escrow Agent in connection with this Agreement or the performance of your duties hereunder, except such as shall result from your gross negligence or willful misconduct.

5. Notice. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to each of the other parties thereunto entitled at the following addresses, or at such other addresses as a party may designate by ten days' advance written notice to each of the other parties hereto.

COMPANY: Notices to the Company shall be sent to the address set forth in the salutation hereto, Attn: President

HOLDER: Notices to Holder shall be sent to the address set forth below Holder's signature below.

ESCROW AGENT: Notices to the Escrow Agent shall be sent to the address set forth in the salutation hereto.

6. Miscellaneous.

(a) By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions, and you do not become a party to the Agreement.

(b) This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

\* \* \* \* \*

Very truly yours,

CMGI, Inc.

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

Name:

Title:

HOLDER:

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

\_\_\_\_\_  
Print Name

Address: \_\_\_\_\_

\_\_\_\_\_

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

ESCROW AGENT:

\_\_\_\_\_

(STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE)

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto CMGI, Inc. \_\_\_\_\_ (\_\_\_\_\_) shares of Common Stock, \$0.01 par value per share, of CMGI, Inc. (the "Corporation") standing in my name on the books of the Corporation represented by Certificate(s) Number \_\_\_\_\_ herewith, and do hereby irrevocably constitute and appoint \_\_\_\_\_ as attorney to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

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

IN PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

NOTICE: The signature(s) to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration, enlargement, or any change whatever and must be guaranteed by a commercial bank, trust company or member firm of the Boston, New York or Midwest Stock Exchange.

This Form of Restricted Stock Agreement Granted Under 2000 Stock Incentive Plan was entered into on September 2, 2003 by and between CMGI, Inc. and each of the following executive officers of CMGI, Inc.:

<u>Name</u>	<u>Number of Shares</u>
George A. McMillan	140,000
Thomas Oberdorf	100,000
Peter L. Gray	80,000
Bryce C. Boothby, Jr.	100,000

**CERTIFICATION PURSUANT TO  
EXCHANGE ACT RULE 13a-14(a)/15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, George A. McMillan, President and Chief Executive Officer of CMGI, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of CMGI, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 12, 2003

By: /s/ George A. McMillan

---

George A. McMillan  
President and Chief Executive Officer



**CERTIFICATION PURSUANT TO  
EXCHANGE ACT RULE 13a-14(a)/15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas Oberdorf, Chief Financial Officer and Treasurer of CMGI, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of CMGI, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 12, 2003

By: /s/ Thomas Oberdorf

---

Thomas Oberdorf  
Chief Financial Officer and Treasurer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of CMGI, Inc. (the "Company") for the fiscal quarter ended October 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, George A. McMillan, President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 12, 2003

By: /s/ George A. McMillan

---

George A. McMillan  
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of CMGI, Inc. (the "Company") for the fiscal quarter ended October 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Thomas Oberdorf, Chief Financial Officer and Treasurer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 12, 2003

By: /s/ Thomas Oberdorf

---

Thomas Oberdorf  
Chief Financial Officer and Treasurer