FORM 10-12G

Initial general form for registration of a class of securities pursuant to Section 12(g)

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES

Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934

Taleo Corporation

(Exact name of registrant as specified in its charter)

Delaware	**52-2190418**
(State of incorporation or organization)	(I.R.S. Employer Identification No.)

575 Market Street, Eighth Floor, San Francisco, CA 94105

(Address, including zip code, of principal executive offices)

(415) 538-9068

(Registrant' s telephone number, including area code)

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

None

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

Class A Common Stock, $0.00001 par value per share

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ITEM 1. BUSINESS.

Preliminary Information

We were incorporated in Delaware in 1999, and changed our name from Recruitsoft, Inc. to Taleo Corporation in March 2004. In October of 2003, we acquired White Amber, Inc., a vendor of solutions to manage temporary staff and in March of 2005, we acquired Recruitforce.com, Inc., a provider of on demand staffing management solutions for small and medium-size organizations. Our principal offices are located at 575 Market Street, Eighth Floor, San Francisco, California 94105, and 330 St-Vallier East, Suite 400, Quebec, QC, Canada, G1K 9C5. Our telephone numbers at these locations are (415) 538-9068 and (418) 524-5665, respectively. Our website address is http://www.taleo.com. Our website and the information contained therein or connected thereto is not a part of this prospectus.

Trademark registration for "Taleo" is pending. "Recruitsoft" and our logo are our registered trademarks. This prospectus also includes trademarks of other persons.

Overview

We are a leading provider of on-demand talent management solutions that enable organizations of all sizes to establish, automate and administer worldwide talent management processes for professional, hourly and temporary staff. Large organizations seek to improve their talent management processes not only to reduce the time and costs associated with these processes but, more importantly, to enhance the quality, productivity and satisfaction of their workforces. Taleo customers use our suite of solutions to achieve these goals while creating substantial value. Our solutions enable our customers to build a higher quality workforce, increase employee retention and productivity, and reduce the time and costs associated with enterprise staffing. Our solutions are highly configurable, enabling our customers to create variable workflows to address the unique staffing requirements associated with different employee types, locations, and regulatory environments. This flexibility allows us to deliver tailored solutions without the need for application source code customization. Our solutions support workforce analytics, such as staffing metrics reporting, staffing process benchmarking and employee skills inventory management. We deliver our applications to the vast majority of our customers on a hosted basis through a standard web-browser which significantly reduces the time and upfront costs associated with enterprise deployments.

We market our Talent Management Enterprise solutions to large organizations through our direct sales force and indirectly to large and medium organizations through our strategic partnerships with large business process outsourcing providers. We market our Business Edition solution to small and medium organizations through our telesales and internet channel. We deliver our solutions to approximately 270 customers. Some of our largest customers by revenue in the technology, manufacturing, business services, consumer goods, retail, energy, healthcare, financial services and transportation sectors are HP, Honeywell, Mercer, P&G, Starbucks, SUEZ, UnitedHealth Group, Washington Mutual, and Yellow Corporation.

We are a Delaware corporation and were incorporated in May 1999. In November 1999 we entered into an exchangeable share transaction with a Quebec corporation, 9090-5415 Quebec Inc. As a result of the transaction, the corporation became our subsidiary and its shareholders exchanged their shares for exchangeable shares as further described below in "Item 11-Description of Registrant' s Securities to be Registered." Taleo (Canada) Inc. is a wholly owned subsidiary of 9090-5415 Quebec, Inc. and the majority of our research and development efforts are conducted through Taleo (Canada) Inc. In October 2003 we acquired White Amber, Inc. in order to expand our product offerings. The White Amber acquisition expands our offering to provide the technology and expertise to manage staffing for all types of workers, including contingent and contract workers. White Amber has become Taleo Contingent, which manages the temporary staffing requirements of large organizations. We are in the process of integrating the Contingent solution onto our technology platform to provide our customers with a single technology platform for their staffing needs. In March 2005, we acquired Recruitforce.com in order to expand our product offerings to the small and medium-size enterprise (SME) market. Recruitforce.com' s product offering has become Taleo Business Edition™, which provides a staffing solution which can be accessed and used via a self-service model by smaller organizations, standalone departments and divisions of larger organizations, and staffing companies.

Industry Background

Talent management is a complex process with multiple, interconnected elements that together play a vital role in attracting, qualifying and enhancing the quality and satisfaction of an organization' s valuable human capital. Organizations no longer view human capital solely as an expense to be minimized, but instead as an asset to be maximized. This shift in thinking has mirrored the evolution of staffing management from a manual, paper-based practice to a technology-enabled, enterprise-wide process.

Traditional Staffing Management

Historically, companies used manual, paper-based processes and a variety of internally developed practices to manage distinct elements of enterprise staffing including recruiting, hiring, retention and internal mobility, as well as processes associated with temporary staffing. These inconsistent, inefficient, and time consuming processes resulted in significant expenses, a high degree of risk associated with regulatory non-compliance and variance in the quality of individual hires and deployment of personnel. The most qualified candidates are often lost due to the inefficiency of the manual approach as they generally find employment faster and may be more apt to look outside an organization that does not provide mobility than less qualified candidates and employees. In addition, qualified employees often found it simpler to seek employment outside the organization than to pursue internal opportunities. The manual practices related to talent management and, particularly, staffing, including paper resume exchange, spreadsheet-based candidate and employee databases, and manual workforce management practices, were particularly ineffective in both high growth and large, complex organizations. Furthermore, temporary and permanent talent management processes have traditionally been managed by different departments. These functions were typically handled by procurement and human resources, respectively. Although solutions to manage the temporary workforce existed, few were truly vendor neutral, and they did not provide advanced features such as project and vendor management, or the ability to negotiate simultaneously with multiple vendors. These solutions also lacked accurate tracking of overall temporary workforce needs. Over the past decade, organizations have begun to understand the need to invest in more sophisticated enterprise talent management solutions.

The Emergence of Online Job Boards and Applicant Tracking Systems

The proliferation of enterprise software applications and broad-based Internet adoption led to the emergence of first-generation staffing technologies and tools aimed at the basic automation of existing hiring processes within recruiting departments. During this time, electronic job boards emerged as an alternative to traditional print advertising as an important means by which companies disseminated employment opportunities and collected candidate resumes. Additionally, companies began to leverage corporate branding and websites with career sections to both advertise job openings and to allow for online job research and application submission by a broader audience of potentially interested candidates. The advent of electronic posting of both job opportunities and candidate resumes led to an unprecedented influx of applications and resumes to corporate recruiters and hiring managers. With this increase in the volume of applicants, manual screening of resumes and candidate relationship management became more cumbersome, time consuming and expensive.

Organizations began to recognize that their inability to consistently and effectively process, sort, screen and match the substantial inflow of candidates with job opportunities increased their cost of hire and time to hire. Additionally, organizations experienced a negative impact on their corporate reputations from disenfranchised job applicants who often believed they did not receive fair evaluation or feedback. To address these issues, software vendors developed solutions known as applicant tracking systems, or ATSs, to collect, mine and search candidate resumes and track candidate status from a central database. Some ATSs provided basic tools for automating communication and feedback to candidates in an effort to foster better relations. ATSs primarily enabled recruiters to organize and search resume content for key words or phrases. In recent years, large enterprise software companies, such as enterprise resource planning, or ERP, vendors including Oracle, PeopleSoft, and SAP, added, among other things, ATSs to their offerings.

These basic ATS offerings may enable companies to reduce the time and expense associated with hiring employees as organizations automate discrete, high volume transactions. However, neither electronic information exchange nor resume processing addresses the fundamental need to more effectively and consistently attract, select, hire and retain top talent and thus do not significantly improve the return on investment in human capital or the quality of the workforce. Following the implementation of first- and second-generation ATSs, many organizations found that the simple automation of traditional

and often flawed recruiting processes might only increase the frequency and quicken the pace at which sub-optimal candidates are hired, which increases the ongoing costs associated with training, turnover, and workforce inefficiency.

The Emergence of the Software Service Provider

While organizations attempted to address the changing environment of enterprise staffing, they also struggled to realize the expected functional and economic benefits of traditional client-server based enterprise software applications. To support most enterprise applications, organizations were required to make sizable upfront and ongoing investments in IT infrastructure, including computer systems, networks, software licenses and maintenance fees. Additionally, customers generally require the services of internal staff and IT consultants to customize, maintain and upgrade traditional enterprise applications. In an attempt to address these challenges, some enterprise software application vendors have adapted their legacy products to be accessible over the Internet. However, as these products were not designed to be delivered over the Internet, they have generally suffered from performance and useability issues.

With dramatic declines in the pricing of computing technology and network bandwidth, and more reliable Internet infrastructure, a new model for enterprise computing emerged: the software service provider, or SSP, model. SSPs allow substantial components of IT infrastructure to be provisioned and delivered dynamically as a service over the Internet. SSPs deliver a wide variety of software applications that have been developed specifically for Internet use. The SSP model allows businesses to reduce their total cost of ownership by eliminating the need to install and manage hardware and third-party software in-house.

Market Opportunity

Over the past few years organizations have automated most critical business functions. While this automation has generated large volumes of data and business information, the critical knowledge within organizations resides with employees. Accordingly, much of the value of the organization resides in its human capital. To increase their return on investment in human capital, organizations have begun to shift their focus from traditional cost-and time-per-hire metrics to more strategic considerations such as time-to-productivity, internal mobility and employee retention. Systematically pursuing these goals increases overall workforce productivity by enabling effective assignment and redeployment of talent. A comprehensive view of enterprise staffing management requires solutions that not only automate discrete recruiting transactions, but also improve the effectiveness and consistency of staffing processes, thereby increasing the quality of hire and employee retention and productivity.

According to data from the Bureau of Economic Analysis, an agency of the U.S. Department of Commerce, the amount spent on U.S. labor in 2004 was approximately $6.6 trillion, or 57% of total gross domestic product. With labor comprising such a significant percentage of corporate cost structures, many organizations have acquired technologies and outsourced staffing-related functions in an effort to reduce costs and improve efficiency of their human capital assets. In October 2004, an independent market research firm, International Data Corporation, or IDC, estimated that recruiting and staffing service spending would grow from $29.9 billion in 2003 to $47.1 billion by 2008, a compound annual growth rate of 9.5% during that period. The fastest growing component of this aggregate IDC forecast, the end-to-end hiring process automation solutions market, is expected to grow from $239 million in 2003, to approximately $727.9 million in 2008, which represents a compound annual growth rate of 24.9% during this period. This estimate does not include the market for temporary staffing process automation solutions, or the market for end-to-end hiring process automation solutions outside of the United States.

Enterprise Talent Management Requirements

In order to increase their return on investment in human capital, large organizations must optimize not only staffing, but also talent management, including employee mobility processes to create and sustain a competitive advantage based on one of the most important differentiators in today' s knowledge economy: human capital. Effective enterprise talent management processes must enable organizations to:

Attract and Retain Top Talent. The process of attracting, hiring and retaining the best available staff is critical to every company' s long-term operational and financial success. Companies have acknowledged that the talent level and

satisfaction of their workforce has direct implications on product quality, customer service and relationships, brand equity, financial performance and competitive positioning. Real-time screening and communication are necessary capabilities to quickly capture the best internal and external candidates. However, time-to-hire alone is an ineffective performance metric. Poor hires that stay with an organization are unproductive and have a recurring negative impact on the value of the organization. To maximize the long-term benefits of the staffing process, employers must hire employees that will make long lasting and substantial contributions. To retain top talent and place the right employees in the right positions, companies also require sophisticated processes and technology to enable employee career preference management and internal mobility.

Implement Effective and Consistent Talent Management Processes. Effective hiring processes exhibit a balanced combination of agility, low variance and defensibility. Managing the staffing process for large and complex organizations requires both extensive domain expertise and advanced technology that is configurable to support diverse business needs, candidate expectations, cultural norms and regulatory environments. The candidate facing processes and internal staffing processes must be aligned, comfortable to the candidate, and capable of supporting the business drivers of the organization. Slow screening processes often result in a more costly, lower quality of hire as top candidates are most likely to quickly find new employment opportunities. In order to achieve consistently high quality outcomes, organizations' hiring processes and technologies must deliver consistency and increased speed. In addition, they must enable defensible processes which can assist with regulatory compliance and protection against potential claims of discrimination.

Enable Deep Assessment of Talent. Beyond technical skills and work experience, the assessment of both employees' and candidates' behaviors, personalities and "soft" competencies ensures shorter training requirements, optimal fit with organizational and work-group cultures as well as fitness for particular work functions. Organizations are seeking advanced assessment tools that yield significant cost savings, elevate quality of workforces for increased productivity, and increase rates of retention. Integrating assessment into overall talent management processes and technologies further enables workforce optimization.

Match Skills and Job Requirements. To maximize their return on human capital, organizations must more effectively match skill sets against specific needs of unfilled job opportunities across an organization. Organizations with ineffective candidate screening processes will likely incur significant ongoing costs associated with extended learning curves for new hires, low productivity and higher turnover. Organizations that record and update candidate and employee data structured by skills, rather than by resume content, are able to match skills against the immediate and longer-term needs of the organization. Skills-based matching requires innovative technologies that substantially increase the quality of hire, reduce time- and cost-to-productivity, enhance job satisfaction and enable internal mobility and workforce optimization.

Promote Workforce Agility. Building talent management processes that support workforce mobility enables organizations to become more agile in response to marketplace changes, with minimal disruption of current work. Empowering employees to manage their career preferences increases retention of top talent and helps ensure that organization managers have an ample pool of current employees with the skills to support new and changing organizational initiatives.

Measure Talent Management Process Effectiveness. In order to drive continuous improvement in both enterprise talent management and return on human capital assets, organizations need to measure and analyze the effectiveness of end-to-end enterprise talent management processes. Organizations seek to quantify the contributions of their staff to the overall organization' s success, leading to greater focus on workforce management analytics. Workforce analytics tools enable organizations to identify the best sources for new hires, uncover deficiencies in staffing processes, and begin proactive workforce-planning efforts. Substantial investment in new technologies, tools and training are required to enable organizations to more effectively extract accurate information, evaluate absolute performance and trends, benchmark against competitor performance, and design and implement continuous staffing process improvements.

The Benefits of Our Approach

Just as supply chain optimization maximizes the return on physical assets, our enterprise talent management solutions maximize the return on human capital assets by increasing the quality and speed of hires, enabling the assessment and skills inventory of employees, as well as promoting effective employee mobility. By driving enterprise-wide

participation in the talent supply chain, we help our customers to establish systematic processes and enable these processes through the use of our configurable technology to increase the quality and satisfaction of their workforces.

The key benefits of our solutions include:

Comprehensive Suite of Solutions. Our enterprise solutions address the needs of large organizations with diverse workforces that include professional, hourly and temporary staff. The extensive configurability of our solutions allows our customers to design workflows to meet the different needs of centralized and decentralized organizations within diverse business units and geographic regions. Our customers use our solutions to manage their talent management needs as they change with the growth and evolution of their businesses.

Systematic Approach to Talent Management Processes. Our solutions standardize talent management processes to help organizations place the right individuals in the right positions, at the right time. This systematic approach enables an organization to significantly reduce the time and cost associated with talent management processes as well as the inevitable variance in the quality of employees that results from non-standard processes. Our solutions also document each step in talent management processes, thereby reducing the risk associated with failure to comply with various regulatory requirements established by government agencies. Our systematic approach extends to workforce mobility within the organization to increase the retention of strong performers.

Embedded Domain Expertise. We have developed an extensive knowledge base of staffing models that we call Talent Topologies. This knowledge base accelerates the definition and implementation of industry-specific staffing processes. Our Talent Topologies Knowledge Base reflects years of industry-specific experience which allows our customers to benefit from a diverse library of best practices, workflows and other solution content that we have developed in their industry through previous successes.

Ease of Use and Integration. We have designed our solutions for ease-of-use by non-technical staffing professionals, managers, candidates and employees. The intuitive look, feel and operation of our applications allow users to rapidly realize the benefits of our solutions and reduces the amount of user training required to deploy our applications. The combination of the power and simplicity of our technology has driven high rates of user adoption within our customer deployments. We also provide integration solutions that enable our offerings to be quickly integrated with ERP systems as well as with the systems of additional staffing services providers.

Enterprise-wide Talent Analytics. Our solutions include talent analytics tools that allow our customers to track the efficiency and effectiveness of their enterprise talent management processes. Our solutions allow customers to design different workflows for various human capital and staffing departments within their organizations and our analytics tools provide an enterprise-wide view of the talent management processes and results. By measuring the results of talent management processes on an enterprise-wide basis, our customers can refine best practices within their organizations, thereby improving the overall effectiveness of their talent management processes.

Increased Workforce Productivity. Our solutions focus on reducing the time to hire, the time to productivity, and the agility of the workforce. We maintain extensive databases of candidate and employee skill sets, assessments, and job requirements for our customers that allow them to more accurately match individuals to positions. Our solutions match individuals with the requisite skill sets to the appropriate jobs, thereby reducing the average learning curve and time to productivity for new hires and employee transfers. Our solutions allow employees to more easily transfer to new positions within the organization that match their skill sets and preferences. Employee career preference management fosters increased retention of employees.

The key benefits of our business model include:

Ease of Deployment through Hosted Model. Our hosted delivery model allows our technology solutions to be deployed quickly as our customers avoid the time required to procure, install, test and implement the hardware and software needed to support our applications. Our consultants are available to assist customers in the deployment of our solutions and to help our customers define and implement their staffing processes. Our delivery model also allows our customers to

benefit from the ongoing improvements of our solution without enduring the time consuming and costly process of a system-wide upgrade.

Single Version of Application Source Code. We maintain a single version of each release of our software applications. By eliminating the significant expense associated with customization, we are able to focus our development investment on improvements to our existing applications, as well as new applications, that benefit all of our customers. Our delivery model enables us to upgrade all of our customers to a new version of our application suite more quickly and easily than traditional software models. The standardization of our application code base not only reduces the cost of our solution but also facilitates the rapid delivery of enhanced technology to our customers. Furthermore, through more in-depth quality control and testing within our controlled IT environment, our configurable solutions deliver higher levels of reliability than customized individual solutions.

Configurability. We build extensive configurability into our solutions so that our customers can deploy our applications in a manner consistent with their business drivers. Such flexibility allows us to configure our functionality for a specific industry or type of hire, such as recent college graduates or experienced engineers, without the need for customized code. Our configurable solutions serve the needs of complex organizations that have different requirements in different locations and business segments, yet require enterprise-wide availability, reporting and employee mobility. Customers also have the ability to enable or disable specific functionalities, and thus structure their solutions to meet their specific business needs.

Secure, Scalable Infrastructure. We have designed our infrastructure to scale with the needs of our current and future customers. We maintain the security infrastructure to offer access to our solutions via a point-to-point virtual private network or a single-sign-on within our customers' domains. Our Java-based applications run on standard hardware and software and are load-balanced across multiple servers to provide consistent availability. Each tier of our architecture has been configured for independent operation and scalability to provide customers with performance and reliability.

Lower Total Cost of Ownership. Our hosted delivery model reduces the total cost of ownership for our customers by shifting the expense of designing, procuring, installing, testing and maintaining the infrastructure needed to support our applications to us. By delivering our solution on a shared, yet secure, infrastructure, we enjoy economies of scale in our deployments that our customers could not achieve through a proprietary implementation.

Recurring Revenue. Our software subscription model provides increased levels of recurring revenue and long-term predictability relative to perpetual license models. Our typical subscription agreements run approximately two to three years in duration and we have enjoyed high renewal rates since we began offering our solutions. The recurring nature of our subscription fees provides an ongoing base of revenue that allows us to better predict our financial performance in future periods.

Our Strategy

Our strategy is to be the leading global provider of enterprise talent management solutions. Key elements of our strategy include:

Extend Our Technology Leadership. We believe we have established advanced technological capabilities and competitive advantages through extensive development on a single platform. As of March 31, 2005, we employed 222 professionals in our product management and development organizations that support an integrated solution platform that is highly configurable to meet the diverse needs of our customers. We intend to leverage our experience and our development resources to enhance our technology to capitalize on the enterprise staffing management market opportunity.

Expand Our Solution Offerings. We plan to expand our suite of solutions to deliver more value to our customers through our internal development initiatives, such as our Taleo Hourly solution enhancement introduced in February 2004. We may also pursue strategic acquisitions to broaden our suite of solutions, such as our acquisitions of White Amber in October 2003 to add a temporary staffing solution and of Recruitforce.com, Inc. in March 2005 to add a solution that addresses the needs of small and medium-size organizations. We intend to develop solutions that address additional aspects of enterprise workforce logistics, which involves the integration of comprehensive and dynamic sources of human capital demand and supply with decision support and business analytics.

Build upon Our Domain Expertise. We have compiled extensive industry-specific workforce logistics knowledge in a structured platform that we call our Talent Topologies Knowledge Base. We will continue to work closely with our customers to further develop our content and technology offerings to meet the unique needs of specific vertical markets.

Increase Penetration of Our Existing Customer Base. We have approximately 270 customers, many of which are large organizations that have not deployed all of our solutions throughout their entire organization. We intend to cross-sell our existing solutions and our future solutions to our existing customer base.

Partner with Additional Leading Business Process Outsourcing Organizations. We intend to establish our solutions as the accepted standard for staffing management practices at leading business process outsourcing, or BPO, organizations. We intend to invest in our partnership strategy to gain access to enterprises that have chosen to broadly outsource human resource functions.

Expand Our Multinational Presence, Functionality and Customer Base. We believe the increasing globalization of large organizations provides us with substantial opportunities to capitalize on our leadership in global deployments. We intend to expand our efforts to deploy our solutions to more companies that are based outside of North America. We also intend to enhance our multinational functionality and continue to invest in our international sales, marketing and customer support organizations.

Expand Our Customer Base. We intend to significantly expand our customer base beyond large enterprises to include small and medium size enterprises through marketing campaigns offering our Taleo Business Edition product line.

Our Solutions

Our integrated suite of solutions addresses multiple staff types including professional, hourly and temporary, with support for various languages as well as geographic and cultural requirements. Our solutions are specifically designed for and delivered primarily through a hosted model, using a standard web browser. Our solutions are accessed through intuitive applications designed specifically for corporate recruiters, managers, and system administrators. Our candidate-facing applications are available in 13 languages, including Chinese and Japanese. The descriptions below do not include our Taleo Business Edition suite, which was acquired in March 2005.

The Taleo Enterprise Talent Management Suite

The Taleo Enterprise Talent Management Suite includes 11 modular solutions that enable the management of staffing initiatives throughout large, complex organizations to reduce process variance, drive quality and consistency and create efficiencies to increase workforce productivity and enhance organizational value. Our modular solutions include the following:

Taleo Professional ™ helps organizations manage professional, non-hourly talent management functions, including attracting and evaluating candidates and employees, matching skills against job opportunities, candidate relationship management and internal employee mobility. Taleo Professional provides many-to-many matching of all candidates and employees against available job opportunities, and includes variable workflows for different types of workers, locations, workgroups and regulatory environments, as well as resume processing capabilities and proven third-party integration capabilities.

Taleo Hourly™ provides screening and validated assessment content, skills matching and resume processing capabilities, in-depth reporting, configurable workflows and proven third-party integration capabilities. The Taleo Hourly solution can be configured to fit unique and dynamic business requirements for hourly workers across various industries. Our Hourly solution provides customers with a variety of candidate application methods, such as in-store staffing stations, digital pen and paper, voice and online applications.

Taleo Workforce Mobility™ effectively aligns an organization' s existing workforce by matching the key elements of employee capabilities, training, and future career preferences with job requirements to address the changing needs of an organization. Career preference management provides organizations with the ability to understand not only employee skills but also their future career plans. Employees are able to update their profiles, receive notices of opportunities, and access corporate-wide opportunities through internal career sites.

Taleo Campus™ automates the logistical and administrative burden of campus recruitment programs through school and program-based candidate categorization and workflow. The solution allows organizations to better attract and build relationships with the right students, reduce candidate obsolescence and better match students with jobs, to decrease time to productivity, as well as to increase retention.

Taleo Contingent™ automates and simplifies temporary labor procurement and management. The solution efficiently matches qualified temporary workers to tasks, and measures their performance against organizational standards. Taleo Contingent integrates organizations' existing staffing supplier bases and provides the flexibility to select any supplier, including only preferred suppliers, based on the organizations' needs, preferences and negotiated contracts. The solution gives hiring managers easy access to data on vendor past performance, rankings and billing rates, as well as detailed information about individual temporary workers. Our solution provides a combination of application functionality and managed services that facilitates the ongoing management of temporary workforce programs on a vendor neutral basis. Sold as a module with Taleo Contingent is **Taleo Projects**™, a solution that helps organizations manage large consulting projects.

Taleo Agency™ directly links organizations with staffing agencies, allowing pre-approved third-party recruiters to directly submit candidates to our skills-based platform, saving significant time and costs. Recruiters and hiring managers use a single system to source and prescreen the best candidates, compare agency candidates with those currently in the customer' s database, and ensure that there is no duplication between the candidates agencies submit and those that apply directly to the organization, regardless of application method.

Taleo Regulatory & Diversity™ provides organizations with the ability to create consistent and scalable staffing processes that help to reduce exposure to lawsuits and regulatory actions, comply with the requirements of certain government contracts, reduce administrative costs and improve the quality of hire through support of diversity programs.

Taleo Integration™ includes our toolkit, which integrates our solutions with leading ERP solution providers such as Oracle, PeopleSoft and SAP, enabling organizations to leverage their investment in such solutions as well as benefit from best-of-breed functionality. Our solution also integrates staffing and assessment services such as background checking, tax credit screening, assessment and more on one common platform. Additionally, the technology supports ease-of-use initiatives.

Taleo Assessment™ enables organizations to systematically assess candidates' fit and employees' with organizational cultures and the needs of specific positions, by using either their own, third-party, or our proprietary behavioral and personality tests. The solution includes an application for either third-party or customer-employed industrial organization psychologists to define and manage assessment content, scoring algorithms and hiring bands. The solution also includes the ability for a candidate to easily complete assessments online or via in-store staffing stations or other alternative means. The assessment results are then included in the overall candidate profile.

Taleo Talent Metrics Reporter™ provides comprehensive data analysis capabilities that enable our customers to make continuous process improvements. The Talent Metrics Reporter transforms talent data into the critical information necessary to manage critical processes, allocate staffing and sourcing funds, identify procedural bottlenecks and measure return on investment. The Talent Metrics Reporter offers standard proprietary reports as well as ad-hoc and custom reports that can be generated in real time. The standard reports focus on commonly used metrics that allow customers to observe and analyze staffing processes and results across the organization.

Our Taleo Agency, Taleo Regulatory & Diversity, Taleo Assessment, Taleo Integration, Taleo Projects and Taleo Talent Metrics Reporter solutions are sold as complements to one or more of the following solutions: Taleo Professional, Taleo Contingent, Taleo Hourly, Taleo Workforce Mobility and Taleo Campus.

Technology

Historically, we have maintained our solutions on a common technology infrastructure. Integration efforts for our Taleo Contingent solution, obtained through our acquisition of White Amber in October 2003 are nearly complete, and the technology we obtained in our acquisition of Recruitforce.com in March 2005 is in the process of being integrated into our hosting and support infrastructure while remaining on its current code base.

Our solutions reside on a common proprietary platform, configurable for complex operations, that provides organizations with a comprehensive view of their workforces. Together, the Structured Enterprise Talent Platform and the Configurable Staffing Process Platform represent the foundation for our solutions.

The Structured Enterprise Talent Platform maintains the data elements required by our solutions. The data structure within the Structured Enterprise Talent Platform includes information on competency, experience, and level of interest in a skill or set of skills that can be matched to job requirements. This platform also allows candidates and current employees to submit their skills profiles to a company to be matched to jobs as they become available. The platform also enables an organization to inventory and search the skills of its candidates and current employees to decide between internal and external hires for new business initiatives and measure gaps in skills existing in its current workforce.

The Configurable Staffing Process Platform provides the foundation for deploying our solutions throughout an organization while adapting it locally according to the organization, location, local staffing model, types of hires and internal mobility requirements. Our platform allows our customers to configure our solution to meet their specific needs according to their internal staffing workflows.

We deliver our solutions to nearly all of our customers on a hosted basis. Our solutions may also be deployed behind our customers' firewalls in a Linux or Unix environment. Our technology infrastructure is designed to achieve high levels of security, scalability, performance and availability. We believe that our architecture allows us to deliver our solutions to customers more cost effectively and faster than traditional enterprise software providers. We maintain a single version of each release of our software applications within our controlled IT infrastructure. Customers are typically required to migrate to the current version within six to twelve months of its general release. All of our solutions are accessed through a web browser and are non-intrusive. Our solutions provide a rich, intuitive interface that our customers use to access their data with secure user names, passwords and role-based access rights. Our Java-based applications run on standard hardware and software and are load balanced across multiple servers to provide consistent availability and performance. We license technology from third-party software vendors, including Business Objects, Oracle and webMethods.

Our solutions operate on standard Unix and Linux operating systems and common open-source software components for enhanced reliability and a scalable and secure computing environment that can accommodate significant increases in activity. Our secure infrastructure includes Secure Socket Layer offload and anti-virus appliances that help us to detect and prevent unauthorized access. Our multi-tier application architecture has been configured for independent operation and scalability to provide customers with proven performance and reliability.

We maintain our technology infrastructure in two third-party hosting facilities in the United States, operated by Internap in New York City and IBM, at an Equinix facility, in San Jose, California. Internap also provides us with our internet connectivity at both facilities. Under the terms of these collocation agreements, our third-party hosting providers agree to provide space, electrical power and internet connectivity for our hosting infrastructure, including web servers, database servers and application servers. These agreements are renewable annually unless either party terminates the contract or does not consent to renewal upon prior notice (90 days for Internap and 30 days for IBM) and may be terminated by the hosting provider in the case of material breach by us of the terms of the agreement or, in the case of our agreement with Internap, insolvency, failure to operate in the ordinary course, a breach of confidentiality provisions, a change in pricing terms not agreed to by the parties, or force majeure.

Our customers benefit from the use of a shared computing infrastructure and leverage the flexibility and security of independent application and database configurations. At the systems level, customers share the use of specialized servers and their software components, including web, application and database servers and database, search and reporting engines. Our systems architecture and technology allow us to spread the computing load required by our customers across servers for optimal performance. Our customers use our solutions independently from each other at both the application and database layers. At the database layer, each customer' s data is stored in distinct database schemas and data files, providing increased manageability and security.

Professional Services

Our professional services organization leverages our consultants' domain expertise and our proprietary methodologies to provide implementation services, solution optimization and training. We also provide talent management financial metrics, research and consulting services through our iLogos Research organization. Many of our consultants have held talent management positions at Global 2000 corporations, or senior level consulting positions at major consulting agencies or other enterprise software companies.

Taleo Methodologies

We have developed methodologies that enable us to accelerate the deployment of our solutions across a variety of industries and enterprise staffing environments:

ACE Methodology. Working with Fortune 500 companies, we developed a supply chain approach to talent and identified methods to optimize critical business processes, while maintaining the integrity of our customers' business drivers. We call this approach our ACE Methodology. Our ACE Methodology addresses specific staffing processes for requisition management, position management, candidate management, collaborative workflow and hire review and analysis. Our consultants work with our customers, as a component of our consulting engagements, to implement the ACE Methodology through a complete review of current business practices, mapping our solution to the organization' s structure and processes, and ultimately configuring a skills-based platform for complete staffing management, from entry to redeployment.

Talent Topologies. Our Talent Topologies templates enable us to understand an organization' s overall talent management environment, including internal and external business drivers, talent management models, hire types and talent management processes and to recommend best practices to optimize resulting talent management processes. Our Talent Topologies Knowledge Base is a searchable database of descriptions of the complex talent management challenges faced within different industries and geographies. Our Talent Knowledge Base also provides specific details of the solutions our consultants implemented to address these challenges. This knowledge base reflects years of talent management experience across a wide variety of industries. Our consultants utilize the collective data from our Talent Topologies Knowledge Base, as a component of our consulting engagements, to help our new customers solve their complex staffing challenges, and to help our existing customers hone their talent management practices and processes.

Implementation Services

Our implementation services begin with a complete evaluation of a customer' s current talent management practices, and include process engineering to leverage the configuration of the solutions and integration with existing applications to fit each organization' s dynamic business requirements. We support a consulting certification program and have a project management office that equips our consultants with a library of toolkits, forms, training documentation and workshop templates. The project management office also oversees the management of customer deployments to help enable smooth, systematic and on-time implementations.

Solution Optimization

We provide ongoing solution optimization services to help our customers achieve desired results in quality improvement, increased productivity, cost savings and operational effectiveness after the initial deployment of our solution. As a service component of our software subscription agreements, we work with our customers to measure improvement in their staffing processes and if necessary, modify customer usage or configuration of our solutions to increase their effectiveness. In collaboration with customer project leaders, we establish an ongoing process for continual evolution and solution optimization. Using this process, our customers can promote best practice usage and end user adoption long after our solutions have been deployed.

Training

We offer a full range of educational services including pre-deployment classroom training, train-the-trainer programs, system administrator training, post-deployment specialty training, upgrade training and eLearning/web-based training. We also utilize a variety of training tools to drive user adoption, including solution user manuals, process-specific user guides, feature-specific training exercises, a self-service website for training scheduling and registration, post-training assessments and synchronous, web-based training tools for remote users.

iLogos Research

Our iLogos consulting and metrics development organization, focuses on the financial aspects of talent management and consults with large organizations to help them optimize financial return from global talent management processes and technologies. iLogos serves large organizations throughout the world with business analytics that tie talent management technology and process improvements to reduced costs and improved financial results.

Customer Support

Our global customer care organization provides both proactive and customer-initiated support. We deliver our multilingual technical assistance via telephone, e-mail and our web-based customer care portal, 24 hours a day, seven days a week. Our customer care organization tracks all customer support requests and reports the status of these requests to the user through our customer care portal, enabling users to know the status of their support requests, the person responsible for resolving them, and the targeted timing and process for resolution. Our senior executives review customer satisfaction reports and take action when necessary to ensure that we maintain a high level of customer satisfaction.

We assign a service account manager, or SAM, to each of our customers. Our SAMs represent our customer' s primary contact for ongoing support, project coordination, solution optimization and release management. Our consultants and SAMs work together to ensure a smooth transition during the implementation phase of each deployment. Our SAMs learn the business operations and staffing processes of each customer and monitor the progress of our deployments to proactively drive user adoption and acceptance, minimizing the effects of change and helping our customers derive maximum benefit from our solutions.

Customers

We currently have approximately 270 corporate customers with more than 400,000 registered users located in over 85 countries. For our Enterprise Talent Management Suite, we target large organizations with more than 5,000 employees. For the Talco Business Edition, we target organizations with fewer than 5,000 employees. Our customers include organizations in the technology, manufacturing, business services, consumer goods, retail, energy, healthcare, financial services and transportation sectors. None of our customers has accounted for more than ten percent of our revenue in any of the last three years. Some of our largest customers by revenue in a variety of different industries are:

Technology
Agere Systems
Dell
HP

Manufacturing
BMW Manufacturing Corp.
Dow Chemical
Honeywell

Business Services
ARAMARK
First Data
Mercer

Consumer Goods
Colgate-Palmolive
Gillette
P&G

Retail
Blockbuster
Limited Brands
Starbucks

Energy
Direct Energy
PacifiCorp
SUEZ

Healthcare
Intermountain Health Care
Sutter Health
UnitedHealth Group

Financial Services
Mutual of Omaha
Thomson
Washington Mutual

Transportation
American Airlines
United Airlines
Yellow Corporation

In 2004, 2003, 2002, and 2001, respectively, 9%, 12%, 14%, and 20% of our revenue was from Canada and 5.7%, 3%, 2% and 0% came from other locations outside of the United States. We base our determination of revenue attributable to a country on the location of the contracting party.

Customer User Groups

We have established customer user groups to provide a forum for sharing staffing strategies and best practices, reviewing new features of our solution and identifying new customer requirements. We currently have eight self-governed, self-financed Regional Users Groups throughout the United States, Europe, Asia-Pacific and Canada. The elected leader of each Regional User Group becomes a member of the Taleo Product Council and in that capacity works directly with our Product Management Group to guide the development of our solutions. The Regional Users Groups support several Special Interest Groups focused on best practices and technology in specific areas such as campus recruiting/university relations, hourly staffing, reporting and skills-based staffing, among others. These groups benefit our customers by enabling them to share their knowledge and benefit us by providing powerful input into our product development process as well as a valuable opportunity to deepen our relationships. We host an annual user conference, Taleo WORLD. We also maintain an advisory board with members from the following organizations: the Wharton School of Business; Fidelity Employer Services Company; Limited Brands; Hewlett-Packard; UnitedHealth Group; Fidelity Investments; Johnson & Johnson; and Dow Chemical.

Sales and Marketing

We sell our software and services primarily through our global direct sales force and in conjunction with our partners. In North America, we have sales and services offices across the United States, including Boston, Chicago, Dallas,

the greater New York area and San Francisco, and in Canada, including Montreal and Toronto. Outside of North America we have sales and services offices in Amsterdam, London, Paris, Melbourne and Sydney.

Sales

Our direct sales force consists of a team of account executives, solutions consultants and business developers that sell our solutions across multiple industries and geographies. Our sales professionals possess comprehensive technology and talent management expertise and domain knowledge that allows them to educate potential clients on the benefits of our solutions. We also maintain a separate team of account executives that focuses on selling new solutions and services to existing customers. Our solutions consultants work in tandem with our account executives to provide technical and product expertise in support of the sales process. Our business developers assist our direct sales force in penetrating new accounts. In addition, we have developed indirect sales relationships with BPO providers and anticipate that a growing number of sales will be made through these and similar relationships in the future. Our BPO partners use our solutions to manage enterprise talent management for their customers as part of their broader human resource offerings. Our Tako Business Edition offerings are currently sold primarily through self registration on our website

Marketing

Our marketing initiatives include market research, product and strategy updates with industry analysts, public relations activities, web marketing, direct mail and relationship marketing programs, seminars, industry specific trade shows, speaking engagements as well as cooperative marketing with customers and partners. Our marketing team generates qualified leads and provides programs for prospects and customers that build awareness of our existing solutions as well as new products and services. Our marketing department also produces materials that include brochures, data sheets, white papers, presentations, demonstrations and other marketing tools. We also generate awareness through electronic and print advertising in select trade magazines, websites, search engines, seminars and direct customer and partner events.

Research and Development

Our research and development organization consists of product management and development employees. We employed 222 professionals in these areas as of March 31, 2005. Our research and development organization is primarily located in our Quebec City facility, which enables us to benefit from lower staffing costs and higher retention rates. Our development methodology allows us to implement adjustable development cycles that result in more timely and efficient delivery of new solutions and enhancements to existing solutions. We focus our research and development efforts on improving and enhancing our existing solution offerings as well as developing new solutions. The responsibilities of our research and development organization include product management, product development, and software maintenance and solution release management. We allocate a portion of our research and development expenses to the development of our technology infrastructure, including our Structured Enterprise Talent Platform and Configurable Staffing Process Platform. Our research and development expenditures, net of tax credits we received in Quebec, totaled $4.6 million, $6.5 million and $11.0 million in 2001, 2002 and 2003.

Competition

The market for enterprise talent management solutions is highly competitive and rapidly evolving. We believe that the principal competitive factors in this market include:

product performance and functionality;

ease of implementation and use;

ability to integrate;

scalability;

company reputation; and

price.

We believe that we compete favorably with respect to these factors. We compete with both smaller companies that provide point solutions such as BrassRing, Deploy Solutions, Hire.com, Hodes iQ, Kenexa, PeopleClick, Recruitmax, Resumix, Unicru, VirtualEdge, Webhire and Workstream and with large ERP providers, such as Oracle and SAP. We also compete with temporary staffing solution providers, such as Beeline, Chimes, Elance, Fieldglass, IQNavigator and ProcureStaff.

Our current and potential competitors include large, established companies with a larger installed base of users, longer operating histories, and greater name recognition and resources. In addition, we compete with smaller companies who may be better able to adapt to changing conditions in the market. We cannot assure you that our competitors will not develop products or services which will be superior to ours or that will achieve greater market acceptance.

Intellectual Property

Our success is dependent in part on our ability to protect our proprietary technology. We rely on a combination of trademark, copyright and trade secret laws in the United States and other jurisdictions as well as confidentiality procedures and contractual provisions to protect our proprietary technology, services methodology and brand. We have registered trademarks for certain of our products and services and will continue to evaluate the registration of additional trademarks as appropriate. We also enter into confidentiality and proprietary rights agreements with our employees, consultants and other third parties and control access to software, documentation and other proprietary information.

Despite these efforts, it may be possible for unauthorized third parties to copy certain portions of our products or to reverse engineer or otherwise obtain and use our proprietary information. We do not have any patents or patents pending, and existing copyright laws afford only limited protection. In addition, we cannot be certain that others will not develop substantially equivalent or superior proprietary technology, or that equivalent products will not be marketed in competition with our products, thereby substantially reducing the value of our proprietary rights. Furthermore, confidentiality agreements between us and our employees or any license agreements with our clients may not provide meaningful protection of our proprietary information in the event of any unauthorized use or disclosure of it. In addition, the laws of certain countries do not protect our proprietary rights to the same extent as do the laws of the United States. Accordingly, the steps we have taken to protect our intellectual property rights may not be adequate and we may not be able to protect our proprietary software in the United States or abroad against unauthorized third party copying or use, which could significantly harm our business.

In addition, we license third-party technologies that are incorporated into some elements of our services. Licenses from third-party technologies may not continue to be available to us at a reasonable cost, or at all.

Employees

As of March 31, 2005, we had 525 employees, as compared to 541 as of December 31, 2004 and 479 as of December 31, 2003. None of our employees is represented by a collective bargaining agreement and we have never experienced a strike or similar work stoppage. We consider our relationship with our employees to be good.

Forward-Looking Statements and Certain Factors That May Affect Our Business

We have made statements in this registration statement that are forward-looking statements. In some cases, you can identify these statements by forward-looking words such as “may,” “might,” “will,” “should,” “could,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “forecasts,” “projects,” “predicts,” “intends,” “potential,” “continue,” the negative of these terms and other comparable terminology. These forward-looking statements, which are subject to risks, uncertainties and assumptions about us, may include projections of our future financial performance, our anticipated growth strategies and anticipated trends in our business. These statements are only predictions based on our current expectations and projections about future events. There are important factors that could cause our actual results, level of activity, performance or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements, including those factors discussed under the caption entitled “Risk Factors.”

Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of any of these forward-looking statements. We undertake no obligation to update any of these forward-looking statements after the date of this prospectus to conform our prior statements to actual results or revised expectations.

Risk Factors

Risks Related to Our Business and Industry

We have a history of losses, and we cannot be certain that we will achieve or sustain profitability.

We have incurred annual losses since our inception. As of December 31, 2004, we had incurred cumulative losses of $37.2 million. We expect to incur operating losses at least in the short term as a result of expenses associated with the continued development and expansion of our business. Our expenses include those related to sales and marketing, general and administrative, research and development and others relating to the development, marketing and sale of products and services that may not generate revenue until later periods, if at all. As we implement initiatives to grow our business, which include among other things, plans for international expansion and new product development; any failure to increase revenue or manage our cost structure could prevent us from completing these initiatives and achieving or sustaining profitability. As a result, our business could be harmed and our stock price could decline. We cannot be certain that we will be able to achieve or sustain profitability on a quarterly or annual basis.

We participate in a new and evolving market, which makes it difficult to evaluate our current business and future prospects.

You must consider our business and prospects in light of the risks and difficulties we encounter in the new, uncertain and rapidly evolving enterprise talent management market. Because this market is new and evolving, it is difficult to predict with any assurance the future growth rate and size of this market which, in comparison with the overall market for enterprise software applications, is relatively small. The rapidly evolving nature of the markets in which we sell our products and services, as well as other factors which are beyond our control, reduce our ability to accurately evaluate our future prospects and forecast quarterly or annual performance.

If our existing customers do not renew their software subscriptions and buy additional solutions from us, our business will suffer.

We expect to continue to derive a significant portion of our revenue from renewal of software subscriptions and, to a lesser extent, service and maintenance fees from our existing customers. As a result, maintaining the renewal rate of our existing software subscriptions is critical to our future success. Factors that may affect the renewal rate for our solutions include:

- the price, performance and functionality of our solutions;
- the availability, price, performance and functionality of competing products and services;
- the effectiveness of our maintenance and support services; and
- our ability to develop complementary products and services.

Most of our existing customers entered into software subscription agreements that expire between two and three years from the initial contract date. Our customers have no obligation to renew their subscriptions for our solutions after the expiration of the initial term of their agreements. In addition, our customers may negotiate less advantageous terms upon renewal which may reduce revenue from these customers, or may request that we license our software to them on a perpetual basis, which may, after we have ratably recognized the revenue for the perpetual license over the relevant term in accordance with our revenue recognition policies reduce recurring revenue from these customers. Under certain circumstances, our

customers may cancel their subscriptions for our solutions prior to the expiration of the term. Our future success also depends in part on our ability to sell new products and services to our existing customers. If our customers terminate their agreements, fail to renew their agreements, renew their agreements upon less favorable terms, or fail to buy new products and services from us, our revenue may decline or our future revenue may be constrained.

If our efforts to attract new customers are not successful, our revenue growth will be adversely affected.

In order to grow our business, we must continually add new customers. Our ability to attract new customers will depend in large part on the success of our sales and marketing efforts. However, our prospective customers may not be familiar with our solutions, or may have traditionally used other products and services for their enterprise talent management requirements. Our prospective customers may develop their own solutions to address their enterprise talent management requirements, purchase competitive product offerings, or engage third-party providers of outsourced talent management services that do not use our solution to provide their services. Additionally, some new customers may request that we license our software to them on a perpetual basis or that we allow them the contractual right to convert from a term license to a perpetual license during the contract term, which may reduce recurring revenue from these customers. To date, we have completed a limited number of agreements with such terms. If our prospective customers do not perceive our products and services to be of sufficiently high value and quality, we may not be able to attract new customers.

Our financial performance may be difficult to forecast as a result of our focus on large customers and the long sales cycle associated with our solutions.

The majority of our revenue is currently derived from large organizations with complex talent management requirements. Accordingly, in a particular quarter the majority of our new customer sales represent large sales made to a relatively small number of customers. Our failure to close a sale in a particular quarter will impede expected revenue growth until the sale closes, if at all. In addition, our sales cycles are generally between six months and one year, and in some cases can be longer. As result, substantial time and cost may be spent attempting to secure a sale that may not be successful. The period between an initial sales contact and a contract signing is relatively long due to several factors, including:

- the complex nature of our solutions;
- the need to educate potential customers about the uses and benefits of our solutions;
- the relatively long duration of our contracts;
- the discretionary nature of our customers' purchase and budget cycles;
- the competitive evaluation of our solutions;
- fluctuations in the staffing management requirements of our prospective customers;
- announcements or planned introductions of new products by us or our competitors; and
- the lengthy purchasing approval processes of our prospective customers.

If our sales cycle unexpectedly lengthens, our ability to accurately forecast the timing of sales in a given period will be adversely affected and we may not meet our forecasts for that period.

If we fail to develop or acquire new products or enhance our existing products to meet the needs of our existing and future customers, our sales will decline.

To keep pace with technological developments, satisfy increasingly sophisticated customer requirements and achieve market acceptance, we must enhance and improve existing products and we must also continue to introduce new products and services. Any new products we develop or acquire may not be introduced in a timely manner and may not achieve the broad market acceptance necessary to generate significant revenue. If we are unable to successfully develop or

acquire new products or enhance our existing products or if we fail to price our products to meet market demand, our business and operating results will be adversely affected. To date, we have focused our business on providing solutions for the enterprise talent management market, but we may seek to expand into other markets in the future. Our efforts to expand our solutions beyond the enterprise talent management market may divert management resources from existing operations and require us to commit significant financial resources to an unproven business, which may harm our existing business.

We expect to incur significant expense to develop software products and to integrate acquired software products into existing platforms to maintain our competitive position. These efforts may not result in commercially viable solutions. If we do not receive significant revenue from these investments, our business would be adversely affected. Additionally, we intend to maintain a single version of each release of our software applications that is configurable to meet the needs of our customers. Customers may require customized solutions, or features and functions that we do not yet offer and do not intend to offer in future releases, which may cause them to choose a competing solution.

Fluctuation in the demand for temporary workers will impact the revenue associated with our Taleo Contingent solution, which may harm our business and operating results.

We generate revenue from our Taleo Contingent solution based on a fixed percentage of the dollar amount invoiced for temporary labor procured and managed through this solution. We anticipate that our Taleo Contingent solution will account for a significant portion of our revenue in future periods. If our customers' demand for temporary workers declines or if the general wage rates for temporary workers declines, their associated spending for temporary workers will decline, and as a result, revenue associated with our Taleo Contingent solution will decrease and our business may suffer.

Because we recognize revenue from software subscriptions over the term of the agreement, a significant downturn in our business may not be immediately reflected in our operating results, which makes it more difficult to evaluate our prospects.

We recognize revenue from software subscription agreements monthly over the terms of these agreements, which are typically between two and three years. As a result, a significant portion of the revenue we report in each quarter is generated from software subscription agreements entered into during previous periods. Consequently, a decline in new or renewed subscriptions in any one quarter may not impact our financial performance in that quarter, but will negatively affect our revenue in future quarters. If a number of contracts expire and are not renewed in the same quarter, our revenue would decline significantly in that quarter and subsequent quarters. In addition, we may be unable to adjust our costs in response to reduced revenue. Accordingly, the effect of significant declines in sales and market acceptance of our solutions may not be reflected in our short-term results of operations and this would make our results less indicative of our future prospects.

If we do not compete effectively with companies offering enterprise talent management solutions, our revenue may not grow and could decline.

We have experienced, and expect to continue to experience, intense competition from a number of companies. We compete with vendors of enterprise resource planning software, such as Oracle and SAP. We also compete with niche point solution vendors such as BrassRing, Deploy Solutions, Hire.com, Hodes iQ, Kenexa, Peopleclick, Recruitmax, Resumix, Unicru, VirtualEdge, Webhire and Workstream that offer products that compete with one or more modules in our suite of solutions. In the area of talent management solutions for temporary employees, we compete primarily with companies such as Beeline, Chimes, Elance, Fieldglass, IQNavigator, and ProcureStaff. Our competitors may announce new products, services or enhancements that better meet the price or performance needs of customers or changing industry standards. Increased competition may cause pricing pressure and loss of market share, either of which could have a material adverse effect on our business, results of operations and financial condition.

Many of our competitors and potential competitors, especially, vendors of enterprise resource planning software, have significantly greater financial, technical, development, marketing, sales, service and other resources than we have. Many of these companies also have a larger installed base of users, longer operating histories and greater name recognition than we have. Our enterprise resource planning software competitors provide products that may incorporate capabilities in addition to staffing management, such as automated payroll and benefits. Products with such additional functionalities may be appealing to some customers because they would reduce the number of different types of software or applications used to

run their business. Our niche competitors' products may be more effective than our products at performing particular talent management functions or may be more customized for particular customer needs in a given market. Further, our competitors may be able to respond more quickly than we can to changes in customer requirements.

In some cases our products may need to be integrated with software provided by our existing or potential competitors. These competitors could alter their products in ways that inhibit integration with our products, or they could deny or delay access by us to advance software releases, which would restrict our ability to adapt our products to facilitate integration with these new releases and could result in lost sales opportunities. In addition, many organizations have developed or may develop internal solutions to address enterprise talent management requirements that may be competitive with our solutions.

We may lose sales opportunities if we do not successfully develop and maintain strategic relationships to sell and deliver our solutions.

We intend to partner with BPOs that resell our staffing solution as a component of their outsourced human resource services. We currently have relationships with several of these companies. If customers or potential customers begin to outsource their talent management functions to BPOs that do not resell our solutions, or to BPOs that choose to develop their own solutions, our business will be harmed. In addition, we have relationships with third party consulting firms, system integrators and software and service vendors who provide us with customer referrals, cooperate with us in marketing our products and provide our customers with system implementation or maintenance services. If we fail to establish new strategic relationships or expand our existing relationships, or should any of these partners fail to work effectively with us or go out of business, our ability to sell our products into new markets and to increase our penetration into existing markets may be impaired.

We may not be able to finance future needs or adapt our business plan to changes because of restrictions placed on us by our secured credit facility.

The agreements governing our existing debt contain various covenants that limit our ability to, among other things:

use up to $8.125 million of our cash for a period of time;

incur additional debt, including guarantees by us or our subsidiaries;

make investments, pay dividends on our capital stock, redeem or repurchase our capital stock, subject to certain exceptions;

create specified liens;

make capital expenditures;

sell assets;

make acquisitions;

create or permit restrictions on the ability of our subsidiaries to pay dividends or make other distributions to us;

engage in transactions with affiliates;

engage in sale and leaseback transactions; and

consolidate or merge with or into other companies or sell all or substantially all of our assets.

Our ability to comply with covenants contained in our secured credit facility may be affected by events beyond our control, including prevailing economic, financial and industry conditions. Our secured credit facility requires us to comply with limits on capital expenditures, a minimum current ratio, minimum adjusted EBITDA, minimum liquidity, minimum hosted application revenue and a maximum loan to value ratio. Additionally, the secured credit facility contains numerous affirmative covenants, including covenants regarding payment of taxes and other obligations, timely completion of financial audits, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations.

Our failure to comply with these covenants could result in a default. If a default occurs under our secured credit facility, the lender could cause all of the outstanding obligations under the secured credit facility to become due and payable. Upon a default the lender under the secured credit facility could proceed against the collateral. Even if we are able to comply with all of the applicable covenants, the restrictions

on our ability to manage our business in our sole discretion could adversely affect our business by, among other things, limiting our ability to take advantage of financings, mergers, acquisitions and other corporate opportunities that we believe would be beneficial to us.

Mergers of or other strategic transactions by our competitors could weaken our competitive position or reduce our revenue.

If one or more of our competitors were to merge or partner with another of our competitors, the change in the competitive landscape could adversely affect our ability to compete effectively. Our competitors may also establish or strengthen cooperative relationships with our current or future business process outsourcing, or BPO, partners, systems integrators, third-party consulting firms or other parties with whom we have relationships, thereby limiting our ability to promote our products and limiting the number of consultants available to implement our solutions. Disruptions in our business caused by these events could reduce our revenue.

If we are required to reduce our prices to compete successfully, our margins and operating results could be adversely affected.

The intensely competitive market in which we do business may require us to reduce our prices. If our competitors offer discounts on certain products or services we may be required to lower prices or offer our solutions at less favorable terms to us to compete successfully. Several of our larger competitors have significantly greater resources than we have and are more able to absorb short-term losses. Any such changes would likely reduce our margins and could adversely affect our operating results. Some of our competitors may provide fixed price implementations or bundle product offerings that compete with ours for promotional purposes or as a long-term pricing strategy. These practices could, over time, limit the prices that we can charge for our products. If we cannot offset price reductions with a corresponding increase in the number of sales, our margins and operating results would be adversely affected.

If our security measures are breached and unauthorized access is obtained to customer data, customers may curtail or stop their use of our solutions, which would harm our business, operating results and financial condition.

Our solutions involve the storage and transmission of customers' proprietary information, and security breaches could expose us to a risk of loss of this information, litigation and possible liability. If our security measures are breached as a result of third-party action, employee error, criminal acts by an employee, malfeasance or otherwise, and, as a result, someone obtains unauthorized access to customer data, our reputation will be damaged, our business may suffer and we could incur significant liability. Techniques used to obtain unauthorized access or to sabotage systems change frequently and

generally are not recognized until launched against a target. As a result, we may be unable to anticipate these techniques or to implement adequate preventative measures. If an actual or perceived breach of our security occurs, the market perception of our security measures could be harmed and we could lose sales and customers.

Defects or errors in our products could affect our reputation, result in significant costs to us and impair our ability to sell our products, which would harm our business.

Our products may contain defects or errors, which could materially and adversely affect our reputation, result in significant costs to us and impair our ability to sell our products in the future. The costs incurred in correcting any product defects or errors may be substantial and could adversely affect our operating results. While we test our products for defects or errors prior to product release, defects or errors are also identified from time to time by our internal team and by our customers. Such defects or errors are likely to occur in the future.

Any defects that cause interruptions to the availability of our solutions could result in:

lost or delayed market acceptance and sales of our products;

loss of customers;

product liability suits against us;

diversion of development resources;

injury to our reputation; and

increased maintenance and warranty costs.

While our software subscription agreements typically contain limitations and disclaimers that purport to limit our liability for damages related to defects in our software, such limitations and disclaimers may not be enforced by a court or other tribunal or otherwise effectively protect us from such claims.

Widespread market acceptance of the hosted delivery model is uncertain and if it does not continue to develop, or develops more slowly than we expect, our business may be harmed.

The market for hosted enterprise software is new and, to a large extent, unproven, and it is uncertain whether hosted enterprise software will achieve and sustain high levels of demand and market acceptance. The overwhelming majority of our customers access and use our software as a web-based solution that is hosted by us. If the preferences of our customers change and our customers elect to host our software themselves, either upon the initiation of a new agreement or upon the renewal of an existing agreement, we would experience a decrease in revenue from hosting fees, and potentially higher costs and greater complexity in providing maintenance and support for our software. Additionally, a very limited number of our customers has the contractual right to elect to host our software themselves prior to the expiration of their subscription agreements with us. If the number of customers purchasing hosting services from us decreases, we might not be able to decrease our expenses related to hosting infrastructure in the short term if the demand for such hosting services decreases. Potential customers may be reluctant or unwilling to allow a vendor to host enterprise software or internal data on their behalf for a number of reasons, including security and data privacy concerns. If such organizations do not recognize the benefits of the hosted delivery model, then the market for our solutions may not develop at all, or may develop more slowly than we expect.

If we fail to adequately manage our hosting infrastructure capacity, our existing customers may experience service outages and our new customers may experience delays in the deployment of our solution.

We have experienced significant growth in the number of users, transactions and data that our hosting infrastructure supports. Failure to adequately address the increasing demands on our hosting infrastructure may result in service outages or

disruptions. For example, in the first quarter of 2005 we experienced a significant single downtime event in our hosting facility in San Jose, California.

We seek to maintain sufficient excess capacity in our hosting infrastructure to meet the needs of all of our customers. We also maintain excess capacity to facilitate the rapid provisioning of new customer deployments and expansion of existing customer deployments. The provisioning of new hosting infrastructure to keep pace with expanding storage and processing requirements could be a significant cost to the company that the company is not able to adequately predict and for which the company is not able to budget significantly in advance. Such outlays could raise the company' s cost of goods sold and negatively impact the financial results of the company. At the same time, the provisioning of new hosting infrastructure requires significant lead time. If we do not accurately predict our infrastructure capacity requirements, our existing customers may experience service outages that may subject us to financial penalties, financial liabilities and customer losses. If our hosting infrastructure capacity fails to keep pace with sales, customers may experience delays as we seek to obtain additional capacity, which could harm our reputation and adversely affect our revenue growth.

Any significant disruption in our computing and communications infrastructure could harm our reputation, result in a loss of customers and adversely affect our business.

Our computing and communications infrastructure is a critical part of our business operations. The vast majority of our customers access our solutions through a standard web browser. Our customers depend on us for fast and reliable access to our applications. Much of our software is proprietary, and we rely on the expertise of members of our engineering and software development teams for the continued performance of our applications. We may experience serious disruptions in our computing and communications infrastructure. Factors that may cause such disruptions include:

human error;

physical or electronic security breaches;

telecommunications outages from third-party providers;

computer viruses;

acts of terrorism or sabotage;

fire, earthquake, flood and other natural disasters; and

power loss.

Although we backup data stored on our systems at least daily, our infrastructure does not currently include real-time, or near real-time, mirroring of data storage and production capacity in more than one geographically distinct location. Thus, in the event of a physical disaster, or certain other failures of our computing infrastructure, customer data from recent transactions may be permanently lost.

We have computing and communications hardware operations located at third-party facilities with Internap in New York City and with IBM, at an Equinix facility, in California. We do not control the operation of these facilities and must rely on these vendors to provide the physical security, facilities management, and communications infrastructure services to ensure the reliable and consistent delivery of our solutions to our customers. Although we believe we would be able to enter into a similar relationship with another third party should one of these relationships fail or terminate for any reason, we believe our reliance on any third-party vendor exposes us to risks outside our control. If these third-party vendors encounter financial difficulty such as bankruptcy or other events beyond our control that cause them to fail to adequately secure and maintain their hosting facilities or provide the required data communications capacity, our customers may experience interruptions in our service or the loss or theft of important customer data.

We have experienced system failures in the past. If our customers experience service interruptions or the loss or theft of customer data, we may be subject to financial penalties, financial liability or customer losses. Our insurance policies may not adequately compensate us for any losses that may occur due to any failures or interruptions in our systems.

We must retain key employees and recruit qualified technical and sales personnel or our future success and business could be harmed.

We believe that our success will depend on the continued employment of our senior management and other key employees, such as our chief executive officer and our chief financial officer. For example, Taleo recently hired several senior management positions including our chief executive officer and chief financial officer in the first quarter of 2005, and our continued success will depend on their effective integration into and management of the company. We do not maintain key man life insurance on any of our executive officers. Additionally, our continued success depends, in part, on our ability to retain qualified technical, sales and other personnel. In particular, we have recently hired a significant number of sales personnel who may take some period of time to become fully productive. We generally find it difficult to find qualified personnel with relevant experience in both technology sales and human capital management. Because our future success is dependent on our ability to continue to enhance and introduce new products, we are particularly dependent on our ability to retain qualified engineers with the requisite education, background and industry experience. In particular, because our research and development facilities are primarily located in Quebec we are substantially dependent on that labor market to attract qualified engineers. The loss of the services of a significant number of our engineers or sales people could be disruptive to our development efforts or business relationships. If we lose the services of one or more of our senior management or key employees, or if one or more of them decides to join a competitor or otherwise to compete with us, our business could be harmed.

We currently derive a material portion of our revenue from international operations, and may expand our international operations but do not have substantial experience in international markets, and may not achieve the expected results.

During the year ended December 31, 2004, revenue generated outside the United States was 14.7% of total revenue, with Canada accounting for 9% of total revenue. We currently have international offices in Australia, Canada, France, the Netherlands and the United Kingdom. We may expand our international operations, which will involve a variety of risks, including:

unexpected changes in regulatory requirements, taxes, trade laws, tariffs, export quotas, custom duties or other trade restrictions;

differing regulations in Quebec with regard to maintaining operations, products and public information in both French and English;

differing labor regulations, especially in France and Quebec, where labor laws are generally more advantageous to employees as compared to the United States;

more stringent regulations relating to data privacy and the unauthorized use of, or access to, commercial and personal information, particularly in Europe and Canada;

greater difficulty in supporting and localizing our products;

changes in a specific country' s or region' s political or economic conditions;

challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs;

limited or unfavorable intellectual property protection; and

restrictions on repatriation of earnings.

We have limited experience in marketing, selling and supporting our products and services abroad. If we invest substantial time and resources to expand our international operations and are unable to do so successfully and in a timely manner, our business and operating results will suffer.

Fluctuations in the exchange rate of foreign currencies could result in currency transactions losses, which could harm our operating results and financial condition.

We currently have foreign sales denominated in the Canadian dollar, Australian dollar, euro, New Zealand dollar and Swiss franc, and may in the future have sales denominated in the currencies of additional countries in which we establish or have established sales offices. In addition, we incur a substantial portion of our operating expenses in Canadian dollars and, to a much lesser extent, other foreign currencies. We also have a loan facility denominated in Canadian dollars. Any fluctuation in the exchange rate of these foreign currencies may negatively impact our business, financial condition and operating results. For example, in 2004, the Canadian dollar increased in value by approximately 8% over the U.S. dollar on an average annual basis. This change resulted in a net decrease to our earnings of $1.3 million. This decrease was comprised of increased revenues of $0.4 million, offset by $0.3 million of additional cost of sales and incremental operating expenses of $1.4 million. The increase in value of the Canadian dollar for the twelve-month period ended December 31, 2004 as compared to the same period in 2003 was nearly 8%. We have not previously engaged in foreign currency hedging. If we decide to hedge our foreign currency exposure, we may not be able to hedge effectively due to lack of experience, unreasonable costs or illiquid markets.

If we fail to adequately protect our proprietary rights, our competitive advantage could be impaired and we may lose valuable assets, experience reduced revenue and incur costly litigation to protect our rights.

Our success is dependent, in part, upon protecting our proprietary technology. We rely on a combination of copyrights, trademarks, service marks, trade secret laws and contractual restrictions to establish and protect our proprietary rights in our products and services. We have no issued or pending patents and do not rely on patent protection. We will not be able to protect our intellectual property if we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property. Despite our precautions, it may be possible for unauthorized third parties to copy our products and use information that we regard as proprietary to create products and services that compete with ours. Some license provisions protecting against unauthorized use, copying, transfer and disclosure of our licensed products may be unenforceable under the laws of certain jurisdictions and foreign countries in which we operate. Further, the laws of some countries do not protect proprietary rights to the same extent as the laws of the United States. To the extent we expand our international activities, our exposure to unauthorized copying and use of our products and proprietary information may increase.

We enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with the parties with whom we have strategic relationships and business alliances. No assurance can be given that these agreements will be effective in controlling access to and distribution of our products and proprietary information. Further, these agreements do not prevent our competitors from independently developing technologies that are substantially equivalent or superior to our products. Litigation may be necessary in the future to enforce our intellectual property rights and to protect our trade secrets. Litigation, whether successful or unsuccessful, could result in substantial costs and diversion of management resources, either of which could seriously harm our business.

Our results of operations may be adversely affected if we are subject to a protracted infringement claim or a claim that results in a significant damage award.

We expect that software product developers, such as ourselves, will increasingly be subject to infringement claims as the number of products and competitors grows and the functionality of products in different industry segments overlaps. Our competitors or other third parties may challenge the validity or scope of our intellectual property rights. For example, the holder of US patent number 6,701,313 has verbally asserted that he believes that our software products infringe upon his patent. We have reviewed this matter and we believe that our software products do not infringe any valid and enforceable claim of the 6,701,313 patent. No legal claim has been filed against us regarding this matter. A claim may also be made relating to technology that we acquire or license from third parties. If we were subject to a claim of infringement, regardless of the merit of the claim or our defenses, the claim could:

require costly litigation to resolve and the payment of substantial damages;

require significant management time;

cause us to enter into unfavorable royalty or license agreements;

require us to discontinue the sale of our products;

require us to indemnify our customers or third-party service providers; or

require us to expend additional development resources to redesign our products.

We may also be required to indemnify our customers and third-party service providers for third-party products that are incorporated into our products and that infringe the intellectual property rights of others. Although many of these third parties are obligated to indemnify us if their products infringe the rights of others, this indemnification may not be adequate.

In addition, from time to time there have been claims challenging the ownership of open source software against companies that incorporate open source software into their products. We use open source software in our products and may use more open source software in the future. As a result, we could be subject to suits by parties claiming ownership of what we believe to be open source software. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition or require us to devote additional research and development resources to change our products.

We employ technology licensed from third parties for use in or with our solutions, and the loss or inability to maintain these licenses or errors in the software we license could result in increased costs, or reduced service levels, which would adversely affect our business.

We include in the distribution of our solutions certain technology obtained under licenses from other companies, such as Oracle for database software, Business Objects for reporting software and webMethods for integration software. We anticipate that we will continue to license technology and development tools from third parties in the future. Although we believe that there are commercially reasonable software alternatives to the third-party software we currently license, this may not always be the case or we may license third-party software that is more difficult or costly to replace than the third party software we currently license. In addition, integration of our products with new third-party software may require significant work and require substantial allocation of our time and resources. Also, to the extent our products depend upon the successful operation of third-party products in conjunction with our products, and therefore any undetected errors in these third-party products could prevent the implementation or impair the functionality of our products, delay new product introductions and injure our reputation. Our use of additional or alternative third-party software would require us to enter into license agreements with third parties, which could result in higher costs.

If we fail to develop our brand cost-effectively, our customers may not recognize our brand and we may incur significant expenses, which would harm our business and financial condition.

In March 2004 we changed our name from Recruitsoft, Inc. to Taleo Corporation. Our existing customers and business partners may not recognize our new brand. We may need to incur substantial expense and it may require more time than we anticipate before our new name gains broad recognition within our industry. We believe that developing and maintaining awareness of our brand in a cost-effective manner is critical to achieving widespread acceptance of our existing and future solutions and is an important element in attracting new customers. Furthermore, we believe that the importance of brand recognition will increase as competition in our market intensifies. Successful promotion of our brand will depend largely on the effectiveness of our marketing efforts and on our ability to provide reliable and useful solutions at competitive prices. In the past, our efforts to build our brand have involved significant expense, and we expect to increase that expense in connection with our re-branding process. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incur in building our brand. If we fail to successfully promote and maintain our brand, we may fail to attract enough new customers or retain our existing customers to the extent necessary to realize a sufficient return on our brand-building efforts, and our business could suffer.

Failure to implement the appropriate controls and procedures to manage our growth could harm our growth, business, operating results and financial condition.

We are currently experiencing a period of rapid growth in our operations, which has placed, and will continue to place, a significant strain on our management, administrative, operational, technical and financial infrastructure. We have increased our employee base from 345 on December 31, 2002, to 479 on December 31, 2003, and to 541 at December 31, 2004. To manage our growth, we will need to continue to improve our operational, financial and management processes and controls and our reporting systems and procedures. This effort may require us to make significant capital expenditures or incur significant expenses, and divert the attention of our personnel from our core business operations, any of which may adversely affect our financial performance. If we fail to successfully manage our growth, our business, operating results and financial condition will be adversely affected.

Failure to effectively manage our customer deployments could increase our expenses and cause customer dissatisfaction.

Enterprise deployments of our products require a substantial understanding of our customers' businesses, and the resulting configuration of our solutions to their business processes and integration with their existing systems. It may be difficult for us to manage the timeliness of these deployments and the allocation of personnel and resources by us or our customers. In certain situations we also work with third-party service providers in the implementation or software integration related services of our solutions and we may experience difficulties managing such third parties. Failure to successfully manage customer implementation or software integration related services by us or our third-party service providers could harm our reputation and cause us to lose existing customers, face potential customer disputes or limit the rate at which new customers purchase our solutions.

Difficulties We May Encounter Managing Changes in the Size of Our Business Could Adversely Affect Our Operating Results.

Our business has experienced rapid growth in employee count through both internal expansion and acquisitions. Beginning in 2005, we are taking steps to better align our resources with our operating requirements in order to increase our efficiency. Through these steps, we have reduced our headcount and incurred charges for employee severance. As many employees are located in Quebec City, Canada, we will have to pay the severance amounts legally required in such jurisdiction, which may exceed those of the United States. While we believe that these steps help us achieve greater operating efficiency, we have limited history with such measures and the results of these measures are less than predictable. Additional restructuring efforts may be required. To manage our business effectively, we must continue managing headcount in an efficient manner. Our productivity and the quality of our products may be adversely affected if we do not integrate and train our employees quickly and effectively and coordinate among our executive, engineering, finance, marketing, sales, operations and customer support organizations, all of which add to the complexity of our organization. We believe workforce reductions, management changes and facility consolidation create anxiety and uncertainty, and may adversely affect employee morale. These measures could adversely affect our employees that we wish to retain and may also adversely affect our ability to hire new personnel. They may also negatively affect customers. In addition, our revenues may not grow in alignment with our headcount.

Acquisitions and investments present many risks, and we may not realize the anticipated financial and strategic goals for any such transactions which would harm our business, operating results and financial condition.

We have made, and may continue to make, acquisitions or investments in companies, products, services and technologies to expand our product offerings, customer base and business. For example, in October 2003, we acquired White Amber, Inc., a privately-held company that provided a temporary talent management solution, which we introduced as our Taleo Contingent solution and in March 2005 we acquired Recruitforce.com, Inc. Such acquisitions and investments involve a number of risks, including the following:

- we may find that we are unable to achieve the anticipated benefits from our acquisitions;

we may have difficulty integrating the operations and personnel of the acquired business, and may have difficulty retaining the key personnel of the acquired business;

our ongoing business and management' s attention may be disrupted or diverted by transition or integration issues and the complexity of managing geographically and culturally diverse locations;

we may have difficulty incorporating the acquired technologies or products, including our Taleo Contingent solution, into our existing code base;

there may be customer confusion regarding the positioning of acquired technologies or products;

we may have difficulty maintaining uniform standards, controls, procedures and policies across locations;

we may have difficulty retaining the acquired business' customers; and

we may experience significant problems or liabilities associated with product quality, technology and legal contingencies.

For example, with respect to our acquisition of White Amber, we expended significant management time in attending to integration activities relating to employee relations and benefits matters, integration of product pricing, and the consolidation of other infrastructure to common systems. From time to time, we may enter into negotiations for acquisitions or investments that are not ultimately consummated. Such negotiations could result in significant diversion of management time, as well as out-of-pocket costs.

The consideration paid in connection with an investment or acquisition also affects our financial results. If we were to proceed with one or more significant acquisitions in which the consideration included cash, we could be required to use a substantial portion of our available cash, including proceeds of this offering, to consummate any acquisition. To the extent we issue shares of stock or other rights to purchase stock, including options or other rights, existing stockholders may be diluted and earnings per share may decrease. In addition, acquisitions may result in the incurrence of debt, large one-time write-offs or purchase accounting adjustments and restructuring charges. They may also result in goodwill and other intangible assets which may be subject to future impairment charges or ongoing amortization costs.

Unfavorable economic conditions and reductions in information technology spending could limit our ability to grow our business.

Our operating results may vary based on the impact of changes in global economic conditions on our customers. The revenue growth and profitability of our business depends on the overall demand for enterprise application software and services. We sell our solutions primarily to large organizations whose businesses fluctuate with general economic and business conditions. As a result, a softening of demand for enterprise application software and services, and in particular enterprise talent management solutions, caused by a weakening global economy may cause a decline in our revenue. Historically, economic downturns have resulted in overall reductions in corporate information technology spending. In the future, potential customers may decide to reduce their information technology budgets by deferring or reconsidering product purchases, which would negatively impact our operating results.

Our reported financial results may be adversely affected by changes in generally accepted accounting principles.

Generally accepted accounting principles in the United States are subject to interpretation by the Financial Accounting Standards Board, or FASB, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, or SEC, and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our historical or projected financial results.

For example, we currently are not required to record stock-based compensation charges if the employee' s stock option exercise price is equal to or exceeds the deemed fair value of the underlying security at the date of grant. However, several companies have recently elected to change their accounting policies and begun to record the fair value of stock

options as an expense. Although the standards have not been finalized and the timing of a final statement has not been established, the FASB has announced its support for recording expense for the fair value of stock options granted. If we were required to change our accounting policy in accordance with Statement of Financial Accounting Standards, or SFAS, No. 123, "Accounting for Stock-Based Compensation" and SFAS No. 148, "Accounting for Stock-Based Compensation − Transition and Disclosure," our cost of revenue and operating expenses would have increased by approximately $2.0 million for 2004.

If tax benefits currently available under the tax laws of Quebec are reduced or repealed, our business could suffer.

The majority of our research and development activities are conducted through our Canadian subsidiary, Taleo (Canada) Inc. We participate in a government program in Quebec that provides investment credits based upon qualifying research and development expenditures. These expenditures primarily consist of the salaries for the persons conducting research and development activities. We have participated in the program for five years, and expect that we will continue to receive these investment tax credits through September 2008. In 2004, we recorded a $2.4 million reduction in our research and development expenses as a result of this program. We anticipate the continued reduction of our research and development expenses through 2008. If these investment tax benefits are reduced or eliminated, our financial condition and operating results may be adversely impacted.

Evolving regulation of the Internet may increase our expenditures related to compliance efforts, which may adversely affect our financial condition.

As Internet commerce continues to evolve, increasing regulation by federal, state or foreign agencies becomes more likely. We are particularly sensitive to these risks because the Internet is a critical component of our business model. For example, we believe increased regulation is likely in the area of data privacy, and laws and regulations applying to the solicitation, collection, processing or use of personal or consumer information could affect our customers' ability to use and share data, potentially reducing demand for solutions accessed via the Internet and restricting our ability to store, process and share data with our customers via the Internet. In addition, taxation of services provided over the Internet or other charges imposed by government agencies or by private organizations for accessing the Internet may also be imposed. Any regulation imposing greater fees for internet use or restricting information exchange over the Internet could result in a decline in the use of the Internet and the viability of internet-based services, which could harm our business.

Current and future litigation against us could be costly and time consuming to defend.

We are regularly subject to legal proceedings and claims that arise in the ordinary course of business. For example, in the fourth quarter of 2004 we settled a lawsuit with Bernard Hodes Group. Litigation may result in substantial costs and may divert management' s attention and resources, which may seriously harm our business, financial condition, operating results and cash flows. For more information regarding our current legal proceedings, please see the information under "Item 8 − Legal Proceedings" contained elsewhere in this prospectus.

Risks Related to the Securities Markets and Ownership of our Class A Common Stock

Our stock price is likely to be volatile and could decline following our contemplated public offering, resulting in a substantial loss on your investment.

Prior to our contemplated public offering, there has not been a public market for our Class A common stock. An active trading market for our Class A common stock may never develop or be sustained, which could affect your ability to sell your shares and could depress the market price of your shares. In addition, the initial public offering price will be determined through negotiations among us, the selling stockholders and the representatives of the underwriters and may bear no relationship to the price at which the Class A common stock will trade upon the completion of the offering. The stock market in general, and the market for technology-related stocks in particular, has been highly volatile. As a result, the market price of our Class A common stock is likely to be similarly volatile, and investors in our Class A common stock may experience a decrease in the value of their stock, including decreases unrelated to our operating performance or prospects.

The price of our Class A common stock could be subject to wide fluctuations in response to a number of factors, including those listed in this "Risk Factors" section of this prospectus and others such as:

- our operating performance and the performance of other similar companies;
- the overall performance of the equity markets;
- developments with respect to intellectual property rights;
- publication of unfavorable research reports about us or our industry or withdrawal of research coverage by securities analysts;
- speculation in the press or investment community;
- terrorist acts; and
- announcements by us or our competitors of significant contracts, new technologies, acquisitions, commercial relationships, joint ventures or capital commitments.

Our principal stockholders will have a controlling influence over our business affairs and may make business decisions with which you disagree and which may adversely affect the value of your investment.

Based on share ownership as of March 31, 2005, including shares issuable upon exercise of outstanding options and warrants exercisable within 60 days of March 31, 2005, our officers, directors, major stockholders and their affiliates beneficially own or control, directly or indirectly, 7,072,635 shares of our Class A common stock, which in the aggregate represents approximately 30% of the outstanding shares of Class A common stock. As a result, if some of these persons or entities act together, they will have the ability to control matters submitted to our stockholders for approval, including the election and removal of directors, amendments to our certificate of incorporation and bylaws and the approval of any business combination. These actions may be taken even if they are opposed by other stockholders. This concentration of ownership may also have the effect of delaying or preventing a change of control of our company or discouraging others from making tender offers for our shares, which could prevent our stockholders from receiving a premium for their shares.

Some of these persons or entities may have interests different than yours. For example, because many of these stockholders purchased their shares at prices substantially below the price at which shares are contemplated to be sold in the offering and have held their shares for a relatively longer period, they may be more interested in selling our company to an acquiror than other investors or may want us to pursue strategies that deviate from the interests of other stockholders.

There may be sales of a substantial number of shares of our Class A common stock after our contemplated offering, which could cause our Class A common stock price to decline significantly.

Additional sales of our Class A common stock in the public market after our contemplated offering, or the perception that such sales could occur, could cause the market price of our Class A common stock to decline. Upon the completion of our contemplated offering, we will have a significantly greater number of shares of Class A common stock outstanding. The shares to be sold in the offering will be freely tradeable without restriction or further registration under the Securities Act of 1933, as amended. Substantially all of our existing stockholders are subject to lock-up agreements with the underwriters or us that restrict their ability to transfer their stock for 180 days from the date of the prospectus. After the lock-up agreements expire additional shares will be eligible for sale in the public market, subject in most cases to the limitations of either Rule 144 or Rule 701 under the Securities Act of 1933.

In addition, Citigroup, on behalf of the underwriters, may in its sole discretion, at any time without notice, release all or any portion of the shares subject to the lock-up agreements, which would result in more shares being available for sale in the public market at earlier dates. Sales of Class A common stock by existing stockholders in the public market, the availability of the shares for sale, our issuance of securities or the perception that any of these events might occur could

materially and adversely affect the market price of our Class A common stock. In addition, the sale of the shares by these stockholders could impair our ability to raise capital through the sale of additional stock.

We may need to raise additional capital, which may not be available, which would adversely affect our ability to operate our business.

We expect that the net proceeds from our contemplated offering, together with our other capital resources, including income from our operations, will be sufficient to meet our working capital and capital expenditure needs for the foreseeable future. If we need to raise additional funds due to unforeseen circumstances or material expenditures, we cannot be certain that we will be able to obtain additional financing on favorable terms, if at all, and any additional financings could result in additional dilution to our existing stockholders. If we need additional capital and cannot raise it on acceptable terms, we may not be able to meet our business objectives, our stock price may fall and you may lose some or all of your investment.

Provisions in our charter documents and Delaware law may delay or prevent an acquisition of our company.

Our certificate of incorporation and bylaws, as amended to be effective upon the completion of our contemplated public offering, contain provisions that could make it harder for a third party to acquire us without the consent of our board of directors. For example, if a potential acquiror were to make a hostile bid for us, the acquiror would not be able to call a special meeting of stockholders to remove our board of directors or act by written consent without a meeting. In addition, our board of directors has staggered terms, which means that replacing a majority of our directors would require at least two annual meetings. The acquiror would also be required to provide advance notice of its proposal to replace directors at any annual meeting, and will not be able to cumulate votes at a meeting, which will require the acquiror to hold more shares to gain representation on the board of directors than if cumulative voting were permitted.

Our board of directors also has the ability to issue preferred stock that could significantly dilute the ownership of a hostile acquiror. In addition, Section 203 of the Delaware General Corporation Law limits business combination transactions with 15% or greater stockholders that have not been approved by the board of directors. These provisions and other similar provisions make it more difficult for a third party to acquire us without negotiation. These provisions may apply even if the offer may be considered beneficial by some stockholders.

The requirements of being a public company might strain our resources, which may adversely affect our business and financial condition.

As a public company, we will be subject to a number of additional requirements, including the reporting requirements of the Securities Exchange Act of 1934, as amended, the Sarbanes-Oxley Act of 2002 and the listing standards of The Nasdaq Stock Market, Inc. These requirements might place a strain on our systems and resources. The Securities Exchange Act of 1934 requires, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls for financial reporting. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal controls over financial reporting, significant resources and management oversight will be required. As a result, our management' s attention might be diverted from other business concerns, which could have a material adverse effect on our business, financial condition, and operating results. In addition, we might need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and we might not be able to do so in a timely fashion. The listing standards of the Nasdaq Stock Market require, among other things, that within a year of the date of this offering all of the members of committees of our board of directors, including our audit committee, consist of independent directors. We might not be able to retain our independent directors, or attract new independent directors, for our committees.

Holders of our Class B common stock vote with our Class A common stock, which dilutes the voting power of our Class A common stockholders.

4,038,287 shares of our Class B common stock are held by holders of our exchangeable shares in order to allow them voting rights in Taleo without having to exchange their shares and suffer the corresponding Canadian tax

consequences. These shares vote as a class with our Class A common stock and, upon exchange of the exchangeable shares for Class A common stock, will be redeemed on the basis of one share of Class B common stock redeemed for each one share of Class A common stock issued. Therefore, approximately 24.5% of the voting power of our outstanding shares as of March 31, 2005, is held by the Class B common stockholders and will continue to be held by them until they decide to exchange their exchangeable shares. Accordingly, our Class B common stock constitutes, and is expected to continue to constitute, a significant portion of the shares entitled to vote on all matters requiring approval by our stockholders.

Where You Can Find More Information

After the effective date of the earlier of this Form 10 or our registration statement on Form S-1, we will become subject to the information and periodic reporting requirements of the Securities Exchange Act of 1934, and, in accordance therewith, will file periodic reports, proxy statements and other information with the SEC. Such periodic reports, proxy statements and other information will be available for inspection and copying at the public reference room and web site of the SEC referred to above. We maintain a web site at http://www.taleo.com. You may access our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 with the SEC free of charge at our web site as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. The reference to our web address does not constitute incorporation by reference of the information contained at that site.

ITEM 2. FINANCIAL INFORMATION.

Selected Consolidated Financial Data

To be filed by amendment.

Management' s Discussion And Analysis Of Financial Condition And Results Of Operations

To be filed by amendment.

ITEM 3. PROPERTIES.

Our principal offices are in San Francisco, where we lease approximately 12,000 square feet of space, and in Quebec City, where we lease approximately 48,000 square feet of space used primarily by our research and development group. In North America, we have additional offices across the United States, including Boston, Chicago, Dallas and the greater New York area, and Canada, including Montreal and Toronto. Outside of North America we have sales and services offices in Amsterdam, London, Paris and Sydney. We believe that our facilities are adequate for current needs and that suitable additional or substitute space will be available as needed to accommodate foreseeable expansion of our operations.

ITEM 4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The following table sets forth certain information regarding the beneficial ownership of our Class A common stock as of March 31, 2005, for the following persons:

- Each person who we know beneficially owns more than 5% of our Class A common stock;
- Each of our directors;
- Each of our named executive officers; and
- All of our directors and executive officers as a group.

We have determined beneficial ownership in accordance with the rules of the SEC. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below

have sole voting and investment power with respect to all shares of Class A common stock that they beneficially own, subject to applicable community property laws.

Applicable beneficial ownership is based on 16,450,110 shares of Class A common stock, assuming the exchange of all of the outstanding exchangeable shares of 9090-5415 Quebec Inc. into our Class A common stock and the corresponding one for one redemption of our Class B common stock and the conversion of all outstanding shares of our preferred stock into shares of our Class A common stock. The number of shares beneficially owned and the percentage of ownership of each person or entity includes shares of Class A common stock subject to options, warrants or other convertible securities held by that person or entity that are exercisable within 60 days of March 31, 2005. Those shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person.

	Shares Beneficially Owned Class A Common Stock	
Name of Beneficial Owner (1)	Shares	%
5% Stockholders:		
Bain Capital Funds (2)	3,362,306	16.9 %
General Catalyst Group LLC (3)	1,698,135	9.3 %
Martin Ouellet (4)	1,092,742	6.2 %
Seneca Investments LLC (5)	1,918,056	10.4 %
Telesystem Ltd. (6)	3,420,886	17.2 %
Named Executive Officers and Directors:		
Michael P. Gregoire	–	–
Louis Tetu (7)	1,197,420	6.7 %
Guy Gauvin (8)	182,498	1.0 %
Tom Lavey (9)	53,471	0.3 %
Jean Lavigueur (10)	388,330	2.0 %
Mark A. Bertelsen	5,000	0.03 %
Howard Gwin	–	–
Eric Herr (11)	7,777	0.04 %
James D. Maikranz (12)	7,777	0.04 %
Jeffrey M. Schwartz (2)	3,362,306	16.9 %
Michael P. Tierney (5)	1,918,056	10.4 %
All directors and executive officers as a group (13 persons)(13)	7,072,635	30.0 %

* Less than 1%

(1) Unless otherwise indicated, the address of each beneficial owner listed below is c/o Taleo Corporation, 575 Market Street, Eighth Floor, San Francisco, California 94105.

(2) Shares beneficially owned by the Bain Capital Funds represent (i) 2,889,648 shares of record held by Bain Capital Venture Fund, L.P. (the "Bain Venture Fund"), whose sole general partner is Bain Capital Venture Partners, L.P. ("BCVP"), whose sole general partner is Bain Capital Venture Investors, LLC ("BCVI"), (ii) 399,921 shares held of record by BCIP Associates II ("BCIP II"), whose sole managing partner is Bain Capital Investors, LLC ("BCI") and (iii) 72,737 shares held of record by BCIP Associates II-B (BCIP II-B, and together with BCIP II, the BCIP Entities), whose sole managing partner is BCI. BCI has granted BCVI a power of attorney with respect to the shares held by the BCIP Entities. Michael A. Krupka is the sole managing member and a Managing Director of BCVI, a limited partner of BCVP, a member of BCI, and a partner of BCIP II. BCVP, BCVI and Mr. Krupka, by virtue of these relationships with respect to the Bain Venture Fund, may each be deemed to beneficially own the shares held by the Bain Venture Fund, and BCI, BCVI and Mr. Krupka, by virtue of these relationship with respect to the BCIP Entities, may each be deemed to beneficially own the shares held by the BCIP Entities. BCVP, BCVI, Mr. Krupka and BCI each disclaims beneficial ownership of such shares except to the extent of its or his pecuniary interest therein. Mr. Schwartz is a limited partner of BCVP, a member of BCI, a member and a Managing Director of BCVI and a partner of BCIP II and also serves as a member of our board of directors. Accordingly, he may be deemed to beneficially own the shares held by the Bain

Venture Fund and the BCIP Entities. Mr. Schwartz disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. The address of these entities is 111 Huntington Avenue, Boston, MA 02199.

(3) General Catalyst Partners, LLC is the managing member of General Catalyst Group, LLC. Joel Cutler and David Fialkow are members of the Board of Managers of General Catalyst Group, LLC and, as such, may be deemed to share voting and dispositive power over the shares beneficially owned by General Catalyst Group, LLC. Messrs. Cutler and Fialkow disclaim beneficial ownership of any such shares. The address for this entity is 20 University Road, Suite 450, Cambridge, MA 02138.

(4) Includes options held by Mr. Ouellet to purchase 130,624 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005. In addition, 962,118 of these shares represent our exchangeable shares.

(5) Shares beneficially owned by Seneca Investments LLC represent 1,918,056 shares held of record by E-Services Investments Private Sub LLC. E-Services Investments Private Sub LLC is a wholly owned subsidiary of Seneca Investments LLC. Seneca Investments LLC holds voting and dispositive power for the shares held by E-Services Investments Private Sub LLC. Mr. Tierney is the chief executive officer of Seneca Investments LLC and serves as a member of our board of directors. Accordingly, he may be deemed to have voting and dispositive power and beneficially own the shares held of record by E-Services Investments Private Sub LLC. Mr. Tierney disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. The address of these entities is 437 Madison Avenue, New York, NY 10022.

(6) Shares beneficially owned by Telesystem Ltd. represent 1,358,508 shares held of record by Telesystem Ltd. and 2,062,378 shares held of record by Telesystem Software Ventures Limited Partnership. Of these, 1,058,400 shares represent our exchangeable shares. Telesystem Software Ventures Limited Partnership is an indirect subsidiary of Telesystem Ltd. Telesystem Ltd. holds voting and dispositive power for the shares held by Telesystem Software Ventures Limited Partnership, and Charles Sirois, the Chairman and President of Telesystem Ltd., may be deemed to have voting and dispositive power for the shares held directly or indirectly by Telesystem Ltd. Mr. Sirois disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. The address of these entities is 1250 René-Lévesque Blvd. West, 38th Floor, Montreal, QC, Canada H3B 4W8.

(7) Shares beneficially owned by Mr. Tetu represent 146,906 shares held of record by Louise Couture, Mr. Tetu' s wife, and 556,071 shares held of record by 9020-8828 Quebec Inc., and options held by Mr. Tetu to purchase 494,443 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005. Of these, 702,977 shares represent our exchangeable shares. Mr. Tetu is the sole shareholder of 9020-8828 Quebec Inc.

(8) Includes options held by Mr. Gauvin to purchase 182,498 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005.

(9) Includes options held by Mr. Lavey to purchase 53,471 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005.

(10) Shares beneficially owned by Mr. Lavigueur represent 147,025 shares held of record by Christine Johnson, Mr. Lavigueur' s wife, and options held by Mr. Lavigueur to purchase 241,305 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005. Of these, 147,025 shares represent our exchangeable shares.

(11) Includes options held by Mr. Herr to purchase 7,777 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005.

(12) Includes options held by Mr. Maikranz to purchase 7,777 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005.

(13) Shares beneficially owned by all executive officers and directors as a group include options to purchase 987,271 shares of Class A common stock that are exercisable within sixty (60) days of March 31, 2005.

ITEM 5. DIRECTORS AND EXECUTIVE OFFICERS.

The following table sets forth certain information with respect to our executive officers and directors as of April 30, 2005.

Name	Age	Position(s)
Michael P. Gregoire	39	President, Chief Executive Officer and Director

Louis Tetu	40	Executive Chairman of the Board of Directors
Bradford Benson	43	Executive Vice President, Products and Technology
Jeffrey Carr	46	Executive Vice President, Global Marketing and Sales
Guy Gauvin	37	Executive Vice President, Global Services

Name	Age	Position(s)
Divesh Sisodraker	36	Chief Financial Officer and Secretary
Mark A. Bertelsen	61	Director
Howard Gwin	46	Director
Eric Herr	57	Director
James D. Maikranz	57	Director
Jeffrey M. Schwartz	40	Director
Michael P. Tierney	52	Director

Michael P. Gregoire has served as our President and Chief Executive Officer since March 2005. Prior to joining us, Mr. Gregoire worked at PeopleSoft, an enterprise software company, from May 2000 to January 2005, most recently as Executive Vice President, Global Services. Prior to PeopleSoft, Mr. Gregoire served as Managing Director for the Global Financial Markets at Electronic Data Systems, Inc, a technology services provider, from 1996 to April 2000. Mr. Gregoire has a master' s degree from California Coast University, and holds a bachelor' s degree in physics and computing from Wilfred Laurier University in Ontario, Canada.

Louis Tetu has served as our executive chairman of the board since April 2005. Prior to serving as executive chairman of the board, Mr. Tetu served as our chairman of the board of directors from July 1999 to April 2005, our chief executive officer from July 1999 to March 2005 and as our president from March 2004 to March 2005. Prior to joining us, Mr. Tetu served as president of Baan Supply Chain Solutions, an enterprise applications vendor, from May 1996 to December 1998, following its acquisition of Berclain Group Inc., a supply chain management solutions vendor. Mr. Tetu co-founded and served as vice president of Berclain Group from 1987 to April 1996. Mr. Tetu also serves on the board of directors of L' Entraide Mutual Life Insurance Company of Canada. Mr. Tetu holds a bachelor' s degree in mechanical engineering from Laval University in Canada.

Bradford Benson has served as our executive vice president, products and technology since January 2005. Prior to joining us, Mr. Benson served as the senior vice president of research and development at Lawson Software, an enterprise software company, from November 2001 to July 2004. Prior to Lawson, Mr. Benson served as the vice president of engineering at Avolent, a software company, from September 1999 to November 2001. Prior to Avolent, Mr. Benson served in various management positions, including multiple VP positions in application development, at PeopleSoft, an enterprise software company, from January 1993 to August 1999. Prior to joining PeopleSoft, Mr. Benson served as a financial development manager of The Gap, a retail clothing company, from August 1991 to January 1993. Prior to joining The Gap, Mr. Benson served in various capacities in software development at Oracle, an enterprise software and database company, from September 1989 to July 1991. Prior to Oracle, Mr. Benson served in various consulting capacities at Andersen Consulting, a management consulting company, from January 1986 to August 1989. Mr. Benson holds a bachelor' s degree in business administration from Iowa State University.

Jeffrey Carr has served as our executive vice president, global marketing and sales since April 2005. Prior to serving as executive vice president, global marketing and sales, Mr. Carr served as our executive vice president, global marking and chief strategy officer from November 2004 to April 2005. Prior to joining us, Mr. Carr served as chairman and chief executive officer of Motiva, Inc., a software vendor, from August 2001 to December 2003. Prior to Motiva, Mr. Carr served as president of RightWorks Corporation, a business applications provider, from March 2000 to July 2001. Prior to RightWorks, Mr. Carr served in a variety of positions at PeopleSoft, Inc., an enterprise software company, from January 1991 to January 2000, most recently as executive vice president, worldwide marketing, strategy and emerging markets. Mr. Carr holds a bachelor' s degree in business from Miami University (Ohio).

Guy Gauvin has served as our executive vice president, global services since April 2005. Prior to serving as our executive vice president, global services, Mr. Gauvin served as our executive vice president, worldwide operations from March 2002 to April 2005. Prior to serving as executive vice president, worldwide operations, Mr. Gauvin served as our vice president, customer services from August 1999 to March 2002. Prior to joining us, from May 1995 to August 1999, Mr. Gauvin served as vice president of global services at Baan Supply Chain Solutions. Mr. Gauvin holds a bachelor' s degree in mechanical engineering from Laval University in Canada.

Divesh Sisodraker has served as our chief financial officer and secretary since April 2005. From January 2000 to March 2005, Mr. Sisodraker served in various roles with Pivotal Corporation, a customer relationship management software

provider, including president and chief executive officer, chief financial officer, and vice-president, corporate development. Prior to joining Pivotal, Mr. Sisodraker served as director, finance and treasurer of A.L.I. Technologies Inc., a digital image management solution provider, from September 1998 to December 1999. Prior to joining A.L.I Technologies Inc., Mr. Sisodraker held roles as an investment analyst with HSBC Capel Asia Limited, a banking and financial services company, and West Shore Ventures Limited, a financial services company, from September 1995 to February 1998. Prior to this, Mr. Sisodraker worked at KPMG, an accounting firm, from January 1991 to September 1995. Mr. Sisodraker holds a Bachelor of Business Administration degree, Honours, from Simon Fraser University of Vancouver, Canada and is a Chartered Accountant.

Mark Bertelsen has served as a director since June 2000. Mr. Bertelsen joined the law firm of Wilson Sonsini Goodrich & Rosati in 1972, was the firm' s managing partner from 1991 to 1996 and is currently a member of the firm' s Policy Committee of Senior Partners. Mr. Bertelsen also serves on the boards of directors of Autodesk, Inc. and Informatica Corporation. Mr. Bertelsen holds a bachelor' s degree in political science from the University of California, Santa Barbara, and a law degree from the University of California, Berkeley.

Howard Gwin has served as a director since December 2004. Mr. Gwin is an executive management consultant, advising chief executive officers in the technology industry. Prior to being an executive management consultant, Mr. Gwin served as a consultant to Solect Technology Group, a provider of billing, customer care and service management software, from May 2000 to December 2000 and as president and chief executive officer of Solect from February 2000 to April 2000. Prior to Solect, Mr. Gwin served as executive vice president, worldwide operations at PeopleSoft, Inc., an enterprise software company, from February 1999 to January 2000, as senior vice president, international from January 1998 to January 1999, as vice president, Europe from May 1996 to December 1997 and as vice president, Canada from September 1994 to May 1996. Prior to PeopleSoft, Mr. Gwin served as general manager of strategic operations at Xerox Corporation, a technology and services enterprise, from October 1992 to August 1994. Mr. Gwin also serves on the boards of directors of MKS Inc. and several private companies. Mr. Gwin holds a bachelor' s degree in business administration from Simon Fraser University in Canada.

Eric Herr has served as a director since March 2004. Mr. Herr has served as an executive-in-residence at the Whittemore School of Business at the University of New Hampshire since September 1999. Mr. Herr previously served as president and chief operating officer of Autodesk, Inc., a design software and digital content company, from September 1996 to September 1999. Mr. Herr also served as Autodesk' s chief financial officer from May 1992 until September 1996, as vice president, finance and administration from January 1995 to May 1995, and as vice president, emerging businesses from December 1992 through January 1995. Mr. Herr holds a bachelor' s degree in economics from Kenyon College and a master' s degree in economics from Indiana University.

James Maikranz has served as a director since November 2003. Mr. Maikranz previously served as senior vice president, worldwide sales, at J.D. Edwards & Company, an enterprise software company, from 1998 to 2001. Prior to joining J.D. Edwards, Mr. Maikranz served as senior vice president of worldwide sales for SAP, an enterprise software company, from 1991 to 1998. Mr. Maikranz also serves on the board of directors of IONA Technologies PLC.

Jeffrey Schwartz has served as a director since January 2001. Mr. Schwartz is a managing director of Bain Capital Investors, LLC, a private investment firm. Prior to joining Bain Capital Investors in March 2000, Mr. Schwartz was a vice president of Wellington Management Company, LLP, an investment management firm, from January 1999 to February 2000, and a vice president with Merrill Lynch, Pierce, Fenner & Smith Incorporated, an investment banking firm, from August 1994 to January 1999. Mr. Schwartz holds a bachelor' s degree in economics from Dartmouth College and a master' s degree in business administration from Harvard University.

Michael Tierney has served as a director since February 2001. Mr. Tierney is the chief executive officer of Seneca Investments LLC, the successor in interest to the investments formerly held by Communicade, LLC, a division of Omnicom Group Inc., a global marketing and corporate communications company. Prior to joining Seneca Investments in May 2001, Mr. Tierney was president of Communicade from October 2000 to May 2001. From 1995 until October 2000, Mr. Tierney was an investment and merchant banker with Ecoban Finance Limited, a trade finance and corporate advisory company. From 1983 to 1995, Mr. Tierney was an investment and merchant banker with Lehman Brothers Inc., an investment banking

firm. Mr. Tierney holds a bachelor' s degree in English from the University of Maryland and a law degree from the University of Chicago.

ITEM 6. EXECUTIVE COMPENSATION.

Executive Compensation

The following table sets forth information regarding the compensation of our chief executive officer and the four other most highly compensated executive officers during the fiscal years ended December 31, 2003 and December 31, 2004. We refer to these executive officers, together with the chief executive officer, as the named executive officers. Amounts derived from Canadian dollars contained in this table have been expressed in U.S. dollars based on the noon buying rate for the Canadian dollar of CAD $1.2923 per U.S. dollar on December 31, 2003 for 2003 and CAD $1.2034 per U.S. dollar on December 31, 2004 for 2004.

The compensation committee of the board of directors sets the specific goals and amount for incentive bonus compensation on an annual basis for the chief executive officer and the other executive officers. Incentive bonus compensation is based upon a subjective consideration of factors including the executive officer' s level of responsibility, individual performance, contributions to our success and our general financial performance.

Summary Compensation Table

		Annual Compensation			Long-Term Compensation Awards	
Name and Principal Position	Year	Salary ($)	Bonus ($)	Other Annual Compensation ($) (1)	Securities Underlying Options (#)	All Other Compensation ($) (2)
Michael P. Gregoire (3)	2004	–	–	–	–	–
President and Chief Executive Officer	2003	–	–	–	–	–
Louis Tetu	2004	207,745	195,280	1,221	50,000	253
Executive Chairman of the Board of Directors	2003	193,454	146,390	1,136	33,333	237
Guy Gauvin	2004	138,774	89,380	1,669	12,500	217
Executive Vice President, Global Services	2003	129,227	66,115	1,136	20,000	237
Tom Lavey (4)	2004	215,000	153,102	9,539	–	1,662
Former Executive Vice President, Sales and Business Development	2003	62,708	263	–	133,333	470
Jean Lavigueur	2004	141,267	29,084	1,669	12,500	221
Vice President, Finance	2003	123,810	43,363	1,136	11,666	237

(1) Includes medical insurance premiums paid by us pursuant to employee benefit programs available to all employees.

(2) Includes life insurance premiums paid by us pursuant to employee benefit programs available to all employees.

(3) Mr. Gregoire joined us in March 2005.

(4) Mr. Lavey joined us in September 2003 and left in April 2005.

Stock Option Grants in Last Fiscal Year

The following table sets forth information regarding grants of stock options to each of the named executive officers during the fiscal year ended December 31, 2004. The percentage of total options set forth below is based on options to purchase an aggregate of 697,459 shares of our Class A common stock granted to employees during the fiscal year ended December 31, 2004. All options were granted at the fair market value of our Class A common stock, as determined by our board of directors, on the date of grant.

These options were granted under our 1999 Stock Plan. The options vest over a four-year period, at a rate of 25% upon the first anniversary of their vesting commencement dates and then at a rate of 1/48 per month thereafter. In addition, the stock options granted to certain of our officers are subject to vesting acceleration provisions. See "Employment Agreements and Change of Control Arrangements."

Potential realizable value is based on the assumption that our Class A common stock appreciates at the annual rate shown, compounded annually, from the date of grant until the expiration of the ten-year option term. These amounts were calculated based on the requirements promulgated by the SEC and do not reflect the estimate of future price growth.

	Individual Grants						
Name	Number of Securities Underlying Options Granted	Percentage of Total Options Granted to Employees in Fiscal Year	Exercise Price	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term		
					5%	10%	
Michael P. Gregoire	–	–	–	–	–	–	
Louis Tetu	50,000	7.17 %	$3.00	3/17/2014	$94,334	$239,061	
Guy Gauvin	12,500	1.79 %	$3.00	3/17/2014	$23,584	$59,765	
Tom Lavey	–	–	–	–	–	–	
Jean Lavigueur	12,500	1.79 %	$3.00	3/17/2014	$23,584	$59,765	

Option Exercises In Last Fiscal Year and Fiscal Year-End Option Values

The following table sets forth information concerning options to purchase shares of our Class A common stock held by each of the named executive officers as of December 31, 2004.

As of April 27, 2005, the most recent date on which the board of directors made a determination as to the fair market value of the Class A common stock, the fair market value of the Class A common stock was valued at $13.50 per share. This valuation is dependent upon numerous factors, including a third party analysis of comparables, operating conditions and factors both internal and external to us. The value realized and the value of unexercised in-the-money options at fiscal year end have been calculated based on the fair market value of the Class A common stock, less the applicable exercise price, in accordance with the rules of the SEC.

			Number of Securities Underlying Unexercised Options at Fiscal year End		Value of Unexercised In-The Money Options at Fiscal Year End	
Name	Shares Acquired on Exercise (#)	Value Realized ($)	Exercisable	Unexercisable	Exercisable	Unexercisable
Michael P. Gregoire	–	–	–	–	–	–
Louis Tetu			474,305	67,359	$4,755,203	$ 182,290
Guy Gauvin			176,247	22,919	$1,452,122	$ 109,368
Tom Lavey			39,583	93,750	$415,622	$ 984,375
Jean Lavigueur			235,923	18,577	$2,829,992	$ 63,798

Employment Agreements and Change of Control Arrangements

Employment Agreements with Certain Executive Officers

Michael P. Gregoire, our president and chief executive officer, entered into an employment agreement in March 2005. The employment agreement provides for an annual salary amount that may be adjusted from time to time by the board of directors. Under the employment agreement, in the event Mr. Gregoire' s employment is terminated by us without cause or Mr. Gregoire resigns for good reason, as the terms cause and good reason are defined in the employment agreement, Mr. Gregoire will receive a severance payment equal to twelve months of his then current annual base salary payable in one lump-sum within 30 days of such termination or resignation, and continued participation in our health insurance plan for twelve months. In addition, the vesting schedule of Mr. Gregoire' s outstanding equity awards will accelerate by twelve months, and he will be permitted to exercise vested options for twelve months following termination of employment. In addition to the foregoing severance benefits, upon a change of a control, as such term is defined in the employment agreement, Mr. Gregoire will receive immediate vesting with respect to half of his outstanding equity awards. If, within 60 days before or 18 months following a change of control, Mr. Gregoire' s employment is terminated other than for cause, he will be entitled to receive a severance payment equal to twelve months of his then current annual base salary plus 100% of his target bonus for the year of termination, and all of Mr. Gregoire' s unvested stock options will vest immediately. Also, under the employment agreement, Mr. Gregoire is subject to a nonsolicitation covenant for one year following termination of employment, as well as customary confidentiality and nondisclosure covenants for the term of employment and thereafter.

Louis Tetu, our executive chairman of the board, has, and Jean Lavigueur, our Vice President, Finance, have entered into employment agreements with our subsidiary, Taleo (Canada) Inc. Under the employment agreements, in the event an officer' s employment is involuntarily terminated other than for cause, as such term is defined in the employment agreement, the officer will receive a severance payment equal to six months of his then current base salary payable in equal monthly installments, and continued participation in our health, dental and life insurance programs for six months. In addition, the employment agreements provide for annual salary amounts that may be adjusted from time to time by the board of directors. Also, under the employment agreements, the officers are subject to noncompetition and nonsolicitation covenants during the term of employment and for three years following termination of employment, as well as customary confidentiality and nondisclosure covenants for the term of employment and thereafter.

Bradford Benson, our executive vice president of research and development and chief technology officer, executed an offer letter in December 2004. Under the offer letter, in the event Mr. Benson' s employment is terminated without cause, as such term is defined in the offer letter, Mr. Benson will be entitled to receive a severance payment equal to three months of his then current base salary, and his outstanding equity awards will continue to vest for a period of three months. If, within one year following a change of control, as such term is defined in the offer letter, Mr. Benson' s employment is terminated other than for cause, he will be entitled to receive a severance payment equal to six months of his then current base salary.

Jeffrey Carr, our executive vice president, global marketing and sales, executed an offer letter in November 2004. Under Mr. Carr' s offer letter, if, prior to Mr. Carr' s promotion to the position of chief operating officer, his employment is terminated other than for cause or he resigns for good reason, as such terms are defined in the offer letter, Mr. Carr will be entitled to receive a severance payment equal to six months of his then current base salary, and his outstanding equity awards will continue to vest for a period of six months. If, after Mr. Carr' s promotion to the position of chief operating officer, his employment is terminated other than for cause or he resigns for good reason, Mr. Carr will be entitled to receive a severance payment equal to six months of his then current base salary and six months of his aggregate target bonuses, and his outstanding equity awards will continue to vest for a period of twelve months. If, within one year following a change of control, as such term is defined in the offer letter, Mr. Carr' s employment is terminated other than for cause or he resigns with good reason, he will be entitled to receive a severance payment equal to twelve months of his then current base salary and twelve months of his aggregate target bonuses.

Divesh Sisodraker, our chief financial officer, executed an offer letter in March 2005. Under the offer letter, in the event Mr. Sisodraker' s employment is terminated without cause, as such term is defined in the offer letter, Mr. Sisodraker will be entitled to receive a severance payment equal to six months of his then current base salary, and his outstanding equity awards will continue to vest for a period of three months. If, within one year following a change of control, as such term is defined in the offer letter, Mr. Sisodraker' s employment is terminated other than for cause, he will be entitled to receive a severance payment equal to twelve months of his then current base salary.

Tom Lavey, our former executive vice president, sales and business development, executed an offer letter in September 2003. Under Mr. Lavey' s offer letter, in the event Mr. Lavey' s employment was terminated without cause, he would have been entitled to receive a severance payment equal to six months of his salary based on on-target earnings. Mr. Lavey left us in April 2005.

Management Stock Option Agreements

In September 2002, the board of directors authorized us to amend the stock option agreements of certain executive officers in an effort to ensure the continued service of our key executives in the event of a change of control the company. The stock option agreements between us and Louis Tetu, Guy Gauvin and Jean Lavigueur provide that, if within one year following a change in control such officer is involuntarily terminated, which includes a termination other than for cause (as each term is defined in the stock option agreement), each such option will become fully vested and exercisable.

ITEM 7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

Certain Transactions

Pursuant to an investor rights agreement between us and certain of our stockholders, certain entities affiliated with Bain Capital Investors, LLC have the right to purchase up to five percent of an aggregate of the securities offered by us in a public offering, at the offering price per share, net of underwriting discounts and commissions. These entities have not informed us whether they intend to exercise this right in connection with this offering of our Class A common stock. If such entities do exercise this right in connection with this offering, we will register the issuance of the shares of Class A common stock purchased by them.

The law firm of Wilson Sonsini Goodrich & Rosati, Professional Corporation, acts as our principal outside counsel. Mark Bertelsen, one of our directors, is a member of Wilson Sonsini Goodrich & Rosati. Payments by us to Wilson Sonsini Goodrich & Rosati did not exceed five percent of the firm' s gross revenues in the last fiscal year. We believe that the services performed by Wilson Sonsini Goodrich & Rosati were provided on terms no more or less favorable than those with unrelated parties.

Indemnification and Employment Agreements

We have entered into indemnification agreements with each of our directors and officers. We have also entered into employment agreements with certain of our executive officers. See "Management − Employment Agreements and Change of Control Arrangements."

Registration Rights

Holders of our preferred stock are entitled to certain registration rights with respect to the Class A common stock issued or issuable upon conversion of the preferred stock. See "Item 11 − Description of Registrant' s Securities to be Registered − Registration Rights."

ITEM 8. LEGAL PROCEEDINGS.

We are involved in various legal proceedings arising from the normal course of business activities. In our opinion, resolution of these proceedings are not expected to have a material adverse impact on our operating results or financial condition. However, depending on the amount and timing, an unfavorable resolution of a matter could materially affect our future operating results or financial condition in a particular period.

ITEM 9. MARKET PRICE OF AND DIVIDENDS ON THE REGISTRANT' S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Market Information

As of the date of this Form 10, there is no established public trading market for our Class A Common Stock. As of March 31, 2005, 2,922,458 shares of our Class A Common Stock are subject to outstanding options granted under our 1999 Stock Plan, Viasite Stock Plan, and 2003 Series D Stock Plan and 16,450,110 shares of our Class A Common Stock could be sold pursuant to Rule 144 under the Securities Act. Holders of our preferred stock are entitled to certain registration rights with respect to the Class A common stock issued or issuable upon conversion of the preferred stock. See "Item 11 − Description of Registrant' s Securities to be Registered − Registration Rights." On March 31, 2004, we filed a registration statement on Form S-1 with the Securities and Exchange Commission, relating to the proposed initial public offering of our Class A Common Stock. The proposed offering will be consummated only if the prevailing market conditions are favorable. As of the date of this registration statement, the number of shares of Class A Common Stock proposed to be sold in the offering has not been determined.

Holders

As of March 31, 2005, there were approximately 31 holders of record of our Class A common stock and 18 holders of record of our Class B common stock.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock. We currently expect to retain any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends on our Class A common stock in the foreseeable future. Our financing agreement with Goldman prohibits the declaration or payment of dividends on our shares other than the existing dividend obligations with respect to our outstanding preferred stock, which will be converted or paid in connection with this offering. See "Dividends" in Item 11 below for information regarding our existing dividend obligations.

Equity Compensation Plan Information

The following table provides information as of December 31, 2004 with respect to the shares of our Class A common stock and Series D preferred stock that may be issued under our existing equity compensation plans. The Series D preferred stock converts into Class A common stock on a share-for-share basis.

Plan category	Class of Common Stock	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))	
Equity compensation plans approved by Class A security holders	Common Stock	3,025,192	$ 5.95	1,145,218	(1)
Equity compensation plans approved by Series D security holders	Preferred Stock	183,416	$ .90	0	
Total		3,208,608	$ 5.66	1,145,218	

(1) Includes an aggregate of 1,000,000 shares available for issuance under our 2004 Stock Plan and 2004 Employee Stock Purchase Plan.

ITEM 10. RECENT SALES OF UNREGISTERED SECURITIES.

In the three years prior to the filing of this registration statement, the registrant issued the following unregistered securities:

(a) In connection with the registrant' s acquisition of White Amber, Inc., on October 21, 2003, the registrant issued an aggregate of 10,624,723 shares of Series D preferred stock to a total of 16 private accredited investors in exchange for shares of Series C preferred stock of White Amber, Inc.

(b) On October 3, 2003, the registrant issued and sold 150,000 shares of Series C preferred stock to an accredited investor in connection with the exercise of a warrant at an exercise price of $0.36810 per share.

(c) On September 30, 2003, the registrant issued a warrant to purchase 1,666 shares of the registrant' s Class A common stock to a sophisticated investor at an exercise price of $3.00 per share. Such investor had information regarding the registrant' s business affairs and financial condition, access to the registrant for the opportunity to ask questions and receive answers and to obtain any additional information, and information on the limitations on resale of the securities issued.

(d) On March 1, 2002, the registrant issued a warrant to purchase 2,583 shares of the registrant' s Class A common stock to a sophisticated investor at an exercise price of $3.00 per share. Such investor had information regarding the registrant' s business affairs and financial condition, access to the registrant for the opportunity to ask questions and receive answers and to obtain any additional information, and information on the limitations on resale of the securities issued.

(e) As of March 31, 2005, the registrant has issued and sold an aggregate of 77,525 shares of Class A common stock upon exercise of options issued to certain employees, directors and consultants under the registrant' s 1999 Stock Plan and Viasite Inc. Stock Plan for an aggregate consideration of $218,432.69.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and the registrant believes that each transaction was exempt from the registration requirements of the Securities Act in reliance on Section 4(2) thereof or Regulation D promulgated thereunder, with respect to items (a)-(d) above, and Section 4(2) or Rule 701, with respect to item (e) above, as transactions by an issuer not involving a public offering or transactions pursuant to compensatory benefit plans and contracts relating to compensation as provided under such Rule 701. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such transactions. All recipients either received adequate information about the registrant or had access, through their relationships with the registrant, to such information.

ITEM 11. DESCRIPTION OF REGISTRANT' S SECURITIES TO BE REGISTERED.

The following is a summary of the rights of our Class A and Class B common stock and preferred stock and related provisions of our certificate of incorporation and bylaws.

Our authorized capital stock consists of 353,763,458 shares, each with a par value of $0.00001 per share, of which:

250,000,000 shares are designated Class A common stock;

24,229,762 shares are designated Class B common stock; and

79,533,696 shares are designated preferred stock.

Class A and Class B Common Stock

As of March 31, 2005, there were 16,450,110 shares of Class A common stock outstanding that were held of record by 31 stockholders, and 4,038,287 shares of Class B common stock outstanding that were held of record by 18 stockholders.

Other than the voting rights and our redemption right described in this section, holders of Class B common stock are not entitled to any rights, economic or otherwise, as a result of their ownership of Class B common stock, including but not limited to any rights as to dividends, payment upon our liquidation, dissolution or winding up or any other economic benefits. However, each holder of Class B common stock also owns an equivalent number of exchangeable shares, which cumulatively replicates the rights of a holder of our Class A common stock.

Voting Rights

Holders of our Class A and Class B common stock are entitled to one vote per share. Holders of our Class B common stock have voting rights and powers equal to the voting rights and powers of the Class A common stock, and vote together as a single class with holders of our Class A common stock and preferred stock on all matters (including the election of directors) submitted to a vote of stockholders, unless otherwise required by law or our certificate of incorporation. Holders of Class B common stock have no separate class or series vote on any matter except as expressly required by law.

Redemption Rights

The Class A common stock is not redeemable. One share of our Class B common stock is redeemable by us for $0.00001 per share in connection with the issuance of one share of Class A common stock in exchange for Class A preferred exchangeable shares or Class B preferred exchangeable shares of 9090-5415 Quebec Inc. See “Exchangeable Shares.”

Dividends

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of Class A common stock shall be entitled to share equally with the Series A preferred stock in any dividends that our board of directors may determine to issue from time to time.

Liquidation Rights

In the event we are sold by way of merger, reorganization or asset sale, or in the event we decide to liquidate, dissolve or wind-up, the holders of Class A common stock shall be entitled to share with the Series A preferred stock as set forth below all assets remaining after the payment of any preferential liquidation preferences.

Preferred Stock

As of March 31, 2005, there were no shares of Series A preferred stock outstanding, 1,878,154 shares of Series B preferred stock outstanding, 8,685,484 shares of Series C preferred stock outstanding, and 1,770,771 shares of Series D preferred stock outstanding that were held of record by 32 stockholders, and which are convertible into an aggregate of 12,334,409 shares of Class A common stock.

Voting Rights

The holder of each share of our preferred stock is entitled to notice of any stockholder’ s meeting in accordance with our bylaws and any other matter submitted to the vote of stockholders and shall be entitled to vote, together with the holders of our Class A and Class B common stock, with respect to any matters upon which the holders of our Class A common stock have the right to vote. Holders of preferred stock are entitled to one vote for each share of Class A common stock into which such share of preferred stock could be converted. The holders of Series A preferred stock have no separate class or series vote on any matter except as expressly required by law.

Redemption Rights

Our Series C preferred stock is redeemable by us in three annual installments upon the written request of the holders of a majority of the outstanding shares of Series C preferred stock delivered to us between 10 and 90 days prior to October 25, 2008, in exchange for an amount of cash equal to $0.4907 per share (as adjusted for stock dividends,

combinations or splits) plus all accrued but unpaid dividends. Holders of a majority of the Series C preferred stock may elect to waive or defer one or more redemption payments with respect to all holders of Series C preferred stock.

Dividends

Holders of Series C preferred stock and Series D preferred stock are entitled to receive dividends prior and in preference to any dividends on our common stock, Series A preferred stock and Series B preferred stock, whether or not declared by our board of directors, at the rate of $0.039256 per share per year (as adjusted for any stock dividends, combinations or splits). The right to such dividends is cumulative. Such dividends may be payable in cash or stock except that the holders of Series C preferred stock may only elect to have their dividends paid in stock while our line of credit with Goldman Sachs Specialty Lending Group is outstanding. Holders of Series B preferred stock are entitled to receive dividends prior and in preference to any dividends on our common stock and Series A preferred stock, when and if declared by our board of directors, at the rate of $0.0973 per share per year (as adjusted for any stock dividends, combinations or splits). Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of Series A preferred stock shall be entitled to share equally with the Class A common stock in any dividends that our board of directors may determine to issue from time to time.

Liquidation Rights

In the event we are sold by way of merger, reorganization or asset sale, or in the event we decide to liquidate, dissolve or wind-up, the holders of our Series C preferred stock and Series D preferred stock shall be entitled to receive, prior to any distribution of any of our assets to the holders of the common stock, Series A preferred stock or Series B preferred stock, an amount equal to the greater of (a) the amount that would be payable to each holder of Series C preferred stock in respect of the common stock if all outstanding shares of Series C preferred stock were converted into common stock immediately prior to such event or (b) the sum of $0.4907 per share (as adjusted for any subdivisions, combinations or stock dividends) and any accrued but unpaid dividends. In the event the assets and funds available for distribution to the holders of our Series C preferred stock and Series D preferred stock shall be insufficient to permit the payment of full preferential amounts, then our entire assets shall be distributed ratably among the holders of our Series C preferred stock and Series D preferred stock.

Subject to the preferences of the Series C preferred stock and Series D preferred stock, the holders of our Series B preferred stock shall be entitled to receive, prior to any distribution to the holders of the common stock and Series A preferred stock, an amount equal to $1.40 per share plus all declared but unpaid dividends. In the event the assets and funds available for distribution to the holders of our Series B preferred stock shall be insufficient to permit the payment of full preferential amounts, then the assets shall be distributed ratably among the holders of our Series B preferred stock.

Subject to the preferences of the Series B preferred stock, Series C preferred stock and Series D preferred stock, the holders of our Series A preferred stock shall be entitled to receive, prior to any distribution of any of our assets to the holders of the Class A common stock, an aggregate amount based on the amount to be distributed pro rata based on the number of shares of Class A common stock held by each holder (assuming conversion of all Series A preferred stock) and thereafter, the holders of the Series A preferred stock shall receive, equally with the holders of Class A common stock, the balance of the amount to be distributed. If the total value of the distribution exceeds CAD $20,000,000, the holders of Series A preferred stock shall receive, equally with the holders of Class A common stock, the full amount of the distribution pro rata based on the number of shares of Class A common stock held by each holder (assuming conversion of all Series A preferred stock).

Voluntary Conversion

At the option of the holder, each share of our preferred stock is convertible into shares of our Class A common stock at the then effective and applicable conversion rate. Each share of our preferred stock currently is convertible into one share of our Class A common stock.

Automatic Conversion

Each share of our preferred stock automatically converts into shares of our Class A common stock at the then effective and applicable conversion rate immediately upon the effectiveness of a firm commitment underwritten public offering covering the offer and sale of common stock to the public, in which the aggregate net proceeds equal or exceed $25,000,000 and the price per share is equal to or greater than $1.4721 (as adjusted for any subdivisions, combinations or stock dividends). Each share of a series of preferred stock is also automatically convertible into shares of Class A common stock at the then effective and applicable conversion rate upon the affirmative vote of the holders of at least a majority of the outstanding shares of such series of preferred stock.

Antidilution Protection

In the event we issue certain additional securities without consideration or for consideration per share less than the applicable conversion price of any series of our preferred stock, then the conversion rate of any such series of preferred stock shall be reduced concurrently with such issuance.

Protective Provisions

Our certificate of incorporation contains provisions that limit our ability to take certain actions without the approval of holders of at least two-thirds of the outstanding shares of Series A preferred stock and Series B preferred stock or a majority of Series C preferred stock. These actions include, among other things: (i) adversely altering or changing the preferences, rights, privileges of the preferred stock, or increasing or decreasing the number of authorized shares of Class A common stock, Class B common stock, Series A preferred stock, Series B preferred stock and Series C preferred stock, and (ii) authorizing shares of any class or series of stock having any preference or priority as to voting, dividends or liquidation rights which are superior to any preferences of the Series A preferred stock, Series B preferred stock and Series C preferred stock.

Exchangeable Shares

In November 1999, we entered into an exchangeable share transaction with 9090-5415 Quebec Inc., formerly known as Viasite Inc., a corporation organized under the laws of Quebec, Canada. In connection with this transaction, we were issued 1,000 Class A common shares of 9090-5415 Quebec. The remaining shares of 9090-5415 Quebec are non-voting exchangeable shares, entitling the holder to exchange each exchangeable share for a share of our Class A common stock on a one-for-six basis. There are 17,879,362 Class A preferred exchangeable shares and 6,350,400 Class B preferred exchangeable shares outstanding as of March 31, 2004. We refer to these Class A preferred exchangeable shares and Class B preferred exchangeable shares together as the exchangeable shares.

In the event we declare a dividend on our shares, 9090-5415 Quebec is obligated to provide the holders of exchangeable shares with cash, exchangeable shares, or other property which would mirror the distribution they would have received had they exchanged their exchangeable shares into our stock. In addition, if our holders experience a liquidation event, 9090-5415 Quebec is obligated to pay an equivalent liquidation preference to its shareholders. We have entered into a covenant agreement with 9090-5415 Quebec which obligates us to fund both the dividend and liquidation payments that 9090-5415 provides to its holders.

These exchangeable shares were issued so that the holders of the outstanding capital stock of 9090-5415 Quebec could defer the imposition of certain taxes under Canadian law until such time as they elected to exchange their exchangeable shares for shares of our Class A common stock but could otherwise maintain their economic rights. In order to give the holders of these exchangeable shares the ability to vote on matters which may be voted on by our stockholders during the period prior to when they exchange their exchangeable shares for shares of our Class A common stock, we have issued to the holders of exchangeable shares one share of our Class B common stock for each six exchangeable shares held by them, which shares of Class B common stock are redeemable, one-for-six, for nominal value by us upon and simultaneously with the exchange of the exchangeable shares. 4,038,287 shares of our Class B common stock were outstanding as of March 31, 2005. Other than the rights described in this section, the holders of exchangeable shares have no further powers, preferences or rights with respect to our capital stock.

Warrants

As of March 31, 2005, the following warrants to purchase Class A common stock were outstanding:

Beauchesne, Ostiguy & Simard Inc. holds a warrant to purchase 2,583 shares at an exercise price of $3.00 per share, which is fully exercisable at any time through the earlier of (a) November 20, 2006, (b) the closing of an initial public offering of our Class A common stock, or (c) a change of control of us;

E-Services Investments Private Sub LLC holds a warrant to purchase 481,921 shares at an exercise price of $3.66 per share, which is fully exercisable at any time through the earlier of (a) January 25, 2005, or (b) the closing of an initial public offering of our Class A common stock; and

Heidrick & Struggles holds a warrant to purchase 41,667 shares at an exercise price of $13.50 per share, which is fully exercisable at any time through the earlier of (a) March 14, 2010, or (b) a change of control of us.

The warrant granted to FMR Corp. is not currently exercisable, and we do not believe that this warrant will become exercisable.

As of March 31, 2005, the following warrants to purchase Series D preferred stock were also outstanding:

Comdisco, Inc. and Comdisco Ventures, Inc. hold a series of warrants to purchase 587,976 shares at an exercise price of $1.23 per share, which is fully exercisable at any time through the earlier of (a) ten years from the original date of issuance, or (b) a three to five year period from the effective date of our initial public offering which is convertible into 97,995 shares of our Class A common stock (at an implied exercise price of $7.38 per share); and

Comerica Bank-California holds a warrant to purchase 92,496 shares at an exercise price of $1.23 per share, which is fully exercisable at any time through the earlier of (a) seven years from its original date of issuance, or (b) five years from the effective date of our initial public offering which is convertible into 15,416 shares of our Class A common stock (at an implied exercise price of $7.38 per share).

Registration Rights

The holders of an aggregate of 11,622,038 shares of our Class A common stock or shares exchangeable into our Class A common stock will be entitled to the following rights with respect to registration of such shares under the Securities Act of 1933. These shares are referred to as registrable securities.

Demand Registration Rights. If holders of at least 30% of the Class A common stock issued upon conversion of the Series C preferred stock or Series B preferred stock request that an amount of securities having an aggregate offering price of at least $5,000,000 be registered, we may be required to register their shares. We are only obligated to affect two registrations in response to these demand registration rights for the holders of Class A common stock issued upon conversion of our Series C preferred stock and one registration for the holders of Class A common stock issued upon conversion of our Series B preferred stock. The underwriters of any underwritten offering have the right to limit the number of shares registered by these holders due to marketing reasons.

Piggyback Registration Rights. If at anytime we propose to register any of our Class A common stock under the Securities Act of 1933, the holders of registrable securities will be entitled to notice of the registration and will be entitled to include their shares of our Class A common stock in the registration. The underwriters of any underwritten offering have the right to limit the number of shares registered by these holders due to marketing reasons. The holders of an additional 10,624,723 shares convertible into 1,770,711 shares of our Class A common stock are entitled to these piggyback registration rights.

S-3 Registration Rights. The holders of registrable securities may require us, on not more than two occasions in any 365-day period, to file a registration statement on Form S-3 under the Securities Act covering their shares of our Class A common stock when registration of our shares under this form becomes possible. Depending on certain conditions, however, we may defer such registration for up to 90 days.

Registration of shares of Class A common stock because of the exercise of demand registration rights, piggyback registration rights or S-3 registration rights under the Securities Act of 1933 would result in the holders being able to trade these shares without restriction under the Securities Act of 1933 when the applicable registration statement is declared effective. We generally must pay all expenses, other than underwriting discounts and commissions, related to any registration.

The registration rights terminate upon the earlier of (1) five years after completion of this offering, or (2) with respect to the registration rights of an individual holder, when the holder holds less than one percent of our outstanding stock and when the holder can sell all of the holder' s shares in any three-month period under Rule 144 under the Securities Act of 1933 or another similar exception.

Also, certain entities affiliated with Bain Capital Investors, LLC have the right to purchase up to an aggregate of five percent of securities offered by us in a public offering, at the offering price per share, net of underwriting discounts and commissions. These entities have not currently informed us whether they intend to exercise this right in connection with this offering of our Class A common stock. If such entities do exercise this right in connection with this offering, we will register the issuance of the shares of Class A common stock purchased by them.

In addition, pursuant to the warrant issued to FMR Corp., if at anytime we propose to register any of our Class A common stock under the Securities Act of 1933, FMR Corp. will be entitled to notice of the registration and will be entitled to include their shares of our Class A common stock in the registration. The underwriters of any underwritten offering have the right to limit the number of shares registered by FMR Corp. due to marketing reasons. We generally must pay all expenses, other than underwriting discounts and commissions, related to any registration. The registration rights terminate upon the third anniversary of the completion of this offering. As of September 30, 2004, no shares were vested pursuant to the warrant.

Anti-takeover Effects of Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law. This provision generally prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date such stockholder became an interested stockholder, unless:

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

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (a) persons who are directors and also officers and (b) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

at or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

These provisions are intended to enhance the likelihood of continuity and stability in the composition of the board and in the policies formulated by the board and to discourage certain types of transactions that may involve an actual or threatened change of control of us. These provisions are designed to reduce our vulnerability to an unsolicited proposal for a takeover that does not contemplate the acquisition of all of our outstanding shares or an unsolicited proposal for the restructuring or sale of all or part of our company. These provisions, however, could discourage potential acquisition proposals and could complicate, delay or prevent a change in control of us. They may also have the effect of preventing changes in our management. We believe that the benefits of increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweighs the disadvantages of discouraging these proposals, including proposals that are priced above the then current market value of our Class A common stock, because, among other things, negotiation of these proposals could result in an improvement of their terms.

Listing

We are not listed on any stock market or exchange.

ITEM 12. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation' s board of directors to grant, indemnity to officers, directors and other corporate agents in terms sufficiently broad to permit such indemnification under certain circumstances and subject to certain limitations.

The registrant' s certificate of incorporation and bylaws provide that the registrant shall indemnify its directors, officers, employees and agents to the full extent permitted by Delaware General Corporation Law, including in circumstances in which indemnification is otherwise discretionary under Delaware law.

In addition, the registrant has entered into separate indemnification agreements with its directors, officers and certain employees which requires the registrant, among other things, to indemnify them against certain liabilities which may arise by reason of their status as directors, officers or certain other employees. The registrant also intends to maintain director and officer liability insurance, if available on reasonable terms.

These indemnification provisions and the indemnification agreements entered into between the registrant and its officers and directors may be sufficiently broad to permit indemnification of the registrant' s officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

ITEM 13. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

To be filed by amendment.

ITEM 14. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

Not applicable.

ITEM 15. FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements.

See Item 13 above.

(b) Exhibits.

Unless otherwise noted, the following exhibits are incorporated by reference to our registration statement on Form S-1 (File No. 333-114093).

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated October 21, 2003, between the registrant, Kangaroo Acquisition Corporation and White Amber, Inc.
2.2‡	Agreement and Plan of Merger, dated March 10, 2005, between the registrant, Butterfly Acquisition Corporation and Recruitforce.com, Inc.
3.1‡	Certificate of Incorporation of the registrant.
3.2‡	Bylaws of the registrant, as amended and restated.
4.1*	Form of registrant' s Class A common stock certificate.
4.2*	Form of registrant' s Class B common stock certificate.
4.3	Second Amended and Restated Investor Rights Agreement, dated October 21, 2003, between the registrant and the individuals and entities listed therein.
4.4‡	Covenant Agreement, dated November 24, 1999, between the registrant and Viasite Inc.
10.1	1999 Stock Plan and form of agreements thereunder.
10.2	Viasite Inc. Stock Plan.
10.3	2003 Series D Preferred Stock Plan and form of agreement thereunder.
10.4	2004 Stock Plan and form of agreement thereunder.
10.5	2004 Employee Stock Purchase Plan.
10.6	Form of Indemnification Agreement entered into by registrant with each of its directors and officers.
10.7	Employment Agreement, dated April 30, 1999, between Recruitsoft (Canada) Corporation Inc. and Louis Tetu.
10.8	Employment Agreement, dated April 30, 1999, between Recruitsoft (Canada) Corporation Inc. and Jean Lavigueur.
10.10	Lease for 330 St. Vallier East, Suite 400, Quebec, QC, Canada, G1K 9C5.

10.11 Intentionally omitted.

10.12 e-business Hosting Agreement, dated June 30, 2003, between the registrant and International Business Machines Corporation.

10.13 Agreement, dated September 1, 2002, between the registrant and Internap Network Services Corporation.

10.14 Offer Letter, dated September 12, 2003, between the registrant and Tom Lavey.

10.15 Offer Letter, dated November 17, 2004, between the registrant and Jeffrey Carr.

10.16‡ Employment Agreement, date March 14, 2005, between the registrant and Michael P. Gregoire.

10.17‡ Offer Letter, dated December 16, 2004, between the registrant and Bradford Benson.

10.18‡ Offer Letter, dated March 15, 2005, between the registrant and Divesh Sisodraker.

10.19‡ Credit and Guaranty Agreement, dated as of April 25, 2005, between the registrant, various lenders, and Goldman Sachs Specialty Lending Group, L.P.

10.20‡ Pledge and Security Agreement, dated as of April 25, 2005 between the registrant and Goldman Sachs Specialty Lending Group, L.P.

Exhibit Number	Description
21.1	List of subsidiaries.
99.1	Consent of IDC.

‡ Filed herewith.

* To be filed by amendment.

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

Date: May 2, 2005

TALEO CORPORATION

By: /s/ Michael P. Gregoire
Michael P. Gregoire
Chief Executive Officer

EXHIBIT INDEX

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‡ Filed herewith.

* To be filed by amendment.

EXHIBIT 2.2

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

TALEO CORPORATION,

BUTTERFLY ACQUISITION CORPORATION,

RECRUITFORCE.COM, INC.,

AND

WITH RESPECT TO ARTICLE VI ONLY,

MATTHEW ROBINSON

AS STOCKHOLDER AGENT

AND

U.S. BANK, NATIONAL ASSOCIATION AS ESCROW AGENT

DATED AS OF MARCH 10, 2005

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "AGREEMENT") is made and entered into as of March 10, 2005 by and among Taleo Corporation, a Delaware corporation ("PARENT"), Butterfly Acquisition Corporation, a California corporation and a wholly-owned subsidiary of Parent ("MERGER SUB"), Recruitforce.com, Inc., a California corporation (the "COMPANY"), and with respect to ARTICLE VI hereof only, Matthew Robinson as stockholder agent (the "STOCKHOLDER AGENT"), and U.S. Bank, National Association as escrow agent (the "ESCROW AGENT").

RECITALS

A. The Boards of Directors of each of Parent, the Company and Merger Sub believe it is in the best interests of each company and their respective stockholders that Parent acquire the Company through the statutory merger of Merger Sub with and into the Company (the "MERGER") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, (i) all of the issued and outstanding shares of capital stock of the Company (the "COMPANY CAPITAL STOCK") shall be extinguished or converted into the right to receive the Merger Consideration (as defined in Section 1.7(d)) on the terms and conditions set forth herein and (ii) all outstanding options (whether vested or unvested) to acquire shares of Company Common Stock shall expire.

C. The Escrow Amount (as defined in Section 1.7(d)) shall be placed in escrow by Parent, the release of which shall be contingent upon certain events and conditions, all as set forth in ARTICLE VI hereof.

D. The Company , on the one hand, and Parent and Merger Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration,

intending to be legally bound hereby the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the California General Corporation Law ("CALIFORNIA LAW"), Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the "SURVIVING CORPORATION."

1.2 Effective Time. The closing of the Merger (the "CLOSING") will take place concurrently with the execution and delivery hereof at the offices of Wilson Sonsini Goodrich & Rosati, 950 Page Mill Road, Palo Alto, California, unless another place or time is agreed to by Parent and the Company. The date upon which the Closing actually occurs is herein referred to as the "CLOSING DATE." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing an agreement or certificate of merger (or like instrument) (the "MERGER AGREEMENT") with the Secretary of State of California, in accordance with the relevant provisions of California Law (the time of acceptance by the Secretary of State of California of such filing being referred to herein as the "EFFECTIVE TIME").

(a) At the Closing, the Company shall deliver or cause to be delivered to Parent the following:

(i) from each of the Company's stockholders an executed Form W-8 or W-9, if applicable;

(ii) a certificate, dated as of the date of the Closing and signed by the Secretary of the Company, certifying that attached thereto are: (i) a true and complete copy of the resolutions adopted by the Company's Board of Directors, (ii) a true and complete copy of the resolutions adopted by the Company's stockholders, (iii) true and complete copies of the Company's Articles of Incorporation and Bylaws and (iv) specimen signatures of certain officers of the Company;

(iii) a good standing certificate for the Company from the Secretary of State of the State of California, dated as of a date within three days of the Closing;

(iv) with regard to the individuals listed on Schedule 1.2 (the "REQUIRED EMPLOYEES"), executed noncompetition agreements in the form attached hereto as Exhibit A (each, a "NONCOMPETITION AGREEMENT"), executed consideration holdback agreements in the form attached hereto as Exhibit B (each, a "CONSIDERATION HOLDBACK AGREEMENT"), executed employment agreements in the form attached hereto as Exhibit C (each, an "EMPLOYMENT AGREEMENT"), and

executed employment proprietary information and inventions agreements in the form attached hereto as Exhibit D (each, an "EMPLOYMENT PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT");

(v) those consents and waivers from third parties to the Company's contracts and other instruments required to consummate the transactions contemplated by this Agreement, as set forth in the Company Schedules (as defined in ARTICLE II); and

(vi) all other documents, agreements, certificates, instruments or writings required to be delivered by the Company on or prior to the Closing Date pursuant to this Agreement or as may be reasonably requested by any party in order to consummate the transactions contemplated by this Agreement.

(b) At the Closing, Parent shall deliver or cause to be delivered to the Company the following:

(i) with regard to the Required Employees, executed Noncompetition Agreements, executed Consideration Holdback Agreements, and executed Employment Agreements;

(ii) a certificate, dated as of the date of the Closing and signed by the Secretary of Parent, certifying that attached thereto are: (i) a true and complete copy of the resolutions adopted by Parent's Board of Directors, (ii) true and complete copies of the Parent Certificate of Incorporation and the Parent Bylaws and (iii) specimen signatures of certain officers of Parent;

(iii) a good standing certificate for Parent from the Secretary of State of the States of Delaware and California, dated as of a date within three days of the Closing; and

(iv) all other documents, agreements, certificates or writings required to be delivered by Parent on or prior to the Closing Date pursuant to this Agreement or as may be reasonably requested by any party in order to consummate the transactions contemplated by this Agreement.

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of California law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of each of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of each of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Articles of Incorporation; Bylaws. At the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be amended and restated to be the same as the Articles of Incorporation of Merger Sub until thereafter amended as provided by law and such Articles of Incorporation; provided, however, that Article I of the Articles of Incorporation of the Surviving Corporation shall be amended to read as follows: "The name of this corporation

is Butterfly, Inc."

(a) The Bylaws of the Surviving Corporation shall be amended and restated to be the same as the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended, except that all references to Merger Sub shall be changed to refer to the Company.

1.5 Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation. The officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Bylaws of the Surviving Corporation.

1.6 Amounts to be Paid by Parent. The consideration payable by Parent in exchange for all outstanding shares of Company Capital Stock pursuant to Section 1.7 shall equal the Initial Merger Consideration plus the Secondary Merger Consideration (equal to an aggregate of $5,000,000), payable as follows:

(a) The Initial Merger Consideration ($1,000,000 in the aggregate less any Excess Third Party Expenses to be paid pursuant to Section 5.5 below) shall be paid in cash by Parent to the Company shareholders at the Effective Time in the amounts set forth opposite each Company shareholder's name on Schedule 1.6 attached hereto under the column titled "Payment Upon Effective Time".

(b) On the ninetieth (90th) consecutive day immediately following the date of the Closing (or June 8, 2005) (the "SECOND PAYMENT DATE"), Parent shall pay the Company shareholders an amount in cash equal to the Secondary Merger Consideration less (i) the Escrow Amount, (ii) the Holdback Consideration and (iii) any Excess Third Party Expenses to be paid pursuant to Section 5.5 below not previously paid in connection with the payment of the Initial Merger Consideration (the "90TH DAY PARENT OBLIGATION"). The 90th Day Parent Obligation shall be paid in cash by Parent to the Company shareholders at the Second Payment Date in the amounts set forth opposite each Company shareholder's name on Schedule 1.6 attached hereto under the column titled "90th Day Payment".

(i) For the avoidance of doubt, the 90th Day Parent Obligation is an absolute and irrevocable binding obligation of Parent, without any right of set-off, counterclaim, condition, contingency, withholding or deduction whatsoever, due and payable in its entirety on the Second Payment Date, without any further action of Parent, the Company or any Company shareholder.

(ii) In the event of Parent's failure to pay the 90th Day Parent Obligation on the Second Payment Date in accordance with the terms of the Agreement, Parent shall be deemed in default of its obligations under this Agreement and, in addition to all other obligations of Parent hereunder, Parent shall (i) pay the Company shareholders the Default Penalty up to and including the date of actual payment made by Parent of the 90th Day Parent Obligation and (ii) reimburse Stockholder Agent for all reasonable fees and expenses (including reasonable legal fees and expenses) in taking all reasonable actions in order to collect the 90th Day Parent Obligation (and Default Penalty) from Parent on

behalf of the Company shareholders. The provision for the Default Penalty shall in no way diminish Parent's absolute and irrevocable obligation to pay the 90th Day Parent Obligation in full upon the Second Payment Date. In the event that Parent breaches its obligation to timely pay the 90th Day Parent Obligation, the Company and the Company shareholders shall be entitled to all rights and remedies as may be available in addition to the Default Penalty, including, without limitation, the right to sue for specific performance.

(iii) If prior to the payment of the 90th Day Payment Obligation, there is (i) any voluntary or involuntary proceeding relating to Parent, under the United States Bankruptcy Code, as amended, or any successor law or laws thereto or (ii) any case, action or other proceeding relating to Parent under any bankruptcy, insolvency, debt reorganization or similar law (whether now or hereafter in effect) of any state, country or other jurisdiction which seeks or provides for the relief of or reorganization or delay of debts generally or the liquidation and distribution of Parent's assets in satisfaction of its debts, then the 90th Day Payment Obligation shall be accelerated and immediately become due and payable in full upon such time.

(iv) If prior to the payment of the 90th Day Payment Obligation, a third party proposes to acquire Parent or substantially all of its assets (whether by asset purchase, stock purchase, merger, consolidation or otherwise), then as a condition to the closing of any such transaction, the 90th Day Payment Obligation shall be accelerated and immediately become due and payable in full prior to the closing of any such transaction.

(c) On the Second Payment Date, Parent shall deposit the Escrow Amount in cash with the Escrow Agent in accordance with Section 1.9(b).

(d) On the Second Payment Date Parent shall deposit the Holdback Amount in cash with U.S. Bank, National Association as escrow agent in accordance with the terms of the Consideration Holdback Agreement, which shall accrue interest and become payable to the shareholders of the Company set forth in Schedule 1.2 in accordance with the terms of the Consideration Holdback Agreement.

1.7 Effect on Capital Stock. In consideration of the payments to be made pursuant to Section 1.6, and subject to the terms and conditions of this Agreement, as of the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holder of any shares of the Company Capital Stock, the following shall occur:

(a) Conversion of Company Common Stock. Each share of Company Common Stock (as defined in Section 1.7(d)(ii)) issued and outstanding immediately prior to the Effective Time (other than any shares of Company Capital Stock to be canceled pursuant to Section 1.7(b) and any Dissenting Shares (as defined and to the extent provided in Section 1.8(a)) will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such share of Company Common Stock in the manner provided in Section 1.9, the amount in cash set forth opposite Company stockholder's name on Schedule 2.2 attached hereto, payable in accordance with the terms of this Agreement.

(b) Cancellation of Company-Owned Stock. Each share of Company Capital Stock owned by the Company or any direct or indirect wholly-owned subsidiary of the Company immediately prior to the Effective Time shall be canceled and extinguished and shall not be converted into the right to receive any consideration whatsoever in the Merger.

(c) Company Options. At the Effective Time, all Company Options then outstanding under the Company's 2002 Equity Incentive Plan (the "COMPANY STOCK OPTION PLAN") or otherwise, whether vested or unvested, shall expire.

(d) Certain Definitions.

(i) "CODE" shall mean the Internal Revenue Code of 1986, as amended.

(ii) "COMPANY COMMON STOCK" shall mean shares of common stock, no par value per share, of the Company.

(iii) "COMPANY OPTIONS" shall mean all issued and outstanding options (including commitments to grant options) to purchase or otherwise acquire Company Common Stock (whether or not vested) held by any person.

(iv) "COMPANY OPTIONHOLDERS" shall mean holders of Company Options.

(v) "COMPANY STOCKHOLDERS" shall mean holders of shares of Company Capital Stock.

(vi) "ESCROW AMOUNT" shall mean $500,000.

(vii) "HOLDBACK AMOUNT" shall equal $1,422,944, of which ten percent (10%) shall be placed in the Escrow Fund on behalf of Matthew Robinson and Pavel Vorobiev.

(viii) "INITIAL MERGER CONSIDERATION" shall mean $1,000,000, less any Excess Third Party Expenses to be paid pursuant to Section 5.5 below.

(ix) "MERGER CONSIDERATION" shall mean the sum of the Initial Merger Consideration plus the Secondary Merger Consideration.

(x) "NINETY DAY INTEREST AMOUNT" shall mean $15,657.

(xi) "DEFAULT PENALTY" shall be an amount calculated at the rate of fifteen percent (15%) per annum, compounded monthly (with pro rata amounts calculated for any partial annual period) multiplied by the amount of the 90th Day Parent Obligation.

(xii) "PERSON" shall mean an individual or entity, including a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (as defined in Section 2.4 below).

(xiii) "SECONDARY MERGER CONSIDERATION" shall mean $4,000,000

plus the Ninety Day Interest Amount, less any Excess Third Party Expenses to be paid pursuant to Section 5.5 below.

(xiv) "SECURITIES ACT" shall mean the Securities Act of 1933, as amended.

1.8 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has demanded and perfected appraisal or dissenters' rights for such shares in accordance with California Law and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal or dissenters' rights ("DISSENTING SHARES") shall not be converted into or represent a right to receive Merger Consideration pursuant to Section 1.6, but the holder thereof shall only be entitled to such rights as are granted by California Law.

(b) Notwithstanding the provisions of subsection (a), if any holder of shares of Company Capital Stock who is otherwise entitled to exercise dissenters' rights under California Law shall effectively withdraw or lose (through failure to perfect or otherwise) such dissenters' rights, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive Merger Consideration, without interest thereon, in respect of such shares of Company Capital Stock pursuant to this Agreement, without interest thereon, upon surrender of the certificate representing such shares upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demands for the exercise of dissenters' rights in respect of any shares of Company Capital Stock, withdrawals of such demands, and any other instruments served pursuant to California Law (including without limitation instruments concerning appraisal or dissenters' rights) and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent or as required by law, voluntarily make any payment with respect to any demands for the exercise of dissenters' rights in respect of any shares of Company Capital Stock or offer to settle or settle any such demands.

1.9 Surrender of Certificates.

(a) Exchange Agent. U.S. Bank, National Association shall serve as Exchange Agent in the Merger.

(b) Parent to Provide Merger Consideration. Parent shall make available to the Exchange Agent for payment to the Company shareholders in exchange for the outstanding shares of Company Capital Stock in accordance with this ARTICLE I, an amount of cash equal to (i) at the Effective Time, the Initial Merger Consideration and (ii) on the 90th day following the Effective Time, the Secondary Merger Consideration; provided that, on behalf of the holders of Company Capital Stock, Parent shall cause the Exchange Agent to withhold the Escrow Amount from the Secondary Merger Consideration and deposit such Escrow Amount into an escrow account; provided further that 50% of the

portion of the Escrow Amount to be funded by each of Matthew Robinson and Pavel Vorobiev shall be funded out of the Holdback Amount. The pro rata portion of the Escrow Amount to which each holder of Company Capital Stock shall be entitled upon distribution of the remaining Escrow Amount, if any, at the termination of the Escrow Period shall be as set forth on Schedule 6.2 hereof. Distributions of any Merger Consideration from the Escrow Amount shall be governed by the terms and conditions of ARTICLE VI below.

(c) Exchange Procedures. Prior to the distribution of any Merger Consideration pursuant to Section 1.6, each holder of record of a certificate or certificates (the "CERTIFICATES") which immediately prior to the Effective Time represented outstanding shares of Company Capital Stock, and which shares were converted into the right to receive Merger Consideration pursuant to Section 1.6, shall deliver to the Exchange Agent a letter of transmittal (which shall be in customary form and shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent) and the Certificates being surrendered by such holder. Upon surrender of a Certificate to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration payable to such holder pursuant to Section 1.6 (less, in the case of the Secondary Merger Consideration, the portion of the Secondary Merger Consideration to be deposited in the Escrow Fund (as defined in Section 6.2(a)) on such holder's behalf pursuant to ARTICLE VI hereof, and the Certificate so surrendered shall forthwith be cancelled, provided, however, that the holder of such Certificate shall not receive any distributions of the cash deposited with the Exchange Agent as to the Secondary Merger Consideration until the 90th day following the Effective Date. From the Closing and until so surrendered, each outstanding Certificate that, prior to the Effective Time, represented shares of Company Capital Stock will be deemed from and after the Effective Time, for all corporate purposes, to represent solely the Merger Consideration.

(d) No Liability. Notwithstanding anything to the contrary in this Section 1.9, none of the Exchange Agent, the Surviving Corporation or any party hereto shall be liable to a holder of shares Company Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.10 No Further Ownership Rights in Company Capital Stock. Subject to Parent's payment obligations under Section 1.6, all Merger Consideration issued pursuant to the Merger upon the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this ARTICLE I.

1.11 Lost, Stolen or Destroyed Certificates. In the event any Certificates evidencing shares of Company Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or

destroyed Certificates, upon receiving notice from the holder thereof and upon the making of an affidavit of that fact by such holder, the Merger Consideration payable to the holder thereof pursuant to Section 1.6; provided, however, that Parent may, in its discretion and, as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

1.12 Tax and Accounting Consequences. It is intended by the parties hereto that the Merger shall constitute a taxable purchase of the shares of the Company.

1.13 Withholding Rights. Parent, the Company, the Exchange Agent or the Escrow Agent shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payments under the provisions of any applicable Tax laws; provided that the applicable shareholders of the Company shall be given written notice of any such withholding. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

1.14 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any such further action is necessary or reasonably desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, the officers and directors of the Company and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent, subject to such exceptions as are disclosed in the disclosure schedule supplied by the Company to Parent which identify the section

and subsection of this Agreement to which such disclosure relates or is clearly apparent on the face of such disclosure that it relates to any other section or subsection of this Agreement (the "COMPANY SCHEDULES") and dated as of the date hereof, as follows:

2.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under California Law. The Company has the corporate power and authority to own its properties and to carry on its business as now being conducted. The Company is duly qualified to do business and is in good standing as a foreign corporation in each state or other jurisdiction in which the failure to be so qualified would have a material adverse effect on the business, assets (including intangible assets), financial condition, results of operations or prospects of the Company (hereinafter referred to as a "MATERIAL ADVERSE EFFECT"). The Company has delivered a true

and correct copy of the Articles of Incorporation and Bylaws of the Company, each as amended to date, to Parent.

2.2 Company Capital Structure.

(a) The authorized capital stock of the Company consists of thirty million (30,000,000) shares of authorized Company Common Stock, of which 16,018,420 are issued and outstanding. Except as set forth in the immediately preceding sentence, no shares of capital stock or other equity securities of the Company are issued or reserved for issuance except as set forth in Section 2.2(c) below. All outstanding shares of Company Capital Stock are, and at the Closing will be, duly authorized, validly issued, fully paid and non assessable and not subject to preemptive rights created by statute, the Articles of Incorporation or Bylaws of the Company or any agreement to which the Company is a party or by which it is bound. None of the outstanding Company Capital Stock or other securities of the Company were issued in violation of the Securities Act, or any applicable state blue sky laws. Schedule 2.2 hereto is an accurate and complete list, as of the Closing Date, of all Company Stockholders and Company Optionholders and their respective addresses, the number and class or series of shares of Company Capital Stock and Company Options held by such Company Stockholders and Company Optionholders, the pro rata ownership of the outstanding shares of Company Common Stock, the Merger Consideration to be issued to each holder and the amount of cash to be deposited into the Escrow Fund on behalf of each holder. An executive officer of the Company has certified that such list is complete and accurate as of the Closing Date.

(b) Except for the Company Stock Option Plan or Restricted Stock Purchase Agreements entered into with the Company's founders, neither the Company nor any of its subsidiaries has ever adopted, sponsored or maintained any stock option plan or any other plan or agreement providing for equity compensation to any person. The Company has reserved a total of 2,000,000 shares of Company Common Stock for issuance under the Company Stock Option Plan of which options to purchase 200,000 shares of Company Common Stock are outstanding and 1,340,000 shares are available to be granted as of the date hereof. True and complete copies of all agreements and instruments relating to or issued under the Company Stock Option Plan have been provided to Parent and such agreements and instruments have not been amended, modified or

supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments, from the forms thereof provided to Parent.

(c) Except for the outstanding options to purchase Company Common Stock as set forth above, as of the Effective Time, there are no other options, warrants, calls, rights, commitments or agreements of any character, written or oral, to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company. There are no voting trusts, proxies, or other agreements or understandings with respect to the capital stock of the Company.

2.3 Subsidiaries. The Company does not have and has never had any subsidiaries or affiliated companies and does not otherwise own and has never otherwise owned any shares of capital stock or any interest in, or control, directly or indirectly, any other corporation, partnership, association, joint venture or other business entity.

2.4 Authority. Subject only to the filing and recordation of appropriate merger documents as required by California Law, the Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject only to the filing and recordation of appropriate merger documents as required by California Law. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies. Subject only to the approval of the Merger and this Agreement by the Company's stockholders, the execution and delivery of this Agreement by the Company does not, and, as of the Closing, the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (any such event, a "CONFLICT") (i) any provision of the Articles of Incorporation or Bylaws of the Company, or (ii) any mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or its properties or assets, where such Conflict would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on the Company. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any court, tribunal, judicial or arbitral body, regulatory or administrative agency or commission, or other national, federal, state, county, municipal, local or foreign governmental authority, instrumentality, agency or

commission ("GOVERNMENTAL ENTITY") or any third party (so as not to trigger any Conflict), is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws, (ii) such filings as are required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR ACT"), if any, (iii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as shall have been obtained prior to the Closing, and (iv) such other consents, waivers, authorizations, filings, approvals and registrations which are set forth on Schedule 2.4.

2.5 Company Financial Statements. Schedule 2.5 sets forth the Company's (i) unaudited balance sheets as of March 31, 2004, and the related unaudited statements of operations, cash flows and stockholders equity (deficit) for the

fiscal year then ended and (ii) the Company's unaudited balance sheet as of February 28, 2005 (the "BALANCE SHEET") and the related unaudited statement of operations, cash flow and stockholder's equity (deficit) for the eleven-month period then ended (collectively, the "COMPANY FINANCIAL STATEMENTS"). The Company Financial Statements are correct in all material respects. The Company Financial Statements present fairly the financial condition and operating results of the Company as of the dates and during the periods indicated therein on a cash accounting basis.

2.6 No Undisclosed Liabilities. The Company does not have any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required to be reflected in financial statements in accordance with GAAP), that in the aggregate exceeds $10,000, and which (i) has not been reflected or reserved against in the Balance Sheet, or (ii) has arisen other than in the ordinary course of the Company's business and consistent with past practices since February 28, 2005. The Company does not have any outstanding payables, whether reflected on the Company Financial Statements or not, which (i) exceed $10,000 or (ii) are more than 60 days past due.

2.7 No Changes. Since February 28, 2005, there has not been, occurred or arisen any transaction by the Company except in the ordinary course of business as conducted on that date and consistent with past practices;

(a) amendments or changes to the Articles of Incorporation or Bylaws of the Company;

(b) capital expenditure or commitment by the Company of $10,000 in any individual case or $20,000 in the aggregate;

(c) destruction of, damage to or loss of any material assets, business or customer of the Company (whether or not covered by insurance);

(d) labor disputes or grievances, work stoppages or slowdowns, or claim of wrongful discharge or other unlawful labor practice or action;

(e) change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company;

(f) revaluation by the Company of any of its assets;

(g) declaration, setting aside or payment of a dividend or other distribution with respect to the capital stock of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any of its capital stock or interests;

(h) increase of the salary or other compensation payable or to become payable by the Company to any of its officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment of a severance payment, termination payment, bonus or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement;

(i) sale, lease, license or other disposition of any of the assets or properties of the Company, except in the ordinary course of business as conducted on that date and consistent with past practices;

(j) amendment or termination of any material contract, agreement or license to which the Company is a party or by which it is bound;

(k) loan by the Company to any person or entity, incurring by the Company of any indebtedness, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or guaranteeing of any debt securities of others, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices;

(l) waiver or release of any material right or claim of the Company, including any write-off of provisions for uncollectible accounts receivable of the Company;

(m) commencement or notice or threat of commencement of any lawsuit or proceeding against or investigation of the Company or its affairs;

(n) notice of any claim of ownership by a third party of any Company Intellectual Property (as defined in Section 2.11(a)(iii)) or of infringement by the Company of any third party's Intellectual Property Rights (as defined in Section 2.11(a)(ii));

(o) issuance or sale by the Company of any shares of capital stock, or securities exchangeable, convertible or exercisable therefor, or of any other of its securities;

(p) change in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(q) event or condition of any character that has or could reasonably be expected to have a Material Adverse Effect on the Company; or

(r) negotiation or agreement by the Company or any officer or employees thereof to do any of the things described in the preceding clauses (a) through (q) (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement).

2.8 Tax.

(a) Definition of Taxes. For the purposes of this Agreement, "TAX" or, collectively, "TAXES," means (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) of this Section 2.8 as a result of being a

member of an affiliated, consolidated, combined or unitary group for any period, and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this Section 2.8 as a result of any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor or transferor entity. References to the Company are to the Company and each of its subsidiaries.

(b) Tax Returns and Audits.

(i) The Company has prepared and filed on a timely basis, all required federal, state, local and foreign returns, estimates, information statements and reports ("RETURNS") due to be filed (taking into account any extension of such due date) relating to any and all Taxes concerning or attributable to the Company or its operations and such Returns are true, correct and complete in all material respects and have been completed in accordance with applicable law, in all material respects.

(ii) The Company: (a) has timely paid all Taxes it is required to pay, and (b) has withheld and paid over to the appropriate Tax authorities all federal and state income taxes, Taxes pursuant to the Federal Insurance Contribution Act, Taxes pursuant to the Federal Unemployment Tax Act and other Taxes required to be withheld.

(iii) The Company has not been delinquent in the payment of any Tax claimed to be due and payable by any taxing authority nor is there any Tax deficiency outstanding,

proposed or assessed against the Company, nor has the Company executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax which waiver or extension is still in effect.

(iv) No audit or other examination of any Return of the Company is presently in progress, nor has the Company been notified of any request for such an audit or other examination.

(v) As of the date of the Balance Sheet, the Company did not have any liabilities for unpaid Taxes which had not been accrued or reserved against on the Balance Sheet, whether asserted or unasserted contingent or otherwise, and the Company has no knowledge of any basis for the assertion of any such liability attributable to the Company, its assets or operations. Since the date of the Balance Sheet, the Company has not incurred any liability for Taxes other than in the ordinary course of business.

(vi) The Company has provided or made available to Parent copies of all Tax Returns for all periods as requested by Parent.

(vii) There are (and as of immediately following the Closing there will be) no liens, pledges, charges, claims, security interests or other encumbrances of any sort ("LIENS") on the assets of the Company relating to or attributable to Taxes, other than Liens for Taxes not yet due and payable. The

Company has no knowledge of any basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien on the assets of the Company.

(viii) As of the Closing, there will not be any contract, agreement, plan or arrangement, including but not limited to the provisions of this Agreement, covering any employee or former employee of the Company or other person that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G or 404 or 162(m) of the Code.

(ix) The Company is not, and has not been at any time, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

(x) No adjustment relating to any Returns filed by the Company has been proposed, formally or informally, by any Tax authority to the Company.

(xi) No claim has ever been made by an authority in a jurisdiction where the Company does not file Returns that it is or may be subject to taxation by that jurisdiction.

(xii) The Company has (a) never been a member of an affiliated group (within the meaning of Code Section 1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), (b) never been a party to any Tax sharing, indemnification or allocation agreement, nor does the Company owe any amount under any such

agreement, (c) no liability for the Taxes of any person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law and including any arrangement for group or consortium relief within a jurisdiction (or similar arrangement)), as a transferee or successor, by contract, or otherwise and (d) never been a party to any joint venture, partnership or, to the knowledge of the Company, other agreement that could be treated as a partnership for Tax purposes.

(xiii) The Company has not constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax free treatment under Section 355 of the Code.

(xiv) The Company has not engaged in a "reportable transaction" within the meaning of Treas. Reg. Section 1.6011-4 or a transaction that is the same or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a "listed transaction", as set forth in Treas. Reg. Section 1.6011-4(b).

(xv) The Company uses the accrual method of accounting for income Tax purposes. The Company will not be required to include any income or gain or exclude any deduction or loss from Taxable income as a result of (a) any change in method of accounting under Section 481(c) of the Code, closing agreement under Section 7121 of the Code (or similar provision of applicable

law), (b) installment sale or open transaction disposition or (c) prepaid amount.

2.9 Restrictions on Business Activities. There is no agreement (noncompete or otherwise), commitment, judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company which has or reasonably would be expected to have the effect of prohibiting or materially impairing any business practice (including, without limitation, the licensing of any product) material to the Company, any acquisition of property (tangible or intangible) by the Company or the conduct of business by the Company. Without limiting the foregoing, the Company has not entered into any agreement under which the Company is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

2.10 Title to Properties; Absence of Liens and Encumbrances.

(a) The Company owns no real property, nor has it ever owned any real property. Schedule 2.10(a) of the Company Schedules sets forth a list of all real property currently leased by the Company, the name of the lessor and the date of the lease and each amendment thereto. All such current leases are in full force and effect, are valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default) by the Company or, to the knowledge of the Company, any other party.

(b) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets used or held for use in its business, free and clear of any Liens, except as reflected in the Company Financial Statements or in Schedule 2.10(b) of the Company Schedules and except for liens for taxes not yet due and payable and such imperfections of title and encumbrances, if any, which are not material in character, amount or extent, and which do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

2.11 Intellectual Property.

(a) Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(i) "TECHNOLOGY" shall mean any or all of the following: (1) works of authorship including, without limitation, (a) computer programs, algorithms, routines, source code and executable code, whether embodied in software or otherwise (collectively, "SOFTWARE"), and (b) documentation provided for use therewith; (2) inventions (whether or not patentable) and improvements; (3) proprietary and confidential information, including, without limitation, technical data and customer and supplier lists, trade secrets, know how and techniques; (4) databases, data compilations and collections; (5) processes, software tools, devices, methods, prototypes, test methodologies and software development tools; and (6) all instantiations of the foregoing in any form and embodied in any media.

(ii) "INTELLECTUAL PROPERTY RIGHTS" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (1) all United States and foreign patents and utility models and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and equivalent or similar rights registered or applied for anywhere in the world in inventions and discoveries ("PATENTS"); (2) all trade secrets and other rights in know-how and confidential information, including, without limitation, confidential invention disclosures ("TRADE SECRETS"); (3) all copyrights, copyrights registrations and applications therefor throughout the world ("COPYRIGHTS"); (4) all industrial designs and any registrations and applications therefor throughout the world; (5) all rights in World Wide Web addresses ("WWW") and domain names and applications and registrations therefor ("INTERNET PROPERTIES"); (6) all rights in trade names, trade dress, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world ("TRADEMARKS"); and (7) any similar corresponding or equivalent foreign rights to any of the foregoing anywhere in the world.

(iii) "COMPANY INTELLECTUAL PROPERTY" shall mean any Intellectual Property Rights including, without limitation, Company Registered Intellectual Property Rights (as defined in Section 2.11(c)) that are owned exclusively by the Company and used by the Company in its business as currently conducted on the date of this Agreement or, with respect to Company Products, as currently planned or contemplated to be conducted by the Company.

(iv) "COMPANY TECHNOLOGY" shall mean any Technology that is owned exclusively by the Company and used by the Company in its business as currently conducted on the date of this Agreement or, with respect to Company Products, as currently planned or contemplated to be conducted by the Company.

(v) "REGISTERED INTELLECTUAL PROPERTY RIGHTS" shall mean all United States, international and foreign: (1) Patents; (2) registered Trademarks, applications to register Trademarks, including intent-to-use applications, or other registrations or applications related to Trademarks; (3) Copyrights registrations and applications to register Copyrights; and (4) any other Intellectual Property Right that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any state, government or Governmental Entity at any time.

(b) Schedule 2.11(b) of the Company Schedules contains a complete and accurate list (by name and version number) of all products, Software and/or service offerings (including without limitation the data model, data architecture, database design, logical database model and all elements for the hosting infrastructure underlying all products, Software and/or service offerings listed in Schedule 2.11(b)) of the Company or any of its subsidiaries (i) that have been sold, distributed or otherwise disposed of in the three (3) year period preceding the date hereof or (ii) for which the Company or any of its subsidiaries currently allocate resources with the intent to sell, distribute or otherwise dispose of in the twelve (12) month period after the date hereof (collectively, the "COMPANY PRODUCTS"), including without limitation, Company Products currently under development.

(c) Schedule 2.11(c) of the Company Schedules lists all Registered Intellectual Property Rights owned by, filed in the name of, or applied for in the name of or applied for by, the Company or any of its subsidiaries as of the date of this Agreement (the "COMPANY REGISTERED INTELLECTUAL PROPERTY RIGHTS") and lists any pending proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to any of the Company Intellectual Property. Each item of Company Registered Intellectual Property Rights is currently in compliance with all formal legal requirements (including, without limitation, payment of filing, examination and maintenance fees and proofs of use), except where such non-compliance would not materially prejudice, impair or result in the abandonment of the Company Registered Intellectual Property Rights, and is subsisting (or applied for in the case of applications). All necessary documents and certificates in connection with such Company Registered Intellectual Property Rights required to be filed on or prior to the date of this Agreement without possibility of extension have been filed with the PTO, the United States Copyright Office or the relevant patent, copyright, trademark or other authorities in foreign jurisdictions, as the case may be, for the purposes of perfecting, prosecuting and maintaining the Company Registered Intellectual Property Rights. Except as set forth on Schedule 2.11(c) of the Company Schedules, as of the date of this Agreement, there are no actions that must be taken by the Company or its subsidiaries within one hundred and twenty (120) days of the date of this Agreement in order to perfect, preserve, renew or maintain the Company Registered Intellectual Property Rights,

including, without limitation, the unextendible payment of any registration, maintenance or renewal fees or the unextendible filing of any responses to PTO office actions, documents, applications or certificates.

(d) In each case in which the Company or any of its subsidiaries have acquired or purported to acquire ownership of any of the Company Intellectual Property from any person (other than employees, consultants and contractors of the Company or any subsidiary, with respect to which see Section 2.11(f) below) or other entity, the Company or such subsidiary has obtained a valid and enforceable assignment sufficient to irrevocably transfer all Intellectual Property Rights in and to such Company Intellectual Property (including the right to seek past and future damages with respect thereto, if applicable) to the Company or such subsidiary. To the maximum extent provided for, by, and in accordance with and as required by, applicable laws and regulations, the Company or each such subsidiary has recorded each such assignment of a Registered Intellectual Property Right assigned to the Company or each such subsidiary with the PTO the United States Copyright Office or equivalent authorities outside the United States.

(e) Neither the Company nor any of its subsidiaries has pending any suit, action or proceeding or received any written notice from any person or other entity claiming that any Company Intellectual Property is invalid or unenforceable. To the Company's knowledge, no person or other entity is infringing or misappropriating any Company Intellectual Property. The Company has not received written notice from any person or other entity claiming that the operation or any act, product, technology or service (including products, technology or services currently under development) of the Company infringes or

misappropriates any Intellectual Property Right of any person or constitutes unfair competition or trade practices under the laws of any jurisdiction.

(f) The Company and each of its subsidiaries have taken commercially reasonable steps to protect the Company's and its subsidiaries' rights in Trade Secrets of the Company that the Company desires to maintain as confidential. All use, disclosure or appropriation of confidential information owned by the Company or any of its subsidiaries by or to a third party has been pursuant to the terms of a written agreement or other legally binding arrangement between the Company or its subsidiary and such third party. Without limiting the foregoing, the Company and each of its subsidiaries have and enforce, a policy requiring each employee, consultant and contractor to execute proprietary information, confidentiality and assignment agreements materially similar to the form set forth in Schedule 2.11(f) of the Company Schedules, and all current and former employees, consultants and contractors of the Company and each of its subsidiaries who have created or modified any Company Technology or Company Intellectual Property have executed such an agreement assigning all of such employees', consultants' and contractors' rights in and to Company Technology and Company Intellectual Property to the Company or such subsidiary.

(g) All Company Intellectual Property and Company Technology is fully transferable, alienable or licensable by Parent without restriction and without payment of any kind to any third party. No prior employer of any current or former employee of the Company has any right, title or claim to any technology used by the Company in connection with the operation or conduct of the

business of the Company or incorporated in any Company Product. Any work performed on any such technology by anyone employed by another entity (i) was completed without using any equipment, supplies, facility, or trade secret information of the employer and (ii) was developed entirely on the employee's own time as relates to such other entity and (iii) does not relate to the employer's business or to the employer's actual or demonstrably anticipated research or development or does not result from any work performed by the employee for the employer.

(h) Each item of Company Intellectual Property is free and clear of any Liens and encumbrances, except for non-exclusive licenses granted to end-user customers in the ordinary course of business. The Company is the exclusive owner of all Company Technology and Company Intellectual Property. Without limiting the generality of the foregoing, (i) the Company is the exclusive owner of all registrations for Internet Properties used by the Company in the conduct of the business of the Company, including, without limitation, the sale, distribution or provision of any Company Products and the operation of any WWW sites by the Company; and (ii) other than Copyrighted works licensed from third parties and listed on Schedule 2.11(n), the Company owns exclusively all Copyrighted works that are included or incorporated into Company Products.

(i) Neither the Company nor any of its subsidiaries has transferred ownership of, or granted any exclusive license of or any exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Technology or Intellectual Property Right that is or was Company Technology or Company Intellectual Property, to any other person or entity, or

permitted the Company's or its subsidiary's rights in such Company Technology and Company Intellectual Property to lapse or enter the public domain except for Trade Secrets of the Company that the Company does not desire to maintain as confidential, which shall in no event include:

(i) the Company Source Code (as defined in Section 2.11(w));

(ii) product or functional requirement documents or plans to be used by Company's software architects or software coders as a blueprint for future modifications or enhancements to the Company Source Code;

(iii) descriptions of the architecture of the Company Products, excluding high level, general descriptions of the nature that might be provided in a sales context (i.e., web services architecture); and

(iv) descriptions of the Company's data model, data architecture, database design or logical database model underlying the Company Products, excluding high level, general descriptions of the nature that might be provided in a sales context.

(j) Other than Technology licensed from third parties that is either (a) listed on Schedule 2.11(n) or (b) licensed under "shrink wrap," "click wrap," and similar publicly available commercial binary code end user licenses pursuant to which the Company is not obligated to pay more than one thousand dollars ($1,000.00), all Technology used in or necessary to the conduct of

the Company's business as currently conducted on the date of this Agreement or, with respect to the Company Products, as currently planned or contemplated to be conducted by the Company over the next twelve (12) months, including, without limitation, the operation, design, license, development, manufacture, use, import, distribution and sale of Company Products, is Company Technology and was written and created solely by either (i) employees of the Company acting within the scope of their employment or (ii) by third parties who have validly and irrevocably assigned all of their rights, including, without limitation, Intellectual Property Rights therein, to the Company, and no person or other entity (including any former employers of current or former Company employees) owns or has any rights to any of the Company Technology or Company Intellectual Property.

(k) Other than Technology licensed from third parties that is either (a) listed on Schedule 2.11(n) or (b) licensed under "shrink wrap," "click wrap," and similar publicly available commercial binary code end user licenses pursuant to which the Company is not obligated to pay more than one thousand dollars ($1,000.00), Company Technology and Company Intellectual Property constitutes all the Technology, Intellectual Property Rights and Company Registered Intellectual Property Rights used in and/or necessary to the conduct of the business of the Company as it currently is conducted on the date of this Agreement, and, with respect to the Company Products, as it is currently planned or contemplated to be conducted by the Company over the next twelve (12) months, including, without limitation, the operation, design, license, development, manufacture, use, import, distribution and sale of Company Products. This Section 2.11(k) is not a representation or warranty of non-infringement of third party patent rights.

(l) The operation of the business of the Company and each subsidiary of the Company as it is currently conducted on the date of this Agreement, or, with respect to the Company Products, as is planned or contemplated to be conducted, by the Company and each such subsidiary over the next twelve (12) months, including but not limited to the design, development, use, import, branding, advertising, promotion, marketing, manufacture and sale of Company Products does not and will not when conducted by Parent (including following any merger of the Company into Parent) in substantially the same manner following the Closing, infringe or misappropriate any Intellectual Property Right of any person, violate any right (including any statutory right to privacy or publicity) of any person or other entity, or constitute unfair competition or trade practices under the laws of any jurisdiction. To clarify, "in substantially the same manner" excludes the addition to the Company Products of non-Company materials not previously used by the Company or mentioned in Company information relating to the Company Products.

(m) No Company Technology, Company Intellectual Property or Company Product is subject to any outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company or any of its subsidiaries or that adversely affects the validity, use or enforceability of such Company Intellectual Property.

(n) Schedule 2.11(n)(i) of the Company Schedules lists, as of the date of this Agreement, all contracts, licenses and agreements to which the Company is a party and pursuant to which the Company obtains a license to use any third party Technology or Intellectual Property

Rights, other than "shrink wrap," "click wrap," and similar publicly available commercial binary code end user licenses pursuant to which the Company is not obligated to pay more than one thousand dollars ($1,000.00) and Schedule 2.11(n)(ii) of the Company Schedules lists, as of the date of this Agreement, all contracts, licenses and agreements to which the Company is a party and pursuant to which the Company grants to a third party a license to use any Company Technology or Company Intellectual Property, (the contracts, licenses and agreements listed in Schedule 2.11(n)(i) and Schedule 2.11(n)(ii) collectively referred to as "IP CONTRACTS"). All IP Contracts are in full force and effect. Neither the Company nor any of its subsidiaries is in material breach or default of nor has the Company nor its subsidiaries materially failed to perform under any of the IP Contracts and, to the Company's knowledge: (i) no other party to any such IP Contract is in material breach thereof or has materially failed to perform thereunder; and (ii) there are no disputes regarding the scope of or performance under such IP Contracts, including with respect to any payments to be made or received by the Company thereunder. The consummation of the transactions contemplated by this Agreement will neither violate nor result in the breach, modification, cancellation, termination or suspension of any IP Contracts or entitle the other party or parties to such IP Contracts to terminate such IP Contracts. The consummation of the transactions contemplated by this Agreement will not result in the IP Contracts restricting Parent from exercising all of the Company's and each of its subsidiaries' rights under the IP Contracts to the same extent the Company and each of its subsidiaries would have been able to had the transactions contemplated by this

Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company or such subsidiary would otherwise be required to pay had it exercised such rights to the same extent as the Parent.

(o) Schedule 2.11(o) of the Company Schedules lists all IP Contracts in which the Company or any of its subsidiaries have agreed in writing to, or have assumed, any obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or liability or provide a right of rescission with respect to the infringement or misappropriation by the Company or such other person or entity of the Intellectual Property Rights of any person or entity other than the Company.

(p) Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent of any contracts or agreements to which the Company is a party, by operation of law or otherwise, will result in (i) Parent's granting, pursuant to an Agreement to which the Company is a party, to any person or entity any right or license to any Technology or Intellectual Property Right owned by, or licensed to, either the Company or Parent (excluding, with respect only to out-licensed Technology or Intellectual Property Rights, the agreements listed in Schedule 2.11(n)(ii) of the Company Schedules); or (ii) Parent's being bound by, or subject to, pursuant to an Agreement to which the Company is a party, any non-compete or other restriction on the operation or scope of the Company's or Parent's respective businesses; or (iii) Parent's being obligated, pursuant to an Agreement to which the Company is a party, to pay any royalties or other amounts to any person or entity in excess of those payable by the Company prior to the Closing.

(q) The Company and each of its subsidiaries have the right to use, pursuant to valid licenses, all data (including, without limitation, personal data of third parties), all software development tools, library functions, operating systems, data bases, compilers and all other third-party Software that are used in the business of the Company and each of its subsidiaries as of the date of this Agreement or that are required, as of the date of this Agreement, to create, modify, compile, operate or support any software that is Company Technology or is incorporated into any Company Product.

(r) Schedule 2.11(r) of the Company Schedules lists as of the date of this Agreement all software that is distributed as "free software", "open source software" or under a similar licensing or distribution model (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License) (collectively, "OPEN SOURCE MATERIALS") used by the Company in any way, and describes the manner in which such Open Source Materials were used (such description shall include, without limitation, whether (and, if so, how) the Open Source Materials were modified and/or distributed by the Company or any subsidiary). The Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, any Company Product or used Open Source Materials to provide any Company Product; (ii) distributed Open Source Materials in conjunction with or for use with any Company Product; or (iii) used Open Source Materials, each of (i), (ii) or (iii) in a manner that creates, or purports to create, obligations

for the Company with respect to any Company Intellectual Property or that grants, or purports to grant, to any third party, any rights or immunities in or to any Company Intellectual Property (including, but not limited to, using any Open Source Materials in a manner that requires any Company Technology to be (x) disclosed or distributed in source code form, (y) licensed for the purpose of making derivative works, or (z) redistributable at no charge or with any restriction on the consideration charged therefor).

(s) No person who has licensed any Technology to the Company or any of its subsidiaries has ownership rights or license rights to improvements made by or for the Company or any such subsidiary in such Technology.

(t) No government funding, facilities of a university, college, other educational institution or research center or funding from third parties was used in the development of any Company Technology, Company Products or Company Intellectual Property. No current or former employee, consultant or independent contractor of the Company or any subsidiary of the Company, who was involved in, or contributed to, the creation or development of any Company Technology, Company Products or Company Intellectual Property, has performed services for the government, university, college, or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or such subsidiary.

(u) Neither the Company nor any of its subsidiaries has received any opinion of counsel that any third party patent applies to any Company Product.

(v) Neither the Company nor any subsidiary has collected any personally identifiable information from any third parties except as described on Schedule 2.11(v) of the Company Schedules. The Company and each subsidiary have complied with all applicable laws and their respective internal privacy policies relating to (i) the privacy of users of the Company Products and all Internet Properties owned, maintained or operated by the Company or any of its subsidiaries as part of the business of the Company as currently conducted on the date of this Agreement or currently planned or contemplated to be conducted by the Company; and (ii) the collection, storage and transfer of any personally identifiable information collected by the Company or any of its subsidiaries or by third parties having authorized access to the records of the Company or any of its subsidiaries. The execution, delivery and performance of this Agreement comply with all applicable laws relating to privacy and with the Company's and each subsidiary's privacy policies. Copies of all current and prior privacy policies of the Company and each subsidiary, including the privacy policies included in the Company's Internet website, are attached as Schedule 2.11(v) of the Company Schedules. Each such privacy policy and all materials distributed or marketed by the Company or any of its subsidiaries have at all times made all disclosures to users or customers required by applicable laws and none of such disclosures made or contained in any such privacy policy or in any such materials have been in violation of any applicable laws.

(w) Neither the Company, any subsidiary nor any other person or entity acting on their behalf has disclosed, delivered or licensed to any person or other entity, agreed to disclose, deliver or license to any person or other entity, or permitted the disclosure or delivery to any escrow agent or other

person or entity of, any Company Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) would reasonably be expected to, result in the disclosure or delivery by the Company or any subsidiary or any person or other entity acting on their behalf to any person or other entity of any Company Source Code. 2.11(w) of the Company Schedules identifies each contract pursuant to which the Company or any subsidiary has deposited, or is or may be required to deposit, with an escrow agent or any other person or entity, any Company Source Code, and describes whether the execution of this Agreement or the consummation of the Merger or any of the other transactions contemplated by this Agreement, in and of itself, would reasonably be expected to result in the release from escrow of any Company Source Code. As used in this Section 2.11(w) "COMPANY SOURCE CODE" means, collectively, any software source code, any material portion or aspect of software source code, or any material proprietary information or algorithm contained in or relating to any software source code, of any Company Technology contained in the Company Products.

2.12 Agreements, Contracts and Commitments. Except as set forth on Schedule 2.12 of the Company Schedules, the Company does not have, is not a party to nor is it bound by:

(i) Any employment, consulting or severance agreement, contract or commitment;

(ii) any collective bargaining agreements;

(iii) any agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement (either alone or in connection with additional or subsequent events) or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement (either alone or in connection with additional or subsequent events);

(iv) any fidelity or surety bond or completion bond;

(v) any lease of personal property having aggregate payment obligations or receivables individually in excess of $10,000;

(vi) any agreement of indemnification or guaranty;

(vii) any agreement, contract or commitment containing any covenant limiting the freedom of the Company to engage in any line of business or to compete with any person;

(viii) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of $10,000 individually or $20,000 in the aggregate;

(ix) any agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company's business;

(x) any mortgages, indentures, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit, including guaranties referred to in clause (viii) hereof;

(xi) any purchase order or contract for the purchase of raw materials involving $10,000 or more;

(xii) any construction contract;

(xiii) any distribution, joint marketing or development agreement;

(xiv) any agreement, contract or commitment pursuant to which the Company has granted or may grant in the future, to any party a source-code license or option or other right to use or acquire source-code; or

(xv) any other agreement, contract or commitment that involves $25,000 or more and is not cancelable without penalty within thirty (30) days.

(b) Except for such alleged breaches, violations and defaults, and events that would constitute a breach, violation or default with the lapse of time, giving of notice, or both, all of which are noted in Schedule 2.12(b) of the Company Schedules, the Company has not breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any agreement, contract or commitment required to be set forth on Schedule 2.12, Schedule 2.11(n)(i) or Schedule 2.11(n)(ii) of the Company Schedules (any such agreement, contract or commitment, a "CONTRACT"). Each Contract is in full force and effect and, except as otherwise disclosed in Schedule 2.12(b) of the Company Schedules, is not subject to any default thereunder of which the Company has knowledge by any party obligated to the Company pursuant thereto.

2.13 Interested Party Transactions. No officer, director, affiliate (as defined under Regulation C under the Securities Act) or, to the knowledge of the Company, stockholder of the Company (nor, to the knowledge of the Company, any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an economic interest), has or has had, directly or indirectly, (i) any material economic interest in any entity which furnished or sold, or furnishes or sells, services or products that the Company furnishes or sells, or proposes to furnish or sell, or (ii) any material economic interest in any entity that purchases from or sells or furnishes to, the Company, any goods or services or (iii) a material beneficial interest in any contract or agreement set forth in Schedule 2.12, Schedule 2.11(n)(i) or Schedule 2.11(n)(ii) of the Company Schedules; provided that ownership of less than five percent (5%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an "economic interest in any entity" for purposes of this Section 2.13.

2.14 Compliance with Laws. The Company has complied in all material respects with, is not in material violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law

or regulation, except where any such violations or failures to comply would not, individually or in the aggregate, have a Material Adverse Effect.

2.15 Litigation. There is no action, suit or proceeding of any nature pending or, to the knowledge of the Company , threatened against the Company, its properties or any of its officers or directors, in their respective capacities as such. There is no investigation pending or, to the knowledge of the Company , threatened against the Company, its properties or any of its officers or directors in their respective capacities as such by or before any Governmental Entity. Schedule 2.15 of the Company Schedules sets forth, with respect to any such pending or threatened action, suit, proceeding or investigation, the forum, the parties thereto, the subject matter thereof and the amount of damages claimed or other remedy requested. No Governmental Entity has at any time challenged or questioned the legal right of the Company to manufacture, offer or sell any of the Company Products in the present manner or style thereof.

2.16 Insurance. The insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company contain provisions which to the knowledge of the Company are reasonable and customary in the Company's industry, and there is no claim by the Company pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds for their present terms have been paid and the Company is otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

2.17 Minute Books. The minute books of the Company made available to Parent are the only minute books of the Company and contain a reasonably accurate summary of all meetings of directors (including committees thereof) and stockholders or actions by written consent since the time of incorporation of the Company.

2.18 Environmental Matters. The Company is not in material violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, and no material expenditures are or will be required in order to comply with any such existing statute, law or regulation.

2.19 Brokers' and Finders' Fees; Third Party Expenses. The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

2.20 Employee Matters and Benefit Plans.

(a) Definitions.

(i) "COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and as codified in Section 4980B of the Code and Section 601 et. seq. of ERISA;

(ii) "COMPANY EMPLOYEE PLAN" shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten, funded or unfunded, including without limitation, each "employee benefit plan," within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company for the benefit of any Employee, or with respect to which the Company has or may have any liability or obligation;

(iii) "DOL" shall mean the Department of Labor;

(iv) "EMPLOYEE" shall mean any current or former or retired employee, consultant or director of the Company;

(v) "EMPLOYEE AGREEMENT" shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visa, work permit or other agreement, contract or understanding between the Company and any Employee;

(vi) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended;

(vii) "IRS" shall mean the Internal Revenue Service;

(b) Schedule. Schedule 2.20(b) of the Company Schedules contains an accurate and complete list of each Company Employee Plan and, to the extent currently in effect or containing outstanding or potential obligations or liabilities, each Employee Agreement. The Company does not have any plan or commitment to establish any new Company Employee Plan or Employee Agreements, to modify any Company Employee Plan or Employee Agreements, or to adopt or enter in any Company Employee Plan or Employee Agreement.

(c) Documents. The Company has provided to Parent correct and complete copies of: (i) all documents embodying each Company Employee Plan and, to the extent currently in effect or containing outstanding or potential obligations or liabilities, each Employee Agreement including (without limitation) all amendments thereto and all related trust documents, administrative service agreements, group annuity contracts, and group insurance contracts; (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan; (iii) the most recent summary plan description together with the summary(is) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan; (iv) all IRS determination, opinion, notification and advisory letters, and all applications and correspondence to or from the IRS or the DOL with respect to any such application or letter; (v) all communications material to any Employee or Employees relating to any Company Employee Plan; and (vi) all written correspondence to or from any governmental agency relating to any Company Employee Plan; and (vii) all COBRA forms and related notices (or such forms and notices as required under comparable law).

(d) Employee Plan Compliance. The Company has performed in all material respects all obligations required to be performed by them under, are not in default or violation of, and have no knowledge of any default or violation by any other party to each Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code. There are no audits, inquiries or proceedings pending or, to the knowledge of the Company, threatened by the IRS or DOL, or any other

Governmental Entity with respect to any Company Employee Plan. The Company is not subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. The Company has timely made all contributions and other payments required by and due under the terms of each Company Employee Plan.

(e) No Post-Employment Obligations. No Company Employee Plan or Employee Agreement provides, or reflects or represents any liability to provide, retiree life insurance, retiree health or other retiree employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable statute, and neither of the Company nor Subsidiary has ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other person that such Employee(s) or other person would be provided with retiree life insurance, retiree health or other retiree employee welfare benefits, except to the extent required by statute.

(f) Effect of Transaction. The execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employee Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee.

(g) Employment Matters. The Company: (i) is in compliance in all material respects with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Employees; (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing; and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no pending or, to the Company's knowledge, threatened claims or actions against the Company under any worker's compensation policy or long-term disability policy. The Company has no direct or indirect material liability with respect to any misclassification of any person as an independent contractor rather than as an employee.

(h) Labor. No work stoppage or labor strike against the Company is pending or to the Company's knowledge, threatened. The Company does not know of any activities or proceedings of any labor union to organize any Employees. There are no actions, suits, claims, labor disputes or grievances pending, or, to the knowledge of the Company, threatened relating to any labor, safety or discrimination matters involving any Employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, result in any material liability to the Company. The Company is not presently, nor has it

been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated with respect to Employees.

2.21 Employees. To the knowledge of the Company , no employee of the Company (i) is in violation of any term of any employment contract, patent disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company because of the nature of the business conducted or presently proposed to be conducted by the Company or to the use of trade secrets or proprietary information of others and (ii) has given notice to the Company, nor is the Company otherwise aware, that any employee intends to terminate his or her employment with the Company.

2.22 Governmental Authorization. The Company possesses all material consents, licenses, permits, grants or other authorizations issued to the Company by a governmental entity (i) pursuant to which the Company currently operates or holds any interest in any of its properties or (ii) which are required for the operation of its business or the holding of any such interest, other than such consents, licenses, permits, grants or authorizations the failure to obtain which would not, either individually or in the aggregate, have a Material Adverse Effect (herein collectively called "COMPANY AUTHORIZATIONS"), which Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its business or hold any interest in its properties or assets.

2.23 Representations Complete. None of the representations or warranties made by the Company (as modified by the Company Schedules), nor any statement made in the Company Schedules or certificate furnished by the Company pursuant to this Agreement, or furnished in or in connection with documents mailed or delivered to the stockholders of the Company (to the extent such information was supplied by the Company) in connection with soliciting their consent to this Agreement and the Merger, contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Parent and Merger Sub hereby represents and warrants to the Company that on the date hereof and as of the Effective Time, as though made at

the Effective Time, as follows:

3.1 Organization and Standing. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of California. Each of Parent and Merger Sub is duly qualified to do business and is in good standing as a foreign corporation in each

state or other jurisdiction in which the failure to be so qualified would have a material adverse effect on the business, assets, financial condition, results of operations of Parent and its subsidiaries taken as a whole.

3.2 Authority. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Parent and Merger Sub of this Agreement and any related agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. This Agreement and any Related Agreements to which Parent and Merger Sub are parties have been duly executed and delivered by Parent and Merger Sub and constitute the valid and binding obligations of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with their terms. The execution and delivery of this Agreement and any Related Agreement to which it is a party by Parent and Merger Sub does not, and, as of the Closing, the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (any such event, a "CONFLICT") (i) any provision of the Certificate of Incorporation or Bylaws of Parent or Merger Sub, or (ii) any mortgage, indenture, lease, contract or other agreement or instrument, permit, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to either Parent or Merger Sub or its properties or assets, where such Conflict would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Parent and its subsidiaries taken as a whole.

3.3 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, or any third party is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Merger Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not have a material adverse effect on the business, assets (including intangible assets), condition (financial or otherwise), results of operations or capitalization of Parent or otherwise materially affect its ability to consummate the Merger or perform its obligations under this Agreement and (ii) the filing of the Merger Agreement with the Secretary of State of the State of California.

3.4 Solvency. Parent and each of its subsidiaries is currently solvent.

Parent is not entering into this Agreement, with the intent to defraud, delay or hinder any of its present or future creditors. After the Closing, each of Parent and its subsidiaries shall be solvent and capable of paying its debts as they become due. Neither Parent nor any of its subsidiaries nor any of their respective assets or properties is subject to, or the subject of, any insolvency proceeding. Neither Parent nor its subsidiaries has initiated, taken or attempted to initiate or take, or been the subject of, any insolvency action or proceeding, and no assets or properties of Parent or any of its subsidiaries are subject to any proceeding or action relating to insolvency. No writ of attachment, execution or similar process has

been ordered, executed or filed against Parent or any of its subsidiaries or any of their respective assets or properties. Neither Parent nor any of its subsidiaries has any intention to file a voluntary petition for relief under the United States Bankruptcy Code, as amended, or to seek relief on its debts under or the protection of any other bankruptcy or insolvency law or insolvency proceeding. No creditor of Parent or any its subsidiaries has threatened to file an involuntary petition for relief under the United States Bankruptcy Code, as amended, or to institute any other insolvency proceeding or action against Parent or any of its subsidiaries.

3.5 Parent Financial Statements. Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in the Registration Statement on Form S-1 filed by Parent on March 31, 2004 and the amendments thereto has been prepared in accordance with GAAP applied on a consistent basis throughout the period involved (except as may be indicated in the notes thereto) and each fairly presents in all material respects the consolidated financial position of Parent and its subsidiaries as of the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments which will not be material in significance.

3.6 Merger Sub. Merger Sub is wholly-owned by Parent. Merger Sub was formed by Parent solely for the purpose of completing the transactions hereunder and has no business activities other than the operations as contemplated by this Agreement.

ARTICLE IV

CLOSING CONDITIONS

4.1 Company Closing Conditions.

(a) Stockholder Approval. Prior to the execution of the Agreement, the stockholders of the Company shall have approved and adopted this Agreement and the transactions contemplated hereby as provided by California Law and the Company's Articles of Incorporation and Bylaws.

(b) Performance. Parent shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

(c) Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Company, and the Company shall have received

all such counterparts and certified or other copies of such documents as the Company may reasonably request.

(d) No Legal Proceedings. No proceeding challenging this Agreement or the transactions contemplated hereby or seeking to prohibit, alter, prevent or materially delay the Closing or seeking damages in connection therewith shall have been instituted or threatened by any person or entity.

(e) Qualifications. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with this Agreement or the execution, delivery and performance by the Company of this Agreement shall be duly obtained and effective as of the Closing.

4.2 Parent Closing Conditions.

(a) Performance. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

(b) Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to Parent, and Parent shall have received all such counterparts and certified or other copies of such documents as Parent may reasonably request.

(c) No Legal Proceedings. No proceeding challenging this Agreement or the transactions contemplated hereby or seeking to prohibit, alter, prevent or materially delay the Closing or seeking damages in connection therewith shall have been instituted or threatened by any person or entity.

(d) Qualifications. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with this Agreement or the execution, delivery and performance by the Company of this Agreement shall be duly obtained and effective as of the Closing.

(e) Employees. Parent and each of the Required Employees shall have entered into an Employment Agreement, with effect as of the Closing Date, and each Required Employee shall have executed and delivered an Employment Proprietary Information and Inventions Agreement, and none of the Required Employees shall have taken any action to rescind, revoke or otherwise repudiate his or her Employment Agreement or Employment Proprietary Information and Inventions Agreements.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Stockholder Approval. Prior to the execution of the Agreement, the stockholders of the Company have approved and adopted this Agreement and the transactions contemplated hereby as provided by California Law and the Company's Articles of Incorporation and Bylaws.

5.2 Confidentiality. Each of the parties hereto hereby agrees to maintain the confidentiality of the information obtained pursuant to the negotiation and execution of this Agreement, in accordance with the provisions of the Confidentiality and Nondisclosure Agreement between Parent and the Company dated as of December 10, 2004 (the "CONFIDENTIALITY AGREEMENT").

5.3 Employee Benefit Matters. As of the Effective Time, each employee of the Company who is employed by Parent after the Effective Time (each a "CONTINUING EMPLOYEE"), shall be eligible to either: (i) participate in Parent benefit plans, (ii) participate in the Company benefit plans that are continued by Parent, or (iii) a combination of (i) and (ii), in each case to the extent eligible under the terms of the applicable benefit plan, so that each Continuing Employee is eligible to receive benefits that are substantially similar in the aggregate to those of similarly situated employees of Parent (it being understood that equity incentives may vary). Each Continuing Employee shall, to the extent permitted by law and applicable tax qualification requirements, and subject to any generally applicable break in service or similar rule, receive credit for purposes of vacation, eligibility to participate and vesting under Parent's benefit program for years of service with the Company prior to the Effective Time.

5.4 401(k) Plan. Effective no later than the day immediately preceding the Closing Date, the Company shall have terminated any and all group severance, separation or salary continuation plans, programs or arrangements and any and all plans intended to include a Code Section 401(k) arrangement (collectively, the "COMPANY PLANS") (unless Parent has provided written notice to the Company that such Company Plans shall not be terminated). Unless Parent has provided such written notice to the Company, the Company has provided Parent with evidence, to the reasonable satisfaction of Parent, that the Company Plans have been terminated (effective as of no later than the day immediately preceding the Closing Date) pursuant to resolutions of the Company's Board of Directors.

5.5 Expenses. In the event that the Merger is consummated, up to $37,500 of the reasonable legal, accounting, financial advisory, consulting and all other fees and expenses of third parties ("THIRD PARTY EXPENSES") incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby shall be borne and paid by Parent. All Third Party Expenses of the Company in excess of $37,500 (the "EXCESS THIRD PARTY EXPENSES") shall be paid by the holders of Company Common Stock on a pro rata basis, based on the aggregate Merger Consideration to which such stockholders are entitled

hereunder, by means of a reduction in the Merger Consideration deliverable to

such holders of Company Common Stock.

5.6 Public Disclosure. No disclosure (whether or not in response to an inquiry) of the existence or nature of this Agreement shall be made by any party hereto (other than to their respective agents including, without limitation, to accountants, tax advisors, legal advisors) unless approved by duly authorized officers of both Parent and the Company prior to release, provided that such approval shall not be unreasonably withheld and subject in any event to Parent's obligation to comply with applicable securities law.

5.7 FIRPTA Compliance. On the Closing Date, the Company shall deliver to Parent a properly executed statement in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

5.8 Reasonable Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use its reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals (including, but not limited to, those required under the Contracts and specifically including the licenses set forth on Section 2.11(n)(i) of the Disclosure Schedule) in a manner that does not materially alter the underlying obligations of the parties and to effect all necessary registrations and filings, and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement; provided that Parent shall not be required to agree to any divestiture by Parent or the Company or any of Parent's subsidiaries or Affiliates of shares of capital stock or of any business, assets or property of Parent or its subsidiaries or Affiliates or the Company or its Affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock.

5.9 Additional Documents and Further Assurances. Each party hereto, at the request of the other party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely and promptly the consummation of this Agreement and the transactions contemplated hereby, including, without limitation, transfer of the domain names relating to the operation of the business of the Company which are under the name of Matthew Robinson to Parent.

5.10 Employees. Parent and each of the Required Employees shall enter into an Employment Agreement, with effect as of the Closing Date, and each Required Employee shall execute and deliver an Employment Proprietary Information and Inventions Agreement. None of the Required Employees shall have taken any action to rescind, revoke or otherwise repudiate his or her Employment Agreement or Employment Proprietary Information and Inventions Agreement.

ARTICLE VI

6.1 Survival of Representations and Warranties. The representations and warranties made by the Company in this Agreement or in any instrument delivered pursuant to this Agreement (each as modified by the Company Schedules) shall survive the Merger and continue until the one year anniversary of the Closing Date (the "EXPIRATION DATE").

6.2 Escrow Arrangements.

(a) Escrow Fund. At the Effective Time, the Company's stockholders will be deemed to have consented to the deposit of the Escrow Amount with the Escrow Agent upon payment of the 90th Day Parent Obligation on the Second Payment Date without any act required on the part of such stockholders. Upon payment of the 90th Day Parent Obligation on the Second Payment Date, the Escrow Amount, without any act required on the part of any stockholder, will be deposited with the Escrow Agent, such deposit to constitute an escrow fund (the "ESCROW FUND") to be governed by the terms set forth herein and at Parent's cost and expense. The pro rata portion of the Escrow Amount to which each stockholder of the Company shall be entitled upon distribution of the remaining Escrow Amount, if any, at the termination of the Escrow Period shall be in proportion to the Merger Consideration to which such holder would otherwise be entitled under Section 1.6 as set forth on Schedule 2.2. The Escrow Amount shall be contributed entirely out a portion of the Secondary Merger Consideration issuable upon the Merger in respect of the Company Capital Stock; provided, however that in the case of Matthew Robinson and Pavel Vorobiev, 50% of each individual's contribution to the Escrow Amount shall be contributed from such holder's portion of the Holdback Amount and all references herein to deposits to or withdrawals from the Escrow Fund or relating to the Escrow Amount for such individuals shall include such amounts. The Escrow Fund is available to compensate Parent and its affiliates for any claims, losses, liabilities, damages, deficiencies, costs and expenses, including reasonable attorneys' fees and expenses, and expenses of investigation and defenses (hereinafter individually a "LOSS" and collectively "LOSSES") incurred by Parent, its officers, directors, or affiliates (including the Surviving Corporation) directly or indirectly as a result of any inaccuracy or breach of a representation or warranty of the Company contained in this Agreement or in any certificate or instrument delivered pursuant to this Agreement , or any failure by the Company to perform or comply with any covenant contained herein.

The Escrow Fund shall be the sole and exclusive remedy to compensate Parent, its officers, directors, or affiliates (including the Surviving Corporation) for any Losses, except in the case of fraud or intentional misrepresentation. The maximum amount of Losses for which each stockholder of the Company shall be liable is such stockholder's proportionate amount of the Escrow Fund based on the percentage of Merger Consideration received by such stockholder. In the event any payment pursuant to the indemnity obligations of the stockholders of the Company set forth in this Agreement is required to be made, each stockholder will satisfy such payment by forfeiture of its proportionate

share of the Escrow Fund. Parent shall not be entitled to receive any amounts from the Escrow Fund unless and until Parent shall have delivered an Officer's

Certificate (as defined in Section 6.2(d)) identifying the Losses.

Notwithstanding anything to the contrary, neither Parent or any of its affiliates shall have any right to compensation from the Escrow Fund unless and until the aggregate Losses exceed an aggregate of Five Thousand Dollars ($5,000) (the "DEDUCTIBLE"), in which event Parent shall be entitled to compensation from the Escrow Fund only to the extent to which the amount of Losses exceed $5,000 (and not the initial $5,000 of Losses), provided, however, that any Losses incurred in connection with the Company's use of commercial software in a production environment that has not been appropriately licensed shall not be subject to the Deductible and Parent shall be entitled to recovery of any and all such Losses up to the amount of the Escrow Fund without regard to the Deductible.

(b) Escrow Period; Distribution upon Termination of Escrow Periods. Subject to the following requirements, the Escrow Fund shall be deemed to be in existence immediately following the payment of the 90th Day Parent Obligation on the Second Payment Date and shall terminate at 5:00 p.m. Pacific Time on the Expiration Date (the "ESCROW PERIOD"); provided that the Escrow Period shall not terminate with respect to such amount (or some portion thereof), that together with the aggregate amount remaining in the Escrow Fund is necessary in the reasonable judgment of Parent (subject to reduction as may be determined by arbitration of the matter as provided in Section 6.2(f) hereof in the event of the objection of the Stockholder Agent in the manner provided in Section 6.2(e) hereof) to satisfy any unsatisfied claims concerning facts and circumstances existing prior to the termination of such Escrow Period and to the extent specified in any Officer's Certificate delivered to the Escrow Agent prior to termination of such Escrow Period. As soon as all such claims have been resolved, the Escrow Agent shall transfer to the stockholders of the Company, pursuant to written instructions by Parent, the remaining portion of the Escrow Fund not required to satisfy such claims, such remaining portion to be transferred no later than ten (10) days after the resolution of such claims. If no claims exist as of the Expiration Date, the Escrow Agent shall release the full amount of the Escrow Fund within five (5) days of the Expiration Date. Deliveries of Escrow Amounts to the stockholders of the Company pursuant to this Section 6.2(b) shall be made in proportion to their respective original contributions to the Escrow Fund.

(c) Protection of Escrow Fund. The Escrow Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and dispose of the Escrow Fund only in accordance with the terms hereof or pursuant to joint written instructions from Parent and the Stockholder Agent. The Escrow Fund shall be invested in U.S. Treasury bills with maturities of not more than thirty (30) days and any interest paid on the cash contained in the Escrow Fund shall be added to the Escrow Fund and become a part thereof. For any period of time before such U.S. Treasury bills can be purchased by the Escrow Agent or after such bills mature, the Escrow Fund shall be invested in a business money market account of the Escrow Agent (or another nationally recognized banking institution) and any interest paid on the cash contained in the Escrow

Fund shall be added to the Escrow Fund and become a part thereof and available

for satisfaction of claims. The parties hereto agree that Parent is the owner of any cash in the Escrow Fund, and that all interest on or other taxable income, if any, earned from the investment of such cash pursuant to this Agreement shall be treated for tax purposes as earned by Parent. At the end of Parent's taxable year, an amount equal to the income earned from the investment of cash contained in the Escrow Fund shall be deemed distributed to the Company stockholders in accordance with the pro rata portion of the Escrow Fund to which each such stockholder would be entitled upon distribution of the Escrow Fund at the termination of the Escrow Period, and then recontributed by such stockholders to the Escrow Fund. The deemed distribution represents interest for the deferral of payment of a portion of the Merger Consideration resulting from the escrow arrangement. The Company stockholders shall be responsible for any Taxes dues with respect to the deemed distribution.

(d) Claims Upon Escrow Fund. Upon receipt by the Escrow Agent at any time on or before the last day of the Escrow Period of a certificate signed by any officer of Parent (an "OFFICER'S CERTIFICATE"): (A) stating that Parent has paid or properly accrued or reasonably anticipates that it will have to pay or accrue Losses, and (B) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid or properly accrued in accordance with GAAP, or the basis for such reasonably anticipated Loss, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related, the Escrow Agent shall, subject to the provisions of Section 6.2(e) hereof, transfer to Parent out of the Escrow Fund, as promptly as practicable, cash held in the Escrow Fund in an amount equal to such Losses; provided, however, that to the extent an Officer's Certificate alleges only the basis for an anticipated Loss, no amount shall be distributed until such Loss is actually paid or accrued under GAAP. Payments of cash from the Escrow Fund will be made pro rata in proportion to each stockholder's original contributions to the Escrow Fund as set forth on Schedule 6.2.

(e) Objections to Claims. At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such certificate shall be delivered to the Stockholder Agent and for a period of thirty (30) days after confirmed receipt of such delivery, the Escrow Agent shall make no transfer to Parent of any Escrow Amounts pursuant to Section 6.2(d) hereof unless the Escrow Agent shall have received written authorization from the Stockholder Agent to make such transfer. After the expiration of such thirty (30)-day period, the Escrow Agent shall transfer cash from the Escrow Fund in accordance with Section 6.2(d) hereof, provided that no such transfer may be made if the Stockholder Agent shall object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to the Escrow Agent prior to the expiration of such thirty (30)-day period.

(f) Resolution of Conflicts; Arbitration.

(i) In case the Stockholder Agent shall object in writing to any claim or claims made in any Officer's Certificate as provided in Section 6.2(e) hereof, the Stockholder Agent and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Agent and Parent should so agree, a memorandum setting

forth such agreement shall be prepared and signed by both parties and shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and distribute cash from the Escrow Fund in accordance with the terms thereof.

(ii) If no such agreement can be reached after good faith negotiation, either Parent or the Stockholder Agent may demand arbitration of the matter unless the amount of the damage or loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration; and in either such event the matter shall be settled by arbitration conducted by three arbitrators in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association (the "AAA"). Parent and the Stockholder Agent shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator; provided, however, that (i) failing such agreement within ninety (90) days of delivery of the Officer's Certificate (or failure to select a mutually agreed upon arbitrator), the third arbitrator shall be appointed in accordance with the AAA Rules and (ii) if either the Stockholder's Agent or Parent fails to timely designate an arbiter, the claim shall be resolved with the participation of the one arbitrator timely designated. The arbitrators shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrators, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrators shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the extent as a court of competent law or equity, should the arbitrators determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of a majority of the three arbitrators as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon the parties to this Agreement, and notwithstanding anything in Section 6.2(e) hereof, the Escrow Agent shall be entitled to act in accordance with such decision and make or withhold payments out of the Escrow Fund in accordance therewith. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrators.

(iii) Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. Any such arbitration shall be held in San Francisco, California under the rules then in effect of the American Arbitration Association. For purposes of this Section 6.2(f), in any arbitration hereunder in which any claim or the amount thereof stated in the Officer's Certificate is at issue, the Company shall be deemed to be the prevailing party in the event that the arbitrators award the Company at least $10,000; otherwise, the stockholders of the Company as represented by the Stockholder Agent shall be deemed to be the prevailing party. The non-prevailing party to an arbitration shall pay its own expenses, the fees of each arbitrator, the administrative costs of the arbitration, and the expenses, including without limitation, reasonable attorneys' fees and costs, incurred by the other party to the arbitration.

(g) Stockholder Agent; Power of Attorney.

(i) In the event that the Merger is approved, effective upon such vote, and without further act of any stockholder, Matthew Robinson shall be appointed as Stockholder Agent and attorney-in-fact for each stockholder of the Company (except such stockholders, if any, as shall have perfected their appraisal or dissenters' rights under California Law), for and on behalf of stockholders of the Company, to give and receive notices and communications, to authorize delivery to Parent of cash from the Escrow Fund in satisfaction of claims by Parent, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of Stockholder Agent for the accomplishment of the foregoing. Such agency may be changed by the stockholders of the Company from time to time upon not less than thirty (30) days prior written notice to Parent; provided that the Stockholder Agent may not be removed unless holders of a two-thirds interest of the Escrow Fund agree to such removal and to the identity of the substituted agent. Any vacancy in the position of Stockholder Agent may be filled by approval of the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Stockholder Agent, and the Stockholder Agent shall not receive compensation for its services. Notices or communications to or from the Stockholder Agent shall constitute notice to or from each of the stockholders of the Company.

(ii) The Stockholder Agent shall not be liable for any act done or omitted hereunder as Stockholder Agent while acting in good faith and in the exercise of reasonable judgment. The stockholders of the Company on whose behalf the Escrow Amount was contributed to the Escrow Fund shall severally on a pro rata basis (based on the Merger Consideration to which such stockholders are entitled) indemnify the Stockholder Agent and hold the Stockholder Agent harmless against any loss, liability or expense incurred without gross negligence or willful misconduct on the part of the Stockholder Agent and arising out of or in connection with the acceptance or administration of the Stockholder Agent's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Agent.

(h) Actions of the Stockholder Agent. A decision, act, consent or instruction of the Stockholder Agent shall constitute a decision of all the stockholders for whom a portion of the Escrow Amount otherwise issuable to them are deposited in the Escrow Fund and shall be final, binding and conclusive upon each of such stockholders, and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Agent as being the decision, act, consent or instruction of each every such stockholder of the Company. The Escrow Agent and Parent are hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Agent.

(i) Third-Party Claims. In the event Parent becomes aware of a third-party claim which Parent reasonably believes may result in a demand against the Escrow Fund, Parent shall notify the Stockholder Agent of such claim in accordance with Section 6.2(e), and the Stockholder Agent, as representative for the stockholders of the Company, shall be entitled, at his expense, to

participate in any defense of such claim. Parent shall have the right in its sole discretion to control the defense of all such claims and to settle any such claim; provided, however, that no settlement of any such claim with third-party claimants in excess of $25,000 in a single matter shall permit any claim against the Escrow Fund, except with the consent of the Stockholder Agent, which consent shall not be unreasonably withheld. Except with the written consent of the Stockholder Agent, Parent will not, in the defense of a third party claim, consent to the entry of any judgment or enter into any settlement (i) which does not include as a term thereof the giving to the indemnifying party by the third party of a release from all liability with respect to such suit, claim, action, or proceeding; and (ii) unless there is no finding or admission of (A) any violation of applicable laws by the indemnifying party, (B) any liability on the part of the indemnifying party or (C) any violation of the rights of any person and no effect on any other claims of a similar nature that may be made by the same third party against the indemnifying party. Except with the consent of the Stockholder Agent, no settlement of any such claim with third-party claimants shall alone be determinative of the amount of any claim against the Escrow Fund. In the event that the Stockholder Agent has consented to any such settlement and acknowledged that the claim is a valid claim against the Escrow Fund, the Stockholder Agent shall be deemed to have agreed to the claim by Parent against the Escrow Fund in an amount equal to such settlement.

(j) Escrow Agent's Duties.

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an authorized officer of Parent and the Stockholder Agent, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed in good faith to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith, provided that the Escrow Agent has exercised reasonable care in the selection of such counsel.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person 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.

(iii) The Escrow Agent 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

this Agreement or any documents or papers deposited or called for hereunder absent gross negligence, bad faith or willful misconduct.

(iv) The Escrow Agent shall not be liable for the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent absent gross negligence, bad faith or willful misconduct.

(v) In performing any duties under the Agreement, the Escrow Agent shall not be liable to any party for damages, losses, or expenses, except for gross negligence, bad faith or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall not incur any such liability for (A) any act or failure to act made or omitted in good faith, or (B) any action taken or omitted in reliance upon any instrument, including any written statement of affidavit provided for in this Agreement that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, the Escrow Agent may consult with the legal counsel in connection with Escrow Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by him/her in good faith in accordance with the advice of counsel provided that the Escrow Agent has exercised reasonable care in the selection of such counsel. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and cash in the Escrow Fund and may wait for settlement of any such controversy by final appropriate legal proceedings. In such event, the Escrow Agent will not be liable for damage.

Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents and cash held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The Escrow Agent shall be indemnified and held harmless by the Company Stockholders (only out of the Escrow Fund) and Parent jointly and severally, against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, and disbursements that may be imposed on Escrow Agent or incurred by Escrow Agent in connection with the performance of his/her duties under this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter.

(viii) The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to the parties; provided, however, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows: the parties shall use their best efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to appoint a successor escrow agent authorized to do business in the State of California. The successor escrow agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. The Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(k) Fees. All fees of the Escrow Agent for performance of its duties hereunder shall be paid by Parent. It is understood that the fees and usual charges agreed upon for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not provided for in this Agreement, or if the parties request a substantial modification of its terms, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or its subject matter, the Escrow Agent shall be reasonably compensated by Parent for such extraordinary services and reimbursed for all costs, attorneys' fees, and expenses occasioned by such default, delay, controversy or litigation.

ARTICLE VII

GENERAL PROVISIONS

7.1 Notices. All notices and other communications hereunder shall be in writing, shall be effective when received, and shall in any event be deemed to have been received (i) when delivered, if delivered personally or by commercial delivery service, (ii) three (3) business days after deposit with U.S. Mail, if mailed by registered or certified mail (return receipt requested), (iii) one (1) business day after the business day of deposit with Federal Express or similar overnight courier for next day delivery (or, two (2) business days after such deposit if deposited for second business day delivery), if delivered by such means, or (iv) one (1) business day after delivery by facsimile transmission with copy by U.S. Mail, if sent via facsimile plus mail copy (with acknowledgment of complete transmission), to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Merger Sub, to:

Taleo Corporation
182 Second Street
5th Floor
San Francisco, CA 94105
Attention: Chief Executive Officer

Telephone No. (415) 538-9068
Facsimile No.: (415) 538-9069

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
950 Page Mill Road
Palo Alto, California 94304
Attention: Mark A. Bertelsen, Esq.
Facsimile No.: (650) 493-6811

(b) if to the Company, to:

Recruitforce.com, Inc.
444 Castro Street
Suite 302
Mountain View, CA 94041
Attention: Chief Executive Officer
Telephone No.: (650) 938 - 0121
Facsimile No.: (650) 938-0122

with a copy to:
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Attention: Michael Patrick
Telephone No.: (650) 988 - 8500
Facsimile No.: (650) 938-5200

(c) if to the Escrow Agent:
U.S. Bank, National Association
One California Street, Suite 2550
San Francisco, CA 94111
Attention: Sheila K. Soares
Telephone No.: (415) 273 - 4532
Facsimile No.: (415) 273-4591

(d) if to the Stockholder Agent:
444 Castro Street
Suite 302
Mountain View, CA 94041
Attention: Matthew Robinson
Telephone No.: (650) 938 - 0121
Facsimile No.: (650) 938-0122

7.2 Interpretation. When a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. The words "INCLUDE," "INCLUDES" and "INCLUDING" when used herein shall be deemed in each case to be followed by the words "without limitation." The word "AGREEMENT" when used herein shall be deemed in each case to mean any contract, commitment or other agreement, whether oral or written, that is legally binding. The table of contents and headings contained in this

Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When

reference is made herein to "THE BUSINESS OF" an entity, such reference shall be deemed to include the business of all direct and indirect subsidiaries of such entity. Reference to the subsidiaries of an entity shall be deemed to include all direct and indirect subsidiaries of such entity.

7.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

7.4 Entire Agreement. This Agreement, the Company Schedules, and the documents and instruments and other agreements among the parties hereto referenced herein: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement; and (b) are not intended to confer upon any other person any rights or remedies hereunder.

7.5 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

7.6 Other Remedies. Except as otherwise provided herein (including, without limitation, the limitations on remedies of Parent set forth in Article 6 of this Agreement), any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

7.7 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof;

provided that issues involving the corporate governance of any of the parties hereto shall be governed by their respective jurisdictions of incorporation. Each of the parties hereto irrevocably consents to the exclusive jurisdiction of any

state or federal court within the State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, other than issues involving the corporate governance of any of the parties hereto, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

7.9 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

7.10 Assignment. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without prior written approval of the other party; provided, however, that except as otherwise provided herein, Parent may assign this Agreement to a successor entity or successor in interest of Parent without written consent provided that if such assignment occurs on or before the termination of Parent's obligations pursuant to this Agreement, such successor shall agree in writing to undertake Parent's obligations as set forth in this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.11 Absence of Third Party Beneficiary Rights. No provisions of this Agreement are intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, partner of any party hereto or any other person or entity unless specifically provided otherwise herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized respective officers as of the date first written above

TALEO CORPORATION

By: /s/ Louis Tetu

Name: Louis Tetu
Title: CEO

BUTTERFLY ACQUISITION CORPORATION

By: /s/ Louis Tetu

Name: Louis Tetu
Title: President

RECRUITFORCE.COM, INC.

By: /s/ Pavel Vorobiev
Name: Pavel Vorobiev
Title:

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized respective officers as of the date first written above.

SOLELY AS TO ARTICLE VI:

U.S. BANK, NATIONAL ASSOCIATION

By: /s/ Sheila Soares
Name: Sheila K. Soares
Title: Vice President

STOCKHOLDER AGENT

By: /s/ Matthew Robinson

Name: Matthew Robinson

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

SCHEDULE 1.2

Matthew Robinson
Pavel Vorobiev

EXHIBIT 3.1

SEVENTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF TALEO CORPORATION

a Delaware corporation

Taleo Corporation, a corporation organized and existing under the laws of the State of Delaware (the "CORPORATION"), hereby certifies as follows:

A. The name of the Corporation is Taleo Corporation. The Corporation was originally incorporated under the name of Recruitsoft.com Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 25, 1999.

B. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL"), this Seventh Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation.

C. This Seventh Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation in accordance with Sections 242 and 245 of the DGCL.

D. This Seventh Amended and Restated Certificate of Incorporation has been duly approved by the written consent of the stockholders of the Corporation in accordance with Sections 228, 242 and 245 of the DGCL.

E. The text of the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed by the undersigned officer, thereunto duly authorized, on April 22, 2005.

TALEO CORPORATION

By: /s/ Jean Lavigueur

Jean Lavigueur
Chief Financial Officer

EXHIBIT A

ARTICLE I

The name of this corporation is Taleo Corporation (the "Corporation").

ARTICLE II

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

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

Immediately upon the filing of this Seventh Amended and Restated Certificate of Incorporation, each six (6) outstanding shares of the Corporation's Common Stock will be exchanged and combined, automatically and without further action, into one (1) share of Common Stock. Such combination shall be effected on a certificate-by-certificate basis, and any fractional shares resulting from such combination shall be rounded down to the nearest whole share, and each holder shall receive from the Corporation the cash value of such fractional shares in lieu of such fractional shares.

A. Classes of Stock. This Corporation is authorized to issue two classes of stock, to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is three hundred fifty-three million, seven hundred sixty-three thousand, four hundred fifty-eight (353,763,458) shares. Two hundred seventy-four million, two hundred twenty-nine thousand, seven hundred sixty-two (274,229,762) shares shall be Common Stock, par value $0.00001 per share, and seventy nine million, five hundred thirty-three thousand, six hundred ninety-six (79,533,696) shares shall be Preferred Stock, par value $0.00001 per share. Of the authorized shares of Common Stock, a total of two hundred fifty million (250,000,000) shares are designated Class A Common Stock ("Class A Common Stock") and a total of twenty-four million, two hundred twenty-nine thousand, seven hundred sixty-two (24,229,762) shares are designated Class B Common Stock ("Class B Common Stock"). Of the authorized shares of Preferred Stock, a total of six million, three hundred fifty thousand, four hundred (6,350,400) shares shall be designated Series A Preferred Stock ("Series A Preferred Stock"), seven million, one hundred thirty two thousand, four hundred forty one (7,132,441) shares shall be designated Series B Preferred Stock ("Series B Preferred Stock"), fifty-two million, one hundred twelfth thousand, nine hundred thirty-one (52,112,931) shares shall be designated Series C Preferred Stock ("Series C Preferred Stock") and thirteen

million, nine hundred thirty-seven, nine hundred twenty-four (13,937,924) shares shall be designated Series D Preferred Stock ("Series D Preferred Stock").

Subject to the rights of stockholders set forth herein, the Board of Directors is further authorized to decrease (but not below the number of shares of any such Series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such Series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any Series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

B. Rights, Preferences, Privileges and Restrictions of Class A Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Class A Common Stock are as set forth below in this Article IV(B).

(1) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors pari passu with the rights of holders of Series A Preferred Stock at the time outstanding. Such dividends shall not be cumulative.

(2) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(D) hereof.

(3) Redemption. The Class A Common Stock is not redeemable.

(4) Voting Rights. The holder of each share of Class A Common Stock shall have the right to one (1) vote for each share of Class A Common Stock held by such holder, shall be entitled to notice of any stockholder meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as is otherwise provided herein or as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

(5) Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Class A Common Stock.

C. Rights, Preferences, Privileges and Restrictions of Class B Common Stock. The rights, preferences, privileges and restrictions granted to and

imposed on the Class B Common Stock are as set forth below in this Article IV(C).

(1) Redemption. The Class B Common Stock shall be redeemable by the Corporation, for a sum of $0.00001 per share, upon and simultaneously with the issuance by the Corporation of Class A Common Stock or Series A Preferred Stock to a holder of Class B Common Stock in exchange for Class A preferred exchangeable shares or Class B preferred exchangeable shares of the share capital of 9090-5415 Quebec, Inc., a company incorporated under the laws of the Province of Quebec (Canada), on the basis of one (1) share of Class B Common Stock to be redeemed for each share of Class A Common Stock or Series A Preferred Stock to be issued.

(2) Voting Rights. Each holder of shares of Class B Common Stock shall be entitled to notice of any stockholder meeting in accordance with the Bylaws of the Corporation, shall be entitled to one vote for each share of Class B Common Stock held by such holder, shall have voting rights and powers equal to the voting rights and powers of the holders of Class A Common Stock, and shall vote together as a single class with holders of Class A Common Stock and all series of Preferred Stock on all matters except as expressly required by law or as set forth in this Certificate of Incorporation. The holders of Class B Common Stock shall have no separate class or series vote on any matter except as expressly required by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

(3) No Other Rights. Except as expressly set forth above, holders of Class B Common Stock shall not be entitled to any rights, economic or otherwise, as a result of their ownership of Class B Common Stock, including but not limited to any rights as to dividends, payment upon liquidation, dissolution or winding up of the Corporation or any other economic benefits.

D. Rights, Preferences, Privileges and Restrictions of Series A Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article IV(D).

(1) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors pari passu with the rights of holders of Class A Common Stock at the time outstanding. Such dividends shall not be cumulative.

In the event that the Corporation shall have declared but unpaid dividends

outstanding immediately prior to, and in the event of, a conversion of Series A Preferred Stock (as provided in Section D(3) hereof), the Corporation shall, at the option of each holder, pay in cash to each holder of Series A Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Class A Common Stock in accordance with, and pursuant to the terms specified in, Section D(3) hereof.

(2) Liquidation Preference.

a. Primary Distribution. Subject to the prior rights of the holders of Series B Preferred Stock set forth in Article IV(E), Series C Preferred Stock in Article IV(F) and Series D Preferred Stock in Article IV(G), in the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of this Corporation to the holders of Common Stock by reason of their ownership thereof, an amount as set forth below in Section D(2)(b) (as adjusted in each case for any stock dividends, combinations or splits with respect to such shares), plus in each case an amount equal to all declared but unpaid dividends on such shares.

b. Should the total value of the cash and assets after taking into account the rights of senior securities (based on the fair market value of such assets) available to be distributed by the Corporation to the holders of Series A Preferred Stock and Class A Common Stock pursuant to Section D(2)(a) (the "Distribution") be less than twenty million dollars, in Canadian funds, (CDN $20,000,000), the holders of the Series A Preferred Stock shall receive, in preference and priority to the holders of Class A Common Stock, by way of distribution of cash and assets, in the same proportion of cash and assets as in the

Distribution, an aggregate amount determined in accordance with the schedule below (the "Reserved Amount"):

<TABLE>
<CAPTION>

DISTRIBUTION (RANGE)	RESERVED AMOUNT
<S>	<C>
CDN$0 to CDN$1,999,999	100% of Distribution
CDN$2,000,000 to CDN$9,999,999	CDN$2,000,000
CDN$10,000,000 to CDN$12,499,999	CDN$1,600,000

CDN$12,500,000 to CDN$14,999,999	CDN$1,200,000
CDN$15,000,000 to CDN$17,499,999	CDN$800,000
CDN$17,500,000 to CDN$19,999,999	CDN$400,000

</TABLE>

and thereafter, the holders of the Series A Preferred Stock shall receive, pari passu with the holders of the Class A Common Stock, the balance of the Distribution (less the Reserved Amount), if any, pro rata based on the number of shares of Common Stock held by each such holder (assuming full conversion of all Series A Preferred Stock), or should the total value of the Distribution be twenty million dollars, in Canadian funds, (CDN$20,000,000) or more, the holders of the Series A Preferred Stock shall receive, pari passu with the holders of the Class A Common Stock, the full amount of the Distribution pro rata based on the number of shares of Common Stock held by each such holder (assuming full conversion of all Series A Preferred Stock).

c. Definition of Liquidation Event; Notice.

(i) For purposes of this Section D(2), a liquidation, dissolution or winding up of this Corporation shall be deemed to be occasioned by, and to include, (A) any distribution of the assets of the Corporation among shareholders for the purpose of winding-up its affairs; or (B) a sale of all or substantially all of the assets of the Corporation in one or a series of transactions (including, for purposes of this section, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets; or (C) any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation or other business combination) that results in the transfer of 50% or more of the outstanding voting power of the Corporation, provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this Corporation's

incorporation or to create a holding company that will be owned in substantially the same proportions and pursuant to substantially the same terms by the persons who held this Corporation's securities immediately prior to such transaction.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows: (1) if traded on a securities exchange or through the Nasdaq National Market, the value

shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty day period ending three days prior to the closing; (2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty day period ending three days prior to the closing; and (3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) Securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be valued in such a manner as to make an appropriate discount from the market value determined as above in paragraph (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(iii) In the event the requirements of this Section D(2) are not complied with, this Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section D(2) have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section D(2)(c)(iv) hereof.

(iv) The Corporation shall give each holder of record of Series A Preferred Stock written notice of any such impending transaction not later than ten (10) days prior to the stockholder meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction whichever notice date is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Section D(2), and the amounts anticipated to be distributed to holders of each outstanding series and class of capital stock of the Corporation, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock (on an as-converted basis).

(3) Conversion. The holders of Series A Preferred Stock shall have

conversion rights set forth in Article IV(E)(3).

(4) Voting Rights. Each holder of shares of Series A Preferred Stock shall be entitled to notice of any stockholder meeting in accordance with the Bylaws of the Corporation, shall be entitled to a number of votes equal to the number of shares of Class A Common Stock into which the shares of Series A Preferred Stock held by such holder could then be converted, shall have voting rights and powers equal to the voting rights and powers of the holders of Class A Common Stock, and shall vote together as a single class with holders of Class A Common Stock, Class B Common Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock except as expressly required by law or as set forth in this Certificate of Incorporation. Fractional votes shall not be permitted, and any fractional voting rights resulting from the right of any holder of Series A Preferred Stock to vote on an as converted basis (after aggregating the shares into which all shares of Series A Preferred Stock held such holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). The holders of Series A Preferred Stock shall have no separate class or series vote on any matter except as expressly required by law.

(5) Status of Converted Series A Preferred Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section D(3), the shares so converted shall be canceled and shall not thereafter be issuable by the Corporation. The Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

E. Rights, Preferences and Restrictions of Series B Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Series B Preferred Stock are as set forth below in this Article IV(E).

(1) Dividends. The holders of the Series B Preferred Stock shall be entitled to receive, out of any funds legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, the Series A Preferred Stock or any other class or series of Common Stock or Preferred Stock that is not expressly senior to or pari passu in right of payment to the Series B Preferred Stock (collectively, "Series B Junior Stock"), when and as declared by the Board of Directors, dividends at a rate of $0.0973 per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares). The right to such dividends on the Series B Preferred Stock shall not be cumulative, and no right shall accrue to holders of Series B Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year.

In addition, the holders of the Series B Preferred Stock shall share pro rata with holders of Common Stock on the basis of the number of shares of Common Stock which each holder would be entitled to receive upon conversion of such holder's Series B Preferred Stock as of the record date for the dividend or distribution, in all other dividends or distributions, if any, that the Board of

Directors may declare from time to time with respect to the Common Stock.

In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series B Preferred Stock (as provided in Section E(3) hereof), the Corporation shall, at the option of each holder, pay in cash to each holder of Series B Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Class A Common Stock in accordance with, and pursuant to the terms specified in, Section E(3) hereof.

(2) Liquidation Preference.

a. Subject to the prior rights of the holders of Series C Preferred Stock set forth in Article IV(F) and the holders of Series D Preferred Stock set out in Article IV(G), in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series B Junior Stock by reason of their ownership thereof, the amount of $1.40 per share for each share of Series B Preferred Stock then held by them (as adjusted for any subdivisions, combinations or stock dividends with respect to such shares), and, in addition, an amount equal to all declared but unpaid dividends on the Series B Preferred Stock. If, upon occurrence of such event the assets and funds legally available to be distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for such distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the respective amounts which would be payable in respect of the shares then held by them upon such distribution if all amounts on or with respect to such shares of Series B Preferred Stock were paid in full.

b. Upon completion of the distribution required by Sections G(2)(a), F(3)(a) and E(2)(a) the holders of the Series A Preferred Stock and Class A Common Stock of the Corporation shall receive all of the remaining assets of the Corporation as provided in Section 2 of Article IV(D).

c. (i) For purposes of this Section E(2), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, (A) any distribution of the assets of the Corporation among shareholders for the purpose of winding-up its affairs, (B) a sale of all or substantially all of the assets of the Corporation in one or a series of transactions (including, for purposes of this section, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets), or (C) any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation or other business combination) that results in the transfer of 50%

or more of the outstanding voting power of the Corporation, provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this Corporation's securities immediately prior to such transaction.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows: (1) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty day period ending three days prior to the closing; (2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty day period ending three days prior to the closing; and (3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) Securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be valued in such a manner as to make an appropriate discount from the market value determined as above in paragraph (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(iii) The Corporation shall give each holder of record of Series B Preferred Stock written notice of any such impending transaction not later than ten (10) days prior to the stockholder meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction whichever notice date is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Section E(2), and the amounts anticipated to be distributed to holders of each outstanding series and class of capital stock of the Corporation, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series B Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series B Preferred Stock (on an as-converted basis).

(3) Conversion. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Class A Common Stock, as is determined by dividing CDN$0.3149 by the then applicable Series A Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Class A Common Stock shall be deliverable upon conversion of the Series A Preferred Stock (the "Series A Conversion Price") shall initially be CDN$0.3149 per share of Class A Common Stock. Such initial Series A Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Class A Common Stock, as is determined by dividing $1.40204 by the then applicable Series B Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Class A Common Stock shall be deliverable upon conversion of the Series B Preferred Stock (the "Series B Conversion Price") shall initially be $1.40204 per share of Class A Common Stock. Such initial Series B Conversion Price shall be subject to adjustment as hereinafter provided.

b. Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Class A Common Stock at the then effective Series A Conversion Price or Series B Conversion Price, as applicable, immediately upon the effectiveness of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public in which the aggregate net proceeds to the Company equal or exceed $25,000,000. The holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting together as a single class at a duly held meeting or by written consent or other agreement, may at any time elect to convert all Series B Preferred Stock into Class A Common Stock. The holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a single class at a duly held meeting or by written consent or other agreement, may at any time elect to convert all Series A Preferred Stock into Class A Common Stock.

c. Mechanics of Conversion. Before any holder of Series A Preferred Stock or Series B Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock or Series B Preferred Stock, and shall give written notice to the

Corporation at such office that he elects to convert the same. Such notice shall also state whether the holder elects to receive declared but unpaid dividends on the Series A Preferred Stock or Series B Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Common Stock at their fair market value as determined by the Board of Directors. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series B Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Common Stock, and any declared but unpaid dividends on the converted Series A Preferred Stock or Series B Preferred Stock which the holder elected to receive in cash. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to such closing.

If only part of the Series A Preferred Stock or Series B Preferred Stock represented by the surrendered certificate or certificates is converted, the holder shall have the right to receive a new certificate for the shares of Series A Preferred Stock or Series B Preferred Stock represented by the original certificate or certificates which were not converted. All shares issued by the Corporation pursuant to the conversion of Series A Preferred Stock or Series B Preferred Stock into Common Stock, as set out above, shall be fully paid and non-assessable.

d. Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section E(3), the following definitions shall apply:

(A) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) "Series B Original Issue Date" shall mean the date on which the first share of Series B Preferred Stock is issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock) or other securities convertible

into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section E(3)(d)(iii), deemed to be issued) by the Corporation after the Series B Original Issue Date, other than shares of Common Stock issued or issuable:

i) upon conversion of shares of the Preferred Stock;

ii) to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program (collectively, the "Plans") up to a maximum of 24,997,618 shares in the aggregate, pursuant to a

warrant to Beauchesne, Ostiguy & Simard Inc. in an amount of 15,500 shares, pursuant to the Series D Preferred Stock Plan up to a maximum of 1,238,926 shares in the aggregate, pursuant to warrants to Comdisco, Inc./Comdisco Ventures, Inc. in an aggregate amount of 587,976 shares pursuant, to a warrant to Comerica Incorporated in an amount of 92,496 shares and pursuant, to a warrant to Planet Enlightenment Corp. in an amount of 10,000 shares (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares after the Series A Original Issue Date or Series B Original Issue Date, as applicable);

iii) as a dividend or distribution on Series A Preferred Stock or Series B Preferred Stock; and

iv) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (i), (ii) or (iii).

(ii) No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price or Series B Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series A Conversion Price or Series B Conversion Price, as applicable, in effect on the date of, and immediately prior to such issue, for such share of Series A Preferred Stock or Series B Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. Except as provided in Section E(3)(d)(i)(D) above, in the event the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such

Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section E(3)(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Series A Conversion Price or Series B Conversion Price, as applicable, in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

i) no further adjustment in the Series A Conversion Price or the Series B Conversion Price, as applicable, shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price or the Series B Conversion Price, as applicable, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any

subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series A Conversion Price or the Series B Conversion Price, as applicable, shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or

for the issue of all such Convertible Securities which were actually converted or exchanged, and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

iv) no readjustment pursuant to this clause (A) shall have the effect of increasing with respect to Series A Preferred Stock, the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price on the original adjustment date, or (ii) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date or, with respect to the Series B Preferred Stock, the Series B Conversion Price to an amount which exceeds the lower of (i) the Series B Conversion Price on the original adjustment date, or (ii) the Series B Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(B) Stock Dividends. In the event the Corporation, at any time or from time to time after the Series B Original Issue Date, shall declare or pay any dividend on the Common Stock payable in Common Stock or Convertible Securities, then Additional Shares of Common Stock shall be deemed to have been issued immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend (and the number of shares issuable with respect to Convertible Securities shall be determined in the same manner provided in clause (A) above).

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section E(3)(d)(iii)) without consideration or for a consideration per share less than the Series A Conversion Price and/or the Series B Conversion Price, as applicable, in effect on the date of and immediately prior to such issue, then and in such event, such Series A Conversion Price and/or Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest hundredth of a cent) determined by multiplying such Series A Conversion Price and/or Series B Conversion Price, as applicable, by a fraction, the numerator of which shall

be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate

consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series A Conversion Price and/or Series B Conversion Price, as applicable, in effect on the date immediately prior to such issue; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock (including shares deemed to be issued pursuant to this section) so issued; and provided further that, for the purposes of this Section E(3)(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding Series A Preferred Stock or Series B Preferred Stock and all outstanding Convertible Securities, and upon exercise of all outstanding Options bearing an exercise price which is lower than the price at which Additional Shares of Common Stock were issued (or deemed to be issued), shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section E(3)(d)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section E(3)(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section E(3)(d)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible

Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends. Any Additional Shares of Common Stock deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(vi) Adjustments for Subdivisions, Combinations, or Consolidations of Common Stock. In the event the number of shares of Common Stock outstanding at any time after the Series A Original Issue Date or Series B Original Issue Date, as applicable, shall be subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, then the Conversion Price for the Series A Preferred Stock and Series B Preferred Stock in effect immediately prior to such subdivision, combination or consolidation shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately increased or decreased, as applicable.

e. Other Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section E(3)(d)(iii), then, in each such case, the holders of Series A Preferred Stock or Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock or Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

f. Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock or a business combination, merger or consolidation of this Corporation with or into another entity (other than a subdivision, combination, merger, consolidation or sale of assets transaction provided for elsewhere in this Seventh Amended and Restated Certificate of Incorporation), provision shall be made so that the holders of Series A Preferred Stock or Series B Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock or Series B Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization, business combination, merger, consolidation or sale of assets transaction. In any such case, appropriate adjustment shall be made in the application of the provisions

of this Section E(3) with respect to the rights of the holders of the Series A Preferred Stock or Series B Preferred Stock after the recapitalization to the end that the provisions of this Section E(3) (including adjustment of the applicable Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

g. No Impairment. This Corporation will not, without the appropriate vote of the stockholders under the General Corporation Law or Sections E(5) and F(6), by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section E(3) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred Stock or Series B Preferred Stock against impairment.

h. No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series A Preferred Stock or Series B Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair

market value of the Class A Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to this Section E(3), this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock or Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series A Conversion Price and Series B Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock or Series B Preferred Stock.

(iii) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock or Series B Preferred Stock such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock or Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock or Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock or Series B Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Seventh Amended and Restated Certificate of Incorporation.

(iv) Notices. Any notice required by the provisions of this Section E(3) to be given to the holders of shares of Series A Preferred Stock or Series B Preferred Stock shall be deemed given if deposited in the United States registered or certified mail, postage prepaid, return receipt requested and addressed to each holder of record at his address appearing on the books of this Corporation.

(4) Voting Rights. The holder of each share of Series B Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such share of Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Class A Common Stock, shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote together as a single class with holders of Class A Common Stock, Class B Common Stock, Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock with respect to any question upon which holders of Class A Common Stock have the right to vote, unless otherwise prohibited by law. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(5) Protective Provisions of Series A Preferred Stock and Series B Preferred Stock. The Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of

the holders of two-thirds (2/3) of the outstanding shares of Series A Preferred

Stock and Series B Preferred Stock that are entitled to vote with respect to the following matters:

a. alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock, Class A Common Stock, Class B Common Stock or Series A Preferred Stock so as to adversely affect the shares of Series A Preferred Stock and Series B Preferred Stock, including by merger, consolidation, reorganization or otherwise;

b. increase or decrease (other than by redemption or conversion) the total number of authorized shares of Class A Common Stock, Class B Common Stock, Series A Preferred Stock or Series B Preferred Stock, including by merger, consolidation, reorganization or otherwise;

c. create (by new authorization, reclassification, recapitalization or otherwise) any class or series of stock or any other securities convertible into equity securities of this Corporation having a preference over, or being on a parity with, the rights, preferences or privileges of the Series A Preferred Stock or Series B Preferred Stock, including by merger, consolidation, reorganization or otherwise;

d. redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of any series of the Company's Preferred Stock or Common Stock other than as provided in Article IV(C)(1) or Article VI(F)(1); provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, provided that such repurchase has been approved by unanimous agreement of the Board of Directors;

e. effect a reclassification or recapitalization of the outstanding capital stock of the Corporation in which any capital stock has any preference or priority as to dividends or assets senior to or on parity with the preferences of the Series A Preferred Stock or the Series B Preferred Stock, including by merger, consolidation, reorganization or otherwise;

f. increase the number of authorized directors to more than seven directors; or

g. declare or effect the payment of a dividend on any share or shares of Class A Common Stock.

(6) Status of Converted Series B Preferred Stock. In the event any shares of Series B Preferred Stock shall be converted pursuant to Section E(3) hereof, the shares so converted shall be canceled and shall not thereafter be issuable by the Corporation. The Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

F. Rights, Preferences and Restrictions of Series C Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Series C Preferred Stock are as set forth below in this Article IV(F).

(1) Redemption. At the written request of the holders of a majority of the outstanding shares of Series C Preferred Stock delivered to the Corporation no earlier than 90 days prior to October 25, 2008 and no later than 10 days prior to October 25, 2008, the Corporation shall redeem, from sources of funds legally available therefor, the Series C Preferred Stock in three equal annual installments on each of October

25, 2008, October 25, 2009 and October 25, 2010 ("Series C Redemption Dates"). On each Series C Redemption Date, the Corporation shall redeem the Series C Preferred Stock to be redeemed on such date pro rata from each holder of Series C Preferred Stock based on the number of shares of Series C Preferred Stock held by each such holder. The Corporation shall effect such redemptions on the applicable Series C Redemption Dates by paying cash in exchange for the Series C Preferred Stock to be redeemed in a sum equal to $0.4907 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the "Series C Redemption Price") plus all accrued and unpaid dividends on the shares to be redeemed. Any shares of Series C Preferred Stock not redeemed at the specified Series C Redemption Dates under this Section F(1) shall continue to accrue dividends until redeemed. A majority of the holders of the Series C Preferred Stock may elect to waive or defer one or more redemption payments with respect to all holders of the Series C Preferred Stock.

(2) Dividends. The holders of the Series C Preferred Stock shall be entitled to receive, out of any funds legally available therefor, pari passu with the Series D Preferred Stock and prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, the Series A Preferred Stock and Series B Preferred Stock or any other class or series of Common Stock or Preferred Stock that is not expressly senior to or pari passu in right of payment to the Series C Preferred Stock (collectively, "Series C Junior Stock"), dividends compounded annually at the rate per annum of $0.039256 per share (as adjusted for any subdivisions, combinations or stock dividends with respect to such shares). The right to such dividends on the Series C Preferred Stock shall be cumulative and shall accrue whether or not declared by the Board of Directors and whether or not there are profits or surplus available therefor.

In addition, the holders of the Series C Preferred Stock shall share pro rata with holders of Common Stock on the basis of the number of shares of Common Stock which each holder would be entitled to receive upon conversion of such holder's Series C Preferred Stock as of the record date for the dividend or distribution, in all other dividends or distributions, if any, that the Board of Directors may declare from time to time with respect to the Common Stock.

In the event that the Corporation shall have accrued but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series C Preferred Stock (as provided in Section F(4) hereof), the Corporation shall, at the option of each holder, pay in cash to each holder of Series C Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Class A Common Stock in accordance with, and pursuant to the terms specified in, Section F(4) hereof; provided, however, that so long as any loans are outstanding under the Credit Facility (as defined below), no holder of Series C Preferred Stock may elect to have such dividends paid in cash. "Credit Facility" shall mean the Credit and Guaranty Agreement, dated as of April 25, 2005, among the Corporation, the lenders from time to time parties thereto, and Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent, as it may be amended or extended from time to time, together with the documents executed in connection therewith.

(3) Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive, pari passu with the Series D Preferred Stock and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series C Junior Stock by reason of their ownership thereof, the greater of (i) the amount that would be payable to each holder of the Series C Preferred Stock in respect of the Common Stock issuable upon conversion of such holder's shares of Series C Preferred Stock if all outstanding shares of Series C Preferred Stock were converted into Common Stock immediately prior to

such event in accordance with Section F(4), or (ii) the sum of (x) $0.4907 (as adjusted for any subdivisions, combinations or stock dividends with respect to such shares) per share of the Series C Preferred Stock, and (y) any accrued and unpaid dividends on such shares. If, upon the occurrence of such event the assets and funds legally available to be distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for such distribution shall be distributed ratably among the holders of the Series C Preferred Stock and Series D Preferred Stock in proportion to the respective amounts which would be payable in respect of the shares then held by them upon such distribution if all amounts on or with respect to such shares of Series C Preferred Stock and Series D Preferred Stock were paid in full.

b. Upon completion of the distribution required by Sections G(2)(a) and F(3)(a) the holders of the Series A Preferred Stock, Series B Preferred Stock and Class A Common Stock of the Corporation shall receive all of the remaining assets of the Corporation as provided in Section E(2)(a) and Section 2 of Article IV(D).

c. (i) For purposes of this Section F(3), unless the holders of a majority of the Series C Preferred Stock elect otherwise, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, (A) any distribution of the assets of the Corporation among shareholders for the purpose of winding-up its affairs, (B) a sale of all or substantially all of the assets of the Corporation in one or a series of transactions (including, for purposes of this section, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets), or (C) any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation or other business combination) that results in the transfer of 50% or more of the outstanding voting power of the Corporation, provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this Corporation's securities immediately prior to such transaction.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows: (1) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty day period ending three days prior to the closing; (2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty day period ending three days prior to the closing; and (3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) Securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be valued in such a manner as to make an appropriate discount from the market value determined as above in paragraph (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(iii)The Corporation shall give each holder of record of Series C Preferred Stock written notice of any such impending transaction not later than ten (10) days prior to the stockholder meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction

whichever notice date is earlier, and shall also notify such holders in writing

of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Section F(3), and the amounts anticipated to be distributed to holders of each outstanding series and class of capital stock of the Corporation, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series C Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series C Preferred Stock (on an as-converted basis).

(4) Conversion. The holders of the Series C Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing $0.4907 by the then applicable Series C Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Class A Common Stock shall be deliverable upon conversion of the Series C Preferred Stock (the "Series C Conversion Price") shall initially be $0.4907 per share of Class A Common Stock. Such Series C Conversion Price shall be subject to adjustment as hereinafter provided.

b. Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted into shares of Class A Common Stock at the then effective Series C Conversion Price immediately upon the effectiveness of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public in which the per share price is equal to or greater than $1.4721 (as adjusted for any subdivisions, combinations or stock dividends with respect to the Common Stock after the Series C Original Issue Date) and the aggregate net proceeds to the Company equal or exceed $25,000,000 (a "Qualified Public Offering"). The holders of at least a majority of the then outstanding shares of Series C Preferred Stock, voting together as a single class at a duly held meeting or by written consent or other agreement, may at any time elect to convert all Series C Preferred Stock into Class A Common Stock.

c. Mechanics of Conversion. Before any holder of Series C Preferred Stock shall be entitled to convert the same into full shares of Class A Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series C Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. Such notice shall also state whether the holder elects to receive accrued but unpaid dividends on the Series C Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Class A Common Stock at their fair market value as determined by

the Board of Directors. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock, a certificate or certificates for the number of shares of Class A Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Class A Common Stock, and any accrued but unpaid dividends on the converted Series C Preferred Stock which the holder elected to receive in cash. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock on such date. If the conversion is in

connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Class A Common Stock issuable upon such conversion of the Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to such closing.

If only part of the Series C Preferred Stock represented by the surrendered certificate or certificates is converted, the holder shall have the right to receive a new certificate for the shares of Series C Preferred Stock represented by the original certificate or certificates which were not converted. All shares issued by the Corporation pursuant to the conversion of Series C Preferred Stock into Class A Common Stock, as set out above, shall be fully paid and non-assessable.

d. Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section F(4), the following definitions shall apply:

(A) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) "Series C Original Issue Date" shall mean the date on which the first share of Series C Preferred Stock is issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Series D Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section F(4)(d)(iii), deemed to be issued) by the Corporation after the Series C Original Issue Date, other

than shares of Common Stock issued or issuable:

i) upon conversion of shares of Preferred Stock;

ii) to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program (collectively, the "Plans") up to a maximum of 24,997,618 shares in the aggregate, pursuant to a warrant to Beauchesne, Ostiguy & Simard Inc. in an amount of 15,500 shares, pursuant to the Series D Preferred Stock Plan up to a maximum of 1,238,926 shares in the aggregate, pursuant to warrants to Comdisco, Inc./Comdisco Ventures, Inc. in an aggregate amount of 587,976 shares, pursuant to a warrant to Comerica Incorporated in an amount of 92,496 shares, and pursuant to a warrant to Planet Enlightenment Corp. in an amount of 10,000 shares (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares after the Series C Original Issue Date);

iii) as a dividend or distribution on Series C Preferred Stock (in accordance with the provisions hereof).

(ii) No Adjustment of Conversion Price. No adjustment in the Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the

Corporation is less than the Series C Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

i) no further adjustment in the Series C Conversion Price shall be made upon the subsequent issue of Convertible

Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series C Conversion Price shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

iv) no readjustment pursuant to this clause (A) shall have the effect of increasing the Series C Conversion Price to an amount which exceeds the lower of (i) the

Series C Conversion Price on the original adjustment date, or (ii) the Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(B) Stock Dividends. In the event the Corporation,

at any time or from time to time after the Series C Original Issue Date, shall declare or pay any dividend payable in Common Stock or Convertible Securities, then Additional Shares of Common Stock shall be deemed to have been issued immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend (and the number of shares issuable with respect to Convertible Securities shall be determined in the same manner provided in clause (A) above).

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section F(4)(d)(iii)) without consideration or for a consideration per share less than the Series C Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Series C Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest hundredth of a cent) determined by multiplying such Series C Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series C Conversion Price in effect on the date immediately prior to such issue; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued (including for purposes of this Section F(4)(d)(iv) any increase in the number of Shares of Common Stock issuable upon conversion of any Series of Preferred Stock that results from such issuance of Additional Shares of Common Stock) provided that, for the purposes of this Section F(4)(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding Preferred Stock and all outstanding Convertible Securities, and upon exercise of all outstanding Options bearing an exercise price which is lower than the price at which Additional Shares of Common Stock were issued (or deemed to be issued), shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section F(4)(d)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section F(4)(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in the good faith exercise of its reasonable business judgment by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section F(4)(d)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends. Any Additional Shares of Common Stock deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(vi) Adjustments for Subdivisions, Combinations, or Consolidations of Common Stock. In the event the number of shares of Common Stock outstanding at any time after the Series C Original Issue Date shall be subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, then the Series C Conversion Price in effect immediately prior to such subdivision, combination or consolidation shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately decreased or increased, as applicable.

e. Other Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section F(4)(d)(iii), then, in each such case, the holders of Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders

of the number of shares of Common Stock of the Corporation into which their shares of Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

f. Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock or a business combination, merger or consolidation of this Corporation with or into another entity (other than a subdivision, combination, merger, consolidation or sale of assets transaction provided for elsewhere in this Seventh Amended and Restated Certificate of Incorporation), provision shall be made so that the holders of Series C Preferred Stock shall thereafter be entitled to receive upon conversion of the Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization, business combination, merger, consolidation or sale of assets transaction. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section F(4) with respect to the rights of the holders of the Series C Preferred Stock thereafter to the end that the provisions of this Section F(4) (including adjustment of the Series C Conversion Price then in effect and the number of shares issuable upon conversion of the Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

g. No Impairment. This Corporation will not, without the appropriate vote of the stockholders under the General Corporation Law or Sections E(5) and F(6), by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section F(4) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series C Preferred Stock against impairment.

h. No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Class A Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series C Conversion Price pursuant to this Section F(4), this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series C Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series C Preferred Stock.

(iii) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series C Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Seventh Amended and Restated Certificate of Incorporation.

(iv) Notices. Any notice required by the provisions of this Section F(4) to be given to the holders of shares of Series C Preferred Stock shall be deemed given if deposited in the United States registered or certified mail, postage prepaid, return receipt requested and addressed to each holder of record at his address appearing on the books of this Corporation.

(5) Voting Rights. The holder of each share of Series C Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such share of Series C Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to

the voting rights and powers of the holders of Class A Common Stock, shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote together as a single class with holders of Class A Common Stock, Class B Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series D

Preferred Stock with respect to any question upon which holders of Class A Common Stock have the right to vote, unless otherwise prohibited by law. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(6) Protective Provisions of Series C Preferred Stock. So long as at least ten percent (10%) of the Series C Preferred Stock remain outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the outstanding shares of Series C Preferred Stock:

a. alter or change the rights, preferences or privileges of the shares of the Series C Preferred Stock, including by merger, consolidation, reorganization or otherwise;

b. increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock, including by merger, consolidation, reorganization or otherwise;

c. create (by new authorization, reclassification, recapitalization or otherwise) any class or series of stock or any other securities convertible into equity securities of this Corporation having a preference over, or being on a parity with, the rights, preferences or privileges of the Series C Preferred Stock, including by merger, consolidation, reorganization or otherwise;

d. redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of any series of Preferred Stock or Common Stock other than as provided in Article IV(C)(1) and Section F(1) above; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, provided that such repurchase has been approved by unanimous agreement of the Board of Directors;

e. amend the Certificate of Incorporation or the Bylaws of the Corporation, including by merger, consolidation, reorganization or otherwise;

f. effect any acquisition of or investment in another person or entity involving consideration in excess of $1,000,000, other than in the ordinary course of business;

g. effect a sale, transfer or other disposition of assets, excluding sales of inventory and other sales in the ordinary course of business, in any transaction or series of related transactions involving consideration in excess of the lesser of (x) $1,000,000 or (y) 25% of the fair market value of

the Corporation's consolidated assets;

h. effect any transaction with senior management of the Corporation or any other affiliates, except for any arms-length employment arrangements;

i. effect any debt or lease transaction involving in excess of $3,000,000.

(7) Status of Converted Series C Preferred Stock. In the event any shares of Series C Preferred Stock shall be converted pursuant to Section F(4) hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

G. Rights, Preferences and Restrictions of Series D Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Series D Preferred Stock are as set forth below in this Article IV(G).

(1) Dividends. The holders of the Series D Preferred Stock shall be entitled to receive, out of any funds legally available therefor, pari passu with the Series C Preferred Stock and prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, the Series A Preferred Stock and Series B Preferred Stock or any other class or series of Common Stock or Preferred Stock that is not expressly senior to or pari passu in right of payment to the Series D Preferred Stock (collectively, "Series D Junior Stock"), dividends compounded annually at the rate per annum of $0.039256 per share (as adjusted for any subdivisions, combinations or stock dividends with respect to such shares). The right to such dividends on the Series D Preferred Stock shall be cumulative and shall accrue whether or not declared by the Board of Directors and whether or not there are profits or surplus available therefor.

In addition, the holders of the Series D Preferred Stock shall share pro rata with holders of Common Stock on the basis of the number of shares of Common Stock which each holder would be entitled to receive upon conversion of such holder's Series D Preferred Stock as of the record date for the dividend or distribution, in all other dividends or distributions, if any, that the Board of Directors may declare from time to time with respect to the Common Stock.

In the event that the Corporation shall have accrued but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series D Preferred Stock (as provided in Section G(3) hereof), the Corporation shall, at the option of each holder, pay in cash to each holder of Series D Preferred Stock subject to conversion the full amount of any such dividends or allow such

dividends to be converted into Class A Common Stock in accordance with, and pursuant to the terms specified in, Section G(3) hereof.

(2) Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series D Preferred Stock shall be entitled to receive, pari passu with the Series C Preferred Stock and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series D Junior Stock by reason of their ownership thereof, the greater of (i) the amount that would be payable to each holder of the Series D Preferred Stock in respect of the Common Stock issuable upon conversion of such holder's shares of Series D Preferred Stock if all outstanding shares of Series D Preferred Stock were converted into Common Stock immediately prior to such event in accordance with Section G(3), or (ii) the sum of (x) $0.4907 (as adjusted for any subdivisions, combinations or stock dividends with respect to such shares) per share of the Series D Preferred Stock, and (y) any accrued and unpaid dividends on such shares. If, upon occurrence of such event the assets and funds legally available to be distributed among the holders of the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for such distribution shall be distributed ratably among the holders of the Series C Preferred Stock and Series D Preferred Stock in proportion to the respective amounts which would be

payable in respect of the shares then held by them upon such distribution if all amounts on or with respect to such shares of Series C Preferred Stock and Series D Preferred Stock were paid in full.

b. Upon completion of the distribution required by Section F(3)(a) and G(2)(a) the holders of the Series A Preferred Stock, Series B Preferred Stock and Class A Common Stock of the Corporation shall receive all of the remaining assets of the Corporation as provided in Section E(2)(a) and Section 2 of Article IV(D).

c. (i) For purposes of this Section G(2), unless the holders of a majority of the Series D Preferred Stock elect otherwise, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, (A) any distribution of the assets of the Corporation among shareholders for the purpose of winding-up its affairs, (B) a sale of all or substantially all of the assets of the Corporation in one or a series of transactions (including, for purposes of this section, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets), or (C) any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation or other business combination) that results in the transfer of 50% or more of the outstanding voting power of the Corporation, provided, however,

that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this Corporation's securities immediately prior to such transaction.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows: (1) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty day period ending three days prior to the closing; (2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty day period ending three days prior to the closing; and (3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) Securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be valued in such a manner as to make an appropriate discount from the market value determined as above in paragraph (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(iii)The Corporation shall give each holder of record of Series D Preferred Stock written notice of any such impending transaction not later than ten (10) days prior to the stockholder meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction whichever notice date is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Section G(2), and the amounts anticipated to be distributed to holders of each outstanding series and class of capital stock of the Corporation, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however,

that such periods may be shortened upon the written consent of the holders of Series D Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series D Preferred Stock (on an as-converted

basis).

(3) Conversion. The holders of the Series D Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert. Each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing $0.4907 by the then applicable Series D Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Class A Common Stock shall be deliverable upon conversion of the Series D Preferred Stock (the "Series D Conversion Price") shall initially be $0.4907 per share of Class A Common Stock. Such Series D Conversion Price shall be subject to adjustment as hereinafter provided.

Notwithstanding anything herein to the contrary, to the extent the Corporation issues shares of Class A Common Stock pursuant to that certain warrant issued to FMR Corp. (the "Warrant"), then the Conversion Price of the Series D Preferred Stock shall be reduced, with effect from the Series D Original Issue Date (defined below), to an amount equal to the product of (i) $0.4907 multiplied by (ii) the quotient obtained by dividing (A) 123,892,670 by (B) the sum of (x) 123,892,670 plus (y) the total aggregate number of shares of Class A Common Stock issued upon exercise of the Warrant (aggregating any prior partial exercises of the Warrant with the most recent exercise) (such adjusted Conversion Price to be the "Deemed Series D Conversion Price"), and in addition, any other adjustment of the Series D Conversion Price resulting from the operation of any other provision of this Section G(3) shall, upon each exercise of the Warrant, be recalculated or adjusted to reflect such deemed prior adjustment of the Series D Conversion Price to the Deemed Series D Conversion Price pursuant to this paragraph.

b. Automatic Conversion. Each share of Series D Preferred Stock shall automatically be converted into shares of Class A Common Stock at the then effective Series D Conversion Price immediately upon the effectiveness of a Qualified Public Offering. The holders of at least a majority of the then outstanding shares of Series D Preferred Stock, voting together as a single class at a duly held meeting or by written consent or other agreement, may at any time elect to convert all Series D Preferred Stock into Class A Common Stock.

c. Mechanics of Conversion. Before any holder of Series D Preferred Stock shall be entitled to convert the same into full shares of Class A Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series D Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. Such notice shall also state whether the holder elects to receive accrued but unpaid dividends on the Series D Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Class A Common Stock at their fair market value as determined by the Board of Directors. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series D

Preferred Stock, a certificate or certificates for the number of shares of Class A Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Class A Common Stock, and any accrued but unpaid dividends on the converted Series D Preferred Stock which the holder elected to receive in cash. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series D Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock on such date. If the conversion is in

connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Class A Common Stock issuable upon such conversion of the Series D Preferred Stock shall not be deemed to have converted such Series D Preferred Stock until immediately prior to such closing.

If only part of the Series D Preferred Stock represented by the surrendered certificate or certificates is converted, the holder shall have the right to receive a new certificate for the shares of Series D Preferred Stock represented by the original certificate or certificates which were not converted. All shares issued by the Corporation pursuant to the conversion of Series D Preferred Stock into Class A Common Stock, as set out above, shall be fully paid and non-assessable.

d. Adjustments to Conversion Price.

(i) Special Definitions. For purposes of this Section G(4), the following definitions shall apply:

(A) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) "Series D Original Issue Date" shall mean the date on which the first share of Series D Preferred Stock is issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section G(3)(d)(iii), deemed to be issued) by the Corporation after the Series D Original Issue Date, other than shares of Common Stock issued or issuable:

i) upon conversion of shares of Preferred Stock;

ii) to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program (collectively, the "Plans") up to a maximum of 24,997,618 shares in the aggregate, pursuant to a warrant to Beauchesne, Ostiguy & Simard Inc. in an amount of 15,500 shares, pursuant to the Series D Preferred Stock Plan up to a maximum of 1,238,926 shares in the aggregate, pursuant to warrants to Comdisco, Inc./Comdisco Ventures, Inc. in an aggregate amount of 587,976 shares, pursuant to a warrant to Comerica Incorporated in an amount of 92,496 shares, and pursuant to a warrant to Planet Enlightenment Corp. in an amount of 10,000 shares (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares after the Series D Original Issue Date);

iii) as a dividend or distribution on Series D Preferred Stock (in accordance with the provisions hereof).

(ii) No Adjustment of Conversion Price. No adjustment in the Series D Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series D Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Series D Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

i) no further adjustment in the Series D Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series D Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series D Conversion Price shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

iv) no readjustment pursuant to this clause (A) shall have the effect of increasing the Series D Conversion Price to an amount which exceeds the lower of (i) the Series D Conversion Price on the original adjustment date, or (ii) the Series D Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(B) Stock Dividends. In the event the Corporation, at any time or from time to time after the Series D Original Issue Date, shall declare or pay any dividend payable in Common Stock or Convertible Securities, then Additional Shares of Common Stock shall be deemed to have been issued immediately after the close of business on the record date for the

determination of holders of any class of securities entitled to receive such dividend (and the number of shares issuable with respect to Convertible Securities shall be determined in the same manner provided in clause (A) above).

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section G(3)(d)(iii)) without consideration or for a consideration per share less than the Series D Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Series D Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest hundredth of a cent) determined by multiplying such Series D Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series D Conversion Price in effect on the date immediately prior to such issue; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued (including for purposes of this Section G(4)(d)(iv) any increase in the number of Shares of Common Stock issuable upon conversion of any Series of Preferred Stock that results from such issuance of Additional Shares of Common Stock) provided that, for the purposes of this Section G(3)(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding Preferred Stock and all outstanding Convertible Securities, and upon exercise of all outstanding Options bearing an exercise price which is lower than the price at which Additional Shares of Common Stock were issued (or deemed to be issued), shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section G(3)(d)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section G(3)(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of

such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in the good faith exercise of its reasonable business judgment by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section G(3)(d)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends. Any Additional Shares of Common Stock deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(vi) Adjustments for Subdivisions, Combinations, or Consolidations of Common Stock. In the event the number of shares of Common Stock outstanding at any time after the Series D Original Issue Date shall be subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, then the Series D Conversion Price in effect immediately prior to such subdivision, combination or consolidation shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately decreased or increased, as applicable.

e. Other Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section G(3)(d)(iii), then, in each such case, the holders of Series D Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series D Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the

Corporation entitled to receive such distribution.

f. Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock or a business combination, merger or consolidation of this Corporation with or into another entity (other than a subdivision, combination, merger, consolidation or sale of assets transaction provided for elsewhere in this Seventh Amended and Restated Certificate of Incorporation), provision shall be made so that the holders of Series D Preferred Stock shall thereafter be entitled to receive upon conversion of the Series D Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization, business combination, merger, consolidation or sale of assets transaction. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section G(3) with respect to the rights of the holders of the Series D Preferred Stock thereafter to the end that the provisions of this Section G(3) (including adjustment of the Series D Conversion Price then in effect and the number of shares issuable upon conversion of the Series D Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

g. No Impairment. This Corporation will not, without the appropriate vote of the stockholders under the General Corporation Law or Sections E(5) and F(6), by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the

observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section G(3) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series D Preferred Stock against impairment.

h. No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series D Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Class A Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series D Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or

readjustment of the Series D Conversion Price pursuant to this Section G(3), this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series D Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series D Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series D Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series D Preferred Stock.

(iii) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series D Preferred Stock such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series D Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series D Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series D Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Seventh Amended and Restated Certificate of Incorporation.

(iv) Notices. Any notice required by the provisions of this Section G(3) to be given to the holders of shares of Series D Preferred Stock shall be deemed given if deposited in the United States registered or certified mail, postage prepaid, return receipt requested and addressed to each holder of record at his address appearing on the books of this Corporation.

(4) Voting Rights. The holder of each share of Series D Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such share of Series D Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Class A Common Stock, shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote together as a single class with holders of Class A Common Stock, Class B Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock with respect

to any question upon which holders of Class A Common Stock have the right to vote, unless otherwise prohibited by law. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series D Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(5) Status of Converted Series D Preferred Stock. In the event any shares of Series D Preferred Stock shall be converted pursuant to Section G(3) hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

ARTICLE V

Except as otherwise provided in this Seventh Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.
ARTICLE VI

ARTICLE VI

Subject to Article IV(E)(5), the number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws or amendment thereof duly adopted by the Board of Directors or by the stockholders.

To the maximum extent permitted from time to time under the law of the State of Delaware, this Corporation renounces any interest or expectancy of the Corporation in, or being offered an opportunity to participate in, business opportunities that are from time to time presented to the director elected by each of Bain Capital Venture Fund, L.P., Telesystem Software Ventures Limited Partnership and Communicade Investments Ltd. (the "Bain Director," the "Telsoft Director," and the "Communicade Director," respectively). No amendment or repeal of this Article VI shall apply to or have any effect on the liability or alleged liability of any Bain Director, Telsoft Director or Communicade Director for or with respect to any opportunities of which such Bain Director, Telsoft Director or Communicade Director become aware prior to such amendment or repeal.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision of applicable law) outside the

State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE IX

To the fullest extent permitted by the General Corporation Law of Delaware, as the same may be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of Delaware is hereafter amended to authorize, with or without the approval of a corporation's stockholders, further limitations of the liability of the corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware as so amended.

Any repeal or modification of the foregoing provisions of this Article IX, by amendment of this Article IX or by operation of law, shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE X

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and other agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification), through Bylaw provisions, agreements with any such director, officer, employee or other agent or other person, vote of stockholders or disinterested directors, or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or nonstatutory), with respect to actions for breach of duty to a corporation, its stockholders and others.

Any repeal or modification of any of the foregoing provisions of this Article X, by amendment of this Article X or by operation of law, shall not adversely affect any right or protection of a director, officer, employee or other agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification.

ARTICLE XI

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Seventh Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, subject to the rights of stockholders herein.

ARTICLE XII

The Corporation shall have perpetual existence.

EXHIBIT 3.2

BYLAWS

OF

RECRUITSOFT.COM INC.

(A DELAWARE CORPORATION)

ARTICLE I.
CORPORATE OFFICES

1.1. REGISTERED OFFICE. The registered office of the corporation shall be fixed in the certificate of incorporation of the corporation.

1.2. OTHER OFFICES. The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

2.1. PLACE OF MEETINGS. Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

2.2. ANNUAL MEETING. The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. In the absence of such designation, the annual meeting of stockholders shall be held on the second Tuesday in May. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected, and any other proper business may be transacted.

2.3. SPECIAL MEETING. A special meeting of the stockholders may be called at any time by the board of directors, the chairman of the board, the vice chairman of the board, or by the president, or by one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes of all shares of stock owned by stockholders entitled to vote at that meeting.

If a special meeting is called by any person or persons other than the board of directors, the chairman of the board, the vice chairman of the board or the president, then the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or

other facsimile transmission to the chairman of the board, the vice chairman of the board, the president, any vice president or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.6 of these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting, so long as that time is not less than ten (10) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty

(20) days after receipt of the request, then the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4. NOTICE OF STOCKHOLDERS' MEETINGS. All notices of meetings of stockholders shall be sent or otherwise given in accordance with Section 2.6 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Written notice of any meeting of stockholders shall be given either (i) personally or (ii) by private courier service or (iii) by United States class mail or (iv) by telegraphic, facsimile or other written communication or (v) via e-mail. Notices not personally delivered shall be sent postage prepaid and shall be addressed to the stockholder at the address of that stockholder appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice. Notice shall be deemed to have been given at such time as it is delivered personally or deposited in the mail or sent by telegram or other means of written communication.

An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the secretary, assistant secretary or any transfer agent of the corporation giving the notice, shall be prima facie evidence of the giving of such notice.

2.6. QUORUM. The holders of a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairman of the meeting or (ii) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting in accordance with Section 2.8 of these bylaws.

When a quorum is present at any meeting, the affirmative vote of holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the

question is one upon which, by express provision of the laws of the State of Delaware or of the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of the question.

The stockholders present at a duly called or held meeting at which a quorum is initially present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, if any action taken is approved by a majority of the shares required to constitute a quorum.

2.7. ADJOURNED MEETING; NOTICE. When any meeting of stockholders, either annual or special, is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8. VOTING. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217

and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgor and joint owners, and to voting trusts and other voting arrangements).

Except as otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.9. STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Such consents shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

2.10. RECORD DATE FOR STOCKHOLDER NOTICE; VOTING. For purposes of determining the stockholders entitled to notice of any meeting or to vote

thereat or entitled to give consent to a corporate action without a meeting, the board of directors may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting, and in such event only stockholders of record on the date so fixed are entitled to notice and to vote, notwithstanding any transfer of any shares on the books of the corporation after the record date.

If the board of directors does not so fix a record date, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting unless the board of directors fixes a new record date for the adjourned meeting, but the board of directors shall fix a new record date if the meeting is adjourned for more than thirty (30) days from the date set for the original meeting.

The record date for any other purpose shall be as provided in Section 8.1 of these bylaws.

2.11. PROXIES. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, telefacsimile or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

2.12. ORGANIZATION. The president, or in the absence of the president, the chairman of the board, or in the absence of the chairman of the board, the vice chairman of the board, or in the absence of the vice chairman of the board, any vice president of the corporation, shall call the meeting of the stockholders to order, and shall act as chairman of the meeting. In the absence of the president, the chairman of the board, the vice chairman of the board, and all of the vice presidents, the stockholders shall appoint a chairman for such

meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and the conduct of business. The secretary of

the corporation shall act as secretary of all meetings of the stockholders, but in the absence of the secretary at any meeting of the stockholders, the chairman of the meeting may appoint any person to act as secretary of the meeting.

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

ARTICLE III.
DIRECTORS

3.1. POWERS. Subject to the provisions of the General Corporation Law of Delaware and to any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2. NUMBER OF DIRECTORS. The board of directors shall consist of 7 members. The number of directors may be changed by an amendment to this bylaw, duly adopted by the board of directors or by the stockholders or by a duly adopted amendment to the certificate of incorporation.

3.3. ELECTION AND TERM OF OFFICE OF DIRECTORS. Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director, including a director elected or appointed to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

3.4. RESIGNATION AND VACANCIES. Any director may resign effective on giving written notice to the chairman of the board, the vice chairman of the board, the president, the secretary or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective.

Vacancies in the board of directors may be filled by a majority of the remaining directors, even if less than a quorum, or by a sole remaining director; however, a vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled only by the affirmative vote of

a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the required quorum). Each director so elected shall hold office until the next annual meeting of the stockholders and until a successor has been elected and qualified.

Unless otherwise provided in the certificate of incorporation or these bylaws:

i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a

single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10) percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5. REMOVAL OF DIRECTORS. Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

3.6. PLACE OF MEETINGS; MEETINGS BY TELEPHONE. Regular meetings of the

board of directors may be held at any place within or outside the State of Delaware that has been designated from time to time by resolution of the board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board may be held at any place within or outside the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal executive office of the corporation.

Any meeting of the board, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another; and all such directors shall be deemed to be present in person at the meeting.

3.7. FIRST MEETINGS. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

3.8. REGULAR MEETINGS. Regular meetings of the board of directors may be held without notice if the times of such meetings are fixed by the board of directors. If any regular meeting day shall fall on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day.

3.9. SPECIAL MEETINGS; NOTICE. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the vice chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, telecopy or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone, telecopy or telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

3.10. QUORUM. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 3.12 of these bylaws. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of the certificate of incorporation and applicable law.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the quorum for that meeting.

3.11. WAIVER OF NOTICE. Notice of a meeting need not be given to any director (i) who signs a waiver of notice, whether before or after the meeting, or (ii) who attends the meeting other than for the express purpose of objecting at the beginning of the meeting of the transaction of any business because the meeting is not lawfully called or convened. All such waivers, consents and approvals shall be filed with the corporate records or made part of the minutes of the meeting. A waiver of notice need not specify the purpose of any regular or special meeting of the board.

3.12. ADJOURNMENT. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting of the board to another time and place.

3.13. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting of the board need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meeting takes place, in the manner specified in Section 3.9 of these bylaws, to the directors who were not present at the time of the adjournment.

3.14. BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action required or permitted to be taken by the board of directors may be taken without a meeting, provided that all members of the board individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. Such written consent and any counterparts thereof shall be filed with the minutes of the proceedings of the board of directors.

3.15. FEES AND COMPENSATION OF DIRECTORS. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the board of directors. This Section 3.15 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

3.16. APPROVAL OF LOANS TO OFFICERS. The corporation may lend money or property to, or guarantee any obligation of, or otherwise assist any officer or

other employee of the corporation or its parent or any subsidiary, whether or not a director of the corporation or its parent or any subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.17. SOLE DIRECTOR PROVIDED BY CERTIFICATE OF INCORPORATION. In the event only one director is required by these bylaws or the certificate of incorporation, then any reference herein to notices, waivers, consents, meetings or other actions by a majority or quorum of the directors shall be deemed to refer to such notice, waiver, etc., by such sole director, who shall have all the rights and duties and shall be entitled to exercise all of the powers and shall assume all the responsibilities otherwise herein described as given to the board of directors.

3.18. NOMINATION OF DIRECTORS; STOCKHOLDER BUSINESS AT ANNUAL MEETINGS. Subject to the rights of holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation, nominations for the election of directors may be made by the board of directors or any nominating committee appointed by the board of directors or by any stockholder entitled to vote in the election of directors generally. However, a stockholder generally entitled to vote in the election of directors may nominate one or more persons for election as directors at a meeting only if written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the secretary of the corporation not later than (i) with respect to an election to be held at an annual meeting of stockholders, sixty (60) days in advance of such meeting and (ii) with respect to an election to be held at a special meeting of stockholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to stockholders. Each such notice shall set forth the following information: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder, each nominee or any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated, by the board of directors of the corporation; and (e) the consent of each nominee to serve as a director of the corporation if so elected. At the request of the board of directors any person nominated by the board of directors for election as a director shall furnish to the secretary of the corporation that information required to be set forth in a

stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth herein. A majority of the board of directors may reject any nomination by a stockholder not timely made or otherwise not in accordance with the terms of this Section 3.18. If a majority of the board of directors reasonably determines that the information provided in a stockholder's notice does not satisfy the

informational requirements of this Section 3.18 in any material respect, the secretary of the corporation shall promptly notify such stockholder of the deficiency in writing. The stockholder shall have an opportunity to cure the deficiency by providing additional information to the secretary within such period of time, not to exceed ten (10) days from the date such deficiency notice is given to the stockholder, as a majority of the board of directors shall reasonably determine. If the deficiency is not cured within such period, or if a majority of the board of directors reasonably determines that the additional information provided by the stockholder, together with the information previously provided, does not satisfy the requirements of this Section 3.18 in any material respect, then a majority of the board of directors may reject such stockholder's nomination. The secretary of the corporation shall notify a stockholder in writing whether the stockholder's nomination has been made in accordance with the time and information requirements of this Section 3.18.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) by or at the direction of the chairman of the meeting or (ii) by any stockholder of the corporation who complies with the notice procedures set forth in this Section 3.18. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than sixty (60) days prior to the meeting; provided, however, that in the event that less than seventy (70) days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the tenth day following the earlier of the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting the following information: (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation which are beneficially owned by the stockholder and (d) any material direct or indirect interest, financial or otherwise of the stockholder or its affiliates or associates in such business. The board of directors may reject any stockholder proposal not timely made in accordance with this Section 3.18. If the board of directors determines that the information provided in a stockholder's notice does not satisfy the informational

requirements hereof, the secretary of the corporation shall promptly notify such stockholder of the deficiency in the notice. The stockholder shall then have an opportunity to cure the deficiency by providing additional information to the secretary within such period of time, not to exceed ten (10) days from the date such deficiency notice is given to the stockholder, as the board of directors shall determine. If the deficiency is not cured within such period, or if the board of directors determines that the additional information provided by the stockholder, together with the information previously provided, does not satisfy the requirements of this Section 3.18, then the board of directors may reject such stockholder's proposal. The secretary of the corporation shall notify a stockholder in writing whether the stockholder's proposal has been made in accordance with the time and information requirements hereof.

This provision shall not prevent the consideration and approval or disapproval at an annual meeting of reports of officers, directors and committees of the board of directors, but in connection therewith no new business shall be acted upon at any such meeting unless stated, filed and received as herein provided. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 3.18.

ARTICLE IV.
COMMITTEES

4.1. COMMITTEES OF DIRECTORS. The board of directors may designate one (1) or more committees, each consisting of one or more directors, to serve at the pleasure of the board. The board may designate

one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors. Any committee, to the extent provided in the resolution of the board, shall have and may exercise all the powers and authority of the board, but no such committee shall have the power and authority to (i) approve or adopt or recommend to the stockholders any action or matter that requires the approval of the stockholders or (ii) adopt, amend or repeal any bylaw of the corporation.

4.2. MEETINGS AND ACTION OF COMMITTEES. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the following provisions of Article III of these bylaws: Section 3.6 (place of meetings; meetings by telephone), Section 3.8 (regular meetings), Section 3.9 (special meetings; notice), Section 3.10 (quorum), Section 3.11 (waiver of notice), Section 3.12 (adjournment), Section 3.13 (notice of adjournment) and Section 3.14 (board action by written consent without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings

of committees may also be called by resolution of the board of directors, and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

4.3. COMMITTEE MINUTES. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

ARTICLE V.
OFFICERS

5.1. OFFICERS. The corporate officers of the corporation shall be a president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, a vice chairman of the board, a chief executive officer, one or more vice presidents (however denominated), one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

In addition to the Corporate Officers of the Company described above, there may also be such Administrative Officers of the corporation as may be designated and appointed from time to time by the president of the corporation in accordance with the provisions of Section 5.13 of these bylaws.

5.2. ELECTION OF OFFICERS. The Corporate Officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or Section 5.5 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment, and shall hold their respective offices for such terms as the board of directors may from time to time determine.

5.3. SUBORDINATE OFFICERS. The board of directors may appoint, or may empower the president to appoint, such other Corporate Officers as the business of the corporation may require, each of whom shall hold office for such period, have such power and authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

The president may from time to time designate and appoint Administrative Officers of the corporation in accordance with the provisions of Section 5.13 of these bylaws.

5.4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of a Corporate Officer under any contract of employment, any Corporate Officer may be removed, either with or without cause, by the board of directors at any regular or special meeting of the board or, except in case of a Corporate Officer chosen by the board of directors, by any Corporate Officer upon whom such power of removal may be conferred by the board of directors.

Any Corporate Officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the Corporate Officer is a party.

5.5. VACANCIES IN OFFICES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

5.6. CHAIRMAN OF THE BOARD. The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise such other powers and perform such other duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no president, then the chairman of the board shall also be the chief vice president of the corporation and shall have the powers and duties prescribed in Section 5.8 of these bylaws.

5.7. VICE CHAIRMAN OF THE BOARD. The vice chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors if the chairman of the board is not present to so preside, and shall exercise such other powers and perform such other duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws.

5.8. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board and the vice chairman of the board, if there be such officers, the president shall be the chief vice president of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. The president shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board or vice chairman of the board, at all meetings of the board of directors. The president shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.9. VICE PRESIDENTS. In the absence or disability of the president, and if there is no chairman of the board, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president, the chairman of the board or the vice chairman of the board.

5.10. SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of the board of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given),

the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.11. CHIEF FINANCIAL OFFICER. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director for a purpose reasonably related to his position as a director.

The chief financial officer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. He or she shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.12. ASSISTANT SECRETARY. The assistant secretary, if any, or, if there is more than one, the assistant secretaries in the order determined by the board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

5.13. ADMINISTRATIVE OFFICERS. In addition to the Corporate Officers of the corporation as provided in Section 5.1 of these bylaws and such subordinate Corporate Officers as may be appointed in accordance with Section 5.3 of these bylaws, there may also be such Administrative Officers of the corporation as may be designated and appointed from time to time by the president of the corporation. Administrative Officers shall perform such duties and have such powers as from time to time may be determined by the president or the board of directors in order to assist the Corporate Officers in the furtherance of their duties. In the performance of such duties and the exercise of such powers, however, such Administrative Officers shall have limited authority to act on behalf of the corporation as the board of directors shall establish, including but not limited to limitations on the dollar amount and on the scope of agreements or commitments that may be made by such Administrative Officers on behalf of the corporation, which limitations may not be exceeded by such individuals or altered by the president without further approval by the board of directors.

5.14. AUTHORITY AND DUTIES OF OFFICERS. In addition to the foregoing powers, authority and duties, all officers of the corporation shall respectively have such authority and powers and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors.

ARTICLE VI.
INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

6.1. INDEMNIFICATION OF DIRECTORS AND OFFICERS. The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, indemnify any person against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was a director or officer of the corporation. For purposes of this Section 6(a), a "director" or "officer" of the corporation shall mean any person (i) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

The corporation shall be required to indemnify a director or officer in connection with an action, suit, or proceeding (or part thereof) initiated by such director or officer only if the initiation of such action, suit, or proceeding (or part thereof) by the director or officer was authorized by the board of directors of the corporation.

The corporation shall pay the expenses (including attorney's fees) incurred by a director or officer of the corporation entitled to indemnification hereunder in defending any action, suit or proceeding referred to in this Section 6.1 in advance of its final disposition; provided, however, that payment of expenses incurred by a director or officer of the corporation in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should ultimately be determined that the director or officer is not entitled to be indemnified under this Section 6.1 or otherwise.

The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the corporation's certificate of incorporation, these bylaws, agreement, vote of the stockholders or disinterested directors or otherwise.

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

6.2. INDEMNIFICATION OF OTHERS. The corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, to indemnify any person (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding, in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was an employee or agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) shall mean any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

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

6.4. SAVINGS CLAUSE. If this Article VI or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director, officer, employee or agent against expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit, proceeding or investigation, whether civil, criminal or administrative, and whether internal or external, including a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

6.5. CONTINUATION OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

6.6. CONFLICTS. No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the certificate of incorporation, these bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

ARTICLE VII.
RECORDS AND REPORTS

7.1. MAINTENANCE AND INSPECTION OF SHARE REGISTER. The corporation shall keep, either at its principal executive office or the office of its transfer agent or registrar (if either be appointed), as determined by resolution of the board of directors, a record of its stockholders listing the names and addresses of each stockholder and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records of its business and properties.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or

such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

7.2. INSPECTION BY DIRECTORS. Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director.

7.3. ANNUAL REPORT TO STOCKHOLDERS. The board of directors shall present at each annual meeting a full and clear statement of the business and condition of the corporation.

7.4. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The chairman of the board, the vice chairman of the board, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of stock of any other corporation or corporations standing in the name of this corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

7.5. CERTIFICATION AND INSPECTION OF BYLAWS. The original or a copy of these bylaws, as amended or otherwise altered to date, certified by the secretary, shall be kept at the corporation's principal executive office and shall be open to inspection by the stockholders of the corporation, at all reasonable times during office hours.

ARTICLE VIII.
GENERAL MATTERS

8.1. RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING. For purposes of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action. In that case, only stockholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided by law.

If the board of directors does not so fix a record date, then the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the applicable resolution.

8.2. CHECKS; DRAFTS; EVIDENCES OF INDEBTEDNESS. From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.3. CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED. The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.4. STOCK CERTIFICATES; TRANSFER; PARTLY PAID SHARES. The shares of the corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution

or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the corporation by, the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the chief financial officer, or by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Certificates for shares shall be of such form and device as the board of directors may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a summary statement or reference to the powers, designations, preferences or other special rights of such stock and the qualifications, limitations or restrictions of such preferences and/or rights, if any; a statement or summary of liens, if any; a conspicuous notice of restrictions upon transfer or registration of transfer, if any; a statement as to any applicable voting trust agreement; and if the shares be assessable, or,

if assessments are collectible by personal action, a plain statement of such facts.

Upon surrender to the secretary or transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.5. SPECIAL DESIGNATION ON CERTIFICATES. If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.6. LOST CERTIFICATES. Except as provided in this Section 8.6, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may, in case any share certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of replacement certificates on such terms and

conditions as the board may require; the board may require indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of the certificate or the issuance of the replacement certificate.

8.7. TRANSFER AGENTS AND REGISTRARS. The board of directors may appoint one or more transfer agents or transfer clerks, and one or more registrars, each of which shall be an incorporated bank or trust company -- either domestic or foreign, who shall be appointed at such times and places as the requirements of the corporation may necessitate and the board of directors may designate.

8.8. CONSTRUCTION; DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the General Corporation Law of Delaware shall govern the construction of these bylaws. Without limiting the generality of this provision, as used in these bylaws, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporate entity and a natural person.

ARTICLE IX.
AMENDMENTS

9.1. AMENDMENT BY STOCKHOLDERS. The original or other bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that if the certificate of incorporation set forth the number of authorized directors of the corporation, then the authorized number of directors may be changed only by an amendment of the certificate of incorporation.

9.2. AMENDMENT BY DIRECTORS. Subject to the rights of the stockholders as provided in Section 9.1 of these bylaws, bylaws, other than a bylaw or an amendment of a bylaw changing the authorized number of directors (except to fix the authorized number of directors pursuant to a bylaw providing for a variable number of directors), may be adopted, amended or repealed by the board of directors.

9.3. PLACING BYLAWS IN BOOK OF BYLAWS. Whenever an amendment or new bylaw is adopted, it shall be copied in the book of bylaws with the original bylaws, in the appropriate place. If any bylaw is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or the filing of the operative written consent(s) shall be stated in said book

EXHIBIT 4.4

COVENANT AGREEMENT entered into by and

between: RECRUITSOFT.COM INC., a corporation incorporated under the laws of the State of Delaware (U.S.A.), having its registered office at One Rodney Square, 10th Floor, Tenth and Kent Streets, City of Wilmington, County of New Castle, State of Delaware (U.S.A.) 19801, represented hereunder by Mr. Martin Ouellet, its President, duly authorized as he so declares;

("Recruitsoft.com")

and: VIASITE INC., a company incorporated under the laws of the Province of Quebec (Canada), having its head office at 390 St-Vallier East, Suite 401, Quebec City, Province of Quebec (Canada) G1K 3P6, represented hereunder by Mr. Martin Ouellet, its President, duly authorized as he so declares ;

("ViaSite")

WITNESSETH:

WHEREAS Recruitsoft.com has been incorporated under the General Corporation Law (Delaware) by Certificate of Incorporation dated May 25, 1999, as amended and restated by Amended and Restated Certificate of Incorporation, dated November 23, 1999, a copy of which is annexed hereto as Schedule A (the "Amended and Restated Certificate of Incorporation");

WHEREAS ViaSite has been amalgamated under Part 1A of the Companies Act (Quebec) by Certificate and Articles of Amalgamation dated April 30, 1999, as amended by Certificate and Articles of Amendment dated November 23, 1999, a copy of which is annexed hereto as Schedule B (the "Certificate and Articles of Amendment");

WHEREAS, under the Amended and Restated Certificate of Incorporation, the authorized capital stock of Recruitsoft.com consists of 130,800,162 shares, of which (i) 124,449,762 shares shall be Common Stock, par value US$0.00001 per share, of which Common Stock, a total of 100,000,000 shall be designated Series A Common and a total of 24,449,762 shall be designated Series B Common, and (ii) 6,350,400 shares shall be Preferred Stock, par value US$0.00001 per share, of which Preferred Stock a total of 6,350,400 shall be designated Series A Preferred.

WHEREAS, as of the date hereof, of the Series B Common Stock of Recruitsoft.com, 24,449,762 shares are issued and outstanding and no other share

of the capital stock of Recruitsoft.com is issued.

WHEREAS, under the Certificate and Articles of Amendment, the share capital of ViaSite consists (i) of an unlimited number of class A common shares, (ii) of 18,099,362 class A preferred exchangeable shares, (iii) of 6,350,400 class B preferred exchangeable shares, and (iv) of 24,449,762 class C preferred voting shares, all without par value.

WHEREAS, as of the date hereof, 1,000 class A common shares, 18,099,362 class A preferred exchangeable shares, 6,350,400 class B preferred exchangeable shares and 24,449,762 class C preferred voting shares are issued and outstanding, and no other share of the share capital of ViaSite is issued.

WHEREAS the Certificate and Articles of Amendment of ViaSite contains provisions regarding the class A preferred exchangeable shares (the "Class A Preferred Exchangeable Shares") and the class B preferred exchangeable shares (the "Class B Preferred Exchangeable Shares") of the share capital of ViaSite respecting, without limitation, (i) the declaration and payment by ViaSite of dividends in case of declaration and payment by Recruitsoft.com of dividends on Series A Common Stock ("Series A Common Stock") or Series A Preferred Stock ("Series A Preferred Stock") of its capital stock, (ii) a certain Liquidation Call Right (as defined in the Certificate and Articles of Amendment) in favour of Recruitsoft.com in case of liquidation, dissolution or winding-up of ViaSite, (iii) a certain Call Right (as defined in the Certificate and Articles of Amendment) in favour of Recruitsoft.com in case of retraction of Class A Preferred Exchangeable Shares or Class B Preferred Exchangeable Shares by a shareholder of ViaSite and (iv) a certain Redemption Call Right (as defined in the Certificate and Articles of Amendment) in favour of Recruitsoft.com in case of redemption by ViaSite of Class A Preferred Exchangeable Shares or Class B Preferred Exchangeable Shares.

NOW, THEREFORE, THE PARTIES HERETO DO HEREBY AGREE WITH EACH OTHER AS FOLLOWS:

1. PREAMBLE

1.1 The preamble to this Covenant Agreement shall form integral part thereof.

1.2 Unless otherwise defined in this Covenant Agreement, the words and expressions used herein which are defined in the Certificate and Articles of Amendment of ViaSite shall have the same meaning as in the Certificate and Articles of Amendment.

2. DIVIDENDS

2.1 In each case mentioned in sub-paragraph 3.3.1 (dividend by Recruitsoft.com in US$ its Series A Common Stock), sub-paragraph 3.3.3 (dividend by

Recruitsoft.com in property other than US$ or Series A Common Stock on Series A Common Stock), sub-paragraph 4.3.1 (dividend by Recruitsoft.com in US$ on Series A Preferred Stock) and sub-paragraph 4.3.3 (dividend by Recruitsoft.com in property other than US$ or Series A Preferred Stock on Series A Preferred Stock) of the Certificate and Articles of Amendment, Recruitsoft.com hereby irrevocably agrees and covenants to provide ViaSite, whether as a loan or otherwise, with the amount in US$ or Canadian Dollars Equivalent thereof, or with the type and amount

of property or the Economic Equivalent thereof, as the case may be, in a timely manner, in order to allow ViaSite to declare and pay the dividends mentioned in paragraph 3.3 and 4.3 of the Certificate and Articles of Amendment, in accordance with paragraphs 3.4 to 3.7 inclusive or paragraphs 4.4 to 4.7 inclusive, as the case may be, of the Certificate and Articles of Amendment.

3. LIQUIDATION CALL RIGHTS

3.1 In each case mentioned in paragraphs 3.10 and 4.10 (liquidation, dissolution or winding-up of ViaSite) of the Certificate and Articles of Amendment, Recruitsoft.com hereby irrevocably agrees and covenants to fully exercise its Liquidation Call Right, in a timely manner, in accordance with paragraphs 3.11 to 3.16 inclusive and paragraphs 4.11 to 4.16 inclusive of the Certificate and Articles of Amendment.

4. CALL RIGHTS

4.1 In each case mentioned in paragraphs 3.19 and 4.19 (retraction of Class A Preferred Exchangeable Shares or Class B Preferred Exchangeable Shares, as the case may be, by a shareholder of ViaSite) of the Certificate and Articles of Amendment, Recruitsoft.com hereby irrevocably agrees and covenants to fully exercise its Call Right, in a timely manner, in accordance with paragraphs 3.20 to 3.26 inclusive or paragraphs 4.20 to 4.26 inclusive, as the case may be, of the Certificate and Articles of Amendment.

5. REDEMPTION CALL RIGHTS

5.1 In each case mentioned in paragraphs 3.27 and 4.27 (redemption by ViaSite of Class A Preferred Exchangeable Shares or Class B Preferred Exchangeable Shares, as the case may be) of the Certificate and Articles of Amendment, Recruitsoft.com hereby irrevocably agrees and covenants to fully exercise its Redemption Call Right, in a timely manner, in accordance with paragraphs 3.28 to 3.33 inclusive or paragraphs 4.28 to 4.33 inclusive, as the case may be, of the Certificate and Articles of Amendment.

6. DURATION

6.1 Notwithstanding the place and date of its execution, as the case may be, this Covenant Agreement shall enter into force and have full effect as of, and may be referred to as an agreement entered into in Quebec (Quebec) as of November 24, 1999.

6.2 This Covenant Agreement shall remain into force and have full effect as long as there is at least one (1) Class A Preferred Exchangeable Share or one (1) Class B Preferred Exchangeable Share still outstanding.

7. OTHER PROVISIONS

7.1 The parties hereto shall take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by each of

them with all provisions of this Covenant Agreement and consequently, of the Certificate and Articles of Amendment.

7.2 Any notice or demand to or upon the respective parties hereto under this Covenant Agreement or the Certificate and Articles of Amendment, shall be deemed to have been duly given or made to the party to which such notice or demand is made, when delivered to such party, by certified mail, postage prepaid, or by telecopier or hand delivery, at the addresses hereafter, or at such other address as any of the parties hereto may hereafter notify the other in writing in accordance with these provisions:

7.2.1 In the case of Recruitsoft.com:

390 St-Vallier East
Suite 401
Quebec City, Province of Quebec
Canada
G1K 3P6

telecopier: (418) 640-3338

Attention of the President

7.2.2 in the case of ViaSite:

390 St-Vallier East
Suite 40
Quebec City, Province of Quebec
Canada
G1K 3P6

telecopier: (418) 640-3338

Attention of the President

7.3 This Covenant Agreement shall be governed by and in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein, and the courts having jurisdiction in the Province of Quebec shall have exclusive jurisdiction to settle any dispute regarding this Covenant Agreement and the Certificate and Articles of Amendments which may arise between the parties hereto.

7.4 This Covenant Agreement may be executed and signed in counterparts; all signed copies hereof shall be deemed to be originals of one and same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Covenant Agreement.

IN THE PRESENCE OF:

RECRUITSOFT.COM INC.

_____
(witness)

per: Martin Ouellet

VIASITE INC.

_____
(witness)

per: Martin Ouellet

EXHIBIT 10.16

TALEO CORPORATION

MICHAEL P. GREGOIRE EMPLOYMENT AGREEMENT

This Agreement is entered into as of March 14, 2005 (the "Effective Date") by and between Taleo Corporation (the "Company") and Michael P. Gregoire ("Executive").

1. Duties and Scope of Employment.

(a) Positions and Duties. As of the Effective Date, Executive will serve as the Company's President and Chief Executive Officer. Executive will render such business and professional services in the performance of his duties, consistent with Executive's position as the most senior executive officer within the Company, as will reasonably be assigned to him by the Company's Board of Directors (the "Board"). The period of Executive's employment under this Agreement is referred to herein as the "Employment Term." The Executive's services shall be performed at the Company's corporate headquarters in San Francisco, California.

(b) Board Membership. At the next Board meeting, Executive will be appointed to serve as a director of the Company. If the Company's stock becomes publicly traded, Executive's continued service as a member of the Board will be subject to the Company's corporate governance policies for the nomination of directors applicable to all directors and any required stockholder approval.

(c) Obligations. During the Employment Term, Executive will devote Executive's full business efforts and time to the Company but the Executive may serve on up to two other boards of directors, subject to the Board's reasonable determination that such service does not conflict with his obligations to the Company. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without the prior approval of the Board; provided, however, that Executive may, without the approval of the Board, serve in any capacity with any civic, educational, or charitable organization, provided such services do not interfere with Executive's obligations to Company.

2. At-Will Employment. Executive and the Company agree that Executive's employment with the Company constitutes "at-will" employment. Executive and the Company acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without good cause or for any or no cause, at the option either of the Company or Executive. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive's termination of employment. Upon the termination of Executive's employment with the Company for any reason, Executive will be entitled to payment on his termination date of all accrued but

unpaid salary, vacation, any earned bonuses, expense reimbursements, and other benefits due to Executive through his termination date under any Company-provided or paid plans, policies, and arrangements. Executive agrees to resign from all positions that he holds with the Company, including, without limitation, his position as a member of the Board, immediately following the termination of his employment if the Board so requests.

3. Compensation.

(a) Base Salary. As of the Effective Date, the Company will pay Executive an annual salary of $300,000 as compensation for his services (the "Base Salary"). The Base Salary will be paid periodically in accordance with the Company's normal payroll practices (but no less frequently than once per month) and be subject to the usual, required withholding. Executive's salary will be subject to annual review, and adjustments will be made based upon the Company's standard practices or the discretion of the Board.

(b) Annual Bonus. Executive's annual target bonus will be 100% of Base Salary ("Target Bonus"). Executive's annual bonus will be determined based upon achievement of performance goals approved by the Board. Executive will have the opportunity to discuss the nature of such performance goals with the Board prior to such performance goals being approved by the Board. The Target Bonus will have a linear payout schedule ranging from 75% to 125% of the Target Bonus based upon achieving at least 75% of the Executive's performance goals, and there may be no bonus paid if the threshold performance level is not achieved. Bonuses, if any, will accrue and become payable in accordance with the Committee's standard practices for paying executive incentive compensation; provided, however, Executive's actual bonus earned for any fiscal year will be paid within 45 days following the end of the Company's fiscal year.

(c) Equity Compensation. Within fifteen (15) days of the Effective Date, Executive will be granted the following option to purchase shares of Company common stock:

(i) An option to purchase 3,571,526 shares (2.75% of Company's currently outstanding capital stock including warrants and options granted or reserved for issuance in the amount of 129,873,721) of Company Class A common stock for a per-share exercise price equal to the fair market value of a share of Company common stock on the date of grant (the "Stock Option"). The Stock Option will vest over a 4-year period, with 25% of the shares vesting on the first anniversary of the Effective Date, and 1/48th of the total shares vesting monthly thereafter, so that all shares will be fully vested four years from the Effective Date, subject to Executive continuing to remain a "Service Provider" (as defined in the Company's 1999 Stock Plan, the "Plan") to the Company on each vesting date;

(ii) The Stock Option shall have (x) a ten-year maximum term, (y) a per common share exercise price of $2.25, and (z) otherwise have the same terms and conditions as stock options held by other senior executives of the

Company, subject to Section 6. Executive shall be eligible for additional grants of Company equity (the Stock Option and any other compensatory equity grants to Executive shall be collectively referred to herein as "Compensatory Equity") as may be determined by the Board of Directors in its discretion. The Stock Option shall be issued in reliance upon Rule 701 under the Securities Act of 1933, as amended. The Stock Option and any other Compensatory Equity granted to Executive may be exercised (a) with cash, (b) with previously owned Company common shares and/or (c) if the Company's stock is publicly traded and it is legally permissible, via a "cashless exercise" program in which payment may be made all or in part by delivery of an irrevocable direction to a securities broker to sell common shares and to deliver all or part of the sale proceeds to the Company in payment of the aggregate option exercise and any applicable tax withholding obligations relating to the exercised option. Accelerated vesting of Compensatory Equity may be credited: (x) pursuant to the terms of this Agreement and in addition

(y) pursuant to the terms of the Plan and any applicable Compensatory Equity agreement. In the event of any conflict in the express terms between this Agreement and the Plan and any Compensatory Equity agreement executed by and between Executive and the Company, the express terms of this Agreement shall prevail and govern. If the Company's stock becomes publicly traded, then Executive may elect to establish a trading plan in accordance with Rule 10b5-1 of the Securities Exchange Act of 1934 provided that such trading plan shall be subject to the reasonable approval of the Board of Directors consistent with policies established by the Board applicable to all Section 16 officers. Subject to the preceding provisions of this Section 3(c), the Stock Option will be subject to the terms, definitions and provisions of the Plan and the stock option agreements by and between the Executive and the Company (the "Option Agreement"), all of which documents are incorporated herein by reference.

4. Employee Benefits. During the Employment Term, Executive will be eligible to participate in accordance with the terms of all Company employee benefit plans, policies, and arrangements that are applicable to other senior executives of the Company, as such plans, policies, and arrangements may exist from time to time. Executive will be entitled to 4 weeks of paid annual vacation.

5. Expenses. The Company will reimburse Executive for reasonable travel, entertainment, and other expenses incurred by Executive in the furtherance of the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

6. Severance.

(a) Termination Without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, then, subject to Section 7, Executive will receive: (i) a lump-sum payment equal to Executive's then annual Base Salary, paid within

30 days of termination of employment, (ii) reimbursement for any applicable premiums Executive pays to continue coverage for Executive and Executive's eligible dependents under the Company's health insurance plan for twelve months after the date of termination, or, if earlier, until Executive is eligible for similar benefits from another employer (provided Executive validly elects to continue coverage under applicable law), (iii) a post-termination exercise period of twelve (12) months, and (iv) immediate vesting of all unvested Compensatory Equity that would have vested had Executive otherwise remained an employee for the 12-month period commencing on his termination date. Notwithstanding clause (iv) of the preceding sentence, upon a Change of Control, (x) Executive will receive immediate vesting with respect to 50% of all unvested Stock Options that are then held by Executive, and (y) if a termination described in the preceding sentence occurs within 60 days before or 18 months following a Change of Control, Executive will receive (A) a lump-sum payment equal to Executive's annual Base Salary plus 100% of the annual Target Bonus amount for the year of termination and (B) immediate vesting with respect to all unvested Stock Options that are held by an Executive. For purposes of clause (x) in the preceding sentence, the vesting schedule for Executive's remaining unvested Stock Options (determined after giving effect to clause (x)) shall be automatically proportionately adjusted on a grant by grant basis. Purely to illustrate the mechanics of the preceding sentence, if immediately prior to a Change of Control there were 150 unvested option shares outstanding which were vesting at a rate of 8 shares each month, and after giving effect to the accelerated vesting provisions of

clause (x) 75 of such option shares become vested on an accelerated basis, then the 75 remaining unvested option shares would thereafter vest at a rate of 4 shares per month. Executive's vested Stock Options will remain exercisable in accordance with the terms of the 1999 Stock Plan and the corresponding Option Agreements and thereafter will expire to the extent not exercised.

(b) Section 280G Gross-up. If any payment or benefit Executive would receive from the Company and/or pursuant to this Agreement, but determined without regard to any additional payment required under this Section 6(b), (collectively, the "Payment") would (x) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (y) be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties payable with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive will be entitled to receive from the Company an additional payment (the "Gross-Up Payment," and any iterative payments pursuant to this paragraph also shall be "Gross-Up Payments") in an amount that shall fund the payment by Executive of any Excise Tax on the Payment, as well as all income and employment taxes on the Gross-Up Payment, any Excise Tax imposed on the Gross-Up Payment and any interest or penalties imposed with respect to income and employment taxes imposed on the Gross-Up Payment. For this purpose, all income taxes will be assumed to apply to Executive at the highest marginal rate. Notwithstanding the foregoing, the total

amount paid as Gross-Up Payments will not exceed $2,000,000. Any Gross-Up Payment shall be paid to Executive, or for his benefit, within 15 days following receipt by the Company of the report of the accounting firm described below (or any determination by the Internal Revenue Service that Excise Taxes are owed, if earlier).

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is also serving as accountant or auditor for the individual, entity or group which will control the Company upon the occurrence of a Change of Control, the Company shall appoint a nationally recognized accounting firm other than the accounting firm engaged by the Company for general audit purposes to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within thirty calendar days after the date on which such accounting firm has been engaged to make such determinations or such other time as requested by the Company or Executive. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and Executive with an opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding, and conclusive upon the Company and Executive. Notwithstanding the foregoing, if the Internal Revenue Service determines that Excise Taxes are owed, the Company shall promptly pay the Gross-up Payment to Executive subject to the maximum set forth in Section 6(b) above.

(c) Voluntary Termination without Good Reason; Termination for Cause. If Executive's employment with the Company terminates voluntarily by Executive without Good

Reason or is terminated for Cause by the Company, then (i) all further vesting of Executive's outstanding Stock Options will terminate immediately, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned), (iii) Executive will be paid all accrued but unpaid salary, vacation, any earned bonuses, expense reimbursements and other benefits due to Executive through his termination date under any Company-provided or paid plans, policies, and arrangements, and (iv) Executive will be eligible for severance benefits only in accordance with the Company's then established policies and practices.

(d) Termination due to Death or Disability. If Executive's employment terminates by reason of death or Disability, then (i) Executive will be entitled to receive benefits only in accordance with the Company's then

applicable plans, policies, and arrangements, and (ii) subject to Section 3(c), Executive's outstanding Compensatory Equity awards will terminate in accordance with the terms and conditions of the applicable award agreement(s).

(e) Sole Right to Severance. This Agreement is intended to represent Executive's sole entitlement to severance payments and benefits in connection with the termination of his employment. To the extent Executive receives severance or similar payments and/or benefits under any other Company plan, program, agreement, policy, practice, or the like, severance payments and benefits due to Executive under this Agreement will be correspondingly reduced (and vice-versa).

7. Conditions to Receipt of Severance; No Duty to Mitigate.

(a) Separation Agreement and Release of Claims. The receipt of any severance pursuant to Section 6 will be subject to Executive signing and not revoking a separation agreement and release of claims in a form reasonably acceptable to the Company. Such agreement will provide (among other things) that Executive will not disparage the Company, its directors, or its executive officers for 12 months following the date of termination and the Company will instruct its officers and directors not to disparage the Executive. No severance will be paid or provided until the separation agreement and release agreement becomes effective.

(b) No Duty to Mitigate. Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

(c) Nonsolicitation. In the event of a termination of Executive's employment that otherwise would entitle Executive to the receipt of severance pursuant to Section 6, Executive agrees that, during the 12-month period following termination of employment, Executive, directly or indirectly, whether as employee, owner, sole proprietor, partner, director, founder or otherwise, will not solicit, induce, or influence any person to modify his or her employment or consulting relationship with the Company except for any individual whose employment with the Company has been terminated for a period of six months or longer (the "No-Inducement"). If Executive breaches the No-Inducement, all continuing payments and benefits to which Executive otherwise may be entitled pursuant to Section 6 will cease immediately.

8. Definitions.

(a) Cause. For purposes of this Agreement, "Cause" means (i) Executive's conviction of, or plea of nolo contendere to, a felony, (ii) Executive's repeated failure to follow

lawful, reasonable instructions of the Board, (iv) Executive's violation or breach of any fiduciary or contractual duty to the Company which results in

material damage to the Company or its business; provided that if any of the foregoing events is capable of being cured, the Company will provide written notice to Executive describing the nature of such event and Executive will thereafter have 30 days to cure such event (including the opportunity to present his case to the full Board with the assistance of his own counsel). The foregoing shall not be deemed an exclusive list of all acts or omissions that the Company may consider as grounds for the termination of Executive's employment, but it is an exclusive list of the acts or omissions that shall be considered "Cause" for the termination of Executive's employment by the Company. Executive shall continue to receive the compensation and benefits provided by this Agreement during the 30 day period after he receives the written notice of the Company's intention to terminate his employment for Cause.

(b) Change of Control. For purposes of this Agreement, "Change of Control" means (i) a sale of all or substantially all of the Company's assets, (ii) any merger, consolidation, or other business combination transaction of the Company with or into another corporation, entity, or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction, (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company, (iv) a contested election of Directors, as a result of which or in connection with which the persons who were Directors before such election or their nominees cease to constitute a majority of the Board, (v) a dissolution or liquidation of the Company or (vi) any definition provided by the Plan.

(c) Disability. For purposes of this Agreement, Disability shall have the same defined meaning as in the Company's long-term disability plan.

(d) Good Reason. For purposes of this Agreement, "Good Reason" means the occurrence of any of the following without Executive's express written consent: (i) a reduction in Executive's position or duties other than a reduction in position or duties solely by virtue of the Company being acquired and made part of a larger entity so long as Executive continues in his same role on an adjusted basis serving as the highest ranking employee in a division or subsidiary with no material reduction in the Executive's operational responsibilities and duties in effect prior to the Change of Control, rather than as CEO of the successor entity, (ii) a reduction in Executive's Base Salary or Target Bonus other than a one-time reduction that in the aggregate does not exceed 10% that also is applied to substantially all of the Company's other senior executives, (iii) relocation of Executive's primary place of business for the performance of his duties to the Company to a location that is more than 30 miles from its location as of the Effective Date, or (iv) any material breach or material violation of a material provision of this Agreement by the Company (or

any successor to the Company).

9.Indemnification and Insurance. Executive will be covered under the Company's insurance policies and, subject to applicable law, will be provided indemnification to the maximum

extent permitted by the Company's bylaws, Certificate of Incorporation, and standard form of Indemnification Agreement, with such insurance coverage and indemnification to be in accordance with the Company's standard practices for senior executive officers but on terms no less favorable than provided to any other Company senior executive officer or director.

10. Confidential Information. Executive agrees to execute the Company's standard form of employee confidential information agreement (the "Confidential Information Agreement") upon commencement of employment. During the Employment Term, Executive further agrees to execute any updated versions of the Confidential Information Agreement (any such updated version also referred to as the "Confidential Information Agreement") as may be required of substantially all of the Company's executive officers.

11. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of Executive upon Executive's death and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive's right to compensation or other benefits will be null and void.

12. Notices. All notices, requests, demands, and other communications called for hereunder will be in writing and will be deemed given (a) on the date of delivery if delivered personally, (b) one day after being sent by a well established commercial overnight service, or (c) four days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:

Attn: Chairman of the Board of Directors
Taleo Corporation
575 Market Street
San Francisco, CA 94105

If to Executive:

at the last residential address known by the Company as provided by Executive in writing.

13. Severability. If any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement will continue in full force and effect without said provision.

14. Arbitration.

(a) General. In consideration of Executive's service to the Company, its promise to arbitrate all employment related disputes, and Executive's receipt of the compensation, pay raises, and other benefits paid to Executive by the Company, at present and in the future, Executive agrees that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder, or benefit plan of the Company in their capacity as such or otherwise) arising out of, relating to, or resulting from Executive's service to the Company under this Agreement or otherwise or the termination of Executive's service with the Company, including any breach of this Agreement, will be subject to binding arbitration under the Arbitration Rules set forth in California Code of Civil Procedure Section 1280 through 1294.2, including Section 1283.05 (the "Rules") and pursuant to California law. Disputes which Executive agrees to arbitrate, and thereby agrees to waive any right to a trial by jury, include any statutory claims under state or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the California Fair Employment and Housing Act, the California Labor Code, claims of harassment, discrimination, or wrongful termination, and any statutory claims. Executive further understands that this Agreement to arbitrate also applies to any disputes that the Company may have with Executive.

(b) Procedure. Executive agrees that any arbitration will be administered by the American Arbitration Association ("AAA") and that a neutral arbitrator will be selected in a manner consistent with its National Rules for the Resolution of Employment Disputes. The arbitration proceedings will be held in San Francisco County, California and will allow for discovery according to the rules set forth in the National Rules for the Resolution of Employment Disputes or California Code of Civil Procedure. Executive agrees that the arbitrator will have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication and motions to dismiss and demurrers, prior to any arbitration hearing. Executive agrees that the arbitrator will issue a written decision on the merits. Executive understands the Company will pay for any administrative or hearing fees charged by the arbitrator or AAA except that Executive will pay the first $200.00 of any filing fees associated with any arbitration Executive initiates.

Executive agrees that the arbitrator will administer and conduct any arbitration in a manner consistent with the Rules and that to the extent that the AAA's National Rules for the Resolution of Employment Disputes conflict with the Rules, the Rules will take precedence.

(c) Remedy. Except as provided by the Rules, arbitration will be the sole, exclusive, and final remedy for any dispute between Executive and the Company. Accordingly, except as provided for by the Rules, neither Executive nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration. Notwithstanding, the arbitrator will not have the authority to disregard or refuse to enforce any lawful Company policy, and the arbitrator will not order or require the Company to adopt a policy not otherwise required by law which the Company has not adopted.

(d) Availability of Injunctive Relief. In addition to the right under the Rules to petition the court for provisional relief, Executive agrees that any party also may petition the court for injunctive relief where either party alleges or claims a violation of this Agreement or the

Confidentiality Agreement or any other agreement regarding trade secrets, confidential information, nonsolicitation or Labor Code Section 2870.

(e) Administrative Relief. Executive understands that this Agreement does not prohibit Executive from pursuing an administrative claim with a local, state, or federal administrative body such as the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the workers' compensation board. This Agreement does, however, preclude Executive from pursuing court action regarding any such claim.

(f) Voluntary Nature of Agreement. Executive acknowledges and agrees that Executive is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. Executive further acknowledges and agrees that Executive has carefully read this Agreement and that Executive has asked any questions needed for Executive to understand the terms, consequences, and binding effect of this Agreement, including that Executive is waiving Executive's right to a jury trial. Finally, Executive agrees that Executive has been provided an opportunity to seek the advice of an attorney of Executive's choice before signing this Agreement.

15. Legal and Tax Expenses. The Company will directly pay Executive's counsel up to $10,000 for reasonable legal and tax advice expenses incurred in connection with the negotiation and execution of this Agreement. Such payment shall be made in full within 30 days after the Company's receipt of any applicable invoices.

16. Integration. This Agreement represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. No waiver,

alteration, or modification of any of the provisions of this Agreement will be binding unless in a writing that specifically references this Section and is signed by duly authorized representatives of the parties hereto.

17. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

18. Survival. The Confidential Information Agreement, the Company's and Executive's responsibilities under Sections 6, 7, 9, 12, 14 and 15 will survive the termination of this Agreement.

19. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

20. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

21. Governing Law. This Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

22. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

23. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by a duly authorized officer, as of the day and year written below.

COMPANY:

TALEO CORPORATION

By: /s/Louis Tetu Date: March 8, 2005

Title: Chairman of the Board

EXECUTIVE:

/s/Michael P. Gregoire Date: March 8, 2005

Michael P. Gregoire

[SIGNATURE PAGE TO MICHAEL P. GREGOIRE EMPLOYMENT AGREEMENT]

Exhibit 10.17

[TALEO LOGO]

Taleo Corporation
575 Market Street, 8th Floor
San Francisco, California 94105

San Francisco, December 16, 2004

MR. BRADFORD BENSON

RE: TERMS OF EMPLOYMENT

Dear Brad,

This letter will confirm the terms of your offer of employment with Taleo Corp., a Delaware corporation ("Taleo"). Such terms are as follows:

1. Position and Responsibilities. You will serve in the position of Executive Vice President of Research & Development and Chief Technology Officer reporting directly to the Chief Executive Officer. You will assume and discharge such responsibilities as are commensurate with such position and as the Chief Executive Officer may direct from time to time. During your employment with Taleo, you shall devote your full time, skill and attention to your duties and responsibilities and shall perform faithfully, diligently and competently. In addition, you shall comply with and be bound by the operating policies, procedures and practices of Taleo in effect from time to time during your employment.

2. At-Will Employment. You acknowledge that your employment with Taleo is for an unspecified duration and constitutes at-will employment and that either you or Taleo can terminate this relationship at any time, with or without Cause and with or without notice.

3. Compensation.

(a) In consideration of your services, you will be paid a salary of $16,667 US per month (annualized base salary of $200,000.00 US) payable in two monthly payments in accordance with Taleo's standard payroll practices ("Base Salary").

(b) Starting January 1st, 2005, in addition to your base salary, you will be eligible for incentive bonuses for each fiscal quarter or fiscal year of Taleo ("Incentive

Compensation"). The bonuses will be awarded based on criteria established by Taleo's Chief Executive Officer and approved by Taleo's Board of Directors. The aggregate amount of your target bonuses at 100% achievement of goal for a fiscal year will be equal to one hundred and fifty thousand dollars ($150,000 US). The bonus for a fiscal quarter or fiscal year will be paid in accordance with Taleo's standard practices for payment of bonuses. For fiscal year 2005, you will be eligible to participate in the Incentive Compensation Plan attached hereto as Attachment A, which will be deemed to meet the requirements of this Subsection (b) for 2005.

(c) If Taleo terminates your employment for any reason other than Cause, then Taleo will continue to pay your Base Salary at the rate in effect at the time of your resignation or termination of your employment for a period of three (3) months from the date of your resignation or termination of your employment and you shall continue to vest in stock options in accordance with the schedule specified in Attachment C for a period of three (3) months from the date of your resignation or termination of your employment ("Vesting Period 1"). Such vested options shall expire ninety (90) days after the expiration of Vesting Period 1.

(d) If, within one (1) year following a Change in Control (as defined in Attachment C), Taleo or the successor corporation terminates your employment for any reason other than Cause, then Taleo or the successor corporation will continue to pay your Base Salary at the rate in effect at the time of your resignation or termination of your employment for a period of six (6) months from the date of your resignation or termination of your employment. Your severance benefit will be paid in accordance with Taleo's standard payroll procedures.

(e) If Taleo terminates your employment for any reason other than Cause, and if you elect to continue your health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") following the termination of your employment, then Taleo will pay the same portion of your monthly premium under COBRA as it pays for active employees until the earliest of (i) the close of the 3-month period following the termination of your employment, (ii) the expiration of your continuation coverage under COBRA or (iii) the date when you become eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment.

(f) If your employment is terminated by Taleo with Cause, or if you resign your employment voluntarily, no compensation or other payments will be paid or provided to you that would have, or might have, become payable to you in periods following the date when such a termination of employment is effective. Any rights you may have under any Taleo plan regarding Benefits, as defined below, shall be determined under the provisions of those plans. If your employment terminates as a result of your death or disability, no compensation

or payments will be made to you other than those to which you may otherwise be entitled under any Taleo plan regarding Benefits.

(g) For purposes of this Section 3, "Cause" means (i) any act of personal dishonesty taken by you in connection with your responsibilities under this agreement that is intended to result in your personal enrichment, (ii) your conviction of a felony, (iii) any act by you that constitutes material misconduct and is injurious to Taleo or (iv) substantial

violations of employment duties, responsibilities or obligations to Taleo that are demonstrably willful and deliberate.

4. Other Benefits. You will be eligible to receive the standard employee benefits made available by Taleo to its employees from time to time during the term of your employment to the extent of your eligibility therefore ("Benefits"). You shall earn paid vacation at the rate of four weeks per year of employment (which shall be consistent with Taleo's vacation policy and which shall not accrue in excess of that allowable under the policy). During your employment, you shall be permitted, to the extent eligible, to participate in any group medical, dental, life insurance and disability insurance plans, or similar benefit plan of Taleo that is available to employees generally. You should note that Taleo may modify salary and benefits from time to time as deemed necessary. Base Salary and Incentive Compensation are not considered Benefits as that term is used in this agreement.

Taleo shall reimburse you for all reasonable business expenses actually incurred or paid by you in the performance of your services on behalf of Taleo, upon prior authorization and approval and upon submission of appropriate documentation in accordance with Taleo's expense reimbursement policy.

5. Conflicting Employment. During the term of your employment with Taleo, you will not engage in any other employment, occupation, consulting, or other business activity directly related to the business in which Taleo is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to Taleo. This provision does not preclude you from serving on the boards of directors and/or advisory boards of companies that are not competitors of Taleo.

6. General Provisions.

(a) This offer letter will be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

(b) This offer letter along with the Exhibits A-D hereto and the Incentive Compensation Plan attached as Attachment A, the Employment, Confidential Information and Invention Assignment Agreement attached as Attachment B, the Stock Option Recommendation attached as Attachment C, and the Arbitration Agreement attached as Attachment D set forth the terms of your employment with Taleo and supersedes any prior representations or agreements, whether written or oral. Any modifications must be in writing and signed by an officer of Taleo and by you. Any subsequent change or changes in your duties, salary or other compensation will not affect the at-will nature of your employment, the commitments you have agreed to or the enforceability, validity or scope of this Agreement.

(c) This offer of employment is contingent upon background verification and reference checks satisfactory to Taleo. I authorize Taleo and/or a third party designated by Taleo, to conduct such investigations and secure such information as is necessary to assess my background and employment history.

(d) If you accept this offer of employment, you must provide to Taleo documentary evidence of your identity and eligibility to work in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

(e) This agreement will be binding upon your heirs, executors, administrators and other legal representatives and will be for the benefit of Taleo, Taleo Holding and their respective successors and assigns.

7. Contingencies. This offer is contingent upon our obtaining the following:

(a) Return of the enclosed copy of this letter, signed by you without modification, indicating your acceptance of this offer;

(b) Return of the enclosed Arbitration Agreement, signed by you without modification;

(c) Return of the enclosed Employment, Confidential Information and Invention Assignment Agreement (attached to this letter as Attachment B), signed by you without modification;

(d) Satisfactory results of background and reference checks

(e) Documentation verifying your identity and legal authority to work in the United States no later than 3 business days after the date you commence work.

To indicate your acceptance of this offer, please sign and date the enclosed copy of this offer letter and the Confidentiality Agreement, and return both to me as soon as possible. This offer shall be valid for three (3) working days from the date of this letter. If you have any questions about this offer letter, please call Louis Tetu, 418.524.5665 x1226.

We look forward to working with you at Taleo.

Sincerely,

Taleo Corp.

/s/ Louis Tetu

Louis Tetu, Chief Executive Officer

ACCEPTANCE:

I accept the terms of my employment with Taleo Corp. as set forth above. I understand that this offer letter does not constitute a contract of employment for any specified period of time and that my employment relationship may be terminated by Taleo or me at any time with or without notice and with or without Cause.

Tuesday, December 21, 2004	/s/ Brad Benson
---	---
Start date Date	Bradford Benson

EXHIBIT A

TALEO CORP.

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number of Brief Description

____ No invention or improvements ____ Additional sheets attached

Signature of Employee: _____

Printed Name of Employee: _____ Date: _____

EXHIBIT B

CALIFORNIA LABOR CODE SECTION 2870 EMPLOYMENT AGREEMENTS; ASSIGNMENT OF RIGHTS

(a) Any provision in an employment agreement which provides that an employee shall assign, of offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

EXHIBIT C

TALEO CORP.
TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to Taleo, its subsidiaries, affiliates, successors or assigns (together, the "Company").

I further certify that I have complied with all the terms of the Company's Employment Confidential Information and Invention Assignment Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employment, Confidential Information and Invention Assignment Agreement; I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

*

Employee Date

* TO BE SIGNED ABOVE ONLY UPON TERMINATION

Exhibit C read and understood by:

Bradford Benson Date

EXHIBIT D

TALEO CORP.
CONFLICT OF INTEREST GUIDELINES

It is the policy of Taleo Corp. to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees and independent contractors must avoid activities, which are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations,

which must be avoided. Any exceptions must be reported to the CEO and written approval for continuation must be obtained.

1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended. (The Employment, Confidential Information and Invention Assignment Agreement elaborate on this principle and is a binding agreement).

2. Accepting or offering substantial gifts, excessive entertainment, favors or payments which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.

3. Participation in civic or professional organizations that might involve divulging confidential information of the Company.

4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement.

5. Initiating or approving any form of personal or social harassment of employees.

6. Investing or holding outside directorship in suppliers, customers or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company.

7. Borrowing from or lending to employees, customers or suppliers.

8. Acquiring real estate of interest to the Company.

9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist.

10. Unlawfully discussing prices, costs, customers, sales, or markets with competing companies or their employees.

11. Making any unlawful agreement with distributors with respect to prices.

12. Improperly using or authorizing the use of any inventions, which are the subject of patent claims of any other person or entity.

13. Engaging in any conduct, which is not in the best interest of the Company.

Each officer, employee and independent contractor must take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of higher management for review. Violations of this conflict of interest policy may result in discharge without warning.

EXHIBIT 10.18

[TALEO LOGO]

Taleo Corporation
575 Market Street, 8th Floor
San Francisco, California 94105

San Francisco, March 15, 2005

MR. DIVESH SISODRAKER

RE: TERMS OF EMPLOYMENT

Dear Divesh,

This letter will confirm the terms of your offer of employment with Taleo Corp., a Delaware corporation ("Taleo"). Such terms are as follows:

1. Position and Responsibilities. You will serve in the position of Chief Financial Officer reporting directly to the Chief Executive Officer. You will assume and discharge such responsibilities as are commensurate with such position and as the Chief Executive Officer may direct from time to time. During your employment with Taleo, you shall devote your full time, skill and attention to your duties and responsibilities and shall perform faithfully, diligently and competently. In addition, you shall comply with and be bound by the operating policies, procedures and practices of Taleo in effect from time to time during your employment.

2. At-Will Employment. You acknowledge that your employment with Taleo is for an unspecified duration and constitutes at-will employment and that either you or Taleo can terminate this relationship at any time, with or without Cause and with or without notice.

3. Compensation.

(a) In consideration of your services, you will be paid a salary of $16,667 US per month (annualized base salary of $200,000.00 US) payable in two monthly payments in accordance with Taleo's standard payroll practices ("Base Salary").

(b) In addition to your base salary, you will be eligible for incentive bonuses for each fiscal quarter, beginning Q2 2005, or fiscal year of Taleo ("Incentive

Compensation"). The bonuses will be awarded based on criteria established by Taleo's Chief Executive Officer and approved by Taleo's Board of Directors. The aggregate amount of your target bonuses at 100% achievement of goal for a fiscal

year will be equal to one hundred thousand dollars ($100,000 US). The bonus for a fiscal quarter or fiscal year will be paid in accordance with Taleo's standard practices for payment of bonuses. For fiscal year 2005, you will be eligible to participate in the Incentive Compensation Plan attached hereto as Attachment A, which will be deemed to meet the requirements of this Subsection (b) for 2005.

(c) If Taleo terminates your employment for any reason other than Cause, then Taleo will continue to pay your Base Salary at the rate in effect at the time of your resignation or termination of your employment for a period of six (6) months from the date of your resignation or termination of your employment and you shall continue to vest in stock options in accordance with the schedule specified in Attachment C for a period of three (3) months from the date of your resignation or termination of your employment ("Vesting Period 1"). Such vested options shall expire ninety (90) days after the expiration of Vesting Period 1.

(d) If, within one (1) year following a Change in Control (as defined in Attachment C), Taleo or the successor corporation terminates your employment for any reason other than Cause, then Taleo or the successor corporation will continue to pay your Base Salary at the rate in effect at the time of your resignation or termination of your employment for a period of one (1) year from the date of your resignation or termination of your employment. Your severance benefit will be paid in accordance with Taleo's standard payroll procedures.

(e) If Taleo terminates your employment for any reason other than Cause, and if you elect to continue your health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") following the termination of your employment, then Taleo will pay the same portion of your monthly premium under COBRA as it pays for active employees until the earliest of (i) the close of the 6-month period following the termination of your employment, (ii) the expiration of your continuation coverage under COBRA or (iii) the date when you become eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment.

(f) If your employment is terminated by Taleo with Cause, or if you resign your employment voluntarily, no compensation or other payments will be paid or provided to you that would have, or might have, become payable to you in periods following the date when such a termination of employment is effective. Any rights you may have under any Taleo plan regarding Benefits, as defined below, shall be determined under the provisions of those plans. If your employment terminates as a result of your death or disability, no compensation or payments will be made to you other than those to which you may otherwise be entitled under any Taleo plan regarding Benefits.

(g) For purposes of this Section 3, "Cause" means (i) any act of personal dishonesty taken by you in connection with your responsibilities under this agreement that is intended to result in your personal enrichment, (ii) your conviction of a felony, (iii) any act by you that constitutes material misconduct and is injurious to Taleo or (iv) substantial violations of

employment duties, responsibilities or obligations to Taleo that are demonstrably willful and deliberate.

4. Location and Relocation fees. This offer is made to you with the condition that you will relocate to San Francisco before August 15, 2005, and perform your duties from our San Francisco head office. You will be eligible to receive reasonable reimbursement for relocation charges from Vancouver to San Francisco, not to exceed $30,000. Taleo will gross-up taxable relocation expenses in order to pay the appropriate tax authorities on your behalf. Should you voluntarily leave Taleo or your employment is terminated by Taleo for any reason within one year of your hire date, you must repay a pro-rated portion of all relocation benefits and expenses. For each month not employed during this 12-month minimum employment period, you must reimburse Taleo 1/12 of all relocation expenses paid to you or on your behalf.

5. Immigration requirements. To legally work in the United States, the Employee will require a valid visa. The Company shall cover the processing and legal fees associated with obtaining the appropriate authorizations for the Employee.

6. Other Benefits. You will be eligible to receive the standard employee benefits made available by Taleo to its employees from time to time during the term of your employment to the extent of your eligibility therefore ("Benefits"). You shall earn paid vacation at the rate of four (4) weeks per year of employment (which shall be consistent with Taleo's vacation policy and which shall not accrue in excess of that allowable under the policy). During your employment, you shall be permitted, to the extent eligible, to participate in any group medical, dental, life insurance and disability insurance plans, or similar benefit plan of Taleo that is available to employees generally. You should note that Taleo may modify benefits from time to time, as deemed necessary. Base Salary and Incentive Compensation are not considered Benefits as that term is used in this agreement.

Taleo shall reimburse you for all reasonable business expenses actually incurred or paid by you in the performance of your services on behalf of Taleo, upon prior authorization and approval and upon submission of appropriate documentation in accordance with Taleo's expense reimbursement policy.

7. Conflicting Employment. During the term of your employment with Taleo, you will not engage in any other employment, occupation, consulting, or other business activity directly related to the business in which Taleo is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to Taleo. You understand that this offer is made to you with the understanding that Taleo will represent your sole and full-time employment occupation. This provision does not preclude you from serving on the boards of directors and/or advisory boards of companies that are not competitors of Taleo or active in the Human Capital Management industry. You understand that every such situation should be discussed and agreed to with the CEO.

8. General Provisions.

(a) This offer letter will be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

(b) This offer letter along with the Exhibits A-D hereto and the Incentive Compensation Plan attached as Attachment A, the Employment, Confidential Information and Invention Assignment Agreement attached as Attachment B, the Stock Option Recommendation attached as Attachment C, and the Arbitration Agreement attached as Attachment D set forth the terms of your employment with Taleo and supersedes any prior representations or agreements, whether written or oral. Any modifications must be in writing and signed by an officer of Taleo and by you. Any subsequent change or changes in your duties, salary or other compensation will not affect the at-will nature of your employment, the commitments you have agreed to or the enforceability, validity or scope of this Agreement.

(c) This offer of employment is contingent upon background verification and reference checks satisfactory to Taleo. I authorize Taleo and/or a third party designated by Taleo, to conduct such investigations and secure such information as is necessary to assess my background and employment history.

(d) This agreement will be binding upon your heirs, executors, administrators and other legal representatives and will be for the benefit of Taleo, Taleo Holding and their respective successors and assigns.

9. Contingencies. This offer is contingent upon our obtaining the following:

(a) Return of the enclosed copy of this letter, signed by you without modification, indicating your acceptance of this offer;

(b) Return of the enclosed Arbitration Agreement, signed by you without modification;

(c) Return of the enclosed Employment, Confidential Information and Invention Assignment Agreement (attached to this letter as Attachment B), signed by you without modification;

(d) Satisfactory results of background and reference checks

To indicate your acceptance of this offer, please sign and date the enclosed copy of this offer letter and the Confidentiality Agreement, and return both to me as soon as possible. This offer shall be valid for three (3) working days from the date of this letter. If you have any questions about this offer letter, please call Louis Tetu, 418.524.5665 x1226.

We look forward to working with you at Taleo.

Sincerely,

Taleo Corp.

/s/ Michael Gregoire

Michael Gregoire, Chief Executive Officer

ACCEPTANCE:

I accept the terms of my employment with Taleo Corp. as set forth above. I understand that this offer letter does not constitute a contract of employment for any specified period of time and that my employment relationship may be terminated by Taleo or me at any time with or without notice and with or without Cause.

MONDAY, APRIL 4, 2005	/s/ Divesh Sisodraker
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Start date	Divesh Sisodraker

EXHIBIT 10.19

CREDIT AND GUARANTY AGREEMENT

DATED AS OF APRIL 25, 2005

AMONG

TALEO CORPORATION,
AS COMPANY,

VARIOUS LENDERS,

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.
AS ADMINISTRATIVE AGENT, COLLATERAL AGENT, DOCUMENTATION AGENT,
LEAD ARRANGER, AND SYNDICATION AGENT

$20,000,000 SENIOR SECURED TERM LOAN

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CREDIT AND GUARANTY AGREEMENT

This CREDIT AND GUARANTY AGREEMENT, dated as of April 25, 2005, is entered into by and among TALEO CORPORATION, a Delaware corporation ("COMPANY"), the Lenders party hereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P. ("GSSLG"), as Administrative Agent (in such capacity, "ADMINISTRATIVE AGENT"), Collateral Agent (in such capacity, "COLLATERAL AGENT"), Lead Arranger, Syndication Agent (in such capacity, "SYNDICATION AGENT"), and Documentation Agent (in such capacity, "DOCUMENTATION AGENT").

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in SECTION 1.1 hereof;

WHEREAS, Lenders have agreed to extend a term loan to Company, in an aggregate amount not to exceed $20,000,000, consisting entirely of aggregate principal amount of Term Loans, the proceeds of which will be used to repay Existing Indebtedness, pay Transaction Costs, for Restricted Cash Account funding, and for general corporate purposes;

WHEREAS, RECRUITFORCE.COM, INC., a California corporation ("GUARANTOR") has agreed to guarantee the obligations of Company; and

WHEREAS, Company and Guarantor have agreed to secure all of the Obligations by granting to Collateral Agent, for the benefit of Lenders, a First Priority Lien on substantially all of their assets, including a pledge of 100% of the Capital Stock of each of Company's and Guarantor's Domestic Subsidiaries and 66% of the Capital Stock of each of Company's and Guarantor's Foreign Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"ACT" as defined in SECTION 4.25.

"ADJUSTED LIBOR RATE" means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBOR Rate Loan, the rate per annum obtained by dividing (and rounding upward to the next whole multiple of 1/16 of 1%) (i)(a) the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3740 or 3750, as applicable) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding CLAUSE (a) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service which displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates

referenced in the preceding CLAUSES (a) and (b) are not available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the offered quotation rate to first class banks in the London interbank market by GSSLH or any other Lender selected by Administrative Agent for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Term Loan of GSSLH or any other Lender selected by Administrative Agent, for which the Adjusted LIBOR Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one, minus (b) the Applicable Reserve Requirement.

"ADMINISTRATIVE AGENT" as defined in the preamble hereto.

"ADVERSE PROCEEDING" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Company or any of its Subsidiaries, threatened against or directly affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries.

"AFFECTED LENDER" as defined in SECTION 2.15(b).

"AFFECTED LOANS" as defined in SECTION 2.15(b).

"AFFILIATE" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"AGENT" means each of Syndication Agent, Administrative Agent, Collateral Agent and Documentation Agent.

"AGGREGATE AMOUNTS DUE" as defined in SECTION 2.14.

"AGGREGATE PAYMENTS" as defined in SECTION 7.2.

"AGREEMENT" means this Credit and Guaranty Agreement, dated as of April 25, 2005, as it may be amended, supplemented or otherwise modified from time to time.

"APPLICABLE RESERVE REQUIREMENT" means, at any time, for any LIBOR Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted LIBOR Rate or any other interest rate of a Term Loan is to be determined, or (ii) any category of extensions of credit or other assets which include LIBOR Rate Loans. A LIBOR Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of

credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBOR Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"ASSET SALE" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person (other than Company or any Guarantor Subsidiary), in one transaction or a series of transactions, of all or any part of Company's or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any of Company's Subsidiaries, other than (i) inventory (or other assets) sold or leased in the ordinary course of business; (ii) the non-exclusive licensing of intellectual property or know-how on commercially reasonable terms and in the ordinary course of business; (iii) any disposition by a Guarantor to Company or by Company or a Guarantor to a Guarantor; and (iv) any disposition by a non-Guarantor to the Company or a Guarantor.

"ASSIGNMENT AGREEMENT" means an Assignment and Assumption Agreement substantially in the form of EXHIBIT E, with such amendments or modifications as may be approved by Administrative Agent.

"AUTHORIZED OFFICER" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive

officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer.

"BANKRUPTCY CODE" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"BASE RATE" means, for any day, a rate per annum equal to the greater of (i) the Prime Rate in effect on such day, and (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"BASE RATE LOAN" means a Term Loan bearing interest at a rate determined by reference to the Base Rate.

"BENEFICIARY" means each Agent, Lender and Lender Counterparty.

"BUSINESS DAY" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or the State of Texas or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBOR Rate or any LIBOR Rate Loans, the term "BUSINESS DAY" shall mean any day which is a Business Day described in CLAUSE (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"CAPITAL LEASE" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"CAPITAL STOCK" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a

Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"CASH" means money, currency or a credit balance in any demand or Deposit Account.

"CASH EQUIVALENTS" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least Aaa from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in CLAUSES (I) and (II) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"CASH RELEASE COMPLIANCE NOTICE AND CERTIFICATE" means a certificate substantially in the form of EXHIBIT G-3.

"CERTIFICATE REGARDING NON-BANK STATUS" means a certificate substantially in the form of EXHIBIT F.

"CHANGE OF CONTROL" means, at any time, that any of the following have occurred: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any

employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of such Person cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in CLAUSE (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in CLAUSES (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both CLAUSE (ii) and CLAUSE (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or

consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directions); or (c) prior to the occurrence of a Qualified IPO, in addition to clauses (a) and (b) above, Bain Capital (or any affiliate of Bain Capital) shall cease to hold at least 9% of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis.

"CLOSING DATE" means the date on which the Term Loans are made.

"CLOSING DATE CERTIFICATE" means a Closing Date Certificate substantially in the form of EXHIBIT G-1.

"COLLATERAL" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"COLLATERAL AGENT" as defined in the preamble hereto.

"COLLATERAL DOCUMENTS" means the Pledge and Security Agreement, the Landlord/Operator Consents and Waivers, the Copyright Security Agreement, Hypothec on Shares and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Lenders, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"COLLATERAL QUESTIONNAIRE" means a certificate in form satisfactory to Collateral Agent that provides information with respect to the real, personal or mixed property of each Credit Party.

"COMPANY" as defined in the preamble hereto.

"COMPLIANCE CERTIFICATE" means a Compliance Certificate substantially in the form of EXHIBIT C.

"CONSOLIDATED ADJUSTED EBITDA" means, for any period, an amount determined for Company and its Subsidiaries on a consolidated basis equal to (i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, plus (b) Consolidated Interest Expense, plus (c) provisions for taxes based on income, plus (d) total depreciation expense, plus (e) total amortization expense, plus (f) other non-Cash items (including non-Cash compensation expense) reducing Consolidated Net Income (excluding any such non-Cash item to the extent that it represents an accrual or reserve for potential Cash items in any future period or amortization of a prepaid Cash item that was paid in a prior period), plus (g) losses related to foreign currency translation adjustments, minus (ii) the sum, without duplication of the amounts for such period of (a) other non-Cash items increasing Consolidated Net Income for such period (excluding any such non-Cash item to the extent it represents the reversal of an accrual or reserve for potential Cash item in any prior period), plus (b) interest income, plus (c) other non-ordinary course income,

plus (d) gains related to foreign currency translation adjustments; provided, however, that, for purposes of SECTIONS 3.1(s) and 6.8(b), Consolidated Adjusted EBITDA shall exclude a one-time restructuring charge in the Fiscal Quarter ending March 31, 2005 of up to $850,000 relating to headcount reduction and lease terminations, and shall also exclude two one-time charges of up to $700,000 each in the Fiscal Quarter ending March 31, 2006 and in the Fiscal Quarter ending March 31, 2007, relating to compensation paid to the two founders of Recruitforce.com, Inc. under the Agreement and Plan of Merger, dated as of March 10, 2005, by and among Company, Butterfly Acquisition

Corporation, Recruitforce.com, Inc., and with respect to Article VI only, Matthew Robinson as Stockholder Agent and U.S. Bank, National Association as Escrow Agent.

"CONSOLIDATED CAPITAL EXPENDITURES" means, for any period, the aggregate of all expenditures of Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment or which should otherwise be capitalized" or similar items reflected in the consolidated statement of cash flows of Company and its Subsidiaries.

"CONSOLIDATED CASH INTEREST EXPENSE" means, for any period, Consolidated Interest Expense for such period, excluding any amount not payable in Cash.

"CONSOLIDATED CURRENT ASSETS" means, as at any date of determination, the total assets of Company and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, including Cash and Cash Equivalents.

"CONSOLIDATED CURRENT LIABILITIES" means, as at any date of determination, the total liabilities of Company and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt (including under Capital Leases).

"CONSOLIDATED EXCESS CASH FLOW" means, for any period, an amount (if positive) determined for Company and its Subsidiaries on a consolidated basis equal to: (i) the sum, without duplication, of the amounts for such period of (a) Consolidated Adjusted EBITDA, plus (b) interest income, plus (c) other non-ordinary course income, plus (d) the Consolidated Working Capital Adjustment, minus (ii) the sum, without duplication, of the amounts for such period of (a) voluntary and scheduled repayments of Consolidated Total Debt, plus (b) Consolidated Capital Expenditures (net of any proceeds of (x) Net Asset Sale Proceeds to the extent reinvested in accordance with SECTION 2.11(a), (y) Net Insurance/Condemnation Proceeds to the extent reinvested in accordance with SECTION 2.11(b), and (z) any proceeds of related financings with respect to such expenditures), plus (c) Consolidated Cash Interest Expense, plus (d) provisions for current taxes based on income of Company and its Subsidiaries and payable in Cash with respect to such period.

"CONSOLIDATED HOSTED APPLICATION REVENUE" means, for any period, all revenue from subscription agreements executed with customers relating to access to Company's products, including application fees, hosting fees and maintenance fees on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP. This shall exclude: (i) revenues from perpetual license sales entered into after the Closing Date, and (ii) license fees from that certain contract between the Company and Citigroup Technology, Inc. and similar agreements that are non-recurring in nature, and (iii) revenues from business arrangements with the customers associated with "Taleo Contingent" (the former "White Amber" business division).

"CONSOLIDATED INTEREST EXPENSE" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Consolidated Total Debt, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under any Interest Rate Agreement, but excluding, however, any amounts referred to in SECTION 2.8 payable on or before the Closing Date.

"CONSOLIDATED LIQUIDITY" means, for any period an amount determined for Company and its Subsidiaries on a consolidated basis equal to the Cash and Cash Equivalents of Company and its Subsidiaries.

"CONSOLIDATED NET INCOME" means, for any period, (i) the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) the sum of (a) the income (or loss) of any Person (other than a Subsidiary of Company) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, plus (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Company or is merged into or consolidated with Company or any of its Subsidiaries or that Person's assets are acquired by Company or any of its Subsidiaries, plus (c) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, plus (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, plus (e) (to the extent not included in CLAUSES (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"CONSOLIDATED TOTAL DEBT" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"CONSOLIDATED WORKING CAPITAL" means, as at any date of determination, the excess or deficiency of Consolidated Current Assets over Consolidated Current Liabilities.

"CONSOLIDATED WORKING CAPITAL ADJUSTMENT" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"CONTRACTUAL OBLIGATION" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"CONTRIBUTING GUARANTORS" as defined in SECTION 7.2.

"CONVERSION/CONTINUATION DATE" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"CONVERSION/CONTINUATION NOTICE" means a Conversion/Continuation Notice substantially in the form of EXHIBIT A-2.

"CREDIT DOCUMENT" means any of this Agreement, the Term Loan Notes, the Collateral Documents, the Disclosure Letter and the Schedules thereto, the Fee Letter, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of any Agent or any Lender in connection herewith, as the same may be modified, amended, or restated from time to time.

"CREDIT EXTENSION" means the making of a Term Loan.

"CREDIT PARTY" means each Person (other than any Agent or any Lender or any other representative thereof) from time to time party to a Credit Document.

"CURRENCY AGREEMENT" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Company' and its Subsidiaries' operations and not for speculative purposes.

"CURRENT RATIO" means the ratio as of the last day of any Fiscal Quarter ending after the Closing Date of (a) Consolidated Current Assets as of such day, to (b) Consolidated Current Liabilities as of such day.

"DEFAULT" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"DEFAULT EXCESS" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate

outstanding principal amount of Term Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Term Loans of such Defaulting Lender.

"DEFAULT PERIOD" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (i) the date on which all Obligations are indefeasibly paid in full, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Term Loans in accordance with the terms of SECTION 2.10 or SECTION 2.11 or by a combination thereof), and (b) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"DEFAULT RATE" means any interest payable pursuant to SECTION 2.7.

"DEFAULTED LOAN" as defined in SECTION 2.19.

"DEFAULTING LENDER" as defined in SECTION 2.19.

"DEPOSIT ACCOUNT" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"DEPOSIT ACCOUNT CONTROL AGREEMENT" means a Deposit Account Control Agreement substantially in the form of EXHIBIT J with such amendments or modifications as may be approved by Collateral Agent.

"DISCLOSURE LETTER" means the Disclosure Letter of Company to Administrative Agent and the Lenders dated the Closing Date.

"DOCUMENTATION AGENT" as defined in the preamble hereto.

"DOLLARS" and the sign "$" mean the lawful money of the United States of America.

"DOMESTIC SUBSIDIARY" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"ELIGIBLE ASSIGNEE" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses, and (c) any other Person (other than a natural Person) approved by Company (so long as no Default or Event of Default has occurred and is continuing) and Administrative Agent; provided, that in no event shall Company nor any Affiliate of Company be an Eligible Assignee.

"EMPLOYEE BENEFIT PLAN" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

"ENTERPRISE VALUE" means, on or after a Qualified IPO, the sum of: (i)(a) the amount of all outstanding Obligations of the Company and its Subsidiaries; and (b) the market value of all outstanding equity of the Company (which shall be calculated by multiplying the average of the Company's closing stock price over a trailing 30 calendar-day period by the number of diluted shares outstanding as indicated by the Company's then-most-recently filed 424B3, S-1/A, 10Q, or 10K), minus (ii) the aggregate Cash and Cash Equivalents of the Company and its Subsidiaries.

"ENVIRONMENTAL CLAIM" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to

health, safety, natural resources or the environment.

"ENVIRONMENTAL LAWS" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Company or any of its Subsidiaries or any Facility.

"EQUITY INVESTMENTS" is defined in SECTION 6.7(b).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA AFFILIATE" means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in CLAUSE (i) above or any trade or business described in

CLAUSE (ii) above is a member. Any former ERISA Affiliate of Company or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Company or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Company or such Subsidiary and with respect to liabilities arising after such period for which Company or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"ERISA EVENT" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Company, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Company, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for

exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"EVENT OF DEFAULT" means each of the conditions or events set forth in SECTION 8.1.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"EXCLUDED DEPOSIT ACCOUNTS" is defined in SECTION 5.14(b).

"EXISTING INDEBTEDNESS" means all Indebtedness and other obligations outstanding under that certain Security Agreement dated as of May 7, 2004, between Company and National Bank of

Canada, as amended prior to the Closing Date, or any other agreement evidencing Indebtedness to National Bank of Canada.

"FACILITY" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"FEDERAL FUNDS EFFECTIVE RATE" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to GSSLH or any other Lender selected by Administrative Agent on such day on such transactions as determined by Administrative Agent.

"FEE LETTER" means the letter agreement dated April 8, 2005, between Company and Administrative Agent.

"FINANCIAL OFFICER CERTIFICATION" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Company that such financial statements fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes in the case of financial statements covering interim periods.

"FINANCIAL PLAN" as defined in SECTION 5.1(j).

"FIRST PRIORITY" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"FISCAL QUARTER" means a fiscal quarter of any Fiscal Year.

"FISCAL YEAR" means the fiscal year of Company and its Subsidiaries ending on December 31 of each calendar year.

"FLOOD HAZARD PROPERTY" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of the Lenders, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"FOREIGN SUBSIDIARY" means any Subsidiary that is not a Domestic Subsidiary.

"FUNDING DEFAULT" as defined in SECTION 2.19.

"FUNDING GUARANTORS" as defined in SECTION 7.2.

"FUNDING NOTICE" means a notice substantially in the form of EXHIBIT A-1.

"GAAP" means, subject to the limitations on the application thereof set forth in SECTION 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"GOVERNMENTAL AUTHORITY" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"GOVERNMENTAL AUTHORIZATION" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"GSSLG" as defined in the preamble hereto.

"GSSLH" means Goldman Sachs Specialty Lending Holdings, Inc., a Delaware corporation.

"GUARANTEED OBLIGATIONS" as defined in SECTION 7.1.

"GUARANTOR" means any Domestic Subsidiary or Foreign Subsidiary of Company formed in the future, that may, from time to time, guarantee the Obligations hereunder, if any.

"GUARANTOR SUBSIDIARY" means each Guarantor, if any.

"GUARANTY" means the guaranty of each Guarantor, if any, set forth in SECTION 7, or otherwise, in form and substance acceptable to Administrative Agent, and, in each case, as the same may be modified, amended, supplemented or restated from time to time.

"HAZARDOUS MATERIALS" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"HAZARDOUS MATERIALS ACTIVITY" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"HIGHEST LAWFUL RATE" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"HISTORICAL FINANCIAL STATEMENTS" means (i) the audited financial statements of Company and its Subsidiaries, for the Fiscal Year ended December 31, 2003, consisting of a consolidated balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, (ii) the unaudited financial statements of Company and its Subsidiaries, for the Fiscal

Year ended December 31, 2004, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (iii) for the interim period from January 1, 2005, to the Closing Date, internally prepared, unaudited financial statements of Company and its Subsidiaries, consisting of a consolidated balance sheet and the related consolidated statements of income for each quarterly period completed prior to forty-six (46) calendar-days before the Closing Date and for each monthly period completed prior to thirty-one (31) calendar-days prior to the Closing Date, in the case of CLAUSES (i), (ii), and (iii), certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal

year end adjustments.

"HYPOTHEC ON SHARES" means that Hypothec on Shares, to be executed by Company substantially in the form of EXHIBIT H-3, as it may be amended, supplemented, or otherwise modified from time to time.

"INCREASED-COST LENDERS" as defined in SECTION 2.20.

"INDEBTEDNESS," as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any stock of, or equity interest in, such Person or any other Person on or prior to the date that is 180 days following the Term Loan Maturity Date, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (v) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (vi) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vii) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another (of the types specified in CLAUSES (i) through (viii) above); (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under SUBCLAUSES (a) or (b) of this CLAUSE (ix), the primary purpose or intent thereof is as described in CLAUSE (viii) above; and (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes; provided, in no event shall obligations under any Interest Rate Agreement and Currency Agreement be deemed "INDEBTEDNESS" for any purpose under SECTION 6.8.

"INDEMNIFIED LIABILITIES" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the statements contained in the commitment letter delivered by any Lender to Company with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or

indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries.

"INDEMNITEE" as defined in SECTION 10.3.

"INDEMNITEE AGENT PARTY" as defined in SECTION 9.6.

"INSTALLMENT" as defined in SECTION 2.9.

"INSTALLMENT DATE" as defined in SECTION 2.9.

"INTEREST PAYMENT DATE" means with respect to (i) any Base Rate Loan, (a) the last day of each month, commencing on the first such date to occur after the Closing Date, and (b) the Term Loan Maturity Date; and (ii) any LIBOR Rate Loan, (a) the last day of each Interest Period applicable to such Term Loan, (b) if the Interest Period is greater than one month, the last day of each month commencing on the first such date to occur after the Closing Date, and (c) the Term Loan Maturity Date.

"INTEREST PERIOD" means, in connection with a LIBOR Rate Loan, an interest period of one-, two-, three- or six-months, as selected by Company in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Closing Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to CLAUSE (c) of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of any Term Loans shall extend beyond such Term Loan Maturity Date.

"INTEREST RATE AGREEMENT" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or

arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with Company's and its Subsidiaries' operations, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

"INTEREST RATE DETERMINATION DATE" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"INTERNAL REVENUE CODE" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"INVESTMENT" means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor Subsidiary); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person (other than Company or any Guarantor Subsidiary), of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Company or any of its Subsidiaries to any other Person (other than Company or any Guarantor Subsidiary), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"JOINT VENTURE" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"LANDLORD/OPERATOR CONSENT AND WAIVER" means a Landlord or Operator Consent and Waiver substantially in the form of EXHIBIT I with such amendments or modifications as may be approved by Collateral Agent.

"LEAD ARRANGER" as defined in the preamble hereto.

"LEASEHOLD PROPERTY" means any leasehold interest of any Credit Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"LENDER" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"LENDER COUNTERPARTY" means each Lender or any Affiliate of a Lender counterparty to an Interest Rate Agreement or Currency Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into an Interest Rate Agreement or Currency Agreement, ceases to be a Lender) including, without limitation, each such Affiliate that enters into a joinder agreement with Collateral Agent.

"LIBOR RATE LOAN" means a Term Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.

"LIEN" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or

other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities issued by any Subsidiary, any purchase option, call or similar right of a third party with respect to such Securities.

"LOAN TO VALUE RATIO" means the ratio, as of the last day of any Fiscal Quarter ending after the Closing Date, of (a) the Company's Obligations as of such day, to (b) the Company's Enterprise Value as of such day.

"MARGIN STOCK" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"MATERIAL ADVERSE EFFECT" means whether singly or in conjunction with any other event, act, condition, or occurrence of any nature, whether or not related, a material adverse effect on and/or material adverse developments with respect to (i) the business operations, properties, assets, condition (financial or otherwise) or prospects of Company and its Subsidiaries taken as a whole; (ii) a significant portion of the industry or business segment in which Company or its Subsidiaries operate or rely upon if such effect or development will have a material adverse effect on Company and its Subsidiaries taken as a whole; (iii) the ability of any Credit Party to fully and timely perform its Obligations; (iv) the legality, validity, binding effect, or enforceability against a Credit Party of a Credit Document to which it is a party; or (v) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender under any Credit Document.

"MATERIAL CONTRACT" means (i) any contract or other arrangement to which Company or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, and (ii) those contracts and arrangements required under SECTION 4.16 to be listed on SCHEDULE 4.16 to the Disclosure Letter.

"MATERIAL REAL ESTATE ASSET" means (i)(a) any fee-owned Real Estate Asset having a fair market value in excess of $500,000 as of the date of the acquisition thereof, and (b) all Leasehold Properties other than those with respect to which the aggregate payments under the term of the lease are less than $100,000 per annum, or (ii) any Real Estate Asset that the Requisite Lenders have determined (and notified Company of such determination) is material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any Subsidiary thereof, including Company and any listed on SCHEDULE 1.1.

"MAXIMUM CASH BALANCE" as defined in SECTION 5.17.

"MOODY'S" means Moody's Investor Services, Inc.

"MULTIEMPLOYER PLAN" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"NAIC" means The National Association of Insurance Commissioners,

and any successor thereto.

"NARRATIVE REPORT" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Company and its Subsidiaries in the form similar to that which would be presented as "Management Discussion and Analysis" in a filing with the Securities and Exchange Commission for the applicable, Fiscal Quarter or Fiscal Year and

for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate with comparison to and variances from the comparable period for the preceding year.

"NET ASSET SALE PROCEEDS" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments or Cash Equivalents received by Company or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale during the tax period the sale occurs, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Term Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Company or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"NET INSURANCE/CONDEMNATION PROCEEDS" means an amount equal to: (i) any Cash payments or proceeds received by Company or any of its Subsidiaries (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii)(a) any actual and reasonable costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in CLAUSE (i)(b) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

"NON-US LENDER" as defined in SECTION 2.17(c).

"NOTICE" means a Funding Notice or a Conversion/Continuation Notice.

"OBLIGATIONS" means all obligations of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders or any of them and Lender Counterparties, or any other Person required to be indemnified by Company, that arises under any Credit Document or Interest Rate Agreement and Currency Agreement (including, without limitation, with respect to an Interest Rate Agreement or Currency Agreement, obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the time such Interest Rate Agreement or Currency Agreement was entered into), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), payments for early termination of Interest Rate Agreements or Currency Agreements, fees, expenses, indemnification or otherwise.

"OBLIGEE GUARANTOR" as defined in SECTION 7.7.

"ORGANIZATIONAL DOCUMENTS" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, and all applicable resolutions of the board of directors (or any committee thereof) of such corporation, (ii) with respect to any limited partnership, its certificate of limited

partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and

(iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "ORGANIZATIONAL DOCUMENT" shall only be to a document of a type customarily certified by such governmental official.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"PENSION PLAN" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"PERMITTED ACQUISITION" means any acquisition by Company or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary of Company in connection with such acquisition shall be owned 100% by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in SECTIONS 5.10 and/or 5.11, as applicable;

(iv) Company and its Subsidiaries shall be in compliance with the financial covenants set forth in SECTION 6.8(a), (b), and (e) on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended;

(v) Company shall have delivered to Administrative Agent at least 20 Business Days prior to such proposed acquisition, a Compliance Certificate evidencing compliance with SECTION 6.8(a), (b), and (e) as required under CLAUSE (iv) above, together with all relevant financial information with respect to such acquired assets, including, without limitation, the aggregate consideration for such acquisition and any other information required to demonstrate compliance with SECTION 6.8(a), (b), and (e);

(vi) any Person or assets or division as acquired in accordance herewith (y) shall be in the business or lines of business specified in SECTION 6.13; and

(vii) the acquisition shall have been approved by the board of directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired.

"PERMITTED EXCHANGE" means the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market.

"PERMITTED LIENS" means each of the Liens permitted pursuant to SECTION 6.2.

"PERSON" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"PHASE I REPORT" means, with respect to any Facility, a report that (i) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (ii) was conducted no more than six months prior to the date such report is required to be delivered hereunder, by one or more environmental consulting firms reasonably satisfactory to Administrative Agent, (iii) includes an assessment of asbestos-containing materials at such Facility, (iv) is accompanied by (a) an estimate of the

reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity identified in the Phase I Report as giving rise to an actual or potential material violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim, and (b) a current compliance audit setting forth an assessment of Company's, its Subsidiaries' and such Facility's current and past compliance with Environmental Laws and an estimate of the cost of rectifying any non-compliance with current Environmental Laws identified therein and the cost of compliance with reasonably anticipated future Environmental Laws identified therein.

"PLEDGE AND SECURITY AGREEMENT" means a Pledge and Security Agreement, to be executed by Company and each Guarantor, if any, substantially in the form of EXHIBIT H-1, as it may be amended, supplemented or otherwise modified from time to time.

"PLEDGOR" as defined in the Pledge and Security Agreement.

"PREPAYMENT PREMIUM" as defined in SECTION 2.10(c).

"PRIME RATE" means the rate of interest quoted in The Wall Street Journal, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"PRINCIPAL OFFICE" means, for Administrative Agent, such Person's "PRINCIPAL OFFICE" as set forth on APPENDIX B, or such other office as such Person may from time to time designate in writing to Company, Administrative Agent and each Lender.

"PRO RATA SHARE" means (i) with respect to all payments, computations and other matters relating to the Term Loan of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender, by (b) the aggregate Term Loan Exposure of all Lenders. For all other purposes with respect to each Lender, "PRO RATA SHARE" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure of all Lenders.

"PROJECTIONS" as defined in SECTION 4.8.

"QUALIFIED IPO" means a firmly underwritten initial public offering of common equity securities by the Company: (i) resulting in net aggregate proceeds to the Company (after accounting for underwriting discounts and commissions and not including any proceeds to any selling shareholders) of not less than $50,000,000; (ii) immediately after giving effect to which, the equity securities are listed for trading on a Permitted Exchange; and (iii) that results in the conversion, into the Company's common equity securities, of all of Company's issued and outstanding preferred equity securities.

"REAL ESTATE ASSET" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"REGISTER" as defined in SECTION 2.4(b).

"REGULATION D" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"RELATED FUND" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"RELEASE" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"REPLACEMENT LENDER" as defined in SECTION 2.20.

"REQUIRED PREPAYMENT DATE" as defined in SECTION 2.12(b).

"REQUISITE LENDERS" means one or more Lenders having or holding Term Loan Exposure representing more than 50% of the sum of the aggregate Term Loan Exposure of all Lenders.

"RESTRICTED CASH ACCOUNT" means that account established pursuant to SECTION 5.14(b).

"RESTRICTED JUNIOR PAYMENT" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Company now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Company now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Company now or hereafter outstanding; and (iv) management or similar fees payable to any equity investor or any of its Affiliates.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"SECURITIES" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any

certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"SECURITIES ACT" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"SERIES C PREFERRED SHAREHOLDER" means the beneficial owner of any Series C Preferred Shares.

"SERIES C PREFERRED SHARES" means the outstanding shares of Series C Preferred Stock of the Company.

"SERIES D PREFERRED SHAREHOLDER" means the beneficial owner of any Series D Preferred Shares.

"SERIES D PREFERRED SHARES" means the outstanding shares of Series D Preferred Stock of the Company.

"SOLVENCY CERTIFICATE" means a Solvency Certificate of the chief financial officer of Company substantially in the form of EXHIBIT G-2.

"SOLVENT" means, with respect to any Credit Party, that as of the date of determination, both (i)(a) the total amount of such Credit Party's debt (including contingent, disputed, and unliquidated liabilities) does not exceed the present fair saleable value of such Credit Party's present assets, as such value is established and liabilities evaluated for purposes of Section 101(3)(A) of the Bankruptcy Code and, in the alternative, for purposes of the Uniform Fraudulent Transfer Act; (b) such Credit Party's capital is not unreasonably small in relation to its business as contemplated on the Closing Date and reflected in the Projections or with respect to any transaction contemplated or undertaken after the Closing Date; (c) such Credit Party is able to realize upon its property and pay its debts and other liabilities (including contingent, disputed, and unliquidated liabilities) as they mature in the normal course of business; and (d) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No.5).

"SUBJECT TRANSACTION" as defined in SECTION 6.8(g).

"SUBSIDIARY" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"SYNDICATION AGENT" as defined in the preamble hereto.

"TAX" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"TERM LOAN" means a Term Loan made by a Lender to Company pursuant to SECTION 2.1(a).

"TERM LOAN COMMITMENT" means the commitment of a Lender to make or otherwise fund a Term Loan and "TERM LOAN COMMITMENTS" means such commitments of all Lenders in the aggregate. The amount of each Lender's Term Loan Commitment is set forth on APPENDIX A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term Loan Commitments as of the Closing Date is $20,000,000.

"TERM LOAN EXPOSURE" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; provided, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Loan Commitment.

"TERM LOAN MATURITY DATE" means the earlier of (i) April 25, 2008, and (ii) the date that all Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"TERM LOAN NOTE" means a promissory note in the form of EXHIBIT B, as it may be amended, supplemented or otherwise modified from time to time.

"TERMINATED LENDER" as defined in SECTION 2.20.

"TRANSACTION COSTS" means the fees, costs and expenses payable by Company or any of Company's Subsidiaries on or before the Closing Date in connection with the transactions contemplated by the Credit Documents.

"TYPE OF LOAN" means with respect to Term Loans, a Base Rate Loan or a LIBOR Rate Loan.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"WAIVABLE MANDATORY PREPAYMENT" as defined in SECTION 2.12(b).

"YIELD MAINTENANCE PREMIUM" as defined in SECTION 2.10(b).

1.2. ACCOUNTING TERMS. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

Financial statements and other information required to be delivered by Company

to Lenders pursuant to SECTION 5.1(a), 5.1(b), 5.1(c) and 5.1(d) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in SECTION 5.1(F), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements.

1.3. INTERPRETATION, ETC. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. TERM LOAN

2.1. TERM LOAN.

(a) Term Loan Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Closing Date, a Term Loan to Company in an amount equal to such Lender's Term Loan Commitment.

Company may make only one borrowing under the Term Loan Commitment which shall be on the Closing Date. Any amount borrowed under this SECTION 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to SECTIONS 2.9 and 2.10, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Term Loan Maturity Date. Each Lender's Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Term Loan Commitment on such date.

(b) Borrowing Mechanics for Term Loans.

(i) Company shall deliver to Administrative Agent a fully executed Funding Notice (specifying a Base Rate Loan) on or prior to the Closing Date with respect to Term Loans made on the Closing Date. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Company on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from Lenders to be credited to the account of Company at Administrative Agent's Principal Office or to such other account as may be designated in writing to Administrative Agent by Company.

2.2. PRO RATA SHARES; AVAILABILITY OF FUNDS.

(a) Pro Rata Shares. All Term Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Closing Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Term Loan requested on the Closing Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on the Closing Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on the Closing Date. If such corresponding amount is not in fact made available to

Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans. Nothing in this SECTION 2.2(b) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

2.3. USE OF PROCEEDS. The proceeds of the Term Loan made on the Closing Date shall be applied by Company to repay Existing Indebtedness, pay Transaction Costs, and for general corporate purposes. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

2.4. EVIDENCE OF DEBT; REGISTER; LENDERS' BOOKS AND RECORDS; TERM LOAN NOTES.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Term Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any applicable Term Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and Term Loans of each Lender from time to time (the "REGISTER"). The Register shall be available for inspection by Company or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Term Loans, and each repayment or prepayment in respect of the principal amount of the Term Loans, and any such recordation shall be conclusive and binding on Company and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Term Loan. Company hereby designates the

entity serving as Administrative Agent to serve as Company's agent solely for purposes of maintaining the Register as provided in this SECTION 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "INDEMNITEES."

(c) Term Loan Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to SECTION 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company's receipt of such notice) a Term Loan Note or Notes to evidence such Lender's Term Loan.

2.5. INTEREST ON TERM LOANS.

(a) Except as otherwise set forth herein, each Term Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus 4.50%; or

(ii) if a LIBOR Rate Loan, at the Adjusted LIBOR Rate plus 6.00%.

(b) The basis for determining the rate of interest with respect to any Term Loan, and the Interest Period with respect to any LIBOR Rate Loan,

shall be selected by Company and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Term Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Term Loan shall be a Base Rate Loan.

(c) In the event Company fails to specify between a Base Rate Loan or a LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Term Loan (if outstanding as a LIBOR Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Term Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Company fails to specify an Interest Period for any LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Company shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Company and each Lender.

(d) Interest payable pursuant to SECTION 2.5(a) shall be computed on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Term Loan, the date of the making of such Term Loan or the first day of an Interest Period applicable to such Term Loan or, with respect to a Base Rate Loan being converted from a LIBOR Rate Loan, the date of conversion of such LIBOR Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Term Loan or the expiration date of an Interest Period applicable to such Term Loan or, with respect to a Base Rate Loan being converted to a LIBOR

Rate Loan, the date of conversion of such Base Rate Loan to such LIBOR Rate Loan, as the case may be, shall be excluded; provided, if a Term Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Term Loan.

(e) Except as otherwise set forth herein, interest on each Term Loan shall be payable in arrears on and to (i) each Interest Payment Date applicable to that Term Loan; (ii) upon any prepayment of that Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

2.6. CONVERSION/CONTINUATION.

(a) Subject to SECTION 2.15 and so long as no Default or Event of Default shall have occurred and then be continuing, Company shall have the option:

(i) to convert at any time all or any part of any Term Loan equal to $1,000,000 and integral multiples of $1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a LIBOR Rate Loan may only be converted on the expiration of the Interest Period applicable to such LIBOR Rate Loan unless Company shall pay all amounts due under SECTION 2.15 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any LIBOR Rate Loan, to continue all or any portion of such Term Loan equal to $1,000,000 and integral multiples of $1,000,000 in excess of that amount as a LIBOR Rate Loan.

(b) Company shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any LIBOR Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to effect a conversion or continuation in accordance therewith.

2.7. DEFAULT INTEREST. Upon the occurrence and during the continuance of

an Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Term Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 3% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Term Loans (or, in the case of any such fees and other amounts, at a rate which is 3% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of LIBOR Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such LIBOR Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 3% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this SECTION 2.7 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.8. FEES.

(a) The Company agrees to pay to the Administrative Agent, for its own account, the fees in the amounts and at the times from time to time agreed to in writing by the Company (or any Affiliate) and the Administrative Agent, including pursuant to the Fee Letter.

(b) In addition to any of the foregoing fees, Company agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

(c) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees shall be refundable under any circumstances.

2.9. SCHEDULED PAYMENTS.

(a) Installments. The principal amounts of the Term Loans shall be repaid in consecutive quarterly installments (each, an "INSTALLMENT") in the aggregate amount of $500,000 on the last day of each Fiscal Quarter (each, an "INSTALLMENT DATE"), commencing June 30, 2005, and continuing on the last day of each Fiscal Quarter ending on or prior to the Term Loan Maturity Date, with the remainder of the Obligation outstanding and unpaid being payable on the Term Loan Maturity Date.

(b) Waivable Installments. Anything contained herein to the contrary notwithstanding, not less than two Business Days prior to the Installment Date on which Company is required to make such Installment, Administrative Agent shall notify Company of Requisite Lenders' decision to refuse such Installment. Each Lender may elect whether such Lender would like to exercise such option by giving written notice to Administrative Agent of its election to exercise its option not to accept any given Installment on or before the fifth Business Day prior to the Installment Date (it being understood that any Lender which does not notify Administrative Agent of its election to exercise such option on or before the fifth Business Day prior to the Installment Date shall be deemed to have elected, as of such date, not to exercise its option to refuse such Installment). Unless Requisite Lenders elect to refuse the Installment on the Installment Date, Company shall pay to Administrative Agent the amount of the Installment, which amount shall be applied (i) to prepay the Term Loans of such Lenders (which prepayment shall be applied to the principal of the Term Loans in accordance with SECTION 2.12(a)), and (ii) to the extent of any excess, to Company for working capital and general corporate purposes.

2.10. VOLUNTARY PREPAYMENTS.

(a) Voluntary Prepayments.

(i) Any time and from time to time after the Closing Date:

(1) with respect to Base Rate Loans, Company may prepay any such Term Loans on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $1,000,000 in excess of that amount; and

(2) with respect to LIBOR Rate Loans, Company may prepay any such Term Loans on any Business Day in whole or in part (together with any amounts due pursuant to SECTION 2.15(c)) in an aggregate minimum amount of $1,000,000 and integral multiples of

$1,000,000 in excess of that amount.

(ii) All such prepayments shall be made:

(1) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans; and

(2) upon not less than three Business Days' prior written or telephonic notice in the case of LIBOR Rate Loans,

in each case given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or original notice for Term Loans by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Term Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in SECTION 2.12(a) with respect to Term Loans.

(b) Yield Maintenance Premium. If Company prepays, including as a result of acceleration, for any reason (except as specifically excluded under SECTION 2.11 below), all or any part of the principal balance of any Term Loan on or prior to April 25, 2006, Company shall pay to Administrative Agent, for the benefit of all Lenders entitled to a portion of such prepayment, an amount (the "YIELD MAINTENANCE PREMIUM") (which such amount shall be in addition to the Prepayment Premium described below) equal to (1) the aggregate amount of interest (including, without limitation, interest payable in Cash, in kind or deferred) which would have otherwise been payable on the amount of the principal prepayment from the date of prepayment until April 25, 2006, minus (2) the aggregate amount of interest Lenders would earn if the prepaid principal amount were reinvested for the period from the date of prepayment until April 25, 2006 at the Treasury Rate. The term "TREASURY RATE" shall mean a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by Administrative Agent on the date three (3) Business Days prior to the date of prepayment, to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities having a term of not greater than twelve (12) months. No amount will be payable pursuant to the foregoing provisions with respect to any prepayment of all or any part of any Loan after April 25, 2006.

(c) Prepayment Premium. If Company prepays, including as a result of acceleration, for any reason (except as specifically excluded under SECTION 2.11 below), all or any part of the principal balance of any Term Loan, other than scheduled payments, on or prior to the Term Loan Maturity Date, Company shall pay to Administrative Agent (in addition to any Yield Maintenance Premium required pursuant to CLAUSE (b) above), for the benefit of all Lenders entitled to a portion of such prepayment, a prepayment premium (the "PREPAYMENT PREMIUM") on the amount so prepaid as follows:

<TABLE>
<CAPTION>

RELEVANT PERIOD (number of calendar months elapsed since the Closing Date)	PREPAYMENT PREMIUM (as a percentage of the amount prepaid)
<S>	<C>
Closing Date through 18	5%
on or after 19; through 24	3%
on or after 24; prior to the end of 36	1%

</TABLE>

2.11. MANDATORY PREPAYMENTS.

(a) Asset Sales. No later than the first Business Day following the date of receipt by Company or any of its Subsidiaries of any Net Asset Sale Proceeds, Company shall prepay the Term Loans (subject to SECTION 2.10) as set forth in SECTION 2.12(a) in an aggregate amount equal to such Net Asset Sale Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing, Company shall have the option, directly or through one or more of its Subsidiaries, to invest Net Asset Sale Proceeds of up to $250,000 in any Fiscal Year within 180 days of receipt thereof in long-term productive assets of the general type used in the business of Company and its Subsidiaries (including any such assets acquired pursuant to a Permitted Acquisition).

(b) Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by Company or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Company shall prepay the Term Loans (subject to SECTION 2.10) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing, Company shall have the option, directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds of up to $250,000 in any Fiscal Year within 180 days of receipt thereof in long term productive assets of the general type used in the business of Company and its Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof.

(c) Issuance of Equity Securities. On the date of receipt by Company of any Cash proceeds from a capital contribution to, or the issuance of any Capital Stock of Company or any of its Subsidiaries in an aggregate amount of $30,000,000 or more (other than Capital Stock issued (i) in connection with a Qualified IPO, or (ii) for purposes approved in writing by Administrative Agent), Company shall prepay the Term Loans (subject to SECTION 2.10) as set forth in SECTION 2.12(a) in an aggregate amount equal to 100% of such proceeds in excess of $30,000,000, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(d) Issuance of Debt. On the date of receipt by Company or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of Company or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to SECTION 6.1), Company shall prepay the Term Loans (subject to SECTION 2.10) as set forth in SECTION 2.12(a) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(e) Consolidated Excess Cash Flow. In the event that there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with Fiscal Year ending December 31, 2006), Company shall, no later than the date on which audited annual financial statements must be delivered pursuant to SECTION 5.1, prepay the Term Loans (subject to SECTION 2.10) as set forth in SECTION 2.12(a) in an aggregate amount equal to 50% of such Consolidated Excess Cash Flow. Any amounts prepaid pursuant to this SECTION 2.11(e) with respect to any Fiscal Year in excess of 50% of Consolidated Excess Cash Flow shall be treated as voluntary prepayments made pursuant to SECTION 2.12(a), and shall not be subject to the Yield Maintenance Premium or the Prepayment Premium.

(f) Tax Refunds. On the date of receipt by Company or any of its Subsidiaries of any tax refunds in excess of $250,000 in the aggregate in any Fiscal Year, Company shall prepay the Term Loans (subject to SECTION 2.10) as set forth in SECTION 2.12(a) in the amount of such tax refunds in excess of $250,000, and shall not be subject to the Yield Maintenance Premium or the Prepayment Premium.

(g) Prepayment Certificate. Concurrently with any prepayment of the Term Loans pursuant to SECTIONS 2.11(a) through 2.11(f), Company shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds or Consolidated Excess Cash Flow, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Term Loans in an amount equal to such excess, and Company shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.12. APPLICATION OF PREPAYMENTS.

(a) Application of Prepayments by Type of Loans. Any voluntary prepayments of Term Loans pursuant to SECTION 2.10 and any mandatory prepayment of any Term Loan pursuant to SECTION 2.11 shall be applied as follows:

first, to the payment of all due and unpaid expenses and fees to the full extent thereof;

second, to the payment of any accrued interest at the Current Rate;

third, to the payment of any accrued interest at the Default Rate, if any;

fourth, to the payment of the Prepayment Premium and Yield Maintenance Premium, if either is applicable, on any Term Loan;

fifth, except in connection with any Waivable Mandatory Prepayment in SECTION 2.12(b), to prepay the Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) and shall be further applied in inverse order of maturity to reduce the remaining scheduled Installments of principal of the Term Loan; and

sixth, to the payment of any other amounts due to the Agent or the Lenders under the Credit Documents.

(b) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a "WAIVABLE MANDATORY PREPAYMENT") of the Term Loans, not less than three Business Days prior to the date (the "REQUIRED PREPAYMENT DATE") on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Term Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and Requisite Lenders' option to refuse such amount. Each such Lender may vote on whether such Lender would like to exercise such option by giving written notice to Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Company and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). If Requisite Lenders elect to accept the prepayment, on the Required Prepayment Date, Company shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) to prepay the Term Loans of such Lenders (which prepayment shall be applied to the principal of the Term Loans in accordance with SECTION 2.12(a)), and (ii) to the extent of any excess, to Company for working capital and general corporate purposes.

(c) Application of Prepayments of Term Loans to Base Rate Loans and LIBOR Rate Loans. Considering any prepayment of Term Loans shall be applied first to Base Rate Loans to the full extent thereof before application to LIBOR Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Company pursuant to SECTION 2.15(c).

2.13. GENERAL PROVISIONS REGARDING PAYMENTS.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at Administrative Agent's Principal Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next Business Day.

(b) All payments in respect of the principal amount of any Term Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any LIBOR Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "INTEREST PERIOD," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(f) Administrative Agent shall deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 12:00 p.m. (New

York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Company and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of SECTION 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate determined pursuant to SECTION 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to SECTION 8.1, all payments or proceeds (whether or not proceeds of the Collateral) received by Agents hereunder in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 7 of the Pledge and Security Agreement.

2.14. RATABLE SHARING. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Term Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "AGGREGATE AMOUNTS DUE" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.15. MAKING OR MAINTAINING LIBOR RATE LOANS.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBOR Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Rate Loans on the basis provided for in the definition of Adjusted LIBOR Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Company and each Lender of such determination, whereupon (i) no Term Loans may be made as, or converted to, LIBOR Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Company with respect to the Term Loans in respect of which such determination was made shall be deemed to be rescinded by Company.

(b) Illegality or Impracticability of LIBOR Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its LIBOR Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any

such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "AFFECTED LENDER" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Company and Administrative Agent of such determination (which

notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Term Loans as, or to convert Term Loans to, LIBOR Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Term Loan as (or continue such Term Loan as or convert such Term Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding LIBOR Rate Loans (the "AFFECTED LOANS") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, Company shall have the option, subject to the provisions of SECTION 2.15(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this SECTION 2.15(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Term Loans as, or to convert Term Loans to, LIBOR Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to Lenders of funds borrowed by it to make or carry its LIBOR Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any LIBOR Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any LIBOR Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its LIBOR Rate Loans occurs on any day other than the last day of an Interest Period applicable to that Term Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its LIBOR Rate Loans is not made on any date specified in a notice of prepayment given by Company.

(d) Booking of LIBOR Rate Loans. Any Lender may make, carry or transfer LIBOR Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of LIBOR Rate Loans. Calculation of all amounts payable to a Lender under this SECTION 2.15 and under SECTION 2.16 shall be made as though such Lender had actually funded each of its relevant LIBOR Rate Loans through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to CLAUSE (i) of the definition of Adjusted LIBOR Rate in an amount equal to the amount of such LIBOR Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such LIBOR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its LIBOR Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this SECTION 2.15 and under SECTION 2.16.

2.16. INCREASED COSTS; CAPITAL ADEQUACY.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of SECTION 2.17 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or governmental authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law): (i) subjects such Lender (or its applicable lending office) to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to LIBOR Rate Loans that are reflected in the definition of Adjusted LIBOR Rate); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Term Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Company shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this SECTION 2.16(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Term Loans, or participations therein or other obligations hereunder with respect to the Term Loans to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in the next sentence, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail

the basis for calculating the additional amounts owed to Lender under this SECTION 2.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

2.17. TAXES; WITHHOLDING, ETC.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the

United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by CLAUSE (ii) above to pay, Company shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under CLAUSE (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, in respect of payments to such Lender.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "NON-US LENDER") shall deliver to Administrative Agent for transmission to Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver Internal Revenue Service Form W-8ECI pursuant to CLAUSE (i)

above, a Certificate Regarding Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this SECTION 2.17(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Company two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to confirm or establish that such Lender is not subject to deduction or withholding of United States federal

income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence. Company shall not be required to pay any additional amount to any Non-US Lender under SECTION 2.17(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in the first or second sentence of this SECTION 2.17(c), or (2) to notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this SECTION 2.17(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of SECTION 2.17(c) shall relieve Company of its obligation to pay any additional amounts pursuant this SECTION 2.17 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.18. OBLIGATION TO MITIGATE. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Term Loans, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under SECTION 2.15, 2.16 or 2.17, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to SECTION 2.15, 2.16 or 2.17 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such, Term Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Term Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this SECTION 2.18 unless Company agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this SECTION 2.18 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.19. DEFAULTING LENDERS. Anything contained herein to the contrary notwithstanding, in the event that any Lender, other than at the direction or request of any regulatory agency or authority, defaults

(a "DEFAULTING LENDER") in its obligation to fund (a "FUNDING DEFAULT") any Term Loan (in each case, a "DEFAULTED LOAN"), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a Lender for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; and (b) to the extent permitted by applicable law, until such time as the Default Excess with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Term Loan shall, if Administrative Agent so directs at the time of making such voluntary prepayment, be applied to the Term Loans of other Lenders as if such Defaulting Lender had no Term Loans outstanding and the outstanding Term Loans of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Term Loans shall, if Administrative Agent so directs at the time of making such mandatory prepayment, be applied to the Term Loans of other Lenders (but not to the Term Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Term Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this CLAUSE (b). No Term Loan Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this SECTION 2.19, performance by Company of its obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this SECTION 2.19. The rights and remedies against a Defaulting Lender under this SECTION 2.19 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

2.20. REMOVAL OR REPLACEMENT OF A LENDER. Anything contained herein to the

contrary notwithstanding, in the event that: (a)(i) any Lender (an "INCREASED-COST LENDER") shall give notice to Company that such Lender is an Affected Lender or that such Lender is entitled to receive payments under SECTION 2.16, 2.17 or 2.18, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Company's request for such withdrawal; or (b)(i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after Company's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by SECTION 10.5(b), the consent of Administrative Agent and Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "NON-CONSENTING LENDER") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "TERMINATED LENDER"), Administrative Agent may (which, in the case of an Increased-Cost Lender, only after receiving written request from Company to remove such Increased-Cost Lender), by giving written notice to Company and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loans in full to one or more Eligible Assignees (each a "REPLACEMENT LENDER") in accordance with the provisions of SECTION 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to SECTION 2.8; (2) on the date of such assignment, Company shall pay any amounts payable to such Terminated Lender pursuant to SECTION 2.16 or 2.17; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such

Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Term Loan Commitments, such Terminated Lender shall no longer constitute a Lender for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

SECTION 3. CONDITIONS PRECEDENT

3.1. CLOSING DATE. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with SECTION 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent shall have received sufficient copies of each Credit Document originally executed and delivered by each applicable Credit Party for each Lender.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) sufficient copies of each Organizational Document executed and delivered by each Credit Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, for each Lender, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Company and its Subsidiaries shall be as set forth on SCHEDULE 4.2 to the Disclosure Letter.

(d) Series C Preferred Shareholder Letter or Amended Certificate of Incorporation. Administrative Agent shall have received a letter from all Series C Preferred Shareholders stating that they shall not redeem or convert any of their Series C Preferred Shares, or pay any cash dividends (other than a redemption, conversion or dividend payment in connection with a Qualified IPO) so long as any of the Obligations remain outstanding hereunder, and which letter permits the company to incur the Obligations; or, in the alternative, an amended Certificate of Incorporation prohibiting any redemption, conversion or dividend payment in relation to the Series C Preferred Shares.

(e) Existing Indebtedness. On the Closing Date, Company and its Subsidiaries shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Company and its Subsidiaries thereunder being repaid on the Closing Date, and (iv) made arrangements satisfactory to Administrative Agent with respect to the cancellation of any letters of credit outstanding thereunder.

(f) Transaction Costs. On or prior to the Closing Date, Company shall have delivered to Administrative Agent Company's reasonable best estimate of the Transactions Costs (other than fees payable to any Agent).

(g) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(h) Collateral. In order to create in favor of Collateral Agent, for the benefit of the Lenders, a valid, perfected First Priority Lien in the personal property Collateral, Collateral Agent shall have received:

(i) evidence satisfactory to Collateral Agent of the compliance by each Credit Party of their obligations under a Pledge and Security Agreement and the other Collateral Documents (including, without limitation, their obligations to execute and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) A completed Collateral Questionnaire dated the Closing Date and executed by an Authorized Officer of each Credit Party, together with all attachments contemplated thereby, including (A) the results of a recent search, by a Person satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Credit Party in the jurisdictions specified in the Collateral Questionnaire, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens);

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party or any personal property Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iv) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including without limitation, (i) a Landlord or Operator Consent and

Waiver executed by the landlord or operator of any Leasehold Property and by the applicable Credit Party, and (ii) any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to SECTION 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(i) Environmental Reports. Administrative Agent shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to the Facilities.

(j) Financial Statements; Projections. Lenders shall have received from Company: (i) confirmatory diligence with the Company's auditors regarding the 2004 audit and the draft unaudited financial statements for the Fiscal Year ended December 31, 2004, together with a Financial Officer Certification in the form attached as EXHIBIT G-4; (ii) pro forma consolidated and consolidating balance sheets of Company and its Subsidiaries as at the Closing Date, the related financings and the other transactions contemplated by the Credit Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance satisfactory to Administrative Agent; and (iii) the Projections.

(k) Evidence of Insurance. Collateral Agent shall have received a certificate from Company's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to SECTION 5.5 is in full force and effect, together with endorsements naming the Collateral Agent, for the benefit of the Lenders, as additional insured and loss payee thereunder to the extent required under SECTION 5.5.

(l) Opinion of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel for the Company, in the form of EXHIBIT D and as to such other matters as Administrative Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Credit Party hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(m) Fees. Company shall have paid to Syndication Agent, Administrative Agent and Documentation Agent the fees payable on the Closing Date referred to in SECTION 2.8.

(n) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate from Company dated as of the Closing Date and addressed to Administrative Agent and Lenders, and in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the Term Loan to be made on the Closing Date, Company and its Subsidiaries are and will be Solvent.

(o) Closing Date Certificate. Company shall have delivered to Administrative Agent an originally executed Closing Date Certificate, together with all attachments thereto.

(p) Closing Date. Lenders shall have made the Term Loans to Company on or before April 25, 2005.

(q) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Administrative Agent, singly or in the aggregate, materially impairs the financing thereof or any of the other transactions contemplated by the Credit Documents, or that could have a Material Adverse Effect.

(r) Due Diligence. Other than changes occurring in the ordinary course of business, no information or materials are or should have been available to Company and its Subsidiaries as of the Closing Date that are materially inconsistent with the material previously provided to Administrative Agent for its due diligence review of Company and its Subsidiaries.

(s) Minimum EBITDA. The pro forma income statement delivered pursuant to SECTION 3.1(j) shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date and immediately after giving effect to any Term Loans to be made on the

Closing Date, including the payment of all Transaction Costs required to be paid in Cash, the Company shall have generated trailing twelve month Consolidated Adjusted EBITDA of at least $1,000,000.

(t) Minimum Liquidity. The pro forma balance sheet delivered pursuant to SECTION 3.1(j) shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date and immediately after giving effect to any Term Loans to be made on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash, the Company shall have Consolidated Liquidity of at least $18,000,000.

(u) Landlord and Operator Consents and Waivers. Receipt of consent, access, and lien subordination agreements satisfactory to Agent for each of Company's hosting sites and designated leasehold locations.

(v) Establishment of Restricted Cash Account. On or prior to the Closing Date, Company shall have a cash management system in place which is acceptable to Administrative Agent and shall have funded a Restricted Cash Account in the amount set forth opposite the applicable period in SECTION 5.14(b).

(w) No Material Adverse Change. Since December 31, 2003, no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(x) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent, and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.

Each Lender, by delivering its signature page to this Agreement and funding a Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

3.2. CONDITIONS TO CREDIT EXTENSION.

(a) Conditions Precedent. The obligation of each Lender to make any Term Loan on the Closing Date, are subject to the satisfaction, or waiver in accordance with SECTION 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice;

(ii) as of the Closing Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of the Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date;

(iii) as of the Closing Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default; and

(iv) the Chief Financial Officer of the Company shall have delivered an Officer's Certificate representing and warranting and otherwise demonstrating to the satisfaction of Agent that, as of the Closing Date, Company reasonably expects, after giving effect to the proposed borrowing and based upon good faith determinations and projections consistent with the Financial Plan, to be in compliance with all operating and financial covenants set forth in this Agreement as of the last day of each Fiscal Quarter ending prior to the Term Loan Maturity Date.

Any Agent or Requisite Lenders shall be entitled, but not obligated to, request and receive, prior to the making of any Credit Extension, additional information reasonably satisfactory to the requesting party confirming the satisfaction of

any of the foregoing if, in the good faith judgment of such Agent or Requisite Lender such request is warranted under the circumstances.

(b) Notices. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Company may give Administrative Agent telephonic notice by the required time of any proposed borrowing or conversion/continuation, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of borrowing, continuation/conversion. Neither Administrative Agent nor any Lender shall incur any liability to Company in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Company or for otherwise acting in good faith.

3.3. CONDITIONS SUBSEQUENT TO THE CLOSING DATE. Company shall fulfill, on or before the date applicable thereto (which date can be extended in writing by the Administrative Agent in its sole discretion), each of the conditions subsequent set forth below (the failure by Company to so perform or cause to be performed constituting a Event of Default).

(a) Establishment of Cash Management Systems. Within 60 calendar days of the Closing Date, Company shall have a revised cash management system in place that is reasonably acceptable to Administrative Agent and Company.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Lender, on the Closing Date, that the following statements are true and correct:

4.1. ORGANIZATION; REQUISITE POWER AND AUTHORITY; QUALIFICATION. Each of Company and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in SCHEDULE 4.1 to the Disclosure Letter, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. CAPITAL STOCK AND OWNERSHIP. The Capital Stock of each of Company and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on SCHEDULE 4.2 to the Disclosure Letter, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Company or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Company or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Company or any of its Subsidiaries of any additional membership interests or other Capital Stock of Company or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Company or any of its Subsidiaries. SCHEDULE 4.2 to the Disclosure Letter correctly sets forth the ownership interest of Company and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3. DUE AUTHORIZATION. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4. NO CONFLICT. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Company or any of its Subsidiaries, any of the Organizational Documents of Company or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government binding on Company or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company or any of its Subsidiaries (other than any Liens created under any of the Credit Documents

in favor of Collateral Agent, on behalf of Lenders); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Company or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

4.5. GOVERNMENTAL CONSENTS. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date, and except for the filing of the Credit Documents with the Securities and Exchange Commission as exhibits to Company's registration statement on Form S-1.

4.6. BINDING OBLIGATION. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7. HISTORICAL FINANCIAL STATEMENTS. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, (i) to changes resulting from audit and normal year-end adjustments, and (ii) to the absence of footnotes in the case of financial statements for interim periods. As of the Closing Date, neither Company nor any of its Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long-

term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company and any of its Subsidiaries taken as a whole.

4.8. PROJECTIONS. On and as of the Closing Date, the Projections of Company and its Subsidiaries for the period of Fiscal Year 2005 through and including Fiscal Year 2007, including monthly projections for each month during the Fiscal Year in which the Closing Date takes place, (the "PROJECTIONS") are based on good faith estimates and assumptions made by the management of Company; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material; provided further, as of the Closing Date, management of Company believed that the Projections were reasonable and attainable.

4.9. NO MATERIAL ADVERSE CHANGE. Since December 31, 2003, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10. NO RESTRICTED JUNIOR PAYMENTS. Since December 31, 2003, neither Company nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to SECTION 6.5.

4.11. ADVERSE PROCEEDINGS, ETC. Except as disclosed on SCHEDULE 4.11 to the Disclosure Letter, there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Company nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12. PAYMENT OF TAXES. Except as otherwise permitted under SECTION 5.3, all tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges

upon Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Company knows of no proposed tax assessment against Company or any of its Subsidiaries which is not being actively contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13. PROPERTIES.

(a) Title. Each of Company and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in SECTION 4.5 and in the most recent financial statements delivered pursuant to SECTION 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under SECTION 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, SCHEDULE 4.13 to the Disclosure Letter contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in CLAUSE (ii) of the immediately preceding sentence is in full force and effect and Company does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.14. ENVIRONMENTAL MATTERS. Neither Company nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Company nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9604) or any comparable state law. There are and, to each of Company' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Company nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Company' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to Company or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15. NO DEFAULTS. Neither Company nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.16. MATERIAL CONTRACTS. SCHEDULE 4.16 to the Disclosure Letter contains a true, correct and complete list of all the Material Contracts specified in CLAUSE (i) of the definition of Material Contract, including, without

limitation, all hosting arrangements, in effect on the Closing Date, which, together with any updates provided pursuant to SECTION 5.1(n), are in full force and effect and no material defaults currently exist thereunder (other than as described in SCHEDULE 4.16 to the Disclosure Letter or in such updates).

4.17. GOVERNMENTAL REGULATION. Neither Company nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations

unenforceable. Neither Company nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. MARGIN STOCK. Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loans made to such Credit Party will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

4.19. EMPLOYEE MATTERS. Neither Company nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Company or any of its Subsidiaries, or to the best knowledge of Company, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Company or any of its Subsidiaries or to the best knowledge of Company, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving Company or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and (c) to the best knowledge of Company, no union representation question existing with respect to the employees of Company or any of its Subsidiaries and, to the best knowledge of Company, no union organization activity that is taking place, except (with respect to any matter specified in CLAUSE (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

4.20. EMPLOYEE BENEFIT PLANS. Company, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed in all material respects all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination or opinion letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination or opinion letter which would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Company, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Company, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Company, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Company, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Company, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each

Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21. CERTAIN FEES. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

4.22. SOLVENCY. Each Credit Party is and, upon the incurrence of any Credit Extension by such Credit Party on any date on which this representation and warranty is made, will be, Solvent.

4.23. COMPLIANCE WITH STATUTES, ETC. Each of Company and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Company or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.24. DISCLOSURE. No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to Lenders by or on behalf of Company or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Company (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.25. PATRIOT ACT. To the extent applicable, each Credit Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the Untied States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "ACT"). No part of the proceeds of the Term Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that so long as any Term Loan Commitment is in effect and until payment in full of all Obligations (other than inchoate indemnity obligations), each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this SECTION 5.

5.1. FINANCIAL STATEMENTS AND OTHER REPORTS. Unless otherwise provided below, Company will deliver to Administrative Agent and Lenders:

(a) 2004 Audited Financial Statements. As soon as available, and in any event no later than May 31, 2005, the audited financial statements of Company and its Subsidiaries, for the Fiscal Year ended December 31, 2004, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the

Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Deloitte & Touche, LLP or other independent certified public accountants of recognized national standing selected by Company, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that they have audited the consolidated financial statements of Company, and (2) whether, in connection therewith, it has come to their attention that Company is not in compliance with the terms of SECTION 6.8; provided that such statement may further state that the audit was not directed primarily toward obtaining knowledge of noncompliance with SECTION 6.8;

(b) Monthly Reports. As soon as available, and in any event within 30 days after the end of each calendar month (including months which began prior to the Closing Date), (i) the consolidated balance sheet of Company and its Subsidiaries as at the end of such month and the related consolidated statements of income, and cash flows of Company and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto and any other operating reports prepared by management for such period; and (ii) a summary report detailing all new customer contracts for the immediately preceding calendar month, and detailing all cancelled customer contracts and existing customer contracts that were not renewed for another term;

(c) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter), the consolidated and consolidating balance sheets of Company and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(d) Annual Financial Statements. As soon as available, and, if prior to a Qualified IPO, within 135 days after the end of each Fiscal Year, or, if after a Qualified IPO, within 90 days after the end of each Fiscal Year (except for fiscal year 2004, which shall be delivered as provided in SECTION 5.1(a)

above) (i) the consolidated and consolidating balance sheets of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Deloitte & Touche, LLP or other independent certified public accountants of recognized national standing selected by Company, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with

generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that they have audited the consolidated financial statements of Company, and (2) whether, in connection therewith, it has come to their attention that Company is not in compliance with the terms of SECTION 6.8; provided that such statement may further state that the audit was not directed primarily toward obtaining knowledge of noncompliance with SECTION 6.8;

(e) Compliance Certificate. Together with each delivery of financial statements of Company and its Subsidiaries pursuant to SECTIONS 5.1(b), 5.1(c) and 5.1(d), a duly executed and completed Compliance Certificate (provided that the Compliance Certificate for monthly financial statements shall address only SECTION 6.8(e));

(f) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of Company and its Subsidiaries delivered pursuant to SECTION 5.1(a), 5.1(b), 5.1(c) or 5.1(d) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(g) Notice of Default. Promptly upon any officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Company with respect thereto; (ii) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in SECTION 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(h) Notice of Litigation. Promptly upon any officer of Company obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either CLAUSE (i) or (ii) if adversely determined, could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with

such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(i) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each SCHEDULE B (Actuarial Information) to the annual report (Form 5500 Series) filed by Company, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(j) Financial Plan. As soon as practicable and in any event no later than January 15th of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the Term Loan Maturity Date (a "FINANCIAL PLAN"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (ii) forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for each month of each such Fiscal Year, (iii) forecasts demonstrating projected compliance with the requirements of SECTION 6.8 through

the Term Loan Maturity Date, and (iv) forecasts demonstrating adequate liquidity through the Term Loan Maturity Date, together, in each case, with an explanation of the assumptions on which such forecasts are based all in form and substance reasonably satisfactory to Agents;

(k) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, a report in form and substance satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by Company and its Subsidiaries and all material insurance coverage planned to be maintained by Company and its Subsidiaries in the immediately succeeding Fiscal Year;

(l) Notice of Change in Board of Directors. With reasonable promptness, written notice of any change in the board of directors (or similar governing body) of Company;

(m) Notice of Conversion. Promptly upon receipt, Company will notify Administrative Agent of its receipt of a notice by any Series D Preferred Shareholder of its intention to convert any of its Series D Preferred Shares into common equity securities of Company.

(n) Notice Regarding Material Contracts. Promptly, and in any event within ten Business Days (i) after any Material Contract of Company or any of its Subsidiaries is terminated or amended in a manner that is materially adverse to Company or such Subsidiary, as the case may be, (ii) any new Material Contract is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Administrative Agent (to the extent such delivery is permitted by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by Company or its applicable Subsidiary with the intent of avoiding compliance with this SECTION 5.1(n)), and an explanation of any actions being taken with respect thereto, or (iii) after any contracts, which when aggregated over a rolling period of 12 months, constitute 10% of the Consolidated Hosted Application Revenue of the Company are terminated, not renewed, or amended in a manner that is materially adverse to Company or any Subsidiary;

(o) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits and reports with respect to environmental matters at any Facility or which relate to any environmental liabilities of Company or its Subsidiaries which, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(p) Information Regarding Collateral. Company will furnish to Collateral Agent prompt written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's identity or corporate structure, or (iii) in any Credit Party's Federal Taxpayer Identification Number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Company also agrees promptly to notify Collateral Agent if any material portion of the Collateral is damaged or destroyed;

(q) Quarterly Collateral Verification. Concurrently with the delivery of the Compliance Certificate pursuant to SECTION 5.1(e), at the end of each Fiscal Quarter, Company shall deliver to Collateral Agent an Officer's Certificate confirming: (i) that there has been no change in such information since the date of the Collateral Questionnaire delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section, (ii) that Company has not made any applications on any of its unpatented but patentable inventions or any of its registrable but unregistered copyrights and trademarks in the United States Patent and Trademark Office, the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and (iii) certifying that all Uniform Commercial Code financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Collateral Questionnaire to the extent necessary to protect and perfect the security interests under the Collateral Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(r) Aging Reports. Within 30 days of the end of each Fiscal Quarter, or more often as may be reasonably requested by Administrative Agent: (i) a summary of the accounts receivable aging report of each Credit Party as of the end of such period; and (ii) a summary of accounts payable aging report of each Credit Party as of the end of such period;

(s) Tax Returns. As soon as practicable and in any event within 15 days following the filing thereof, copies of each federal income tax return filed by or on behalf of any Credit Party; and

(t) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Company to its security holders acting in such capacity or by any Subsidiary of Company to its security holders other than Company or another Subsidiary of Company, (ii) all regular and periodic reports and all registration statements and prospectuses filed by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Company or any of its Subsidiaries to the public concerning material developments in the business of Company or any of its Subsidiaries, and (B) such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent. Notwithstanding the foregoing, the Company shall be deemed to have complied with the foregoing requirements if it shall have made the items publicly available through its filings with the Securities and Exchange Commission

and shall have notified Administrative Agent, within the time periods specified above, electronically of such filings including a link to such filings.

5.2. EXISTENCE. Except as otherwise permitted under SECTION 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3. PAYMENT OF TAXES AND CLAIMS. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Company or any of its Subsidiaries).

5.4. MAINTENANCE OF PROPERTIES. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Company and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5. INSURANCE. Company will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Company will maintain or cause to be

maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Collateral Agent, on behalf of Lenders as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, on behalf of Lenders as the loss payee thereunder and provides for at least 30 days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6. INSPECTIONS. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

5.7. LENDERS MEETINGS. Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

5.8. COMPLIANCE WITH LAWS. Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9. ENVIRONMENTAL.

(a) Environmental Disclosure. Company will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (2) any remedial action taken by Company or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) Company or Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (3) any request for information from any governmental agency that suggests such agency is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Company or any

of its Subsidiaries that could

reasonably be expected to (A) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of Company or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by Company or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Company or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this SECTION 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10. SUBSIDIARIES. In the event that any Person becomes a Domestic Subsidiary of Company, Company shall (a) concurrently with such Person becoming a Domestic Subsidiary cause such Domestic Subsidiary to become a Guarantor of the Obligations hereunder and a "Pledgor" under a Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Guaranty and a Pledge and Security Agreement in form and substance acceptable to Administrative Agent, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in SECTIONS 3.1(b), 3.1(h), 3.1(i), and 3.1(j). In the event that any Person becomes a Foreign Subsidiary of Company, and the ownership interests of such Foreign Subsidiary are owned by Company or by any Domestic Subsidiary thereof, Company shall, or shall cause such Domestic Subsidiary to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in SECTION 3.1(b), and Company shall take, or shall cause such Domestic Subsidiary to take, all of the actions referred to in SECTION 3.1(h)(i) necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Lenders, under the Pledge and Security Agreement in 66% of such ownership interests. Requisite Lenders reserve the right to require Company to cause any Foreign Subsidiary that may be formed in the future to become a Guarantor of the Obligations hereunder and to pledge 100% of the outstanding ownership interests in any such Foreign Subsidiary. With respect to each such Subsidiary, Company shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in SCHEDULES 4.1 and 4.2 to the Disclosure Letter with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement SCHEDULE 4.1 and 4.2 to the Disclosure Letter for all purposes hereof.

5.11. ADDITIONAL MATERIAL REAL ESTATE ASSETS. In the event that any Credit Party acquires a Material Real Estate Asset or a Real Estate Asset owned or leased on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Lenders, then such Credit Party, contemporaneously with acquiring such Material Real Estate Asset, or promptly after a Real Estate Asset owned or leased on the Closing Date becomes a Material Real Estate Asset, shall take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments,

agreements, opinions and certificates (including any Phase I's that may be requested) similar to those described in SECTIONS 3.1(h), and 3.1(i) with respect to each such Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of

Lenders, a valid and, subject to any filing and/or recording referred to herein, perfected Landlord/Operator Consent and Waiver (in the case of leased sites) and a First Priority Lien (in the case of owned sites) in such Material Real Estate Assets. In addition to the foregoing, Company shall, at the request of Requisite Lenders, deliver, from time to time, to Administrative Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Lien.

5.12. ADDITIONAL COLLATERAL, ETC.. With respect to any Collateral acquired after the Closing Date by Company or any other Credit Party as to which the Collateral Agent, for the benefit of the Lenders, does not have a First Priority Lien (subject to any Permitted Liens), promptly (and, in any event, within 10 days following the date of such acquisition or such latter date approved by the Administrative Agent) (i) execute and deliver to the Administrative Agent and the Collateral Agent such Guaranty or such other Credit Documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Lenders, a security interest in such Collateral and (ii) take all actions necessary or advisable to grant to, or continue on behalf of, the Collateral Agent, for the benefit of the Lenders, a perfected First Priority Lien in such Collateral (subject to Permitted Liens), including the execution and delivery of a Deposit Account Control Agreement with respect to each Deposit Account or securities account that is established by a Credit Party after the Closing Date.

5.13. FURTHER ASSURANCES. At any time or from time to time upon the request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information reasonably requested pursuant to SECTION 10.21. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors, if any, and are secured by substantially all of the assets of Company, and its Subsidiaries and all of the outstanding Capital Stock of Company and its Subsidiaries (subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

5.14. MISCELLANEOUS BUSINESS COVENANTS. Unless otherwise consented to by Agents and Requisite Lenders:

(a) Non-Consolidation. Company will and will cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other entity which is an Affiliate of such entity; (ii) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity; and (iii) provide that its board of directors or other analogous governing body will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of other entities.

(b) Cash Management.

(i) At all times on and after the Closing Date, Company's Deposit Accounts and securities accounts shall be subject to Deposit Account Control Agreements in form and substance satisfactory to the Administrative Agent, other than those Deposit Accounts ("EXCLUDED DEPOSIT ACCOUNTS") (A) set forth on SCHEDULE 5.14 to the Disclosure Letter describing the Deposit Account specifically and the nature of the funds in such Deposit Account, or (B) established after the Closing Date with Administrative Agent's written consent (such consent not to be unreasonably withheld) for the same or similar purposes as those specified in CLAUSE (A) above and of which Company has given Administrative Agent notice describing such Deposit Accounts specifically and the nature of the funds in such Deposit Account. Neither Company nor its Subsidiaries shall deposit funds in Excluded Deposit Accounts other than funds of the nature described on SCHEDULE 5.14 to the Disclosure Letter or with written consent from Administrative Agent (such consent not to be unreasonably withheld). In addition, the Company shall deposit and maintain in a restricted account (the "RESTRICTED CASH ACCOUNT"), minimum Cash amounts, as shown below:

<TABLE>
<CAPTION>

PERIOD	MINIMUM CASH SUBJECT TO CONTROL

Closing through April 30, 2005	$8,125,000
May 1, 2005 through May 31, 2005	$8,175,000
June 1, 2005 through June 30, 2005	$8,200,000
July 1, 2005 through July 31, 2005	$6,600,000
August 1, 2005 through August 31, 2005	$6,150,000
September 1, 2005 through September 30, 2005	$5,700,000
October 1, 2005 through October 31, 2005	$5,825,000
November 1, 2005 through November 30, 2005	$5,875,000
December 1, 2005 through December 31, 2005	$5,900,000
January 1, 2006 through January 31, 2006	$4,925,000
February 1, 2006 through February 28, 2006	$5,200,000
March 1, 2006 through March 31, 2006	$5,500,000
April 1, 2006 through April 31, 2006	$5,550,000
May 1, 2006 through May 31, 2006	$5,575,000
June 1, 2006 through June 30, 2006	$5,625,000
July 1, 2006 through July 31, 2006	$5,650,000
August 1, 2006 through August 31, 2006	$5,675,000
September 1, 2006 through September 30, 2006	$5,725,000

PERIOD	MINIMUM CASH SUBJECT TO CONTROL
October 1, 2006 through October 31, 2006	$1,250,000
November 1, 2006 through November 30, 2006	$1,300,000
December 1, 2006 through December 31, 2006	$1,325,000
January 1, 2007 through January 31, 2007	$1,350,000
February 1, 2007 through February 28, 2007	$1,400,000
March 1, 2007 through March 31, 2007	$1,425,000
April 1, 2007 through April 31, 2007	$1,475,000
May 1, 2007 through May 31, 2007	$1,500,000
June 1, 2007 through June 30, 2007	$1,525,000
July 1, 2007 through July 31, 2007	$1,575,000
August 1, 2007 through August 31, 2007	$1,600,000
September 1, 2007 through September 30, 2007	$1,625,000
October 1, 2007 through October 31, 2007	$1,675,000
November 1, 2007 through November 30, 2007	$1,700,000
December 1, 2007 through December 31, 2007	$1,750,000
January 1, 2008 through January 31, 2008	$1,775,000
February 1, 2008 through February 29, 2008	$1,800,000
March 1, 2008 through March 31, 2008	$1,850,000
April 1, 2008 through Maturity	$1,925,000

Company shall deliver to Administrative Agent a Cash Release Compliance Notice and Certificate 3 Business Days prior to Company's requested release of Cash from the Restricted Cash Account. Company shall deposit additional funds into the Restricted Cash Account on or prior to the first day of each period referenced in the chart above such that, in no event, will the balance of such Restricted Cash Account be less than the amount referenced opposite such referenced period. Balance decreases in the Restricted Cash Account shall be effected by Agent on or before the third Business Day following receipt of an acceptable Cash Release Compliance Notice and Certificate; provided, however, that no Cash shall be released from the Restricted Cash Account in accordance with the step-downs referenced above in this SECTION 5.14(b) for the period commencing October 1, 2006 until Company has delivered a Compliance Certificate evidencing compliance for the Fiscal Quarter ending September 30, 2006, and evidencing compliance with the Minimum Consolidated Liquidity covenant set forth in SECTION 6.8(e) for the period commencing October 1, 2006. Accrued interest on the funds in the Restricted Cash Account shall be distributed to Company only in connection with the step-downs referenced

above. To the extent (x) Company is required to pay a dividend in connection with the Series D Preferred Shares, (y) Company actually pays such required dividend; and (z) Company provides Administrative Agent and Lenders with a Cash Release Compliance Notice and Certificate demonstrating compliance with the Credit Agreement, on the date that is

three Business Days following receipt of such certificate, Administrative Agent shall reduce the balance in the Restricted Cash Account by the amount of such dividend actually paid, all the amounts required for subsequent periods shall be reduced by a corresponding amount, and Administrative Agent may, but shall not be required to, prepare a replacement chart evidencing the Restricted Cash Account required balances. After consummation of a Qualified IPO and Company's demonstration of compliance with the Credit Agreement, Administrative Agent shall release any remaining Cash from the Restricted Cash Account.

(ii) From and after the date specified in SECTION 3.3(a), Company and its Subsidiaries shall establish and maintain cash management systems reasonably acceptable to Administrative Agent and Company.

5.15. POST CLOSING MATTERS. Company shall, and shall cause each of the Credit Parties to, satisfy the requirements set forth on SCHEDULE 5.15 on or before the date specified for such requirement or such later date to be determined by the Agent.

5.16. ASSIGNABILITY OF CONTRACTS. Company shall, and shall cause each of its Subsidiaries to, use its commercially reasonable efforts to ensure that all customer contracts executed after the Closing Date be assignable by Company or such Subsidiary.

5.17. SUBSIDIARY CASH. Company shall cause its Subsidiaries to transfer to Company any Cash or Cash Equivalents held by its Subsidiaries to the extent that the Subsidiaries, when taken as a whole, have Cash and Cash Equivalents in an aggregate amount in excess of $2,000,000 ("MAXIMUM CASH BALANCE"); provided, that, to the extent the Maximum Cash Balance exceeds $2,000,000 at any time, all amounts in excess of the Maximum Cash Balance shall be transferred to Company if the aggregate amount of Cash and Cash Equivalents described above still exceed the Maximum Cash Balance at the close of business on the second Business Day following the date that the Maximum Cash Balance was initially exceeded; provided further that Company shall not permit the Maximum Cash Balance to be exceeded more often than 3 times per calendar month.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Term Loan Commitment is in effect and until payment in full of all Obligations (other than inchoate indemnity obligations), such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this SECTION 6.

6.1. INDEBTEDNESS. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) (1) Indebtedness of any Guarantor Subsidiary to Company or to any other Guarantor Subsidiary, or of Company to any Guarantor Subsidiary, provided (i) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent, and (ii) any payment by any such Guarantor

Subsidiary under any Guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made, (2) Indebtedness of any Subsidiary that is not a Guarantor to any other Subsidiary that is not a Guarantor in the amounts listed on SCHEDULE 6.1 to the Disclosure Letter, which may be reduced only (i) in compliance with this Agreement, including, without limitation SECTION 5.17, and (ii) within 30 days following the Closing Date; or otherwise with written consent of Administrative Agent, and (3) Indebtedness (i) for working capital purposes, (ii) to be used by a Subsidiary for repayment of Indebtedness existing between Subsidiaries that are not Guarantors (x) in compliance with this Agreement, including, without limitation SECTION 5.17, and (y) within 30 days following the Closing Date, or (iii) for Permitted Acquisitions made in accordance with SECTION 6.9, in each case, of any Subsidiary that is not a Guarantor, to Company or a Guarantor not to exceed, at any time outstanding, in the aggregate, $17,500,000 during Fiscal Year 2005, $22,500,000 during Fiscal Year 2006, $27,500,000 during Fiscal Year 2007, and $32,500,000 during Fiscal Year 2008 (as each amount shall be reduced by outstanding Equity Investments made under SECTION 6.7(b)(iii)); provided

further that, in the case of Indebtedness under CLAUSE (3) above, that all such Indebtedness shall be evidenced by promissory notes and all such notes shall be subject to a First Priority Lien pursuant to a Pledge and Security Agreement;

(c) Indebtedness incurred by Company or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Company or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of Company or any of its Subsidiaries;

(d) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with Deposit Accounts;

(f) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Company and its Subsidiaries;

(g) Indebtedness described in SCHEDULE 6.1, to the Disclosure Letter including any extensions, renewals or replacements of such Indebtedness so long as (i) such refinancings, extensions, renewals or replacements of any such Indebtedness are on terms and conditions not less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(h) Indebtedness with respect to Capital Leases (including leases of software) in an aggregate amount not to exceed $5,000,000 at any time outstanding, when taken together with Indebtedness incurred pursuant to CLAUSE (i) below;

(i) purchase money Indebtedness (including software financing) in an aggregate amount not to exceed $5,000,000 at any time outstanding, when taken together with Indebtedness incurred pursuant to CLAUSE (h) above; provided, any such Indebtedness shall be secured only to the asset acquired in connection with the incurrence of such Indebtedness;

(j) Indebtedness of a Subsidiary outstanding on the date such Subsidiary was acquired by Company or any of its Subsidiaries or assumed in connection with the acquisition of assets from a Person (other than Indebtedness incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Subsidiary became a Subsidiary of Company or was otherwise acquired by Company); provided that the aggregate principal amount (or accreted value, as applicable) of all such Indebtedness incurred pursuant to this CLAUSE (j) shall not exceed $500,000;

(k) Indebtedness incurred in connection with Interest Rate Agreements or Currency Agreements entered into in the ordinary course of business and not for speculative purposes;

(l) Indebtedness to the two founders of Recruitforce.com, Inc. in connection with the Agreement and Plan of Merger, dated as of March 10, 2005, by and among Company, Butterfly Acquisition Corporation, Recruitforce.com, Inc., and with respect to Article VI only, Matthew Robinson as Stockholder Agent and U.S. Bank, National Association as Escrow Agent; and

(m) other unsecured Indebtedness of Company and its Subsidiaries, which is unsecured and subordinated to the Obligations in a manner satisfactory to Administrative Agent in an aggregate amount not to exceed $500,000 at any time outstanding.

6.2. LIENS. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts

receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except:

(a) Liens in favor of Collateral Agent for the benefit of Lenders granted pursuant to any Credit Document;

(b) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;

(c) statutory, common law, or contractual Liens of landlords, creditor depository institutions and financial institutions maintaining securities accounts (including rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 5 days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and cannot reasonably be expected to interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any Cash earnest money deposits made by Company or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by Company or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of Company or such Subsidiary;

(l) Liens securing Indebtedness permitted pursuant to SECTION 6.1(h) and (i); provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness; together with accessions thereto, and replacements and proceeds thereof;

(m) Liens described on SCHEDULE 6.2 to the Disclosure Letter;

(n) Liens on Cash not to exceed $200,000 in the aggregate, securing reimbursement obligations under letters of credit and Liens on cash deposits made in the ordinary course of business; and

(o) Liens securing judgments, writs, warrants or similar processes

not constituting an Event of Default under SECTION 8.1(i).

6.3. EQUITABLE LIEN. If any Credit Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4. NO FURTHER NEGATIVE PLEDGES. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other sale of property not constituting an Asset Sale that is not prohibited hereunder, (b) restrictions by reason of customary provisions restricting Liens, assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), (c) restrictions and conditions, applicable to any Subsidiary acquired after the date hereof, if such

restrictions and conditions existed at the time such Subsidiary was acquired, were not created in anticipation of such acquisition and apply solely to such acquired Subsidiary, no Credit Party nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

6.5. RESTRICTED JUNIOR PAYMENTS

(a) No Credit Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment, except for (i) cash dividends in connection with a Qualified IPO; (ii) stock or cash dividends payable to the Series D Preferred Shareholders pursuant to existing rights of the Series D Preferred Shareholders and in connection with conversion to common equity securities of Company not to exceed $2,000,000; (iii) payments of Cash in lieu of fractional shares upon conversion of convertible preferred stock or upon any stock dividend, stock split or combination or business combination; (iv) acquisitions of Capital Stock of Company, solely by issuance of Capital Stock, in connection with either (A) the exercise of stock options or warrants by way of cashless exercise, or (B) in connection with the satisfaction of withholding tax obligations related to the exercise of stock options; (v) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, purchase, repurchase, redeem, defease, acquire or retire for value Capital Stock of Company or any of its Subsidiaries from any officer, director, employee or consultant of Company or its Subsidiaries upon the resignation, termination, or death of such employees, directors, board members, or consultants in an aggregate amount not to exceed $500,000 in the aggregate; and (vi) in connection with any Permitted Acquisition or acquisition that occurred prior to the Closing Date, the Company or any of its Subsidiaries may, (A) receive or accept the return of Capital Stock of Company constituting a portion of the purchase price in settlement of indemnification claims, or (B) subject to SECTION 6.9(e), make payments or distributions to dissenting stockholders pursuant to applicable law.

(b) No Subsidiary of Company shall (i) pay a dividend in cash or make a distribution in Cash to any holder of any class of stock or other equity security of such Subsidiary, unless the holder is the Company or another Subsidiary of Company, or (ii) redeem, retire, make any sinking payment or purchase or otherwise acquire for value, in each case in Cash, any class of stock or other equity security of such Subsidiary from the holder thereof, unless the holder is Company or another Subsidiary of Company.

6.6. RESTRICTIONS ON SUBSIDIARY DISTRIBUTIONS. Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company (other than permitted stock dividends payable solely in shares of that class of stock to the holders of that class), (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (c) make loans

or advances to Company or any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or any other Subsidiary of Company other than restrictions (i) in agreements evidencing Indebtedness permitted by SECTION 6.1(h) or (i) that impose restrictions on the property so acquired or leased, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement,

(iv) imposed on a Subsidiary and existing at the time it became a Subsidiary if such restrictions were not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by Company and only to the extent applying to such Subsidiary; (v) under any agreement, instrument or contract affecting property or a Person at the time such property or Person was acquired by Company or any of its Subsidiaries, so long as such restriction relates solely to the property or Person so acquired and was not created in connection with or in anticipation of such acquisition; and (vi) existing by virtue of, or arising under, applicable law, regulation, order, approval, license, permit, grant or similar restriction, in each case mandatory and imposed by a Governmental Authority.

6.7. INVESTMENTS. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) (i) Investments owned as of the Closing Date in any Subsidiary; (ii) Investments in any wholly-owned Guarantor Subsidiary of Company or in Company, and (iii) Investments by Company or any Guarantor in a Subsidiary that is not a Guarantor, provided that such Investments (whether or not constituting Indebtedness and including Investments permitted under clause (i) above) shall be limited by the purpose and to the amounts provided in SECTION 6.1(b)(3) and Investments not constituting Indebtedness ("EQUITY INVESTMENTS") shall reduce the amount of Indebtedness permitted to be incurred under SECTION 6.1(b)(3) by the same amount.

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Company and its Subsidiaries;

(d) intercompany loans to the extent permitted under SECTION 6.1(b);

(e) Consolidated Capital Expenditures permitted by SECTION 6.8(c);

(f) loans and advances to employees of Company and its Subsidiaries (i) made in the ordinary course of business and described on SCHEDULE 6.7 to the Disclosure Letter, and any refinancings of such loans after the Closing Date, and (ii) made in the ordinary course of business after the Closing Date in an aggregate amount not to exceed $250,000;

(g) Investments made in connection with Permitted Acquisitions permitted pursuant to SECTION 6.9;

(h) Investments described in SCHEDULE 6.7 to the Disclosure Letter;

(i) Investments arising in connection with Interest Rate Agreements or Currency Agreements entered into in the ordinary course of business and not for speculative purposes;

(j) guarantees and similar obligations permitted by SECTION 6.1;

(k) Investments received in partial or full satisfaction of an account receivable from financially troubled account debtors to the extent reasonably necessary to prevent or limit loss; and

(l) other Investments in an aggregate amount not to exceed at any time $100,000.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of SECTION 6.5.

6.8. FINANCIAL COVENANTS.

(a) Current Ratio. Company shall not permit the Current Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2005, to be less than the correlative ratio indicated:

FISCAL QUARTER	CURRENT RATIO
March 31, 2005	1.15:1.00
June 30, 2005	1.10:1.00
September 30, 2005	1.15:1.00
December 31, 2005	1.10:1.00
March 31, 2006	1.00:1.00
June 30, 2006	1.05:1.00
September 30, 2006	1.10:1.00
December 31, 2006	1.10:1.00
March 31, 2007	1.10:1.00
June 30, 2007	1.20:1.00
September 30, 2007	1.20:1.00
December 31, 2007	1.20:1.00
March 31, 2008	1.10:1.00

With respect to the Fiscal Quarter ended March 31, 2005, for the purposes of determining compliance with the financial covenant set forth above, the Current Ratio shall be calculated with respect to such period on a pro forma basis using the Historical Financial Statements of Company and its Subsidiaries which shall be reformulated as if the Closing Date had occurred and the Term Loan had been made.

(b) Minimum Consolidated Adjusted EBITDA. Company shall not permit Consolidated Adjusted EBITDA as at the end of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2005, for the Fiscal Quarter period then ended, to be less than the correlative amount indicated:

FISCAL QUARTER	MINIMUM CONSOLIDATED ADJUSTED EBITDA
March 31, 2005	$ 1,000,000
June 30, 2005	$ 1,100,000
September 30, 2005	$ 2,850,000
December 31, 2005	$ 3,900,000
March 31, 2006	$ 4,500,000
June 30, 2006	$ 6,500,000
September 30, 2006	$ 9,000,000

FISCAL QUARTER	MINIMUM CONSOLIDATED ADJUSTED EBITDA
December 31, 2006	$10,000,000
March 31, 2007	$11,000,000
June 30, 2007	$11,500,000
September 30, 2007	$12,000,000
December 31, 2007	$12,500,000
March 31, 2008	$13,000,000

For purposes of calculating compliance with the financial covenants in this SECTION 6.8(b), the calculations for the Fiscal Quarter periods ending March 31, 2005, June 30, 2005 and September 30, 2005, shall be calculated as follows: (i)

for the calculation period ending March 31, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-calendar month period from January 1, 2005 through March 31, 2005; (ii) for the calculation period ending June 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the two-Fiscal Quarter period from January 1, 2005 through June 30, 2005; (iii) for the calculation period ending September 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-Fiscal Quarter period from January 1, 2005, through September 30, 2005; and (iv) thereafter, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the trailing four-Fiscal Quarter period most recently ended.

(c) Maximum Consolidated Capital Expenditures. Company shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures for the Fiscal Quarter period then ended, in an aggregate amount for Company and its Subsidiaries in excess of the corresponding amount set forth below opposite such Fiscal Quarter period then ended:

<TABLE>
<CAPTION>

FISCAL QUARTER	MAXIMUM CONSOLIDATED CAPITAL EXPENDITURES
<S>	<C>
March 31, 2005	$2,900,000
June 30, 2005	$5,000,000
September 30, 2005	$5,800,000
December 31, 2005	$6,100,000
March 31, 2006	$4,750,000
June 30, 2006	$4,750,000
September 30, 2006	$4,750,000
December 31, 2006	$5,500,000
March 31, 2007	$5,500,000
June 30, 2007	$5,500,000
September 30, 2007	$5,500,000
December 31, 2007	$5,500,000
March 31, 2008	$5,500,000

</TABLE>

For purposes of calculating compliance with the financial covenants in this SECTION 6.8(c), the calculations for the Fiscal Quarter periods ending March 31, 2005, June 30, 2005, September 30, 2005, shall be calculated as follows: (i) for the calculation period ending March 31, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-calendar month period from January 1, 2005 through March 31, 2005; (ii) for the calculation period ending June 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the two-Fiscal Quarter period from January 1, 2005 through June 30, 2005; (iii) for the calculation period ending September 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-Fiscal Quarter period from January 1, 2005, through September 30, 2005; and (iv) thereafter, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the trailing four-Fiscal Quarter period most recently ended.

(d) Minimum Hosted Application Revenue. Company shall not permit Consolidated Hosted Application Revenue as at the end of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2005, for the Fiscal Quarter period then ended, to be less than the correlative amount indicated:

<TABLE>
<CAPTION>

FISCAL QUARTER	MINIMUM HOSTED APPLICATION REVENUE
<S>	<C>
March 31, 2005	$10,700,000
June 30, 2005	$20,400,000
September 30, 2005	$33,100,000
December 31, 2005	$43,800,000
March 31, 2006	$46,300,000
June 30, 2006	$48,800,000
September 30, 2006	$53,800,000
December 31, 2006	$53,800,000

March 31, 2007	$58,800,000
June 30, 2007	$61,300,000
September 30, 2007	$63,800,000
December 31, 2007	$66,050,000
March 31, 2008	$68,800,000

For purposes of calculating compliance with the financial covenants in this SECTION 6.8(d), the calculations for the Fiscal Quarter periods ending March 31, 2005, June 30, 2005, September 30, 2005, shall be calculated as follows: (i) for the calculation period ending March 31, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-calendar month period from January 1, 2005 through March 31, 2005; (ii) for the calculation period ending June 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the two-Fiscal Quarter period from January 1, 2005 through June 30, 2005; (iii) for the calculation period ending September 30, 2005, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the three-Fiscal Quarter period from January 1, 2005, through September 30, 2005; and (iv) thereafter, the amount of each item to be used in the calculation shall be equal to the actual amount of such item for the trailing four-Fiscal Quarter period most recently ended.

(e) Minimum Consolidated Liquidity. Company shall not permit Consolidated Liquidity to be less than the amounts specified below for the correlative periods indicated:

PERIOD	MINIMUM CONSOLIDATED LIQUIDITY
Closing through April 30, 2005	$15,625,000
May 1, 2005 through May 31, 2005	$15,675,000
June 1, 2005 through June 30, 2005	$ 8,700,000
July 1, 2005 through July 31, 2005	$ 6,850,000
August 1, 2005 through August 31, 2005	$ 6,900,000
September 1, 2005 through September 30, 2005	$ 6,450,000
October 1, 2005 through October 31, 2005	$ 6,825,000
November 1, 2005 through November 30, 2005	$ 6,875,000
December 1, 2005 through December 31, 2005	$ 6,900,000
January 1, 2006 through January 31, 2006	$ 6,200,000
February 1, 2006 through February 28, 2006	$ 6,980,000
March 1, 2006 through March 31, 2006	$ 7,000,000
April 1, 2006 through April 31, 2006	$ 6,050,000
May 1, 2006 through May 31, 2006	$ 6,075,000
June 1, 2006 through June 30, 2006	$ 6,125,000
July 1, 2006 through July 31, 2006	$ 6,150,000
August 1, 2006 through August 31, 2006	$ 6,175,000
September 1, 2006 through September 30, 2006	$ 6,225,000
October 1, 2006 through October 31, 2006	$ 3,250,000
November 1, 2006 through November 30, 2006	$ 3,300,000
December 1, 2006 through December 31, 2006	$ 3,325,000
January 1, 2007 through January 31, 2007	$ 3,350,000
February 1, 2007 through February 28, 2007	$ 3,400,000
March 1, 2007 through March 31, 2007	$ 3,425,000
April 1, 2007 through April 31, 2007	$ 3,475,000
May 1, 2007 through May 31, 2007	$ 3,500,000
June 1, 2007 through June 30, 2007	$ 3,525,000
July 1, 2007 through July 31, 2007	$ 3,575,000

PERIOD	MINIMUM CONSOLIDATED LIQUIDITY
August 1, 2007 through August 31, 2007	$ 3,600,000

September 1, 2007 through September 30, 2007	$ 3,625,000
October 1, 2007 through October 31, 2007	$ 3,675,000
November 1, 2007 through November 30, 2007	$ 3,700,000
December 1, 2007 through December 31, 2007	$ 3,750,000
January 1, 2008 through January 31, 2008	$ 3,775,000
February 1, 2008 through February 29, 2008	$ 3,800,000
March 1, 2008 through March 31, 2008	$ 3,850,000
April 1, 2008 through Maturity	$ 3,850,000

</TABLE>

To the extent that Company has satisfied the requirements set forth in SECTION 5.14(b)(i) with respect to the reduction of the Restricted Cash Account upon actual payment of a dividend in connection with the Series D Preferred Shares, the required Minimum Consolidated Liquidity shall be reduced for corresponding periods by the amount of the dividend actually paid. Administrative Agent may, but shall not be required to, prepare a replacement chart evidencing the required Minimum Consolidated Liquidity amounts.

(f) Loan to Value Ratio. At all times following the thirtieth calendar day following a Qualified IPO, Company shall not permit its Loan to Value Ratio to be more than 0.20:1.00.

(g) Certain Calculations. With respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a "SUBJECT TRANSACTION"), for purposes of determining compliance with the financial covenants set forth in this SECTION 6.8, Consolidated Adjusted EBITDA shall be calculated with respect to such period on a pro forma basis (including pro forma adjustments approved by Administrative Agent in its sole discretion) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Company and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Term Loan s incurred during such period).

6.9. FUNDAMENTAL CHANGES; DISPOSITION OF ASSETS; ACQUISITIONS. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and Consolidated Capital Expenditures in the ordinary course of business) the business,

property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) with the exception of any Subsidiary organized under the laws of Canada or any of its Provinces (i) any Subsidiary of Company may be merged with or into Company or any Guarantor Subsidiary (provided that the Company shall always be the surviving Person of any merger to which it is a party and a Guarantor Subsidiary shall be the surviving Person of any merger to which a Guarantor Subsidiary is a party except a merger into Company), and any Subsidiary that is not a Guarantor may be merged with or into any Subsidiary that is not a Guarantor (provided if the parent of a party to any such merger has pledged all or a portion of the stock of such party under the Credit Documents then such party shall be the surviving Person of any such merger or, if the other party is the surviving Person the parent of such surviving Person shall pledge the same proportion of the stock of the surviving Person); and (ii) any Subsidiary of Company may be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Guarantor Subsidiary or, if such Subsidiary is not a Guarantor, to the Subsidiary that is its parent;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales for fair value, the proceeds of which (i) are less than $150,000 with respect to any single Asset Sale or series of related Asset

Sales, and (ii) when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, are less than $250,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof, (2) no less than 100% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by SECTION 2.11(a);

(d) disposals of obsolete or worn out property;

(e) Permitted Acquisitions, the aggregate consideration for which, to the extent consisting of (i) Cash (including any Cash paid to dissenting shareholders), Indebtedness of the acquiring Person, or Indebtedness of the Person being acquired, or other consideration besides Capital Stock of the Company, is not more than $1,500,000, in the aggregate, and (ii) Capital Stock of the Company, is not more than $5,000,000;

(f) Investments made in accordance with SECTION 6.7; and

(g) the execution of either (i) a letter of intent, term sheet, or similar document (A) that provides for fees (including breakup or similar fees, legal, and other fees and expenses) payable by the Company of no more than $250,000 in the aggregate, and (B) for which prompt notice of the execution thereof has been given to Administrative Agent) or (ii)an agreement (with prompt notice upon execution to be given by Company to the Administrative Agent) for (i) any merger of Company with or into a Person, or (ii) a sale of all or substantially all of the assets of Company to a Person that is, in the case of either CLAUSE (i) and (ii) above, in the opinion of the Company's board of directors, reasonably likely to be consummated and, if consummated, will result in the concurrent payment in full of all Obligations.

6.10. DISPOSAL OF SUBSIDIARY INTERESTS. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of SECTION 6.9, no Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Credit

Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

6.11. SALES AND LEASE-BACKS. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Company or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Company or any of its Subsidiaries) in connection with such lease.

6.12. TRANSACTIONS WITH SHAREHOLDERS AND AFFILIATES. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 10% or more of any class of Capital Stock of Company or any of its Subsidiaries or with any Affiliate of Company or of any such holder, on terms that are less favorable to Company or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between Company and any Guarantor Subsidiary; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of Company and its Subsidiaries; (c) compensation arrangements for officers and other employees of Company and its Subsidiaries entered into in the ordinary course of business; and (d) transactions described in SCHEDULE 6.12. Company shall disclose in writing each transaction with any holder of 10% or more of any class of Capital Stock of Company or any of its Subsidiaries or with any Affiliate of Company or of any such holder to Administrative Agent.

6.13. CONDUCT OF BUSINESS. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the enterprise software business and businesses that are reasonably related or incidental thereto, and (ii) such other lines of business as may be consented to by the Administrative Agent and Requisite Lenders.

6.14. FISCAL YEAR. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from December 31.

6.15. AMENDMENTS TO ORGANIZATIONAL AGREEMENTS AND MATERIAL CONTRACTS. No Credit Party shall (a) amend or permit any amendments to any Credit Party's Organizational Documents if such amendment would be adverse to Administrative Agent or the Lenders; or (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract if such amendment, termination, or waiver would be materially adverse to Administrative Agent or the Lenders.

6.16. PREPAYMENTS OF CERTAIN INDEBTEDNESS. No Credit Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations, and (ii) Indebtedness secured by a Permitted Liens if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with SECTION 6.9.

6.17. REGISTRATION OF INTELLECTUAL PROPERTY. No Credit Party shall, nor shall it permit any of its Subsidiaries to, make any applications on any of its unpatented but patentable inventions or any of its registrable but unregistered copyrights and trademarks in the United States Patent and Trademark Office, the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, unless it shall have given 60 days' prior written notice thereof to Administrative Agent.

SECTION 7. GUARANTY

7.1. GUARANTY OF THE OBLIGATIONS. Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. Section 362(a)) (collectively, the "GUARANTEED OBLIGATIONS"). Notwithstanding the preceding, the obligations of each Guarantor hereunder shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any applicable state or federal law. Should any provision in or obligation under this SECTION 7 be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, all with respect to any Guarantor, shall not in any way be affected or impaired thereby.

7.2. CONTRIBUTION BY GUARANTORS. All Guarantors desire to allocate among themselves (collectively, the "CONTRIBUTING GUARANTORS"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "FUNDING GUARANTOR") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "FAIR SHARE" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "FAIR SHARE CONTRIBUTION AMOUNT" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this SECTION 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "AGGREGATE PAYMENTS" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such

date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this SECTION 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this SECTION 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this SECTION 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this SECTION 7.2.

7.3. PAYMENT BY GUARANTORS. Subject to SECTION 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by

required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. Section 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4. LIABILITY OF GUARANTORS ABSOLUTE. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or

the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of

such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Interest Rate Agreement and Currency Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Company or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents or Interest Rate Agreements and Currency Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents or any Interest Rate Agreement or Currency Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Interest Rate Agreements or Currency Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Interest Rate Agreement or Currency Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any of the Interest Rate Agreements or Currency Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Company or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5. WAIVERS BY GUARANTORS. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of

the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to gross negligence or bad faith; (e)(i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Interest Rate Agreements or Currency Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in SECTION 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6. GUARANTORS' RIGHTS OF SUBROGATION, CONTRIBUTION, ETC. Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Company with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Company, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by SECTION 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Company, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. SUBORDINATION OF OTHER OBLIGATIONS. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor (the "OBLIGEE GUARANTOR") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee

Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8. CONTINUING GUARANTY. This Guaranty is a continuing guaranty and shall

remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9. AUTHORITY OF GUARANTORS OR COMPANY. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10. FINANCIAL CONDITION OF COMPANY. Any Credit Extension may be made to Company or continued from time to time, and any Interest Rate Agreements or Currency Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation or at the time such Interest Rate Agreement or Currency Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Credit Documents and the Interest Rate Agreements and Currency Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

7.11. BANKRUPTCY, ETC.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense which Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in CLAUSE (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in

possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Company, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12. DISCHARGE OF GUARANTY UPON SALE OF GUARANTOR. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

SECTION 8. EVENTS OF DEFAULT

8.1. EVENTS OF DEFAULT. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) when due, the principal of and premium, if any, on any Term Loan (other than any Excess Cash Flow payment) whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Term Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; (iii) when due, or within one Business Day of when due, any interest on any Term Loan; or (iv) when due, or within 15 days of when Company has received notice of any fee or any other amount due hereunder, except when such amounts are payable upon the closing of any given transaction; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in SECTION 8.1(a)) in an individual principal amount of $250,000 or more or with an aggregate principal amount of $500,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in CLAUSE (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in SECTION 2.3, SECTION 5.1, SECTION 5.2, SECTION 5.14(b), SECTION 5.17 or SECTION 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or

thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made (unless any such representation or warranty is already qualified with respect to materiality, in which event it shall have been correct in any respect); or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this SECTION 8.1, and such default shall not have been remedied or waived within 30 days (or, in the case of SECTION 5.17, 2 Business Days) after the earlier of (i) an officer of such Credit Party becoming aware of such default, or (ii) receipt by Company of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law or non-U.S. law; or (ii) an involuntary case shall be commenced against Company or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect whether a law of the United States or another country; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any of its Subsidiaries, and any such event described in this CLAUSE (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Company or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, whether a law of the United States or another country, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in SECTION 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case or related series of transactions, incidents, or conditions an amount in excess of $250,000 or (ii) in the aggregate at any time an amount in excess of $500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than 5 days prior to the date of any proposed sale thereunder); or

(i) Non Monetary Judgments. One (1) or more non-monetary judgments, orders, decrees, permanent injunctions, temporary restraining orders, or similar judicial action shall be rendered

against the Company or any of its Subsidiaries which does or would reasonably be expected to (i) enjoin, restrain, or prevent Company or any Subsidiary from conducting all or any material part of its business or operations, including the use of, and provision of services through the use of, software, or (ii) have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of 15 consecutive days during which a stay of enforcement of such judgment, injunction, restraint, or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(j) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of 30 days; or

(k) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $100,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 412(n) of the Internal Revenue Code or under ERISA; or

(l) Failure to Redeem Preferred Shares. In connection with a Qualified IPO, less than all of Company's and its Subsidiaries' issued and outstanding preferred equity securities are converted into common equity securities of Company; or

(m) Change of Control. A Change of Control shall occur; or

(n) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) any Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Lender to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders,

under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in SECTION 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Company by Administrative Agent, (A) the Term Loan Commitments of each Lender shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest on the Term Loans, and (II) all other Obligations; and (C) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents.

SECTION 9. AGENTS

9.1. APPOINTMENT OF AGENTS. GSSLG is hereby appointed Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent hereunder and under the other Credit Documents and each Lender hereby authorizes GSSLG, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this SECTION 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any of its Subsidiaries. Each of Syndication Agent and Documentation Agent, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, GSSLG, in its capacity as Syndication Agent and Documentation Agent, shall have no obligations but shall be entitled to all benefits of this SECTION 9.

9.2. POWERS AND DUTIES. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. GENERAL IMMUNITY.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Term Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection

herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under SECTION 10.5) and, upon receipt of

such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under SECTION 10.5).

9.4. AGENTS ENTITLED TO ACT AS LENDER. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term Lender shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5. LENDERS' REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENT.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Company and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

9.6. RIGHT TO INDEMNITY. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent (each, an "INDEMNITEE AGENT PARTY"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN

WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH AGENT; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits,

costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. SUCCESSOR ADMINISTRATIVE AGENT.

(a) Administrative Agent and Collateral Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent and Collateral Agent. Upon the acceptance of any appointment as Administrative Agent and Collateral Agent hereunder by a successor Administrative Agent and Collateral Agent, that successor Administrative Agent and Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and Collateral Agent and the retiring Administrative Agent and Collateral Agent shall promptly (i) transfer to such successor Administrative Agent and Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent and Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent and Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent and Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's and Collateral Agent's resignation hereunder as Administrative Agent and Collateral Agent, the provisions of this SECTION 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent hereunder to an Affiliate of GSSLG without the prior written consent of, or prior written notice to, Company or the Lenders; provided that Company and the Lenders may deem and treat such assigning Administrative Agent as the Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Credit Documents.

9.8. COLLATERAL DOCUMENTS AND GUARANTY.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to any Guaranty, the Collateral and

the Collateral Documents. Subject to SECTION 10.5, without further written consent or authorization from Lenders, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under SECTION 10.5) have otherwise consented, or (ii) release any Guarantor from any Guaranty or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under SECTION 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative

Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

SECTION 10. MISCELLANEOUS

10.1. NOTICES. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Syndication Agent, Collateral Agent, Administrative Agent or Documentation Agent shall be sent to such Person's address as set forth on APPENDIX B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on APPENDIX B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or upon receipt if deposited in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent.

10.2. EXPENSES. Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) all the actual and reasonable costs and expenses of preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Company and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (d) all the actual costs and reasonable expenses of creating and perfecting Liens in favor of Collateral Agent, for the benefit of Lenders pursuant hereto, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers whether internal or external; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained

by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Term Loans and Term Loan Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of any Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3. INDEMNITY.

(a) In addition to the payment of expenses pursuant to SECTION 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent and each Lender (each, an "INDEMNITEE"), from and against any and all Indemnified Liabilities, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING,

IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH AGENT; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this SECTION 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against Lenders, Agents and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4. SET-OFF. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default each Lender and their respective Affiliates each of is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency and other Excluded Deposit Accounts)) and any other Indebtedness at any time held or owing by such Lender to or

for the credit or the account of any Credit Party (in whatever currency) against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, the participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder, (b) the principal of or the interest on the Term Loans or any other amounts due hereunder shall have become due and payable pursuant to SECTION 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Lender different from the branch or office holding such deposit or obligation or such Indebtedness.

10.5. AMENDMENTS AND WAIVERS.

(a) Requisite Lenders' Consent. Subject to SECTIONS 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Term Loan or Term Loan Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayments which shall be subject to SECTION 2.11(b));

(iii) reduce the rate of interest on any Term Loan (other than any waiver of any increase in the interest rate applicable to any Term Loan pursuant to SECTION 2.7) or any fee payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of any Term Loan;

(vi) amend, modify, terminate or waive any provision of this SECTION 10.5(b) or SECTION 10.5(c);

(vii) amend the definition of "REQUISITE LENDERS" or "PRO RATA SHARE"; provided, with the consent of Administrative Agent and the Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of "REQUISITE LENDERS" or "PRO RATA SHARE" on substantially the same basis as the Term Loan Commitments and the Term Loans are included on the Closing Date;

(viii) release all or substantially all of the Collateral or any Guarantors from any Guaranty except as expressly provided in the Credit Documents; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) amend, modify, terminate or waive any provision of SECTION 3.2(a) with regard to any Credit Extension without the consent of Requisite Lenders;

(ii) amend, modify, terminate or waive any provision of SECTION 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this SECTION 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6. SUCCESSORS AND ASSIGNS; PARTICIPATIONS.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Term Loan Commitments and Term Loans listed therein for all purposes hereof, and no assignment or transfer of any such Term Loan Commitment or Term Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in SECTION 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Term Loan Commitment or Term Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Term Loan Commitments or Term Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Term Loan Commitment or Term Loans owing to it or other Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of

all rights and obligations under and in respect of any Term Loan and any related Term Loan Commitments):

(i) to any Person meeting the criteria of CLAUSE (a) or CLAUSE (b) of the definition of the term of "Eligible Assignee" upon the giving of notice to Company and Administrative Agent; and

(ii) to any Person otherwise constituting an Eligible Assignee with the consent of Administrative Agent; provided, each such assignment pursuant to this SECTION 10.6(c)(ii) shall

be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Term Loans of the assigning Lender) with respect to the assignment of Term Loans.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to SECTION 2.17(c).

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, together with any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Company and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Term Loan Commitments or Term Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Term Loan Commitments or Term Loans for its own account in the ordinary course of its business and without a view to distribution of such Term Loan Commitments or Term Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this SECTION 10.6, the disposition of such Term Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this SECTION 10.6, as of the "Effective Date" (as defined in the applicable Assignment Agreement) (i) the assignee thereunder shall have the rights and obligations of a Lender hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a Lender for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under SECTION 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, and (y) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Term Loan Commitments shall be modified to reflect the Term Loan Commitment of such assignee and any Term Loan Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Term Loan Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Term Loan Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Term Loan Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Term Loan Commitments and/or outstanding Term Loans of the assignee and/or the assigning Lender. Notwithstanding the foregoing, an assignee, including an Eligible Assignee, shall not be entitled to receive any greater payment under SECTION 2.16 or SECTION 2.17 than the applicable Lender making

such assignment would have been entitled to receive with respect to the assigned portion of the rights and obligations under this Agreement.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Company, any of its Subsidiaries or any of its Affiliates) in all or any part of its Term Loan Commitments, Term Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Term Loan or Term Loan Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of such participation, and that an increase in any Term Loan Commitment or Term Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or any Guarantors from any Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Term Loans hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of SECTIONS 2.15(c), 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to CLAUSE (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under SECTION 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Company's prior written consent, and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of SECTION 2.17 unless Company is notified of the participation sold to such participant and such participant agrees, for the benefit of Company, to comply with SECTION 2.17 as though it were a Lender. To the extent permitted by applicable law, each participant also shall be entitled to the benefits of SECTION 10.4 as though it were a Lender, provided such Participant agrees to be subject to SECTION 2.14 as though it were a Lender.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this SECTION 10.6, any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Term Loans, the other Obligations owed by or to such Lender, and its Term Loan Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a Lender or be entitled to require the assigning Lender to take or omit to take any action hereunder.

10.7. INDEPENDENCE OF COVENANTS. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENTS. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in SECTIONS 2.15(c), 2.16, 2.17, 10.2, 10.3 and 10.4 and the agreements of

Lenders set forth in SECTIONS 2.14, 9.3(b) and 9.6 shall survive the payment of the Term Loans, and the termination hereof.

10.9. NO WAIVER; REMEDIES CUMULATIVE. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein,

nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Interest Rate Agreements and Currency Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. MARSHALLING; PAYMENTS SET ASIDE. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. SEVERABILITY. In case any provision in or obligation hereunder or any Term Loan Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12. OBLIGATIONS SEVERAL; INDEPENDENT NATURE OF LENDERS' RIGHTS. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Term Loan Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.13. HEADINGS. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) THEREOF.

10.15. CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (d) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (c) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (e) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

10.16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN

TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. CONFIDENTIALITY. Each Lender shall use commercially reasonable standards to hold confidential all non-public information regarding Company and its Subsidiaries and their businesses identified as such by Company and obtained by such Lender pursuant to the requirements hereof, it being understood and agreed by Company that, in any event, a Lender may make (i) disclosures of such

information to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this SECTION 10.17), each of whom has agreed to keep the same confidential, (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Term Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Interest Rate Agreements and Currency Agreements (provided, that each of such Persons are advised of and agree to be bound by the provisions of this SECTION 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any of the Agents or any Lender, (iv) to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the information and agrees to keep the same confidential, and (v) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Company of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information. Notwithstanding the foregoing, on or after the Closing Date and after the Company has completed a public offering of its equity securities or has withdrawn its registration statement with the Securities and Exchange Commission, Administrative Agent may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media.

10.18. USURY SAVINGS CLAUSE. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Term Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Term Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or

receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Term Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.20. EFFECTIVENESS. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.21. PATRIOT ACT. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Company that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Company, which information includes the name and address of Company and other information that will allow such Lender or Administrative Agent, as applicable, to identify Company in accordance with the Act.

10.22. CERTAIN REPRESENTATIONS.

(a) Each Lender has substantial experience in evaluating loan transactions with companies similar to Company and has such knowledge and experience in financial and business matters that Lender has the capacity to protect its own interests in making the Term Loan to Company.

(b) Company and each Guarantor have substantial experience in evaluating loan transactions with companies similar to Lenders and have such knowledge and experience in financial and business matters that each of Company and each Guarantor has the capacity to protect its own interests in receiving or guaranteeing, as the case may be, the Term Loan from Lenders to Company.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the parties hereto have caused this Credit and Guaranty Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

TALEO CORPORATION,
a Delaware corporation, as Company

By: /s/ Jean Lavigueur
_____
Name: Jean Lavigueur
Title: Chief Financial Officer

RECRUITFORCE.COM, INC.,
a California corporation, as Guarantor

By: /s/ Jean Lavigueur
_____
Name: Jean Lavigueur
Title: Chief Financial Officer

SIGNATURE PAGE TO
CREDIT AND GUARANTY AGREEMENT

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Administrative Agent, Lead Arranger, Collateral Agent, Documentation Agent, and Syndication Agent

/s/ Todd B. Foust
By: _____
Name: Todd B. Foust
Title: Vice President

GOLDMAN SACHS SPECIALTY LENDING HOLDINGS, INC.,
as a Lender

/s/ Todd B. Foust
By: _____
Name: Todd B. Foust
Title: Vice President

SIGNATURE PAGE TO
CREDIT AND GUARANTY AGREEMENT

APPENDIX A

TERM LOAN COMMITMENT

<TABLE>
<CAPTION>

LENDER	TERM LOAN COMMITMENT	PRO RATA SHARE
<S>	<C>	<C>
Goldman Sachs Specialty Lending Holdings, Inc.	$ 20,000,000.00	100%
TOTAL	$ 20,000,000.00	100%

</TABLE>

APPENDIX B

NOTICE ADDRESSES

TALEO CORPORATION
575 Market Street, 8th Floor
San Francisco, CA 94105
Attention: Chief Financial Officer
Telecopier: 866-507-5966

RECRUITFORCE.COM, INC.,
444 Castro Street, Suite 302
Mountain View, California 94041
Attention: Chief Financial Officer
Telecopier: 866-507-5966

in each case, with a copy to:

TALEO CORPORATION
575 Market Street, 8th Floor
San Francisco, CA 94105
Attention: Corporate Counsel
Telecopier: 866-507-5966

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Administrative Agent, Collateral Agent,
Documentation Agent, Lead Arranger, and Syndication Agent

Goldman Sachs Specialty Lending Group, L.P.
600 E. Las Colinas Boulevard
Suite 400
Irving, Texas 75039
Attention: Florence Hosanna, Account Manager
Telecopier: 972-368-5099

GOLDMAN SACHS SPECIALTY LENDING HOLDINGS, INC.
as a Lender,

Goldman Sachs Specialty Lending Holdings, Inc.
85 Broad Street
New York, New York 10004
Attention: Managing Director

with copies to:

Goldman Sachs Specialty Lending Holdings, Inc.
600 E. Las Colinas Boulevard
Suite 400
Irving, Texas 75039
Attention: Florence Hosanna, Account Manager
Telecopier: 972-368-5099

and

Goldman Sachs Specialty Lending Group, L.P.
600 E. Las Colinas Boulevard
Suite 400
Irving, Texas 75039
Attention: Kyle Volluz, GSSLG In-House Counsel
Telecopier: 972-368-3199

EXHIBIT A-1
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

FUNDING NOTICE

Reference is made to that certain Credit and Guaranty Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among TALEO CORPORATION, a Delaware corporation (the "COMPANY"), the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT").

1. Pursuant to Section 2.1 of the Credit Agreement, Company desires that Lenders make the following Term Loans to Company on April 25, 2005 (the "CLOSING DATE") in accordance with the applicable terms and conditions of the Credit Agreement:

(a) Term Loan:

[ ] Base Rate Loans: $[___,___,___]

[ ] LIBOR Rate Loans, with an initial Interest Period of _____ month(s): $[___,___,___]

2. Company hereby certifies to Agent and each Lender that:

(a) as of the Closing Date, (i) all Term Loans shall not exceed the Term Loan Commitments then in effect, and (ii) all of the conditions precedent specified in Section 3 of the Credit Agreement shall have been satisfied or waived; and

(b) the representations and warranties contained in each of the Credit Documents are true and correct in all material respects on and as of the Closing Date, both before and after giving effect to the borrowing contemplated hereby, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date; and

(c) as of the Closing Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute a Default or an Event of Default; and

(d) the Chief Financial Officer of the Company shall have delivered an Officer's Certificate representing and warranting and otherwise demonstrating to the satisfaction of Agent that, as of the Closing Date, Company reasonably expects, after giving effect to the proposed borrowing and based upon good faith

determinations and projections consistent with the Financial Plan, to be in compliance with all

operating and financial covenants set forth in the Credit Agreement as of the last day of each Fiscal Quarter ending prior to the Term Loan Maturity Date.

3. Any Agent or Requisite Lenders shall be entitled, but not obligated to, request and receive, prior to the making of any Credit Extension, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of such Agent or Requisite Lender such request is warranted under the circumstances.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Funding Notice to be executed and delivered by its duly authorized representative as of the date set forth below.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:_____

Date:_____, 200__

EXHIBIT A-2
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

CONVERSION/CONTINUATION NOTICE

Reference is made to that certain Credit and Guaranty Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among Taleo Corporation, a Delaware corporation ("COMPANY"), the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT").

1. Subject to Section 2.15 of the Credit Agreement and pursuant to Section 2.6 of the Credit Agreement, Company desires to convert or to continue the following Term Loans, each such conversion and/or continuation to be effective as of _____, 20_____:

(a) Term Loan:

$[___,___,___] LIBOR Rate Loans to be continued with an Interest Period of ____ month(s)

$[___,___,___] Base Rate Loans to be converted to LIBOR Rate Loans with an Interest Period of ____ month(s)

$[___,___,___] LIBOR Rate Loans to be converted to Base Rate Loans

2. Company hereby certifies to Agent and each Lender that, as of the date hereof, no event has occurred and is continuing or would result from the consummation of the conversion and/or continuation contemplated hereby that would constitute a Default or an Event of Default.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Conversion/Continuation Notice to be executed and delivered by its duly authorized representative as of the date set forth below.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:_____

Date:_____, 20_____

EXHIBIT B
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

TERM LOAN NOTE

$20,000,000.00 April __, 2005
New York, New York

FOR VALUE RECEIVED, TALEO CORPORATION, a Delaware corporation ("COMPANY"), hereby promises to pay to GOLDMAN SACHS SPECIALTY LENDING HOLDINGS, INC., a Delaware corporation, or its registered assigns ("PAYEE"), on or before the Term Loan Maturity Date, TWENTY MILLION DOLLARS AND ZERO CENTS ($20,000,000.00) under the Credit Agreement referred to below.

Company also hereby promises to pay interest on the unpaid principal amount hereof, from the date hereof until paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Credit Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among Company, Payee, the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT").

This Term Loan Note (this "NOTE") is the "Term Loan Note" in the aggregate principal amount of $20,000,000.00 referred to in, and is issued pursuant to and entitled to the benefits of, the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loan evidenced hereby was made and is to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Agent or at any other place that shall be designated in writing for such payments in accordance with the terms of the Credit Agreement. Unless and until an Assignment Agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by Agent and recorded in the Register, Company, Agent and Lenders shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof, it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided, the failure to make a notation of any payment made on this Note shall not limit or otherwise affect the obligations of Company hereunder with respect to payments of principal of or interest on this Note.

This Note is subject to mandatory prepayment and to voluntary prepayment at the option of Company, in each case as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF COMPANY AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of Company, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

Company promises to pay all costs and expenses (including, without limitation, reasonable attorneys' fees), all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. Company and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, each Company has caused this Term Loan Note to be executed and delivered by its duly authorized representative as of the date and at the place first written above.

COMPANY:

TALEO CORPORATION

By:_____
Name:_____
Title:_____

EXHIBIT C
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

COMPLIANCE CERTIFICATE

Pursuant to the Credit Agreement referred to below, the undersigned hereby certifies as follows:

1. I am the [Chief Financial Officer/Treasurer/President] of TALEO CORPORATION, a Delaware corporation ("COMPANY").

2. I have reviewed the terms of that certain Credit Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among Company, the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Credit Parties during the accounting period covered by the attached financial statements.

3. The examination described in SECTION 2 above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this

Compliance Certificate (this "CERTIFICATE"), except as set forth in a separate attachment, if any, to this Certificate, describing in detail, the nature of the condition or event, the period during which it has existed and the action which the Credit Parties have taken, are taking, or propose to take with respect to each such condition or event.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Certificate to be executed and delivered by its duly authorized representative as of the date set forth below.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title: [Chief Financial Officer/Treasurer/
President]

Date:_____, 20_____

Annex A

For the fiscal [quarter] [year] ending _____, 20_____:

1. Current Ratio: (i)/(ii) =

(i) Consolidated Current Assets: $[___,___,___]

(ii) Consolidated Current Liabilities: $[___,___,___]

Actual: [____:1.00]
Required:: [____:1.00]

2. Consolidated Adjusted EBITDA: (i) - (ii) =

(i)	(a)	Consolidated Net Income:	$[___,___,___]
	(b)	Consolidated Interest Expense:	$[___,___,___]
	(c)	provisions for taxes based on income:	$[___,___,___]
	(d)	total depreciation expense:	$[___,___,___]
	(e)	total amortization expense:	$[___,___,___]
	(f)	other non-cash items reducing Consolidated Net Income[*]:	$[___,___,___]
	(g)	Phase I Development Costs, if any:	$[___,___,___]
(ii)	(a)	other non-cash items increasing Consolidated Net Income[**]:	$[___,___,___]
	(b)	interest income:	$[___,___,___]
	(c)	other non-ordinary course income:	$[___,___,___]
		Actual:	$[___,___,___]
		Minimum:	>= $[___,___,___]

---

[*] Excluding any such non-Cash item to the extent that it represents an accrual or reserve for potential Cash items in any future period or amortization of a prepaid Cash item that was paid in a prior period.

[**] Excluding any such non-Cash item to the extent that it represents an accrual or reserve for potential Cash items in any future period or amortization of a prepaid Cash item that was paid in a prior period.

3. Consolidated Capital Expenditures:	Actual:		$[___,___,___]
	Maximum:	<=	$[___,___,___]
4. Hosted Application Revenue:	Actual:		$[___,___,___]
	Minimum:	>=	$[___,___,___]
5. Consolidated Liquidity:	Actual:		$[___,___,___]
	Minimum:	>=	$[___,___,___]

6. Loan to Value Ratio***: (i)/(ii) =

(i) Company's Obligations as of the Date hereof: $[___,___,___]

(ii) Company's Enterprise Value as of the Date hereof: $[___,___,___]

Actual: _.__:1.00
Required: 0.20:1.00

*** Only measured after Qualified IPO

EXHIBIT D
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

FORM OF OPINION OF COUNSEL

EXHIBIT E
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "ASSIGNMENT") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "ASSIGNOR") and [Insert name of Assignee] (the "ASSIGNEE"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in ANNEX 1 attached hereto are hereby agreed to, incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date set forth below, the interest in and to all of the Assignor's rights and obligations under the Credit Agreement and the other Credit Documents that represent the amount and percentage interest identified below of all of the Assignor's outstanding rights and obligations under the respective facilities identified below (the "ASSIGNED INTEREST"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, the Credit Agreement and the other Credit Documents, without representation or warranty by the Assignor.

1. ASSIGNOR: _____

2. ASSIGNEE: _____, who is an Eligible Assignee

3. COMPANY: TALEO CORPORATION, a Delaware corporation

4. AGENT: GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent.

5. CREDIT AGREEMENT: Credit Agreement, dated as of April 25, 2005, by and among Taleo Corporation, a Delaware corporation ("COMPANY"), the Lenders party thereto from time to time, and Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT"), as amended, restated, supplemented or otherwise modified from time to time

6. ASSIGNED INTEREST:

<TABLE>
<CAPTION>

Term Loan Commitment Assigned	Aggregate Amount of Term Loans for all Lenders	Amount of Term Loans Assigned	Percentage of Term Loans Assigned [******]
<S>	<C>	<C>	<C>
_____	$ _____	$ _____	_____%

</TABLE>

7. EFFECTIVE DATE: _____, 20_____ [TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER ON THE REGISTER.]

8. NOTICE AND WIRE INSTRUCTIONS:

[NAME OF ASSIGNOR]	[NAME OF ASSIGNEE]
Notices:	Notices:
_____	_____
_____	_____
_____	_____
Attention:_____	Attention:_____
Facsimile:_____	Facsimile:_____
with a copy to:	with a copy to:
_____	_____
_____	_____
_____	_____
Attention:_____	Attention:_____
Facsimile:_____	Facsimile:_____
Wire Instructions:	Wire Instructions:
_____	_____
_____	_____

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SIGNATURE PAGE FOLLOWS.

[******]Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment to be executed and delivered by their respective duly authorized representatives as of the Effective Date.

ASSIGNOR:

[NAME OF ASSIGNOR]

By:_____
Name:_____
Title:_____

ASSIGNEE:

[NAME OF ASSIGNEE]

By:_____
Name:_____
Title:_____

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ACKNOWLEDGEMENT FOLLOWS.

[CONSENTED TO][********]:

AGENT:

GOLDMAN SACHS SPECIALTY LENDING
GROUP, L.P.

By:_____
Name:_____
Title:_____

[********]To be added only if the consent of Agent is required by the terms of the Credit Agreement.

Annex 1

Standard Terms and Conditions for
Assignment and Assumption Agreement

1. Representations and Warranties.

(a) Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any Lien, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, representations and/or warranties made in or in connection with any Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of any Credit Document, or any Collateral thereunder, (iii) the financial condition of any Credit Party or any other Person obligated in respect of any Credit Document, or (iv) the performance or observance by any Credit Party or any other Person of any of their respective obligations under any Credit Document.

(b) Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement and any other documents and information that it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, (v) it has substantial experience in evaluating loan transactions with companies similar to Company and has such knowledge and experience in financial and business matters such that it has the capacity to protect its own interests in purchasing the Assigned Interest; and (vi) if it is a Non-US Lender, attached to the Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Agent, the Assignor or any other Lender, and based on any documents and information that it shall deem appropriate at that time, continue

to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their respective terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued up to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in multiple counterparts (any of which may be delivered by facsimile), each of which shall be an original and all of which taken together shall constitute one and the same Assignment. This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles thereof.

EXHIBIT F
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

CERTIFICATE RE NON-BANK STATUS

Reference is made to that certain Credit Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among TALEO CORPORATION, a Delaware corporation ("COMPANY"), the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT"). Pursuant to Section 2.17(c) of the Credit Agreement, the undersigned hereby certifies that it is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code.

[NAME OF LENDER]

By:_____
Name:_____
Title:_____

EXHIBIT G-1
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

CLOSING DATE CERTIFICATE

The undersigned hereby certifies as follows:

1. Pursuant to Section 3.1(o) of that certain Credit Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among TALEO CORPORATION, a Delaware corporation ("COMPANY"), the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT"), Company hereby requests that Lenders make the following Term Loans to Company on the Closing Date:

(a) Term Loan: $20,000,000

2. Each Credit Party has reviewed the terms of Section 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto, and in each Credit Party's opinion, it has made, or has caused

to be made under its supervision, any examination or investigation that is necessary to enable it to express an informed opinion as to the matters referred to herein.

3. Based upon each Credit Party's review and examination described in SECTION 2 above, each Credit Party certifies to Agent and each Lender that, as of the Closing Date:

(a) the representations and warranties of such Credit Party contained in each Credit Document to which it is a party are true and correct in all material respects on and as of the Closing Date, both before and after giving effect to the borrowing contemplated hereby, to the same extent as though made on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date; and

(b) no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending or has been noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, to recover any damages or to obtain relief as a result of, the borrowing contemplated hereby; and

(c) no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute a Default or an Event of Default.

4. Each Credit Party has requested Wilson Sonsini Goodrich & Rosati, Professional Corporation to deliver to Agent and Lenders on the Closing Date favorable written opinions setting forth substantially the matters in the opinions designated in Exhibit D annexed to the Credit Agreement and any other matters that Agent may reasonably request.

5. Each Credit Party has obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Credit Documents, and each of the foregoing is in full force and effect. All applicable waiting periods have expired without any action being taken or threatened by any Governmental Authority or other Person which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents. No action, request for stay, petition for review or rehearing, reconsideration or appeal with respect to any of the foregoing is pending, and the time for any Governmental Authority or other Person to take action to set aside its consent on its own motion shall have expired.

6. Attached hereto as ANNEX A are true, correct and complete copies of: (a) the Historical Financial Statements, (b) pro forma consolidated and consolidating balance sheets of Company and its Subsidiaries as at the Closing Date, prepared in accordance with GAAP and reflecting the related financings and the other transactions contemplated by the Credit Documents, and (c) the Projections.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Closing Date Certificate to be executed and delivered by its duly authorized representative as of the Closing Date.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:_____

Annex A

Attached hereto are copies of: (a) the Historical Financial Statements, (b) pro forma consolidated and consolidating balance sheets of Company and its Subsidiaries as at the Closing Date, prepared in accordance with GAAP and reflecting the related financings and the other transactions contemplated by the Credit Documents, and (c) the Projections.

EXHIBIT G-2
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

SOLVENCY CERTIFICATE

The undersigned hereby certifies as follows:

1. I am the [Chief Financial Officer/Treasurer/President] of Taleo Corporation, a Delaware corporation ("COMPANY").

2. Reference is made to that certain Credit Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among Company, the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT").

3. I have reviewed the terms of Section 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto and, in my opinion, have made, or have caused to be made under my supervision, any examination or investigation that is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in SECTION 3 above, I certify that, as of the Closing Date, after giving effect to the consummation of the financings and the other transactions contemplated by the Credit Documents, each of Company and its Subsidiaries, on a consolidated basis, are and will be Solvent.

IN WITNESS WHEREOF, the undersigned has caused this Solvency Certificate to be executed and delivered by its duly authorized representative as of the Closing Date.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:[Chief Financial Officer/ Treasurer/ President]

EXHIBIT G-3
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

CASH RELEASE COMPLIANCE NOTICE AND CERTIFICATE

Reference is made to that certain Credit and Guaranty Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among TALEO CORPORATION, a Delaware corporation (the "COMPANY"), the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities,

"AGENT").

1. Pursuant to Section 5.14(b) of the Credit Agreement, Company desires that Agent release any excess funds from the Restricted Cash Account to Company on _____, 200__ (the "STEP-DOWN DATE") to reduce the Funds or deposit in the Restricted Cash Account to the amount opposite the Step-Down Date in accordance with the applicable terms and conditions of the Credit Agreement, as set forth below:

<TABLE>
<CAPTION>

PERIOD	MINIMUM CASH SUBJECT TO CONTROL
<S>	<C>
Closing through June 30, 2005	$7,500,000
July 1, 2005 through July 31, 2005	$6,250,000
August 1, 2005 through August 31, 2005	$5,750,000
September 1, 2005 through September 30, 2005	$5,250,000
October 1, 2005 through December 31, 2005	$5,000,000
January 1, 2006 through September 30, 2006	$4,500,000
October 1, 2006 through March 31, 2008	$ 0

</TABLE>

2. Company hereby certifies to Agent and each Lender that:

(a) as of the date of this Certificate and the Step-Down Date, the representations and warranties contained in each of the Credit Documents are true and correct in all material respects, both before and after giving effect to the balance reduction contemplated hereby, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date; and

(b) as of the date of this Certificate and the Step-Down Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute a Default or an Event of Default.

3. Agent shall be entitled, but not obligated to, request and receive, prior to the making of any balance reduction in the Restricted Cash Account, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of Agent, such request is warranted under the circumstances.

4. No cash shall be released from the Restricted Cash Account in accordance with the step-downs referenced above for the period commencing October 1, 2006 until Company has delivered a compliance certificate evidencing compliance for the Fiscal Quarter ending September 30, 2006, and evidencing compliance with the Minimum Consolidated Liquidity covenant set forth in Section 6.8(e) of the Credit Agreement for the period commencing October 1, 2006.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Cash Release Compliance Notice and Certificate to be executed and delivered by its duly authorized representative as of the date set forth below.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:_____

Date:_____, 200_***

*** Date must be at least 3 Business Days prior to Step-Down Date referenced above.

EXHIBIT G-4
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

2004 FINANCIAL OFFICER CERTIFICATION

Pursuant to the Credit Agreement referred to below, the undersigned hereby certifies as follows:

1. I am the [Chief Financial Officer/Treasurer/President] of TALEO CORPORATION, a Delaware corporation ("COMPANY").

2. I have reviewed the terms of that certain Credit and Guaranty Agreement, dated as of April 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement), by and among Company, the Lenders party thereto from time to time, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Credit Parties during the accounting period covered by the attached 2004 draft unaudited financial statements.

3. The examination described in SECTION 2 has revealed that:

(a) the 2004 audited consolidated financial statements will not be materially different from the draft 2004 unaudited consolidated financial statements covering the same accounting period attached as Exhibit A (the "2004 UNAUDITED FINANCIALS") to this Financial Officer Certification (this "CERTIFICATION"), except for non-cash compensation charges, if any, relating to granting stock options at less than fair market value that may be reflected in the final audited financial statements after consultation with Deloitte and Touche and the Securities and Exchange Commission;

(b) the 2004 Unaudited Financials have been presented to the audit committee of Company; and

(c) The 2004 Unaudited Financials are free of material misstatements and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended.

4. I hereby certify to Agent and each Lender that Company has provided to Deloitte & Touche, LLP, copies of any and all materials, reports, notices, and statements necessary to complete any examinations by such accountants in connection with the audit of the 2004 Unaudited Financials in accordance with generally accepted auditing standards.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, Company has caused this Certification to be executed and delivered by its duly authorized representative as of the date set forth below.

TALEO CORPORATION,
as Company

By:_____
Name:_____

Title:[Chief Financial Officer/Treasurer/
President]

Date:_____, 20_____

EXHIBIT H-1
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

PLEDGE AND SECURITY AGREEMENT

[to be attached]

EXHIBIT H-2
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT (the "AGREEMENT") is executed as of _____, 200_, by TALEO CORPORATION, a Delaware corporation ("DEBTOR"), whose address is 575 Market Street, 8th Floor San Francisco, CA 94105 and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Collateral Agent for the Lenders described below ("SECURED PARTY") whose address is 600 Las Colinas Boulevard, Suite 400, Irving, Texas 75039.

RECITALS

A. Debtor, the Lenders party thereto from time to time, and Secured Party have entered into a Credit and Guaranty Agreement dated as of April 25, 2005 (as amended, modified, supplemented, or restated from time to time, the "CREDIT AGREEMENT");

B. In connection with the Credit Agreement, a Pledge and Security Agreement (as amended, modified, supplemented, or restated from time to time, the "SECURITY AGREEMENT") has been entered into by and among Debtor and Secured Party whereby Debtor granted to Secured Party a security interest in certain assets of Debtor, including, without limitation, the Copyright Collateral (as defined below) to secure the payment of the Obligations;

C. Subject to the terms and conditions set forth below, Debtor and Secured Party desire to enter into this Agreement in order to further evidence the security interest of Secured Party in the Copyright Collateral (as defined below); and

D. This Agreement is integral to the transactions contemplated by the Loan Documents.

ACCORDINGLY, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor and Secured Party hereby agree as follows:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 Defined Terms. Capitalized terms used and not otherwise defined herein shall have the same meanings as set forth in the Credit Agreement. Terms used herein which are defined in the UCC, unless otherwise defined herein or in the Credit Agreement, shall have their meanings as set forth in the UCC.

SECTION 2 Security Interest. In order to secure the full and complete payment and performance of the Obligations when due, Debtor hereby grants to Secured Party a security interest in all of Debtor's rights, titles, and interests in and to the Copyright Collateral (defined below) and pledges the Copyright Collateral to Secured Party, all upon and subject to the terms and conditions of this Agreement. Such security interest is granted and pledge is made as security only and shall not subject Secured Party to, or transfer or in any way affect or modify, any obligation of Debtor with respect to any of the

Copyright Collateral or any transaction involving or giving rise thereto. If the grant or pledge of any specific item of the Copyright Collateral is expressly prohibited by any contract, then the security interest

and pledge created hereby nonetheless remain effective to the extent allowed by the UCC or other applicable Law, but are otherwise limited by that prohibition.

SECTION 3. Copyright Collateral. As used herein, the term "COPYRIGHT COLLATERAL" means the following items and types of property, wherever located, now owned or in the future existing or acquired by Debtor, and all proceeds and products thereof, and any substitutes or replacements therefor:

(a) All copyrights (whether statutory or common law, registered or unregistered), works protectable by copyright, copyright registrations, copyright licenses, and copyright applications of Debtor, including, without limitation, all of Debtor's rights, titles, and interests in and to all copyrights registered in the United States Copyright Office or anywhere else in the world and also including, without limitation, the registered copyrights set forth on SCHEDULE 1; (b) all renewals, extensions, and modifications thereof; (c) all income, licenses, royalties, damages, profits, and payments relating to or payable under any of the foregoing; (d) the right to sue for past, present, or future infringements of any of the foregoing; and (e) all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired by Debtor.

SECTION 4. Security Agreement. This Agreement has been executed and delivered by the Debtor for the purpose of registering the security interest of the Secured Party in the Copyright Collateral with the United States Copyright Office and corresponding offices in other countries of the world. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Secured Party for its benefit and the benefit of the Banks under the Security Agreement. The Security Agreement (and all rights and remedies of Secured Party and the Banks thereunder) shall remain in full force and effect in accordance with its terms.

SECTION 5. Acknowledgment. The Debtor does hereby further acknowledge and affirm that the rights and remedies of Secured Party with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 6. Loan Document, etc. This Agreement is a Collateral Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions of the Credit Agreement.

SECTION 8. Counterparts. This Agreement may be executed by parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the Debtor has duly executed this Copyright Security Agreement as of the day and year first written above.

TALEO CORPORATION, a Delaware corporation,
as Debtor

By: _____
Name:_____
Title:_____

IN WITNESS WHEREOF, Secured Party has duly executed this Copyright Security Agreement as of the day and year first written above.

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Secured Party

By: _____
Name:_____
Title:_____

SCHEDULE 1

COPYRIGHTS

U.S. COPYRIGHTS

<TABLE>
<CAPTION>

OWNER	REGISTRATION NO.	TITLE	COUNTRY
<S>	<C>	<C>	<C>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

</TABLE>

EXHIBIT H-3
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

HYPOTHEC ON SHARES

GRANTED BY: TALEO CORPORATION, a Delaware corporation, whose address is 575 Market Street, 8th Floor; San Francisco, CA 94105;

(the "GRANTOR");

IN FAVOUR OF: GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P, having a place of business at 600 Las Colinas Boulevard, Suite 400, Irving, Texas 75039;

(the "COLLATERAL AGENT").

A. WHEREAS, the Grantor, the lenders party thereto from time to time (the "LENDERS"), and the Collateral Agent have entered into a Credit and Guaranty Agreement dated as of April 25, 2005 (as amended, modified, supplemented, or restated from time to time, the "Credit Agreement").

B. WHEREAS, the Grantor has provided a security interest and pledge over the Collateral (as such term is defined in the Pledge and Security Agreement) to the Collateral Agent by virtue of a Pledge and Security Agreement dated as of April 25, 2005 (as amended, modified, supplemented, or restated from time to time, the "Pledge and Security Agreement")

C. WHEREAS, this Hypothec on Shares is integral to the transactions contemplated by the Credit Documents (as such term is defined in the Credit Agreement), and the execution and delivery hereof are conditions precedent to any Lender's obligations to extend credit under the Credit Documents.

D. NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

The terms defined in the Credit Agreement shall have the same meaning when used hereunder unless there be something in the subject or the context inconsistent therewith or unless otherwise defined herein.

"OBLIGATIONS" means, collectively, (a) the "Obligations" as defined in the Credit Agreement, and (b) all indebtedness, liabilities, and obligations of the Grantor arising under the Pledge and Security Agreement, this Hypothec on Shares or any guaranty assuring payment of the Obligations; it being the intention and

contemplation of the Grantor and the Collateral Agent that the Grantor may guarantee (or otherwise become directly or contingently obligated with respect to) the obligations of others to the Collateral Agent, that from time to time overdrafts of the Grantor's accounts with the Collateral Agent may occur, and that the Collateral Agent may from time to time acquire from others obligations of the Grantor to such others, and that payment and repayment of all of the foregoing are intended to and shall be part of the Obligations secured hereby. The Obligations shall include, without limitation, future, as well as existing, advances, indebtedness, liabilities, and obligations owed by the Grantor to the Collateral Agent arising under the Credit Documents or otherwise.

All representations, warranties and covenants of the Pledge and Security Agreement not contained herein shall apply to this Hypothec on Shares, mutatis mutandis, as if reproduced herein.

In the event of any inconsistency, contradiction or conflict between the provisions hereof and the provisions of the Pledge and Security Agreement, the provisions of the Pledge and Security Agreement shall prevail to the extent of such inconsistency, contradiction or conflict.

2. DESCRIPTION OF THE CHARGED PROPERTY

The Grantor hypothecates, delivers and pledges, the whole in favour of the Collateral Agent for its benefit and the benefit of the Lenders (the hypothec hereby constituted being hereinafter referred to as the "HYPOTHEC"), all rights, titles, and interests of the Grantor in and to all outstanding stock, equity, or other investment securities owned by the Grantor, including without limitation, all such stock, equity, or other investment securities set forth on EXHIBIT 1 (the "PLEDGED SHARES"); provided that (i) not more than 66% of the capital stock or other ownership interest of the Grantor in any Foreign Subsidiary directly held by Grantor, and (ii) no outstanding equity of any Foreign Subsidiary not directly held by Grantor is, or is required to be, pledged to the Collateral Agent under any provision hereof, and any capital stock or ownership interest held by Collateral Agent in excess of 66% shall be held in trust for the benefit of Grantor.

3. SECURED OBLIGATIONS

The Hypothec shall secure payment and performance of the Obligations.

The Hypothec further secures the payment of all sums due or to become due pursuant to the present deed and the performance of all obligations provided for under the present deed.

Any future obligation hereby secured shall be deemed to be one in respect of which the Grantor has once again obligated itself hereunder according to the provisions of Article 2797 of the Civil Code of Quebec.

4. AMOUNT OF THE HYPOTHEC

The amount for which the Hypothec is granted is a principal amount of CDN$40,000,000, with an additional hypothec equal to 20% of the principal amount, the whole plus interest thereon from the date hereof at the rate of 25% per annum.

The rate of interest mentioned herein before is a notional interest rate only and for the purposes of the creation of the hypothec only. The effective rate or rates of interest payable by the Grantor shall be the rate or rates set forth in the Credit Agreement and not the aforementioned rate.

5. RIGHTS OF COLLATERAL AGENT

5.1 The Grantor hereby expressly acknowledges and agrees that for the purposes hereof, the Collateral Agent shall be the sole holder of the Pledged Shares and hold same as the Collateral Agent, on behalf and for the benefit of itself and the Lenders.

5.2 The Collateral Agent shall have all other rights granted to it under the Pledge and Security Agreement, the Credit Agreement and the Credit Documents.

6. DELIVERY OF SHARES

The certificates representing the Pledged Shares endorsed in blank for transfer or accompanied by stock powers of attorney satisfactory to the Collateral Agent shall forthwith be delivered to and remain in the custody of the Collateral Agent or its nominee. Delivery of the Pledged Shares shall be deemed to have occurred simultaneously hereunder and under the Pledge and Security Agreement.

7. EVENT OF DEFAULT

An "Event of Default" shall have the same meaning as ascribed thereto under the Security and Pledge Agreement, the Credit Agreement or under any Credit Documents. Upon the occurrence of any Event of Default the Collateral Agent shall have all the rights of a hypothecary creditor provided under Quebec law.

8. MISCELLANEOUS

8.1 The Hypothec on Shares is in addition to and not in substitution of or in replacement for any other hypothec, pledge, security interest, guarantee or other right held by or for the benefit of the Collateral Agent.

8.2 This agreement shall be governed by the laws applicable in the Province of Quebec and the federal laws of Canada applicable therein.

8.3 This agreement shall be binding upon each of the Grantor, the Collateral Agent and the Lenders, and their successors and assigns.

8.4 This agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

8.5 The parties hereto expressly request and require that this agreement and all deeds, documents or instruments supplemental or ancillary hereto be drafted in English. Les parties aux presentes conviennent et exigent que cette convention ainsi que tous les documents qui s'y rattachent soient rediges en anglais.

SIGNED this - day of April, 2005.

TALEO CORPORATION

_____
Name:
Title:

GOLDMAN SACHS SPECIALTY LENDING
GROUP, L.P.,
as Collateral Agent

Per: _____
Name:
Title:

EXHIBIT 1

Pledged Shares

1. Six Hundred and Sixty (660) Class A Common Shares of 9090-5415 Quebec Inc., (formerly Viasite Inc.).

NOTE: Form Landlord/Operator Consent and Waiver for information purposes only. Documents being individually negotiated with Company's landlords and hosting partners.

EXHIBIT I
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

LANDLORD/OPERATOR CONSENT AND WAIVER

This [Landlord/Operator] Consent and Waiver ("CONSENT AND WAIVER") is executed as of the ____ day of _____, 2005, by [_____], a [_____] ("[LANDLORD/ OPERATOR]").

RECITALS:

A. [Landlord/Operator] and TALEO CORPORATION, a Delaware corporation ("LESSEE/CLIENT") have entered into the [lease/hosting agreement] (as renewed, extended, amended, or substituted, the ["LEASE/HOSTING AGREEMENT"]) described in EXHIBIT A attached hereto, covering certain premises (the "PREMISES") described in the [Lease/Hosting Agreement].

B. [Landlord/Operator] understands that [Lessee/Client] has or will incur certain indebtedness, obligations, and liabilities (collectively, as amended, extended, renewed, and modified from time to time, the "INDEBTEDNESS") pursuant to that certain Credit and Guaranty Agreement, dated as of April 25, 2005 (as amended, modified, restated, supplemented, or refinanced from time to time, the "CREDIT AGREEMENT") among Taleo Corporation, Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent, Collateral Agent, Lead Arranger, Syndication Agent, and Documentation Agent (in such capacities, "AGENT"), and the Lenders named therein ("LENDERS"), which requires [Lessee/Client] to grant to Agent, for and on behalf of the Lenders a security interest and first lien (the "SECURITY INTEREST") in, among other things, all assets, including but not limited to all present and future accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, investment property, equipment, other goods, money, and deposit accounts, of [Lessee/Client] now or in the future located at the Premises and all rights under the [Lease/Hosting Agreement] (together with all cash and non-cash proceeds thereof, the "COLLATERAL").

C. [Landlord/Operator] is willing to consent to the Security Interest to secure the Indebtedness on the terms and conditions set forth herein.

AGREEMENTS:

In consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [Landlord/Operator] hereby certifies to and agrees with Agent, for and on behalf of Lenders, as follows:

1. CONSENT TO GRANT. [Landlord/Operator] specifically consents to the execution and delivery by [Lessee/Client] of any documents evidencing the Security Interest (the "SECURITY DOCUMENTS").

2. CONSENT TO FORECLOSURE. In the event of foreclosure of the Security Documents (by any means, including judicial foreclosure), [Landlord/Operator] shall recognize Agent, for and on behalf of

the Lenders, as the [Lessee/Client] for all purposes under the [Lease/Hosting Agreement]. In such event, [Landlord/Operator] shall accept performance by Agent in lieu of [Lessee/Client] in the [Lease/Hosting Agreement]. Additionally, notwithstanding anything to the contrary or apparently to the contrary contained in the [Lease/Hosting Agreement], [Lessee/Client] hereby consents to foreclosure by Agent, for and on behalf of the Lenders, in the event of default under the terms of the Security Documents, the Credit Agreement, or any other documents executed in connection therewith (the "LOAN DOCUMENTS") and consents to the assignment of the [Lease/Hosting Agreement] by Agent, subject to the [Landlord's Operator's] consent which shall not be unreasonably withheld, if the Agent, either by virtue of the enforcement of the Agent's rights under the Security Documents, the Loan Documents, or otherwise, or in any capacity whatsoever, becomes the owner of [Lessee's/Client's] interest under the [Lease/Hosting Agreement]. The [Landlord/Operator] agrees to execute a memorandum or short form of the [Lease/Hosting Agreement] in recordable form and in such form as is reasonably required by the Agent and containing terms consistent with the terms of the [Lease/Hosting Agreement] and this Consent and Waiver.

3. SUBORDINATION OF LIENS. All Liens, security interests, and other rights to which [Landlord/Operator] might be entitled in the Collateral, whether arising by operation of law or otherwise, whether now existing or hereafter to arise, are subordinate and inferior in every respect to all of the terms, provisions, and conditions of the Security Documents, the Credit Agreement, and the Loan Documents, regardless of the order in which any liens, security interests, and rights in the Collateral were or will be created, attached, pledged, filed, recorded, registered, or perfected. Specifically, and not in limitation of the foregoing, the security interest granted by [Lessee/Client] to

[Landlord/Operator] under Section __ of the [Lease/Hosting Agreement] is subordinated to the Security Interest of the Agent in the Collateral for the benefit of the Lenders under the Credit Agreement and Security Documents. Upon a default or event of default under the [Lease/Hosting Agreement], [Landlord/Operator] shall not exercise any rights or remedies or take any enforcement action otherwise available to [Landlord/Operator] upon such default with respect to the Collateral until (i) all of the obligations and indebtedness of [Lessee/Client] to the Lenders under the Credit Agreement has been paid in full, and (ii) all obligations of Lenders to make any revolving credit loans or other extensions of credit to [Lessee/Client] under the Credit Agreement have been terminated.

4. COLLATERAL NOT FIXTURES. The Collateral may be installed in or located on the Premises and is not and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, and the intentions of the party making the annexation.

5. ENTRY UPON PREMISES. Notwithstanding anything contained in the [Lease/Hosting Agreement] to the contrary or apparently to the contrary, in the event Agent, for and on behalf of the Lenders, forecloses the Security Documents, or exercises any other right granted to it in connection with the Security Documents, the Credit Agreement, or other Loan Documents, the Agent or its representatives may enter upon the Premises upon three (3) days' prior written notice to [Landlord/Operator] (provided that no prior notice will be required if all or any material part of the Collateral is subject to imminent harm or loss) for the purposes of inspecting, preserving, maintaining, taking possession of, removing or disposing of the Collateral or taking possession of the Premises in the exercise of its rights and remedies under the Security Documents, the other Loan Documents, and may utilize the Premises for the purposes expressed in the [Lease/Hosting Agreement]. In addition, the Agent or its representatives may advertise and conduct a public or private auction on the Premises. Any Collateral which is removed from the Premises by Agent in accordance with the Security Documents shall be removed within a reasonable time after the exercise of rights in the Collateral by Agent under the Security Documents, and will in any event be removed within thirty (30) days after the termination of the [Lease/Hosting Agreement].

Provided that the use of the Premises is not in violation of the Permitted Use set forth in the [Lease/Hosting Agreement], [Landlord/Operator] consents to temporary occupancy of the Premises for a period of up to thirty (30) days by Agent or its designee or a purchaser of all or a substantial portion of the Collateral at or following a foreclosure, provided the obligations of [Lessee/Client] under the [Lease/Hosting Agreement] are timely paid and performed. [Landlord/Operator] agrees that following a foreclosure of the Collateral by Agent, [Lessee's/Client's] failure to occupy the Premises shall not, of itself, be a default under the [Lease/Hosting Agreement] during any time that Agent or its designee (including any purchaser of all or a substantial portion of the Collateral at or following a foreclosure) is in possession of the Premises. Further, if Agent or its designee (including any purchaser of all or a substantial portion of the Collateral at or following a foreclosure) shall succeed to the interest of [Lessee/Client] under the [Lease/Hosting Agreement], [Landlord/Operator] shall, at the option of the successor, recognize such successor as the assignee of the [Lease/Hosting Agreement], provided (i) such successor assumes in writing the obligations of [Lessee/Client] under the [Lease/Hosting Agreement], to the extent such obligations first accrue from and after the date such successor succeeds to the interest of [Lessee/Client] under the [Lease/Hosting Agreement]; (ii) the creditworthiness of the successor is reasonably comparable to or better than the creditworthiness of [Lessee/Client] on the date hereof; and (iii) the number of persons regularly occupying the Premises would not be materially greater than the number of persons the Premises are designed to accommodate.

6. RIGHTS UPON DEFAULT. [Landlord/Operator] agrees to give Agent notice:

(a) of any default under the terms of the [Lease/Hosting Agreement], concurrently with giving notice of such default to [Lessee/Client];

(b) of any legal action which the [Landlord/Operator] may commence to evict the [Lessee/Client] from the Premises or to terminate or limit the [Lessee's/Client's] right to use, possess, or lease the Premises, promptly upon the commencement of any such action; or

(c) of any cancellation of the [Lease/Hosting Agreement], at least thirty (30) days before such cancellation, stating the grounds for cancellation or

termination.

After receipt of any notice described in this SECTION 6, the Agent shall have the right to remedy any default of the [Lessee/Client] under the [Lease/Hosting Agreement], or to cause any default of the [Lessee/Client] under the [Lease/Hosting Agreement] to be remedied, and for such purpose the [Landlord/Operator] hereby grants Agent forty-five (45) days for remedying, or causing to be remedied, any such default which is a non-monetary default, or such longer period of time as may be needed to complete such remedying (provided that the Agent has commenced to remedy such default within such forty-five (45) days and continues diligent prosecution of such remedying), and twenty (20) days for remedying, or causing to be remedied, any such default which is a monetary default. The [Landlord/Operator] shall not exercise any remedies under the [Lease/Hosting Agreement] or terminate the [Lease/Hosting Agreement] on account of a default by the [Lessee/Client], until the applicable grace period described in the foregoing sentence has expired. Any payment made or act done by Agent to cure any such default shall not constitute any assumption of the [Lease/Hosting Agreement] or any obligations of [Lessee/Client].

(d) All notices hereunder shall be by certified or registered mail, return receipt requested, and shall be effective three (3) days after the same is deposited in the United States mail and shall be addressed to the Agent as follows: GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.; 600 E. Las Colinas Blvd., Suite 400; Irving, Texas 75039; Attention: Kyle Volluz.

7. STATUS OF [LEASE/HOSTING AGREEMENT]. [Landlord/Operator] hereby represents that (i) the granting of the Security Interest by [Lessee/Client] will not constitute an event of default under the [Lease/Hosting Agreement]; (ii) there are no events or conditions existing which, with or without notice or through the lapse of time could constitute a monetary or other default of [Lessee/Client] under the [Lease/Hosting Agreement]; (iii) the [Lease/Hosting Agreement] is valid and in full force and effect and has not been modified, supplemented, or amended; and (iv) all rents due and payable as of the date hereof under the [Lease/Hosting Agreement] have been paid in full.

8. INDEMNIFICATION. As a condition to exercising any remedies referenced in this Consent and Waiver, Agent and Lenders shall indemnify and hold harmless [Landlord/Operator] and its mortgagees from any and all claims, demands, liabilities, or expenses which may accrue or arise out of any wrongful or negligent act by them in exercising any rights or remedies under the Security Documents, the Credit Agreement, or the Loan Documents, any wrongful or negligent act by the Agent or Lenders in exercising any action authorized herein, or any damage to or use of the Premises by Agent or Lenders. No provision, qualification, or limitation of this Consent and Waiver shall be deemed to limit any right of indemnification otherwise available to the [Landlord/Operator] or its lender.

9. COUNTERPARTS. This Consent and Waiver may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Consent and Waiver to physically form one document, which may be recorded.

10. GOVERNING LAW. THIS CONSENT AND WAIVER AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) THEREOF.

11. SUCCESSORS AND ASSIGNS. This Consent and Waiver inures to the benefit of the Agent, on behalf of the Lenders, and binds the [Landlord/Operator], and its respective successors, transferees, endorsees, and assigns. [Landlord/Operator] agrees to give Agent notice of any change in ownership of the Premises and the name and address of each new owner [and lessor] of the Premises, at least fifteen (15) days before any such change in ownership.

12. ESTOPPEL CERTIFICATES. [Landlord/Operator] agrees that within ten (10) days after written request by [Lessee/Client], [Landlord/Operator] will provide an estoppel certificate setting forth (a) the name of the [Lessee/Client] under the [Lease/Hosting Agreement], (b) that the [Lease/Hosting Agreement] has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (c) the basic rent payable under the [Lease/Hosting Agreement], (d) the date to which all rental charges have been paid by the [Lessee/Client] under the [Lease/Hosting Agreement], and (e) whether to the best of [Landlord's/Operator's] current actual knowledge

there are any alleged defaults of the [Lessee/Client] under the [Lease/Hosting Agreement] and, if there are, setting forth the nature thereof in reasonable detail.

13. WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS CONSENT AND WAIVER.

14. [Landlord's/Operator's] current address for notices and payments under the [Lease/Hosting Agreement] is as follows:

[_____]
[_____]
[_____]

[Landlord/Operator] understands that the Agent and the Lenders will rely on this Consent and Waiver in making or continuing loans under the Credit Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, [Landlord/Operator] has executed this Consent and Waiver as of the date first stated above.

[LANDLORD/OPERATOR]:

[_____],
a [_____]

By:_____
Name:
Title:

[LESSEE/CLIENT]:

TALEO CORPORATION,
a Delaware corporation

By:_____
Name:
Title:

STATE OF [_____] Section
Section
COUNTY OF [_____] Section

Before me, a Notary Public, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of [Landlord/Operator], a [_____], and that s/he has executed the same on behalf of said limited partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2005.

_____
Notary Public in and for the State of [_____]

(PERSONALIZED SEAL)

STATE OF [_____] Section
Section
COUNTY OF [_____] Section

Before me, a Notary Public, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was

the act of Taleo Corporation, a Delaware corporation and that s/he has executed the same on behalf of said corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2005.

_____
Notary Public in and for the State of [_____]

(PERSONALIZED SEAL)

ACKNOWLEDGED AND ACCEPTED:

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Agent

By:_____
Name:
Title:

NOTE: Form of Deposit Account Control Agreement for information purposes only. Documents being individually negotiated with Company's banks.

EXHIBIT J
TO CREDIT AGREEMENT
BY AND AMONG
TALEO CORPORATION AND
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., AS AGENT

DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement (this "AGREEMENT"), is dated as of April __, 2005, by and between TALEO CORPORATION (the "COMPANY"), GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Collateral Agent for the Secured Parties (in such capacity, "AGENT"), and _____, in its capacity as a "bank" as defined in Section 9-102 of the UCC (in such capacity, the "FINANCIAL INSTITUTION"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in that certain Pledge and Security Agreement, dated on or about the date hereof, by and among the Company, the other Grantors party thereto and Agent (as amended, restated, supplemented or otherwise modified from time to time, the "SECURITY AGREEMENT"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

1. ESTABLISHMENT OF DEPOSIT ACCOUNT. The Financial Institution hereby confirms and agrees that:

(a) The Financial Institution has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "DEPOSIT ACCOUNT") and the Financial Institution shall not change the name or account number of the Deposit Account without the prior written consent of Agent; and

(b) The Deposit Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the UCC.

2. CONTROL OF THE DEPOSIT ACCOUNT. If at any time the Financial Institution shall receive any instructions originated by Agent directing the disposition of funds with respect to the Deposit Account, the Financial Institution shall comply with such instructions without further consent by the Company or any other Person. Until such time as Agent notifies Financial Institution otherwise in writing, Financial Institution shall comply with instructions directing the disposition of funds with respect to the Deposit Account originated by Company or its authorized representatives. In the event that any instructions originated by Agent with respect to the Deposit Account conflict with any instructions given by the Company or any other Person with respect thereto, the instructions given by Agent shall control. The Financial Institution hereby acknowledges that it has received notice of the security interest of Agent, on behalf of the Secured Parties, in the Deposit Account and hereby acknowledges and consents to such security interest.

3. SUBORDINATION OF LIEN; WAIVER OF SET-OFF. In the event that the

Financial Institution has or subsequently obtains, by agreement, by operation of law or otherwise, a security interest in the Deposit Account or any funds credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of Agent, on behalf of the Secured Parties. Money and other

items credited to the Deposit Account will not be subject to deduction, set-off, banker's lien or any other right in favor of any Person other than Agent (except that the Financial Institution may set off: (a) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Deposit Account, and (b) the face amount of any checks which have been credited to such Deposit Account but are subsequently returned unpaid because of uncollected or insufficient funds).

4. CHOICE OF LAW. This Agreement and the Deposit Account shall each be governed by the laws of the State of New York. Regardless of any provision in any other agreement, for purposes of the UCC, New York shall be deemed to be the Financial Institution's jurisdiction (within the meaning of Section 9-304 of the UCC) and the Deposit Account shall be governed by the laws of the State of New York.

5. CONFLICT WITH OTHER AGREEMENTS.

(a) In the event of any conflict between the terms of this Agreement (or any instructions hereunder) and the terms of any other agreement (or any instructions thereunder), the terms of this Agreement shall prevail; and

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto; and

(c) The Financial Institution hereby confirms and agrees that:

(i) No agreement (other than this Agreement) has been entered into between the Financial Institution and the Company with respect to the Deposit Account; and

(ii) It has not entered into, and until the termination of this Agreement, will not enter into, any agreement (other than this Agreement) relating the Deposit Account and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by any Person (other than Agent) as contemplated by Section 9-104 of the UCC.

6. ADVERSE CLAIMS. The Financial Institution does not know of any liens, encumbrances or adverse claims relating to the Deposit Account. If any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Deposit Account, the Financial Institution will promptly notify Agent and the Company thereof.

7. MAINTENANCE OF DEPOSIT ACCOUNT. In addition to, and not in lieu of, the obligation of the Financial Institution to honor instructions from Agent as set forth in Section 2 hereof, the Financial Institution agrees to maintain the Deposit Account as follows:

(a) Statements and Confirmations. The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning the Deposit Account simultaneously to each of the Company and Agent at the address for each set forth in Section 11 of this Agreement; and

(b) Tax Reporting. All interest, if any, relating to the Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Company.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE FINANCIAL INSTITUTION. The Financial Institution hereby makes the following representations, warranties and covenants to and with Agent and the Company:

(a) The Deposit Account has been established as set forth in Section 1 and the Deposit Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) The Financial Institution shall not, during the term of this Agreement, amend or otherwise modify either the account agreement, if any, or its policies and procedures with respect to the Deposit Account in derogation of Agent's rights hereunder without Agent's prior written consent; and

(c) This Agreement is the valid and legally binding obligation of the Financial Institution.

9. INDEMNIFICATION OF FINANCIAL INSTITUTION. The Company and Agent hereby agree that (a) the Financial Institution is released from any and all liabilities to the Company and Agent arising from the terms of this Agreement and the compliance by the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's negligence, willful misconduct or the breach of any of its obligations under this Agreement, and (b) the Company, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of other Persons arising out of the terms of this Agreement or the compliance by the Financial Institution with the terms hereof and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement, except to the extent that any of the same arise from the Financial Institution's negligence, willful misconduct or the breach of any of its obligations under this Agreement.

10. SUCCESSORS; ASSIGNMENT. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors who obtain such rights solely by operation of law. Agent may assign its rights hereunder only with the written consent of the Financial Institution and by sending written notice of such assignment to the Company.

11. NOTICES. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given (a) when delivered in person, (b) when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received, or (c) two (2) Business Days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Company: TALEO CORPORATION
575 MARKET STREET, 8TH FLOOR
SAN FRANCISCO, CA 94105
Attention: Mr. Michael Gregoire
Chief Executive Officer and President
Telecopier:_____

Agent: Goldman Sachs Specialty Lending Group, L.P.
600 E. Las Colinas Boulevard, Suite 400
Irving, Texas 75039
Attention:_____
Telecopier:_____

Financial Institution: _____
_____
_____
Attention:_____
Telecopier:_____

Any party may change its address for notices in the manner set forth above.

12. TERMINATION. The Company covenants with Agent that the Company shall not close or otherwise terminate the Deposit Account without Agent's prior written consent. The obligations of the Financial Institution to Agent pursuant to this Agreement shall continue in effect until the security interest of Agent in the Deposit Account has been terminated pursuant to the terms of the Security Agreement and Agent has notified the Financial Institution of such termination in writing. Agent agrees to provide Notice of Termination in substantially the form of EXHIBIT A hereto to the Financial Institution upon the request of the Company on or after the termination of Agent's security interest in the Deposit Account pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Deposit Account or alter the obligations of the Financial Institution to the Company pursuant to any other agreement with respect to the Deposit Account.

13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION

BASED UPON OR ARISING UNDER THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). EACH PARTY HERETO ACKNOWLEDGES THAT (A) THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, (B) IT HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND (C) IT WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF ANY LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. COUNTERPARTS. This Agreement may be executed in multiple counterparts (any of which may be delivered by facsimile signature), each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Company, Agent and the Financial Institution have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

TALEO CORPORATION,
as Company

By:_____
Name:_____
Title:_____

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Agent

By:_____
Name:_____
Title:_____

[NAME OF FINANCIAL INSTITUTION],
as Financial Institution

By:_____
Name:_____
Title:_____

Exhibit A
to Deposit Account Control Agreement

[LETTERHEAD OF AGENT]

[DATE]

[NAME AND ADDRESS OF FINANCIAL INSTITUTION]
_____
_____
Attention:_____

Re: Termination of Deposit Account Control Agreement

You are hereby notified that the Deposit Account Control Agreement, dated as of _____, 2005, by and among TALEO CORPORATION, you and the undersigned (the "CONTROL AGREEMENT") is terminated and you have no further obligations to the undersigned pursuant to the Control Agreement. Notwithstanding any previous instructions given to you by the undersigned, you are hereby instructed to accept all future directions with respect to the Deposit Account (as defined in the Control Agreement) from TALEO CORPORATION. This notice terminates any obligations you may have to the undersigned with respect to the Deposit Account under the Control Agreement; provided, however, that nothing contained in this notice shall alter any obligations which you may

otherwise owe to TALEO CORPORATION pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to TALEO CORPORATION.

Very truly yours,

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Agent

By:_____
Name:_____
Title:_____

EXHIBIT 10.20

PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT (this "SECURITY AGREEMENT") is executed as of April 25, 2005, by TALEO CORPORATION, a Delaware corporation ("PLEDGOR"), whose address is 575 Market Street, 8th Floor; San Francisco, CA 94105, and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Collateral Agent for the Lenders described below ("COLLATERAL AGENT"), whose address is 600 Las Colinas Boulevard, Suite 400, Irving, Texas 75039.

RECITALS:

A. WHEREAS, Pledgor, RECRUITFORCE.COM, INC., as guarantor, the Lenders party thereto from time to time, and Collateral Agent have entered into a Credit and Guaranty Agreement dated as of April 25, 2005 (as amended, modified, supplemented, or restated from time to time, the "CREDIT AGREEMENT").

B. WHEREAS, this Security Agreement is integral to the transactions contemplated by the Credit Documents, and the execution and delivery hereof are conditions precedent to any Lender's obligations to extend credit under the Credit Documents.

C. WHEREAS, the Collateral Agent was appointed as Collateral Agent under the Credit Agreement, for the benefit of Lenders.

ACCORDINGLY, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Collateral Agent hereby agree as follows:

1. REFERENCE TO CREDIT AGREEMENT. The terms, conditions, and provisions of the Credit Agreement are incorporated herein by reference, the same as if set forth herein verbatim, which terms, conditions, and provisions shall continue to be in full force and effect hereunder until the Obligations are paid and performed in full. This Pledge and Security Agreement is one of the "Collateral Documents" referred to in the Credit Agreement.

2. CERTAIN DEFINITIONS. Unless otherwise defined herein, or the context hereof otherwise requires, each term defined in either of the Credit Agreement or in the UCC is used in this Security Agreement with the same meaning; provided that, if the definition given to such term in the Credit Agreement conflicts with the definition given to such term in the UCC, the Credit Agreement definition shall control to the extent legally allowable; and if any definition given to such term in Chapter 9 of the UCC conflicts with the definition given to such term in any other chapter of the UCC, the Chapter 9 definition shall prevail. As used herein, the following terms have the meanings indicated:

"ADDITIONAL PROPRIETARY RIGHTS" has the meaning set forth in SECTION 4 hereof.

"COLLATERAL" has the meaning set forth in SECTION 4 hereof.

"COLLATERAL NOTES" has the meaning set forth in SECTION 4 hereof.

"COLLATERAL NOTE SECURITY" has the meaning set forth in SECTION 4 hereof.

"COLLATERAL OBLIGOR" means any Person obligated with respect to any of the Collateral, whether as an account debtor, obligor on an instrument, issuer of securities, or otherwise.

"CONTROL AGREEMENT" means, with respect to any Collateral consisting of investment property, Deposit Accounts, electronic chattel paper, and letter-of-credit rights, an agreement evidencing that Collateral Agent has "control" (as defined in the UCC) of such Collateral.

"COPYRIGHTS" has the meaning set forth in SECTION 4 hereof.

"DEPOSIT ACCOUNTS" has the meaning set forth in SECTION 4 hereof.

"FOREIGN SUBSIDIARY" means each Subsidiary of Pledgor that is organized or incorporated under the Law of any jurisdiction other than the jurisdiction of the United States or a state thereof, and that is in existence on the Closing date.

"GOVERNMENT AUTHORITY" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), or solely for purposes of SECTION 3, any central bank.

"INTELLECTUAL PROPERTY" has the meaning set forth in SECTION 4 hereof.

"LAW" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Government Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"OBLIGATIONS" means, collectively, (a) the "Obligations" as defined in the Credit Agreement, and (b) all indebtedness, liabilities, and obligations of Pledgor arising under this Security Agreement or any Guaranty assuring payment of the Obligations; it being the intention and contemplation of Pledgor and Collateral Agent that Pledgor may guarantee (or otherwise become directly or contingently obligated with respect to) the obligations of others to Collateral Agent, that from time to time overdrafts of Pledgor's accounts with Collateral Agent may occur, and that Collateral Agent may from time to time acquire from others obligations of Pledgor to such others, and that payment and repayment of all of the foregoing are intended to and shall be part of the Obligations secured hereby. The Obligations shall include, without limitation, future, as well as existing, advances, indebtedness, liabilities, and obligations owed by Pledgor to Collateral Agent arising under the Credit Documents or otherwise.

"PARTNERSHIPS" shall mean (a) those partnerships and limited liability companies, if any, listed on EXHIBIT B-1 attached hereto and incorporated herein by reference, as such partnerships or limited liability companies exist or may hereinafter be restated, amended, or restructured, (b) any partnership, joint

venture, or limited liability company in which Pledgor shall, at any time, become a limited or general partner, venturer, or member, or (c) any partnership, joint venture, or corporation formed as a result of the restructure, reorganization, or amendment of the Partnerships.

"PARTNERSHIP AGREEMENTS" shall mean (a) those agreements, if any, listed on EXHIBIT B-1 attached hereto and incorporated herein by reference (together with any modifications, amendments, or restatements thereof), and (b) partnership agreements, joint venture agreements, or organizational agreements for any of the partnerships, joint ventures, or limited liability companies described in CLAUSE

(b) of the definition of "Partnerships" above (together with any modifications, amendments or restatements thereof), and "PARTNERSHIP AGREEMENT" means any one of the Partnership Agreements.

"PARTNERSHIP INTERESTS" shall mean all of Pledgor's right, title, and interest now or hereafter accruing under the Partnership Agreements with respect to all distributions, allocations, proceeds, fees, preferences, payments, or other benefits, which Pledgor now is or may hereafter become entitled to receive with respect to such interests in the Partnerships and with respect to the repayment of all loans now or hereafter made by Pledgor to the Partnerships.

"PATENTS" has the meaning set forth in SECTION 4 hereof.

"PLEDGED SECURITIES" means, collectively, the Pledged Shares and any other Collateral constituting securities.

"PLEDGED SHARES" has the meaning set forth in SECTION 4 hereof.

"SECURITY INTEREST" means the security interest granted and the pledge made under SECTION 3 hereof.

"TAXES" means, for any Person, taxes, assessments, duties, levies, imposts, deductions, charges, or withholdings, or other governmental charges or levies, imposed upon such Person, its income, or any of its properties, franchises, or assets.

"TRADEMARKS" has the meaning set forth in SECTION 4 hereof.

"UCC" means the Uniform Commercial Code, including each such provision as it may subsequently be renumbered, as enacted in the State of Texas or other applicable jurisdiction, as amended at the time in question.

3. SECURITY INTEREST. In order to secure the full and complete payment and performance of the Obligations when due, Pledgor hereby grants to Collateral Agent a Security Interest in all of Pledgor's rights, titles, and interests in and to the Collateral and pledges the Collateral to Collateral Agent, all upon and subject to the terms and conditions of this Security Agreement. Such Security Interest is granted and pledge is made as security only and shall not subject Collateral Agent to, or transfer or in any way affect or modify, any obligation of Pledgor with respect to any of the Collateral or any transaction involving or giving rise thereto. If the grant or pledge of any specific item of the Collateral is expressly prohibited by any contract, then the Security Interest created hereby nonetheless remains effective to the extent allowed by

the UCC or other applicable Law, but is otherwise limited by that prohibition.

4. COLLATERAL. As used herein, the term "COLLATERAL" means the following items and types of property, wherever located, now owned or in the future existing or acquired by Pledgor, and all proceeds and products thereof, and any substitutes or replacements therefor:

(a) All personal property and fixture property of every kind and nature including, without limitation, all accounts, chattel paper (whether tangible or electronic), goods (including inventory, equipment, and any accessions thereto), software, instruments, investment property, documents, deposit accounts, money, commercial tort claims, letters of credit or letter-of-credit rights, supporting obligations, Tax refunds, and general intangibles (including payment intangibles);

(b) All rights, titles, and interests of Pledgor in and to all outstanding stock, equity, or other investment securities owned directly by Pledgor, including without limitation, all such stock, equity, or other investment securities set forth on EXHIBIT B-1 (the "PLEDGED SHARES");

(c) All rights, titles, and interests of Pledgor in and to all promissory notes and other instruments payable to Pledgor, including, without limitation, all inter-company notes from Subsidiaries and those set forth on EXHIBIT B-1 ("COLLATERAL NOTES") and all rights, titles, interests, and Liens Pledgor may have, be, or become entitled to under all present and future loan agreements, security agreements, pledge agreements, deeds of trust, mortgages, guarantees, or other documents assuring or securing payment of or otherwise evidencing the Collateral Notes, including, without limitation, those set forth on EXHIBIT B-1 ("COLLATERAL NOTE SECURITY");

(d) The Partnership Interests and all rights of Pledgor with respect thereto, including, without limitation, all Partnership Interests, if any, set forth on EXHIBIT B-1 and all of Pledgor's distribution rights, income rights, liquidation interest, accounts, contract rights, general intangibles, notes, instruments, drafts, and documents relating to the Partnership Interests;

(e) (i) All copyrights (whether statutory or common law, registered or unregistered), works protectable by copyright, copyright registrations, copyright licenses, and copyright applications of Pledgor, including, without limitation, all of Pledgor's right, title, and interest in and to all copyrights registered in the United States Copyright Office or anywhere else in the world and also including, without limitation, the copyrights set forth on EXHIBIT B-2; (ii) all renewals, extensions, and modifications thereof; (iii) all income, licenses, royalties, damages, profits, and payments relating to or payable under any of the foregoing; (iv) the right to sue for past, present, or future infringements of any of the foregoing; and (v) all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired by Pledgor ("COPYRIGHTS");

(f) (i) All patents, patent applications, patent licenses, and patentable inventions of Pledgor, including, without limitation,

registrations, recordings, and applications thereof in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, including, without limitation, those set forth on EXHIBIT B-2, and all of the inventions and improvements described and claimed therein; (ii) all continuations, divisions, renewals, extensions, modifications, substitutions, reexaminations, continuations-in-part, or reissues of any of the foregoing; (iii) all income, royalties, profits, damages, awards, and payments relating to or payable under any of the foregoing; (iv) the right to sue for past, present, and future infringements of any of the foregoing; and (v) all other rights and benefits relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired by Pledgor ("PATENTS");

(g) (i) All trademarks, trade dress, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other business identifiers, all registrations, recordings, and applications thereof, including, without limitation, registrations, recordings, and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, including, without limitation, those set forth on EXHIBIT B-2; (ii) all licenses to any of the foregoing; (iii) all reissues, extensions, and renewals of any of the foregoing; (iv) all income, royalties, damages, and payments now or hereafter relating to or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements of any of the foregoing; (v) the right to sue for past, present, and future infringements of any of the foregoing; (vi) all rights

corresponding to any of the foregoing throughout the world; and (vii) all goodwill associated with and symbolized by any of the foregoing, in each case, whether now owned or hereafter acquired by Pledgor ("TRADEMARKS");

(h) (i) All trade secrets, maskwork rights, database rights and other intellectual property rights however described, all registrations, recordings, and applications thereof, including, without limitation, registrations, recordings, and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof; (ii) all licenses to any of the foregoing; (iii) all reissues, extensions, and renewals of any of the foregoing; (iv) all income, royalties, damages, and payments now or hereafter relating to or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements of any of the foregoing; and (v) the right to sue for past, present, and future infringements of any of the foregoing ("ADDITIONAL PROPRIETARY RIGHTS", and collectively with the Copyrights, Patents and the Trademarks, the "INTELLECTUAL PROPERTY");

(i) (a) All of Pledgor's rights, titles, and interests in, to, and under the Material Contracts including, without limitation, all rights of Pledgor to receive moneys due and to become due under or pursuant to the Material Contracts, (b) all rights of Pledgor to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to the Material

Contracts, (c) all claims of Pledgor for damages arising out of or for breach of or default under the Material Contracts, and (d) all rights of Pledgor to compel performance and otherwise exercise all rights and remedies under the Material Contracts;

(j) All present and future automobiles, trucks, truck tractors, trailers, semi-trailers, or other motor vehicles or rolling stock, now owned or hereafter acquired by such Pledgor (collectively, the "VEHICLES");

(k) Any and all material deposit accounts, bank accounts, investment accounts, or securities accounts, now owned or hereafter acquired or opened by Pledgor, including, without limitation, any such accounts set forth on EXHIBIT B-1, and any account which is a replacement or substitute for any of such accounts, together with all monies, instruments, certificates, checks, drafts, wire transfer receipts, and other property deposited therein and all balances therein (the "DEPOSIT ACCOUNTS");

(l) (i) Account represented by account number 1885036799 maintained by Goldman Sachs Trust, acting directly or through its transfer agent Goldman Sachs & Co. (together with successors and assigns, "ISSUER") in the name of Collateral Agent, for the benefit of Pledgor, as a collateral account of Collateral Agent for Pledgor, and all successor and replacement accounts, regardless of the numbers of such accounts or the offices at which such accounts are maintained or by the affiliate of Issuer maintaining such account, and any account held at any clearing broker for any such account (collectively, the "ACCOUNTS") and all rights of Pledgor against the Issuer or any clearing broker in connection with the Accounts, and (ii) all investment property, security entitlements, financial assets, certificated securities, uncertificated securities, money, deposit accounts, instruments, general intangibles and all other investments or property of any sort now or hereafter held or maintained in, or credited to, the Accounts or delivered to Collateral Agent or to Issuer for the benefit of or as a collateral account for Collateral Agent, including without limitation, any beneficial interests in Issuer, mutual fund shares, financial assets, securities or investment property;

(m) All present and future distributions, income, increases, profits, combinations, reclassifications, improvements, and products of, accessions, attachments, and other additions to, tools, parts, and equipment used in connection with, and substitutes and replacements for, all or part of the Collateral described above;

(n) All present and future accounts, contract rights, general intangibles, chattel paper, documents, instruments, cash and noncash proceeds, and other rights arising from or by virtue of, or from the voluntary or involuntary sale or other disposition of, or collections with respect to, or insurance proceeds payable with respect to, or proceeds payable by virtue of warranty or other claims against the manufacturer of, or claims against any other Person with respect to, all or any part of the Collateral heretofore described in this clause or otherwise; and

(o) All present and future security for the payment to Pledgor of any of the Collateral described above and goods which gave or will give

rise to any such Collateral or are evidenced, identified, or represented therein or thereby.

Notwithstanding anything to the contrary contained in this Security Agreement or the Credit Agreement, the term "Collateral" shall not include, and Collateral Agent shall have no rights with respect to, (i) more than 66% of the outstanding equity of any Foreign Subsidiary directly held by Pledgor, and any shares held by Collateral Agent in excess of 66% shall be held in trust for the benefit of Pledgor, (ii) any outstanding equity of any Foreign Subsidiary owned by another Foreign Subsidiary, (iii) any tangible asset financed as a Capital Lease or by purchase money Indebtedness (including, in each case, any Indebtedness acquired in connection with a Permitted Acquisition) to the extent the terms of such financing prohibit the grant of a security interest hereunder provided, any such Indebtedness is secured only to such asset acquired, and provided further, such Indebtedness is permitted under the Credit Agreement, and Collateral Agent agrees to execute and deliver to Pledgor all documents needed to effect the foregoing and (iv) Deposit Account Numbers 53650036-0365 and 323-187218 held at JPMorgan Chase Bank, N.A., except with respect to any proceeds of other Collateral which may be deposited in such deposit accounts.

The description of the Collateral contained in this SECTION 4 shall not be deemed to permit any action prohibited by this Security Agreement or by the terms incorporated in this Security Agreement. Furthermore, notwithstanding any contrary provision, Pledgor agrees that, if, but for the application of this paragraph, granting a Security Interest in the Collateral would constitute a fraudulent conveyance under 11 U.S.C. Section 548 or a fraudulent conveyance or transfer under any state fraudulent conveyance, fraudulent transfer, or similar Laws in effect from time to time (each a "FRAUDULENT CONVEYANCE"), then the Security Interest remains enforceable to the maximum extent possible without causing such Security Interest to be a fraudulent conveyance, and this Security Agreement is automatically amended to carry out the intent of this paragraph.

5. REPRESENTATIONS AND WARRANTIES. Pledgor represents and warrants to Collateral Agent that:

(a) Credit Agreement. Certain representations and warranties in the Credit Agreement are applicable to it or its assets or operations, and each such representation and warranty is true and correct as of the date made.

(b) Binding Obligations/ Perfection. This Security Agreement creates a legal, valid, and binding Lien in and to the Collateral in favor of Collateral Agent and enforceable against Pledgor. Subject to the following sentence, once UCC-1 financing statements have been properly filed in the jurisdictions described on EXHIBIT A hereto, the Security Interest in the Collateral

described in such financing statements will be fully perfected to the extent a security interest in such Collateral may be perfected by the filing of a UCC-1 financing statement and the Security Interest will constitute a first-priority Lien on such Collateral, subject only to Permitted Liens. With respect to Collateral consisting of investment property (other than Pledged Securities covered by SECTION 5(j)), Deposit Accounts, electronic chattel paper, letter-of-credit rights, and

instruments, upon the delivery of such Collateral to Collateral Agent or delivery of an executed Control Agreement with respect to such Collateral, the Security Interest in that Collateral will be fully perfected to the extent a security interest in such Collateral may be perfected by such delivery or such Control Agreement, as applicable, and the Security Interest will constitute a first-priority Lien on such Collateral, subject only to Permitted Liens. None of the Collateral currently is in the possession of any other Person, nor does any other Person have control over any of the Collateral. Without limiting the foregoing, Collateral Agent has a perfected, first-priority security interest and lien in the Copyrights and all other Intellectual Property. Other than the Financing Statements and Control Agreements with respect to this Security Agreement, there are no other financing statements or control agreements covering any Collateral, other than those evidencing Permitted Liens. The creation of the Security Interest does not require the consent of any Person that has not been obtained.

(c) Pledgor Information. Pledgor's exact legal name, mailing address, jurisdiction of organization, type of entity, and state issued organizational identification number are as set forth on EXHIBIT A hereto, except as subsequently set forth in any notice delivered to Collateral Agent pursuant to SECTION 6(e) of this Security Agreement.

(d) Location/ Fixtures. (i) Pledgor's place of business and chief executive office is where Pledgor is entitled to receive notices hereunder; the present and foreseeable location of Pledgor's books and records concerning any of the Collateral that is accounts is as set forth on EXHIBIT A hereto, and the location of all other Collateral, including, without limitation, Pledgor's inventory and equipment is as set forth on EXHIBIT A hereto; and, except as noted on EXHIBIT A hereto, all such books, records, and Collateral are in Pledgor's possession, and (ii) none of the Collateral is or shall become fixtures.

(e) Governmental Authority. No Authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority is required either (i) for the pledge by Pledgor of the Collateral pursuant to this Security Agreement or for the execution, delivery, or performance of this Security Agreement by Pledgor, or (ii) for the exercise by Collateral Agent of the voting or other rights provided for in this Security Agreement or the remedies in respect of the Collateral pursuant to this Security Agreement (except as may be required in connection with the disposition of the Pledged Securities by Law affecting the offering and sale of securities generally).

(f) Maintenance of Collateral. All tangible Collateral which is useful in and necessary to Pledgor's business is in good repair and condition, ordinary wear and tear excepted, and none thereof is a fixture.

(g) Liens. Pledgor owns all presently existing Collateral, and will acquire all hereafter-acquired Collateral, free and clear of all Liens, except Permitted Liens.

(h) Collateral. EXHIBIT B-1 accurately lists all Collateral Notes, Collateral Note Security, Pledged Shares, Partnership Interests, commercial tort claims, Material Contracts, and Deposit Accounts in which Pledgor has any rights, titles, or interest (but such failure of such description to be accurate or complete shall not impair the Security Interest in such Collateral).

(i) Instruments, Chattel Paper, Collateral Notes, and Collateral Note Security. All instruments and chattel paper, including, without limitation, the Collateral Notes, have been delivered to Collateral Agent, together with corresponding endorsements duly executed by Pledgor in favor of Collateral Agent, and such endorsements have been duly and validly executed and are binding and enforceable against Pledgor in accordance with their terms. Each Collateral Note and the documents evidencing the Collateral Note Security are in full force and effect; there have been no renewals or extensions of, or amendments, modifications, or supplements to, any thereof about which the Collateral Agent has not been advised in writing; and no "default" has occurred and is continuing under any such Collateral Note or documents evidencing the Collateral Note Security, except as disclosed on EXHIBIT C hereto. Pledgor has good title to the Collateral Notes and Collateral Note Security, and such Collateral Notes and Collateral Note Security are free from any claim for credit, deduction, or allowance of a Collateral Obligor and free from any defense, condition, dispute, setoff, or counterclaim, and there is no extension or indulgence with respect thereto. Pledgor's claims under the Collateral Note of any Guarantor are subordinated to the obligations of such Guarantor under the Guaranty of such Guarantor, as provided in Section 8(m).

(j) Pledged Securities; Pledged Shares. All Collateral that is Pledged Shares is duly authorized, validly issued, fully paid, and non-assessable, and the transfer thereof is not subject to any restrictions, other than restrictions imposed by applicable securities and corporate Law. Pledgor has good title to the Pledged Securities, free and clear of all Liens and encumbrances thereon (except for the Security Interest created hereby), and has delivered to Collateral Agent (i) all stock certificates, or other instruments or documents representing or evidencing the Pledged Securities, together with corresponding assignment or transfer powers duly executed in blank by Pledgor, and such powers have been duly and validly executed and are binding and enforceable against Pledgor in accordance with their terms or (ii) to the extent such Pledged Securities are uncertificated, an executed Control Agreement with respect to such Pledged Securities. The pledge of the Pledged Securities in accordance with the terms hereof creates a valid first priority security interest in the Pledged Securities securing payment of the Obligations.

(k) Accounts. All Collateral that is accounts, contract rights, chattel paper, instruments, payment intangibles, or general intangibles is free from any claim for credit, deduction, or allowance of a Collateral Obligor and free from any defense, condition, dispute, setoff, or counterclaim, and there is no extension or indulgence with respect thereto, except for such defenses, conditions, disputes, setoffs or counterclaims that arise in the ordinary course of Pledgor's software business, and do not, in the aggregate, create a Material Adverse Effect.

(l) Material Contracts. All Material Contracts to which Pledgor is a party are set forth on SCHEDULE 4.16 to the Credit Agreement. Each Material Contract is in full force and effect; there have been no amendments, modifications, or supplements to any Material Contract of which Collateral Agent has not been advised in writing; and no default or

breach which could reasonably be expected to result in a Material Adverse Effect has occurred and is continuing under any Material Contract, except as disclosed on EXHIBIT C hereto.

(m) Deposit Accounts. With respect to the Deposit Accounts, (i) Pledgor maintains each Deposit Account with the banks listed on EXHIBIT B-1 hereto, (ii) Pledgor shall cause each such bank to acknowledge to Collateral Agent that Collateral Agent shall have "control" (as defined in the UCC) over such Deposit Account, and (iii) Pledgor has the legal right to pledge to Collateral Agent the funds deposited and to be deposited in each such Deposit Account.

(n) Intellectual Property.

(i) All of the Intellectual Property is valid and enforceable. All issued Patents, Patent applications, registered Trademarks, Trademark applications, registered Copyrights, and Copyright applications of Pledgor are identified on EXHIBIT B-2 hereto, and all of the information contained on EXHIBIT B-2 is true, correct, and complete.

(ii) Pledgor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to the Intellectual Property free and clear of any Liens, including, without limitation, any pledges, assignments, licenses, user agreements, and covenants not to sue, other than Permitted Liens or licenses permitted by SECTION 8(c).

(iii) To Pledgor's knowledge, no third party is infringing, or in Pledgor's reasonable business judgment, may be infringing, any of Pledgor's rights under the Intellectual Property.

(iv) Pledgor has performed and will continue to perform all acts and has paid and will continue to pay all required fees and Taxes to maintain each and every item of the Intellectual Property in full force and effect throughout the world, as applicable unless in Pledgor's reasonable business judgment it is in the best interest of Pledgor not to maintain certain Intellectual Property that is no longer used or useful in Pledgor's business.

(v) Each of the Patents and Trademarks identified on EXHIBIT B-2 hereto has been properly registered with the United States Patent and Trademark Office and in corresponding offices throughout the world (where appropriate) and each of the Copyrights identified on EXHIBIT B-2 hereto has been properly registered with the United States Copyright Office and in corresponding offices throughout the world (where appropriate).

(vi) To Pledgor's knowledge, no claims with respect to the Intellectual Property have been asserted and are pending (i) to the effect that the sale, licensing, pledge, or use of any of the products or services of Pledgor's business infringes any other party's valid patent, copyright, trademark, service mark, trade secret, or other intellectual property right, (ii) against the use

by Pledgor of any Intellectual Property used in the Pledgor's business as currently conducted, or (iii) challenging the ownership or use by Pledgor of any of the Intellectual Property that Pledgor purports to own or use, nor, to Pledgor's knowledge, is there a valid basis for such a claim described in this SECTION 5(o)(vi) except as disclosed to Collateral Agent by Pledgor pursuant to SECTION 4.11 of the Credit Agreement and except such other claims that may be asserted after the Closing Date and that do not adversely affect Pledgor's right and ability to conduct its business or otherwise would reasonably be expected to result in a Material Adverse Effect.

(vii) Except as identified on EXHIBIT B-2 hereto, Pledgor has filed no copyright applications in the United States Copyright Office or in any other jurisdiction.

(viii) EXHIBIT B-3 hereto contains a list of all licenses to third party intellectual property rights, including, without limitation, all third party software, necessary for the conduct of the Pledgor's business.

(ix) The source code for all software used or useful in Pledgor's business contains sufficient in-line and other documentation so as to enable a programmer reasonably skilled in the programming language in which such application is written to maintain and enhance the application without undue effort.

The foregoing representations and warranties will be true and correct in all respects with respect to: 1) any additional Collateral or additional specific descriptions of certain Collateral delivered to Collateral Agent in the future by Pledgor; and 2) for purposes of SECTION 5(n) only, the Intellectual Property ("Subsidiary Intellectual Property") of each of Pledgor's Subsidiaries, and for purposes of the definition of "Subsidiary Intellectual Property" the term "Intellectual Property", and all defined terms used within such definition, shall include intellectual property, rights, and assets of or owned by any such Subsidiary. The failure of any of these representations or warranties or any description of Collateral therein to be accurate or complete shall not impair the Security Interest in any such Collateral.

6. COVENANTS. So long as Collateral Agent is committed to extend credit to Pledgor under the Credit Agreement and thereafter until the Obligations (other than inchoate indemnity obligations) are paid and performed in full, Pledgor covenants and agrees with Collateral Agent that Pledgor will:

(a) Credit Agreement. (i) Comply with, perform, and be bound by all covenants and agreements in the Credit Agreement that are applicable to it, its assets, or its operations, each of which is hereby ratified and confirmed (INCLUDING, WITHOUT LIMITATION, THE INDEMNIFICATION AND RELATED PROVISIONS IN SECTION 10.3 OF THE CREDIT AGREEMENT); AND (ii) CONSENT TO AND APPROVE THE VENUE, SERVICE OF PROCESS, AND WAIVER OF JURY TRIAL PROVISIONS OF SECTION 10.16 OF THE CREDIT AGREEMENT.

(b) Information/Record of Collateral. Maintain, at the place where Pledgor is entitled to receive notices under the Credit Documents, a

current record of where all Collateral is located, permit representatives of Collateral Agent at any time (but not more than three (3) times during a twelve (12) month period, prior to the occurrence of an Event of Default) during normal business hours to inspect and make abstracts from such records, and furnish to Collateral Agent, at such intervals as Collateral Agent may request, such documents, lists, descriptions, certificates, and other information as may be necessary or proper to keep Collateral Agent informed with respect to the identity, location, status, condition, and value of the Collateral. In addition, from time to time at the request of Collateral Agent deliver to Collateral Agent such information regarding Pledgor as Collateral Agent may reasonably request.

(c) Exhibits. Promptly provide notice to Collateral Agent if any information therein shall become inaccurate or incomplete. Notwithstanding any other provision herein, Pledgor's failure to describe any Collateral required to be listed on any annex hereto shall not impair Collateral Agent's Security Interest in the Collateral.

(d) Perform Obligations. Fully perform all of Pledgor's duties under and in connection with each transaction to which the Collateral, or any part thereof, relates. Furthermore, notwithstanding anything to the contrary contained herein, (i) Pledgor shall remain liable under the contracts, agreements, documents, and instruments included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (ii) the exercise by Collateral Agent of any of its rights or remedies hereunder shall not release Pledgor from any of its duties or obligations under the contracts, agreements, documents, and instruments included in the

Collateral, and (iii) Collateral Agent shall not have any indebtedness, liability, or obligation under any of the contracts, agreements, documents, and instruments included in the Collateral by reason of this Security Agreement, and Collateral Agent shall not be obligated to perform any of the obligations or duties of Pledgor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(e) Notices. (i) Except as may be otherwise expressly permitted under the terms of the Credit Agreement, promptly notify Collateral Agent of (A) any material change (which shall include, without limitation, any change that adversely affects the validity, perfection or priority of Collateral Agent's security interests) in any fact or circumstances represented or warranted by Pledgor with respect to any of the Collateral or Obligations, (B) any claim, action, or proceeding affecting title to all or any of the Collateral or the Security Interest and, at the request of Collateral Agent, appear in and defend, at Pledgor's expense, any such action or proceeding, (C) any material change in the nature of the Collateral, (D) any material damage to or loss of Collateral, and (E) the occurrence of any other event or condition (including, without limitation, matters as to Lien priority) that could have a material adverse effect on the Collateral (taken as a whole) or the Security Interest created hereunder; and (ii) give Collateral Agent thirty (30) days written notice before any proposed (A) relocation of its principal place of business or chief executive office, (B) change of its name, identity, or corporate

structure, (C) relocation of the place where its books and records concerning its accounts are kept, (D) relocation of any Collateral (other than delivery of inventory in the ordinary course of business to third party contractors for processing and sales of inventory in the ordinary course of business or transactions otherwise permitted by the Credit Agreement) to a location not described on the attached EXHIBIT A, as supplemented by any notices of relocation provided in accordance with this Section, and (E) change of its jurisdiction of organization or organizational identification number, as applicable. Prior to making any of the changes contemplated in clause (ii) preceding, Pledgor shall execute and deliver all such additional documents and perform all additional acts as Collateral Agent, in its sole discretion, may request in order to continue or maintain the existence and priority of the Security Interests in all of the Collateral.

(f) Collateral in Trust. Hold in trust (and not commingle with other assets of Pledgor) for Collateral Agent all Collateral that is chattel paper, instruments, Collateral Notes, Pledged Securities, or documents at any time received by Pledgor, and promptly deliver same to Collateral Agent, unless Collateral Agent at its option (which may be evidenced only by a writing signed by Collateral Agent stating that Collateral Agent elects to permit Pledgor to so retain) permits Pledgor to retain the same, but any chattel paper, instruments, Collateral Notes, Pledged Securities, or documents so retained shall be marked to state that they are pledged to Collateral Agent; each such instrument shall be endorsed to the order of Collateral Agent (but the failure of same to be so marked or endorsed shall not impair the Security Interest thereon).

(g) Control. Execute all documents and take any action reasonably required by Collateral Agent in order for Collateral Agent to obtain "control" (as defined in the UCC) with respect to Collateral consisting of Deposit Accounts, investment property, uncertificated Pledged Securities, and letter-of-credit rights. If Pledgor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in the federal Electronic Signatures in Global and National Commerce Act, or in the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, promptly notify Collateral Agent thereof and, at the request of Collateral Agent, take such action as Collateral Agent may reasonably request to vest in Collateral Agent control under the UCC of such electronic chattel paper or control under the federal Electronic Signatures in Global and National Commerce Act or, as the

case may be, the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

(h) Further Assurances. At Pledgor's expense and Collateral Agent's request, before or after a Default or Event of Default, (i) file or cause to be filed such applications and take such other actions as Collateral Agent may request to obtain the consent or approval of any Governmental Authority to Collateral Agent's rights hereunder, including, without limitation, the right to sell all the Collateral upon a Default or Event of Default without additional consent or approval from such Governmental Authority (and, because Pledgor agrees that Collateral Agent's remedies at

law for failure of Pledgor to comply with this provision would be inadequate and that such failure would not be adequately compensable in damages, Pledgor agrees that its covenants in this provision may be specifically enforced); (ii) from time to time promptly execute and deliver to Collateral Agent all such other certificates, supplemental documents, and financing statements, and do all other acts or things as Collateral Agent may reasonably request in order to more fully create, evidence, perfect, continue, and preserve the priority of the Security Interest and to carry out the provisions of this Security Agreement; without limiting the foregoing, such additional documents and actions may include those required more fully to evidence, record, and perfect Collateral Agent's pledge and security interests in the stock of Foreign Subsidiaries; and (iii) pay all filing fees in connection with any financing, continuation, or termination statement or other instrument with respect to the Security Interests.

(i) Encumbrances. Not create, permit, or suffer to exist, and shall defend the Collateral against, any Lien or other encumbrance on the Collateral, and shall defend Pledgor's rights in the Collateral and Collateral Agent's Security Interest in, the Collateral against the claims and demands of all Persons except those holding or claiming Permitted Liens. Unless otherwise specifically permitted under this Security Agreement or the Credit Agreement, Pledgor shall do nothing to impair the rights of Collateral Agent in the Collateral.

(j) Estoppel and Other Agreements and Matters. Upon the reasonable request of Collateral Agent, either (i) use commercially reasonable efforts to cause the landlord or lessor for each location where any of its inventory or equipment is maintained to execute and deliver to Collateral Agent an estoppel and subordination agreement in such form as may be reasonably acceptable to Collateral Agent and its counsel, or (ii) deliver to Collateral Agent a legal opinion or other evidence (in each case that is reasonably satisfactory to Collateral Agent and it counsel) that neither the applicable lease nor the Law of the jurisdiction in which that location is situated provide for contractual, common law, or statutory landlord's Liens that is senior to or pari passu with the Security Interest.

(k) Fixtures. Not permit any Collateral to be or become a fixture.

(l) Certificates of Title. Upon the request of Collateral Agent, if certificates of title are issued or outstanding with respect to any of the Vehicles or other Collateral, cause the Security Interest to be properly noted thereon.

(m) Warehouse Receipts Non-Negotiable. If any warehouse receipt or receipt in the nature of a warehouse receipt is issued in respect of any of the Collateral, agree that such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the UCC) unless such warehouse receipt or receipt in the nature thereof is delivered to Collateral Agent.

(n) Impairment of Collateral. Not use any of the Collateral, or permit the same to be used, for any unlawful purpose, in any manner that

is reasonably likely to adversely impair the value or usefulness of the Collateral, or in any manner inconsistent with the provisions or requirements of any policy of insurance thereon.

(o) Collateral Notes and Collateral Note Security. Without the prior written consent of Collateral Agent not (i) modify or substitute, or permit the modification or substitution of, any Collateral Note or any document evidencing the Collateral Note Security or (ii) release any Collateral Note Security unless specifically required by the terms thereof.

(p) Securities. Except as permitted by the Credit Agreement, not sell, exchange, or otherwise dispose of, or grant any option, warrant, or other right with respect to, any of the Pledged Securities; to the extent any issuer of any Pledged Securities is controlled by Pledgor and/or its Affiliates, not permit such issuer to issue any additional shares of stock or other securities in addition to or in substitution for the Pledged Securities, except issuances to Pledgor on terms acceptable to Collateral Agent; pledge hereunder, immediately upon Pledgor's acquisition (directly or indirectly) thereof, any and all additional shares of stock or other securities of each Subsidiary of Pledgor; and take any action necessary, required, or requested by Collateral Agent to allow Collateral Agent to fully enforce its Security Interest in the Pledged Securities, including, without limitation, the filing of any claims with any court, liquidator, trustee, custodian, receiver, or other like person or party.

(q) Partnerships and Partnership Interests. (i) Promptly perform, observe, and otherwise comply with each and every covenant, agreement, requirement, and condition set forth in the contracts and agreements creating or relating to any Partnership; (ii) do or cause to be done all things necessary or appropriate to keep the Partnerships in full force and effect and the rights of Pledgor and Collateral Agent thereunder unimpaired; (iii) except as expressly permitted by the Credit Agreement, not consent to any Partnership selling, leasing, or disposing of substantially all of its assets in a single transaction or a series of transactions; (iv) notify Collateral Agent of the occurrence of any default or breach or default or breach under any contract or agreement creating or relating to the Partnerships; (v) not consent to the amendment, modification, surrender, impairment, forfeiture, cancellation, dissolution, or termination of any Partnership, or material contract relating thereto; (vi) except as permitted by the Credit Agreement, not transfer, sell, or assign any of the Partnership Interests or any part thereof; (vii) to the extent any Partnership is controlled by Pledgor and/or its Affiliates, cause such Partnership to refrain from granting any Partnership Interests in addition to or in substitution for the Partnership Interests granted by the Partnerships, except to Pledgor; (viii) pledge hereunder, immediately upon Pledgor's acquisition (directly or indirectly) thereof, any and all additional Partnership Interests of any Partnership granted to Pledgor; and any and all additional shares of stock or other securities of each; (ix) deliver to Collateral Agent a fully-executed Acknowledgment of Pledge, substantially in the form of EXHIBIT D, for each Partnership Interest; and (x) take any action necessary, required, or requested by Collateral Agent to allow Collateral Agent to fully enforce its Security Interest in the Partnership Interests, including, without limitation, the filing of any claims with any court, liquidator, trustee, custodian, receiver, or other like person or party.

(r) Material Contracts. (i) Promptly perform, observe, and otherwise comply with each and every covenant, agreement, requirement, and condition

set forth in the Material Contracts; (ii) do or cause to be done all things necessary or appropriate to keep the Material Contracts in full force and effect and the rights of Pledgor and Collateral Agent thereunder unimpaired; (iii) notify Collateral Agent of the occurrence of any default or breach or default or breach under any Material Contract; and (iv) without the prior written consent of Collateral

Agent, not consent to the amendment, modification, surrender, impairment, forfeiture, cancellation, dissolution, or termination of any Material Contract, which could adversely affect the rights or interests of Pledgor or Collateral Agent.

(s) Depository Bank. With respect to any Deposit Accounts, (i) maintain the Deposit Accounts at the banks (a "DEPOSITORY BANK") described on EXHIBIT B-1 or such additional depository banks as have complied with ITEM (iv) hereof; (ii) obtain a control agreement with each depository bank granting Collateral Agent "control" (as defined in the UCC) over such Deposit Account; (iii) deliver to Collateral Agent all certificates or instruments, if any, now or hereafter representing or evidencing the Deposit Accounts, accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to Collateral Agent; and (iv) notify Collateral Agent prior to establishing any additional Deposit Accounts and, at the request of Collateral Agent, obtain from such depository bank an executed letter substantially in the form of Exhibit J to the Credit Agreement and deliver the same to Collateral Agent.

(t) Marking of Chattel Paper. At the request of Collateral Agent, not create any chattel paper without placing a legend on the chattel paper acceptable to Collateral Agent indicating that Collateral Agent has a security interest in the chattel paper.

(u) Modification of Accounts. In accordance with prudent business practices, endeavor to collect or cause to be collected from each account Pledgor under its accounts, as and when due, any and all amounts owing under such accounts. Except in the ordinary course of business consistent with prudent business practices and industry standards, without the prior written consent of Collateral Agent, Pledgor shall not (i) grant any extension of time for any payment with respect to any of the accounts, (ii) compromise, compound, or settle any of the accounts for less than the full amount thereof, (iii) release, in whole or in part, any Person liable for payment of any of the accounts, (iv) allow any credit or discount for payment with respect to any account other than trade discounts granted in the ordinary course of business, or (v) release any Lien or guaranty securing any account.

(v) Intellectual Property.

(i) Except to the extent not required in Pledgor's reasonable business judgment, prosecute diligently all applications in respect of Intellectual Property, now or hereafter pending;

(ii) Except to the extent not required in Pledgor's reasonable business judgment, make federal applications on all of its

unpatented but patentable inventions and all of its registrable but unregistered Copyrights and Trademarks; provided that Pledgor shall provide Collateral Agent with at least fifteen (15) Business Days written notice prior to filing any such application, including with such notice all information necessary for Collateral Agent to prepare appropriate documents to file along with such application in order to record the Security Interest, and Pledgor shall file, along with such application, all documents required by Collateral Agent to record the Security Interest;

(iii) Preserve and maintain all of its material rights in Intellectual Property and protect the material Intellectual Property (which for this purpose shall include Intellectual Property actually used in Pledgor's business) from infringement, unfair competition, cancellation, or dilution by all appropriate action necessary in Pledgor's reasonable business judgment, including, without limitation, (A) the commencement and

prosecution of legal proceedings to recover damages for infringement and to defend and preserve its rights in the Intellectual Property and (B) requiring each employee, agent, and independent contractor who develops, programs, or creates, or assists the development, programming, or creation of, programs, code, software, Copyrights, inventions, Patents, or other Intellectual Property, to execute and deliver on a timely basis an agreement that assigns to Pledgor, and acknowledges Pledgor's ownership of, all such programs, code, software, Copyrights, inventions, Patents, or other Intellectual Property;

(iv) Not abandon any of the Intellectual Property necessary to the conduct of its business in the exercise of Pledgor's reasonable business judgment;

(v) Except as permitted under the Credit Agreement, (A) without the prior written consent of Collateral Agent, not sell or assign any of its interest in any of the Intellectual Property; (B) not grant any license or sublicense with respect to any of the Intellectual Property other than (x) as permitted by SECTION 8(c) hereof, and (y) non-exclusive licenses to Pledgor's software, granted in the ordinary course of business and consistent with Pledgor's current business practices; and (C) maintain the quality of any and all products and services with respect to which the Intellectual Property is used;

(vi) Give Collateral Agent prompt written notice if Pledgor shall obtain rights to or become entitled to the benefit of any Intellectual Property not identified on EXHIBIT B-2 hereto;

(vii) If a Default or Event of Default exists, use its reasonable efforts to obtain any consents, waivers, or agreements necessary to enable Collateral Agent to exercise its rights and remedies with respect to the Intellectual Property;

(viii) Use its commercially reasonable efforts to negotiate

licenses, both with its third party providers and Pledgor's customers, that enable the assignment of such licenses in the Event of Default to Collateral Agent and any subsequent assignee;

(ix) Ensure that the source code for the Pledgor's software contains sufficient in-line and other documentation so as to enable a programmer reasonably skilled in the programming language in which such application is written to maintain and enhance the application without undue effort;

(x) So long as Collateral Agent is committed to extend credit to Pledgor under the Credit Agreement and thereafter until the Obligations are paid and performed in full, Collateral Agent shall deposit, with an escrow agent reasonably acceptable to Collateral Agent, the source code to the Pledgor's software, including, without limitation, all related documentation and other materials necessary for Collateral Agent to exercise its rights under this Agreement. The original deposit shall occur within ten (10) days of the Closing Date and upon each major release of such application, but no less frequently than once per calendar quarter. Subject to SECTION 7(g), the source code shall be released to Collateral Agent upon Collateral Agent giving written notice to the escrow agent that an Event of Default has occurred;

(xi) At all times maintain in full force and effect, comply with, and cause each of its Subsidiaries to comply with, a valid and effective assignment and transfer agreement between Pledgor and each such subsidiary, pursuant to which such subsidiary has validly transferred and assigned to Pledgor, and shall continue to transfer and assign

to Pledgor, all Copyrights, software, and other Intellectual Property that previously has been developed, owned or acquired, or hereafter shall be developed, owned or acquired, by such subsidiary (including Intellectual Property developed for such subsidiary by its employees, independent contractors, sub-contractors, and agents); and, without limiting the foregoing, at all times maintain in full force and effect an agreement containing substantially similar terms with respect to assignment and ownership of Intellectual Property as those contained in that certain Intercompany License and Acknowledgement Agreement dated as of January 1, 2002, between Taleo (Canada) Inc., a Quebec Corporation and Pledgor; and

(xii) Cause each of its Subsidiaries to comply with each of the foregoing covenants in clauses (i), (ii), (iii), (iv), and (v), as if all references to "Intellectual Property" referred instead to "Subsidiary Intellectual Property" and all references to "Pledgor" instead referred to such Subsidiary.

7. DEFAULT; REMEDIES. If an Event of Default exists, Collateral Agent may, at its election (but subject to the terms and conditions of the Credit Agreement), exercise any and all rights available to a secured party under the UCC, in addition to any and all other rights afforded by the Credit Documents,

at law, in equity, or otherwise, including, without limitation, (a) requiring Pledgor to assemble all or part of the Collateral and make it available to Collateral Agent at a place to be designated by Collateral Agent which is reasonably convenient to Pledgor and Collateral Agent, (b) surrendering any policies of insurance on all or part of the Collateral and receiving and applying the unearned premiums as a credit on the Obligations, (c) applying by appropriate judicial proceedings for appointment of a receiver for all or part of the Collateral (and Pledgor hereby consents to any such appointment), and (d) applying to the Obligations any cash held by Collateral Agent under this Security Agreement, including, without limitation, any cash in the Cash Collateral Account (defined in SECTION 8(h)).

During the existence of an Event of Default:

(a) Notice. Reasonable notification of the time and place of any public sale of the Collateral, or reasonable notification of the time after which any private sale or other intended disposition of the Collateral is to be made, shall be sent to Pledgor and to any other Person entitled to notice under the UCC; provided that, if any of the Collateral threatens to decline speedily in value or is of the type customarily sold on a recognized market, Collateral Agent may sell or otherwise dispose of the Collateral without notification, advertisement, or other notice of any kind. It is agreed that notice sent or given not less than ten (10) Business Days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purposes of this subparagraph.

(b) Condition of Collateral; Warranties. Collateral Agent has no obligation to clean-up or otherwise prepare the Collateral for sale. Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. Collateral Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

(c) Compliance with Other Laws. Collateral Agent may comply with any applicable state or federal Law in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) Sales of Pledged Securities.

(i) Pledgor agrees that, because of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder (collectively, the "SECURITIES ACT"), or any other Law, and for other reasons, there may be legal or practical restrictions or limitations affecting Collateral Agent in any attempts to dispose of certain portions of the Pledged Securities and for the enforcement of its rights. For these reasons, Collateral Agent is hereby authorized by Pledgor, but not obligated, upon the occurrence and during the continuation of an Event of Default, to sell all or any part of the Pledged Securities at private sale, subject to investment letter or in any other manner which will not require the Pledged Securities, or any part thereof, to be registered in

accordance with the Securities Act or any other Law, at a reasonable price at such private sale or other distribution in the manner mentioned above. Pledgor understands that Collateral Agent may in its discretion approach a limited number of potential purchasers and that a sale under such circumstances may yield a lower price for the Pledged Securities, or any part thereof, than would otherwise be obtainable if such Collateral were either afforded to a larger number or potential purchasers, registered under the Securities Act, or sold in the open market. Pledgor agrees that any such private sale made under this SECTION 7(d) shall be deemed to have been made in a commercially reasonable manner, and that Collateral Agent has no obligation to delay the sale of any Pledged Securities to permit the issuer thereof to register it for public sale under any applicable federal or state securities Law.

(ii) Collateral Agent is authorized, in connection with any such sale, (A) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, and (B) to impose such other limitations or conditions in connection with any such sale as Collateral Agent reasonably deems necessary in order to comply with applicable Law. Pledgor covenants and agrees that it will execute and deliver such documents and take such other action as Collateral Agent reasonably deems necessary in order that any such sale may be made in compliance with applicable Law. Upon any such sale Collateral Agent shall have the right to deliver, assign, and transfer to the purchaser thereof the Pledged Securities so sold. Each purchaser at any such sale shall hold the Pledged Securities so sold absolutely free from any claim or right of Pledgor of whatsoever kind, including any equity or right of redemption of Pledgor. Pledgor, to the extent permitted by applicable Law, hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any Law now existing or hereafter enacted.

(iii) Pledgor agrees that ten (10) days' written notice from Collateral Agent to Pledgor of Collateral Agent's intention to make any such public or private sale or sale at a broker's board or on a securities exchange shall constitute reasonable notice under the UCC. Such notice shall (A) in case of a public sale, state the time and place fixed for such sale, (B) in case of sale at a broker's board or on a securities exchange, state the board or exchange at which such a sale is to be made and the day on which the Pledged Securities, or the portion thereof so being sold, will first be offered to sale at such board or exchange, and (C) in the case of a private sale, state the day after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Collateral Agent may fix in the notice of such sale. At any such sale, the Pledged Securities may be sold in one lot as an entirety or in separate parcels, as Collateral Agent may reasonably determine. Collateral

Agent shall not be obligated to make any such sale pursuant to any such notice. Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned.

(iv) In case of any sale of all or any part of the Pledged Securities on credit or for future delivery, the Pledged Securities so sold may be retained by Collateral Agent until the selling price is paid by the purchaser thereof, but Collateral Agent shall not incur any liability in case of the failure of such purchaser to take up and pay for the Pledged Securities so sold and in case of any such failure, such Pledged Securities may again be sold upon like notice. Collateral Agent, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interests and sell the Pledged Securities, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

(v) Without limiting the foregoing, or imposing upon Collateral Agent any obligations or duties not required by applicable Law, Pledgor acknowledges and agrees that, in foreclosing upon any of the Pledged Securities, or exercising any other rights or remedies provided Collateral Agent hereunder or under applicable Law, Collateral Agent may, but shall not be required to, (A) qualify or restrict prospective purchasers of the Pledged Securities by requiring evidence of sophistication or creditworthiness, and requiring the execution and delivery of confidentiality agreements or other documents and agreements as a condition to such prospective purchasers' receipt of information regarding the Pledged Securities or participation in any public or private foreclosure sale process, (B) provide to prospective purchasers business and financial information regarding Pledgor or the Companies available in the files of Collateral Agent at the time of commencing the foreclosure process, without the requirement that Collateral Agent obtain, or seek to obtain, any updated business or financial information or verify, or certify to prospective purchasers, the accuracy of any such business or financial information, or (C) offer for sale and sell the Pledged Securities with, or without, first employing an appraiser, investment banker, or broker with respect to the evaluation of the Pledged Securities, the solicitation of purchasers for Pledged Securities, or the manner of sale of Pledged Securities.

(e) Application of Proceeds. Collateral Agent shall apply the proceeds of any sale or other disposition of the Collateral under this SECTION 7 in the following order: first, to the payment of all expenses incurred in retaking, holding, and preparing any of the Collateral for sale(s) or other disposition, in arranging for such sale(s) or other disposition, and in actually selling or disposing of the same (all of which are part of the Obligations); second, toward repayment of amounts expended by Collateral Agent under SECTION 8; and third, toward payment of the balance of the Obligations in the order and manner as Collateral Agent determines in its sole discretion. Any surplus remaining shall be delivered to Pledgor or as a court of competent jurisdiction may direct. If the proceeds are insufficient to pay the Obligations in full, then Pledgor shall remain liable for any deficiency.

(f) Sales on Credit. If Collateral Agent sells any of the Collateral upon credit, Pledgor will be credited only with payments actually made by the purchaser, received by the Collateral Agent, and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and Pledgor shall be credited with the proceeds of the sale.

(g) Source Code Escrow Arrangements. Collateral Agent shall not send a notice exercising any rights under any escrow agreements pursuant to which Pledgor's software or other technology is being held in escrow unless such notice is sent in connection with a foreclosure (including preparation for an intended foreclosure, even if such foreclosure does not ultimately occur) by Collateral Agent on all or part of the Collateral after an Event of Default has occurred and is continuing. After any release from escrow and subject to Collateral Agent's rights under this Agreement, Collateral Agent shall use such software or other technology solely in connection with (i) the preservation of, foreclosure on, or transfer of title in, such software or other technology or in the continuation of Pledgor's business; and (ii) the exercise of the rights granted under SECTION 8(c). In the event Collateral Agent exercises any rights under any escrow agreements pursuant to which Pledgor's software or other technology is being held in escrow while in preparation for an intended foreclosure, Collateral Agent shall redeposit any materials released from escrow within thirty (30) days after the abandonment of any intended foreclosure, and shall not retain any copy of any such materials.

8. OTHER RIGHTS OF LENDER.

(a) Performance. If Pledgor fails to keep the Collateral in good repair, working order, and condition, as required by the Credit Documents, or fails to pay when due all Taxes on any of the Collateral in the manner required by the Credit Documents, or fails to preserve the priority of the Security Interest in any of the Collateral, or fails to keep the Collateral insured as required by the Credit Documents, or otherwise fails to perform any of its obligations under the Credit Documents with respect to the Collateral, then Collateral Agent may, at its option, but without being required to do so, make such repairs, pay such Taxes, prosecute or defend any suits in relation to the Collateral, or insure and keep insured the Collateral in any amount deemed appropriate by Collateral Agent, or take all other action which Pledgor is required, but has failed or refused, to take under the Credit Documents. Any sum which may be expended or paid by Collateral Agent under this subparagraph (including, without limitation, court costs and reasonable attorneys' fees) shall bear interest from the dates of expenditure or payment at the Default Rate until paid and, together with such interest, shall be payable by Pledgor to Collateral Agent upon demand and shall be part of the Obligations.

(b) Collection. If an Event of Default exists and upon notice from Collateral Agent, each Collateral Obligor with respect to any payments on any of the Collateral (including, without limitation, dividends and other Distributions with respect to the Pledged Securities and Partnership Interests, payments on Collateral Notes, insurance proceeds payable by reason of loss or damage to any of the Collateral, or payments or distributions with respect to Deposit Accounts) is hereby authorized and

directed by Pledgor to make payment directly to Collateral Agent, regardless of whether Pledgor was previously making collections thereon. Until such notice is given, Pledgor is authorized to retain and expend all payments made on Collateral. If an Event of Default exists, Collateral Agent shall have the right in its own name or in the name of Pledgor to compromise or extend time of payment with respect to all or any portion of the Collateral for such amounts and upon such terms as Collateral Agent may determine; to demand, collect, receive, receipt for, sue for, compound, and give acquittances for any and all amounts due or to become due with respect to Collateral; to take control of cash and other proceeds of any Collateral; to endorse the name of Pledgor on any notes, acceptances, checks, drafts, money orders, or other evidences of payment on Collateral that may come into the possession of Collateral Agent; to sign the name of Pledgor on any invoice or bill of lading relating to any Collateral, on any drafts against Collateral Obligors or other Persons making payment with respect to Collateral, on assignments and verifications of accounts or other Collateral and on

notices to Collateral Obligors making payment with respect to Collateral; to send requests for verification of obligations to any Collateral Obligor; and to do all other acts and things necessary to carry out the intent of this Security Agreement. If an Event of Default exists and any Collateral Obligor fails or refuses to make payment on any Collateral when due, Collateral Agent is authorized, in its sole discretion, either in its own name or in the name of Pledgor, to take such action as Collateral Agent shall deem appropriate for the collection of any amounts owed with respect to Collateral or upon which a delinquency exists. Regardless of any other provision hereof, however, Collateral Agent shall never be liable for its failure to collect, or for its failure to exercise diligence in the collection of, any amounts owed with respect to Collateral, nor shall it be under any duty whatsoever to anyone except Pledgor to account for funds that it shall actually receive hereunder. Without limiting the generality of the foregoing, Collateral Agent shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any Collateral, or for informing Pledgor with respect to any of such matters (irrespective of whether Collateral Agent actually has, or may be deemed to have, knowledge thereof). The receipt of Collateral Agent to any Collateral Obligor shall be a full and complete release, discharge, and acquittance to such Collateral Obligor, to the extent of any amount so paid to Collateral Agent.

(c) Intellectual Property. For purposes of enabling Collateral Agent to exercise its rights and remedies under this Security Agreement and enabling Collateral Agent and its successors and assigns to enjoy the full benefits of the Collateral, Pledgor hereby grants to Collateral Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to Pledgor) to make, have made, use, sell, import, reproduce, distribute, create derivative works, perform and display and otherwise exploit the Intellectual Property, and the right to license, or sublicense any of the foregoing rights provided that Collateral Agent agrees not to exercise this license until an Event of Default occurs and is continuing. Pledgor shall provide Collateral Agent with reasonable access to all media in which any of the Intellectual Property may be

recorded or stored and all computer programs used for the completion or printout thereof. This license shall also inure to the benefit of all successors, assigns, and transferees of Collateral Agent. Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may require that Pledgor assign all of its right, title, and interest in and to the Intellectual Property or any part thereof to Collateral Agent or such other Person as Collateral Agent may designate pursuant to documents satisfactory to Collateral Agent. Notwithstanding anything to the contrary in this Agreement, Collateral Agent shall not exercise any rights under this SECTION 8(c) except in connection with a foreclosure (including preparation for an intended foreclosure, even if such foreclosure does not ultimately occur) by Collateral Agent on all or part of the Collateral after an Event of Default has occurred and is continuing.

(d) Record Ownership of Securities. If an Event of Default exists, Collateral Agent at any time may have any Collateral that is Pledged Securities and that is in the possession of Collateral Agent, or its nominee or nominees, registered in its name, or in the name of its nominee or nominees, as Collateral Agent; and, as to any Collateral that is Pledged Securities so registered, Collateral Agent shall execute and deliver (or cause to be executed and delivered) to Pledgor all such proxies, powers of attorney, dividend coupons or orders, and other documents as Pledgor may reasonably request for the purpose of enabling Pledgor to exercise the voting rights and powers which it is entitled to exercise under this Security Agreement or to receive the dividends and other Distributions and payments in respect of such Collateral that is Pledged Securities or proceeds thereof which it is authorized to receive and retain under this Security Agreement.

(e) Voting of Securities. As long as no Event of Default exists, Pledgor is entitled to exercise all voting rights pertaining to any Pledged Securities and Partnership Interests; provided, however, that no vote shall be cast or consent, waiver, or ratification given or action taken without the prior written consent of Collateral Agent which would (x) be inconsistent with or violate any provision of this Security Agreement or any other Loan Document or (y) amend, modify, or waive any term, provision or condition of the certificate of incorporation, bylaws, certificate of formation, or other charter document, or other agreement relating to, evidencing, providing for the issuance of, or securing any Collateral in any manner which would adversely affect Collateral Agent or the value of Collateral; and provided further that Pledgor shall give Collateral Agent at least five Business Days' prior written notice in the form of an officers' certificate of the manner in which it intends to exercise, or the reasons for refraining from exercising, any voting or other consensual rights pertaining to the Collateral or any part thereof which could reasonably be expected to have a material adverse effect on the value of the Collateral or any part thereof. If an Event of Default exists and if Collateral Agent elects to exercise such right, the right to vote any Pledged Securities shall be vested exclusively in Collateral Agent. To this end, Pledgor hereby irrevocably constitutes and appoints Collateral Agent the proxy and attorney-in-fact of Pledgor, with full power of substitution, to vote, and to act with respect to, any and all Collateral that is Pledged Securities standing in the name of Pledgor or

with respect to which Pledgor is entitled to vote and act, subject to the understanding that such proxy may not be exercised unless an Event of Default exists. The proxy herein granted is coupled with an interest, is irrevocable, and shall continue so long as Collateral Agent is obligated to extend credit under the Credit Agreement and thereafter until the Obligations are paid and performed in full.

(f) Certain Proceeds. Notwithstanding any contrary provision herein, any and all

(i) dividends, interest, or other Distributions paid or payable other than in cash in respect of, and instruments and other property received, receivable, or otherwise distributed in respect of, or in exchange for, any Collateral;

(ii) dividends, interest, or other Distributions hereafter paid or payable in cash in respect of any Collateral in connection with a partial or total liquidation or dissolution, or in connection with a reduction of capital, capital surplus, or paid-in-surplus;

(iii) cash paid, payable, or otherwise distributed in redemption of, or in exchange for, any Collateral; and

(iv) dividends, interest, or other Distributions paid or payable in violation of the Credit Documents,

shall be part of the Collateral hereunder, and shall, if received by Pledgor, be held in trust for the benefit of Collateral Agent, and shall forthwith be delivered to Collateral Agent (accompanied by proper instruments of assignment and/or stock and/or bond powers executed by Pledgor in accordance with Collateral Agent's instructions) to be held subject to the terms of this Security Agreement. Any cash proceeds of Collateral which come into the possession of Collateral Agent on and after the occurrence of an Event of Default (including, without limitation, insurance proceeds) may, at Collateral Agent's option, be applied in whole or in part to the Obligations (to the extent then due), be released in whole or in part to or on the written instructions of Pledgor for any general or specific purpose, or be retained in whole or in part by Collateral Agent as additional Collateral. Any cash Collateral in the possession of Collateral Agent may be invested

by Collateral Agent in certificates of deposit issued by Collateral Agent (if Collateral Agent issues such certificates) or by any state or national bank having combined capital and surplus greater than $100,000,000 with a rating from Moody's and S&P of P-1 and A-1+, respectively, or in securities issued or guaranteed by the United States of America or any agency thereof. Collateral Agent shall never be obligated to make any such investment and shall never have any liability to Pledgor for any loss which may result therefrom. All interest and other amounts earned from any investment of Collateral may be dealt with by Collateral Agent in the same manner as other cash Collateral. The provisions of this SECTION 8(f) are applicable whether or not a Default or Event of Default exists.

(g) Use and Operation of Collateral. Should any Collateral come into

the possession of Collateral Agent, during the existence of an Event of Default Collateral Agent may use or operate such Collateral for the purpose of preserving it or its value pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Collateral Agent in respect of such Collateral. Pledgor covenants to promptly reimburse and pay to Collateral Agent, at Collateral Agent's request, the amount of all reasonable expenses (including, without limitation, the cost of any insurance and payment of Taxes or other charges) incurred by Collateral Agent in connection with its custody and preservation of Collateral, and all such expenses, costs, Taxes, and other charges shall bear interest at the Default Rate until repaid and, together with such interest, shall be payable by Pledgor to Collateral Agent upon demand and shall become part of the Obligations. However, the risk of accidental loss or damage to, or diminution in value of, Collateral is on Pledgor, and Collateral Agent shall have no liability whatever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to the risks insured. With respect to Collateral that is in the possession of Collateral Agent, Collateral Agent shall have no duty to fix or preserve rights against prior parties to such Collateral and shall never be liable for any failure to use diligence to collect any amount payable in respect of such Collateral, but shall be liable only to account to Pledgor for what it may actually collect or receive thereon.

(h) Cash Collateral Account. If an Event of Default exists, then Collateral Agent shall have, and Pledgor hereby grants to Collateral Agent, the right and authority to transfer all funds on deposit in the Deposit Accounts to a CASH COLLATERAL ACCOUNT (herein so called) maintained with a depository institution acceptable to Collateral Agent and subject to the exclusive direction, domain, and control of Collateral Agent, and no disbursements or withdrawals shall be permitted to be made by Pledgor from such Cash Collateral Account. Such Cash Collateral Account shall be subject to the Security Interest and Liens in favor of Collateral Agent herein created, and Pledgor hereby grants a security interest to Collateral Agent in and to, such Cash Collateral Account and all checks, drafts, and other items ever received by Pledgor for deposit therein. Furthermore, if an Event of Default exists, then Collateral Agent shall have the right, at any time in its discretion without notice to Pledgor, (i) to transfer to or to register in the name of Collateral Agent or any nominee any certificates of deposit or deposit instruments constituting Deposit Accounts and shall have the right to exchange such certificates or instruments representing Deposit Accounts for certificates or instruments of smaller or larger denominations and (ii) to take and apply against the Obligations any and all funds then or thereafter on deposit in the Cash Collateral Account or otherwise constituting Deposit Accounts.

(i) Power of Attorney. Pledgor hereby irrevocably constitutes and appoints Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name of Pledgor or in its own name, to take while an Event of Default exists, any and all action and to execute any and all documents and instruments which Collateral Agent at any time and from time to time deems

necessary or desirable to accomplish the purposes of this Security Agreement and, without limiting the generality of the foregoing, Pledgor hereby gives Collateral Agent the power and right on behalf of Pledgor and in its own name to do any of the following while an Event of Default exists, without notice to or the consent of Pledgor:

(i) to transfer any and all funds on deposit in the Deposit Accounts to the Cash Collateral Account as set forth in herein;

(ii) to receive, endorse, and collect any drafts or other instruments or documents in connection with CLAUSE (b) above and this CLAUSE (i);

(iii) to use the Intellectual Property or to grant or issue any exclusive or non-exclusive license under the Intellectual Property to anyone else, and to perform any act necessary for the Collateral Agent to assign, pledge, convey, or otherwise transfer title in or dispose of the Intellectual Property to any other Person;

(iv) to demand, sue for, collect, or receive, in the name of Pledgor or in its own name, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral and, in connection therewith, endorse checks, notes, drafts, acceptances, money orders, documents of title or any other instruments for the payment of money under the Collateral or any policy of insurance;

(v) to pay or discharge taxes, Liens, or other encumbrances levied or placed on or threatened against the Collateral;

(vi) to notify post office authorities to change the address for delivery of Pledgor to an address designated by Collateral Agent and to receive, open, and dispose of mail addressed to Pledgor; and

(vii) (A) to direct account debtors and any other parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to Collateral Agent or as Collateral Agent shall direct; (B) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, proxies, stock powers, verifications, and notices in connection with accounts and other documents relating to the Collateral; (D) to commence and prosecute any suit, action, or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action, or proceeding brought against Pledgor with respect to any Collateral; (F) to settle, compromise, or adjust any suit, action, or proceeding described above and, in connection therewith, to give such discharges or releases as Collateral Agent may deem appropriate; (G) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization, or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depositary, transfer agent, registrar, or other

designated agency upon such terms as Collateral Agent may determine; (H) to add or release any guarantor, indorser, surety, or other party to any of the Collateral; (I) to renew, extend, or otherwise change the terms and conditions of any of the Collateral; (J) to endorse Pledgor's name on all applications, documents, papers, and instruments necessary or desirable in order for Collateral Agent to use or

maintain any of the Intellectual Property; (K) to make, settle, compromise or adjust any claims under or pertaining to any of the Collateral (including claims under any policy of insurance); (L) to execute on behalf of Pledgor any financing statements or continuation statements with respect to the Security Interests created hereby, and to do any and all acts and things to protect and preserve the Collateral, including, without limitation, the protection and prosecution of all rights included in the Collateral; and (M) to sell, transfer, pledge, convey, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Collateral Agent were the absolute owner thereof for all purposes, and to do, at Collateral Agent's option and Pledgor's expense, at any time, or from time to time, all acts and things which Collateral Agent deems necessary to protect, preserve, maintain, or realize upon the Collateral and Collateral Agent's security interest therein.

In addition, whether or not an Event of Default exists, Pledgor hereby irrevocably constitutes and appoints Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney in fact with full irrevocable power and authority in name of Pledgor or in its own name, to file and record in the United States Copyright Office, the Canadian Copyright Office, and any other or similar office or registry of any Governmental Authority or jurisdiction, all notices, security agreements, and other documents as Collateral Agent may deem appropriate, for the purpose of creating, evidencing or perfecting Collateral Agent's security interests and Liens in the Copyrights, or any of them.

This power of attorney is a power coupled with an interest and shall be irrevocable. Collateral Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges, and options expressly or implicitly granted to Collateral Agent in this Security Agreement, and shall not be liable for any failure to do so or any delay in doing so. Neither Collateral Agent nor any Person designated by Collateral Agent shall be liable for any act or omission or for any error of judgment or any mistake of fact or law. This power of attorney is conferred on Collateral Agent solely to protect, preserve, maintain, and realize upon its Security Interest in the Collateral. Collateral Agent shall not be responsible for any decline in the value of the Collateral and shall not be required to take any steps to preserve rights against prior parties or to protect, preserve, or maintain any Lien given to secure the Collateral.

(j) Purchase Money Collateral. To the extent that Collateral Agent

has advanced or will advance funds to or for the account of Pledgor to enable Pledgor to purchase or otherwise acquire rights in Collateral, Collateral Agent, at its option, may pay such funds (i) directly to the Person from whom Pledgor will make such purchase or acquire such rights, or (ii) to Pledgor, in which case Pledgor covenants to promptly pay the same to such Person, and forthwith furnish to Collateral Agent evidence satisfactory to Collateral Agent that such payment has been made from the funds so provided.

(k) Subrogation. If any of the Obligations are given in renewal or extension or applied toward the payment of indebtedness secured by any Lien, then Collateral Agent shall be, and is hereby, subrogated to all of the rights, titles, interests, and Liens securing the indebtedness so renewed, extended, or paid.

(l) Indemnification. Pledgor hereby assumes all liability for the Collateral, for the Security Interest, and for any use, possession, maintenance, and management of, all or any of the Collateral, including, without limitation, any Taxes arising as a result of, or in connection with, the transactions contemplated herein, and agrees to assume liability for, and to indemnify and

hold Collateral Agent harmless from and against, any and all claims, causes of action, or liability, for injuries to or deaths of Persons and damage to property, howsoever arising from or incident to such use, possession, maintenance, and management, whether such Persons be agents or employees of Pledgor or of third parties, or such damage be to property of Pledgor or of others. Pledgor agrees to indemnify, save, and hold Collateral Agent harmless from and against, and covenants to defend Collateral Agent against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses (collectively, "CLAIMS"), including, without limitation, court costs and attorneys' fees, AND ANY OF THE FOREGOING ARISING FROM THE NEGLIGENCE OF COLLATERAL AGENT, OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ADVISORS, EMPLOYEES, OR REPRESENTATIVES, howsoever arising or incurred because of, incident to, or with respect to Collateral or any use, possession, maintenance, or management thereof; provided, however, that the indemnity set forth in this SECTION 8(l) will not apply to Claims caused by the gross negligence or willful misconduct of Collateral Agent.

(m) Subordination. Pledgor hereby fully subordinates all claims that it now or hereafter may have under the Collateral Notes executed by any Guarantor, to the prior payment in full of Lenders' claims against such Guarantor under such Guarantor's Guaranty, and agrees that Lenders shall be entitled to payment in full of their claims against such Guarantor, before Pledgor is entitled to demand, sue for, collect , or receive any payments of or on account of such Collateral Notes.

9. MISCELLANEOUS.

(a) Continuing Security Interest. This Security Agreement creates a continuing security interest in the Collateral and shall (i) remain in full force and effect so long as Collateral Agent is obligated to extend credit under the Credit Agreement and thereafter until the Obligations

(other than inchoate indemnity obligations) are paid and performed in full; and (ii) inure to the benefit of and be enforceable by Collateral Agent and its successors, transferees, and assigns. Without limiting the generality of the foregoing CLAUSE (ii), Collateral Agent may assign or otherwise transfer any of their respective rights under this Security Agreement to any other Person in accordance with the terms and provisions of the Credit Agreement, and to the extent of such assignment or transfer such Person shall thereupon become vested with all the rights and benefits in respect thereof granted herein or otherwise to Collateral Agent. Upon payment in full of the Obligations (other than inchoate indemnity obligations) and the termination of the commitment of Collateral Agent to extend credit under the Credit Documents, Pledgor shall be entitled to the prompt return, at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof.

Upon any sale or other transfer by Pledgor of any Collateral that is expressly permitted under the Credit Agreement to any Person that is not a Credit Party, or upon the effectiveness of any written consent by Collateral Agent to the release of the security interest granted hereby in any Collateral, the security interest in such Collateral shall be automatically released.

In connection with any termination or release pursuant to this Section 9(a), Collateral Agent shall execute and deliver to Pledgor, at Pledgor's expense, all documents needed to evidence such termination or release.

(b) Actions Not Releases. The Security Interest and Pledgor's obligations and Collateral Agent's rights hereunder shall not be released, diminished, impaired, or adversely affected by the occurrence of any one or more of the following events: (i) the taking or accepting of any other security or assurance for any or all of the Obligations; (ii) any release, surrender,

exchange, subordination, or loss of any security or assurance at any time existing in connection with any or all of the Obligations; (iii) the modification of, amendment to, or waiver of compliance with any terms of any of the other Credit Documents without the notification or consent of Pledgor, (the right to such notification or consent being herein specifically waived by Pledgor) except as required therein; (iv) the insolvency, bankruptcy, or lack of corporate or trust power of any party at any time liable for the payment of any or all of the Obligations, whether now existing or hereafter occurring; (v) any renewal, extension, or rearrangement of the payment of any or all of the Obligations, either with or without notice to or consent of Pledgor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Collateral Agent to Pledgor; (vi) any neglect, delay, omission, failure, or refusal of Collateral Agent to take or prosecute any action in connection with any other agreement, document, guaranty, or instrument evidencing, securing, or assuring the payment of all or any of the Obligations; (vii) any failure of Collateral Agent to notify Pledgor of any renewal, extension, or assignment of the Obligations or any part thereof, or the release of any Collateral or other security, or of any other action taken or refrained from being taken by Collateral Agent

against Pledgor or any new agreement between or among Collateral Agent and Pledgor, it being understood that except as expressly provided herein, Collateral Agent shall not be required to give Pledgor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Obligations, including, without limitation, notice of acceptance of this Security Agreement or any Collateral ever delivered to or for the account of Collateral Agent hereunder; (viii) the illegality, invalidity, or unenforceability of all or any part of the Obligations against any party obligated with respect thereto by reason of the fact that the Obligations, or the interest paid or payable with respect thereto, exceeds the amount permitted by applicable Law, the act of creating the Obligations, or any part thereof, is ultra vires, or the officers, partners, or trustees creating same acted in excess of their authority, or for any other reason; or (ix) if any payment by any party obligated with respect thereto is held to constitute a preference under applicable Law or for any other reason Collateral Agent is required to refund such payment or pay the amount thereof to someone else.

(c) Waivers. Except to the extent expressly otherwise provided herein or in other Credit Documents and to the fullest extent permitted by applicable Law, Pledgor waives (i) any right to require Collateral Agent to proceed against any other Person, to exhaust its rights in Collateral, or to pursue any other right which Collateral Agent may have; (ii) with respect to the Obligations, presentment and demand for payment, protest, notice of protest and nonpayment, and notice of the intention to accelerate; and (iii) all rights of marshaling in respect of any and all of the Collateral.

(d) Financing Statement; Authorization. Collateral Agent shall be entitled at any time to file this Security Agreement or a carbon, photographic, or other reproduction of this Security Agreement, as a financing statement, but the failure of Collateral Agent to do so shall not impair the validity or enforceability of this Security Agreement. Pledgor hereby irrevocably authorizes Collateral Agent at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto (without the requirement for Pledgor's signature thereon) that (i) indicate the Collateral (A) as all assets of Pledgor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of the state or such jurisdiction or whether such assets are included in the Collateral hereunder, or (B) as being of an equal or lesser scope or with greater detail, and (ii) contain any other information required by Article 9 of the UCC of the state or such jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Pledgor is an organization, the type of organization, and any organization

identification number issued to Pledgor. Pledgor agrees to furnish any such information to Collateral Agent promptly upon request.

(e) Amendments. This Security Agreement may be amended only by an instrument in writing executed jointly by Pledgor and Collateral Agent, and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

(f) Multiple Counterparts. This Security Agreement has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement; but, in making proof of this Security Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(g) Parties Bound; Assignment. This Security Agreement shall be binding on Pledgor and Pledgor's heirs, legal representatives, successors, and assigns and shall inure to the benefit of Collateral Agent and Collateral Agent's successors and assigns; provided that Pledgor may not, without the prior written consent of Collateral Agent, assign any rights, duties, or obligations hereunder.

(H) GOVERNING LAW. THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION GOVERN THE CREATION, PERFECTION, VALIDITY, OR ENFORCEMENT OF LIENS UNDER THIS SECURITY AGREEMENT, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA, SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS SECURITY AGREEMENT AND ALL OF THE OTHER CREDIT DOCUMENTS.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

EXECUTED as of the date first stated in this Pledge and Security Agreement.

PLEDGOR:

TALEO CORPORATION

By: /s/ Jean Lavigueur
_____
Name: Jean Lavigueur
_____
Title: Chief Financial Officer
_____

COLLATERAL AGENT:

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.

By: /s/ Todd B. Foust
_____
Name: Todd B. Foust
_____
Title: Vice President
_____

EXHIBIT A

PLEDGOR INFORMATION AND LOCATION OF COLLATERAL

A. Exact Legal Name of Pledgor: Taleo Corporation

B. Mailing Address of Pledgor: 575 Market Street, 8th Floor, San Francisco CA 94105

C. Type of Entity: Corporation

D. Jurisdiction of Organization: Delaware

E. State Issued Organizational Identification Number: 3042240

F. Location of Books and Records: 575 Market Street, 8th Floor, San Francisco CA 94105 1010 Northern Boulevard, Suite 328, Great Neck, NY 11021 330 St-Vallier East, Suite 400, Quebec, QC G1K 9C5

G. Location of Collateral: 575 Market Street, 8th Floor, San Francisco CA 94105 90 Washington Valley Road, Bedminster NJ 07921 1010 Northern Boulevard, Suite 328, Great Neck, NY 11021 One Energy Center, 40 Shuman Boulevard, Naperville IL 60563 Hosting Facility operated by Internap Network Services Corporation Hosting Facility operated by IBM

H. Location of Real Property: None

I. Jurisdiction(s) for Filing Financing Statements: Delaware

EXHIBIT B-1

COLLATERAL DESCRIPTIONS

A. Collateral Notes and Collateral Note Security

1. Note made by Taleo (Europe) B.V., for One Million, Four Hundred Sixty Thousand, Two Hundred and Ninety-Two Euros (Euro(Euro) 1,460,292).

2. Note made by Taleo (France) SAS, for One Million, Three Hundred Twenty-Eight Thousand, Three Hundred and Fifty-Seven Euros ((Euro(Euro) 1,328,357).

3. Note made by Recruitsoft (Asia Pacific) Pte Ltd., for One Million, Seven Hundred Thirty Four Thousand, Two Hundred and Ninety Singapore Dollars (SGD$ 1,734,290).

4. Note made by Taleo (Australia) Pty Ltd., for Nine Hundred and Sixty One Thousand, Nine Hundred and Ninety Australian dollars (AUD$ 961,990).

5. Note made by Taleo (UK) Ltd., for Twelve Thousand and Seventy-One United Kingdom Pounds (GBP(Pound) 12,701).

6. Note made by Taleo (Canada) Inc., for Twelve Million, One Hundred Seventy Five Thousand, Six Hundred and Twenty Four Canadian Dollars (CDA$ 12,175,624).

B. Pledged Shares not to exceed 66% of the outstanding equity for existing Foreign Subsidiaries

1. One thousand (1,000) Common Shares, of Butterfly Acquisition Corporation.

2. 66/100ths Ordinary Shares of Taleo (Australia) Pty Limited.

3. Six Hundred and Sixty (660) Class A Common Shares of 9090-5415 Quebec Inc., (formerly Viasite Inc.).

C. Partnership Interests

None.

D. Commercial Tort Claims

None.

E. Material Contracts:

See Schedule 4.16 to the Credit Agreement

F. Deposit Accounts (including name of bank, address, and account number)

JP Morgan Chase Bank N.A., 395 N. Service Road, Melville NY 11747, 904-949214
JP Morgan Chase Bank N.A., 395 N. Service Road, Melville NY 11747, 957044151

Goldman Sachs Trust, through Goldman Sachs & Co., 4900 Sears Tower, 51st Floor, Chicago, IL 60606, 1885036799

EXHIBIT B-2

A. Registered Copyrights and Copyright Applications

Recruitsoft, Inc.	Symbol	Canada / Copyright Registration No. 1011350

B. Issued Patents and Patent Applications

None.

C. Registered Trademarks and Trademark Applications

<TABLE>
<CAPTION>

OWNER	TRADEMARK	COUNTRY/SERIAL NUMBER/REGISTRATION NUMBER

<S>	<C>	<C>
Recruitsoft, Inc.	Recruiter WebTop	United States / 76044,909
Recruitsoft, Inc.	Recruitsoft	United States / 75724,581 / 2,513,172
Recruitsoft, Inc.	Symbol	Canada / Trademark Application
Recruitsoft, Inc.	Symbol	United States / Trademark Application 76506,400
Recruitsoft, Inc.	RECRUITSOFT	European Union / Application No. 003309291 / TM80536EU00
Recruitsoft, Inc.	RECRUITSOFT	Australia

</TABLE>

EXHIBIT B-3

LICENSES

TALEO CORPORATION - THIRD-PARTY SOFTWARE INVENTORY
PREPARED APRIL 19, 2005

TALEO ENTERPRISE SOLUTION

<TABLE>
<CAPTION>

Operating Systems

Components	Description	Licensing
<S>	<C>	<C>
Red Hat Linux Enterprise	Operating System	License
HP-UX	Operating System	License
Sun Solaris	Operating System	License

</TABLE>

<TABLE>
<CAPTION>

Operating Systems Components

Components	Description	Licensing
<S>	<C>	<C>
OpenSSH	Secure Shell Access	Open Source
Syslog-NG	System Logging Tool	Open Source
CIS Security	Security Tool	Open Source
Net-SNMP	Network Management Tool	Open Source
NTP Client	Network Time Protocol	Open Source
RSA Secure ID	Access Management	License
Zenworks Linux Management	Package Management	License
Postfix	Email Server	Open Source

</TABLE>

<TABLE>
<CAPTION>

Taleo Web Servers

Components	Description	Licensing
Apache	Web Server	Open Source

Taleo Application Servers

Components	Description	Licensing
Sun JDK	Sun Java Virtual Machine	Open Source
Apache Jserv	Application Server	Open Source
WhereOn Earth Geozip	Location Tool	License
WinterTree	Spelling Server	License

Taleo Database Servers

Components	Description	Licensing
Polyserve	Clustering Software	License
Oracle Enterprise Manager	Database Management	License
Oracle Enterprise Edition	Database Server	License
Stellent "Outside In"	PDF File Filter	License

Taleo Reporting Servers

Components	Description	Licensing
Business Objects	Reporting Server	License
WebIntelligence	Reporting Software	License
Tomcat	Servlet/JSP Engine	Open Source

EXHIBIT B-3

LICENSES - CONTINUED

Taleo Autonomy Servers

Components	Description	Licensing
Autonomy	Conceptual Search Engine	License
Tomcat	Servlet/JSP Engine	Open Source
Resume Mirror	Server Parsing Engine	License

<CAPTION>
Taleo Integration Servers

Components	Description	Licensing
<S>	<C>	<C>
WebMethods	B2B Integration application	License
Squid	Proxy Server	Open Source
ProFTPd	FTP Server	Open Source
Ftp-GW	FTP Proxy	Open Source
WebMethods Proxy	B2B Integration proxy	License

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Taleo Monitoring Servers

Components	Description	Licensing
<S>	<C>	<C>
HP Openview Operations	Monitoring Tool	License
HP Network Node Manager	Monitoring Tool	License
Cacti	Monitoring Tool	Open Source
Nagios	Monitoring Tool	Open Source
Nessus	Monitoring Tool	Open Source
HP Insight Manager	Monitoring Tool	License

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Taleo Backup Servers

Components	Description	Licensing
<S>	<C>	<C>
Veritas NetBackup	Backup Management	License

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Taleo Anti-Virus Servers

Components	Description	Licensing
<S>	<C>	<C>
McAfee Webshield	Anti-Virus Software	License

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Taleo DNS Servers

Components	Description	Licensing
<S>	<C>	<C>
Bind	DNS Server	Open Source

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Taleo Appliance

Components	Description	Licensing
<S>	<C>	<C>

IOS	Cisco Management Tool	License
Sonic Wall	Crypto Devices	License
F5 Big-Ip	Load Balancers	License

EXHIBIT B-3

LICENSES - CONTINUED

Taleo Storage Management

Components	Description	Licensing
Hitachi Storage Navigator	Storage Management	License
Damp	Storage Management	License
Sommet	Storage Management	License
HP Command View	Storage Management	License
HP Array Control Unit	Storage Management	License
Htachi Hi-Track	Storage Management	License
Hitachi Graph-Track	Storage Management	License
Veritas Foundation Suite	Storage Management	License

Taleo Performance Servers

Components	Description	Licensing
Loadrunner	Performance Monitoring Tool	License

Taleo Development

Components	Description	Licensing
Mercury LoadRunner	Load Testing Tool	License in process
YourKit Memory Profiler	Memory Leak Detection	License
JProfiler	Code Optimization	Under evaluation
Oracle TopLink Mapping Workbench	Data Entity Mapping	Development License
Eclipse SDK	Java Code Development	Open Source
Checkstyle	Code Review Tool	Open Source
Xdoclet	Code Generation Tool	Open Source
JBoss-IDE	Code Generation Tool	Open Source
JBoss	Application Server	Open Source
JAD	Decompiler	Open Source
Apache Jmeter	Load Testing Tool	Open Source
Apache Ant	Script Building Tool	Open Source
XML-Spy License	XML Editor	License
MediaWiki	Collaboration Software	Open Source
Borland StarTeam	Source Code Management	

EXHIBIT B-3

LICENSES - CONTINUED

TALEO CORPORATION - THIRD-PARTY SOFTWARE INVENTORY
PREPARED APRIL 19, 2005

TALEO CONTINGENT SOLUTION

<TABLE>
<CAPTION>
Contingent Development Environments

Components	Description	Licensing
<S>	<C>	<C>
Windows XP	OS	License
Adobe Acrobat	Document creation	?
Adobe Reader	Document reader	Free
Ultra Edit	Text file editor	License
Ad-aware SE personal	Spyware removal	Free
Trend Micro Office Scan	Virus protection	License
Test Track Pro	Bug tracker	License
XML Spy 5	XML file editor	License
Eclipse	Java IDE	Open source
MySQL	Database	Open source
Star Team	Source code archival	License
MS Office suite		License
Putty	SSH telnet	Free
Copernic Desktop Search	Indexing	Free
FlashFXP	FTP client	Trial
MSN Messenger	Instant messaging	Free
Yahoo Messenger	Instant messaging	Free
Real VNC	Remote desktop	Free
Apache Ant	Automation	Open source
Jakarta Jmeter	Profiler	Open source
Jboss	Application Server	Open source
Apache Web Server	Web Server	Open source
Oracle 9i	Database	License

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EXHIBIT B-3

LICENSES - CONTINUED

<TABLE>
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Contingent QA and Release Management

Components	Description	Licensing
<S>	<C>	<C>
MAC OS	Operating System	License
Cisco VPN 4.0.3	Remote connection	License
VSClient 5.1	Remote connection	License
FSecure SSH Client 5.1	Remote connection	License
Microsoft Office 2003	Office suite	License
MS Office Visio	Charting software	License

MS Project	Project software	License
MSN Messenger 6.2	Instant Messaging	Free
WebEX	Web Meeting software	License
Adobe Acrobat Reader 6.02	Document reader	Free
Mozilla Firefox	Web Browser	Free
Netscape	Web Browser	Free
Internet Explorer	Web Browser	Free
Lotus Notes 5.0.11	Development environment	License
Team Studio 2.10	Source code archival	License
Oracle Client 9.2	Database	License
TOAD Professional 7.6	SQL access	License
StarTeam 5.3	Source code archival	License
Java SDK 1.4.2_05	Java library	Open Source
IBM Websphere Studio Application Developer 4.03	Development environment	License
Eclipse 3.0	Development environment	Open Source
JBoss 4.0	Application Server	Open Source
Apache	Web Server	Open Source
Testtrack	Defect tracking	License
Webmethods Developer	Development environment	License
Testlog V1.7	QA testcases	License
SnagIt	Screenshots	License
Remote Desktop Connection	Remote desktop	License
Ad Aware 6.0	Popup blocker	License
Loadrunner	Performance Monitoring Tool	License
UltraEdit-32	Data File editor	License
IBM XDE Tester	Automated Functional Test Tool	License
CruiseControl	Continuous Integration	Open Source
Datapool Editor	Data Provision	Taleo Developed

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EXHIBIT B-3

LICENSES - CONTINUED

<TABLE>
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Components	Contingent Production & ASP Description	Licensing
<S>	<C>	<C>
Crystal Decisions' Crystal Reports 9	Report Development	License
Edify	Integrated Voice Recognition (IVR)	License
XML Convert 1.0		
Oracle's LSX Domino-Oracle Connector	Domino Oracle connectivity	Freeware
Domino Designer 5.0.11	Domino Development	License
Macromedia Dreamweaver	UI Design and Development	License
Computer Associates' Erwin 3.5.2	Database Modeling	License
Mercury Interactive's LoadRunner, WinRunner	Load Testing	License
Teamstudio's Ciao! For Domino/Lotus Notes, Edition 15a	Domino Source Control	License
Microsoft Visual C++ - Visual Studio ..NET 2003 Version	C++ Software Development	License
Java KavaChart Applet Library	Web Integrated Charts	Shareware
Sun Solaris	Operating System	License

Red Hat's Linux 7.0	Operating System	License
Microsoft Windows 2000 Server	Operating System	License
Lotus Domino	Domino App Server	License
Lotus Notes	Notes Server	License
Oracle 8i (8.1.6)	Database	License
Microsoft SQL*Server 2000	Database	License
Candle IntelliWatch for Domino		
CiscoWorks		
Quest Software's Quest Instance for Oracle		
Oracle Enterprise & Capacity managers		
Cisco IDS		
File compare Utility	Comparing files and directories	Free
Roxio	CD Burner	License
Instance Monitor	Monitoring of Oracle Databases	License

</TABLE>

EXHIBIT C

DEFAULTS OR DEFAULTS UNDER ANY COLLATERAL NOTE, DOCUMENTS EVIDENCING THE COLLATERAL NOTE SECURITY, PARTNERSHIP AGREEMENTS, OR MATERIAL CONTRACTS

None.

EXHIBIT D

ACKNOWLEDGMENT OF PLEDGE

PARTNERSHIP: _____ INTEREST OWNER:_____

BY THIS ACKNOWLEDGMENT OF PLEDGE, dated as of _____ , 2005, (the "PARTNERSHIP") hereby acknowledges the pledge in favor of Goldman Sachs Specialty Lending, L.P. ("PLEDGEE"), as Collateral Agent under that certain Pledge and Security Agreement dated as of _____, 2005 (as amended, modified, supplemented, or restated from time to time, the "SECURITY AGREEMENT"), against, and a security interest in favor of Pledgee in, all of _____`s (the "INTEREST OWNER") rights in connection with any partnership interest in the Partnership now and hereafter owned by the Interest Owner ("PARTNERSHIP INTEREST").

A. Pledge Records. The Partnership has identified Pledgee's interest in all of the Interest Owner's right, title, and interest in and to all of the Interest Owner's Partnership Interest as subject to a pledge and security interest in favor of Pledgee in the Partnership Records.

B. Partnership Distributions, Accounts, and Correspondence. The Partnership hereby acknowledges that (i) all proceeds, distributions, and other amounts payable to the Interest Owner, including, without limitation, upon the termination, liquidation, and dissolution of the Partnership shall be paid and remitted to the Pledgee upon demand, (ii) all funds in deposit accounts shall be held for the benefit of Pledgee, and (iii) all future correspondence, accountings of distributions, and tax returns of the Partnership shall be provided to the Pledgee. The Partnership acknowledges and accepts such direction and hereby agrees that it shall, upon the written demand by Collateral Agent, pay directly to Collateral Agent at such address any and all distributions,

income, and cash flow arising from the Partnership Interests whether payable in cash, property or otherwise, subject to and in accordance with the terms and conditions of the Partnership. The Pledgee may from time to time notify the Partnership of any change of address to which such amounts are to be paid.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE TO FOLLOW.

EXECUTED as of the date first stated in this Acknowledgment of Pledge.

By: _____
Name: _____
Title:_____

[PARTNERSHIP]

By: _____,
as General Partner

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT OF PLEDGE
SIGNATURE PAGE