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As filed with the Securities and Exchange Commission on March 3, 2014.

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
under
the Securities Act of 1933

Five9, Inc.

(Exact name of registrant as specified in its charter)

Delaware	7372	94- 3394123
(State or other jurisdiction of incorporation or organization)	(Primary Standard industrial Classification Code Number)	(I.R.S. Employer Identification Number)

Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, CA 94583
(925) 201-2000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Michael Burkland
Chief Executive Officer
Five9, Inc.
Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, CA 94583
(925) 201-2000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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(650) 739-3939

Anthony J. McCusker
Richard A. Kline
Goodwin Procter LLP
135 Commonwealth Drive
Menlo Park, California 94025
(650) 752-3100

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☑ (Do not check if a smaller reporting company)	Smaller reporting company	☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common Stock, $0.001 par value per share	$115,000,000	$14,812

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated March 3, 2014

Prospectus

Shares

Common Stock

This is the initial public offering of common stock by Five9, Inc. We are offering shares of common stock.

The estimated initial public offering price is between $ and $ per share. Currently, no public market exists for the shares. We intend to apply to list our shares of common stock on the New York Stock Exchange under the symbol "FIVN."

We are an "emerging growth company" as defined under the federal securities laws. Investing in our common stock involves risks. See "Risk Factors" beginning on page 11 of this prospectus.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts(1)	$	$
Proceeds to us (before expenses)	$	$

(1) Please see "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters a 30-day option to purchase up to an additional shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares on or about , 2014.

J.P. Morgan **Barclays** **BofA Merrill Lynch**

Pacific Crest Securities **Canaccord Genuity** **Needham & Company**

Prospectus dated , 2014

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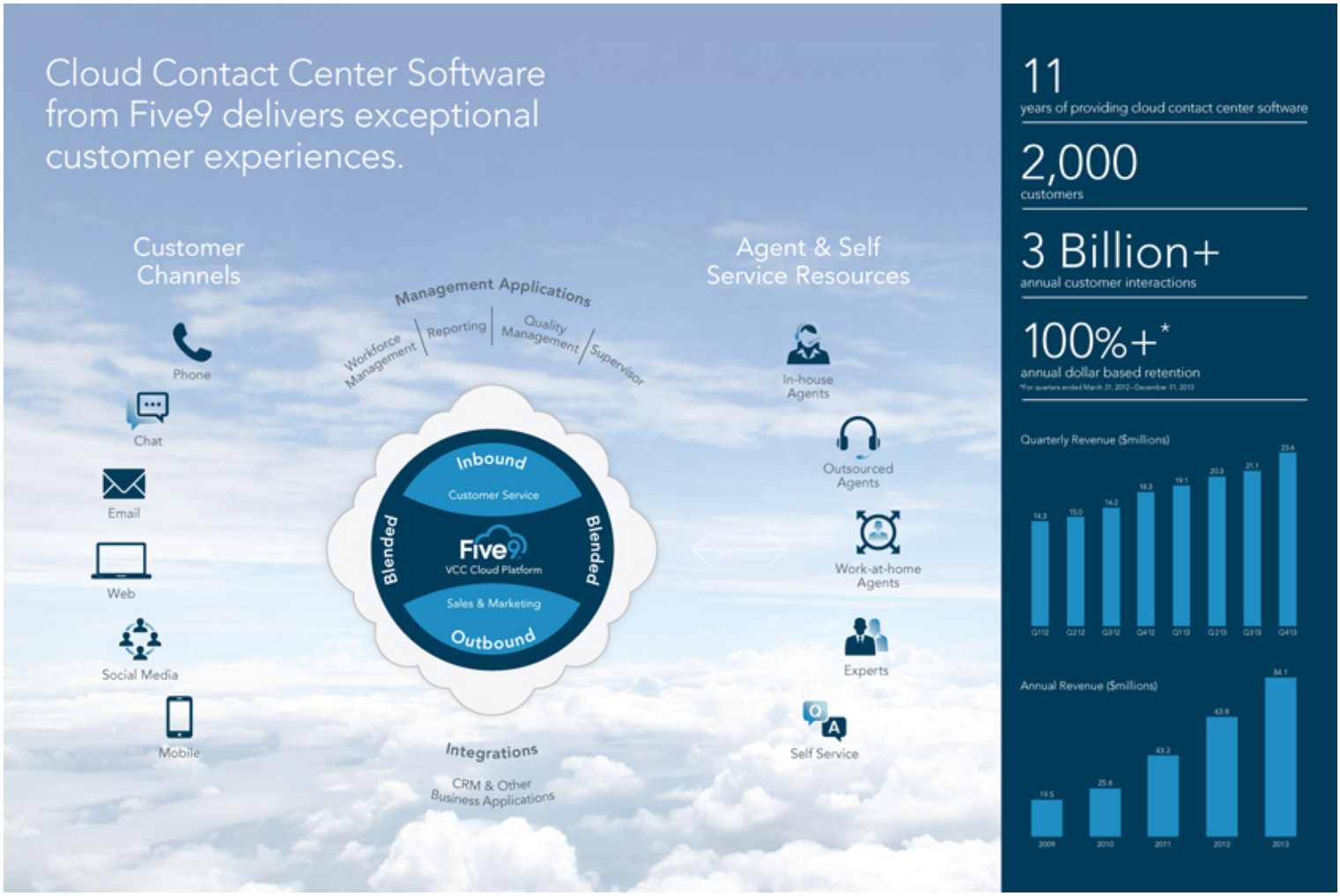

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You should rely only on the information contained in this prospectus and in any related free writing prospectus prepared by or on behalf of us. Neither we nor the underwriters have authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date. Our business, financial condition, results of operations and prospects may have changed since that date.

Through and including , 2014 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

For investors outside the United States: neither we nor the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

The following summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read the entire prospectus, including the consolidated financial statements and the related notes included in this prospectus and the information set forth under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Unless the context requires otherwise, the words "Five9," "we," "company," "us" and "our" refer to Five9, Inc. and its subsidiaries.

Overview

Five9 is a pioneer and leading provider of cloud software for contact centers. Since our inception, we have exclusively focused on delivering our platform in the cloud and are disrupting a significantly large market by replacing legacy on-premise contact center systems. Our mission is to empower organizations to transform their contact centers into customer engagement centers of excellence, while improving business agility and significantly lowering the cost and complexity of their contact center operations. Our purpose-built, highly scalable and secure Virtual Contact Center, or VCC, cloud platform delivers a comprehensive suite of easy-to-use applications that enable the breadth of contact center-related customer service, sales and marketing functions. We facilitate over three billion interactions between our more than 2,000 clients and their customers per year and believe our ability to combine software and telephony into a single unified platform that is delivered in the cloud creates a significant barrier to entry.

Our solution, which is comprised of our VCC cloud platform and applications, allows simultaneous management and optimization of customer interactions across voice, chat, email, web, social media and mobile channels, either directly or through our application programming interfaces. Our VCC cloud platform matches each customer interaction with an appropriate agent resource and delivers relevant customer data to the agent in real-time through integrations with adjacent enterprise applications, such as customer relationship management software, to optimize the customer experience and improve agent productivity. Delivered on-demand, our solution enables our clients to quickly deploy agent seats in any geographic location with only a computer, headset and broadband internet connection, and rapidly adjust the number of contact center agent seats in response to changing business requirements. Unlike legacy on-premise contact center systems, our solution requires minimal up-front investment, can be rapidly deployed and is maintained by us in the cloud.

Our sales model consists of a field sales team that sells our solution into larger opportunities and a telesales team that sells our solution into smaller opportunities. We have developed a proven, high velocity, metrics-driven sales and marketing strategy designed to effectively identify, qualify and close sales opportunities. We have also developed a large ecosystem of technology and system integrator partners to help increase awareness of our solution in the market and drive incremental sales opportunities with new and existing clients.

We provide our solution through a Software-as-a-Service, or SaaS, business model with recurring subscriptions based primarily on the number of agent seats and minutes of usage of our VCC cloud platform, as well as the specific functionalities and applications our clients deploy. Our recurring revenue model combined with strong revenue retention have enhanced our ability to forecast our financial performance and plan future investments.

We have achieved significant growth in recent periods. For the years ended December 31, 2011, 2012 and 2013, our revenues were $43.2 million, $63.8 million and $84.1 million, respectively, representing year-over-year growth of 48% and 32%, respectively. We incurred net losses of $7.9 million, $19.3 million and $31.3 million for the years ended December 31, 2011, 2012 and 2013, respectively, as a result of increased investment in our growth.

Industry Overview

Contact centers must evolve in today's rapidly changing technology environment

Contact centers are vital hubs of interaction between organizations and their customers and are mission critical to the successful execution of customer service, sales and marketing strategies. Today, customers increasingly expect seamless and personalized communications across multiple channels, including voice, chat, email, web, social media and mobile. In addition, organizations seek to enhance the efficiency of their contact centers by managing agent utilization and unifying geographically dispersed operations. In order to meet these changing demands, contact centers must upgrade their existing on-premise contact center systems or migrate their contact center operations to the cloud.

Legacy on-premise contact center systems are inefficient

The majority of contact center operations today rely on legacy on-premise contact center systems that include business workflows, as well as hardware and software architectures designed more than a decade ago. Key shortcomings of these legacy systems include:

- ***Long and complex implementation and upgrade cycles.*** Implementation and upgrades of legacy on-premise contact center systems require long deployment timelines and complex integrations with other enterprise systems, which frequently result in significant expenditures of time, resources and capital;
- ***Inflexible resource deployment.*** Most legacy on-premise contact center systems do not provide the flexibility to easily manage remote agents and quickly adjust agent seats to accommodate peak call volumes. As a result, organizations are typically unable to quickly scale their contact center operations in response to changing business needs; and
- ***Duplicative technology stacks across multiple sites.*** Organizations must integrate multiple contact center sites to drive efficiency and create a unified customer view. However, the use of legacy on-premise contact center systems often results in dissimilar solutions at each site and integration of these contact center sites requires significant ongoing investment.

Our Opportunity

Based on our current product offerings and historical average annual recurring revenue per seat, we believe that the market for our solution is approximately $22 billion annually worldwide. Gartner estimates that there were 14.5 million contact center agents worldwide in 2012 and forecasts that the cloud penetration of the contact center market in North America will more than double from 5% of total contact center agents in 2012 to 13% in 2016. We believe the adoption of cloud contact center software solutions is increasing rapidly as a result of several distinct trends. The increasing adoption of cloud computing, especially within customer relationship management, or CRM, is creating strong demand for integrated cloud contact center software solutions. Cloud contact center software solutions now offer the functionality required by large, complex enterprise contact centers. Furthermore, we believe organizations typically refresh their on-premise contact center systems every 8-10 years, which provides an ongoing opportunity for cloud solutions to replace legacy on-premise contact center systems when these refresh decisions arise.

Our Solution

We deliver a comprehensive cloud software solution for contact centers. Our solution enables organizations of all sizes to optimize their contact center operations by enhancing agent productivity, improving customer satisfaction and driving cost efficiency. Our solution facilitates inbound customer-initiated interactions and outbound agent-initiated interactions and includes features such as automatic call distribution, interactive voice response, computer-telephony integration, outbound dialers and multi-channel capabilities.

Our cloud contact center software solution includes the following key elements:

- ***Rapid implementation, seamless updates and pre-built integrations.*** Our solution can be deployed and updated quickly with minimal disruption to our clients' contact center operations and provides pre-built integrations with leading CRM and other enterprise applications.
- ***Highly flexible platform.*** Our solution provides easy administration, configuration and role-based functionalities for agents, supervisors and administrators, and enables the rapid adjustment of agent seats to meet changing contact center volumes.
- ***Scalable, secure and reliable multi-tenant architecture.*** Our solution provides organizations of all sizes with the robust contact center functionality, scalability, flexibility and security required in the most sophisticated and distributed environments.

Our solution is designed to provide the following key benefits to our clients:

- ***Higher agent productivity.*** Our solution empowers greater agent productivity and utilization by allowing agents to handle both inbound and outbound calls and interact with customers across multiple other channels, including chat, email, web, social media and mobile.
- ***Improved customer satisfaction.*** Our solution routes each customer interaction to an appropriate agent resource and, through integrations with CRM applications, provides agents with immediate access to the most current, relevant and accurate information about the customer, resulting in increased first contact resolutions and a more satisfying experience for the customer.
- ***Enhanced end-to-end visibility.*** Our VCC cloud platform integrates our clients' deployments across multiple contact center locations, providing an organization-wide view of their contact center operations. Our solution also enables our clients to quickly shift agent resources and adjust agent seats in response to changing business requirements, which results in higher agent utilization.
- ***Greater operational efficiency.*** Our solution provides contact center managers with significant visibility into their agents' productivity and the efficiency and performance of their campaigns.
- ***Compelling value proposition.*** We provide a unified cloud-based software and telephony platform for contact center operations, which enables our clients to simplify their technology infrastructure and streamline IT costs.

Our Competitive Strengths

We believe that our position as a leading provider of cloud contact center software results from several key competitive strengths, including:

- ***Cloud-based, enterprise-grade platform and end-to-end application suite.*** Our highly scalable, secure, multi-tenant architecture enables us to serve large, distributed enterprises with complex contact center requirements, as well as smaller organizations, all from a single cloud platform.
- ***Rapid deployment of our comprehensive solution.*** Our solution enables our clients to quickly deploy and provision agent seats in any geographic location with only a computer, headset and broadband internet connection, and rapidly adjust the number of contact center agent seats in response to changing business requirements.
- ***Proven, repeatable and scalable go-to-market model.*** We engage with our clients through a highly scalable and metrics-driven sales and marketing organization that effectively identifies, qualifies and closes sales opportunities. The deep domain expertise of our field sales team is instrumental in selling to larger opportunities and our highly efficient telesales model enables us to cost-effectively identify, qualify and close a high volume of smaller opportunities.
- ***Established market presence and a large, diverse client base.*** We have a large, diverse client base of over 2,000 organizations across multiple industries. The performance, reliability, ease of use and comprehensive nature of our solution has resulted in high client satisfaction and retention.

- ***Extensive partner ecosystem.*** We have cultivated a robust ecosystem of partners, including a variety of leading CRM software vendors such as Salesforce.com, Inc. and Oracle Corporation, system integrators, analytics, workforce management and performance management software vendors and telephony providers.
- ***Focus on innovation and thought leadership.*** Since our inception, we have been an innovator of cloud contact center software. Our investment in research and development has driven our growth and enabled us to deliver a cloud contact center software solution with the features and functionality to power the most complex contact centers.

Our Growth Strategy

Our objective is to strengthen our position as a leader in cloud contact center software. To accomplish this goal, we are pursuing the following growth strategies:

- ***Capture increased market share.*** We believe there is a substantial opportunity for us to win new clients and increase our market share given the strength and client benefits of our cloud solution.
- ***Continue to increase sales in our existing client base.*** We intend to increase the number of agents using our solution within our existing clients as they experience the benefits of our cloud solution.
- ***Maintain our innovation leadership by strengthening and extending our solution.*** We intend to continue to make significant investments in research and development to strengthen our existing solution and develop additional industry-leading contact center features and applications.
- ***Expand internationally.*** We plan to increase our sales capabilities internationally by expanding our direct sales force and collaborating with strategic partners worldwide to target these markets and grow our international client base.
- ***Further develop our partner ecosystem.*** We have established strong partner relationships with organizations in the contact center ecosystem to further enhance the value of our enterprise-class cloud platform and intend to continue to cultivate new relationships to enhance the value of our solution and drive sales.
- ***Selectively pursue acquisitions.*** In addition to organically developing and strengthening our solution, we intend to actively and selectively explore acquisition opportunities of companies and technologies to expand the functionality of our solution, provide access to new clients or markets, or both.

Risk Factors

Before you invest in our stock, you should carefully consider all of the information in this prospectus, including matters set forth under the heading “Risk Factors.” Risks relating to our business include, among others, that:

- our quarterly and annual results may fluctuate significantly, may not fully reflect the underlying performance of our business and may result in decreases in the price of our common stock;
- if we are unable to attract new clients or sell additional services and functionality to our existing clients, our revenue and revenue growth will be harmed;
- our recent rapid growth may not be indicative of our future growth, and if we continue to grow rapidly, we may fail to manage our growth effectively;
- the markets in which we participate are highly competitive, and if we do not compete effectively, our operating results could be harmed;
- if we fail to manage our technical operations infrastructure, our existing clients may experience service outages, our new clients may experience delays in the deployment of our solution and we could be subject to, among other things, claims for credits or damages;

- if our dollar-based retention rate declines, our revenues, gross margins and net income could decrease and we may be required to spend more money to grow our client base and maintain our revenues;
- we sell our solution to larger organizations that require longer sales and implementation cycles and often demand more configuration and integration services or customized features and functions that we may not offer, any of which could delay or prevent these sales and harm our growth rates, business and operating results;
- because most of our revenue is derived from existing clients, downturns or upturns in new sales will not be immediately reflected in our operating results and may be difficult to discern;
- we rely on third-party telecommunications and internet service providers to provide our clients and their customers with telecommunication services and connectivity to our cloud contact center software and any failure by these service providers to provide reliable services could subject us to, among other things, claims for credits or damages;
- we have a history of losses and we may be unable to achieve or sustain profitability; and
- our directors, executive officers and significant stockholders, who after this offering will hold approximately % of the voting power of our outstanding capital stock, will continue to have substantial control over us after this offering and could delay or prevent a change in corporate control.

Company Information

Our principal executive office is located at Bishop Ranch 8, 4000 Executive Parkway, Suite 400, San Ramon, CA 94583 and our telephone number is (925) 201-2000. Our website address is *www.five9.com*. Our website and the information contained therein or connected thereto shall not be deemed to be incorporated into this prospectus or the registration statement of which it forms a part. We were incorporated in Delaware in 2001.

We own or have rights to trademarks or trade names that we use in connection with the operation of our business, including our corporate names, logos and website names. In addition, we own or have the rights to copyrights, trade secrets and other proprietary rights that protect the content of our products and formulations for such products. Solely for convenience, some of the copyrights, trademarks and trade names referred to in this prospectus are listed without the ©, ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our copyrights, trademarks and trade names.

THE OFFERING

Common stock offered by us	shares
Option to purchase additional shares offered by us	shares
Common stock to be outstanding after this offering	shares, or shares if the underwriters exercise their option to purchase additional shares in full.
Use of proceeds	We intend to use the net proceeds from this offering for general corporate purposes, which we expect to include growing our business by expanding our direct sales force and investing to grow our international client base, as well as other working capital, operating expenses and capital expenditures. Additionally, we may use a portion of the net proceeds to acquire complementary businesses, technologies or other assets. However, we do not have agreements or commitments for any acquisitions at this time. We may also use a portion of the net proceeds from this offering to repay the $12.5 million principal amount currently outstanding under our revolving line of credit.
Directed share program	The underwriters have reserved for sale at the initial public offering price up to 5% of the common stock being offered by this prospectus for sale to our employees, executive officers, directors, business associates and related persons who have expressed an interest in purchasing common stock in this offering. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Please see "Underwriting."
Proposed NYSE symbol	"FIVN"

The number of shares of our common stock that will be outstanding after this offering is based on 144,190,363 shares of our common stock (including preferred stock on an as-converted basis) outstanding as of December 31, 2013, and excludes:

- 30,534,026 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of December 31, 2013, with a weighted average exercise price of $0.82 per share;
- 426,250 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock granted subsequent to December 31, 2013, at an exercise price of $2.98 per share;
- 1,562,708 shares of our common stock, on an as-converted basis, issuable upon the exercise of warrants outstanding as of December 31, 2013, with a weighted average exercise price of $0.22 per share;
- 711,462 shares of our common stock issuable upon the exercise of warrants with an exercise price of $2.53 per share issued upon the closing of our new loan and security agreement after December 31, 2013; and
- shares of our common stock reserved for future issuance under our equity incentive plans, consisting of:
  - 790,791 shares of our common stock reserved for future issuance under our Amended and Restated 2004 Equity Incentive Plan, as amended, or our 2004 Plan;
  - shares of our common stock reserved for future issuance under our 2014 Equity Incentive Plan, or our 2014 Plan; and

¡ shares of our common stock reserved for future issuance under our 2014 Employee Stock Purchase Plan, or our ESPP.

Our 2014 Plan and ESPP each provide for annual automatic increases in the number of shares reserved thereunder and our 2014 Plan also provides for increases in the number of shares that may be granted thereunder based on shares under our 2004 Plan that expire, are forfeited or are otherwise repurchased by us, as more fully described in the section titled "Executive Compensation — Employee Benefit and Stock Plans."

Except as otherwise indicated, all information in this prospectus assumes:

- the automatic conversion of all outstanding shares of our series A-2 preferred stock, series B-2 preferred stock, series C-2 preferred stock and series D-2 preferred stock into 122,215,769 pre-stock split shares of common stock at a conversion ratio of 1:1, the conversion of which will occur in connection with this offering;
- the filing and effectiveness of our amended and restated certificate of incorporation in Delaware to give effect to a : reverse stock split of our outstanding common stock and the effectiveness of our amended and restated bylaws, each of which will occur prior to the completion of this offering; and
- no exercise of the underwriters' option to purchase additional shares.

SUMMARY HISTORICAL FINANCIAL AND OPERATING DATA

The following table sets forth, for the periods and dates indicated, our summary historical financial and operating data. The following summary consolidated statement of operations data for the years ended December 31, 2011, 2012 and 2013 and the summary consolidated balance sheet as of December 31, 2013 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read this information in conjunction with "Selected Consolidated Historical Financial and Operating Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes to those statements included elsewhere in this prospectus.

	Year Ended December 31,		
	2011	2012	2013
	(in thousands, except per share data)		
Consolidated Statements of Operations Data:			
Revenue	$43,188	$ 63,822	$ 84,132
Cost of revenue(1)	24,563	39,306	48,807
Gross profit	18,625	24,516	35,325
Operating expenses:			
Research and development(1)	8,739	13,217	17,529
Sales and marketing(1)	10,207	16,808	28,065
General and administrative(1)	6,990	11,546	18,053
Total operating expenses	25,936	41,571	63,647
Loss from operations	(7,311)	(17,055)	(28,322)
Other expense, net:			
Change in fair value of convertible preferred stock warrant liability	(55)	(1,674)	(1,871)
Interest expense and other, net	(442)	(543)	(1,051)
Total other expense, net	(497)	(2,217)	(2,922)
Loss before provision for income taxes	(7,808)	(19,272)	(31,244)
Provision for income taxes	64	62	70
Net loss	$ (7,872)	$(19,334)	$ (31,314)
Net loss per share:			
Basic and diluted	$ (0.75)	$ (1.46)	$ (1.95)
Shares used in computing net loss per share:			
Basic and diluted	10,538	13,280	16,026
Pro forma net loss per share (unaudited):			
Basic and diluted(2)			$ (0.22)
Shares used in computing pro forma net loss per share (unaudited):			
Basic and diluted(2)			133,389
Other Financial Data:			
Adjusted EBITDA(3) (unaudited)	$ (5,415)	$(13,967)	$ (21,958)

(1) Stock-based compensation expense is included in our results of operations as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Cost of revenue	$ 17	$ 60	$ 194
Research and development	51	154	499
Sales and marketing	36	112	751
General and administrative	253	138	505
Total stock-based compensation	$ 357	$ 464	$ 1,949

(2) See Note 7 to the notes to our consolidated financial statements for an explanation of the method used to calculate the unaudited pro forma basic and diluted net loss per share for the year ended December 31, 2013. All shares to be issued in this offering were excluded from the unaudited pro forma basic and diluted net loss per share calculation.

(3) We calculate Adjusted EBITDA, a non-GAAP financial measure, to analyze our financial results and believe that it is useful to investors, as a supplement to generally accepted accounting principles in the United States, or U.S. GAAP, measures, in evaluating our ongoing operational performance and enhancing an overall understanding of our past financial performance. We believe that Adjusted EBITDA helps illustrate underlying trends in our business that could otherwise be masked by the effect of the income or expenses that we exclude from Adjusted EBITDA. Furthermore, we use this measure to establish budgets and operational goals for managing our business and evaluating our performance. We also believe that Adjusted EBITDA provides an additional tool for investors to use in comparing our recurring core business operating results over multiple periods with other companies in our industry.

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with U.S. GAAP and our calculation of Adjusted EBITDA may differ from that of other companies in our industry. We compensate for the inherent limitations associated with using Adjusted EBITDA through disclosure of these limitations, presentation of our financial statements in accordance with U.S. GAAP and reconciliation of Adjusted EBITDA to the most directly comparable U.S. GAAP measure, net loss. We calculate Adjusted EBITDA as net loss before (1) provision for income taxes, (2) other expense, net, (3) depreciation and amortization and (4) stock-based compensation.

The following provides a reconciliation of net loss to Adjusted EBITDA (unaudited, in thousands):

	Year Ended December 31,		
	2011	2012	2013
Reconciliation of Adjusted EBITDA:			
Net loss	$ (7,872)	$ (19,334)	$ (31,314)
Non-GAAP adjustments:			
Provision for income taxes	64	62	70
Other expense, net	497	2,217	2,922
Depreciation and amortization	1,539	2,624	4,415
Stock-based compensation	357	464	1,949
Adjusted EBITDA	$ (5,415)	$ (13,967)	$ (21,958)

	As of December 31, 2013		
	Actual	Pro Forma(1)	Pro Forma as Adjusted(2)
	(in thousands)		
Consolidated Balance Sheet Data:			
Cash, cash equivalents and short-term investments	$ 17,748	$	$
Working capital (deficit)	1,076		
Total assets	56,278		
Total debt and capital leases(3)	30,332		
Additional paid-in capital	34,072		
Total stockholders' equity (deficit)	(2,968)		

(1) The pro forma consolidated balance sheet data give effect to the automatic conversion of all outstanding shares of our convertible preferred stock into 122,215,769 shares of our common stock, which conversion will occur in connection with this offering.

(2) The pro forma as adjusted consolidated balance sheet data also give effect to our sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(3) In February 2014, we entered into a loan and security agreement for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. Please see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Contractual Obligations—Loan and Security Agreement."

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this prospectus, including the consolidated financial statements and the related notes included elsewhere in this prospectus, before deciding whether to invest in shares of our common stock. If any of the following risks or other risks actually occur, our business, financial condition, results of operations, and future prospects could be materially harmed. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

Risks Related to Our Business and Industry

Our quarterly and annual results may fluctuate significantly, may not fully reflect the underlying performance of our business and may result in decreases in the price of our common stock.

Our quarterly and annual results of operations, including our revenues, profitability and cash flow may vary significantly in the future and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. Fluctuation in quarterly and annual results may negatively impact the value of our common stock. Factors that may cause fluctuations in our quarterly and annual results include, without limitation:

- market acceptance of our solution;
- our ability to attract new clients and grow our business with existing clients;
- client renewal rates;
- changes in strategic and client relationships;
- the timing and success of new product and feature introductions by us or our competitors or any other change in the competitive dynamics of our industry, including consolidation among competitors, clients or strategic partners;
- network outages or security breaches, which may result in lost clients, client credits and harm to our reputation;
- inaccessibility or failure of our cloud contact center software due to failures in the products or services provided by third parties;
- the timing of recognition of revenues;
- the amount and timing of costs and expenses related to the maintenance and expansion of our business, operations and infrastructure;
- increases or decreases in the elements of our solution or pricing changes upon any renewals of client agreements;
- changes in our pricing policies or those of our competitors;
- the level of professional services and support we provide to clients;
- the components of our revenue;
- the addition or loss of key clients, including through acquisitions or consolidations;
- general economic, industry and market conditions;
- the timing of costs and expenses related to the development or acquisition of technologies or businesses and potential future charges for impairment of goodwill from acquired companies;
- the regulatory environment;
- the hiring, training and retention of key employees;

- litigation or other claims against us;
- our ability to obtain additional financing; and
- advances and trends in new technologies and industry standards.

If we are unable to attract new clients or sell additional services and functionality to our existing clients, our revenue and revenue growth will be harmed.

To increase our revenue, we must add new clients, encourage existing clients to renew their subscriptions on terms favorable to us and to add additional agent seats and sell additional functionality to existing clients. As our industry matures, or as competitors introduce lower cost and/or differentiated products or services that are perceived to compete favorably with ours, our ability to add new clients and renew or upsell existing clients based on pricing, technology and functionality could be impaired. As a result, we may be unable to renew our agreements with existing clients or attract new clients or new business from existing clients, which could harm our revenue and growth.

A portion of our revenue is generated by acquiring domestic and international telecommunications minutes from wholesale telecommunication service providers and reselling those minutes to our clients. We must resell more minutes if telecommunications rates decrease to maintain our level of usage revenue.

Our recent rapid growth may not be indicative of our future growth, and if we continue to grow rapidly, we may fail to manage our growth effectively.

For the years ended December 31, 2011, 2012 and 2013, our revenue was $43.2 million, $63.8 million and $84.1 million, respectively, representing year-over-year growth of 48% and 32%, respectively. We expect that, in the future, as our revenue increases, our revenue growth rate may decline. We believe growth of our revenue depends on a number of factors, including our ability to:

- capture market share from providers of legacy on-premise contact center systems as contact center systems are refreshed;
- attract new clients, increase our existing clients' use of our solution and further develop our partner ecosystem;
- introduce our solution to new markets outside of the United States and increase global awareness of our brand;
- strengthen and improve our solution through significant investments in research and development; and
- selectively pursue acquisitions.

If we are not successful in achieving these objectives, our revenue may be harmed. In addition, we plan to continue our investment in future growth, including expending substantial financial and other resources on:

- sales and marketing, including a significant expansion of our sales organization;
- our technology infrastructure, including systems architecture, management tools, scalability, availability, performance and security, as well as disaster recovery measures;
- solution development, including investments in our solution development team and the development of new applications and features for existing solutions;
- international expansion; and
- general administration, including legal and accounting expenses related to being a public company.

Moreover, we have recently experienced a period of rapid growth in our headcount and operations. In particular, we grew from 332 employees as of December 31, 2011, to 442 employees as of December 31, 2012, to 533 employees as of December 31, 2013. We have also significantly increased the size of our client base to over

2,000 clients. We anticipate that we will significantly expand our operations and headcount in the near term. This growth has placed, and future growth will place, a significant strain on our management, administrative, operational and financial infrastructure. Our success will depend in part on our ability to manage this growth effectively. To manage the expected growth of our operations and personnel, we will need to continue to improve our operational, financial and management controls and our reporting systems and procedures. Failure to effectively manage growth could result in difficulty or delays in adding new clients, declines in quality or client satisfaction, increases in costs, system failures, difficulties in introducing new features or solutions or other operational difficulties, and any of these difficulties could harm our business performance and results of operations.

The expected addition of new employees and the capital investments that we anticipate will be necessary to manage our anticipated growth will make it more difficult for us to generate earnings or offset any future revenue shortfalls by reducing costs and expenses in the short term. If we fail to manage our anticipated growth, we will be unable to execute our business plan successfully.

The markets in which we participate are highly competitive, and if we do not compete effectively, our operating results could be harmed.

The market for contact center solutions is highly competitive. Our clients are not subject to long-term contractual commitments to purchase our solution and can terminate our service and switch to competitors' offerings on short notice.

We currently compete with large legacy technology vendors that offer on-premise enterprise telephony and contact center systems, such as Avaya Inc., or Avaya, and Cisco Systems, Inc., or Cisco, and legacy on-premise software companies that come from a computer telephony integration, or CTI, heritage, such as Aspect Software, Inc., or Aspect, Genesys Telecommunications Laboratories, Inc., or Genesys, and Interactive Intelligence Group, Inc., or Interactive Intelligence. These companies are supplementing their traditional on-premise contact center systems with cloud offerings, either through acquisition or in-house development. Additionally, we compete with vendors that historically provided other contact center services and technologies and expanded to offer cloud contact center software. These companies include inContact, Inc., or inContact, and LiveOps, Inc., or LiveOps. We also face competition from smaller contact center service providers with specialized contact center software offerings. Our actual and potential competitors may enjoy competitive advantages over us, including greater name recognition, longer operating histories and larger marketing budgets, as well as greater financial or technical resources. With the introduction of new technologies and market entrants, we expect competition to intensify in the future.

Some of our competitors can devote significantly greater resources than we can to the development, promotion and sale of their products and services and many have the ability to initiate or withstand substantial price competition. Current or potential competitors may also be acquired by third parties with significantly greater resources. In addition, many of our competitors have stronger name recognition, longer operating histories, established relationships with clients, more comprehensive product offerings, larger installed bases and major distribution agreements with consultants, system integrators and resellers. Our competitors may also establish cooperative relationships among themselves or with third parties that may further enhance their product offerings or resources. If our competitors' products, services or technologies become more accepted than our solution, if they are successful in bringing their products or services to market earlier than ours, or if their products or services are less expensive or more technologically capable than ours, then our revenues could be harmed. Pricing pressures and increased competition could result in reduced sales, reduced margins and loss of, or a failure to maintain or improve, our competitive market position, any of which could harm our business.

If we fail to manage our technical operations infrastructure, our existing clients may experience service outages, our new clients may experience delays in the deployment of our solution and we could be subject to, among other things, claims for credits or damages.

Our success depends in large part upon the capacity, stability and performance of our operations infrastructure. From time to time, we have experienced interruptions in service, and may experience such interruptions in the future. These problems may be caused by a variety of factors, including infrastructure changes, human or software errors, viruses, security attacks, fraud, spikes in client usage and denial of service

issues. In some instances, we may not be able to identify the cause or causes of these performance problems within an acceptable period of time. Our failure to achieve or maintain expected performance levels, stability and security could harm our relationships with our clients, result in claims for credits or damages, damage our reputation and significantly reduce client demand for our solution and harm our business.

Any future service interruptions could:

- cause our clients to seek credits or damages for losses incurred;
- require us to replace existing equipment;
- affect our reputation as a reliable service provider;
- cause existing clients to cancel or elect not to renew their contracts; or
- make it more difficult for us to attract new clients or expand our business with existing clients.

We have experienced significant growth in the number of agents and interactions that our infrastructure supports. As our client base grows and their use of our service increases, we will be required to make additional investments in our capacity to maintain adequate stability and performance, the availability of which may be limited or the cost of which may be prohibitive. In addition, we need to properly manage our operations infrastructure in order to support version control, changes in hardware and software parameters and the evolution of our solution. If we do not accurately predict or improve our infrastructure requirements to keep pace with growth in our business, our business could be harmed.

If our Dollar-Based Retention Rate declines, our revenues, gross margins and net income could decrease and we may be required to spend more money to grow our client base and maintain our revenues.

We calculate our Dollar-Based Retention Rate by dividing our Retained Net Invoicing by our Retention Base Net Invoicing on a monthly basis, which we then average using the rates for the trailing twelve months for the period being presented. We define Retention Base Net Invoicing as recurring net invoicing from all clients in the comparable prior year period, and we define Retained Net Invoicing as recurring net invoicing from that same group of clients in the current period. We define recurring net invoicing as subscription and related usage revenue excluding the impact of service credits, reserves and deferrals. Historically, recurring net invoicing has been within 10% of our subscription and related usage revenue. We analyze our Dollar-Based Retention Rate data to gain insight into our ability to retain and grow revenue from our clients and measure the long-term value of our client relationships.

We offer both annual and monthly contracts to our clients, with 30 days' notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days' notice. As a result, our Dollar-Based Retention Rate could decrease in the future if clients are not satisfied with our service, competition increases from other contact center providers, we experience system outages, alternative technologies emerge, the U.S. or global economy declines or due to many other factors. If our Dollar-Based Retention Rate decreases, we will need to acquire new clients to maintain our existing level of revenues. There can be no assurance that the market for our solution will continue to grow or that we will not lose market share to current or future competitors, either of which would magnify the impact of any decrease in our Dollar-Based Retention Rate. We incur significant costs and expenses, including sales and marketing expenses, to acquire new clients, and those costs and expenses are an important factor in determining our net profitability. Therefore, if we are unsuccessful in maintaining our Dollar-Based Retention Rate or are required to spend significant amounts to acquire new clients, our revenues, gross margins and net income could decrease.

We sell our solution to larger organizations that require longer sales and implementation cycles and often demand more configuration and integration services or customized features and functions that we may not offer, any of which could delay or prevent these sales and harm our growth rates, business and operating results.

As we target our sales efforts at larger organizations, we face greater costs, longer sales and implementation cycles and less predictability in completing our sales. These larger organizations typically require more configuration and integration services, which increases our upfront investment in sales and deployment efforts, with no guarantee that these clients will subscribe to our solution or increase the scope of their subscription. Furthermore, with larger organizations, we must provide greater levels of education regarding the use and benefits of our solution to a broader group of people. As a result of these factors, we must devote a significant amount of sales support and professional services resources to individual clients, thereby increasing the cost and time required to complete sales. Our typical sales cycle for larger organizations is four to five months, but can be significantly longer, and we expect that our average sales cycle may increase as sales to larger organizations continue to grow as a percentage of our business. Longer sales cycles could cause our operating and financial results to be less predictable and to fluctuate from period to period. In addition, many of our clients that are larger organizations initially deploy our solution to support only a portion of their contact center agents. Our success depends on our ability to increase the number of agent seats and the number of applications utilized by larger organizations over time. There is no guarantee that these clients will increase their subscriptions for our solution. If we do not expand our initial relationships with larger organizations, the return on our investments in sales and deployment efforts for these clients will decrease and our business may suffer.

Furthermore, we may not be able to provide the configuration and integration services that larger organizations typically require. For example, our solution does not currently permit clients to add new data fields and functions or modify our code. If prospective clients require customized features or functions that we do not offer, and that would be difficult for them to deploy themselves, then we may lose sales opportunities with larger organizations and our business could suffer.

Because most of our revenue is derived from existing clients, downturns or upturns in new sales will not be immediately reflected in our operating results and may be difficult to discern.

We generally recognize subscription revenue from clients monthly as services are delivered. As a result, most of the subscription revenue we report in each quarter is derived from existing clients. Consequently, a decline in new subscriptions in any single quarter will likely have only a small impact on our revenue results for that quarter. However, the cumulative impact of such declines could harm our revenues in future quarters. Accordingly, the effect of significant downturns in sales and market acceptance of our solution, and potential changes in our pricing policies or renewal rates, will typically not be reflected in our results of operations until future periods. We also may be unable to adjust our cost structure to reflect the changes in revenue, resulting in lower margins and earnings. In addition, our subscription model makes it difficult for us to rapidly increase our revenue through additional sales in any period, as revenue from new clients will be recognized over time as services are delivered. For example, many of our clients initially deploy our solution to support only a portion of their contact center agents. Any increase to our revenue and the value of these existing client relationships will only be reflected in our results of operations as these clients increase the number of agent seats and the number of applications utilized with our solution over time as they experience the benefits of our cloud solution.

We rely on third-party telecommunications and internet service providers to provide our clients and their customers with telecommunication services and connectivity to our cloud contact center software and any failure by these service providers to provide reliable services could subject us to, among other things, claims for credits or damages.

We rely on third-party telecommunication service providers to provide our clients and their customers with telecommunication services. These telephony services include the public switched telephone network, or PSTN, telephone numbers, call termination and origination services, and local number portability for our clients. In addition, we depend on our internet bandwidth suppliers to provide uninterrupted and error-free service through their telecommunications networks. We exercise little control over these third-party providers, which increases our vulnerability to problems with the services they provide. If any of these service providers fail to provide

reliable services, or terminate or increase the cost of the services that we and our clients depend on, we may be required to switch to another service provider. Delays caused by switching our technology to another service provider, if available, and qualifying this new service provider could materially harm our client relationships, business, financial condition and operating results.

Due to our reliance on these service providers, when problems occur, it may be difficult to identify the source of the problem. Service disruption or outages, whether caused by our service, the products or services of our third-party service providers, or our clients' or their customers' equipment and systems, may result in loss of market acceptance of our solution and any necessary repairs or other remedial actions may force us to incur significant costs and expenses. Any failure on the part of third-party service providers to achieve or maintain expected performance levels, stability and security could harm our relationships with our clients, result in claims for credits or damages, damage our reputation, significantly reduce client demand for our solution and seriously harm our financial condition and operating results.

We have a history of losses and we may be unable to achieve or sustain profitability.

We have incurred significant losses in each period since our inception in 2001. We incurred net losses of $7.9 million in the year ended December 31, 2011, $19.3 million in the year ended December 31, 2012 and $31.3 million in the year ended December 31, 2013. As of December 31, 2013, we had an accumulated deficit of $90.8 million. These losses and our accumulated deficit reflect the substantial investments we have made to develop our solution and acquire new clients. We expect our costs and expenses to increase in the future due to anticipated increases in cost of revenues, sales and marketing expenses, research and development expenses and general and administrative expenses and, therefore, we expect our losses to continue for the foreseeable future as we continue to make significant future expenditures to develop and expand our business. Furthermore, to the extent we are successful in increasing our client base, we may also incur increased losses because costs associated with acquiring clients are generally incurred up front, while revenues are recognized over the course of the client relationship. Historically, we also have experienced negative gross margins on our professional services, which are expected to continue in the future. In addition, as a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. You should not consider our recent growth in revenues as necessarily indicative of our future performance. Accordingly, we cannot assure you that we will achieve profitability in the future nor that, if we do become profitable, we will sustain profitability.

If the market for cloud contact center software solutions develops more slowly than we expect or declines, our business could be harmed.

The cloud contact center software solutions market is not as mature as the market for legacy on-premise contact center systems, and it is uncertain whether cloud contact center solutions will achieve and sustain high levels of client demand and market acceptance. Our success will depend to a substantial extent on the widespread adoption of cloud contact center software solutions as a replacement for legacy on-premise systems. Many larger organizations have invested substantial technical, personnel and financial resources to integrate legacy on-premise contact center systems into their businesses and, therefore, may be reluctant or unwilling to migrate to cloud contact center solutions such as ours. It is difficult to predict client adoption rates and demand for our solution, the future growth rate and size of the cloud contact center software market, or the entry of competitive products and services. The expansion of the cloud contact center software solutions market depends on a number of factors, including the refresh rate for legacy on-premise systems, cost, performance and perceived value associated with cloud contact center software solutions, as well as the ability of providers of cloud contact center software solutions to address security, stability and privacy concerns. If other cloud contact center solution providers experience security incidents, loss of client data, disruptions in delivery or other problems, the market for cloud contact center software products, solutions and services as a whole, including our solution, may be harmed. If cloud contact center software solutions do not achieve widespread adoption, or there is a reduction in demand for such solutions caused by a lack of client acceptance, enhanced product offerings from on-premise providers, technological challenges, weakening economic conditions, security or privacy concerns, competing technologies and products, decreases in corporate spending or otherwise, it could result in decreased revenues and our business could be harmed.

Shifts over time or from quarter-to-quarter in the mix of sizes or types of organizations that purchase our solution or changes in the components of our solution purchased by our clients could harm our operating results.

Our strategy is to sell our solution to both smaller and larger organizations. Our gross margins can vary depending on numerous factors related to the implementation and use of our solution, including the features and number of agent seats purchased by our clients and the level of usage and professional services and support required by our clients. For example, our larger clients typically require more professional services and because our professional services offerings typically have negative margins, any increase in sales of professional services could harm our gross margins and operating results. Sales to larger organizations may also entail longer sales cycles and more significant selling efforts. Selling to smaller clients may involve lower Dollar-Based Retention Rates, smaller contract sizes and greater credit risk and uncertainty. If the mix of organizations that purchase our solution changes, or the mix of solution components purchased by our clients, changes, our revenues and gross margins could decrease and our operating results could be harmed.

We depend on data centers operated by third parties and any disruption in the operation of these facilities could harm our business.

We host our solution at data centers located in Santa Clara, California and Atlanta, Georgia. Any failure or downtime in one of our data center facilities could affect a significant percentage of our clients. While we control and have access to our servers and all of the components of our network that are located in our external data centers, we do not control the operation of these facilities. The owners of our data center facilities have no obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew these agreements on commercially reasonable terms, or if one of our data center operators is acquired, closes, suffers financial difficulty or is unable to meet our growing capacity needs, we may be required to transfer our servers and other infrastructure to new data center facilities, and we may incur significant costs and service interruptions in connection with doing so.

Our data centers are subject to various points of failure. Problems with cooling equipment, generators, uninterruptible power supply, routers, switches, or other equipment, whether or not within our control, could result in service interruptions for our clients as well as equipment damage. Our data centers are subject to disasters such as earthquakes, floods, fires, hurricanes, acts of terrorism, sabotage, break-ins, acts of vandalism and other events, which could cause service interruptions or the operators of these data centers to close their facilities for an extended period of time or permanently. The destruction or impairment of any of our data center facilities could result in significant downtime for our solution and the loss of client data. Because our ability to attract and retain clients depends on our providing clients with highly reliable service, even minor interruptions in our service could harm our business, revenues and reputation. Additionally, in connection with the continuing expansion of our existing data center facilities, there is an increased risk that service interruptions may occur as a result of server addition, relocation or other issues.

In addition, our data centers are subject to increased costs of power. We may not be able to pass on any increase in costs of energy to our clients, which could reduce our operating margins.

Our limited operating history makes it difficult to evaluate and predict our current business and future prospects.

We have been in existence since 2001, and much of our growth has occurred in recent periods. Our limited operating history and recent growth may make it difficult for you to evaluate our current business and our future prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including increasing and unforeseen expenses as we continue to grow our business.

Our ability to forecast our future operating results is limited and subject to a number of uncertainties, including our ability to plan for and model future growth. We have encountered and will continue to encounter risks and uncertainties frequently experienced by growing companies in rapidly changing industries, such as the risks and uncertainties described herein. If our assumptions regarding these risks and uncertainties, which we use to plan our business, are incorrect or change due to adjustments in our markets, or if we do not address these

risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

If our solution fails to perform properly or if it contains technical defects, our reputation could be harmed, our market share may decline and we could be subject to product liability claims.

Our solution may contain undetected errors or defects that may result in failures or otherwise cause our solution to fail to perform in accordance with client expectations. Because our clients use our solution for mission-critical aspects of their business, any errors or defects in, or other performance problems with, our solution may damage our clients' businesses and could significantly harm our reputation. If that occurs, we could lose future sales, or our existing clients could elect to cancel or not renew our solution, seek payment credits or delay or withhold payment to us, which could result in reduced revenues, an increase in our provision for uncollectible accounts and service credits and an increase in collection cycles for accounts receivable. Clients also may make indemnification or warranty claims against us, which could result in significant expense and risk of litigation. Product performance problems could result in loss of market share, failure to achieve market acceptance and the diversion of development resources.

Any product liability, intellectual property, warranty or other claims against us could damage our reputation and relationships with our clients, and could require us to spend significant time and money in litigation or pay significant settlements or damages. Although we maintain general liability insurance, including coverage for errors and omissions, this coverage may not be sufficient to cover liabilities resulting from such claims. Also, our insurer may disclaim coverage. Our liability insurance also may not continue to be available to us on reasonable terms, in sufficient amounts, or at all. Any contract or product liability claims successfully brought against us would harm our business.

If our security measures are breached or unauthorized access to client data is otherwise obtained, our solution may be perceived as not being secure, clients may reduce the use of or stop using our solution and we may incur significant liabilities.

Our solution involves the storage and transmission of our clients' information, including information about our clients' customers or other information treated by our clients as confidential. Unauthorized access or other breaches in our security could result in the loss of confidentiality, integrity and availability of information, leading to litigation, indemnity obligations and other liability. While we have security measures in place to protect client information and minimize the probability of security breaches, if these measures fail as a result of third-party action, employee error, malfeasance or otherwise, and someone obtains unauthorized access to our clients' data, our reputation could be damaged, our business may suffer and we could incur significant liability. Because the techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. In addition, any failure on the part of third parties, including our clients, to achieve or maintain security measures for their own systems could harm our relationships with our clients, result in claims against us for credits or damages, damage our reputation and significantly reduce client demand for our solution. Any or all of these issues could harm our ability to attract new clients, cause existing clients to elect not to renew their subscriptions, result in reputational damage or subject us to third-party lawsuits, regulatory fines or other action or liability, all of which could harm our operating results.

The contact center software solutions market is subject to rapid technological change, and we must develop and sell incremental and new products in order to maintain and grow our business.

The contact center software solutions market is characterized by rapid changes in client requirements, frequent introductions of new and enhanced products and continuing and rapid technological advancement. To compete successfully, we must continue to design, develop, manufacture and sell new and enhanced contact center products, applications and features that provide increasingly higher capabilities, performance and stability at lower cost. If we are unable to develop new features for our existing solution or new applications that achieve market acceptance or that keep pace with technological developments, our business would be harmed. For example, we are focused on enhancing the reliability, features and functionality of our contact center solution to enhance its utility to our clients, particularly larger clients with complex, dynamic and global operations. The

success of these enhancements depends on many factors, including timely development, introduction and market acceptance, as well as our ability to transition our existing clients to these new products, applications and features. Failure in this regard may significantly impair our revenue growth. In addition, because our solution is designed to operate on a variety of systems, we will need to continuously modify and enhance our solution to keep pace with changes in hardware, operating systems, the increasing trend toward multi-channel communications and other changes to software technologies. We may not be successful developing these modifications and enhancements or bringing them to market in a timely fashion. Furthermore, uncertainties about the timing and nature of new network platforms or technologies, or modifications to existing platforms or technologies, could delay introduction of our solution and increase our research and development expenses. Any failure of our solution to operate effectively with future network platforms and technologies could reduce the demand for our solution, result in client dissatisfaction and harm our business.

Our ability to continue to enhance our solution is dependent on adequate research and development resources. If we are not able to adequately fund our research and development efforts, we may not be able to compete effectively and our business and operating results may be harmed.

In order to remain competitive, we must continue to develop new solution offerings and enhancements to our existing cloud contact center software. Maintaining adequate research and development personnel and resources to meet the demands of the market is essential. If we are unable to develop products, applications or features internally due to certain constraints, such as high employee turnover, inability to hire sufficient research and development personnel or a lack of other research and development resources, we may miss market opportunities. Furthermore, many of our competitors expend a considerably greater amount of funds on their research and development programs, and those that do not may be acquired by larger companies that would allocate greater resources to our competitors' research and development programs. Our failure to devote adequate research and development resources or compete effectively with the research and development programs of our competitors could harm our business.

Our growth depends in part on the success of our strategic relationships with third parties and our failure to successfully grow and manage these relationships could harm our business.

We leverage strategic relationships with third parties, such as CRM, system integrator, technology and telephony providers. For example, our CRM and system integrator relationships provide significant lead generation for new client opportunities. As we grow our business, we will continue to depend on both existing and new strategic relationships. Our competitors may be more successful than we are in establishing relationships with third parties or may provide incentives to third parties to favor their products over our solution. Furthermore, if our partners are acquired, they may no longer support or promote our solution, or may be less effective in doing so, which could harm our business, financial condition and operations. If we are unsuccessful in establishing or maintaining our strategic relationships with third parties, our ability to compete in the marketplace or to grow our revenues could be impaired and our operating results may suffer. Even if we are successful, we cannot assure you that these relationships will result in increased client usage of our solution or increased revenue.

In addition, identifying new partners, and negotiating and documenting relationships with them, requires significant time and resources. As the complexity of our solution and our third-party relationships increases, the management of those relationships and the negotiation of contractual terms sufficient to protect our rights and limit our potential liabilities will become more complicated. We also license technology from certain third-party partners. Certain of these license agreements permit either party to terminate all or a portion of the license without cause at any time. Our inability to successfully manage these complex relationships or negotiate sufficient contractual terms could harm our business.

If we are unable to maintain the compatibility of our software with other products and technologies, our business would be harmed.

Our clients often integrate our solution with their business applications, particularly third-party CRM solutions. These third-party providers or their partners could alter their products so that our solution no longer integrates well with them, or they could delay or deny our access to technology releases that allow us to adapt our

solution to integrate with their products in a timely fashion. If we cannot adapt our solution to changes in complementary technology deployed by our clients, it may significantly impair our ability to compete effectively.

We are subject to many hazards and operational risks that can disrupt our business, some of which may not be insured or fully covered by insurance.

Our operations are subject to many hazards inherent in the cloud contact center software business, including:

- damage to third-party and our infrastructure and data centers, related equipment and surrounding properties caused by earthquakes, hurricanes, tornadoes, floods, fires and other natural disasters, explosions and acts of terrorism;
- inadvertent damage from third parties; and
- other hazards that could also result in suspension of operations, personal injury and even loss of life.

These risks could result in substantial losses and the curtailment or suspension of our operations. For example, in the event of a major earthquake along the west coast (where our corporate headquarters and one of our data centers are located), hurricane or tropical storm in the southeastern United States (where our other data center is located) or catastrophic events such as fire, power loss, telecommunications failure, cyber-attack, war or terrorist attack, we may be unable to continue our operations and may endure system and service interruptions, reputational harm, delays in product development, breaches of data security and loss of critical data, all of which could harm our operating results.

We are not insured against all claims, events or accidents that might occur. If a significant accident or event occurs that is not fully insured, if we fail to recover all anticipated insurance proceeds for significant accidents or events for which we are insured, or if we or our data center providers fail to reopen facilities damaged by such accidents or events, our operations and financial condition could be harmed. In addition to being denied coverage under existing insurance policies, we may not be able to maintain or obtain insurance of the type and amount we desire at reasonable rates.

Our business could be harmed if our clients are not satisfied with the professional services and technical support provided by us or our partners.

Our business depends on our ability to satisfy our clients, not only with respect to our solution but also with the professional services and technical support that are performed to enable our clients to implement and use our solution to address their business needs. Professional services and technical support may be performed by our own staff or, with respect to a select subset of our solution, by third parties. We may be unable to respond quickly enough to accommodate short-term increases in client demand for support services. We also may be unable to modify the format of our support services to compete with changes in support services provided by our competitors. Increased client demand for these services, without corresponding revenues, could increase costs and harm our operating results. If a client is not satisfied with the deployment and ongoing services performed by us or a third party, then we could lose clients, miss opportunities to expand our business with these clients, incur additional costs, or lose, or suffer reduced margins on, our service revenue, any of which could damage our ability to grow our business. In addition, negative publicity related to our professional services and technical support, regardless of its accuracy, may further damage our business by affecting our ability to compete for new business with current and prospective clients.

The loss of one or more of our key clients, or a failure to renew our subscription agreements with one or more of our key clients, could harm our ability to market our solution.

We rely on our reputation and recommendations from key clients in order to market and sell our solution. The loss of any of our key clients, or a failure of some of them to renew or to continue to recommend our solution, could have a significant impact on our revenues, reputation and our ability to obtain new clients. In addition, acquisitions of our clients could lead to cancellation of our contracts with those clients or by the acquiring companies, thereby reducing the number of our existing and potential clients.

Our clients may fail to pay us in accordance with the terms of their agreements, necessitating action by us to collect payment, or may terminate their subscriptions for our solution.

If clients fail to pay us under the terms of our agreements, fail to comply with the terms of our agreements, or terminate their subscriptions for our solution, we may lose revenue, be unable to collect amounts due to us, be subject to legal or regulatory action and incur costs in enforcing the terms of our contracts, including litigation. These risks increase the longer the term of our client arrangements. Some of our clients may seek bankruptcy protection or other similar relief and fail to pay amounts due to us, or pay those amounts more slowly, either of which could harm our operating results, financial position and cash flow.

Sales to clients outside the United States or with international operations and our international sales efforts and operations support expose us to risks inherent in international sales and operations.

A key element of our growth strategy is to expand our international sales efforts and develop a worldwide client base. Because of our limited experience with international sales efforts, our international expansion may not be successful and may not produce the return on investment we expect. To date, we have realized only a small portion of our revenues from clients outside the United States.

We currently have full-time employees in the Philippines, who provide technical support, training and other professional services, as well as in Russia, who provide software development services. Operating in international markets requires significant resources and management attention and subjects us to intellectual property, regulatory, economic and political risks that are different from those in the United States. As we increase our international sales efforts and continue our other international operations, we will face risks in doing business internationally that could harm our business, including:

- the need to establish and protect our brand in international markets;
- the need to localize and adapt our solution for specific countries, including translation into foreign languages and associated costs and expenses;
- difficulties in staffing and managing foreign operations, particularly hiring and training qualified sales and service personnel;
- different pricing environments, longer sales and accounts receivable payment cycles and collections issues;
- new and different sources of competition;
- general economic conditions in international markets;
- fluctuations in the value of the U.S. dollar and foreign currencies, which may make our solution more expensive in other countries or may impact our operating results when translated into U.S. dollars;
- compliance challenges related to the complexity of multiple, conflicting and changing governmental laws and regulations, including employment, tax, telecommunications and telemarketing laws and regulations;
- privacy and data protection laws and regulations that are complex, expensive to comply with and may require that client data be stored and processed in a designated territory;
- weaker protection for intellectual property and other legal rights than in the U.S. and practical difficulties in enforcing intellectual property and other rights outside of the U.S.;
- increased risk of international telecom fraud;
- laws and business practices favoring local competitors;
- compliance with U.S. laws and regulations for foreign operations, including the Foreign Corrupt Practices Act, the U.K. Bribery Act, import and export control laws, tariffs, trade barriers, economic sanctions and other regulatory or contractual limitations on our ability to sell our solution in certain foreign markets, and the risks and costs of non-compliance;

- increased financial accounting and reporting burdens and complexities;
- restrictions on the transfer of funds;
- adverse tax consequences; and
- unstable economic and political conditions.

The occurrence of any of these risks could harm our international operations, increase our operating costs and hinder our ability to grow our international business and, consequently, our overall business and results of operations.

In addition, compliance with laws and regulations applicable to our international operations increases our cost of doing business outside the United States. We may be unable to keep current with changes in foreign government requirements and laws as they change from time to time. Failure to comply with these regulations could harm our business. In many countries outside the United States it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. regulations applicable to us. Although we have implemented policies and procedures designed to ensure compliance with these laws and policies, there can be no assurance that all of our employees, contractors, strategic partners and agents will comply with these laws and policies. Violations of laws or key control policies by our employees, contractors, strategic partners or agents could result in delays in revenue recognition, financial reporting misstatements, fines, penalties, or prohibitions on selling our solution and could harm our business.

We depend on our senior management team and the loss of one or more key employees or an inability to attract and retain highly skilled employees could harm our business.

Our success largely depends upon the continued services of our key executive officers. We also rely on our leadership team in the areas of research and development, marketing, sales, services and general and administrative functions, and on mission-critical individual contributors. From time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. The loss of one or more of our executive officers or key employees could seriously harm our business. We currently do not maintain key person life insurance policies on any of our employees.

To execute our growth plan, we must attract and retain highly qualified personnel. Competition for these personnel is intense, especially for engineers with high levels of experience in designing and developing cloud software and for senior sales executives. We have, from time to time, experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached legal obligations, resulting in a diversion of our time and resources and, potentially, damages. In addition, job candidates and existing employees, particularly in the San Francisco Bay Area, often consider the value of the stock awards they receive in connection with their employment. If the perceived value of our stock awards declines, either because we are a public company or otherwise, it may harm our ability to recruit and retain highly skilled employees. In addition, we invest significant time and expense in training our employees, which increases their value to competitors who may seek to recruit them. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects would be harmed.

Failure to adequately expand our sales force will impede our growth.

We will need to continue to expand and optimize our sales infrastructure in order to grow our client base and our business. We plan to aggressively expand our sales force, both domestically and internationally. Identifying and recruiting qualified personnel and training them in the use of our solution requires significant time, expense and attention. It can take several months before our sales representatives are fully trained and productive. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in revenues. In particular, if we are unable to hire, develop and retain talented sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of this investment or increase our revenues.

If we fail to grow our marketing capabilities and develop widespread brand awareness cost effectively, our business may suffer.

Our ability to increase our client base and achieve broader market acceptance of our cloud contact center software solution will depend to a significant extent on our ability to expand our marketing operations. We plan to dedicate significant resources to our marketing programs, including internet advertising, digital marketing campaigns, social marketing, trade shows, industry events, co-marketing with strategic partners and telemarketing. The effectiveness of our online advertising has varied over time and may vary in the future due to competition for key search terms, changes in search engine use and changes in the search algorithms used by major search engines. All of these efforts will continue to require us to invest significant financial and other resources in our marketing efforts. Our business will be seriously harmed if our efforts and expenditures do not generate a proportionate increase in revenue.

In addition, we believe that developing and maintaining widespread awareness of our brand in a cost-effective manner, both in the United States and internationally, is critical to achieving widespread acceptance of our solution and attracting new clients. Brand promotion activities may not generate client awareness or increase revenues, and even if they do, any increase in revenues may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, or incur substantial costs and expenses, we may fail to attract or retain clients necessary to realize a sufficient return on our brand-building efforts, or to achieve the widespread brand awareness that is critical for broad client adoption of our solution.

We may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs.

To date, we have financed our operations, primarily through sales of our solution, net proceeds from the issuance of our convertible preferred stock, lease facilities and, more recently, debt financing. We do not know when or if our operations will generate sufficient cash to fund our ongoing operations. In the future, we may require additional capital to respond to business opportunities, challenges, acquisitions, a decline in sales, increased regulatory obligations or unforeseen circumstances and may engage in equity or debt financings or enter into credit facilities.

We have a substantial amount of debt. As of December 31, 2013, we had $17.5 million outstanding under the loan and security agreement governing our revolving line of credit and term loan and $3.7 million outstanding under a promissory note with the Universal Services Administration Company. In February 2014, we entered into a loan and security agreement for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. Our loan and security agreements are collateralized by substantially all of our assets and contain a number of covenants that limit our ability to, among other things, sell assets, make acquisitions or investments, incur debt, grant liens, pay dividends, enter into transactions with our affiliates and use all of our available cash on hand and may prevent us from engaging in acts that may be in our best long-term interests. The existing collateral pledged under the loan and security agreements and the covenants to which we are bound may prevent us from being able to timely secure additional debt or equity financing on favorable terms, or at all, or to pursue business opportunities, including potential acquisitions. Any debt financing obtained by us in the future would cause us to incur additional debt service expenses and could include restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and pursue business opportunities. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to grow and support our business and to respond to business challenges could be significantly limited.

Adverse economic conditions may harm our business.

Our business depends on the overall demand for cloud contact center software solutions and on the economic health of our current and prospective clients. The recent financial recession resulted in a significant weakening of the economy in the United States and globally, more limited availability of credit, a reduction in business confidence and activity, and other difficulties that affected the industries to which we sell our solution. We plan to market and sell our solution in Europe, Asia and other international markets. If economic conditions

in the United States, Europe and Asia and other key potential markets for our solution continue to remain uncertain or deteriorate further, many clients may delay or reduce their contact center and overall information technology spending. If our clients continue to experience economic hardship, this could reduce the overall demand for our solution, delay and lengthen sales cycles and lead to slower growth or even a decline in our revenues, net income and cash flows.

The forecasts of market growth included in this prospectus may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, our business may not grow at similar rates, if at all.

Growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. The forecasts in this prospectus relating to the expected growth in contact centers and contact centers as a service may prove to be inaccurate.

Even if these markets experience the forecasted growth described in this prospectus, we may not grow our business at similar rates, or at all. Our growth is subject to many factors, including whether the market for cloud contact center software solutions continues to grow, the rate of market acceptance of our solution versus those of our competitors and our success in implementing our business strategies, each of which is subject to many risks and uncertainties. Accordingly, the forecasts of market growth included in this prospectus should not be taken as indicative of our future growth.

We may acquire other companies or technologies, which could divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results.

We may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our solution, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target.

To date, the growth in our business has been primarily organic, and we have limited experience in acquiring other businesses, having only completed one small acquisition. In October 2013, we acquired Face It, Corp., which we refer to as SoCoCare, a social engagement and mobile customer care solution provider. In any acquisitions, including SoCoCare, we may not be able to successfully integrate acquired personnel, operations and technologies, or effectively manage the combined business following the acquisition. We also may not achieve the anticipated benefits from our acquisition of SoCoCare or future acquired businesses due to a number of factors, including:

- inability to integrate or benefit from acquisitions in a profitable manner;
- unanticipated costs or liabilities associated with the acquisition;
- incurrence of acquisition-related costs;
- difficulty converting the clients of the acquired business to our solution and contract terms, including disparities in the revenues, licensing, support or professional services model of the acquired company;
- difficulty integrating the accounting systems, operations and personnel of the acquired business;
- difficulties and additional costs and expenses associated with supporting legacy products and hosting infrastructure of the acquired business;
- diversion of management's attention from other business concerns;
- harm to our existing relationships with our partners and clients as a result of the acquisition;
- the loss of our or the acquired business's key employees;
- diversion of resources that could have been more effectively deployed in other parts of our business; and
- use of substantial portions of our available cash to consummate the acquisition.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. In the future, if

our acquisitions do not yield expected returns, we may be required to take charges to our operating results based on this impairment assessment process, which could harm our results of operations.

Acquisitions could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our operating results. In addition, if an acquired business fails to meet our expectations, our operating results, business and financial condition may suffer.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decrease.

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires that we evaluate and determine the effectiveness of our internal control over financial reporting and, beginning with our annual report for the year ending December 31, 2015, provide a management report on our internal control over financial reporting, which must be attested to by our independent registered public accounting firm to the extent we are no longer an "emerging growth company," as defined by The Jumpstart Our Businesses Act of 2012, or the JOBS Act. Two material weaknesses were identified in our internal control over financial reporting in 2010, one of which was remediated in 2011 and the other of which was remediated in 2012. A "material weakness" is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

If in the future we have material weaknesses in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We are in the process of designing and implementing our internal control over financial reporting, which process will be time consuming, costly and complicated. If we identify material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 in a timely manner, if we are unable to assert that our internal control over financial reporting is effective or if our independent registered public accounting firm is unable to attest that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could decrease. We could also become subject to stockholder or other third-party litigation as well as investigations by the stock exchange on which our securities are listed, the Securities and Exchange Commission, or SEC, or other regulatory authorities, which could require additional financial and management resources and could result in fines, trading suspensions or other remedies.

Changes in financial accounting standards or practices may cause adverse, unexpected financial reporting fluctuations and affect our reported operating results.

Generally accepted accounting principles in the United States are subject to interpretation by the Financial Accounting Standards Board, or FASB, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in accounting standards or practices can have a significant effect on our reported results and may even affect our financial statements completed before the change is effective. New accounting pronouncements and varying interpretations of accounting pronouncements have occurred and will occur in the future. Changes to existing rules or the questioning of current practices may harm our reported financial results or the way we account for or conduct our business.

For example, we recognize subscription revenue in accordance with Accounting Standards Update 2009-13, *Revenue Recognition (Topic 605) — Multiple-Deliverable Revenue Arrangements — a Consensus of the Emerging Issues Task Force* ("ASU 2009-13") (formerly known as EITF 08-01). The FASB and the SEC may issue interpretations and guidance for applying the relevant accounting standards to a wide range of sales contract terms and business arrangements that are prevalent in revenue recognition arrangements. As a result of future interpretations or applications of existing accounting standards, including ASU 2009-13, we could be required to delay revenue recognition into future periods, which would harm our operating results.

In addition, certain factors have in the past and may in the future cause us to defer recognition of subscription revenues. For example, the inclusion in our client contracts of material non-standard terms, such as

acceptance criteria, could require the deferral of subscription revenue. To the extent that such contracts become more prevalent in the future our revenue may be harmed.

Because of these factors and other specific requirements under accounting principles generally accepted in the United States for revenue recognition, we must have very precise terms in our arrangements in order to recognize revenue when we deliver our solution or perform our professional services. Negotiation of mutually acceptable terms and conditions can extend our sales cycle, and we may accept terms and conditions that do not permit revenue recognition at the time of delivery.

We may not be able to utilize a significant portion of our net operating loss or research tax credit carryforwards, which could harm our profitability.

As of December 31, 2013, we had federal and state net operating loss carryforwards due to prior period losses of $68.4 million and $35.8 million, respectively, which if not utilized will begin to expire in 2024 for federal purposes and 2014 for state purposes. We also have federal research tax credit carryforwards, which if not utilized will begin to expire in 2024. If we are unable to generate sufficient taxable income to utilize our net operating loss and research tax credit carryforwards, these carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could harm our profitability.

In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, our ability to utilize net operating loss carryforwards or other tax attributes, such as research tax credits, in any taxable year may be limited if we experience an “ownership change.” A Section 382 “ownership change” generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws. This offering or future issuances or sales of our stock (including certain transactions involving our stock that are outside of our control) could cause an “ownership change.” If an “ownership change” occurs, Section 382 would impose an annual limit on the amount of pre-ownership change net operating loss carryforwards and other tax attributes we can use to reduce our taxable income, potentially increasing and accelerating our liability for income taxes, and also potentially causing those tax attributes to expire unused. It is possible that such an ownership change could materially reduce our ability to use our net operating loss carryforwards or other tax attributes to offset taxable income, which could harm our profitability.

Risks Related to Our Intellectual Property

Any failure to protect our intellectual property rights could impair our ability to protect our proprietary technology and our brand.

Our success and ability to compete depend in part upon our intellectual property. We currently have three registered and five pending trademarks and four issued U.S. patents and seventeen pending patent applications. We primarily rely on copyright, trade secret and trademark laws, trade secret protection and confidentiality or license agreements with our employees, clients, partners and others to protect our intellectual property rights. However, the steps we take to protect our intellectual property rights may be inadequate. We may not be able to obtain any further patents or trademarks, and our pending applications may not result in the issuance of patents or trademarks. We have pending patent applications and limited trademark registrations outside the U.S., and we may have to expend significant resources to obtain additional protection as we expand our international operations. Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights in other countries, including Russia, where we have significant research and development operations, are uncertain and may afford little or no effective protection of our proprietary technology. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to international markets or require costly efforts to protect our technology.

In order to protect our intellectual property rights, we may be required to spend significant resources to monitor and protect these rights. Litigation brought to protect and enforce our intellectual property rights could be costly, time consuming and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, our efforts to enforce our intellectual property rights may be met with

defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights. Accordingly, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Our failure to secure, protect and enforce our intellectual property rights could substantially harm the value of our technology, solutions, brand and business.

We may continue to be subject to third-party intellectual property infringement claims.

There is considerable patent and other intellectual property development activity and litigation in our industry. Our success depends upon our not infringing upon the intellectual property rights of others. Our competitors, as well as a number of other entities and individuals, may own or claim to own intellectual property relating to our industry. From time to time, third parties have claimed that we are infringing upon their intellectual property rights. For example, on April 3, 2012, NobelBiz, Inc. filed a patent infringement lawsuit against us alleging that our local caller ID management service infringes United States Patent No. 8,135,122. Subsequently, NobelBiz amended its complaint to add claims related to U.S. Patent No. 8,565,399, which is a continuation in the same family as the prior patent and addresses the same technology. NobelBiz seeks damages in the form of lost profits as well as injunctive relief. See "Business — Legal Proceedings." If NobelBiz is successful in its request for injunctive relief, we will have to stop providing the accused technology, enter into a license agreement with NobelBiz for the technology or modify our technology, any of which could harm our business. There can be no assurance that we (i) will prevail in this action, (ii) can develop non-infringing technology that is accepted in the market if we are enjoined from using the accused technology or (iii) will be able to negotiate favorable licensing terms with NobelBiz. There can also be no assurance that other actions alleging infringement by us of third-party patents will not be asserted or prosecuted against us.

Certain technology necessary for us to provide our solution may be patented by other parties either now or in the future. If such technology were held under patent by another person, we would have to negotiate a license for the use of that technology. We may not be able to negotiate such a license at a price that is acceptable, or at all. The existence of such a patent, or our inability to negotiate a license for any such technology on acceptable terms, could force us to cease using such technology and offering solutions incorporating such technology.

In the future, others may claim that our solution and underlying technology infringe or violate their intellectual property rights. However, we may be unaware of the intellectual property rights that others may claim cover some or all of our technology or solution. Any claims or litigation could cause us to incur significant costs and expenses and, if successfully asserted against us, could require that we pay substantial damages or ongoing royalty payments, require that we refrain from using, manufacturing or selling certain offerings or using certain processes, prevent us from offering our solution, or require that we comply with other unfavorable terms, any of which could harm our business and operating results. We may also be obligated to indemnify our clients or business partners or pay substantial settlement costs, including royalty payments, in connection with any such claim or litigation and to obtain licenses, modify applications, or refund fees, which could be costly. Even if we were to prevail in such a dispute, any litigation regarding our intellectual property could be costly and time consuming and divert the attention of our management and key personnel from our business operations.

We employ third-party licensed software for use in or with our solution, and the inability to maintain these licenses or errors in the software we license could result in increased costs, or reduced service levels, which could harm our business.

Our solution incorporates certain third-party software obtained under licenses from other companies. We anticipate that we will continue to rely on such third-party software and development tools from third parties in the future. Although we believe that there are commercially reasonable alternatives to the third-party software we currently license, this may not always be the case, or it may be difficult or costly to transition to other providers. In addition, integration of the software used in our solution with new third-party software may require significant work and require substantial investment of our time and resources. To the extent that our solution depends upon the successful operation of third-party software in conjunction with our software, any undetected errors or defects in this third-party software could prevent the deployment or impair the functionality of our solution, delay new product or solution introductions, result in a failure of our solution and injure our reputation. Our use of additional or alternative third-party software would require us to enter into license agreements with third parties.

There can be no assurance that the technology licensed by us will continue to provide competitive features and functionality or that licenses for technology currently utilized by us or other technology which we may seek to license in the future, will be available to us on commercially reasonable terms or at all. The loss of, or inability to maintain, existing licenses could result in implementation delays or reductions until equivalent technology or suitable alternative solutions could be developed, identified, licensed and integrated, and could harm our business.

Our solution utilizes open source software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.

Our solution includes software covered by open source licenses, which may include, for example, free general public use licenses, open source front-end libraries, open source stand-alone applications and open source applications. The terms of various open source licenses have not been interpreted by United States courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market our solution. By the terms of certain open source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available under open source licenses, if we combine our proprietary software with open source software in a certain manner. In the event that portions of our proprietary software are determined to be subject to an open source license, we could be required to publicly release the affected portions of our source code, re-engineer all or a portion of our technologies, or otherwise be limited in the licensing of our technologies, each of which could reduce or eliminate the value of our technologies and solutions. In addition to risks related to license requirements, usage of open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of the software. Given the nature of open source software, there is also a risk that third parties may assert copyright and other intellectual property infringement claims against us based on our use of certain open source software programs. Many of the risks associated with the usage of open source software cannot be eliminated, and could harm our business.

Risks Related to Regulatory Matters

Failure to comply with laws and regulations could harm our business.

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, workplace safety, environmental laws, consumer protection laws, anti-bribery laws, import/export controls, federal securities laws and tax laws and regulations. In certain jurisdictions, these regulatory requirements may be more stringent than those in the United States and in other circumstances these requirements may be more stringent in the United States. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties or injunctions. If any governmental sanctions, fines or penalties are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, operating results and financial condition could be harmed. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees. Enforcement actions and sanctions could further harm our business, operating results and financial condition.

Increased taxes on our service may increase our clients' cost of using our service and/or reduce our profit margins to the extent the costs are not passed through to our clients, and we may be subject to liabilities for past sales and other taxes, surcharges and fees.

Prior to 2012, we did not collect or remit state or local sales, use, gross receipts, excise and utility user taxes, fees or surcharges on our solution.

During 2011, we analyzed our activities and determined that we were obligated to collect sales taxes on sales of our subscriptions in certain states. Accordingly, we registered with those states, paid past-due amounts and began collecting sales taxes from our clients and remitting such taxes to the applicable state taxing authorities. During 2013, we analyzed our activities and determined that we may be obligated to collect and remit sales, excise and utility user taxes, as well as surcharges as a communications service provider, and pay gross

receipts taxes, on our usage-based fees in certain states and municipalities. We have neither collected nor remitted state and local taxes or surcharges on usage-based fees in any of the periods presented.

Based on our ongoing assessment, we will register for tax and regulatory purposes in states where we determine such regulations apply to our activities and commence collecting and remitting state and local taxes and surcharges on applicable usage-based fees. We have accrued a contingent liability for our best estimate of the probable amount of taxes and surcharges that may be imposed by various states and municipalities on our activities prior to registration. This contingent liability is based on our analysis of a number of factors, including the source location of our usage-based fees and the rules and regulations in each state. The actual amount of state and local taxes and surcharges paid may differ from our estimates. See Note 10 to the notes to our consolidated financial statements.

While we have accrued for these potential liabilities in each period, such accruals are based on analyses of our business activities, the operation of our solution, applicable statutes, regulations and rules in each state and locality and estimates of revenue subject to sales tax or other charge. State and local taxing and regulatory authorities may challenge our position and may decide to audit our business and operations with respect to state or local sales, use, gross receipts, excise and utility user taxes, fees or surcharges, which could result in tax liabilities, fees or surcharges for us above our recorded accrued liability or additional tax liabilities, fees or surcharges for our clients, which could harm our results of operations and our relationships with our clients. In addition, state or local taxing and regulatory authorities may assess penalties and interest related to our tax and regulatory obligations.

The applicability of state or local taxes, fees or surcharges relative to services such as ours is complex, ambiguous and subject to interpretation and change. If states enact new legislation or if taxing and regulatory authorities promulgate new rules or regulations or expand their interpretations of existing rules and regulations, we could incur additional liabilities. In addition, the collection of additional taxes, fees or surcharges in the future could increase our prices or reduce our profit margins. Compliance with new or existing legislation, rules or regulations may also make us less competitive with those competitors who are not subject to, or choose not to comply with, such legislation, rules or regulations. We have incurred, and will continue to incur, substantial ongoing costs associated with complying with state or local tax, fee or surcharge requirements in the numerous markets in which we conduct or will conduct business.

We are subject to assessments for unpaid Universal Service Fund contributions, as well as interest thereon and potential penalties, due to our late registration and reporting of revenues.

During the third quarter of 2012, we determined that based on our business activities, we are classified as a telecommunications service provider for regulatory purposes and we are required to make direct contributions to the federal Universal Service Fund and related funds, or USF, based on revenue we receive from the resale of interstate and international telecommunications services. Previously, we had been advised that our telecommunications services were an integral part of an information service and accordingly made indirect USF contributions as an end user through payments to our wholesale telecommunications service providers. In order to comply with the obligation to make direct contributions, in November 2012, we made a voluntary self-disclosure to the Federal Communications Commission, or FCC, Enforcement Bureau and have registered with the Universal Service Administrative Company, or USAC, which is charged by the FCC with administering the USF. As of December 31, 2013, we had a promissory note issued to USAC of $3.7 million and accrued liabilities for unpaid USF contributions of $4.2 million, which are included in accrued federal fees in the consolidated balance sheet. Approximately $803,000 of these amounts pertains to periods prior to 2008. In April 2013, we began remitting required contributions on a prospective basis directly to USAC.

Our registration with USAC subjects us to assessments for unpaid USF contributions, as well as interest and penalties thereon, due to our late registration and reporting of revenues. We are required to pay assessments for periods prior to our registration. While we are in discussions with the FCC to limit such back assessments to the period 2008 through 2012, it is possible that we will be required to pay back assessments for the period from 2003 to 2007. We are also in discussions with the FCC to obtain credit for the indirect USF payments we have made since 2003 to our wholesale telecommunications service providers. If we are unsuccessful in obtaining

credit from the FCC for these payments, we will seek reimbursement from our wholesale telecommunication service providers. We will face a regulatory and contractual challenge in seeking recovery or credit for our USF reimbursement payments previously made to our wholesale telecommunication service providers. Finally, we are exposed to the potential assessment by the FCC of monetary penalties (or forfeitures) due to our past failure to recognize our obligation as a USF contributor. In lieu of the actual assessment of monetary forfeitures, due to our current voluntary disclosure proceeding with the FCC, we may be asked to make a voluntary contribution to the U.S. Treasury in order to resolve the FCC's investigation amicably.

Our ongoing obligations to pay federal, state and local telecommunications contributions and taxes may decrease our price advantage over our competitors who have historically paid these contributions and taxes and could also make us less competitive with those competitors who are not subject to, or choose not to comply with, those requirements. In addition, if we are unable to continue to pass some or all of the cost of these contributions and taxes to our clients, our profit margins on the minutes we resell will decrease. Our federal contributions and tax obligations may significantly increase in the future, due to new interpretations by governing authorities, governmental budget pressures, changes in our business model or solutions or other factors. See Note 9 to the notes to our consolidated financial statements.

If we do not comply with FCC rules and regulations, we could be subject to FCC enforcement actions, fines, loss of licenses and possibly restrictions on our ability to operate or offer certain of our services.

Since our business is regulated by the FCC, we are subject to existing or potential FCC regulations relating to privacy, disability access, porting of numbers, USF contributions and other requirements. If we do not comply with FCC rules and regulations, we could be subject to FCC enforcement actions, fines, loss of licenses and possibly restrictions on our ability to operate or offer certain of our services. Any enforcement action by the FCC, which may be a public process, would hurt our reputation in the industry, possibly impair our ability to sell our services to clients and could harm our business and results of operations.

Among the regulations to which we are subject, we must comply (in whole or in part) with:

- the Communications Assistance for Law Enforcement Act, or CALEA, which requires covered entities to assist law enforcement in undertaking electronic surveillance;
- contributions to the USF which requires that we pay a percentage of our revenues to support certain federal programs;
- payment of annual FCC regulatory fees based on our interstate and international revenues;
- rules pertaining to access to our services by people with disabilities and contributions to the Telecommunications Relay Services fund; and
- FCC rules regarding Customer Proprietary Network Information, or CPNI, which prohibit us from using such information without customer approval, subject to certain exceptions.

If we do not comply with any current or future rules or regulations that apply to our business, we could be subject to substantial fines and penalties, we may have to restructure our service offerings, exit certain markets, accept lower margins or raise the price of our services, any of which could ultimately harm our business and results of operations.

Reform of federal and state USF programs could increase the cost of our service to our clients, diminishing or eliminating our pricing advantage.

The FCC and a number of states are considering reform or other modifications to USF programs. The way we calculate our contribution may change if the FCC or certain states engage in reform or adopt other modifications. In April 2012, the FCC released a Further Notice of Proposed Rulemaking to consider reforms to the manner in which companies like us contribute to the federal USF program. In general, the Further Notice of Proposed Rulemaking is considering questions like: what companies should contribute, how contributions should be assessed, and methods to improve the administration of the system. We cannot predict the outcome of this proceeding nor its impact on our business at this time.

Should the FCC or certain states adopt new contribution mechanisms or otherwise modify contribution obligations that increase our contribution burden, we will either need to raise the amount we currently collect from our clients to cover this obligation or absorb the costs, which would reduce our profit margins. Furthermore, the FCC has ruled that states can require us to contribute to state USF programs. A number of states already require us to contribute, while others are actively considering extending their programs to include the solution we provide. We currently pass through USF contributions to our clients which may result in our solution becoming less competitive as compared to those provided by our competitors.

Privacy concerns and domestic or foreign laws and regulations may reduce the demand for our solution, increase our costs and harm our business.

Our clients can use our solution to collect, use and store information, including personally identifiable information or other information treated as confidential, regarding their customers and potential customers. Federal, state and foreign government bodies and agencies have adopted, are considering adopting, or may adopt laws and regulations, including the Health Insurance Portability and Accountability Act of 1996, regarding the collection, use, storage and disclosure of such information obtained from consumers and individuals. The costs of compliance with, and other burdens imposed by, such laws and regulations that are applicable to the businesses of our clients may limit the use and adoption of our solution and reduce overall demand, or lead to significant fines, penalties or liabilities for any noncompliance with such privacy laws. Furthermore, privacy concerns may cause consumers to resist providing the personal data necessary to allow our clients to use our solution effectively. Even the perception of privacy concerns, whether or not valid, may inhibit market adoption of our solution in certain industries or countries.

Domestic and international legislative and regulatory initiatives may harm our clients' ability to process, handle, store, use and transmit information, including demographic and personally identifiable information or other information treated as confidential, regarding their customers, which could reduce demand for our solution. The European Union and many countries in Europe have particularly stringent privacy laws and regulations, which may impact our ability to profitably operate in certain European countries.

In addition to government activity, privacy advocacy groups and the technology and other industries are considering various new, additional or different self-regulatory standards that may place additional burdens on us. If the processing of information were to be curtailed in this manner, our solution may be less attractive, which may reduce demand for our solution and harm our business.

Risks Related to Ownership of Our Common Stock and this Offering

There has been no prior market for our common stock and an active market may not develop or be sustained and investors may not be able to resell their shares at or above the initial public offering price.

There has been no public market for our common stock prior to this offering. The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary substantially from the market price of our common stock following this offering. If you purchase shares of our common stock in this offering, you may not be able to resell those shares at or above the initial public offering price. An active or liquid market in our common stock may not develop upon completion of this offering or, if it does develop, may not be sustained.

Our stock price may be volatile or may decline, including due to factors beyond our control, resulting in substantial losses for investors purchasing shares in this offering.

The trading prices of the securities of technology companies have been highly volatile. The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our operating results;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;

- failure of securities analysts to initiate or maintain coverage of our company, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- ratings changes by any securities analysts who follow our company;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- changes in operating performance and stock market valuations of other technology companies generally, or those in the SaaS industry in particular;
- price and volume fluctuations in the overall stock market, including as a result of trends in the U.S. or global economy;
- any major change in our board of directors or management;
- lawsuits threatened or filed against us;
- legislation or regulation of our business, the internet and/or contact centers;
- loss of key personnel;
- new entrants into the contact center market, including the transition by providers of legacy on-premise contact center systems to cloud solutions, as well as cable and incumbent telephone companies and other well-capitalized competitors;
- new products or new sales by us or our competitors;
- the perceived or real impact of events that harm our direct competitors;
- developments with respect to patents or proprietary rights;
- general market conditions; and
- other events or factors, including those resulting from war, incidents of terrorism or responses to these events, which could be unrelated to, or outside of, our control.

In addition, stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many technology companies. Stock prices of many technology companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and harm our business, results of operations, financial condition, reputation and cash flows.

If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our share price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

We may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a return.

We intend to use the net proceeds from this offering for general corporate purposes, which we expect to include growing our business by expanding our direct sales force and investing to grow our international client base, as well as other working capital, operating expenses and capital expenditures. Additionally, we may use a portion of the net proceeds to acquire complementary businesses, technologies or other assets. We may also use a portion of the net proceeds from this offering to repay the $12.5 million principal amount currently outstanding under our revolving line of credit. Our management will have

considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately or to influence our decisions regarding the use of proceeds. The net proceeds may be used for purposes that do not increase the value of our business, which could cause our stock price to decline.

Substantial future sales of shares of our common stock could cause the market price of our common stock to decline.

The market price of shares of our common stock could decline as a result of substantial sales of our common stock, particularly sales by our directors, executive officers and significant stockholders, a large number of shares of our common stock becoming available for sale or the perception in the market that holders of a large number of shares intend to sell their shares. After this offering, we will have shares of our common stock outstanding, based on the number of shares outstanding as of . This includes the shares included in this offering, which may be resold in the public market immediately. An additional shares may also be resold in the public market immediately. The remaining shares are currently restricted as a result of 180-day market stand-off or lock-up agreements. J.P. Morgan Securities LLC and Barclays Capital Inc. may, in their sole discretion, permit our officers, directors, employees and current stockholders who are subject to the 180-day contractual lock-up to sell shares prior to the expiration of the lock-up agreements. See "Underwriting."

After this offering, the holders of an aggregate of shares of our common stock as of will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or our stockholders. We also intend to register shares of common stock that we may issue under our employee equity incentive plans. Once we register these shares, they will be able to be sold freely in the public market upon issuance, subject to existing market stand-off and/or lock-up agreements.

Purchasers in this offering will experience immediate and substantial dilution.

The initial public offering price per share will be substantially higher than the pro forma net tangible book value per share of our common stock outstanding prior to this offering. As a result, investors purchasing common stock in this offering will experience immediate dilution of $ per share. This dilution is due in large part to the fact that our earlier investors paid substantially less than the initial public offering price when they purchased their shares of common stock. In addition, we have issued options to acquire common stock at prices significantly below the initial public offering price. To the extent outstanding options are ultimately exercised, there will be further dilution to investors in this offering. In addition, if the underwriters exercise their option to purchase additional shares from us or if we issue additional equity securities, you will experience additional dilution.

The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of the NYSE and other applicable securities laws, rules and regulations. Compliance with these laws, rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources, particularly after we are no longer an "emerging growth company." The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns and our costs and expenses will increase, which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire more employees in the future or engage outside consultants, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some

activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We will incur additional compensation costs in the event that we decide to pay our executive officers cash compensation closer to that of executive officers of other public cloud and technology companies, which would increase our general and administrative expense and could harm our profitability. Any future equity awards will also increase our compensation expenses. We also expect that being a public company and compliance with applicable rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors, particularly to serve on our audit committee and compensation committee.

As a result of disclosure of information in this prospectus and in filings required of a public company, our business and financial condition will become more visible, which could be advantageous to our competitors and clients and could result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and operating results could be harmed, and even if the claims are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and harm our business and operating results.

We are an emerging growth company and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an "emerging growth company" as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised financial accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies."

For as long as we continue to be an emerging growth company, we may also take advantage of certain other exemptions from reporting requirements that are applicable to other public companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile or decline.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates is at least $700 million as of the last business day of our most recently completed second fiscal quarter, (ii) the end of the fiscal year in which we have total annual gross revenues of $1 billion or more during such fiscal year, (iii) the date on which we issue more than $1 billion in non-convertible debt in a three-year period or (iv) the end of the fiscal year in which the fifth anniversary of the date of this prospectus occurs.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as amended and restated in connection with this offering, may have the effect of delaying or preventing a change in control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws will include provisions that:

- provide that our board of directors is classified into three classes of directors;
- provide that stockholders may remove directors only for cause and only with the approval of holders of at least 66 ⅔% of our then outstanding capital stock;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- provide that our stockholders may not take action by written consent, and may only take action at annual or special meetings of our stockholders;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner, and also specify requirements as to the form and content of a stockholder's notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our chief executive officer or the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- provide that stockholders will be permitted to amend our amended and restated bylaws only upon receiving at least 66 2/3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder.

We do not intend to pay dividends for the foreseeable future. If our stock price does not appreciate after you purchase our shares, you may lose some or all of your investment.

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and other factors that our board of directors may deem relevant. In addition, our secured credit agreement prohibits us and our subsidiaries from, among other things, paying any dividends or making any other distribution or payment on account of our common stock. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

Our directors, executive officers and significant stockholders, who after this offering will hold approximately % of the voting power of our outstanding capital stock, will continue to have substantial control over us after this offering and could delay or prevent a change in corporate control.

After this offering, our directors, executive officers and holders of more than 5% of our common stock, together with their affiliates, will beneficially own, in the aggregate, % of our outstanding common stock, on a fully diluted basis. As a result, these stockholders, acting together, have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. In addition, these stockholders, acting together, have the ability to control the management and affairs of our company. Accordingly, this concentration of ownership might decrease the market price of our common stock by:

- delaying, deferring or preventing a change in control of the company;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of the company.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under the captions “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” and elsewhere in this prospectus may include forward-looking statements within the meaning of the federal securities laws, which involve substantial risks and uncertainties. These statements reflect the current views of our senior management with respect to future events and our financial performance. These statements include forward-looking statements with respect to our business and our industry in general. Statements that include the words “expect,” “intend,” “plan,” “believe,” “project,” “forecast,” “estimate,” “may,” “should,” “anticipate” and similar statements of a future or forward-looking nature identify forward-looking statements for purposes of the federal securities laws or otherwise.

Forward-looking statements address matters that involve risks and uncertainties. Accordingly, there are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. We believe that these factors include, but are not limited to, the following:

- our quarterly and annual results may fluctuate significantly, may not fully reflect the underlying performance of our business and may result in decreases in the price of our common stock;
- if we are unable to attract new clients or sell additional services and functionality to our existing clients, our revenue and revenue growth will be harmed;
- our recent rapid growth may not be indicative of our future growth, and if we continue to grow rapidly, we may fail to manage our growth effectively;
- the markets in which we participate are highly competitive, and if we do not compete effectively, our operating results could be harmed;
- if we fail to manage our technical operations infrastructure, our existing clients may experience service outages, our new clients may experience delays in the deployment of our solution and we could be subject to, among other things, claims for credits or damages;
- if our dollar-based retention rate declines, our revenues, gross margins and net income could decrease and we may be required to spend more money to grow our client base and maintain our revenues;
- we sell our solution to larger organizations that require longer sales and implementation cycles and often demand more configuration and integration services or customized features and functions that we may not offer, any of which could delay or prevent these sales and harm our growth rates, business and operating results;
- because most of our revenue is derived from existing clients, downturns or upturns in new sales will not be immediately reflected in our operating results and may be difficult to discern;
- we rely on third-party telecommunications and internet service providers to provide our clients and their customers with telecommunication services and connectivity to our cloud contact center software and any failure by these service providers to provide reliable services could subject us to, among other things, claims for credits or damages;
- we have a history of losses and we may be unable to achieve or sustain profitability; and
- other factors discussed under the headings “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business.”

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this prospectus. If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, our actual results may differ materially from what we anticipate. You should not place undue reliance on our forward-looking statements. Any forward-looking statements you read in this prospectus reflect our views as of the date of this prospectus with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information or the occurrence of unanticipated events, except as required by law. Before making a decision to purchase our common stock, you should carefully consider all of the factors identified in this prospectus that could cause actual results to differ.

MARKET AND INDUSTRY DATA

In this prospectus, we rely on and refer to information and statistics regarding the industries and the markets in which we compete. We obtained this information and these statistics from various third-party sources. We believe that these sources and the estimates contained therein are reliable, but we have not independently verified them. Such information involves risks and uncertainties and is subject to change based on various factors, including those discussed in the "Risk Factors" section of this prospectus.

Each of the Gartner Reports described herein, Gartner, Inc., Forecast: Contact Centers, Worldwide, 2010-2017, 3Q13 Update, Drew Kraus, September 18, 2013 and Gartner, Inc., Market Trends: Contact Centers as a Service, North America, 2012, Daniel O'Connell, Drew Kraus, Gartner Foundational, June 6, 2012, represents data, research opinion or viewpoints published, as part of a syndicated subscription service, by Gartner, Inc., or Gartner, and are not representations of fact. Each Gartner Report speaks as of its original publication date (and not as of the date of this prospectus) and the opinions expressed in the Gartner Reports are subject to change without notice.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of shares of our common stock by us in this offering will be approximately $ million, after deducting underwriting discounts and commissions and estimated fees and expenses payable by us, based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus. If the underwriters exercise their option to purchase additional shares in full, we estimate that our net proceeds would be $ million, after deducting underwriting discounts and commissions and estimated fees and expenses payable by us.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our common stock and enable access to the public equity markets for us and our stockholders. As of the date of this prospectus, we have no specific plans for the use of the net proceeds we receive from this offering. However, we intend to use the net proceeds from this offering for general corporate purposes, which we expect to include growing our business by expanding our direct sales force and investing to grow our international client base, as well as other working capital, operating expenses and capital expenditures. Additionally, we may use a portion of the net proceeds to acquire complementary businesses, technologies or other assets. However, we do not have agreements or commitments for any acquisitions at this time. We may also use a portion of the net proceeds from this offering to repay the $12.5 million principal amount currently outstanding under our revolving line of credit. We cannot specify with certainty the particular uses of the net proceeds that we will receive from this offering. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the proceeds from this offering. Pending the use of proceeds from this offering as described above, we plan to invest the net proceeds that we receive in this offering in short-term and long-term interest-bearing obligations, including government and investment-grade debt securities and money market funds.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and other factors that our board of directors may deem relevant. Our loan and security agreements prohibit us and our subsidiaries from, among other things, paying any dividends or making any other distribution or payment on account of our capital stock.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of December 31, 2013:

- on an actual basis;
- on a pro forma basis to give effect to (1) the conversion of all of our series of preferred stock into an aggregate of shares of common stock, which conversion will occur in connection with this offering; (2) our : reverse stock split effected prior to this offering; and (3) the filing and effectiveness of our amended and restated certificate of incorporation in Delaware, in each case as if such event had occurred on December 31, 2013; and
- on a pro forma as adjusted basis to give effect to the pro forma adjustments set forth above, the sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the estimated range set forth on the cover of this prospectus, and the application of the net proceeds of this offering after deducting underwriting discounts and commissions and estimated fees and expenses payable by us, as described under "Use of Proceeds."

The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other final terms of the offering. You should read this information in conjunction with "Use of Proceeds," "Selected Consolidated Historical Financial and Operating Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of December 31, 2013		
	Actual	Pro Forma	Pro Forma as Adjusted
	(in thousands, except share and per share data) (unaudited)		
Cash, cash equivalents and short-term investments	$ 17,748	$	$
Notes payable, revolving line of credit, capital lease obligations and convertible preferred stock warrant liability[1]	34,267		
Stockholders' equity (deficit):			
Convertible Preferred Stock, $0.001 par value, 125,115 authorized shares, 122,216 shares issued and outstanding, actual; aggregate liquidation preference of $54,303, actual; shares authorized, no shares issued and outstanding, pro forma; shares authorized, no shares issued and outstanding, pro forma as adjusted.	53,734		
Common stock, $0.001 par value: 200,000,000 shares authorized, 21,975 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted.	22		
Additional paid-in capital	34,072		
Accumulated deficit	(90,796)		
Total stockholders' equity (deficit)	(2,968)		
Total capitalization	$ 31,299	$	$

(1) In February 2010, we entered into a secured equipment loan agreement with Atel Capital Group to fund up to $1.7 million of our capital equipment needs. We amended this agreement in June 2010 to increase the amount of available funding to a total of $2.2 million. As of December 31, 2013, we had made five draws totaling $2.2 million. As of December 31, 2013, the total principal owed was $16,000 and was paid in January 2014.

In November 2010, we entered into a secured equipment lease agreement with HP Financial Services for a lease line totaling $0.5 million, which was subsequently increased to $2.6 million in November 2011. As of December 31, 2013, we had made 21 draws totaling $2.6 million. As of December 31, 2013, the total principal owed was $1.2 million and monthly payments were $75,000.

In December 2010, we entered into a secured equipment lease agreement with Fountain Leasing Corporation for a lease line totaling $3.4 million. As of December 31, 2013, we had made five draws totaling $2.8 million. As of December 31, 2013, the total principal owed was $0.9 million and monthly payments were $89,000.

In October 2011, we entered into a secured equipment lease agreement with Cisco Systems Capital Corporation for a lease line totaling $7.0 million. As of December 31, 2013, we had made 16 draws totaling $6.0 million. As of December 31, 2013, the total principal owed was $3.2 million and monthly payments were $169,000.

In November 2012, we entered into a secured equipment lease agreement with Winmark Capital Corporation for a lease line, which as of December 31, 2013 totaled $9.4 million. As of December 31, 2013, we had made four draws totaling $4.5 million. As of December 31, 2013, the total principal owed was $4.0 million and monthly payments were $140,000.

In July 2013, we entered into a promissory note with the Universal Services Administration Company (USAC) for $4.1 million. As of December 31, 2013, $3.7 million of this promissory note was outstanding and monthly payments were $121,000.

In February 2014, we entered into a loan and security agreement for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. Please see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Contractual Obligations—Loan and Security Agreement.”

If the underwriters exercise their option to purchase additional shares of our common stock in full, pro forma as adjusted cash, cash equivalents and short-term investments, additional paid-in capital, total stockholders’ equity and shares outstanding as of December 31, 2013 would be $, $, $ and , respectively.

The pro forma and pro forma as adjusted columns in the table above are based on 144,190,363 shares of our common stock (including preferred stock on an as-converted basis) outstanding as of December 31, 2013, and exclude:

- 30,534,026 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of December 31, 2013, with a weighted average exercise price of $0.82 per share;
- 426,250 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock granted subsequent to December 31, 2013, at an exercise price of $2.98 per share;
- 1,562,708 shares of our common stock, on an as-converted basis, issuable upon the exercise of warrants outstanding as of December 31, 2013, with a weighted average exercise price of $0.22 per share;
- 711,462 shares of our common stock issuable upon the exercise of warrants with an exercise price of $2.53 per share issued upon the closing of our new loan and security agreement after December 31, 2013; and
- shares of our common stock reserved for future issuance under our equity incentive plans, consisting of:
  - 790,791 shares of our common stock reserved for future issuance under our 2004 Plan;
  - shares of our common stock reserved for future issuance under our 2014 Plan; and
  - shares of our common stock reserved for future issuance under our ESPP.

DILUTION

If you invest in our common stock, your ownership interest will be immediately diluted to the extent of the difference between the offering price per share and the pro forma as adjusted net tangible book value per share after this offering. Net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the number of shares of common stock outstanding. Dilution in pro forma net tangible book value per share represents the difference between the amount per share paid by purchasers of our common stock in this offering and the pro forma as adjusted net tangible book value per share of common stock immediately after the consummation of this offering.

Our historical net tangible book value as of December 31, 2013 was $ million, or $ per share, not taking into account the conversion of our outstanding preferred stock. Our pro forma net tangible book value as of December 31, 2013 was approximately $ million, or $ per share, after giving effect to the conversion of all outstanding shares of our preferred stock into shares of our common stock.

After giving effect to the : reverse stock split, conversion of all of our preferred stock and the sale by us of the shares of our common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range on the cover page of this prospectus, less underwriting discounts and commissions and estimated fees and expenses payable by us, our pro forma as adjusted net tangible book value as of December 31, 2013 would have been approximately $ million, or approximately $ per share. This represents an immediate increase in net tangible book value of $ per share to existing stockholders and an immediate dilution in net tangible book value of $ per share to new investors of common stock in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$
Historical net tangible book value per share as of December 31, 2013	$	
Pro forma increase in net tangible book value per share attributable to conversion of preferred stock		
Pro forma net tangible book value per share as of December 31, 2013		
Increase in pro forma net tangible book value per share attributable to new investors in this offering		
Pro forma as adjusted net tangible book value per share immediately after this offering		$
Dilution per share to new investors in this offering		$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value by approximately $ million, or $ per share, and the dilution per share to investors in this offering by approximately $ per share, assuming no change to the number of shares offered by us as set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated fees and expenses payable by us. We may also increase or decrease the number of shares we are offering. A 1.0 million increase (decrease) in the number of shares offered by us would increase (decrease) our pro forma as adjusted net tangible book value by approximately $ million, or $ per share, assuming the initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus, and the dilution per share to investors in this offering by approximately $ per share after deducting underwriting discounts and commissions and estimated fees and expenses payable by us. The pro forma as adjusted information discussed above is illustrative only.

If the underwriters exercise their option to purchase additional shares in this offering in full, our pro forma as adjusted net tangible book value as of December 31, 2013 would be $, the increase in as adjusted net tangible book value per share to existing stockholders would be $ per share and the dilution per share to new investors would be $.

The following table sets forth, on a pro forma as adjusted basis, as of December 31, 2013, the differences between the number of shares of common stock purchased from us, the total consideration paid, and the weighted average price per share paid by existing stockholders and new investors purchasing shares of our common stock in this offering, before deducting underwriting discounts and commissions and estimated expenses payable by us at the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus.

	Shares Purchased		Total Consideration		Weighted Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders	144,190,363	%	$83,348,035	%	$ 0.58
New investors					
Totals		100%		100%	

A $1.00 increase (or decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease), respectively, total consideration paid by new investors and total consideration paid by all stockholders by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated expenses payable by us.

The discussion and tables above are based on 144,190,363 shares of our common stock (including preferred stock on an as-converted basis) outstanding as of December 31, 2013, and exclude:

- 30,534,026 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of December 31, 2013, with a weighted average exercise price of $0.82 per share;
- 426,250 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock granted subsequent to December 31, 2013, at an exercise price of $2.98 per share;
- 1,562,708 shares of our common stock, including on an as-converted basis, issuable upon the exercise of warrants to purchase common stock or convertible preferred stock outstanding as of December 31, 2013, with a weighted average exercise price of $0.22 per share;
- 711,462 shares of our common stock issuable upon the exercise of warrants with an exercise price of $2.53 per share issued upon the closing of our new loan and security agreement after December 31, 2013; and
- shares of our common stock reserved for future issuance under our equity incentive plans, consisting of:
  - 790,791 shares of our common stock reserved for future issuance under our 2004 Plan;
  - shares of our common stock reserved for future issuance under our 2014 Plan; and
  - shares of our common stock reserved for future issuance under our ESPP.

SELECTED CONSOLIDATED HISTORICAL FINANCIAL AND OPERATING DATA

The following selected consolidated statement of operations data for the years ended December 31, 2011, 2012 and 2013 and the selected consolidated balance sheet data as of December 31, 2013 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated statement of operations data for the years ended December 31, 2009 and 2010 has been derived from our unaudited consolidated financial statements not included in this prospectus. The unaudited consolidated financial statements have been prepared on the same basis as the audited financial statements. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read the following selected consolidated historical financial and operating data below in conjunction with the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus.

	Year Ended December 31,				
	2009	2010	2011	2012	2013
	(unaudited)	(in thousands, except per share data)			
Consolidated Statements of Operations Data:					
Revenue	$ 19,463	$ 25,621	$ 43,188	$ 63,822	$ 84,132
Cost of revenue(1)	9,893	13,104	24,563	39,306	48,807
Gross profit	9,570	12,517	18,625	24,516	35,325
Operating expenses:					
Research and development(1)	4,188	5,696	8,739	13,217	17,529
Sales and marketing(1)	4,230	5,861	10,207	16,808	28,065
General and administrative(1)	2,188	2,547	6,990	11,546	18,053
Total operating expenses	10,606	14,104	25,936	41,571	63,647
Loss from operations	(1,036)	(1,587)	(7,311)	(17,055)	(28,322)
Other expense, net:					
Change in fair value of convertible preferred stock warrant liability	(33)	(73)	(55)	(1,674)	(1,871)
Interest expense and other, net	(76)	(267)	(442)	(543)	(1,051)
Total other expense, net	(109)	(340)	(497)	(2,217)	(2,922)
Loss before provision for income taxes	(1,145)	(1,927)	(7,808)	(19,272)	(31,244)
Provision for income taxes	28	5	64	62	70
Net loss	$ (1,173)	$ (1,932)	$ (7,872)	$ (19,334)	$ (31,314)
Net loss per share:					
Basic and diluted	$ (16.52)	$ (0.69)	$ (0.75)	$ (1.46)	$ (1.95)
Shares used in computing net loss per share:					
Basic and diluted	71	2,818	10,538	13,280	16,026
Pro forma net loss per share (unaudited):					
Basic and diluted(2)					$ (0.22)
Shares used in computing pro forma net loss per share (unaudited):					
Basic and diluted(2)					133,389
Other Financial Data:					
Adjusted EBITDA(3) (unaudited)	$ 224	$ 63	$ (5,415)	$ (13,967)	$ (21,958)

(1) Stock-based compensation expense is included in our results of operations as follows (in thousands):

	Year Ended December 31,				
	2009	2010	2011	2012	2013
	(unaudited)				
Cost of revenue	$ 7	$ 12	$ 17	$ 60	$ 194
Research and development	70	73	51	154	499
Sales and marketing	18	43	36	112	751
General and administrative	109	133	253	138	505
Total stock-based compensation	$ 204	$ 261	$ 357	$ 464	$ 1,949

(2) See Note 8 to the notes to our consolidated financial statements for an explanation of the method used to calculate the unaudited pro forma basic and diluted net loss per share for the year ended December 31, 2013. All shares to be issued in this offering were excluded from the unaudited pro forma basic and diluted net loss per share calculation.

(3) We calculate Adjusted EBITDA, a non-GAAP financial measure, to analyze our financial results and believe that it is useful to investors, as a supplement to U.S. GAAP measures, in evaluating our ongoing operational performance and enhancing an overall understanding of our past financial performance. We believe that Adjusted EBITDA helps illustrate underlying trends in our business that could otherwise be masked by the effect of the income or expenses that we exclude from Adjusted EBITDA. Furthermore, we use this measure to establish budgets and operational goals for managing our business and evaluating our performance. We also believe that Adjusted EBITDA provides an additional tool for investors to use in comparing our recurring core business operating results over multiple periods with other companies in our industry.

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with U.S. GAAP and our calculation of Adjusted EBITDA may differ from that of other companies in our industry. We compensate for the inherent limitations associated with using Adjusted EBITDA through disclosure of these limitations, presentation of our financial statements in accordance with U.S. GAAP and reconciliation of Adjusted EBITDA to the most directly comparable U.S. GAAP measure, net loss. We calculate Adjusted EBITDA as net loss before (1) provision for income taxes, (2) other expense, net, (3) depreciation and amortization and (4) stock-based compensation.

The following provides a reconciliation of net loss to Adjusted EBITDA (unaudited):

	Year Ended December 31,				
	2009	2010	2011	2012	2013
	(in thousands)				
Reconciliation of Adjusted EBITDA:					
Net loss	$ (1,173)	$ (1,932)	$ (7,872)	$(19,334)	$(31,314)
Non-GAAP adjustments:					
Provision for income taxes	28	5	64	62	70
Other expense, net	109	340	497	2,217	2,922
Depreciation and amortization	1,056	1,389	1,539	2,624	4,415
Stock-based compensation	204	261	357	464	1,949
Adjusted EBITDA	$ 224	$ 63	$ (5,415)	$(13,967)	(21,958)

	As of December 31, 2013		
	Actual	Pro Forma(1)	Pro Forma as Adjusted(2)
		(in thousands)	
Consolidated Balance Sheet Data:			
Cash, cash equivalents and short-term investments	$17,748		
Working capital (deficit)	1,076		
Total assets	56,278		
Total debt and capital leases(3)	30,332		
Additional paid-in capital	34,072		
Total stockholders' equity (deficit)	(2,968)		

(1) The pro forma consolidated balance sheet data give effect to the automatic conversion of all outstanding shares of our convertible preferred stock into 122,215,769 shares of our common stock, which conversion will occur in connection with this offering.

(2) The pro forma as adjusted consolidated balance sheet data also give effect to our sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(3) In February 2014, we entered into a loan and security agreement for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. Please see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Contractual Obligations—Loan and Security Agreement."

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion in conjunction with the section titled "Selected Consolidated Historical Financial and Operating Data" and our consolidated financial statements and the related notes included elsewhere in this prospectus. In addition to historical information, this discussion contains forward-looking statements that involve risks and uncertainties that could cause our actual results to differ materially from our expectations. Factors that could cause such differences include, but are not limited to, those described in the section titled "Risk Factors" and elsewhere in this prospectus.

Overview

We are a pioneer and leading provider of cloud software for contact centers, facilitating over three billion interactions between our more than 2,000 clients and their customers per year. We believe we achieved this leadership position through our expertise and technology, which has empowered us to help organizations of all sizes transition from legacy on-premise contact center systems to our cloud solution. Our solution, which is comprised of our VCC cloud platform and applications, allows simultaneous management and optimization of customer interactions across voice, chat, email, web, social media and mobile channels, either directly or through our application programming interfaces. Our VCC cloud platform routes each customer interaction to an appropriate agent resource, and delivers relevant customer data to the agent in real-time to optimize the customer experience. Unlike legacy on-premise contact center systems, our solution requires minimal up-front investment and can be rapidly deployed and adjusted depending on our client's requirements.

Since founding our business in 2001, we have focused exclusively on delivering cloud contact center software. We initially targeted smaller contact center opportunities with our telesales team and, over time, invested in expanding the breadth and depth of the functionality of our cloud platform to meet the evolving requirements of our clients. In 2009, we made a strategic decision to expand our market opportunity to include larger contact centers. This decision drove further investments in research and development and the establishment of our field sales team to meet the requirements of these larger contact centers. We believe this shift has helped us diversify our client base while significantly enhancing our opportunity for future revenue growth. To complement these efforts, we also have focused on building client awareness and driving adoption of our solution through marketing activities, which include internet advertising, digital marketing campaigns, social marketing, trade shows, industry events and telemarketing.

We provide our solution through a SaaS business model that drives recurring and predictable revenue. We offer a comprehensive suite of applications delivered on our VCC cloud platform that are designed to enable our clients to manage and optimize interactions across inbound and outbound contact centers. We primarily generate revenue by selling subscriptions and related usage of our VCC cloud platform. We charge our clients monthly subscription fees for access to our solution, primarily based on the number of agent seats, as well as the specific functionalities and applications our clients deploy. We define agent seats as the maximum number of named agents allowed to concurrently access our solution. Our clients typically have more named agents than agent seats, and multiple named agents may use an agent seat, though not simultaneously. Substantially all of our clients purchase both subscriptions and related usage from us. A small percentage of our clients subscribe to our platform but purchase telephony usage directly from a wholesale telecommunications service provider. We do not sell telephony usage on a stand-alone basis to any client. The related usage fees are based on the volume of minutes for inbound and outbound interactions. We also offer bundled plans, generally for smaller deployments whereby the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. We offer both annual and monthly contracts to our clients, with 30 days' notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days' notice. Our larger clients typically choose annual contracts, which generally include an implementation and ramp period of several months. Fixed subscription fees (including bundled plans) are billed monthly in advance, while related usage fees are billed in arrears. For the years ended December 31, 2011, 2012 and 2013, subscription and related usage fees accounted for 96%, 97%

and 98% of our revenue, respectively. The remainder is comprised of professional services revenue from the implementation and optimization of our solution.

Our revenue growth over the last three years has primarily been driven by new clients choosing to use our solution and to a lesser extent, existing clients gradually increasing the number of agent seats under subscription. For the years ended December 31, 2011, 2012 and 2013, no single client accounted for more than 10% of our total revenue. As of December 31, 2013, we had over 2,000 clients across multiple industries, with subscriptions ranging in size from fewer than 10 agent seats to approximately 1,000 agent seats.

We have achieved significant growth in a relatively short period of time. For the years ended December 31, 2011, 2012 and 2013, our revenue was $43.2 million, $63.8 million and $84.1 million, respectively, representing year-over-year growth of 48% and 32%, respectively. We have continued to make significant expenditures and investments, including in research and development, sales and marketing and infrastructure. We have incurred net losses of $7.9 million, $19.3 million and $31.3 million for the years ended December 31, 2011, 2012 and 2013, respectively. We primarily evaluate the success of our business based on revenue growth and the efficiency and effectiveness of our investments.

The growth of our business and our future success depend on many factors, including our ability to continue to expand our client base to include larger opportunities, grow revenue from our existing client base, innovate and expand internationally. While these areas represent significant opportunities for us, they also pose risks and challenges that we must successfully address in order to sustain the growth of our business and improve our operating results. In order to pursue these opportunities, we anticipate that we will expand our operations and headcount in the near term. The expected addition of new employees and the investments that we anticipate will be necessary to manage our anticipated growth will make it more difficult for us to generate earnings. As we grow our business, we expect our cost of revenue and operating expenses to increase in future periods. For example, (i) sales and marketing expenses are expected to increase in absolute dollars as we continue to expand our sales and marketing teams, increase our marketing activities and grow our international operations; (ii) research and development expenses are expected to increase in absolute dollars to support the enhancement of our existing solution and development of additional industry-leading contact center features and applications; and (iii) general and administrative expenses are expected to increase in absolute dollars as a result of both our growth and the infrastructure required to be a public company. In order to support future client growth, we also intend to invest in maintaining a high level of client service and support and to continue investing in our data center infrastructure and services capabilities. Due to our continuing investments to scale our business, increase our sales and marketing efforts, pursue new opportunities, enhance our solution and build our technology, we will incur expenses in the future for which we may not realize benefit.

Key Operating and Financial Performance Metrics

In addition to measures of financial performance presented in our consolidated financial statements, we monitor the key metrics set forth below to help us evaluate growth trends, establish budgets, measure the effectiveness of our sales and marketing efforts, and assess operational efficiencies.

Dollar-Based Retention Rate

We believe that our Dollar-Based Retention Rate provides insight into our ability to retain and grow revenue from our clients, and is a measure of the long-term value of our client relationships. Our Dollar-Based Retention Rate is calculated by dividing our Retained Net Invoicing by our Retention Base Net Invoicing on a monthly basis, which we then average using the rates for the trailing twelve months for the period being presented. We define Retention Base Net Invoicing as recurring net invoicing from all clients in the comparable prior year period, and we define Retained Net Invoicing as recurring net invoicing from that same group of clients in the current period. We define recurring net invoicing as subscription and related usage revenue excluding the impact of service credits, reserves and deferrals. Historically, recurring net invoicing has been within 10% of our subscription and related usage revenue. Our Dollar-Based Retention Rate was at or above 100% in each of the periods presented. Although our Dollar-Based Retention Rate is an indicator of the stability of our revenues, as indicated below, it has fluctuated, primarily as a result of significant occasional increases in recurring net invoicing due to large clients increasing their subscriptions as they add agent seats.

The following table shows our Dollar-Based Retention Rate for the periods presented (unaudited):

	Year Ended December 31,		
	2011	2012	2013
Dollar-Based Retention Rate	102%	107%	100%

Adjusted EBITDA

We monitor Adjusted EBITDA, a non-GAAP financial measure, to analyze our financial results and believe that it is useful to investors, as a supplement to U.S. GAAP measures, in evaluating our ongoing operational performance and enhancing an overall understanding of our past financial performance. We believe that Adjusted EBITDA helps illustrate underlying trends in our business that could otherwise be masked by the effect of the income or expenses that we exclude from Adjusted EBITDA. Furthermore, we use this measure to establish budgets and operational goals for managing our business and evaluating our performance. We also believe that Adjusted EBITDA provides an additional tool for investors to use in comparing our recurring core business operating results over multiple periods with other companies in our industry.

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with U.S. GAAP and our calculation of Adjusted EBITDA may differ from that of other companies in our industry. We compensate for the inherent limitations associated with using Adjusted EBITDA through disclosure of these limitations, presentation of our financial statements in accordance with U.S. GAAP and reconciliation of Adjusted EBITDA to the most directly comparable U.S. GAAP measure, net loss. We calculate Adjusted EBITDA as net loss before (1) provision for income taxes, (2) other expense, net, (3) depreciation and amortization and (4) stock-based compensation. See “Selected Consolidated Historical Financial and Operating Data” for a reconciliation of net loss to Adjusted EBITDA.

The following table shows our Adjusted EBITDA for the periods presented (unaudited, in thousands):

	Year Ended December 31,		
	2011	2012	2013
Adjusted EBITDA	$ (5,415)	$(13,967)	$(21,958)

Key Components of Our Results of Operations

Revenue

Our revenue consists of subscription and related usage as well as professional services. We consider our subscription and related usage to be recurring. This recurring revenue includes fixed subscription fees for the delivery and support of our VCC cloud platform as well as related usage fees. The related fees for usage are based on the volume of minutes for inbound and outbound customer interactions. We also offer bundled plans, generally for smaller deployments, whereby the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states, and, in some cases, Canada. We offer both annual and monthly contracts for our clients, with 30 days’ notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days’ notice.

Fixed subscription fees, including plans with bundled usage, are billed monthly in advance while variable usage fees are billed in arrears. Fixed subscription fees are recognized on a straight-line basis over the applicable term, predominantly the monthly contractual billing period. Support activities include technical assistance for our solution and upgrades and enhancements on a when and if available basis, which are not billed separately. Variable subscription related usage fees for non-bundled plans are billed in arrears based on client specific per minute rate plans and are recognized as actual usage occurs. We generally require advance deposits from clients based on estimated usage. All fees, except usage deposits, are non-refundable.

In addition, we generate professional services revenue from assisting clients in implementing our solution and optimizing use. These services include application configuration, system integration and education and

training services. Professional services are primarily billed on a fixed-fee basis and are typically performed by us directly. In limited cases, our clients may choose to perform these services themselves or engage their own third-party service providers to perform such services. Professional services are recognized as the services are performed using the proportional performance method, with performance measured based on hours of work performed provided all other criteria for revenue recognition are met.

Cost of Revenue

Our cost of revenue consists primarily of fees that we pay to telecommunications providers for usage, personnel costs (including stock-based compensation), taxes due to federal agencies on usage fees, costs to build out and maintain data centers, depreciation and related expenses of the servers and equipment, amortization of acquired developed technology, state taxes paid to telecommunication providers and allocated facility costs. Personnel costs included as part of cost of revenue include those associated with support of our solution, clients and data center operations, as well as providing professional services. Cost of revenue can fluctuate based on a number of factors, including the fees we pay to telecommunications providers, which vary depending on our clients' usage of our VCC cloud platform, the timing of capital expenditures and related depreciation charges and changes in headcount. We expect to continue investing in our network infrastructure and client support function to maintain high quality and availability of service. As our business grows, we expect to realize economies of scale in network infrastructure, personnel and client support.

Operating Expenses

We classify our operating expenses as research and development, sales and marketing and general and administrative expenses.

Research and Development. Our research and development expenses consist primarily of salary and related expenses (including stock-based compensation) for personnel related to the development of improvements and expanded features for our services, as well as quality assurance, testing, product management and allocated overhead. We expense research and development expenses as they are incurred due to our relatively short development cycle. We believe that continued investment in our solution is important for our future growth, and we expect research and development expenses to increase in absolute dollars in the foreseeable future, although these expenses may fluctuate as a percentage of our revenue from period to period.

Sales and Marketing. Sales and marketing expenses consist primarily of salaries and related expenses (including stock-based compensation) for employees in sales and marketing, including commissions and bonuses, as well as advertising, marketing events, corporate communications, travel costs and allocated overhead. We expense the costs of sales commissions associated with the acquisition or renewal of client contracts as incurred in the period the contract is acquired or the renewal occurs. We believe it is important to continue investing in sales and marketing to continue to generate revenue growth. Accordingly, we expect sales and marketing expenses to increase in absolute dollars as we continue to support our growth initiatives, although these expenses may fluctuate as a percentage of our revenue from period to period.

General and Administrative. General and administrative expenses consist primarily of salary and related expenses (including stock-based compensation) for management, finance and accounting, legal, information systems and human resources personnel, professional fees, compliance costs, other corporate expenses and allocated overhead. We anticipate that we will incur increased expenses for personnel and professional services, including auditing and legal services, insurance and other corporate governance expenses related to operating as a public company. We expect that general and administrative expenses will increase in absolute dollars, especially in the near term, as we continue to add personnel to support our growth and operate as a public company, although these expenses may fluctuate as a percentage of our revenue from period to period.

Other Expense, Net

Our other expense, net consists primarily of interest expense associated with our capital leases, notes payable and revolving line of credit. As a result of our additional term loan borrowed in October 2013 to acquire SoCoCare and our drawdown of $12.5 million under the revolving line of credit in December 2013, we expect that interest expense will increase in absolute dollars.

Change in Fair Value of Convertible Preferred Stock Warrant Liability. We have outstanding warrants to purchase shares of our convertible preferred stock which are classified as liabilities. The convertible preferred stock warrants are subject to re-measurement at each balance sheet date, and any change in fair value is recognized as a component of other expense, net. In connection with this offering, the warrants will automatically be converted into warrants for common stock and the liability amount reclassified to stockholders' equity. We will no longer be required to re-measure the value of the warrants once they are converted to warrants for common stock after this offering and, therefore, no further charges or credits related to such warrants will be made to other expense, net.

Provision for Income Taxes

Our provision for income taxes consists primarily of corporate income taxes resulting from profits generated in foreign jurisdictions by wholly-owned subsidiaries, along with state income taxes payable in the United States.

The following table sets forth selected consolidated statements of operations data for each of the periods presented (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Consolidated Statements of Operations Data:			
Revenue	$ 43,188	$ 63,822	$ 84,132
Cost of revenue(1)	24,563	39,306	48,807
Gross profit	18,625	24,516	35,325
Operating expenses:			
Research and development(1)	8,739	13,217	17,529
Sales and marketing(1)	10,207	16,808	28,065
General and administrative(1)	6,990	11,546	18,053
Total operating expenses	25,936	41,571	63,647
Loss from operations	(7,311)	(17,055)	(28,322)
Other expense, net:			
Change in fair value of convertible preferred stock warrant liability	(55)	(1,674)	(1,871)
Interest expense and other, net	(442)	(543)	(1,051)
Total other expense, net	(497)	(2,217)	(2,922)
Loss before provision for income taxes	(7,808)	(19,272)	(31,244)
Provision for income taxes	64	62	70
Net loss	$ (7,872)	$ (19,334)	$ (31,314)

(1) Includes stock-based compensation as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Cost of revenue	$ 17	$ 60	$ 194
Research and development	51	154	499
Sales and marketing	36	112	751
General and administrative	253	138	505
Total stock-based compensation	$ 357	$ 464	$ 1,949

The following table sets forth selected consolidated statements of operations data for each of the periods presented as a percentage of revenue:

	Year Ended December 31,		
	2011	2012	2013
Consolidated Statements of Operations Data:			
Revenue	100%	100%	100%
Cost of revenue	57	62	58
Gross profit	43	38	42
Operating expenses:			
Research and development	20	21	21
Sales and marketing	24	26	33
General and administrative	16	18	22
Total operating expenses	60	65	76
Loss from operations	(17)	(27)	(34)
Other expense, net:			
Change in fair value of convertible preferred stock warrant liability	(0)	(2)	(2)
Interest expense and other, net	(1)	(1)	(1)
Total other expense, net	(1)	(3)	(3)
Loss before provision for income taxes	(18)	(30)	(37)
Provision for income taxes	0	0	0
Net loss	(18)%	(30)%	(37)%

Comparison of Years Ended December 31, 2012 and 2013

Revenue

	Year Ended December 31,			
	2012	2013	Change	% Change
	(in thousands, except percentages)			
Revenue	$63,822	$84,132	$20,310	32%

Revenue increased by $20.3 million, or 32%, for the year ended December 31, 2013 compared to the year ended December 31, 2012. Approximately $10.5 million of the increase was due to a 17% increase in the number of new clients from December 31, 2012 to December 31, 2013. The increase in the number of new clients was primarily driven by an increase in sales and marketing activities for the year ended December 31, 2013 as compared to the year ended December 31, 2012. The remaining $9.8 million of the increase was due to revenue growth from existing clients as of December 31, 2012. Our average pricing remained relatively consistent between these periods.

Cost of Revenue and Gross Profit

	Year Ended December 31,					
	2012	% of Revenue	2013	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Cost of revenue	$39,306	62%	$48,807	58%	$9,501	24%

Cost of revenue increased by $9.5 million, or 24%, for the year ended December 31, 2013 compared to the year ended December 31, 2012, primarily due to increases in personnel costs of $4.1 million, colocation facility

and related equipment depreciation costs of $2.4 million, telecommunications services costs of $1.6 million, hosted software costs of $0.7 million and equipment-related expenses and facility overhead costs of $0.4 million. The increase in telecommunications services costs was partially offset by a decrease of $1.1 million in expenses related to USF contributions. This $1.1 million decrease was due to the fact that in the year ended December 31, 2012 we incurred duplicate expenses for USF contributions payable to both our wholesale telecommunications service providers and USAC, while in the year ended December 31, 2013, we solely incurred expenses for USF contributions payable to USAC. The increases in personnel costs were primarily driven by increased headcount. The increases in the other expense categories were primarily driven by investments in technical infrastructure to support current and expected future client growth.

	Year Ended December 31,					
	2012	% of Revenue	2013	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Gross profit	$24,516	38%	$35,325	42%	$10,809	44%

Overall gross margin increased by 4% from 38% to 42% for the year ended December 31, 2013 compared to the year ended December 31, 2012, primarily due to a reduction in the costs for telecommunication services as a result of carrier changes and improved cost management systems and processes and elimination of duplicate USF contribution assessments. These decreases were partially offset by colocation and related equipment depreciation costs, which increased due to infrastructure investment as well as higher personnel costs driven by increased headcount to support growth.

Operating Expenses

	Year Ended December 31,					
	2012	% of Revenue	2013	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Research and development	$13,217	21%	$17,529	21%	$ 4,312	33%
Sales and marketing	16,808	26	28,065	33	11,257	67
General and administrative	11,546	18	18,053	22	6,507	56
Total operating expenses	$41,571	65%	$63,647	76%	$22,076	53%

Research and development expenses increased $4.3 million, or 33%, for the year ended December 31, 2013 compared to the year ended December 31, 2012, primarily due to increases in personnel costs of $3.8 million and facilities and equipment-related expenses of $0.5 million. The increase in personnel costs was primarily due to an increase in average employee and related costs as we increased compensation for our non-U.S. workforce, while also hiring senior level employees to invest in future growth.

Sales and marketing expenses increased $11.3 million, or 67%, for the year ended December 31, 2013 compared to the year ended December 31, 2012, primarily due to increases in personnel costs of $6.1 million, marketing-related activities of $2.6 million, commissions paid to sales personnel of $1.3 million, and allocated facility costs of $0.5 million. The increase in personnel costs was primarily due to headcount additions, while the increase in commissions was primarily due to growth in sales of our solution. We increased marketing efforts to raise brand awareness and lead generation efforts, which led to increased marketing, travel and related expenses. The increases in headcount and other expense categories described above supported our growth strategy to acquire new clients, increase the number of agent seats within our existing client base and establish brand awareness.

General and administrative expenses increased $6.5 million, or 56%, for the year ended December 31, 2013 compared to the year ended December 31, 2012, primarily due to increases in personnel costs of $2.6 million, fees for outside professional services of $2.3 million, third-party software costs of $0.5 million and equipment and facility costs of $0.4 million. The increase in personnel and equipment and facility costs was primarily due to increases in headcount and average salary and related costs due to senior-level hires as we built our management team in preparation for future growth. Outside professional services fees increased primarily due to legal and

accounting costs as we prepared to become a public company, and the increase in third-party software costs was due primarily to upgrading existing software and purchasing new software to support our growth.

Other Expense, net

	Year Ended December 31,					
	2012	% of Revenue	2013	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Change in fair value of convertible preferred stock warrant liability	$(1,674)	(2)%	$(1,871)	(2)%	$ (197)	12%
Interest expense and other, net	(543)	(1)	(1,051)	(1)	(508)	94
Total other expense, net	$(2,217)	(3)%	$(2,922)	(3)%	$ (705)	32%

Other expense, net increased by $0.7 million to net expense of $2.9 million for the year ended December 31, 2013 compared to a net expense of $2.2 million for the year ended December 31, 2012, primarily due to an increase in interest and other, net expenses of $0.5 million due to increases in interest expense driven by additions of equipment financed by capital leases and outstanding debt.

Comparison of Years Ended December 31, 2011 and 2012

Revenue

	Year Ended December 31,			
	2011	2012	Change	% Change
	(in thousands, except percentages)			
Revenue	$43,188	$63,822	$20,634	48%

Revenue increased by $20.6 million, or 48%, for the year ended December 31, 2012 compared to the year ended December 31, 2011. Approximately $9.7 million of the increase was due to a 32% increase in the number of clients from December 31, 2011 to December 31, 2012. The increase in the number of new clients was primarily driven by an increase in sales and marketing activities for the year ended December 31, 2012 as compared to the year ended December 31, 2011. The additional $10.9 million of the increase was due to revenue growth from existing clients as of December 31, 2011, as reflected in our Dollar Based Retention Rate, and additional revenue generated from existing clients added in 2011. Our average pricing remained relatively consistent between these periods.

Cost of Revenue and Gross Profit

	Year Ended December 31,					
	2011	% of Revenue	2012	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Cost of revenue	$24,563	57%	$39,306	62%	$14,743	60%

Cost of revenue increased by $14.7 million, or 60%, for the year ended December 31, 2012 compared to the year ended December 31, 2011, primarily due to increases in telecommunications services costs of $7.1 million, personnel costs of $3.9 million, colocation facility and related equipment depreciation costs of $2.7 million and an increase in equipment-related expenses and facility overhead costs of $0.9 million. The increase in personnel costs was primarily driven by increased headcount. The increases in the other expense categories were primarily driven by investments in our technical infrastructure to support current and future client growth.

	Year Ended December 31,					
	2011	% of Revenue	2012	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Gross profit	$18,625	43%	$24,516	38%	$5,891	32%

Overall gross margin decreased by 5% from 43% to 38% for the year ended December 31, 2012 compared to the year ended December 31, 2011, primarily due to increases in colocation and related equipment depreciation costs as a percentage of revenue as we continued to invest in infrastructure to support current and future clients, increases in costs for telecommunication services due to usage mix, and increases in employee and related costs due to headcount growth.

Operating Expenses

	Year Ended December 31,					
	2011	% of Revenue	2012	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Research and development	$ 8,739	20%	$13,217	21%	$ 4,478	51%
Sales and marketing	10,207	24	16,808	26	6,601	65
General and administrative	6,990	16	11,546	18	4,556	65
Total operating expenses	$25,936	60%	$41,571	65%	$15,635	60%

Research and development expenses increased $4.5 million, or 51%, for the year ended December 31, 2012 compared to the year ended December 31, 2011, primarily due to increases in personnel costs of $4.0 million and consulting and other third-party related services of $0.5 million. The increase in personnel costs was primarily due to an increase in headcount and average employee and related costs as we hired senior level employees to invest in future growth. The increase in consulting and other third-party services was related to our investment in improving our solution.

Sales and marketing expenses increased $6.6 million, or 65%, for the year ended December 31, 2012 compared to the year ended December 31, 2011, primarily due to increases in personnel costs of $3.4 million, marketing-related activities of $1.7 million, commissions paid to sales personnel of $0.9 million, and allocated facility costs of $0.3 million. The increase in personnel costs was primarily due to an increase in headcount and the increase in commissions was primarily due to growth in sales of our solution. We increased marketing activities to raise brand awareness and lead generation, which led to increased marketing, travel and related expenses. Headcount growth drove the increase in allocated facility costs. The increases in headcount and other expense categories supported our growth strategy to acquire new clients, increase the number of agent seats within our existing client base and establish brand awareness.

General and administrative expenses increased $4.6 million, or 65%, for the year ended December 31, 2012 compared to the year ended December 31, 2011, primarily due to increases in personnel costs of $2.3 million, fees for outside professional services of $1.5 million, merchant fees of $0.3 million, and equipment, facility, and hosted software costs of $0.3 million. The increase in personnel costs was primarily due to an increase in headcount as we built our management team to support our growth. Increases in outside professional fees were primarily related to legal and accounting costs, increases in merchant fees were driven by increased transaction volume, and increases in equipment, facility and software costs related to headcount and business growth.

Other Expense, net

	Year Ended December 31,					
	2011	% of Revenue	2012	% of Revenue	Change	% Change
	(in thousands, except percentages)					
Change in fair value of convertible preferred stock warrant liability	$ (55)	(0)%	$(1,674)	(2)%	$(1,619)	(2,944)%
Interest expense and other, net	(442)	(1)	(543)	(1)	(101)	(23)
Total other expense, net	$(497)	(1)%	$(2,217)	(3)%	$(1,720)	(346)%

Other expense, net increased by $1.7 million to net expense of $2.2 million for the year ended December 31, 2012 compared to a net expense of $0.5 million for the year ended December 31, 2011, primarily due to the

increase in fair value of our convertible preferred stock warrant liability of $1.6 million in 2012 attributable to the increase in the value of our underlying convertible preferred stock.

Quarterly Results of Operations

The following table sets forth our unaudited consolidated statements of operations data for each of the eight quarters through and including the period ended December 31, 2013. The unaudited quarterly consolidated statements of operations data set forth below have been prepared on the same basis as the audited consolidated financial statements included elsewhere in this prospectus and, in the opinion of management, reflect all necessary adjustments, which consist only of normal recurring adjustments, necessary for a fair presentation of such data. Our historical results are not necessarily indicative of the results for the full year or any other period. This data should be read together with our consolidated financial statements and the related notes included elsewhere in this prospectus.

	Three Months Ended							
	Mar 31, 2012	Jun 30, 2012	Sep 30, 2012	Dec 31, 2012	Mar 31, 2013	Jun 30, 2013	Sep 30, 2013	Dec 31, 2013
	(unaudited) (in thousands)							
Consolidated Statements of Operations Data:								
Revenue	$14,321	$15,028	$16,202	$18,271	$19,115	$20,283	$21,091	$23,643
Cost of revenue(1)	8,972	9,240	9,908	11,186	11,681	12,215	12,265	12,646
Gross profit	5,349	5,788	6,294	7,085	7,434	8,068	8,826	10,997
Operating expenses:								
Research and development(1)	2,867	3,019	3,484	3,847	4,154	4,106	4,419	4,850
Sales and marketing(1)	3,301	4,004	4,324	5,179	6,147	7,227	6,964	7,727
General and administrative(1)	2,396	2,570	2,988	3,592	3,825	4,052	4,223	5,953
Total operating expenses	8,564	9,593	10,796	12,618	14,126	15,385	15,606	18,530
Loss from operations	(3,215)	(3,805)	(4,502)	(5,533)	(6,692)	(7,317)	(6,780)	(7,533)
Other expense, net:								
Change in fair value of convertible preferred stock warrant liability	(120)	(707)	(730)	(117)	230	(785)	(622)	(694)
Interest expense and other, net	(151)	(118)	(151)	(123)	(176)	(183)	(288)	(404)
Total other expense, net	(271)	(825)	(881)	(240)	54	(968)	(910)	(1,098)
Loss before provision for income taxes	(3,486)	(4,630)	(5,383)	(5,773)	(6,638)	(8,285)	(7,690)	(8,631)
Provision for income taxes	21	10	22	9	19	5	45	1
Net loss	$ (3,507)	$ (4,640)	$ (5,405)	$ (5,782)	$ (6,657)	$ (8,290)	$ (7,735)	$ (8,632)

(1) Includes stock-based compensation as follows (unaudited, in thousands):

	Three Months Ended							
	Mar 31, 2012	Jun 30, 2012	Sep 30, 2012	Dec 31, 2012	Mar 31, 2013	Jun 30, 2013	Sep 30, 2013	Dec 31, 2013
Cost of revenue	$ 13	$ 16	$ 21	$ 10	$ 32	$ 44	$ 51	$ 67
Research and development	21	17	44	72	53	49	136	261
Sales and marketing	12	11	15	74	105	134	182	330
General and administrative	32	27	39	40	74	77	89	265
Total stock-based compensation	$ 78	$ 71	$ 119	$ 196	$ 264	$ 304	$ 458	$ 923

The following table presents our unaudited consolidated statement of operations data as a percentage of revenue:

	Three Months Ended							
	Mar 31, 2012	Jun 30, 2012	Sep 30, 2012	Dec 31, 2012	Mar 31, 2013	Jun 30, 2013	Sep 30, 2013	Dec 31, 2013
	(unaudited)							
Revenue	100%	100%	100%	100%	100%	100%	100%	100%
Cost of revenue	63	61	61	61	61	60	58	53
Gross profit	37	39	39	39	39	40	42	47
Operating expenses:								
Research and development	20	20	22	21	22	20	21	21
Sales and marketing	23	27	27	28	32	36	33	33
General and administrative	17	17	18	20	20	20	20	25
Total operating expenses	60	64	67	69	74	76	74	79
Loss from operations	(23)	(25)	(28)	(30)	(35)	(36)	(32)	(32)
Other expense, net:								
Change in fair value of convertible preferred stock warrant liability	(1)	(5)	(5)	(1)	1	(4)	(3)	(3)
Interest expense and other, net	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)
Total other expense, net	(2)	(6)	(6)	(2)	0	(5)	(4)	(5)
Loss before provision for income taxes	(25)	(31)	(34)	(32)	(35)	(41)	(36)	(37)
Provision for income taxes	0	0	0	0	0	0	0	0
Net loss	(25)%	(31)%	(34)%	(32)%	(35)%	(41)%	(36)%	(37)%

The following table presents our key performance metrics for the periods presented:

	Three Months Ended							
	Mar 31, 2012	Jun 30, 2012	Sep 30, 2012	Dec 31, 2012	Mar 31, 2013	Jun 30, 2013	Sep 30, 2013	Dec 31, 2013
	(unaudited) (in thousands, except percentages)							
Dollar-Based Retention Rate	111%	112%	112%	107%	103%	103%	102%	100%
Reconciliation of Adjusted EBITDA:								
Net loss	$(3,507)	$(4,640)	$(5,405)	$(5,782)	$(6,657)	$(8,290)	$(7,735)	$(8,632)
Non-GAAP adjustments:								
Provision for income taxes	21	10	22	9	19	5	45	1
Other expense, net	271	825	881	240	(54)	968	910	1,098
Depreciation and amortization	509	548	668	899	958	881	1,063	1,513
Stock-based compensation	78	71	119	196	264	304	458	923
Adjusted EBITDA	$(2,628)	$(3,186)	$(3,715)	$(4,438)	$(5,470)	$(6,132)	$(5,259)	$(5,097)

Quarterly Trends

In general, our revenue has increased sequentially, primarily as a result of an increase in clients and, to a lesser extent, increases in the number of agent seats within existing clients. Our average client size has also grown during this period as we have developed our field sales team and improved our solution to target larger opportunities.

Gross margin improved progressively during 2013 resulting primarily from the reduction in costs of telecommunication services as a result of carrier changes and improved cost management systems and processes. Gross margin improvement for the fourth quarter was further driven by data center relocation projects completed in the third quarter.

Operating expenses are primarily driven by headcount and headcount-related expenses. Specifically, research and development expenses generally increased in absolute dollars quarter-over-quarter as we continued to hire additional personnel to update and enhance our solution. Sales and marketing expenses have increased

sequentially from quarter-to-quarter as we continued to expand our sales organization and increase our marketing efforts to support our overall business growth. In 2013, our sales and marketing costs increased as a percentage of revenue, primarily as a result of expanding our marketing organization and continuing to increase our field sales personnel. General and administrative expenses have increased sequentially from quarter-to-quarter due to increased headcount costs and increases in professional services, such as audit and legal fees.

Other expense, net has fluctuated quarter-to-quarter due to interest expense based on our outstanding debt and equipment financing lines, and based on changes in the fair value of our convertible preferred stock warrant liability, which fluctuates primarily based on the value of our convertible preferred stock and proximity to a liquidation event.

Our Dollar-Based Retention Rate has fluctuated as we increased the number of larger clients beginning in 2011, which caused our Dollar-Based Retention Rate to be higher in 2012 as these larger clients ramped up their agent seat subscriptions. Over time, as the number of larger clients within our client base has grown, our Dollar-Based Retention Rate has stabilized.

Liquidity and Capital Resources

To date, we have financed our operations primarily through sales of our solution, net proceeds from the issuance of our convertible preferred stock, lease facilities and, more recently, debt financing. As of December 31, 2012 and 2013, we had $6.0 million and $17.7 million, respectively, of cash and cash equivalents. Our cash equivalents were comprised of money market funds.

In April 2012, we received net proceeds of $11.9 million from the issuance of series C-2 convertible preferred stock, and in April 2013, we received net proceeds of $21.8 million from the issuance of series D-2 convertible preferred stock.

In March 2013, we entered into a loan and security agreement with a lender for a revolving line of credit for up to $12.5 million. The revolving line of credit bears monthly interest at a variable annual rate of prime plus 1.25%, and matures in March 2015. Interest is due and payable on the last business day of each month during the term of the loan, and all amounts outstanding under the revolving line of credit are due and payable in March 2015. In December 2013, we drew the full available amount of our revolving line of credit of $12.5 million, all of which remained outstanding as of December 31, 2013. In October 2013, this loan and security agreement was amended to provide for an additional $5.0 million term loan in connection with our acquisition of SoCoCare. Monthly interest-only payments are due on the term loan in equal monthly installments through September 2014, at which point principal and interest payments are due in equal monthly installments through the maturity of the term loan in March 2017. The term loan carries a variable annual interest rate of prime plus 1.50%. This loan and security agreement, as amended, contains certain covenants, including the requirement that we maintain $5.5 million of cash deposited with the lender for the term of the agreement. The loan and security agreement includes the occurrence of a material adverse effect, as defined in the agreement and determined by the lender, as an event of default.

In February 2014, we entered into a loan and security agreement with two lenders in a syndicate for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. The term loan bears interest at a variable per annum rate equal to the greater of 10% or LIBOR plus 9%. Interest is due and payable on the last business day of each month during the term of the loan. Monthly principal payments will be due beginning in February 2016 based on 1/60th of the outstanding balance at that time and continue until all remaining principal outstanding under the term loan are due and payable in February 2019. The loan and security agreement includes the occurrence of a material adverse event, as defined in the agreement and determined by the lender, as an event of default.

We believe our existing cash and cash equivalents, together with the $19.6 million we borrowed under our term loan, will be sufficient to meet our working capital and capital expenditure needs over at least the next twelve months. Our future capital requirements will depend on many factors including our growth rate, continuing market acceptance of our solution, client retention, ability to gain new clients, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities and the introduction of new and enhanced offerings. We may in the future enter into arrangements to acquire or invest in complementary

businesses, technologies and intellectual property rights. We may be required to seek additional equity or debt financing. In the event that additional financing is required, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results, and financial condition would be harmed.

If we raise additional funds by issuing equity or equity-linked securities, the ownership of our existing stockholders will be diluted. If we raise additional funds by the incurrence of indebtedness, we will be subject to increased debt service obligations and could also be subject to restrictive covenants, such as limitations on our ability to incur additional debt, and other operating restrictions that could adversely impact our ability to conduct our business.

There can be no assurance that we will be able to raise additional capital on acceptable terms or at all, which would harm our ability to achieve our business objectives. In addition, if our operating performance during the next twelve months is below our expectations, our liquidity and ability to operate our business could be harmed.

Cash Flows

The following table summarizes our cash flows for the periods presented (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Consolidated Statement of Cash Flows Data:			
Cash flows used in operating activities	$ (699)	$ (8,301)	$ (20,959)
Cash flows (used in) provided by investing activities	(7,423)	(1,589)	(1,021)
Cash flows provided by financing activities	9,843	10,473	33,767
Increase in cash and cash equivalents	$ 1,721	$ 583	$ 11,787

Cash Flows from Operating Activities

Cash used in operating activities is significantly influenced by the amount of cash we invest in personnel and infrastructure to support the anticipated growth of our business and the amount and timing of customer payments. For the periods presented, we have continued to experience increases in investments in personnel and infrastructure that have exceeded the growth in our revenue and increased our net losses. As we continue to invest in personnel and infrastructure to support the anticipated growth of our business, we expect net uses of cash by operations to continue. Our largest source of operating cash inflows is cash collections from our customers for subscription and related usage services. Payments from customers for these services are typically received monthly. As of December 31, 2011, 2012 and 2013 our day's sales outstanding were 20, 24 and 25 days, respectively.

During the year ended December 31, 2013, we used $21.0 million in cash in operating activities due to a net loss of $31.3 million, and increases in accounts receivable of $1.6 million, and prepaid expenses and other current assets of $0.3 million, offset by non-cash items such as depreciation and amortization of $4.4 million, stock-based compensation of $1.9 million, change in fair value of convertible preferred stock warrant liability of $1.9 million, and cash positive changes in accounts payable and accrued liabilities of $3.9 million. The increase in our net loss for the year ended December 31, 2013 was driven by a significant increase in investments in our infrastructure and personnel to support our current business growth.

During the year ended December 31, 2012, we used $8.3 million in cash in operating activities as a result of a net loss of $19.3 million, a $2.1 million increase in accounts receivable, and a $0.4 million increase in prepaid expenses and other current assets related to long-term maintenance contracts and annual subscription fees on third-party licensed technology. These decreases in cash were partially offset by non-cash items, including depreciation and amortization of $2.6 million, change in the fair value of our convertible preferred stock warrant liability of $1.7 million, and stock-based compensation of $0.5 million, as well as positive cash changes in deferred revenue of $1.4 million attributable to increased collections from clients, a net increase in accounts payable and accrued liabilities of $6.6 million primarily related to increased headcount, operations growth and increases in federal fees and sales taxes due, and a $0.5 million increase in other liabilities, primarily resulting from deferred rent. The increase in our net loss for the year ended December 31, 2012 was driven by increases in

investment in our infrastructure and personnel in anticipation of future business growth. Accounts receivable increased primarily due to the overall growth of sales of our solution outpacing collections of existing receivables, and an increase in our day's sales outstanding from 20 for the year ended December 31, 2011 to 24 for the year ended December 31, 2012.

During the year ended December 31, 2011, we used $0.7 million in cash in operating activities as a result of a net loss of $7.9 million, adjusted by non-cash items, including depreciation and amortization of $1.5 million, and stock-based compensation of $0.4 million. Working capital sources of cash were related to an increase of $6.2 million in accounts payable and accrued liabilities, primarily related to increased headcount, increases in telecommunication taxes due, and overall operations growth, and an increase of $1.1 million in deferred revenue, attributable to increased collections from clients. These sources of cash were partially offset by an increase of $1.9 million in accounts receivable due to the overall growth of our business. The increase in our net loss for the year ended December 31, 2012 was driven by increases in investment in our infrastructure and personnel in anticipation of future business growth. Accounts receivable increased due to the overall growth of sales of our solution outpacing collections of existing receivables.

Cash Flows from Investing Activities

During the year ended December 31, 2013, cash used for investing activities was $1.0 million, due to $2.8 million of cash used in the acquisition of Face It, Corp. and in the purchase of property and equipment of $0.6 million, partially offset by the proceeds from the sale of certificates of deposit of $2.5 million.

During the years ended December 31, 2011 and 2012, we used $7.4 million and $1.6 million in cash for investing activities, respectively. We used $3.1 million and $2.7 million, respectively, of cash for capital expenditures, including investment in computer hardware and software for our data centers to support our growth. Additionally, in 2011 and 2012, we used $3.6 million and received $1.1 million, net, respectively, of cash for purchases and sales of short-term investments, composed primarily of twelve-month certificates of deposit.

Cash Flows from Financing Activities

During the year ended December 31, 2013, cash provided by financing activities of $33.8 million was primarily attributable to our series D-2 convertible preferred stock issuance which provided $21.8 million in net proceeds, net proceeds from debt issuances of $17.5 million, and cash received from stock exercises of $0.7 million. This increase was partially offset by $5.4 million in repayments on our capital lease and notes payable obligations and $0.8 million paid in deferred offering costs.

During the year ended December 31, 2012, cash provided by financing activities of $10.5 million was primarily attributable to our issuance of series C-2 convertible preferred stock which provided $11.9 million in net proceeds and $1.4 million in proceeds from equipment financing related to reimbursements for purchased fixed assets. These amounts were partially offset by repayments on our capital lease and notes payable obligations of $2.9 million.

During the year ended December 31, 2011, cash provided by financing activities of $9.8 million was primarily attributable to our issuance of series B-2 convertible preferred stock which provided $7.9 million in net proceeds and $3.0 million in proceeds from equipment financing related to reimbursements for purchased fixed assets. These amounts were partially offset by $1.2 million in payments on our notes payable and capital lease obligations.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. On an ongoing basis, we evaluate our estimates and assumptions. Our actual results may differ from these estimates under different assumptions or conditions.

We believe that of our significant accounting policies, which are described in the notes to our consolidated financial statements, the following accounting policies involve the greatest degree of judgment and complexity and have the greatest potential impact on our consolidated financial statements. A critical accounting policy is one that is material to the presentation of our consolidated financial statements and requires us to make difficult, subjective or complex judgments for uncertain matters that could have a material effect on our financial

condition and results of operations. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our financial condition and results of operations.

Revenue Recognition

Our revenue consists of subscription services and related usage as well as professional services. We charge clients monthly subscription fees for access to our solution. Monthly subscription fees are primarily based on the number of agent seats, as well as the specific VCC functionalities and applications deployed by the client. Agent seats are defined as the maximum number of named agents allowed to concurrently access the VCC cloud platform. Clients typically have more named agents than agent seats. Multiple named agents may use an agent seat, though not simultaneously. Substantially all of our clients purchase both subscriptions and related usage. A small percentage of our clients subscribe to our platform but purchase telephony usage directly from a wholesale telecommunications service provider. We do not sell telephony usage on a stand-alone basis to any client. The related usage fees are based on the volume of minutes used for inbound and outbound customer interactions. We also offer bundled plans, generally for smaller deployments whereby the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. Professional services revenue is derived primarily from implementations, including application configuration, system integration, optimization, education and training services. Clients are not permitted to take possession of our software.

We offer both annual and monthly contracts to clients, with 30 days' notice required for changes in the number of agent seats. Our clients can use this notice period to rapidly adjust the number of agent seats used to meet their changing contact center volume needs, including to reduce the number of agent seats to zero. As a general matter, this means that a client can effectively terminate its agreement with us upon 30 days' notice. Larger clients typically choose annual contracts, which generally include an implementation and ramp period of several months. Fixed subscription fees, including plans bundled with usage, are billed monthly in advance, while related usage fees are billed in arrears. Support activities include technical assistance and upgrades and enhancements to our solution on a when-and-if-available basis, which are not billed separately.

We generally require advance deposits from our clients based on estimated usage. Fees for usage are applied against the advance deposit resulting in continuous consumption and requiring frequent replenishment of the deposit. Any unused portion of the deposit is refundable to the client upon termination of the arrangement, provided all amounts due have been paid. All fees, except usage deposits, are non-refundable.

Professional services are primarily billed on a fixed-fee basis and are performed by us directly, or clients may also choose to perform these services themselves or engage their own third-party service providers.

Our sales arrangements generally involve multiple deliverables, including subscription services and related usage as well as professional services, all of which have standalone value to the client. We allocate arrangement consideration to these deliverables based on the relative standalone selling price method in accordance with the selling price hierarchy, which includes: (i) Vendor Specific Objective Evidence ("VSOE") if available; (ii) Third Party Evidence ("TPE") if VSOE is not available; and (iii) Best Estimate of Selling Price ("BESP") if neither VSOE nor TPE is available.

VSOE. We determine VSOE based on our historical pricing and discounting practices for the specific service when sold separately. In determining VSOE, we require that a substantial majority of the selling prices for these services fall within a reasonably narrow pricing range. We limit our assessment of VSOE for each element to either the price charged when the same element is sold separately or the price established by management, having the relevant authority to do so, for an element not yet sold separately. We have not met the criteria to establish selling prices based on VSOE.

TPE. When VSOE cannot be established for deliverables in multiple element arrangements, we apply judgment with respect to whether we can establish a selling price based on TPE. TPE is determined based on competitor prices for similar deliverables when sold separately. Our services are significantly differentiated such that the comparable pricing of deliverables with similar functionality cannot be obtained. Furthermore, we are unable to reliably determine the standalone selling prices of similar deliverables sold by competitors. As a result, we have not met the criteria to establish selling prices based on TPE.

BESP. Since we are unable to establish a selling price using VSOE or TPE, we use BESP in our allocation of arrangement consideration. The objective of BESP is to determine the price at which we would transact a sale if the product or service were sold on a stand-alone basis. We determine BESP for deliverables by considering multiple factors including, but not limited to, prices we charge for similar offerings, market conditions, and competitive landscape. We limit the amount of allocable arrangement consideration to amounts that are fixed or determinable and that are not contingent on future performance or future deliverables.

We recognize revenue for each unit of accounting when all of the following criteria have been met:

- persuasive evidence of an arrangement exists;
- delivery has occurred;
- the fee is fixed or determinable; and
- collection is reasonably assured.

Revenue allocated to the separate accounting units is recognized as follows:

- fixed subscription revenue is recognized on a straight-line basis over the applicable term, predominantly the monthly contractual billing period;
- variable usage-based revenue is recognized as actual usage occurs. Usage revenue in subscription arrangements that include bundled usage is recognized on a straight-line basis over the applicable term as we cannot reliably estimate client usage patterns; and
- professional services revenue is recognized as the services are performed using the proportional performance method, with performance measured based on labor hours, assuming all other revenue recognition criteria have been met.

At the time of each revenue transaction, we assesses whether fees under the arrangement are fixed or determinable and whether collection is reasonably assured. For arrangements where the fee is not fixed or determinable, we recognize revenue as these amounts become due and payable. We assess collection based on a number of factors, including past transaction history and the creditworthiness of the client. If we determine that collection of fees is not reasonably assured, we defer the revenue and recognize revenue at the time collection becomes reasonably assured, which is generally upon receipt of payment. We maintain a revenue reserve for potential credits to be issued in accordance with service level agreements or for other revenue adjustments. The revenue recognition standards include guidance relating to any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer which may include, but is not limited to, sales, use, value added and excise taxes. We record amounts billed to our clients for USF contributions and other regulatory costs on a gross basis in our consolidated statement of operations and comprehensive loss and record surcharges and sales, use and excise taxes billed to our clients on a net basis. The cost of gross USF contributions payable to USAC and suppliers is presented as a cost of revenue in the consolidated statement of operations and comprehensive loss. Surcharges and sales, use and excise taxes incurred in excess of amounts billed to our clients are presented in general and administrative expense in the consolidated statement of operations and comprehensive loss.

Income Taxes

We account for income taxes using an asset and liability approach. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Operating loss and tax credit carryforwards are measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized. As of December 31, 2012 and 2013, we provided a full valuation allowance against our net deferred tax assets.

We recognize the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date and only in an amount more likely than not to be sustained upon review by the tax authorities. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments and which may not accurately reflect actual outcomes.

As of December 31, 2013, we had net operating loss carryforwards of approximately $68.4 million for federal income taxes and $35.8 million for state income taxes. If not utilized, these carryforwards will begin to expire in 2024 for federal purposes and 2014 for state purposes. As of December 31, 2013, we had research credit carryforwards of $1.0 million and $0.8 million for federal and state income taxes, respectively. If not utilized, these federal research carryforwards will begin to expire in 2024. The state tax credit can be carried forward indefinitely.

Internal Revenue Code Section 382 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event that we have a change of ownership, utilization of the net operating loss and tax credit carryforwards may be restricted.

Stock-Based Compensation

Compensation expense related to stock-based transactions, including employee, consultant and non-employee director stock option awards, is measured and recognized in the financial statements based on fair value. The fair value of each option award is estimated on the grant date using the Black-Scholes option-pricing model. The stock-based compensation expense, net of forfeitures, is recognized on a straight-line basis over the requisite service periods of the awards, which is generally four years.

Our option-pricing model requires the input of highly subjective assumptions, including the expected term of the option, the expected volatility of the price of our common stock, risk-free interest rates and the expected dividend yield of our common stock. The assumptions used in our option-pricing model represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

These assumptions are estimated as follows:

- *Fair Value of Common Stock*. Because our common stock is not publicly traded, we must estimate the fair value of common stock, as discussed in "—Common Stock Valuations" below;
- *Risk-Free Interest Rate*. We base the risk-free interest rate on the implied yield available on U.S. Treasury zero-coupon issues with a remaining term equivalent to that of the options for each option group;
- *Expected Term*. The expected term represents the period that our stock-based awards are expected to be outstanding. Since we did not have sufficient historical information to develop reasonable expectations about future exercise behavior, the expected term for options issued to employees was calculated as the average of the option vesting period and the options' contractual term. The expected term for options issued to non-employees is the contractual term;
- *Volatility*. We determine the price volatility factor based on the historical volatilities of our peer group as we do not have a trading history for our common stock. To determine our peer group of companies, we consider public enterprise cloud-based application providers and select those that are similar to us in size, stage of life cycle, and financial leverage. For each period, a similar peer group of publicly traded companies was used to determine expected volatility and to determine the fair value of our common stock. We did not rely on implied volatilities of traded options in our industry peers' common stock because the volume of activity was relatively low. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation; and
- *Dividend Yield*. We have not paid and do not expect to pay dividends.

In addition to assumptions used in the Black-Scholes option-pricing model, we must also estimate a forfeiture rate to calculate the stock-based compensation for our option awards. Our forfeiture rate is based on an analysis of our actual forfeitures. We will continue to evaluate the appropriateness of the forfeiture rate based on actual forfeiture experience, analysis of employee turnover and other factors. Changes in the estimated forfeiture rate can have a significant impact on our stock-based compensation expense as the cumulative effect of adjusting the rate is recognized in the period the forfeiture estimate is changed. If a revised forfeiture rate is higher than the

previously estimated forfeiture rate, an adjustment is made that will result in a decrease to the stock-based compensation expense recognized in the financial statements. If a revised forfeiture rate is lower than the previously estimated forfeiture rate, an adjustment is made that will result in an increase to the stock-based compensation expense recognized in the financial statements.

We will continue to use judgment in evaluating the assumptions related to our stock-based compensation on a prospective basis. As we continue to accumulate additional data related to our common stock, we may refine our estimates, which could materially impact our future stock-based compensation expense.

For the years ended December 31, 2011, 2012 and 2013, we used the following assumptions in our Black-Scholes option-pricing model computation to determine fair values of option grants and related compensation expense for employees and non-employees:

	Year Ended December 31,		
	2011	2012	2013
Expected term — employees (years)	6.1	5.0 to 6.1	5.0 to 6.1
Contractual life — non-employees (years)	10.0	10.0	10.0
Volatility	66%	59% to 60%	59% to 60%
Risk-free interest rate	1.2% to 2.5%	0.7% to 1.7%	1.0% to 3.0%
Dividend yield	—	—	—

Stock-based non-employee compensation is recognized over the vesting periods of the options. The value of options granted to non-employees is periodically re-measured as they vest over a performance period.

Our stock-based compensation expense was as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Cost of revenue	$ 17	$ 60	$ 194
Research and development	51	154	499
Sales and marketing	36	112	751
General and administrative	253	138	505
Total stock-based compensation	$ 357	$ 464	$ 1,949

Common Stock Valuations

We are required to estimate the fair value of the common stock underlying our stock option awards when performing the fair value calculations with the Black-Scholes option-pricing model. The fair value of the common stock underlying our stock option awards was determined by our board of directors, with input from management and review of third-party valuations. We believe that our board of directors has the relevant experience and expertise to determine the fair value of our common stock. As described below, the exercise price of our stock option awards was determined by our board of directors based on the most recent valuation as of the grant date. As shown below, the valuations of common stock were determined in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The assumptions that we used in these valuation models are based on future expectations combined with management judgment. In the absence of a public trading market, our board of directors, with input from management, exercised significant judgment and considered numerous objective and subjective factors to determine the fair value of our common stock for financial reporting purposes as of the grant date of each stock option award, including the following factors:

- valuations of our common stock performed by unrelated third parties;
- the nature of our services and our competitive position in the marketplace;

- the prices, rights, preferences and privileges of our convertible preferred stock relative to our common stock;
- the prices of our convertible preferred stock and common stock sold to outside investors in arms-length transactions;
- our results of operations, financial condition and future financial projections;
- current business conditions and projections;
- the likelihood of achieving a liquidity event for the shares of common stock underlying these stock options, such as an initial public offering or sale of our company, given prevailing market conditions;
- the value of companies that we consider peers based on a number of factors, including similarity to us with respect to industry and business model; and
- the lack of marketability for our common stock.

The dates of our valuations were contemporaneous with the grant dates of our stock option awards. There were significant judgments and estimates inherent in these valuations, which included assumptions regarding our future operating performance, the time to completing an initial public offering or other liquidity event, and the determinations of the appropriate valuation methods to be applied. If we had made different estimates or assumptions, our stock-based compensation expense, net loss and net loss per common share could have been significantly different from those reported in this prospectus.

In valuing our common stock, our board of directors determined the equity value of our business generally using a weighting of the market comparable approach (and within the market-comparable approach, at certain times, the merger and acquisition, or M&A, transaction method) and the income approach valuation methods. When applicable due to a recent convertible preferred stock offering, the prior sale of company stock method was also utilized.

The market comparable approach estimates value based on a comparison of the company to comparable firms in similar lines of business that are publicly traded. Based both on trading multiples and acquisitions of the comparable companies, a representative market value multiple is determined which is applied to the subject company's operating results to estimate the value of the subject company. The estimated value is then discounted by a non-marketability factor due to the fact that stockholders of private companies do not have access to trading markets similar to those used by stockholders of public companies, which impacts liquidity. We review the comparable companies with each valuation to ensure that the companies continue to best reflect our industry and business model. We also review the M&A transactions examined to ensure that the transactions best reflect recent comparable transactions.

In our valuations, we selected our comparable publicly-traded companies by analyzing various factors, including, but not limited to, industry similarity, financial risk and company size. We focused on companies that either compete in the contact center software industry or deliver services using a SaaS business model, are generally growing at levels similar to us (greater than 15% revenue growth), and have last-twelve months revenue below $500 million. While a number of the comparable companies used are larger than us in terms of total revenue and assets, several of the companies, like us, are in the investment and growth stage and have experienced operating losses while growing their businesses. While no two companies are perfectly comparable, we believe that the companies we have selected are a representative group for purposes of performing valuations.

We used the same comparable companies for the October 16, 2012, January 16, 2013, July 15, 2013, October 15, 2013, December 11, 2013 and January 28, 2014 valuations, except that we did not use one company for the July 15, 2013, October 15, 2013, December 11, 2013 and January 28, 2014 valuations that we had used in the October 16, 2012 and January 16, 2013 valuations because this company had been acquired and was no longer a stand-alone, public company. Starting with the October 15, 2013 valuation, we added one company in the SaaS industry that had recently completed its initial public offering. The newly added company provided additional publicly available financial data from which valuation multiples could be derived.

We used an average of the last twelve-month and forward twelve-month revenue multiples from our comparable publicly-traded companies and applied these multiples to our latest twelve-month revenue and our forward twelve-month revenue projections as of the valuation date to arrive at an estimate of our enterprise value.

We deemed multiples of revenue to be the most relevant metric as we are still in a growth phase. Since we have not generated positive historical profit, profit-based multiples are not relevant for us.

The M&A transaction method estimates fair value based on exchange prices in actual transactions and on asking prices for controlling interests in companies offered for sale in the private market. The process involves comparison and correlation of the subject company with other similar companies. Adjustments for differences in various factors, including, but not limited to, size, growth, profitability, risk, and return on investment, are also considered. In selecting transactions, we reviewed transactions involving acquired companies in the software industry, specifically software companies with SaaS business models, and selected the median of the last twelve months revenue multiples and applied this multiple to our last twelve months of revenue to estimate our enterprise value. We used the M&A transaction method for option grants in and prior to January 2013. We stopped using the M&A transaction method in 2013 given the greater likelihood that we would complete an initial public offering rather than an M&A exit event.

We began incorporating the income approach in our weighting for stock option grants made in 2013 as our ability to forecast became more consistent. The income approach is an estimate of the present value of the future monetary benefits generated by an investment in an asset. Specifically, debt free cash flows and the estimated terminal value are discounted at an appropriate risk-adjusted discount rate to estimate the total invested capital value of the entity. In addition, we also considered an appropriate discount adjustment to recognize the lack of marketability due to being a privately-held entity.

In instances where we had a recent convertible preferred stock offering, as was the case for our convertible preferred stock series D-2 issuance in April 2013, we used this as an arms-length market transaction to derive our enterprise value for our April 2013 valuation.

For grants made in or prior to January 2013, our indicated business enterprise value at each valuation date was allocated to the shares of convertible preferred stock, common stock, warrants and options using an option pricing method, or OPM. An OPM treats common stock and convertible preferred stock as call options on a business, with exercise prices based on the liquidation preference of the convertible preferred stock. The common stock has value only if the funds available for distribution to the stockholders exceed the value of the combined liquidation preference for all preferred stock at the time of a liquidity event, such as a merger, sale or IPO. Therefore, common stock is modeled as a call option with a claim on the total equity value at an exercise price equal to the preferred stock's liquidation preference. The OPM uses the Black-Scholes option-pricing model to price the call option. For options granted after January 2013, we used hybrid methods. The change to a hybrid method was made because it was deemed a more appropriate method when the time to our potential IPO was expected to be short. Under the hybrid method, multiple valuation approaches were used and then combined into a single probability weighted valuation. Our approaches included the use of an IPO scenario, a scenario assuming continued operation as a private entity, and a scenario assuming an acquisition of the company.

The following table summarizes, by grant date, the number of shares of common stock subject to stock option awards granted from October 1, 2012 through the date of this prospectus, as well as the associated per share exercise price and the estimated fair value per share of our common stock on the grant date:

Period	Number of shares subject to Options Granted	Per share Exercise Price of Option	Common Stock Fair Value Per Share at Grant Date	Aggregate Estimated Fair Value of Options
October 2012	2,443,462	$ 1.03	$ 1.03	$ 1,395,000
January 2013	2,324,463	1.21	1.21	1,534,000
May 2013	1,280,363	1.19	1.19	844,000
August 2013	2,104,334	1.67	1.67	1,987,000
October 2013	68,855	1.15	2.12	96,000
October 2013	1,449,231	2.12	2.12	1,694,000
November 2013	2,192,000	2.37	2.37	2,929,000
December 2013	1,883,105	2.53	2.53	2,703,000
February 2014	426,250	2.98	2.98	681,000

The aggregate intrinsic value of vested and unvested stock options as of December 31, 2013, based on an assumed initial public offering price of $ per share, the midpoint of the price range on the cover page of this prospectus, was $ million and million, respectively.

The following discussion relates primarily to our determination of the fair value per share of our common stock for purposes of calculating stock-based compensation expense since October 2012. No single event caused the valuation of our common stock to increase or decrease through February 2014. Instead, a combination of the factors described below in each period led to the changes in the fair value of our common stock.

Significant factors considered by our board of directors in determining the fair value of our common stock for each of the grant dates set forth above include:

October 2012

Our board of directors set an exercise price of $1.03 per share for option awards granted in October 2012 based in part on a contemporaneous third-party valuation prepared as of October 16, 2012. The valuation took into account that our revenue for the nine months ended September 30, 2012 grew 54% from the same period in the previous year. The valuation used an equal weighting of the market comparable and M&A transactional approaches to determine our enterprise value. The OPM was used to estimate the common stock fair value, with an 18-month estimate to a liquidity event and a non-marketability discount of 15%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $1.03 per share for stock option awards granted in October 2012.

January 2013

Our board of directors set an exercise price of $1.21 per share for option awards granted in January 2013 based in part on a contemporaneous third-party valuation prepared as of January 16, 2013. The valuation took into account that our revenue for the year ended December 31, 2012 grew 48% from the previous year. The valuation used a weighting of 40%, 40%, and 20% for the market comparable, income, and M&A transactional approaches, respectively, to determine our enterprise value. The discount rate applied to our cash flows was 15%. The OPM was used to estimate the common stock fair value, with a 10-month estimate to a liquidity event and a non-marketability discount of 7%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $1.21 per share for stock option awards granted in January 2013.

May 2013

Our board of directors set an exercise price of $1.19 per share for option awards granted in May 2013 based in part on a contemporaneous third-party valuation prepared as of April 15, 2013. The valuation took into account that

our revenue for the three months ended March 31, 2013 grew 33% from the same period in the previous year, as well as our continued steps towards an initial public offering, including our plans to file a registration statement towards the end of 2013. The valuation used our recent series D-2 preferred round of financing, which occurred in April 2013 at a price per share of $1.44, to estimate our enterprise value. The OPM was used to estimate the common stock fair value, assuming a 10-month period to a liquidity event. The final valuation blended the output of the OPM allocation and an IPO scenario that assumed all shares of preferred stock are converted to shares of common stock and a non-marketability discount of 8%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $1.19 per share for stock option awards granted in May 2013.

August 2013

Our board of directors set an exercise price of $1.67 per share for option awards granted in August 2013 based in part on a contemporaneous third-party valuation prepared as of July 15, 2013. The valuation took into account that our revenue for the six months ended June 30, 2013 grew 34% from the same period in the previous year, as well as our continued steps towards an initial public offering, including our plans to file a registration statement towards the end of 2013. The valuation used an equal weighting of the market comparable and income approaches to determine our enterprise value. The discount rate applied to our cash flows was 15%. The OPM was used to estimate the common stock fair value, assuming an 8-month period to a liquidity event. The final valuation blended the output of the OPM allocation and an IPO scenario that assumed all shares of preferred stock are converted to shares of common stock and a non-marketability discount of 8%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $1.67 per share for stock option awards granted in August 2013.

October 2013

Our board of directors set an exercise price of $2.12 per share for option awards granted in October 2013 based in part on a contemporaneous third-party valuation prepared as of October 15, 2013. The valuation took into account that our revenue for the nine months ended September 30, 2013 grew 33% from the same period in the previous year, as well as our continued steps towards an initial public offering, including our plans to submit a registration statement towards the end of 2013. The valuation used a 45% weighting of both the market comparable and income approaches and a 10% weighting of the IPO method to determine our enterprise value. The discount rate applied to our cash flows was 15%. The hybrid method was used to estimate the common stock fair value, assuming a 6-month period to a liquidity event and a non-marketability discount of 5%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $2.12 per share for stock option awards granted in October 2013.

November 2013

Our board of directors set an exercise price of $2.37 per share for option awards granted in November 2013 based in part on a contemporaneous third-party valuation prepared as of November 18, 2013. The valuation took into account that our revenue for the ten months ended October 31, 2013 grew 31% from the same period in the previous year, as well as our continued steps towards an initial public offering, including our plans to submit a registration statement in early December 2013. The valuation used a 37.5% weighting of both the market comparable and income approaches and a 25% weighting of the IPO method to determine our enterprise value. The discount rate applied to our cash flows was 15%. The hybrid method was used to estimate the common stock fair value, assuming a 6-month period to a liquidity event and a non-marketability discount of 5%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $2.37 per share for stock option awards granted in November 2013.

December 2013

Our board of directors set an exercise price of $2.53 per share for option awards granted in December 2013 based in part on a contemporaneous third-party valuation prepared as of December 11, 2013. The valuation took into account that our revenue for the eleven months ended November 30, 2013 grew 33% from the same period

in the previous year, as well as our continued steps towards an initial public offering, including our submission of a registration statement in early December 2013. The valuation used a 32.5% weighting of both the market comparable and income approaches and a 35% weighting of the IPO method to determine our enterprise value. The discount rate applied to our cash flows was 15%. The hybrid method was used to estimate the common stock fair value, assuming a 6-month period to a liquidity event and a non-marketability discount of 5%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $2.53 per share for stock option awards granted in December 2013.

February 2014

Our board of directors set an exercise price of $2.98 per share for option awards granted in February 2014 based in part on a contemporaneous third-party valuation prepared as of January 28, 2014. The valuation took into account that our revenue for the year ended December 31, 2013 grew 32% from the previous year, as well as our continued steps towards an initial public offering, including our submission of a registration statement in early December 2013. The valuation used a 25% weighting of both the market comparable and income approaches and a 50% weighting of the IPO method to determine our enterprise value. The discount rate applied to our cash flows was 15%. The hybrid method was used to estimate the common stock fair value, assuming a 2-month period to a liquidity event and a non-marketability discount of 4%. Based on these considerations, our board of directors concluded that the fair value of common stock for financial reporting purposes was $2.98 per share for stock option awards granted in February 2014.

Off Balance Sheet Arrangements

We did not have any off balance sheet arrangements as of December 31, 2012 or 2013.

Contractual Obligations

Commitments

Our principal commitments consist of obligations under our outstanding leases for office space and third-party data centers, guaranteed telecommunication usage services, capital leases, notes payable, and our revolving line of credit. The following table summarizes our contractual obligations as of December 31, 2013 (in thousands):

	Payment Due by Period				
Contractual Obligations	**Total**	**Less Than 1 Year**	**1-3 Years**	**3-5 Years**	**More than 5 Years**
Operating lease obligations(1)	$ 7,946	$ 2,416	$ 3,564	$ 1,966	$ —
Capital lease obligations(2)	10,235	5,505	4,693	37	—
Revolving line of credit(3)	12,500	—	12,500	—	—
Notes payable(4)	8,695	1,556	6,520	619	—
Telecommunication usage(5)	6,184	4,024	2,160	—	—
Hosting services(6)	5,712	2,013	1,317	604	—
Total	$51,888	$ 15,632	$32,846	$ 3,410	$ —

(1) Operating lease obligations represent our obligations to make payments under the lease agreements for our facilities and office equipment leases. In January 2014, we modified our corporate office lease to expand its existing space for an additional commitment of $615,000 over the term of the original lease.

(2) Capital lease obligations represent financing on computer equipment and software purchases.

(3) Revolving line of credit obligations represent an outstanding line of credit with a lender.

(4) Notes payable represent (1) a term loan with a lender, (2) a note with a governmental agency and (3) an equipment loan with a lender. In February 2014, we entered into a loan and security agreement for a term loan

of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015.

(5) Telecommunication usage represents guaranteed minimum payments for telecommunication services.

(6) Hosting services represent rental agreements for colocation facilities.

The contractual commitment amounts in the table above are associated with agreements that are enforceable and legally binding. Obligations under contracts that we can cancel without a significant penalty are not included in the table above.

Loan and Security Agreement

In February 2014, we entered into a loan and security agreement with two lenders in a syndicate for a term loan of up to $30.0 million. At closing, we borrowed $19.6 million of the term loan net of $0.4 million in debt costs, with the remaining $10.0 million available to be borrowed until February 2015. The term loan bears interest at a variable per annum rate equal to the greater of 10% or LIBOR plus 9%. Interest is due and payable on the last business day of each month during the term of the loan and monthly principal payments will be due beginning in February 2016 based on 1/60th of the outstanding balance at that time and continue until all remaining principal outstanding under the term loan are due and payable in February 2019.

Indemnification Agreements

In the ordinary course of business, we enter into agreements of varying scope and terms pursuant to which we agree to indemnify clients, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by us or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with directors and certain officers and employees that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. No demands have been made upon us to provide indemnification under such agreements and there are no claims that we are aware of that could have a material effect on our consolidated balance sheet, consolidated statement of operations and comprehensive loss, or consolidated statements of cash flows.

Operating Leases

We lease office space, including our corporate headquarters in San Ramon, California, and third-party data centers, under operating lease agreements that expire through February 2018. The terms of the lease agreements provide for rental payments on a graduated basis. We recognize rent expense on a straight-line basis over the lease periods.

Contingencies — Legal and Regulatory

We are subject to certain legal and regulatory proceedings described below, and from time to time may be involved in a variety of claims, lawsuits, investigations, and proceedings relating to contractual disputes, intellectual property rights, employment matters, regulatory compliance matters, and other litigation matters relating to various claims that arise in the normal course of business. We determine whether an estimated loss from a contingency should be accrued by assessing whether a loss is deemed probable and can be reasonably estimated. We assess our potential liability by analyzing specific litigation and regulatory matters using reasonably available information. We develop our views on estimated losses in consultation with inside and outside counsel, which involves a subjective analysis of potential results and outcomes, assuming various combinations of appropriate litigation and settlement strategies. Legal fees are expensed in the period in which they are incurred.

Universal Services Fund Liability

During the third quarter of 2012, we determined that based on our business activities, we are classified as a telecommunications service provider for regulatory purposes and we are required to make direct contributions to the USF based on revenue we receive from the resale of interstate and international telecommunications services. Previously, we had been advised that our telecommunications services were an integral part of an information service and accordingly made indirect USF contributions as an end user through payments to our wholesale

telecommunications service providers. In order to comply with the obligation to make direct contributions, in November 2012, we made a voluntary self-disclosure to the FCC Enforcement Bureau and have registered with USAC, which is charged by the FCC with administering the USF. We have filed exemption certificates with our wholesale telecommunications service providers in order to eliminate their obligation to pay USF contributions calculated on services sold to us, and our obligation to reimburse them for such contributions. We have accrued for past due contributions dating back to 2003 and, in April 2013, began remitting required contributions on a prospective basis directly to USAC.

Our registration with USAC subjects us to assessments for unpaid USF contributions, as well as interest and penalties thereon, due to our late registration and reporting of revenue. We are required to pay assessments for periods prior to our registration. While we are in discussions with the FCC to limit such back assessments to the period 2008 through 2012, it is possible that we will be required to pay back assessments for the period from 2003 to 2007. We are also in discussions with the FCC to obtain credit for the indirect USF payments we have made since 2003 to our wholesale telecommunications service providers. If we are unsuccessful in obtaining credit from the FCC for these payments, we will seek reimbursement from our wholesale telecommunications service providers. We will face a regulatory and contractual challenge in seeking recovery or credit for our USF reimbursement payments previously made to our wholesale telecommunications service providers of up to $3.1 million as of December 31, 2012 and 2013. Finally, we are exposed to the potential assessment by the FCC of monetary penalties (or forfeitures) due to our past failure to recognize our obligation as a USF contributor. In lieu of the actual assessment of monetary forfeitures, due to our current voluntary disclosure proceeding with the FCC, we may be asked to make a voluntary contribution to the U.S. Treasury in order to resolve the FCC's investigation amicably. We believe we may be able to reduce such penalties as a result of our voluntary self-disclosure.

In July 2013, we and USAC agreed to a financing arrangement for the undisputed portion of the unpaid USF contributions and related interest for the periods 2008 through 2012 whereby we issued to USAC a promissory note for $4.1 million. The promissory note is repayable in 42 equal monthly installments with a fixed annual interest rate of 12.75%. As of December 31, 2013, the balance of the promissory note payable was $3.7 million, which is included in the notes payable amounts on the consolidated balance sheets. In addition to the promissory note payable, we had an accrued liability for USF contributions and related interest and penalties of $8.1 million and $4.2 million included in accrued federal fees on the consolidated balance sheets as of December 31, 2012 and 2013, respectively, of which $0.8 million pertains to periods prior to 2008. For the years ended December 31, 2011, 2012 and 2013, we incurred expenses of $2.0 million, $3.2 million, and $3.9 million, respectively, which was recorded as a charge to cost of revenue. No amounts related to the potential recovery or credit of USF contributions paid by us to our wholesale telecommunications service providers have been recognized in the consolidated financial statements.

Taxes and Surcharges on Usage

The applicability of state and local taxes, fees or surcharges relative to services such as ours is complex, ambiguous and subject to interpretation and change. During 2013, we analyzed our activities and determined that we may be obligated to collect and remit sales, excise and utility user taxes, as well as surcharges as a communications service provider, and pay gross receipts taxes, on our usage-based fees in certain states and municipalities. We have neither collected nor remitted state and local taxes or surcharges on usage-based fees in any of the periods presented.

Based on our ongoing assessment, we will register for tax and regulatory purposes in states where we determine such regulations apply to our activities and commence collecting and remitting state and local taxes and surcharges on applicable usage-based fees. We have accrued a contingent liability for our best estimate of the probable amount of taxes and surcharges that may be imposed by various states and municipalities on our activities prior to registration. This contingent liability is based on our analysis of a number of factors, including the source location of our usage-based fees and the rules and regulations in each state. The actual amount of state and local taxes and surcharges paid may differ from our estimates. As of December 31, 2012 and 2013, we had an accrued sales tax liability related to our contingency for state and local taxes on usage-based fees of $3.2 million and $5.4 million, respectively.

NobelBiz Litigation

In April 2012, NobelBiz, Inc., or NobelBiz, filed a complaint against us in the U.S. District Court for the Eastern District of Texas, Case No. 6:12-cv-00243-LED, alleging infringement of U.S. Patent No. 8,135,122, and seeking a permanent injunction, damages and attorneys' fees should judgment be found against us. Subsequently, NobelBiz amended its complaint to add claims related to U.S. Patent No. 8,565,399, which is a continuation in the same family as the prior patent and addresses the same technology. This complaint is one of six complaints currently known to have been brought by NobelBiz regarding the same patent. On March 28, 2013, the court granted our motion to transfer the case to the U.S. District Court for the Northern District of California. We intend to vigorously defend ourselves against NobelBiz's claims to the extent necessary. The result of this litigation is inherently uncertain. Please see "Business—Legal Proceedings."

Quantitative and Qualitative Disclosure about Market Risk

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

Interest Rate Sensitivity

We had cash and cash equivalents of $17.7 million as of December 31, 2013. We hold our cash and cash equivalents for working capital purposes. Our cash and cash equivalents are held in cash and short-term money market funds. Due to the short-term nature of these instruments, we believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. Declines in interest rates, however, would reduce future interest income. During the year ended December 31, 2013, the effect of a hypothetical 10% increase or decrease in overall interest rates would not have had a material impact on our interest income. As of December 31, 2013, we had a term loan outstanding, which bears interest at a variable annual rate that is equal to the prime rate (3.25% as of December 31, 2013) plus 1.50%. A hypothetical 10% increase would have had a $0.1 million impact on our interest expense.

Foreign Currency Risk

Our functional currency of our foreign subsidiaries is generally the local currency. All of our sales are denominated in U.S. dollars, and therefore our net revenue is not currently subject to foreign currency risk. Our operating expenses are denominated in the currencies of the countries in which our operations are located, which are primarily in the U.S., the Philippines, and Russia. Our consolidated results of operations and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates and may be adversely affected in the future due to changes in foreign exchange rates. To date, we have not entered into any hedging arrangements with respect to foreign currency risk or other derivative financial instruments. During the year ended December 31, 2012 and the nine months ended September 30, 2013, the effect of a hypothetical 10% change in foreign currency exchange rates applicable to our business would not have had a material impact on our consolidated financial statements.

Recent Accounting Pronouncements

In March 2013, the Financial Accounting Standards Board, or FASB, issued an accounting standards update on foreign currency matters that provides additional guidance with respect to the reclassification into income of the cumulative translation adjustment, or CTA, recorded in accumulated other comprehensive income associated with a parent company's ownership interest in a foreign entity. The standard differentiates between transactions occurring within a foreign entity and transactions affecting an investment in a foreign entity. For transactions within a foreign entity, the full CTA associated with the foreign entity would be reclassified into income only when the sale of a subsidiary or group of net assets within the foreign entity represents the substantially complete liquidation of that foreign entity. For transactions affecting an investment in a foreign entity, the full CTA associated with the foreign entity would be reclassified into income only if the parent no longer has a controlling

interest in that foreign entity as a result of the transaction. In addition, acquisitions of a foreign entity completed in stages will trigger release of the CTA associated with an equity method investment in that entity at the point a controlling interest in the foreign entity is obtained. We are required to adopt this standard for our interim and annual periods beginning after December 15, 2013. This standard would impact our consolidated financial condition or results of operations only in the instance a transaction described above occurs.

In July 2013, the FASB issued an accounting standards update on presentation of an unrecognized tax benefit when a net operating loss carryforward, a similar tax loss or a tax credit carryforward exists. The standard requires that unrecognized tax benefits should be presented as a reduction to deferred tax assets for net operating loss carry forwards, a similar tax loss or a tax credit carry forward, or collectively, a carryforward, if such carryforward is required or expected to settle the additional income taxes in the event the uncertain tax position is disallowed. The standard also requires in situations that a carryforward cannot be used or the deferred tax asset is not intended to be used for such purpose, the unrecognized tax benefit should be recorded as a liability and should not offset deferred tax assets. We are required to adopt this standard for interim and annual periods beginning after December 15, 2013. We are currently evaluating the impact of adopting this guidance, but do not expect it to have a material impact on our consolidated financial condition or results of operations.

BUSINESS

Overview

Five9 is a pioneer and leading provider of cloud software for contact centers. Since our inception, we have exclusively focused on delivering our platform in the cloud and are disrupting a significantly large market by replacing legacy on-premise contact center systems. Contact centers are vital hubs of interaction between organizations and their customers and, therefore, are essential to delivering successful customer service, sales and marketing strategies. Our mission is to empower organizations to transform their contact centers into customer engagement centers of excellence, while improving business agility and significantly lowering the cost and complexity of their contact center operations. Our purpose-built, highly scalable and secure Virtual Contact Center, or VCC, cloud platform delivers a comprehensive suite of easy-to-use applications that enable the breadth of contact center-related customer service, sales and marketing functions. We have become an established leader in the cloud contact center market, facilitating over three billion interactions between our more than 2,000 clients and their customers per year. We believe our ability to combine software and telephony into a single unified platform that is delivered in the cloud creates a significant barrier to entry.

Based on our current product offering and historical average annual recurring revenue per seat, we believe that the market for our solution is approximately $22 billion annually worldwide. Gartner estimates that there were 14.5 million contact center agents worldwide in 2012 and forecasts that cloud penetration of the contact center market in North America will more than double from 5% of total contact center agents in 2012 to 13% in 2016. We believe adoption of cloud contact center software solutions is increasing rapidly as a result of several distinct trends. The increasing adoption of cloud computing, especially within CRM, is creating strong demand for integrated cloud contact center software solutions. In addition, cloud contact center software solutions now offer the functionality required by large, complex enterprise contact centers. Furthermore, we believe organizations typically refresh their contact center systems every 8-10 years, which provides an opportunity for cloud solutions to replace legacy on-premise contact center systems when these replacement decisions arise.

Cloud contact center software solutions are replacing legacy on-premise contact center systems. On-premise systems require large up-front investments, long deployment cycles and are burdensome to maintain. These systems are also often inflexible, complex, and require significant duplication of effort and integration across multiple sites. This creates substantial challenges for clients with on-premise contact center systems to implement new features or upgrades, or to integrate with adjacent cloud solutions.

Our solution, which is comprised of our VCC cloud platform and applications, allows simultaneous management and optimization of customer interactions across voice, chat, email, web, social media and mobile channels, either directly or through our application programming interface. Our VCC cloud platform matches each customer interaction with an appropriate agent resource and delivers relevant customer data to the agent in real-time through integrations with adjacent enterprise applications, such as CRM software, to optimize the customer experience and improve agent productivity. Our solution ensures our clients always have the latest version of our software. Delivered on-demand, our solution enables our clients to quickly deploy agent seats in any geographic location with only a computer, headset and broadband internet connection, and rapidly adjust the number of contact center agent seats in response to changing business requirements. Unlike legacy on-premise contact center systems, our solution requires minimal up-front investment, can be rapidly deployed and is maintained by us in the cloud.

Our sales model consists of a field sales team that sells our solution into larger opportunities and a telesales team that sells our solution into smaller opportunities. We have developed a proven, high velocity, metrics-driven sales and marketing strategy, which is designed to effectively identify, qualify and close sales opportunities. To complement this go-to-market strategy, we have developed a large ecosystem of technology and system integrator partners to help increase awareness of our solution in the market and drive incremental sales opportunities with new and existing clients.

We provide our solution through a SaaS business model with recurring subscriptions based primarily on the number of agent seats and minutes of usage of solution, as well as the specific functionalities and applications our clients deploy. Our recurring revenue model combined with our Dollar-Based Retention Rates, which have averaged approximately 100% since 2011, have enhanced our ability to forecast our financial performance and plan future investments.

We have achieved significant growth in recent periods. For the years ended December 31, 2011, 2012 and 2013, our revenues were $43.2 million, $63.8 million and $84.1 million, respectively, representing year-over-year growth of 48% and 32%, respectively. We incurred net losses of $7.9 million, $19.3 million and $31.3 million for the years ended December 31, 2011, 2012 and 2013, respectively, as a result of increased investment in our growth.

Industry Overview

Contact centers must evolve in today's rapidly changing technology environment

Contact centers are vital hubs of interaction between organizations and their customers and are mission critical to the successful execution of customer service, sales and marketing strategies. Both consumer and enterprise technology trends are driving an evolution in contact center strategies. Today, customers increasingly expect seamless communications across multiple channels, including voice, chat, email, web, social media and mobile, thereby increasing the number of touch points between organizations and their customers. Along with these additional channels, customers expect personalized interactions to enhance overall customer service. Delivering customer interactions to an appropriate agent resource while delivering relevant customer data to the agent in real-time is crucial in providing effective customer service.

As the needs of organizations and their customers have become more sophisticated, so have the demands for contact centers. Striving for greater efficiency in meeting demand, the use of remote agents and geographically dispersed contact centers has proliferated. To increase capacity and undertake upgrades, on-premise contact centers must unify geographically dispersed agents and hardware, which requires building out teams and facilities to forecasted future capacity and is a long-term undertaking. In order to meet these changing demands, contact centers must upgrade their existing on-premise contact center systems or migrate their contact center operations to the cloud.

Legacy on-premise contact center systems are inefficient

The majority of contact center operations today rely on legacy on-premise contact center systems that include business workflows, as well as hardware and software architectures designed more than a decade ago. Legacy on-premise contact center systems are typically developed for location-specific deployments and are often costly, inflexible, complex and require significant duplication of effort and integration across multiple sites. Key shortcomings of these legacy systems include:

- ***Long and complex implementation and upgrade cycles.*** Implementation of legacy on-premise contact center systems requires long deployment timelines and complex integrations with other enterprise systems. Once these systems have been deployed, integrated and customized, upgrades and modifications can be extremely challenging. Due to these customized solutions and complex integrations, clients will often forego or postpone upgrades for fear of disabling key functionality. If they do choose to upgrade, clients are often required to rebuild integrations in order to retain full functionality, which frequently result in significant expenditures of time, resources and capital.
- ***Inflexible resource deployment.*** As organizations expand globally, they require the ability to easily manage remote agents and quickly adjust agent seats to accommodate peak call volumes. Most legacy on-premise contact center systems do not provide these capabilities and, as a result, their clients are typically unable to quickly scale their contact center operations in response to changing business needs. This often results in costly over-building of additional capacity to accommodate peak volumes.
- ***Duplicative technology stacks across multiple sites.*** Organizations must integrate multiple contact center sites to drive efficiency and create a unified customer view. Organizations running on-premise systems often find themselves with dissimilar systems at each site resulting in non-integrated and inefficient siloes of technology. Moreover, technology at each site is in a constant state of change over time. The initial and ongoing integration of these contact center sites for such organizations requires significant ongoing investment.

Our Opportunity

Based on our current product offerings and historical average annual recurring revenue per seat, we believe that the market for our solution is approximately $22 billion annually worldwide. Gartner estimates that there were 14.5 million contact center agents worldwide in 2012 and forecasts that the cloud penetration of the contact center market in North America will more than double from 5% of total contact center agents in 2012 to 13% in 2016. We believe the market for contact center solutions is undergoing a significant shift to the cloud driven primarily by:

- *Adoption of cloud CRM solutions*
- *Sophistication of cloud contact center software solutions*
- *Technology refresh of on-premise contact center systems*

Adoption of cloud CRM solutions has grown as organizations seek to enhance their sales strategies, increase business agility and reduce costs. CRM solutions typically integrate deeply with contact center solutions to provide agents with real-time access to customer information. The shift to cloud CRM and ease of integration are creating significant demand for integrated cloud contact center software solutions. As the market opportunity has expanded, cloud contact center software solutions have evolved to meet the requirements of large, complex enterprise contact centers. We believe organizations have typically refreshed their on-premise contact center systems every 8-10 years. Given the prevalence of cloud CRM and the capabilities of cloud-based contact centers, cloud solutions are increasingly considered as a replacement alternative to legacy on-premise contact center systems during these refresh decisions.

Our Solution

We deliver a comprehensive cloud software solution for contact centers. Our solution enables organizations of all sizes to optimize their contact center operations by enhancing agent productivity, improving customer satisfaction and driving cost efficiency. Our solution facilitates inbound customer-initiated interactions and outbound agent-initiated interactions. Our VCC cloud platform includes features such as automatic call distribution, or ACD, interactive voice response, or IVR, computer-telephony integration, or CTI, outbound dialers and multi-channel capabilities. In addition, our VCC cloud platform offers real-time management applications to optimize contact center performance.

Our cloud contact center software solution includes the following key elements:

- ***Rapid implementation, seamless updates and pre-built integrations.*** Our solution can be deployed and updated quickly with minimal disruption to our clients' contact center operations and provides pre-built integrations with leading CRM and other enterprise applications**.** We seamlessly update our solution to ensure our clients always run the latest version of our software, while maintaining our clients' existing configurations with minimal disruption to contact center operations.
- ***Highly flexible platform.*** Our solution provides easy administration, configuration and role-based functionalities for agents, supervisors and administrators, and enables the rapid adjustment of agent seats to meet changing contact center volumes.
- ***Scalable, secure and reliable multi-tenant architecture.*** Our solution provides organizations of all sizes with the robust contact center functionality, scalability, flexibility and security required in the most sophisticated and distributed environments.

Our solution is designed to provide the following key benefits to our clients:

- ***Higher agent productivity.*** Our solution empowers greater agent productivity and utilization by allowing agents to handle both inbound and outbound calls and interact with customers across multiple other channels, including chat, email, web, social media and mobile.
- ***Improved customer satisfaction.*** Our intelligent call routing and IVR capabilities, pre-built integrations with leading CRM applications, and multi-channel capabilities ensure customer interactions are quickly

routed to an appropriate agent resource. Agents, through integrations with CRM applications, have immediate access to the most current, relevant and accurate information about the customer, resulting in increased first contact resolutions and a more satisfying experience for the customer.

- ***Enhanced end-to-end visibility.*** Our VCC cloud platform integrates our clients' deployments across multiple contact center locations, providing an organization-wide view of their contact center operations. This facilitates efficient cloud routing across locations and provides a uniform interface across all agents. With this visibility, our solution enables our clients to quickly shift agent resources and adjust agent seats in response to changing business requirements, which results in higher agent utilization.
- ***Greater operational efficiency.*** Our solution provides contact center managers with significant visibility into their agents' productivity and the efficiency and performance of their campaigns. We provide robust intelligence and analytics capabilities to help supervisors optimize operations and campaigns in real-time to drive increased efficiency. Our role-based interfaces deliver specific functionality to both desktops and mobile devices to meet the unique needs of agents, supervisors and administrators.
- ***Compelling value proposition.*** We provide a unified cloud-based software and telephony platform for contact center operations, including software applications, technology infrastructure, maintenance, monitoring, storage, security, client support and upgrades, which enables our clients to simplify their technology infrastructure and streamline IT costs. We manage upgrades and deployments remotely, often resulting in lower total cost of operations relative to legacy on-premise contact center systems that often require in-house technical support staff.

Our Competitive Strengths

We believe that our position as a leading provider of cloud contact center software results from several key competitive strengths, including:

- ***Cloud-based, enterprise-grade platform and end-to-end application suite.*** We deliver a cloud-based enterprise-grade platform and applications suite with multi-channel capabilities that allows our clients to manage their entire contact center operation. Our highly scalable, secure and multi-tenant architecture enables us to serve large, distributed enterprises with complex contact center requirements, as well as smaller organizations, all from a single cloud platform.
- ***Rapid deployment of our comprehensive solution.*** Our solution enables our clients to quickly deploy and provision agent seats in any geographic location with only a computer, headset and broadband internet connection, and rapidly adjust the number of contact center agent seats in response to changing business requirements. Our clients always have the latest version of our software, deployed seamlessly through the cloud, and can easily integrate our solution with many adjacent enterprise applications using our pre-built integrations. As a result, our clients' contact centers become fully operational more quickly than legacy on-premise contact center systems.
- ***Proven, repeatable and scalable go-to-market model.*** We engage with our clients through a highly scalable and metrics-driven sales and marketing organization that effectively identifies, qualifies and closes sales opportunities. The deep domain expertise of our field sales team is instrumental in selling to larger opportunities, and our highly efficient telesales model enables us to cost-effectively identify, qualify and close a high volume of smaller opportunities. Our ecosystem of technology and system integrator partners increases awareness of our solution and helps generate new sales opportunities. We believe our go-to-market model gives us an efficient and effective means of targeting organizations of all sizes.
- ***Established market presence and a large, diverse client base.*** We have a large, diverse client base of over 2,000 organizations across multiple industries. We believe our clients view us as a key strategic solutions provider. The performance, reliability, ease-of-use and comprehensive nature of our solution has resulted in high client satisfaction and retention.
- ***Extensive partner ecosystem.*** We have cultivated a robust ecosystem of partners including a variety of leading CRM software vendors such as Salesforce.com Inc., Oracle Corporation, Microsoft Corporation

and NetSuite Inc.; system integrators such as Bluewolf, Inc. and Deloitte Consulting LLP; analytics, workforce management and performance management software vendors such as NICE Systems, Inc. and Authority Software; and telephony providers such as AT&T Inc. and Verizon Communications Inc. We believe this ecosystem has enabled us to increase our brand awareness and enhance the functionality and value of our solution for our clients.

- ***Focus on innovation and thought leadership.*** Since our inception, we have been an innovator of cloud contact center software. Our investment in research and development has driven our growth and enabled us to deliver a cloud contact center software solution with the features and functionality to power the most complex contact centers. Our extensive domain expertise enables us to enhance our solution and serves as a critical competitive differentiator. We strive to be a thought leader in our industry, identifying and developing cloud capabilities to transform traditional contact center operations into customer engagement centers of excellence.

Our Growth Strategy

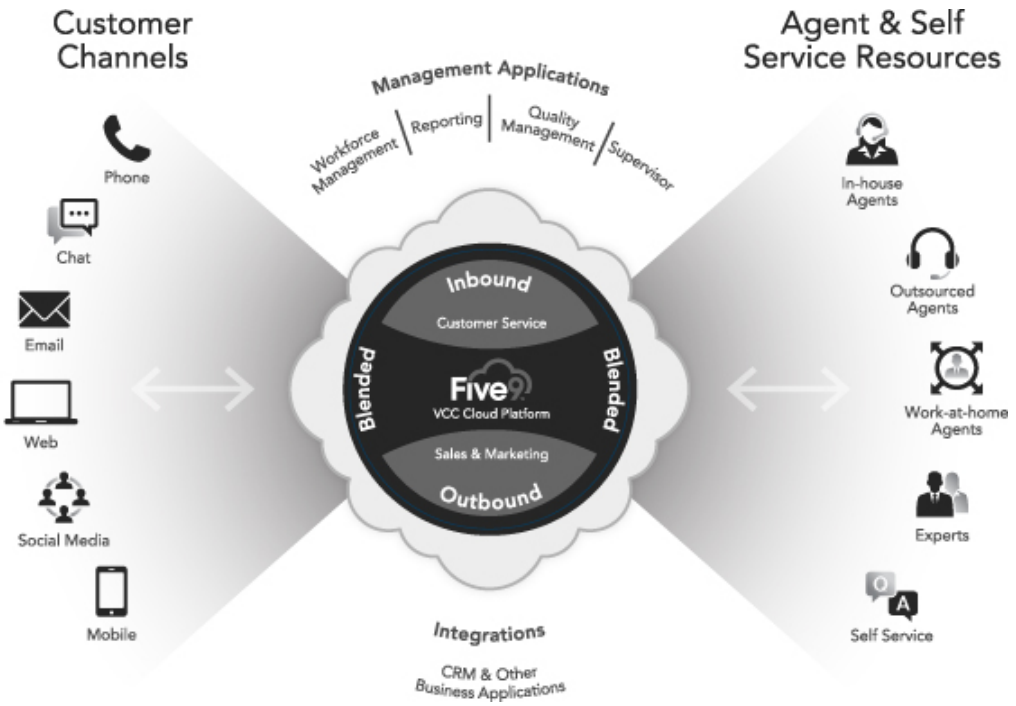
Our objective is to strengthen our position as a leader in cloud contact center software. To accomplish this goal, we are pursuing the following growth strategies:

- ***Capture increased market share.*** We believe that the adoption of cloud contact center software solutions is increasingly driven by mainstream adoption of cloud computing, especially within CRM, as well as the increasing capabilities of these solutions. With organizations refreshing their contact center systems every 8-10 years, cloud solutions have an opportunity to replace legacy on-premise contact center systems at the time a replacement decision is made. We believe there is a substantial opportunity for us to win new clients and increase our market share given the strength and client benefits of our cloud solution. We intend to continue to invest aggressively in our sales force and marketing capabilities to win new clients.
- ***Continue to increase sales in our existing client base.*** Many of our clients deploy our solution to support only a portion of their contact center agents initially. We intend to increase the number of agents using our solution within our existing clients as they experience the benefits of our cloud solution. We also intend to sell our existing clients incremental applications to increase our revenue and the value of our existing client relationships.
- ***Maintain our innovation leadership by strengthening and extending our solution.*** We have an innovative platform that has enabled us to establish a leadership position in the cloud contact center software market. To preserve and expand our leadership position, we intend to continue to make significant investments in research and development to strengthen our existing solution and develop additional industry-leading contact center features and applications.
- ***Expand internationally.*** To date, our focus has been on the U.S. market, which represented 90% of our revenue in the years ended December 31, 2012 and 2013, based on bill to address. We believe there is a significant opportunity for our cloud solution to disrupt incumbent legacy on-premise contact center systems internationally. We plan to increase our sales capabilities internationally by expanding our direct sales force and collaborating with strategic partners worldwide to target these markets and grow our international client base.
- ***Further develop our partner ecosystem.*** We have established strong partner relationships with organizations in the contact center ecosystem to further enhance the value of our VCC cloud platform. We intend to continue to cultivate new relationships with additional software, technology, system integrator and telephony providers to enhance the value of our solution and drive sales.
- ***Selectively pursue acquisitions.*** In addition to organically developing and strengthening our solution, we intend to actively and selectively explore acquisition opportunities of companies and technologies to expand the functionality of our solution, provide access to new clients or markets, or both. For example, we recently acquired SoCoCare in order to establish our social media capabilities and strengthen our market leadership.

Our Virtual Contact Center Cloud Platform and Applications

Our cloud contact center software solution consists of our purpose-built and highly scalable VCC cloud platform that delivers a comprehensive suite of easy-to-use, secure applications to cover the breadth of contact center-related customer service, sales and marketing functions. Our VCC cloud platform acts as the hub for interactions between our clients and their customers, enabling contact center operations focused on either inbound or outbound customer interactions in a single unified architecture. Our solution enables our clients to manage these customer interactions across multiple channels including voice, chat, email, web, social media and mobile and connects them to an appropriate agent. Whether the resource is an internal contact center agent, an outsourcer, an agent working from home, a knowledge worker, or self-service, our solution enables our clients to deliver a highly effective customer experience.

Our solution is built using a multi-tenant architecture and delivered in the cloud. The following diagram illustrates our VCC cloud platform and comprehensive suite of applications used by agents, supervisors and administrators. In addition, we provide a robust set of management applications including workforce management, reporting, quality management and supervisor tools.



Inbound Contact Center: With our VCC cloud platform, inbound contact centers of all sizes have everything they need to run a successful contact center, including the ability to take calls, respond to chat and email interactions, and engage with a wide range of social media sources. Our platform includes a full-featured IVR system that allows our clients to automatically answer calls and identify an appropriate agent resource to resolve the customer issue. At the center of our VCC cloud platform is the ACD, which provides intelligent routing of customer and prospect interactions. This provides our clients with the flexibility to prioritize customer interactions to maximize business results and ensure customer treatment is aligned with their customer service and sales strategy.

Using our ACD, IVR, CTI, natural language processing, or NLP, open application programming interfaces and deep integration with CRM solutions, our clients can provide personalized customer service by delivering customer data to the agent handling the interaction. This promotes quick first contact resolution, which is a key factor in customer satisfaction. Our clients can prioritize high-value customers for special treatment, and respond to time-of-day needs, thereby maximizing agent productivity, while increasing customer satisfaction.

Outbound Contact Center: Our Outbound Contact Center application enables our clients to improve the efficiency and productivity of outbound contact center agents. We offer a complete solution for outbound sales and marketing campaigns, including multiple automated dialing options, so our clients can find the right match for their needs and environment, including outbound business-to-consumer and business-to-business campaigns. We offer a variety of outbound dialer solutions, including our patented predictive dialer. The predictive dialer greatly enhances the productivity of agents and sales representatives by increasing productive talk time and minimizing idle time spent listening to voice mail and busy signals. These dialer solutions allow our clients to choose the automation capabilities that best align with their contact center environment and objectives, including lead prospecting, qualifying, nurturing and converting. We also provide campaign management tools such as list management, sophisticated dialer rules to connect with more prospects and agent scripting to maximize the productivity of our clients' outbound campaigns. Our outbound contact center application easily integrates with our clients' web presence to generate immediate, automated callback for online inquiries.

Blended Contact Center: We provide both inbound and outbound capabilities on a single architecture to unify contact center operations. This helps improve agent productivity, as interactions are automatically routed based on interaction volume. When call volumes are low, our blending ability allows our clients to shift inbound agent resources to outbound-related functions. For example, inbound agents can be assigned to the outbound queue for automatic follow-ups on any customer interaction, flag customer surveys for personalized attention, or resolve open customer issues. Agents receive scripting to improve their effectiveness.

Five9 SoCoCare Social Customer Care: Our social customer care application was purpose built for contact center agents and supervisors. Our solution is designed to route, track and report on performance in the social channel in the same manner as other channels handled by contact centers. Our advanced NLP engine with business rules automatically tags social posts as positive, negative or neutral. Our application also filters out unactionable social media interactions, which can be up to 80% of the social volume for most companies, by analyzing the relevancy of posts. We can prioritize items based on business rules, further cluster posts into tiered business topics and utilize our powerful custom views to monitor the social universe in real-time, thereby enabling agents to focus on actionable customer issues.

Mobile Customer Service Modules: We offer mobile customer service modules to allow our clients to easily provide customer service from within their mobile application. These pre-built modules can be added to mobile applications, allowing enterprises to quickly add common tasks, such as scheduling an agent call back, mobile chat, sentiment feedback or Net Promoter Score measurement, into their applications.

Management Applications: Our integrated portfolio of management applications is built and delivered on our highly scalable and agile VCC cloud platform. We provide real-time supervisor tools to monitor and manage agent performance and call flows. In addition, we provide a suite of configurable management reports to enable our clients to manage the end-to-end performance of their contact center operations. For advanced client needs, we also offer fully integrated workforce and quality management applications through our strategic relationship with NICE Systems, Inc.

Our clients can access our VCC cloud platform in four different ways:

- *Agent Desktop:* Serves as the unified environment for contact center agents. Agents are provided with one easy-to-use interface for handling interactions designed to promote a seamless customer experience. Automated call scripting and real-time customer data, such as purchase and interaction history, is delivered to empower the agent with the data they need to answer customer questions and provide a highly effective customer experience.
- *Supervisor:* Provides supervisors with tools to optimize the contact center and ensure high quality customer interactions. These tools provide visibility into call routing, queues, service level agreements, or

SLAs, workflow management, utilization, campaign statistics and agent productivity. A mobile tablet version of the supervisor application is also available to help supervisors monitor agents, listen in on conversations, coach agents, and oversee queues and agent performance metrics. These metrics typically include average handle time, first contact resolution, number of interactions handled and contact outcomes.

- *Administrator:* Provides administrators with a comprehensive set of integrated tools to easily configure agent skills (such as language, domain expertise, and channels to service), determine interaction routing strategies, specify IVR scripts and manage the contact center operation. The Five9 Administrator system is easy to use so that contact center business personnel can set up and make changes themselves, without having to rely on specialized IT staff often required to deploy or update legacy on-premise contact center systems. This represents a key advantage of our VCC cloud platform, as it allows businesses to move and change quickly to keep up with the rapid changes required in contact center operations.
- *Reporting and Analytics:* Real-time reports provide statistics and key performance indicators to allow executives and supervisors to monitor the contact center, improve reaction time to interaction volume and manage agents more effectively. We provide more than 100 standard reports with multiple views and drill-downs into individual inbound calls and metrics, customer interaction outcomes, and outbound sales and marketing program metrics. Our reporting platform also enables clients to build customized reports and reporting schedules.

CRM Integrations: We offer pre-built integrations with leading providers of CRM systems such as Salesforce.com, Inc., Oracle Corporation, Microsoft Corporation and NetSuite Inc. in addition to professional service-delivered integration with home grown or legacy CRM systems. Our solution routes each customer interaction to an appropriate agent resource and, through integrations with CRM applications, provides agents with immediate access to the most current, relevant and accurate information about the customer, resulting in increased first contact resolutions and a more satisfying experience for the customer.

Clients

We have a large and diverse client base comprised of over 2,000 organizations as of December 31, 2013, with no single client representing more than 10% of our revenues in 2011, 2012 or 2013. Our client base spans organizations of all sizes across multiple industries, including banking and financial services, business process outsourcers, consumer, healthcare and technology.

The following is a representative sample of our current clients: Access Worldwide Communications, Inc.; American Support, LLC (“American Support”); Citrix Systems, Inc.; Comcast; ConnectAmerica.com, LLC; Dun & Bradstreet Credibility Corp.; McKesson Corporation (“McKesson”); NetSuite Inc.; PennyMac Loan Services, LLC; Siemens AG; Straight Forward of Wisconsin, Inc.; Xerox Corporation. These clients vary in size of their respective business and the size of revenue we derive from them.

Client Case Studies

We believe that the following case studies provide a representative sample of how our clients use our solution. These case studies are illustrative only and the results stated herein may not be representative of the results achieved by other clients. These case studies have been approved by the applicable clients.

American Support

Situation: Prior to using Five9, American Support, a leading contact center outsourcer, employed two separate contact center systems: an on-premise system for outbound calls and a cloud solution for inbound calls. Multiple systems required extensive agent training, and managing data was a laborious manual process. Additionally, the premise-based outbound solution forced American Support to invest significantly in both hardware and IT support staff, while the inbound solution lacked large-scale dialing capabilities.

Solution and Benefits: In September 2012, American Support selected Five9 and combined its inbound and outbound calls into one blended solution. Currently, American Support has informed us that they handle an average of 230,000 calls per month for its customers. Some of the benefits that American Support has realized from Five9 include:

- One Total Solution: Five9 offers all of the functionality — powerful dialing options, robust reporting, CRM integration, quality of service and advanced call routing — that American Support was looking for and combines them into one system. This joint solution allows American Support to train agents on only one system no matter what type of calls they are managing.
- Scalability: The cloud solution from Five9 enables American Support to scale up or down almost instantaneously based on its customers' needs. Now American Support can add agents in hours instead of the days and weeks it took with its old solution. Depending on seasonal needs, American Support's staff ranges between 160 and 400 agents throughout the year.
- High Availability of Solution: American Support's contact center enjoys excellent uptime, thanks to Five9's robust technology, geographic redundancy, qualified personnel, and in-production upgrade procedures.
- Cost Savings: Since implementing Five9, American Support has informed us that they have reduced overall costs by approximately 20%. The Five9 cloud solution enables American Support to keep costs predictable and controlled, as there are no up-front investments or bloated IT maintenance budgets to contend with. Also contributing to this substantial savings is the reduction in telephony charges, which they believe decreased by 50%.
- Increased Productivity: American Support informed us that they have experienced a 160% increase in contacts per hour with Five9.
- CRM Integration: The Five9 integration with Salesforce enables American Support to store information, track leads and manage all post-call activities for its clients. Also, supervisors can monitor agents in real-time and track performance from any device at any time.
- Expansion in the Future: In 2014, American Support has informed us that they plan to implement components of the Five9 SoCoCare solution to add advanced social and mobile customer care to its contact center operations.

Dunn & Bradstreet Credibility Corp.

Situation: Dun & Bradstreet Credibility Corp. is the leading provider of credit building and credibility solutions for businesses. When it was establishing itself after an acquisition from Dun & Bradstreet, Inc. and becoming an independent organization, the company looked to find a solution that reduced its telephony investment risk and could be managed with limited IT staff. A significant portion of Dun & Bradstreet Credibility Corp.'s revenue is generated through the phones, so selecting the right contact center solution was critical.

Solution and Benefits: In February 2011, Dun & Bradstreet Credibility Corp. chose Five9 because we offered the advanced features Dun & Bradstreet Credibility Corp. required, as well as the best value. Benefits included:

- A Complete Solution: Dun & Bradstreet Credibility Corp. implemented a blended solution from Five9 to manage tens of thousands of calls per month. Dun & Bradstreet Credibility Corp. benefits from many of Five9's advanced dialing capabilities to handle its large call volume.
- Lower Risk: Five9 manages and maintains the contact center infrastructure within its data centers, so Dun & Bradstreet Credibility Corp. can focus on growing the business and other strategic issues rather than infrastructure.
- Scalability: Due to continued demand for its products, Dun & Bradstreet Credibility Corp. needed to expand its total number of agents dramatically. Dun & Bradstreet Credibility Corp. now has hundreds of agents across the United States.

- Cost Savings: Since utilizing Five9's services, Dun & Bradstreet Credibility Corp. believes that its operating costs have decreased by 60%. Dun & Bradstreet Credibility Corp. no longer relies on consulting firms to help maintain an on-premise system, and its telephony staff has been reduced from roughly 10 employees to one. In addition, Dun & Bradstreet Credibility Corp. has informed us that they believe Five9 has helped Dun & Bradstreet Credibility Corp. decrease monthly recurring costs per agent by 63%.
- Agent Efficiency: Five9's easy-to-use technology has helped Dun & Bradstreet Credibility Corp. maximize its agents' expertise, time and performance. The number of calls of all types that Dun & Bradstreet Credibility Corp. manages increased dramatically.

McKesson

Situation: McKesson, a global provider of health care technology, medical supplies and pharmaceutical products, was using a manual system to dial and manage 10,000+ outbound calls per month within its Specialty Health division. With this outdated system, McKesson was forced to retain a sizable staff, and campaigns still took over 90 days to complete. Other challenges included slow dialing, insufficient manual reporting and inefficient processes.

Solution and Benefits: McKesson implemented Five9 in January 2013 and found the efficiency and cost savings it was looking for. Benefits included:

- Rapid Deployment: Deployment of the Five9 system and training was handled very quickly, and McKesson was operational within just 10 days. Minimal internal IT support was required during the implementation and the Five9 Professional Services team effectively guided the McKesson Contact Center Operations team through the data collection, testing, training and go-live process.
- Higher Efficiency: With the Five9 Dialer, McKesson has informed us that they are now able to manage the same number of calls (10,000+ per month) with half the number of agents.
- Better Visibility: Five9's advanced reporting tools are easy to use and allow McKesson supervisors to monitor agents in real-time and track their performance. McKesson also has much greater visibility into call case status, something that previously had to be tracked manually.
- Cost Savings: Implementing the Five9 cloud solution required low start-up costs, which minimized McKesson's investment risk. No hardware was required, and labor costs have been significantly reduced. Operating costs are drastically lower due to fewer agents and greater efficiency in campaign execution. Since deploying Five9, McKesson has informed us that they have realized a 150% increase in productivity.

NetSuite

Situation: Prior to selecting Five9, NetSuite, the industry's leading provider of cloud-based financials / ERP and omnichannel commerce software suites, had a few problems with other contact center solutions—both on-premise and cloud-based. Issues included poor call quality, the inability to integrate with other tools, a lack of call recording and reporting ability, and poor scalability.

Solution and Benefits: In 2011, NetSuite selected a blended inbound/outbound solution from Five9. By partnering with Five9, NetSuite increased the efficiency of its agents and improved customer satisfaction levels. Benefits included:

- International Deployment: Five9 is used by 320+ NetSuite agents in multiple countries—Philippines, Canada, Czech Republic, Hong Kong, Japan, and the United States. NetSuite manages over 15,000 calls per month.
- CRM Integration: Five9 offers advanced NetSuite integration capabilities for case management, reporting and forecasting.
- Improved Call Quality: The Five9 contact center solution has dramatically enhanced call quality for NetSuite, as demonstrated from feedback results received on NetSuite's regular support customer surveys.
- Growth: Since implementing Five9, NetSuite has grown from 279 to approximately 329 agents.

- Flexibility: The ease-of-use and flexibility of the Five 9 Virtual Contact Center enables NetSuite agents to work from anywhere—even from home—requiring only a high-speed Internet connection and a phone headset.

Sales

Our sales model consists of a field sales team that sells our solution into larger opportunities and a telesales team that sells our solution into smaller opportunities. We established our business targeting smaller opportunities and have expanded our sales focus to larger opportunities as we gained traction in the market and enhanced the capabilities of our cloud solution. We have developed a disciplined, high volume, metrics-driven sales strategy, which we believe enables us to efficiently generate and close a large number of new sales opportunities. Our telesales team focuses on qualified leads generated through traffic to our websites, and also supports our field sales team through lead generation and lead-tracking activities. Our field and telesales teams are also responsible for selling to existing clients, that may renew their subscriptions, increase the number of agents using our cloud solution, add new applications from our solution and expand the deployment of our solution across their contact centers.

Marketing

To build client awareness and adoption of our solution, our lead generation activities consist primarily of client referrals, internet advertising, digital marketing campaigns, social marketing, trade shows, industry events, co-marketing with strategic partners and telemarketing. In addition, our industry analyst, press and media outreach programs, and web site marketing initiatives are designed to build brand awareness and preference for Five9. We offer free trials and services to allow prospective clients to experience the quality and ease-of-use of our cloud solution, to learn about the features and functionality of our VCC cloud platform in more detail, and to quantify the benefits of our cloud solution.

To complement our sales and marketing efforts, we have developed a large ecosystem of software, technology, telephony and system integrator partners who help increase awareness of our solution and generate new and installed base sales opportunities.

Research and Development

Our ability to compete depends in large part on our continuous commitment to research and development and our ability to improve the functionality of, and add new features to, our VCC cloud platform. The majority of our research and development employees are located in our development center in Russia, allowing us to benefit from relatively low-cost, highly skilled software developers. Our engineering team has deep software and telecommunications skills, and works closely with our sales team to identify our clients' product requirements. In addition, continuous interactions with our partners enable our engineers to enhance the usability and performance of our platform and its integration with best-in-class CRM and other business applications and telephony technologies.

As of December 31, 2013, we had 162 employees in our research and development group, of which 85 engineers are based in Russia. Our research and development expenses totaled $8.7 million, $13.2 million and $17.5 million for the years ended December 31, 2011, 2012 and 2013, respectively. We intend to continue investing in research and development to continue to deliver robust functionality to our clients.

Professional Services

We offer comprehensive professional services to our clients to assist in the successful implementation and optimization of our solution. Our professional services include application configuration, system integration, and education and training. Our clients may use our professional services team for implementing our solution or, in limited cases, they may also choose to perform these services themselves or engage third-party service providers to perform such services. Our cloud solution allows us to eliminate the need for lengthy and complex technology integrations, such as deploying equipment or maintaining hardware infrastructure for individual clients. As a result, we are typically able to deploy and optimize our solution in significantly less time than required for deployments of legacy on-premise contact center systems.

Technology and Operations

Our highly scalable and flexible VCC cloud platform is the result of 12 years of research, development, client engagement and operational experience. The platform is comprised of in-house developed intellectual property, open source products and commercially available hardware and software. The platform is designed to be redundant and we believe that all components can be upgraded, expanded or replaced with minimal or no interruption in service.

We deliver our services globally from two third-party co-location data center facilities located in Santa Clara, California and Atlanta, Georgia. Our infrastructure, including that at our third-party co-location facilities, is designed to support real-time mission-critical telecommunications, applications and operational support systems. Our infrastructure is built with redundant, fault-tolerant components divided into distinct security zones forming protective layers for our applications and customer data.

We have designed and maintain an operations, capacity and security program to monitor and maintain our platform, ensure efficient utilization of the platform capacity and protect against security threats or data breaches. Our operations team constantly monitors our data centers for potential performance issues, unauthorized attempts to access secure data or applications and the overall integrity of the platform.

Competition

The market for contact center software is fragmented, highly competitive and evolving rapidly in response to shifting consumer behavior, especially the rapid adoption of mobile devices and social media. The proliferation of each is driving change in contact center technology, as customers expect companies to give them the option of seamless communication across any channel according to their preference and needs. Combined with the disruptive nature of the cloud in the contact center, this has resulted in competitors who come from different market and product heritages, and who vary in size, breadth and scope of the products and services offered. We currently compete with large legacy on-premise contact center system vendors that offer on-premise enterprise telephony and contact center systems, such as Avaya and Cisco; and legacy on-premise software companies with a historical focus on CTI, such as Aspect, Genesys and Interactive Intelligence. These companies are expanding their traditional on-premise contact center systems with cloud-based offerings, either through acquisition or in-house development. Additionally, we compete with vendors that historically provided other contact center services and technologies and expanded to offer cloud contact center software. These companies include inContact and LiveOps. We also face competition from smaller contact center service providers with specialized contact center software offerings. Our actual and potential competitors may enjoy competitive advantages over us, including greater name recognition, longer operating histories, larger marketing budgets and greater financial and technical resources. We believe the principal competitive factors in our market include:

- breadth and depth of solution features;
- reliability, scalability and quality of the platform;
- ease of deployment and use of applications;
- level of client satisfaction;
- domain expertise in contact center operations;
- integration with third-party applications;
- pricing;
- ability to quickly adjust agent seats based on business requirements;
- breadth and domain expertise of the sales and marketing organization;
- ability to keep pace with client requirements;
- extent and efficiency of our professional services;
- ability to offer multiple channels of engagement; and

- size and financial stability of operations.

We believe we currently compete effectively with respect to each of the factors identified above.

Intellectual Property

We rely on a combination of patent, copyright, and trade secret laws in the U.S. and other jurisdictions, as well as license agreements and other contractual protections, to protect our proprietary technology. We also rely on a number of registered and unregistered trademarks to protect our brand. In addition, we require our employees and independent contractors involved in development of intellectual property on our behalf to enter into agreements acknowledging that all works or other intellectual property generated or conceived by them on our behalf are our property, and assigning to us any rights, including intellectual property rights, that they may claim or otherwise have in those works or property, to the extent allowable under applicable law.

Our intellectual property portfolio includes twenty registered and seven pending trademarks, four issued U.S. patents and seventeen pending patent applications and one registered copyright. We have pending patent applications and limited trademark registrations outside the U.S. In general, our patents and patent applications apply to aspects of our VCC cloud platform. We are also a party to various license agreements with third parties that typically grant us the right to use certain third-party technology in conjunction with our solution.

Employees

As of December 31, 2013, we had 533 full-time employees, including 162 employees in our research and development group. None of our employees are covered by collective bargaining agreements. We believe that our employee relations are good and we have never experienced any work stoppages.

Facilities

Our principal executive offices are located in San Ramon, California, where we occupy approximately 62,477 square feet of office space under a lease expiring on February 28, 2018. We maintain additional offices in Russia and the Philippines. We have leases with data center operators in the United States pursuant to various lease agreements and co-location arrangements. We believe our facilities are sufficient for our current needs.

Regulatory

The following summarizes important, but not all, federal and state regulations that could impact our operations. Federal and state regulations are subject to judicial review, administrative revision and statutory changes through legislation that could materially affect how we and others in this industry operate.

The Telecommunications Act of 1996 vests the Federal Communications Commission, or FCC, with jurisdiction over interstate telecommunications services, while preserving state and local jurisdiction over many aspects of these services. As a result, telecommunications services are regulated at both the federal and state levels in the United States.

We are classified as a telecommunications service provider for federal regulatory purposes. Since our business is regulated by the FCC, we are subject to existing or potential FCC regulations relating to privacy, disability access, porting of numbers, USF contributions and other requirements. If we do not comply with FCC rules and regulations, we could be subject to FCC enforcement actions, fines, loss of operating authority and possibly restrictions on our ability to operate or offer certain of our services. Any enforcement action by the FCC, which may be a public process, would hurt our reputation in the industry, possibly impair our ability to sell our services to clients and could harm our business and results of operations.

Among the federal regulations to which we are subject, we must comply (in whole or in part) with:

- the Communications Assistance for Law Enforcement Act, or CALEA, which requires covered entities to assist law enforcement in undertaking electronic surveillance;
- contributions to the USF which requires that we pay a percentage of our revenues to support certain federal programs;

- payment of annual FCC regulatory fees based on our interstate and international revenues;
- rules pertaining to access to our services by people with disabilities and contributions to the Telecommunications Relay Services fund; and
- FCC rules regarding Customer Proprietary Network Information, or CPNI, which require that we not use such information without customer approval, subject to certain exceptions.

In addition, we are subject to contributions and other payments on our usage-based fees at the state and local levels. The tax and fee structure relative to communications services such as ours is complex, ambiguous and subject to interpretation. If taxing and regulatory authorities enact new rules or regulations or expand their interpretations of existing rules and regulations, we could incur additional liabilities. In addition, the collection of additional taxes, fees or surcharges in the future could have the effect of increasing our prices or reducing our profit margins. Compliance with these regulations may also make us less competitive with those competitors who are not subject to, or choose not to comply with, the regulations. See Note 9 to the notes to our consolidated financial statements for a discussion of our accruals related to USF matters.

The FCC and a number of states are considering reform or other modifications to USF programs. The questions being considered as part of such reform by the FCC include which companies should contribute, how those contributions should be assessed and how the administration of the system can be improved. In addition, a number of states are actively considering extending their regulatory regimes. Any such changes could change the way in which we comply with our regulatory obligations and could increase our regulatory costs and expenses.

As we expand internationally, we will be subject to laws and regulations in the countries in which we offer our services. Regulatory treatment of the solutions we provide outside the U.S. varies from country to country, is often unclear, and may be more onerous than those imposed on our services in the U.S. Our regulatory obligations in foreign jurisdictions could negatively impact the use or cost of our solution in international locations.

The legislative and regulatory scheme for telecommunications service providers and other solutions we provide will continue to evolve and can be expected to change the competitive environment for these services. It is not possible to predict how such evolution and changes will affect, if at all, our business or the industry in general. If we do not comply with any current or future rules or regulations that apply to our business, we could be subject to substantial fines and penalties, we may have to restructure our service offerings, exit certain markets, accept lower margins or raise the price of our services, any of which could ultimately harm our business and results of operations. See “Risk Factors — Risks Related to Regulatory Matters” for more information.

Legal Proceedings

We are subject to certain legal and regulatory proceedings described below, and from time to time may be involved in a variety of claims, lawsuits, investigations and proceedings relating to contractual disputes, intellectual property rights, employment matters, regulatory compliance matters and other litigation matters.

During the third quarter of 2012, we determined that based on our business activities, we are classified as a telecommunications service provider for regulatory purposes and we are required to make direct contributions to the USF based on revenue we receive from the resale of interstate and international telecommunications services. Previously, we had been advised that the telecommunications services were an integral part of an information service and accordingly made indirect USF contributions as an end user through payments to our wholesale telecommunications service providers. In order to comply with the obligation to make direct contributions, in November 2012, we made a voluntary self-disclosure to the FCC Enforcement Bureau and have registered with USAC, which is charged by the FCC with administering the USF. We have accrued for past due contributions dating back to 2003 and, in April 2013, began remitting required contributions on a current basis directly to USAC.

Our registration with USAC subjects us to assessments for unpaid USF contributions, as well as interest and penalties thereon, due to our late registration and reporting of revenues. See Note 9 to the notes to our consolidated financial statements for a discussion of such assessments.

On August 5, 2011, NobelBiz, Inc., or NobelBiz, sent a letter to us asserting infringement of a patent related to virtual call centers. On April 3, 2012, NobelBiz filed a patent infringement lawsuit against us in the United States District Court for the Eastern District of Texas. The patent asserted in the complaint is different, but related, to the patent asserted in the original letter. The lawsuit, NobelBiz Inc v. Five9, Inc., Case No. 6:12-cv-00243-LED, alleges that our local caller ID management service infringes United States Patent No. 8,135,122, or the 122 patent. The 122 patent, titled "System and Method for Modifying Communication Information (MCI)," issued on March 13, 2012, and according to the complaint is alleged to relate to "a system for processing a telephone call from a call originator (also referred to as a calling party) to a call target (also referred to as a receiving party), where the system accesses a database storing outgoing telephone numbers, selects a replacement telephone number from the outgoing telephone numbers based on the telephone number of the call target, and originates an outbound call to the call target with a modified outgoing caller identification ('caller ID'). NobelBiz seeks damages in the form of lost profits as well as injunctive relief. The lawsuit is one of several lawsuits filed by NobelBiz the same day against various companies including TCN Inc., LiveVox, Inc. and Global Connect LLC. On March 28, 2013, the court granted our motion to transfer the case to the United States District Court for the Northern District of California. Subsequently, NobelBiz amended its complaint to add claims related to U.S. Patent No. 8,565,399, which is a continuation in the same family as the 122 patent and addresses the same technology. We responded to the complaint and amended complaint by asserting noninfringement and invalidity of the 122 patent. The court in California held a status conference on December 9, 2013, and subsequently set a schedule to hold a claim construction hearing regarding the patents to be held on August 22, 2014. No trial date or further schedule is anticipated until after the court issues its ruling as to claim construction following the hearing.

The outcome of litigation and regulatory claims cannot be predicted with certainty, may be expensive and cause distraction to our management, even if we are ultimately successful, and could harm our future results of operations, cash flows and financial condition.

MANAGEMENT

The following table sets forth the names, ages and positions of our executive officers and directors as of February 28, 2014:

Names	Age	Positions
Executive Officers		
Michael Burkland	51	Chief Executive Officer, President, Director and Chairman
Barry Zwarenstein	65	Chief Financial Officer
David Milam	58	Chief Marketing Officer
Dan Burkland	49	EVP, Sales & Business Development
Moni Manor	48	EVP, Products
Tom Schollmeyer	48	Chief Technology Officer
Non-Employee Directors		
Jack Acosta	66	Director
Kimberly Alexy	43	Director
Jayendra Das	45	Director
David DeWalt	49	Director
Mitchell Kertzman	65	Director
David Welsh	46	Lead Independent Director
Tim Wilson	54	Director
Robert Zollars	56	Director

Each executive officer serves at the discretion of our board of directors and holds office until his successor is duly elected and qualified or until his earlier resignation or removal. There are no family relationships among any of our directors or executive officers, except that Michael Burkland and Dan Burkland are brothers.

Executive Officers

Michael Burkland. Mr. Burkland has served as our Chief Executive Officer and as a member of our board of directors since January 2008 and as our President since January 2012. He has served as our Chairman since February 2014. From 2002 to 2007, Mr. Burkland worked with the Interim CEO Network, serving as an interim CEO for venture-backed technology companies, as well as heading up the firm's strategic advisory practice. From 2000 to 2001, Mr. Burkland served as Chief Executive Officer of Omniva Policy Systems Inc., a pioneer in enterprise policy management and e-mail security, where he built and implemented the company's initial go to market strategy for the enterprise market. From 1994 to 1998, Mr. Burkland served as Chief Executive Officer of Eventus Software, Inc., a leading developer of web content management software which was acquired by Segue Software, Inc. in 1998. Earlier in his career, he held various positions at Oracle, Patrol Software and BMC. Mr. Burkland holds M.B.A. and B.A. degrees from the University of California at Berkeley.

Mr. Burkland was selected to serve on our board of directors because of his perspective and experience as our Chief Executive Officer and his extensive experience as a Chief Executive Officer of companies in the technology industry.

Barry Zwarenstein. Mr. Zwarenstein has served as our Chief Financial Officer since January 2012. Since November 2007, Mr. Zwarenstein has served on the board of directors of Dealertrack Technologies, Inc., a provider of subscription-based software and data solutions for the automotive retail industry. From September 2008 to November 2011, Mr. Zwarenstein served as Senior Vice President and Chief Financial Officer of SMART Modular Technologies, Inc., a designer, manufacturer and supplier of electronic subsystems to original equipment manufacturers that was acquired by Silver Lake Partners in August 2011. From July 2004 through November 2006, Mr. Zwarenstein served as Senior Vice President and Chief Financial Officer, and from December 2006 through August 2008, as Executive Vice President and Chief Financial Officer, of VeriFone Holdings, Inc., a global provider of technology for electronic payment transactions and value-added services at the point-of-sale. From November 2001 to June 2004, Mr. Zwarenstein served as Vice President of Finance and Chief Financial Officer of Iomega Corporation, a provider of storage and network security. From January 2001 to

June 2001, Mr. Zwarenstein served as Vice President and Chief Financial Officer of Mellanox Technologies Ltd., a fabless semiconductor company. From October 1998 to December 2000, Mr. Zwarenstein served as Senior Vice President and Chief Financial Officer of Acuson Corporation, a company specializing in high quality medical ultrasound equipment that was acquired by Siemens AG in 2000. From July 1996 to September 1998, Mr. Zwarenstein served as Senior Vice President, Finance, New Business Development and Chief Financial Officer of Logitech International S.A., a Switzerland-based provider of personal peripherals for computers and other digital platforms. Mr. Zwarenstein holds a Bachelor of Commerce degree from the University of Natal (now known as University of KwaZulu-Natal), South Africa, and an M.B.A. degree from the Wharton School at the University of Pennsylvania. He is qualified as a Chartered Accountant (South Africa).

David Milam. Mr. Milam has served as our Chief Marketing Officer since September 2012. From May 2007 to September 2012, Mr. Milam served as Chief Marketing Officer and Executive Vice President of McAfee, Inc., or McAfee, a provider of security, endpoint, network, compliance and mobile security, and continued to serve when McAfee was acquired by Intel Corporation, or Intel, in 2011. From October 2006 to May 2007, Mr. Milam served as Chief Marketing Officer of ZANTAZ, Inc., a privately-held content archiving company which was acquired by Autonomy Corp. plc in 2007. From February 2004 to October 2006, Mr. Milam served as Senior Vice President and Chief Marketing Officer of EMC Corporation's storage and content management software group. From September 2001 to February 2004, Mr. Milam served as Chief Marketing Officer of Documentum, Inc., or Documentum, an enterprise content management platform which was acquired by EMC in 2003. Mr. Milam holds M.B.A. and B.S. degrees from California State University at Long Beach.

Dan Burkland. Mr. Burkland has served as our Executive Vice President of Sales and Business Development since February 2014. From December 2009 to February 2014, he served as our Senior Vice President of Enterprise Sales and Business Development. From April 2006 to November 2009, Mr. Burkland served as Senior Vice President of Sales at Transera Communications, Inc., a cloud contact center software company. From December 2003 to March 2006, Mr. Burkland served as Senior Vice President of Worldwide Sales of IP Unity, Inc., a provider of carrier-hosted unified communications and conferencing solutions. From August 1997 to November 2003, Mr. Burkland held various sales management roles with Cisco and GeoTel Communications LLC, which was acquired by Cisco in 1999. Mr. Burkland holds a B.S. degree from California State University at Chico.

Moni Manor. Mr. Manor has served as our Executive Vice President, Products since September 2013. From May 2008 to June 2013, Mr. Manor served as a Vice President of Research and Development in Nortel Networks Corporation, a provider of communications solutions, and then in Avaya following its acquisition of Nortel's enterprise solutions business in 2009. From May 2002 to April 2008, Mr. Manor served in various roles, the last two of which were Vice President of Customer Relationship Management followed by General Manager and Vice President of Product Development, at Amdocs Limited, a provider of software and services for communications providers. From September 1999 to April 2002, Mr. Manor served as Managing Director and Vice President of Research and Development at Manna, Inc., a developer of online personalization solutions for e-marketers. Mr. Manor holds a B.Sc. degree from Tel Aviv University, M.Sc. degree from Stanford University, and M.B.A. degree from Northwestern University.

Tom Schollmeyer. Mr. Schollmeyer has served as our Chief Technology Officer since July 2011. From January 2009 to July 2011, Mr. Schollmeyer served as Business and Technology Architect of OneSource Consulting, Inc., a provider of technologies and processes to measure and improve customer satisfaction while reducing cost per transaction. From January 2008 to January 2009, Mr. Schollmeyer served as Chief Executive Officer of Argent Online Services, Inc., a company he founded which was focused on improving customer effectiveness in their contact centers through integration of hosted contact center products. From April 2004 to January 2008, Mr. Schollmeyer served as Vice President of Telecom and Technology of eTelecare Global Solutions, Inc., or eTelecare, a provider of complex business process outsourcing solutions. From April 2002 to April 2004, Mr. Schollmeyer served as Chief Information Officer of Phase 2 Solutions, Inc., a call center outsourcing company specializing in the cellular industry that was acquired by eTelecare in 2004. From January 2001 to March 2002, Mr. Schollmeyer served as Chief Executive Officer of Argent Voice Services, Inc., a company he founded that hosted interactive voice response systems for Fortune 1000 companies. From January 1995 to December 2000, Mr. Schollmeyer served as President of ASA Solutions, Inc. a company he founded that provided interactive voice response application development and staffing resources to Fortune 500 companies.

Non-Employee Directors

Jack Acosta. Mr. Acosta has served as a member of our board of directors since April 2011. Since May 2001, Mr. Acosta has served on the board of directors of Integral Development Corporation, a financial services software company. Since October, 2013, Mr. Acosta has served on the board of directors of Rimini Street, Inc., an enterprise software support services company. From March 2004 to July 2009, Mr. Acosta served as a member of the board of directors and chair of the audit committee of SumTotal Systems, Inc., or SumTotal, a global provider of learning, performance and talent development solutions. From November 2005 to July 2009, Mr. Acosta served as the chairman of SumTotal's board of directors. From September 2004 to September 2006, Mr. Acosta served on the board of directors of BenefitStreet, Inc., a company providing financial services. From April 2005 to July 2006, Mr. Acosta served on the board of directors of Savi Technology, Inc., a provider of radio-frequency identification solutions. From October 2005 to November 2005, Mr. Acosta served as SumTotal's lead independent director. From April 2003 until March 2004, Mr. Acosta served as a member of the board of directors of Docent, Inc., a software solutions company that was acquired by SumTotal in 2004. From February 1999 to September 2001, Mr. Acosta served as Chief Financial Officer and Vice President, Finance of Portal Software, a software company acquired by Oracle Corporation in 2006. From February 1999 to April 1999, Mr. Acosta served as Secretary of Portal Software. From July 1996 to January 1999, Mr. Acosta served as Executive Vice President and Chief Financial Officer of Sybase, Inc., a database company acquired by SAP AG. Mr. Acosta holds a B.S. degree in Industrial Relations from California State University East Bay, M.S. degree in Management Sciences from California State University East Bay and Honorary Doctor of Humane Letters degree from California State University East Bay.

Mr. Acosta was selected to serve on our board of directors because of his accounting, financial, operating and management experience, service on the boards of directors of numerous other companies, financial expertise through his service as a chief financial officer of public software companies, and experience in overseeing auditors and financial audits.

Kimberly Alexy. Ms. Alexy has served as a member of our board of directors since October 2013. Since June 2005, Ms. Alexy has served as the Principal of Alexy Capital Management, a private investment management firm that she founded. Since August 2011, Ms. Alexy has also served as an Adjunct Lecturer at San Diego State University in the Graduate School of Business. Since May 2008, Ms. Alexy has served on the board of directors of CalAmp Corp., a global provider of wireless communications solutions. From September 2009 to August 2011, Ms. Alexy served on the board of directors of SMART Modular Technologies Inc. From August 2009 to September 2010, Ms. Alexy served on the board of directors of SouthWest Water Company, a provider of services ranging from water production, treatment and distribution to utility infrastructure construction management. From December 2005 to May 2010, Ms Alexy served on the board of directors of Dot Hill Systems Corp., a provider of SAN storage solutions. From June 2005 to May 2006, Ms. Alexy served on the board of directors of Maxtor Corporation, a manufacturer of computer hard disk drives. From 1998 to January 2003, Ms. Alexy served as Senior Vice President and Managing Director of Equity Research for Prudential Securities, where she served as principal technology hardware analyst for the firm. From July 1995 to 1998, Ms. Alexy served as Vice President of Equity Research at Lehman Brothers, a financial services firm, where she covered the computer hardware sector. From June 1993 to July 1995, Ms. Alexy served as Assistant Vice President of Corporate Finance at Wachovia Bank, a financial services company. Ms. Alexy is a Chartered Financial Analyst (CFA), and holds a B.A. degree in Psychology from Emory University and an M.B.A. degree with a concentration in Finance and Accounting from the College of William and Mary.

Ms. Alexy was selected to serve on our board of directors because of her extensive experience in the financial services industry as an investment professional, which brings an institutional investor perspective to our Board, financial and accounting expertise and service on other public company boards.

Jayendra Das. Mr. Das has served as a member of our board of directors since April 2013. Since January 2011, Mr. Das has served as Managing Director of SAP Ventures LLC, a venture capital firm he co-founded and for which he currently manages investments in Alteryx, Inc., Apigee Corporation, Box Inc., JasperSoft Corporation, MuleSoft, Inc., Mirantis, Inc., Narrative Science, Inc., One97 Communications Ltd. and Splashtop, Inc. and leads investments in India. From July 2006 to December 2010, Mr. Das served as a Partner of SAP Ventures

director of Agilent Ventures (formerly part of Hewlett-Packard Company), the corporate venture capital arm of Agilent. From June 2002 to June 2004, Mr. Das served as a Principal of MVC Capital, Inc., a business development company and venture capital firm. From June 1999 to July 2003, Mr. Das served as a Lead Architect and as a Product Manager at Oracle, a provider of business software. From September 1999 to June 2001, Mr. Das served as Strategic Investment Manager of Intel Capital, the corporate venture capital arm of Intel. Mr. Das has a B.S. degree in Electrical Engineering from Brown University and M.B.A. degree from the University of Chicago Booth School of Business.

Mr. Das was selected to serve on our board of directors because of his experience as a venture capitalist focusing on the technology sector, experience in the technology and software sectors and service on the boards of directors of numerous other companies.

David DeWalt. Mr. DeWalt has served as a member of our board of directors since April 2012. Since November 2012, Mr. DeWalt has served as the chair of the board of directors and Chief Executive Officer of FireEye, Inc., a global network security company. Since November 2011, Mr. DeWalt has served on the board of directors of Delta Air Lines, Inc. From November 2005 to May 2013, Mr. DeWalt served on the board of directors of Polycom, Inc., a telepresence and voice communication solutions company. From February 2011 to April 2013, Mr. DeWalt served on the board of directors of Jive Software, Inc., a software company in the social business software industry. From April 2007 to February 2012, Mr. DeWalt served as President, Chief Executive Officer and Director of McAfee. From December 2003 to March 2007, Mr. DeWalt held various positions at EMC Corporation, a developer and provider of information infrastructure technology and solutions, including Executive Vice President, EMC Software Group and President of EMC's Documentum and Legato Software divisions. From July 2001 to December 2003, Mr. DeWalt served as President and Chief Executive Officer of Documentum, and from October 2000 to July 2001, Mr. DeWalt served as Executive Vice President and Chief Operating Officer of Documentum. From August 1999 to October 2000, Mr. DeWalt served as Executive Vice President and General Manager, eBusiness Unit, of Documentum. Mr. DeWalt holds a B.S. degree in Computer Science from the University of Delaware.

Mr. DeWalt was selected to serve on our board of directors because of his experience as Chief Executive Officer of publicly-held technology companies, expertise in software technology and service on the boards of directors of numerous other companies.

Mitchell Kertzman. Mr. Kertzman has served as a member of our board of directors since April 2004. Since May 2003, Mr. Kertzman has served as Managing Director of Hummer Winblad Venture Partners V, L.P., a venture capital firm. Mr. Kertzman currently sits on the boards of directors of Flite, Inc., a cloud-based advertising platform, HubPages, Inc., a community publishing and revenue-sharing website, NuoDB, Inc., a database startup company, Palamida, Inc., a provider of application security for open source software and 6connect, Inc., a management platform for internet communications. From May 1996 to 2005, Mr. Kertzman served as member of the board of directors of CNET Networks Inc., which owned various websites, created and distributed video content, and maintained a blog network. From November 1998 to May 2003, Mr. Kertzman served as chairman of the board of directors and Chief Executive Officer of Liberate Technologies, a provider of platform software for the delivery of digital services by cable television companies. From July 1996 to November 1998, Mr. Kertzman served as chairman of the board of directors and Chief Executive Officer of Sybase, Inc., an enterprise software and services company. From April 1974 to February 1995, Mr. Kertzman served as Chief Executive Officer of Powersoft Corporation, or Powersoft, a company he founded that provides client-server development tools, which merged with Sybase in 1995. From April 1974 to June 1992, Mr. Kertzman served as President of Powersoft.

Mr. Kertzman was selected to serve on our board of directors because of his operating and management experience, experience as Chief Executive Officer of publicly-held companies, experience as a venture capitalist, expertise in software technology, and his service on the boards of directors of numerous other companies.

David Welsh. Mr. Welsh has served as a member of our board of directors since January 2011 and has served as our Lead Independent Director since February 2014. Mr. Welsh also served as a member of our board of directors from 2005 to March 2007. Since April 2008, Mr. Welsh has served as Partner of Adams Street Partners, a venture capital firm. Mr. Welsh currently serves on the boards of directors of Atlantis Computing Inc.,

a provider of storage optimization software for virtual environments, BrightRoll Inc., a video advertising technology platform, Damballa, Inc., a computer security company, JasperSoft Corp., a business intelligence software provider, LogRhythm, Inc., a security analytics platform provider, and Mintigo Ltd., a marketing intelligence software company. From March 2007 to April 2008, Mr. Welsh served as Executive Vice President of Corporate Strategy and Business Development of McAfee. From June 2000 to March 2007, Mr. Welsh served as a General Partner of Partech International, LLC, a venture capital firm. From July 1995 to March 2000, Mr. Welsh served as Vice President of Corporate Development of Portal Software. Mr. Welsh holds a J.D. degree from the University of California, Berkeley, School of Law and a B.A. degree in International Relations from the University of California, Los Angeles.

Mr. Welsh was selected to serve on our board of directors because of his experience as a venture capitalist, corporate strategy and business development expertise and service on the boards of directors of numerous other companies.

Tim Wilson. Mr. Wilson has served as a member of our board of directors since August 2007. Since January 2012, Mr. Wilson has served as Managing Director of Artiman Management LLC, a venture capital firm. Mr. Wilson currently serves on the board of Artiman portfolio companies Kaybus Inc., a software company, Oberon FMR, an agriculture feed ingredient company, and Crossbar Inc, a developer of memory storage flash technology. Since April 2004, Mr. Wilson has served on the board of directors of InvenSense, Inc., or InvenSense, a provider of devices for the motion interface market that detect and track an object's motion in three-dimensional space. Mr. Wilson currently serves as a member of the audit committee and chair of the nominating and corporate governance committee of InvenSense. From December 2001 to December 2011, Mr. Wilson served as a Partner of Partech International. Mr. Wilson currently serves on the board of Partech portfolio companies Prysm, Inc., a designer and manufacturer of laser phosphor display solutions, and LedEngin, Inc., a provider of light source modules and optics components. From March 1998 to May 2001, Mr. Wilson served as Vice President of Marketing and as Chief Marketing Officer for Digital Island, Inc., an internet infrastructure provider and Partech portfolio company. From February 1996 to February 1998, Mr. Wilson served as General Manager of Lucent Technologies, Inc., a telecommunications equipment company. From September 1983 to January 1996, Mr. Wilson served in senior management positions of AT&T (North America and Australia) and AT&T Bell Labs, a telecommunications corporation and research laboratory. Mr. Wilson holds a B.S. degree in Physics from Bowdoin College and M.B.A. degree from Duke University's Fuqua School of Business.

Mr. Wilson was selected to serve on our board of directors because of his operating and management experience, experience as a venture capitalist and service on the boards of directors of numerous other companies.

Robert J. Zollars. Mr. Zollars has served as a member of our board of directors since December 2013. Since June 2013, Mr. Zollars has served as Executive Chairman of the Board of Vocera Communications, Inc., a provider of mobile communications solutions for hospital staff and mobile workers. From June 2007 to May 2013, Mr. Zollars served as Chairman of the Board and Chief Executive Officer of Vocera. Since February 2012, Mr. Zollars has served as Chairman of the Board of Diamond Foods, Inc., a packaged foods company, and as a member of its board of directors since February 2005. Since May 2004, Mr. Zollars has served as a member of the board of directors of VWR International, LLC, a scientific equipment distributor. From May 2006 to May 2007, Mr. Zollars served as Chief Executive Officer of Wound Care Solutions, Inc., an operator of outsourced chronic wound care centers. From June 1999 to March 2006, Mr. Zollars served as Chief Executive Officer and Chairman of the Board of Neoforma, Inc., a healthcare technology company. From January 1997 to June 1999, Mr. Zollars served as Executive Vice President and group president of Cardinal Health, Inc., a supplier of health care products and services, where he was responsible for five wholly-owned subsidiaries. From 1985 to 1997, Mr. Zollars served as a division president of four different operating units at Baxter International, Inc., a medical instrument and supply company. From 1979 to 1985, Mr. Zollars served as area vice president and in various other capacities at American Hospital Supply Corporation, a medical supply company, which was acquired by Baxter International in 1985. Mr. Zollars holds a B.S. degree in Marketing from Arizona State University and M.B.A. degree in Finance from John F. Kennedy University.

Mr. Zollars was selected to serve on our board of directors because of his experience as a Chief Executive Officer and service on the boards of directors of numerous other companies.

Board of Directors

Our business and affairs are managed under the direction of our board of directors. Our amended and restated certificate of incorporation authorizes ten directors and our board of directors currently consists of nine directors. Pursuant to our existing amended and restated certificate of incorporation and Eighth Amended and Restated Stockholders' Agreement, or Stockholders' Agreement, our current directors were elected as follows:

- Mr. Burkland was elected by the holders of a majority of our common stock to the position designated for our Chief Executive Officer;
- Ms. Alexy and Mr. Zollars were elected by the holders of a majority of our preferred stock as the unanimous designees of the directors then in office;
- Messrs. Acosta and DeWalt were elected by the holders of a majority of our common stock and preferred stock, voting as separate classes, as the unanimous designees of the common stock director and the preferred stock directors;
- Mr. Kertzman was elected by the holders of a majority of our series A-2 preferred stock as the designee of Hummer Winblad Venture Partners V, L.P. or its affiliates;
- Mr. Wilson was elected by the holders of a majority of our series A-2 preferred stock as the designee of Partech U.S. Partners IV, LLC or its affiliates;
- Mr. Welsh was elected by the holders of a majority of our series B-2 preferred stock as the designee of Adams Street 2011 Direct Fund, L.P. or its affiliates; and
- Mr. Das was elected by the holders of a majority of our series D-2 preferred stock as the designee of SAP Ventures Fund I, L.P. or its affiliates.

The provisions of our Stockholders' Agreement by which our directors are elected will terminate and the provisions of our existing amended and restated certificate of incorporation by which our directors were elected will be amended and restated in connection with this offering. See "Certain Relationships and Related Party Transactions — Stockholders' Agreement." After this offering, the number of directors will be fixed by our board of directors, subject to the terms of our amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the completion of this offering. Each of our current directors will continue to serve as a director until the election and qualification of his or her successor, or until his or her earlier death, resignation or removal. We may add one or more additional directors to our board of directors prior to the consummation of this offering.

Our amended and restated certificate of incorporation, which will be amended and restated in connection with this offering, will provide that directors may only be removed for cause. To remove a director for cause, 66 2/3% of the voting power of the outstanding voting stock must vote as a single class to remove the director at an annual or special meeting. The certificate will also provide that, if a director is removed or if a vacancy occurs due to either an increase in the size of the board or the death, resignation, disqualification or other cause, the vacancy will be filled solely by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum remain.

Classified Board of Directors

We intend to adopt an amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering. Our amended and restated certificate of incorporation will provide that, immediately after the completion of this offering, our board of directors will be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our board of directors will be designated as follows:

- Messrs. Das, Kertzman and Wilson will be Class I directors, and their terms will expire at the annual meeting of stockholders to be held in 2015;

- Messrs. Acosta, DeWalt and Welsh will be Class II directors, and their terms will expire at the annual meeting of stockholders to be held in 2016; and
- Ms. Alexy and Messrs. Burkland and Zollars will be Class III directors, and their terms will expire at the annual meeting of stockholders to be held in 2017.

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of our directors.

The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control. See “Description of Capital Stock — Anti-takeover Provisions” for a discussion of other anti-takeover provisions found in our amended and restated certificate of incorporation.

Director Independence

Commencing in 2014, our board of directors will review at least annually the independence of each director. During these reviews, the board will consider transactions and relationships between each director (and his or her immediate family and affiliates) and our company and its management to determine whether any such transactions or relationships are inconsistent with a determination that the director is independent. This review will be based primarily on responses of the directors to questions in a directors’ and officers’ questionnaire regarding employment, business, familial, compensation and other relationships with us and our management.

Prior to the consummation of this offering, our board of directors will meet to formally assess the independence of each of our directors. As required by the New York Stock Exchange, or NYSE, our independent directors will meet in regularly scheduled executive sessions at which only independent directors are present. We intend to comply with future governance requirements to the extent they become applicable to us.

Code of Business Conduct and Ethics

In 2013, we adopted a code of business conduct and ethics that is applicable to all of our employees, officers and directors, including our chief executive and senior financial officers. The code of business conduct and ethics, as amended, will be available on our website at www.five9.com. We expect that any amendment to the code, or any waivers of its requirements, will be disclosed on our website. The inclusion of our website in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

Lead Independent Director

Our board of directors has adopted, effective upon the listing of our common stock on the NYSE, corporate governance guidelines. Our corporate governance guidelines provide that one of our independent directors shall serve as our Lead Independent Director at any time when our Chief Executive Officer serves as the Chairman of our board of directors or if the Chairman is not otherwise independent. Our Lead Independent Director will preside over periodic meetings of our independent directors, serve as a liaison between our Chairman and our independent directors and perform such additional duties as our board of directors may otherwise determine and delegate.

Board Committees

Upon consummation of this offering, our board of directors will have three standing committees: an audit committee, a compensation committee and a nominating and governance committee. The composition and responsibilities of each committee are described below. Members will serve on these committees until their resignation or until otherwise determined by our board of directors. The charters for each of our committees will be available on our website upon completion of this offering.

Audit Committee

Our audit committee oversees our accounting and financial reporting process and the audit of our financial statements and assists our board of directors in monitoring our financial systems and legal and regulatory compliance. Our audit committee is responsible for, among other things:

- appointing, approving the compensation of and assessing the independence of our independent registered public accounting firm;
- pre-approving auditing and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;
- reviewing annually a report by the independent registered public accounting firm regarding the independent registered public accounting firm's internal quality control procedures and various issues relating thereto;
- coordinating the oversight and reviewing the adequacy of our internal control over financial reporting with both management and the independent registered public accounting firm;
- reviewing and discussing with management and the independent registered public accounting firm our annual and quarterly financial statements and related disclosures;
- periodically reviewing legal compliance matters, including securities trading policies, periodically reviewing significant accounting and other financial risks or exposures to our company and reviewing and, if appropriate, approving all transactions between our company or its subsidiaries and any related party (as described in Item 404 of Regulation S-K);
- periodically reviewing our code of business conduct and ethics;
- establishing policies for the hiring of employees and former employees of the independent registered public accounting firm; and
- reviewing the audit committee report required by SEC rules to be included in our annual proxy statement.

The audit committee has the power to investigate any matter brought to its attention within the scope of its duties and the authority to retain counsel and advisors at our expense to fulfill its responsibilities and duties.

Effective upon the listing of our common stock on the NYSE, our audit committee will be comprised of , and , who is the chairperson of the committee. Our board of directors has designated as an "audit committee financial expert," as defined under the rules of the SEC implementing Section 407 of the Sarbanes Oxley Act of 2002.

Our board of directors has considered the independence and other characteristics of each member of our audit committee and has concluded that the composition of our audit committee meets the requirements for independence under the current requirements of the SEC rules and regulations. Audit committee members must satisfy additional independence criteria set forth under Rule 10A-3 under the Exchange Act. In order to be considered independent for purposes of the Rule 10A-3, an audit committee member may not, other than in his or her capacity as a member of the audit committee, accept consulting, advisory or other fees from us or be an affiliated person of us. Each of the members of our audit committee qualifies as an independent director pursuant to Rule 10A-3.

Compensation Committee

Our compensation committee is responsible for developing and maintaining our compensation strategies and policies. Following the conclusion of this offering, the responsibilities of the compensation committee will include:

- reviewing and approving our overall executive and director compensation philosophy to support our overall business strategy and objectives;
- reviewing and approving, or as appropriate, recommending to our board of directors for approval, base salary, cash incentive compensation, equity compensation and severance rights for our executive officers;
- administering our broad-based equity incentive plans, including the granting of stock awards and determination of offerings under our employee stock purchase plan;

- overseeing the management continuity and succession planning process (except as otherwise within the scope of our nominating and governance committee) with respect to our officers;
- preparing any report on executive compensation required by the applicable rules and regulations of the SEC and other regulatory bodies; and
- managing such other matters that are specifically delegated to our compensation committee by applicable law or by the board of directors from time to time.

The compensation committee also has the power to investigate any matter brought to its attention within the scope of its duties and authority to retain counsel and advisors at our expense to fulfill its responsibilities and duties.

Effective upon the listing of our common stock on the NYSE, our compensation committee will be comprised of , and , who is the chairperson of the committee. Prior to the consummation of this offering, our board of directors will meet to formally assess the independence of each of the members of the compensation committee, including for purposes of the applicable rules of the NYSE, the "non-employee director" standard within the meaning of Rule 16b-3(d)(3) promulgated under the Exchange Act, and the "outside director" standard within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code.

Nominating and Governance Committee

Our nominating and governance committee, or nominating committee, will oversee and assist our board of directors in reviewing and recommending corporate governance policies and nominees for election to our board of directors and its committees. The nominating committee will be responsible for, among other things:

- assessing, developing and communicating with our board of directors concerning the appropriate criteria for nominating and appointing directors, including the size and composition of the board of directors, corporate governance policies, applicable listing standards, laws, rules and regulations, our nominating policy and other factors considered appropriate by our board of directors;
- identifying and recommending to our board of directors the director nominees for annual and special meetings of our stockholders, or to fill a vacancy on the board of directors, in each case in accordance with the nominating policy;
- having sole authority to retain and terminate any search firm used to identify director candidates and approve the search firm's fees and other retention terms;
- if and when requested by our board of directors, assessing and recommending to the board the composition of each of its committees;
- reviewing, as necessary, any executive officer's request to accept a directorship position with another company;
- developing, assessing and making recommendations to our board of directors concerning corporate governance matters, including appropriate revisions to our amended and restated certificate of incorporation, amended and restated bylaws, corporate governance policies, committee charters and nominating policy;
- overseeing an annual evaluation of our board of directors, its committees and each director and management;
- developing with management and monitoring the process of orienting new directors and continuing education for all directors; and
- regularly reporting its activities and any recommendations to our board of directors.

The nominating committee will also have the power to investigate any matter brought to its attention within the scope of its duties. It will also have the authority to retain counsel and advisors at our expense for any matters related to the fulfillment of its responsibilities and duties.

Effective upon the listing of our common stock on the NYSE, our nominating committee will be comprised of , and , who will be the chairperson of the committee. Each of the nominating committee members will meet the independence requirements set forth in the rules of the NYSE.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Compensation Committee Interlocks and Insider Participation

Messrs. Kertzman and Welsh served as members of our compensation committee during 2013. None of the members of our compensation committee is or has been an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee (or other board committee performing equivalent functions) of any entity that has one or more of its executive officers serving on our board of directors or compensation committee.

Limitations of Liability and Indemnification of Directors and Officers

We are incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director has actually and reasonably incurred. Our current amended and restated certificate of incorporation and amended and restated bylaws provide for the indemnification of our directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

Our amended and restated certificate of incorporation and amended and restated bylaws include such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by us.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We expect to adopt a new amended and restated certificate of incorporation and new amended and restated bylaws, which will become effective immediately prior to the completion of this offering and which will contain similar provisions that limit the liability of our directors and officers.

Non-Employee Director Compensation

Prior to this offering, we did not have a formal policy with respect to compensation payable to our non-employee directors for service as directors. Our non-employee directors do not currently receive, and did not receive in 2013, any cash compensation for their service on our board of directors and committees of our board of directors. From time to time, we have granted stock options to certain non-employee directors for their service on our board of directors. We also reimbursed our directors for expenses associated with attending meetings of our board of directors and committees of our board of directors.

The following table provides information regarding the total compensation that was granted to each of our directors who was not serving as an executive officer in 2013.

Name(1)	Option Awards(2)	Total
Jack Acosta(3)	$ —	$ —
Kimberly Alexy(4)	417,360	417,360
Jayendra Das	—	—
David DeWalt(5)	—	—
Mitchell Kertzman	—	—
David Welsh	—	—
Tim Wilson	—	—
Robert Zollars(6)	502,347	502,347

(1) Ms. Alexy was appointed to our board of directors in October 2013 and Mr. Zollars was appointed to our board of directors in December 2013.

(2) Amounts listed in this column represent the grant date fair value of the awards computed in accordance with FASB ASC Topic 718 excluding estimates of forfeitures multiplied by the number of shares. See Note 7 to the notes to our consolidated financial statements for a discussion of assumptions made in determining the grant date fair value.

(3) As of December 31, 2013, Mr. Acosta had options to purchase a total of 450,000 shares of our common stock. These options vest in 48 successive equal monthly installments, subject to continued service through each such date. 300,000 of these options were vested as of December 31, 2013.

(4) On October 28, 2013, Ms. Alexy was granted an option to purchase a total of 350,000 shares of our common stock. As of December 31, 2013, Ms. Alexy had options to purchase a total of 350,000 shares of our common stock. These options vest in 48 successive equal monthly installments, subject to continued service through each such date. 14,583 of these options were vested as December 31, 2013.

(5) As of December 31, 2013, Mr. DeWalt had options to purchase a total of 1,061,600 shares of our common stock. These options vest in 48 successive equal monthly installments, subject to continued service through each such date. 442,333 of these options were vested as of December 31, 2013.

(6) On December 18, 2013, Mr. Zollars was granted an option to purchase a total of 350,000 shares of our common stock. As of December 31, 2013, Mr. Zollars had options to purchase a total of 350,000 shares of our common stock. These options vest in 48 successive equal monthly installments, subject to continued service through each such date. None of these options were vested as of December 31, 2013.

Directors who are also our employees receive no additional compensation for their service as directors. During 2013, Mr. Burkland, one of our directors, was an employee. See "Executive Compensation" for additional information about his compensation.

In connection with this offering, our board of directors has approved a non-employee director compensation policy. Each of our non-employee directors will receive the following compensation for his or her service on our board of directors from and after this offering.

Annual Cash Compensation. Cash compensation amounts are payable in equal quarterly installments, in arrears on the last day of each fiscal quarter in which the service occurred.

- *Annual Board Service Retainer*:
  - All Directors: $30,000
- *Annual Chair Service Fee*:
  - Chairman/Lead Director of the Board: $15,000
  - Chairman of the Audit Committee: $17,000
  - Chairman of the Compensation Committee: $10,000
  - Chairman of the Nominating & Corporate Governance Committee: $5,000
- *Annual Committee Member (non-Chair) Service Fee*:
  - Audit Committee: $7,000
  - Compensation Committee: $5,000
  - Nominating & Corporate Governance Committee: $3,000

Equity Compensation. Our non-employee directors will be granted equity awards as described below, under our 2014 Equity Incentive Plan, or our 2014 Plan, subject to the limitation in our 2014 Plan on the number of awards that can be granted in a calendar year to any one individual or director. All unvested outstanding stock awards granted under this policy will become fully vested as of immediately prior to a Change in Control (as defined in our 2014 Plan).

- *IPO RSU Grant*: On the date we price our common stock for sale in this offering, each director will be granted a restricted stock unit, or RSU, for a number of shares equal to (i) $175,000, divided by (ii) the price at which a share of our common stock is offered to the public in this offering, rounded down for any partial share (the "IPO Grant"). The IPO Grant will vest in full in one installment on the first anniversary of this offering.
- *New Director RSU Grant*: For any individual who first becomes a director after this offering (other than as a result of an employee director transitioning to become a non-employee director), on the third business day after the date on which the director joins the board of directors, he or she will be granted an RSU for a number of shares equal to (i) $300,000, divided by (ii) the Fair Market Value (as defined in our 2014 Plan) of a share of our common stock on the date of grant, rounded down for any partial share (the "New Director Grant"). The New Director Grant will vest in three (3) equal annual installments.
- *Annual RSU Grant*: Commencing in 2015, on the date of each annual meeting of our stockholders at which directors are regularly elected (each, an "Annual Meeting"), each director who has been a director for at least six (6) months will be granted an RSU for a number of shares equal to (i) $175,000, divided by (ii) the Fair Market Value, rounded down for any partial share (the "Annual Grant"). The Annual Grant will vest in full in one installment on the earlier to occur of (i) the first anniversary of the grant date, and (ii) immediately prior to our next succeeding Annual Meeting.

EXECUTIVE COMPENSATION

This section describes the material elements of compensation awarded to, earned by or paid to our Chief Executive Officer and the two other most highly compensated individuals who served as our executive officers during the year ended December 31, 2013, or fiscal 2013. These individuals are listed in the "2013 Summary Compensation Table" below and are referred to as the named executive officers in this prospectus.

2013 Summary Compensation Table

Name & Principal Position	Year	Salary ($)	Bonus ($)(1)	Option Awards ($)(2)(3)	Non-Equity Incentive Plan Compensation ($)(4)	All Other Compensation ($)	Total Compensation ($)
Michael Burkland,	2013	$ 366,212	$ 49,462	$1,842,693	$ 89,684	$ —	$ 2,348,051
Chief Executive Officer	2012	341,295	41,344	—	134,849	—	517,488
Barry Zwarenstein,	2013	307,285		484,976	93,996	—	886,257
Chief Financial Officer	2012	252,778		214,422	74,184	31,101	572,485
Moni Manor,	2013	120,762		1,792,435	30,549	—	1,943,746
Executive Vice President of Products(5)							

(1) Represents discretionary cash bonuses approved by our board of directors.

(2) The dollar amounts in this column represent grant date fair value of stock option awards granted in the applicable fiscal year. These amounts have been calculated in accordance with FASB ASC Topic 718. Pursuant to SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. See Note 6 to the notes to our consolidated financial statements for a discussion of assumptions made in determining the grant date fair value.

(3) The shares underlying these options vest over four years as follows: 25% of the shares vest one year following the vesting commencement date, with the remaining 75% of the shares vesting in equal monthly installments over the next three years, or equally over 48 months.

(4) Amounts in this column represent amounts earned based on achievement of corporate and individual performance goals selected by our board of directors for fiscal 2013. Under our bonus program, as described in more detail below under "— Non-Equity Incentive Plan Compensation," performance is measured on a quarterly basis.

(5) Mr. Manor joined the Company on July 25, 2013 as Executive Vice President of Products.

Executive Employment Arrangements

Michael Burkland

On January 1, 2012, we entered into an employment agreement with Michael Burkland, our Chief Executive Officer and President. Effective November 22, 2013, Mr. Burkland's base salary is $444,357 and he is eligible to earn an annual bonus with a target amount of $239,268. Mr. Burkland is also eligible to be granted awards from our equity incentive plans. Our employment agreement with Mr. Burkland provides for an initial term of one year that is automatically renewed for additional one year terms. Mr. Burkland is an at-will employee under the employment agreement. Mr. Burkland's employment agreement also provides that he will serve as a member of our board of directors during the term of the agreement.

If Mr. Burkland's employment is terminated by us without cause or by him for good reason, then, subject to his entering into a release of claims, Mr. Burkland will receive his then-current base salary as severance for a period of 12 months following the termination. In the event of a change in control, if more than 50% of any of his options are then-outstanding and unvested, the vesting of those options shall accelerate such that (after giving effect to such acceleration and taking into account any portion of those options that had theretofore become vested and exercisable) those options shall become vested and exercisable as of the change in control date with respect to 50% of the total number of shares subject to those options. If, within 12 months following the change in control date, Mr. Burkland is terminated for any reason other than for cause or Mr. Burkland resigns for good

reason prior to this offering, then, in addition to the salary continuation benefit, his options will become immediately vested and exercisable with respect to 50% of the shares covered by the then-outstanding and unvested portion of those options. See "—Potential Payments upon Termination or Change in Control" for a description of his severance rights after this offering.

Barry Zwarenstein

On February 26, 2014, we entered into a confirmation letter with Barry Zwarenstein, our Chief Financial Officer, which supercedes and replaces his original offer letter, as amended. Effective November 22, 2013, Mr. Zwarenstein's base salary is $336,095 and he is eligible to earn an annual bonus with a target amount of $128,655. Mr. Zwarenstein is also eligible to be granted awards from our equity incentive plans. Our confirmation letter with Mr. Zwarenstein has no specific term. Mr. Zwarenstein is an at-will employee under the confirmation letter.

If Mr. Zwarenstein's employment is terminated by us without cause or by him due to a constructive termination prior to this offering, then, subject to his entering into a release of claims, Mr. Zwarenstein will receive his then-current base salary as severance for a period of 6 months following the termination. During this period, we will pay for the continuation of Mr. Zwarenstein's health benefits. If, within 12 months following a change in control, Mr. Zwarenstein is terminated for any reason other than for cause or Mr. Zwarenstein resigns due to a constructive termination prior to this offering, then his then-outstanding options will become immediately vested and exercisable with respect to 50% of the shares covered by the then-outstanding and unvested portion of those options. See "—Potential Payments upon Termination or Change in Control" for a description of his severance rights after this offering.

Moni Manor

On July 20, 2013, we entered into an offer letter with Moni Manor, our Executive Vice President of Products. Effective November 22, 2013, Mr. Manor's base salary is $283,214 and he is eligible to earn an annual bonus with a target amount of $113,285. Mr. Manor is also eligible to be granted awards from our equity incentive plans. Our offer letter to Mr. Manor has no specific term. Mr. Manor is an at-will employee under the offer letter.

If Mr. Manor's employment is terminated by us without cause or by him due to a constructive termination prior to this offering, then, subject to his entering into a release of claims, Mr. Manor will receive his then-current base salary as severance for a period of 6 months following the termination. During this period, we will pay for the continuation of Mr. Manor's health benefits. In the event of a change in control during Mr. Manor's employment with us, the options granted pursuant to the offer letter shall immediately become vested and exercisable with respect to 25% of the shares covered by the then-outstanding and unvested portion of those options. If, within 18 months following a change in control, Mr. Manor is terminated for any reason other than for cause or Mr. Manor resigns due to a constructive termination prior to this offering, then the options granted pursuant to the offer letter will become immediately vested and exercisable with respect to 25% of the shares covered by the then-outstanding and unvested portion of those options. See "—Potential Payments upon Termination or Change in Control" for a description of his severance rights after this offering.

Definitions of Terms

For purposes of the employment agreement and offer letters described above, "cause" means: (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company's reputation; or (iv) a material breach of any provision of (A) the employment agreement or offer letter, as applicable, (B) with respect to Mr. Burkland's employment agreement, the agreement regarding confidential information, intellectual property and non-solicitation to which he is a party or (C) any provision of the Company's code of conduct that is applicable to employees; provided, however, that if a cure is reasonably possible in the circumstances, that at least 15 days'

advance written notice of such breach has been provided to the employee and the employee fails to cure such breach within such 15-day period.

For purposes of the employment agreement and offer letters described above, “good reason” or “constructive termination” means a material default by the Company in the performance of its obligations under the employment agreement or offer letter, as applicable, not corrected within 30 days of receipt of written notice from the employee of the occurrence of such default, which notice shall specifically set forth the nature of such default. Material default shall include, without limitation: (i) the assignment of any duties inconsistent (except in the nature of a promotion) with the employee’s designated position or a material adverse alteration in the nature or status of the employee’s responsibilities (or, in the case of Mr. Burkland’s employment agreement, the conditions of the engagement); (ii) the Company’s failure to pay any of the compensation that has become due and payable to the employee under the employment agreement or offer letter, as applicable; and (iii) a relocation by the Company of the employee’s principal office more than thirty-five miles from Pleasanton, California (or, in the case of Mr. Burkland’s employment agreement and Mr. Manor’s offer letter, San Ramon, California) or more than fifty miles from Mountain View, CA (in the case of Mr. Manor’s offer letter) without the employee’s prior written consent.

For purposes of the employment agreement and offer letters described above, “change in control” means: (i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company); or (ii) a sale of all or substantially all of the assets of the Company, so long as, in either case, the Company’s stockholders of record immediately prior to such event will, immediately after such event, hold less than 50% of the voting power of the surviving or acquiring entity.

Non-Equity Incentive Plan Compensation

The 2013 Bonus Plan provided for bonus payments to eligible employees on a quarterly basis based upon each eligible employee’s target base bonus amount, or Bonus Target Payout and a weighting of our achievement of financial performance objectives, or Corporate Objectives, and individual personal objectives, or Personal Objectives, determined at the beginning of the year by our board of directors.

The bonus pool for Corporate Objectives was funded based on our achievement against quarterly targets of: (i) an 80% weighting of a revenue target (“Revenue Target”) and (ii) a 20% weighting of a normalized cash flow target (“Normalized Cash Flow Target”). For the bonuses to fund under the Revenue Target for a given quarter, we had to achieve at least 90% of the quarterly revenue target. Upon reaching the 90% level, we would fund 70% of the bonus pool, with funding of the pool scaling upwards to a maximum of 130% of the bonus pool if we achieved 110% of our Revenue Target. For bonus payout under our Normalized Cash Flow Target, we had to achieve a quarterly normalized cash flow target as determined by the board of directors. The quarterly Normalized Cash Flow Target is considered to have been met if normalized cash flow for the quarter is within $100,000 of the target or higher.

Up to 50% of an employee’s bonus payments were based on Personal Objectives tailored to each executive which included certain strategic business goals that are established and measured quarterly.

The target bonuses for 2013 were $196,607, $116,145, and $48,016 for Messrs. Burkland, Zwarenstein and Manor, respectively. The total cash incentive payments paid to our named executive officers for fiscal 2013 are described in the “Non-Equity Incentive Compensation” column of the 2013 Summary Compensation Table.

Perquisites

We generally do not provide special employee benefits for our named executive officers. Currently, we offer a limited travel and lodging allowance to certain officers who would otherwise have long daily commutes to increase the time these executives have to focus on their responsibilities to us. We believe the benefit to us outweighs the cost to us.

Outstanding Equity Awards at Fiscal Year End for 2013

The following table sets forth information regarding outstanding stock options held by our named executive officers as of December 31, 2013.

	Option Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date
Michael Burkland(1)	3,425,986	—	0.03	May 20, 2018
Michael Burkland(2)	672,758	249,882	0.13	April 29, 2021
Michael Burkland(3)	169,866	571,369	1.21	January 25, 2023
Michael Burkland(4)	20,958	985,042	2.37	November 22, 2023
Barry Zwarenstein(5)	—	837,783	0.24	April 27, 2022
Barry Zwarenstein(6)	7,562	355,438	2.37	November 22, 2023
Moni Manor(7)	—	1,569,454	1.67	August 1, 2023
Moni Manor(8)	3,979	187,021	2.37	November 22, 2023

(1) These options vested as to 1/48th of the total options on the 24th of each month after January 24, 2008. All of these options were vested as of December 31, 2013.

(2) These options vest, subject to Mr. Burkland's continued role as a service provider to us, with 1/48th of the total options vesting monthly from January 1, 2011. 249,882 of these options were unvested as of December 31, 2013.

(3) These options vest, subject to Mr. Burkland's continued role as a service provider to us, with 1/48th of the total options vesting monthly from January 25, 2013. 571,369 of these options were unvested as of December 31, 2013.

(4) These options vest, subject to Mr. Burkland's continued role as a service provider to us, with 1/48th of the total options vesting monthly from November 22, 2013. 985,042 of these options were unvested as of December 31, 2013.

(5) These options vest, subject to Mr. Zwarenstein's continued role as a service provider to us, as to 1/4th of the total options on the one-year anniversary of January 11, 2012, with 1/48th of the total options vesting monthly thereafter. 837,783 of the shares underlying these options were unvested as of December 31, 2013.

(6) These options vest, subject to Mr. Zwarenstein's continued role as a service provider to us, with 1/48th of the total options vesting monthly from November 22, 2013. 355,438 of these options were unvested as of December 31, 2013.

(7) These options vest, subject to Mr. Manor's continued role as a service provider to us, as to 1/4th of the total options on the one-year anniversary of July 25, 2013, with 1/48th of the total options vesting monthly thereafter. In November 2013, our board of directors amended Mr. Manor's grant to allow for the early exercise of 59,880 of these options. 1,569,454 of these options were unvested as of December 31, 2013.

(8) These options vest, subject to Mr. Manor's continued role as a service provider to us, with 1/48th of the total options vesting monthly from November 22, 2013. In February 2014, our board of directors amended Mr. Manor's grant to allow for the early exercise of 42,194 of these options. 187,021 of these options were unvested as of December 31, 2013.

Potential Payments upon Termination or Change in Control

In connection with this offering, our board of directors has approved the Key Employee Severance Benefit Plan (the "Severance Plan") to provide consistency in severance benefit rights for our executive officers. Severance is conditioned on signing an effective release of claims and compliance with on-going confidentiality and proprietary information obligations.

Under the Severance Plan, we will provide as severance benefits to each executive officer who is subject to an involuntary termination without cause: (1) a lump sum cash payment of the number of months of base salary determined based on the officer's position, and (2) payment of the premiums for continued post-termination health insurance coverage for up to the same number of months. Benefits are 12 months for our Chief Executive Officer, nine months for our Chief Financial Officer, and six months for our other executive officers.

In addition, under the Severance Plan, if the executive officer's employment is terminated in connection with a change in control, we will provide as severance benefits to each executive officer who is subject to either an involuntary termination without cause or resignation for good reason: (1) a lump sum cash payment of the number of months of base salary determined based on the officer's position, (2) payment of the premiums for continued post-termination health insurance coverage for up to the same number of months, (3) pro-rated target cash incentive bonus for the year of termination, and (4) 100% vesting of then outstanding unvested equity awards. Benefits are 18 months for our Chief Executive Officer, 15 months for our Chief Financial Officer, and 12 months for our other executive officers.

If an executive officer has rights under an existing offer letter or equity award agreement providing for a greater number of months of benefits or greater percentage of accelerated vesting, those incremental benefits will be incorporated into that individual's rights under the Severance Plan, to avoid duplication of benefits. The Severance Plan provides for "better after tax" treatment if payments would be "parachute payments" for purposes of Section 280G of the Code – that is, the payment will be paid in full, or reduced, whichever results in the greater after tax benefit after taking into account all taxes including the excise tax under Section 4999 of the Code.

Employee Benefit and Stock Plans

Amended and Restated 2004 Equity Incentive Plan, as Amended

Our board of directors and stockholders originally adopted our 2004 Plan in June 2004. Our 2004 Plan was last amended and restated in June 2012, and was most recently amended in November 2013. Our 2004 Plan allows for the grant of incentive stock options to our employees and to our parent and subsidiary corporations' employees, and for the grant of nonqualified stock options, restricted stock awards and stock bonus awards to employees, officers, directors and consultants of ours and our parent and subsidiary corporations.

We expect to terminate our 2004 Plan on the effectiveness of this offering and, accordingly, no shares will be available for issuance pursuant to new awards under the 2004 Plan following the completion of this offering. We expect that any shares subject to the available share reserve of the 2004 Plan at that time will become available for grant under the 2014 Plan that we expect to adopt in connection with this offering, and that any shares that would otherwise return to the 2004 Plan after the offering will instead return to the 2014 Plan.

Authorized Shares. The maximum share reserve under our 2004 Plan was 47,531,331 shares as of January 31, 2014. As of January 31, 2014, under our 2004 Plan, 1,362,902 shares were available for issuance in the form of stock options or stock awards, options to purchase 29,554,972 shares of our common stock remained outstanding at a weighted average exercise price of approximately $0.84 per share and, as of January 31, 2014, we retained repurchase rights over unvested equity awards covering 59,880 unvested shares of our common stock. Currently, shares subject to stock awards granted under our 2004 Plan (i) that expire or terminate without being exercised in full, (ii) that are forfeited under an award, or (iii) that are subject to an award that otherwise terminates without shares being issued, will return to the 2004 Plan share reserve for future grant.

Plan Administration. Our board of directors currently administers our 2004 Plan. Subject to the provisions of our 2004 Plan, the administrator has the power to interpret and administer our 2004 Plan and any award agreement and to determine the terms of awards, including the recipients, the number of shares subject to each award, the exercise price (if any), the vesting schedule, and to make all other determinations necessary or advisable for the administration of our 2004 Plan. The administrator may, at any time, authorize the issuance of new awards in substitution for outstanding awards or the cashing out or net settlement of awards, and may also reduce the exercise price of options to a price not below the fair market value on the date of the repricing.

Options. Stock options may be granted under our 2004 Plan. The exercise price per share of all options must equal at least 100% of the fair market value per share of our common stock on the date of grant. The term of an option may not exceed ten years. An incentive stock option granted to a participant who owns more than 10% of the total combined voting power of all classes of our stock on the date of grant, or any parent or subsidiary corporations, may not have a term in excess of five years and must have an exercise price of at least 110% of the fair market value per share of our common stock on the date of grant. The administrator will determine the methods of payment of the exercise price of an option, which may include cash, cancellation of indebtedness, surrender of previously acquired shares or through a same day sale mechanism. After a participant's termination of service, the participant generally may exercise his or her options, to the extent vested as of such date of termination, for three months after termination. If termination is due to death or disability, the participant may generally exercise his or her options, to the extent then-vested, for twelve months after termination. However, in no event may an option be exercised later than the expiration of its term.

Restricted Stock and Stock Bonuses. Restricted stock and stock bonuses may be granted under our 2004 Plan. Restricted stock awards and stock bonus awards are grants of shares of our common stock that are subject to various restrictions, including restrictions on transferability and forfeiture provisions. Shares subject to these awards will vest, and the restrictions on such shares will lapse, in accordance with terms and conditions established by the administrator.

Transferability or Assignability of Awards. Our 2004 Plan generally does not allow for the transfer or assignment of awards, other than by will or the laws of descent and distribution.

Certain Adjustments. In the event of certain changes in our capitalization, the exercise prices of and number of shares subject to outstanding options and purchase price of and numbers of shares subject to outstanding awards will be proportionately adjusted, subject to any required action by our board of directors or stockholders. The available share reserve and the limit on the number of incentive stock options that may be granted under the 2004 Plan will also be proportionately adjusted.

Merger or Change in Control. Our 2004 Plan provides that in connection with a merger involving a substantial change in ownership, a dissolution or liquidation, a sale of all assets, or other "corporate transaction" as defined under the incentive stock option rules, each outstanding award may be assumed, replaced or substituted for an equivalent award. If awards are not assumed, replaced or substituted for, then outstanding awards will then generally terminate on the closing of the corporate transaction. For awards granted to persons who were providing services on or before February 23, 2010, the awards that are not assumed, replaced or substituted for will become fully vested immediately prior to the closing.

Amendment; Termination. Our board of directors may amend our 2004 Plan at any time, provided that such amendment does not impair the rights under outstanding awards without the participant's written consent. As noted above, upon completion of this offering, we expect to terminate our 2004 Plan, in which case no further awards will be granted under our 2004 Plan, although all outstanding awards will continue to be governed by their existing terms.

2014 Equity Incentive Plan

We anticipate our board of directors adopting our 2014 Plan in connection with this offering so that the 2014 Plan will become effective immediately upon the signing of the underwriting agreement for this offering. The 2014 Plan will terminate on , 2024, unless sooner terminated by our board of directors. The 2014 Plan will provide for the grant of incentive stock options to our employees and non-statutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards,

performance-based cash awards and other forms of equity compensation to our employees, directors and consultants. Additionally, our 2014 Plan will provide for the grant of performance cash awards to our employees, directors and consultants.

The discussion below summarizes the terms of the proposed 2014 Plan.

Authorized shares. The maximum number of shares of our common stock that may be issued under our 2014 Plan will consist of (i) an initial share reserve of shares of our common stock, (ii) the shares of our common stock remaining available for issuance under the 2004 Plan on the date of this offering and not subject to outstanding awards under the 2004 Plan and (iii) the shares of our common stock subject to awards granted under the 2004 Plan that expire or terminate for any reason prior to exercise or settlement, are forfeited because of the failure to vest in those shares or are otherwise reacquired or withheld to satisfy a tax withholding obligation in connection with such awards if, as and when such shares are subject to such events, which aggregate number of shares will not exceed shares, with such shares subject to adjustment to reflect any split of our common stock. Additionally, the number of shares of our common stock reserved for issuance under our 2014 Plan will automatically increase on January 1 of each year, beginning on January 1, 2015 and ending on and including January 1, 2024, by 5% of the total number of shares of our capital stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares determined by our board of directors. The maximum number of shares that may be issued upon the exercise of incentive stock options under our 2014 Plan is (subject to adjustment to reflect any split of our common stock). Shares issued under our 2014 Plan include authorized but unissued or reacquired shares of our common stock. Shares subject to stock awards granted under our 2014 Plan that expire or terminate without being exercised in full, or that are paid out in cash rather than in shares, do not reduce the number of shares available for issuance under our 2014 Plan. Additionally, shares issued pursuant to stock awards under our 2014 Plan that we repurchase or that are forfeited, as well as shares used to pay the exercise price of a stock award or to satisfy the tax withholding obligations related to a stock award, become available for future grant under our 2014 Plan.

Plan administration. Our board of directors, or a duly authorized committee of our board of directors, will administer our 2014 Plan and is referred to as the administrator. The administrator may also delegate to one or more of our officers the authority to (i) designate employees (other than officers) to receive specified stock awards and (ii) determine the number of shares of our common stock to be subject to such stock awards. Subject to the terms of our 2014 Plan, the administrator has the authority to determine the terms of awards, including recipients, the exercise, purchase or strike price of stock awards, if any, the number of shares subject to each stock award, the fair market value of a share of our common stock, the vesting schedule applicable to the awards, together with any vesting acceleration and the form of consideration, if any, payable upon exercise or settlement of the award and the terms of the award agreements.

The administrator has the power to modify outstanding awards under our 2014 Plan. The administrator has the authority to reprice any outstanding option or stock appreciation right, cancel any outstanding stock award in exchange for new stock awards, cash or other consideration or take any other action that is treated as a repricing under generally accepted accounting principles, with the consent of any adversely affected participant.

Section 162(m) limits. At such time as necessary for compliance with Section 162(m) of the Code, no participant may be granted stock awards covering more than 2,000,000 shares of our common stock (subject to adjustment to reflect any split of our common stock) under our 2014 Plan during any calendar year pursuant to stock options, stock appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise price or strike price of at least 100% of the fair market value of our common stock on the date of grant. Additionally, no participant may be granted in a calendar year a performance stock award covering more than 2,000,000 shares of our common stock (subject to adjustment to reflect any split of our common stock) or a performance cash award having a maximum value in excess of $3,000,000 under our 2014 Plan. These limitations are intended to give us the flexibility to grant compensation that will not be subject to the $1,000,000 annual limitation on the income tax deductibility imposed by Section 162(m) of the Code.

Performance awards. We believe our 2014 Plan will permit the grant of performance-based stock and cash awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility imposed by Section 162(m) of the Code. Our compensation committee may

structure awards so that the stock or cash will be issued or paid only following the achievement of certain pre-established performance goals during a designated performance period. However, we retain the discretion to grant awards under the 2014 Plan that may not qualify for full deductibility.

Our compensation committee may establish performance goals by selecting from one or more performance criteria, including:

- earnings (including earnings per share and net earnings)
- earnings before interest, taxes and depreciation
- earnings before interest, taxes, depreciation and amortization
- earnings before interest, taxes, depreciation, amortization and legal settlements
- earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense)
- earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation
- earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation, changes in deferred revenue and acquisition deal costs
- total stockholder return, either absolutely or relative to an index
- return on equity or average stockholder's equity
- return on assets, investment, or capital employed
- stock price
- margin (including gross margin)
- income (before or after taxes)
- operating income
- operating income after taxes
- pre-tax profit
- sales or revenue targets
- increases in revenue or components of revenue
- expenses and cost reduction goals
- improvement in or attainment of working capital levels
- economic value added (or an equivalent metric)
- market share
- cash flow, operating cash flow, cash flow per share, free cash flow (operating cash flow less capital expenditures and capitalized software), or normalized cash flow (EBITDA less debt service)
- share price performance, either absolutely or relative to an index
- debt reduction
- employee retention
- stockholders' equity
- capital expenditures
- debt levels
- operating profit or net operating profit

- workforce diversity
- growth of net income or operating income
- billings
- bookings
- to the extent that an award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the administrator.

Corporate transactions. Our 2014 Plan provides that in the event of certain specified significant corporate transactions, as defined under our 2014 Plan, each outstanding award will be treated as the administrator determines. The administrator may (i) arrange for the assumption, continuation or substitution of a stock award by a successor corporation, (ii) arrange for the assignment of any reacquisition or repurchase rights held by us to a successor corporation, (iii) accelerate the vesting, in whole or in part, of the stock award and provide for its termination prior to the transaction and arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us or (iv) cancel the stock award prior to the transaction in exchange for a cash payment, if any, determined by our board of directors. The plan administrator is not obligated to treat all stock awards or portions of stock awards, even those that are of the same type, in the same manner.

Plan amendment or termination. Our board of directors will have the authority to amend, suspend or terminate our 2014 Plan, provided that such action does not materially impair the existing rights of any participant without such participant's written consent. No incentive stock options may be granted after the tenth anniversary of the date our board of directors adopts our 2014 Plan.

2014 Employee Stock Purchase Plan

Prior to the effectiveness of this offering, our board of directors intends to adopt our 2014 Employee Stock Purchase Plan, or the ESPP, and we expect our stockholders will approve it prior to the completion of this offering. The ESPP will become effective in connection with the completion of this offering.

Authorized Shares. The maximum aggregate number of shares of our common stock that will be made available for issuance under our ESPP is shares (subject to adjustment to reflect any split of our common stock). Additionally, our ESPP provides that the number of shares of our common stock reserved for issuance under our ESPP will increase automatically each year, beginning on January 1, 2015 and continuing through and including January 1, 2024, by the lesser of (i) % of the total number of shares of our common stock outstanding on December 31 of the preceding calendar year; (ii) shares of common stock (subject to adjustment to reflect any split of our common stock); or (iii) such lesser number as determined by our board of directors. Shares subject to purchase rights granted under our ESPP that terminate without having been exercised in full will not reduce the number of shares available for issuance under our ESPP.

Plan Administration. Our board of directors, or a duly authorized committee of our board of directors, will administer our ESPP. Our board of directors and/or our compensation committee, that is, the administrator, may approve offerings with a duration of not more than 27 months and may specify one or more shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for the employees who are participating in the offering. The administrator, in its discretion, will determine the terms of offerings under our ESPP, including determining which of our designated affiliates will be eligible to participate in the Code Section 423 component of our ESPP and which of our designated affiliates will be eligible to participate in the non-Code Section 423 component of our ESPP.

Payroll Deductions. Our ESPP will permit participants to purchase shares of our common stock through payroll deductions or other methods with up to 15% of their earnings. The purchase price of the shares will be not less than 85% of the lower of the fair market value of our common stock on the first day of an offering or on the date of purchase.

Eligibility. Our employees, including executive officers, may have to satisfy one or more of the following service requirements before participating in our ESPP, as determined by the administrator: (i) customary

employment for more than 20 hours per week and more than five months per calendar year or (ii) continuous employment for a minimum period of time, not to exceed two years. An employee may not be granted rights to purchase stock under our ESPP if such employee (i) immediately after the grant would own stock possessing 5% or more of the total combined voting power or value of our common stock or (ii) holds rights to purchase stock under our ESPP that would accrue at a rate that exceeds $25,000 worth of our stock for each calendar year that the rights remain outstanding. Under our ESPP, we may grant purchase rights that do not meet the requirements of an employee stock purchase plan because of deviations necessary to permit participation by employees who are foreign nationals or employed outside of the United States, as required by applicable foreign laws.

Non-Transferability. A participant may not transfer purchase rights under our ESPP other than by will, the laws of descent and distribution or as otherwise provided under our ESPP.

Merger or Change in Control. In the event of a specified corporate transaction, such as a merger or change in control, a successor corporation may assume, continue or substitute each outstanding purchase right. If the successor corporation does not assume, continue or substitute for the outstanding purchase rights, the offering in progress may be shortened and a new exercise date will be set, so that the participants' purchase rights can be exercised and terminate immediately thereafter.

Termination. Our ESPP will remain in effect until terminated by the administrator in accordance with the terms of the ESPP. Our board of directors has the authority to amend, suspend or terminate our ESPP, at any time and for any reason.

401(k) Plan

We have a 401(k) plan to provide tax deferred salary deductions for all eligible employees. Participants may make voluntary contributions to the 401(k) plan, limited by certain Internal Revenue Service restrictions. We are responsible for the administrative costs of the 401(k), and we do not match employee contributions.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a summary of transactions that occurred on or after January 1, 2010 to which we were a party in which the amount involved exceeded $120,000 and in which any of our executive officers, directors or beneficial holders of more than 5% of our capital stock had or will have a direct or indirect material interest. We believe the terms of the transactions described below were comparable to terms we could have obtained in arm's-length dealings with unrelated third parties.

Private Placements

Series B-2 Preferred Stock Financing

In January 2011, we sold an aggregate of 18,565,794 shares of series B-2 preferred stock at a per share purchase price of $0.4309 pursuant to a stock purchase agreement. Purchasers of the series B-2 preferred stock included venture capital funds that held 5% or more of our capital stock and were represented on our board of directors. The following table summarizes the purchases of series B-2 preferred stock by such investors:

Stockholder	Shares of series B-2 preferred stock	Total Purchase Price
Entities affiliated with Partech Ventures(1)	1,160,363	$ 500,000
Hummer Winblad Venture Partners V, L.P.(2)	1,160,363	$ 500,000

(1) Shares were purchased by the following affiliates of Partech Ventures, whose shares are aggregated for purposes of reporting stock ownership: Partech U.S. Partners IV LLC, Partech International Growth Capital I LLC, Partech International Growth Capital II LLC, Partech International Growth Capital III LLC, AXA Growth Capital II LP, 45th Parallel LLC and PAR SF II, LLC. Tim Wilson, a member of our board of directors, was a Partner of Partech International, LLC, a venture capital firm, at the time of this purchase.

(2) Mitchell Kertzman, a member of our board of directors, is a managing director of the general partner of the purchaser.

Series C-2 Preferred Stock Financing

In April 2012, we sold an aggregate of 12,903,226 shares of series C-2 preferred stock at a per share purchase price of $0.9300 pursuant to a stock purchase agreement. Purchasers of the series C-2 preferred stock included venture capital funds that held 5% or more of our capital stock and were represented on our board of directors. The following table summarizes the purchases of series C-2 preferred stock by such investors:

Stockholder	Shares of series C-2 preferred stock	Total Purchase Price
Entities affiliated with Adams Street Partners(1)	9,677,419	$ 9,000,000
Entities affiliated with Partech Ventures(2)	1,075,269	$ 1,000,000
Hummer Winblad Venture Partners V, L.P.(3)	2,150,538	$ 2,000,000

(1) Shares were purchased by the following affiliates of Adams Street Partners, whose shares are aggregated for purposes of reporting stock ownership: Adams Street 2008 Direct Fund, L.P., Adams Street 2009 Direct Fund, L.P., Adams Street 2010 Direct Fund, L.P. and Adams Street 2011 Direct Fund LP. David Welsh, a member of our board of directors, is a Partner of Adams Street Partners, LLC, the managing member of the general partner of each of the purchasers.

(2) Shares were purchased by the following affiliates of Partech Ventures, whose shares are aggregated for purposes of reporting stock ownership: Partech U.S. Partners IV LLC, Partech International Growth Capital I LLC, Partech International Growth Capital II LLC, Partech International Growth Capital III LLC, AXA Growth Capital II LP, 45th Parallel LLC and PAR SF II, LLC. Tim Wilson, one of our directors, is a non-managing member of (i) 47th Parallel, LLC, which is the managing member of Partech U.S. Partners IV, LLC, (ii) 48th Parallel, LLC, which is the investment general partner of AXA Growth Capital II L.P., and

(iii) 45th Parallel LLC, which is the managing member of 46th Parallel, LLC, which is the managing member of Partech International Growth Capital I, LLC, Partech International Growth Capital II, LLC and Partech International Growth Capital III, LLC.

(3) Mitchell Kertzman, a member of our board of directors, is a managing director of the general partner of the purchaser.

Series D-2 Preferred Stock Financing

In April 2013, we sold an aggregate of 15,269,294 shares of series D-2 preferred stock at a per share purchase price of $1.4408 pursuant to a stock purchase agreement. Purchasers of the series D-2 preferred stock included venture capital funds that held 5% or more of our capital stock and were represented on our board of directors. The following table summarizes the purchases of series D-2 preferred stock by such investors:

Stockholder	Shares of series D-2 preferred stock	Total Purchase Price
Entities affiliated with Adams Street Partners(1)	2,776,235	$ 3,999,999
Entities affiliated with Partech Ventures(2)	1,388,118	$ 2,000,000
Hummer Winblad Venture Partners V, L.P.(3)	1,388,117	$ 1,999,999

(1) Shares were purchased by the following affiliates of Adams Street Partners, whose shares are aggregated for purposes of reporting stock ownership: Adams Street 2008 Direct Fund, L.P., Adams Street 2009 Direct Fund, L.P., Adams Street 2010 Direct Fund, L.P. and Adams Street 2011 Direct Fund LP. David Welsh, a member of our board of directors, is a Partner of Adams Street Partners, LLC, the managing member of the general partner of each of the purchasers.

(2) Shares were purchased by the following affiliates of Partech Ventures, whose shares are aggregated for purposes of reporting stock ownership: Partech U.S. Partners IV LLC, Partech International Growth Capital I LLC, Partech International Growth Capital II LLC, Partech International Growth Capital III LLC, AXA Growth Capital II LP, 45th Parallel LLC and PAR SF II, LLC.

(3) Mitchell Kertzman, a member of our board of directors, is a managing director of the general partner of the purchaser.

Stockholders' Agreement

We are party to the Eighth Amended and Restated Stockholders' Agreement dated as of October 18, 2013, which provides, among other things, that certain holders of our capital stock have the right to demand that we file a registration statement or request that their shares of our capital stock be covered by a registration statement that we are otherwise filing. See "Description of Capital Stock — Registration Rights" for additional information regarding these registration rights.

Under the Stockholders' Agreement, certain holders of our capital stock, including entities with which certain of our directors are affiliated, have agreed to vote their shares of our capital stock on certain matters, including for the election of directors. Upon the completion of this offering, these voting provisions will terminate and none of our stockholders will have any special rights regarding the election or designation of members of our board of directors.

Other Transactions

Pursuant to our 2004 Plan, we or our assignees have a right to purchase certain shares of our common stock which stockholders propose to sell to other parties. These rights will terminate upon the completion of this offering. See "Principal Stockholders" for additional information regarding beneficial ownership of our capital stock.

We have adopted a change in control plan providing certain of our executive officers with certain severance and change in control benefits. See "Executive Compensation — Potential Payments upon Termination or Change in Control" for additional information regarding this plan.

As a managing director of Hummer Winblad Venture Partners, one of our directors, Mr. Kertzman, has an indirect ownership interest in Birst, Inc., or Birst. In 2012, we incurred $0.5 million of expense for data warehousing services rendered to us by Birst. In the year ended December 31, 2013, we incurred $0.3 million of expense for data warehousing services rendered to us by Birst.

Limitation of Liability and Indemnification of Officers and Directors

Our current amended and restated certificate of incorporation limits the liability of our directors for monetary damages for a breach of fiduciary duty as a director to the fullest extent permitted by the Delaware General Corporation Law. Consequently, our directors are not personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for (i) any breach of their duty of loyalty to our company or our stockholders; (ii) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or (iv) any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law. We expect to adopt a new amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, and which will contain similar provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law.

Our current amended and restated bylaws provide that we (i) will indemnify any person who was or is a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our directors or officers or, while a director or officer, is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and (ii) must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by us. We expect to adopt new amended and restated bylaws, which will become effective immediately prior to the completion of this offering, which will contain similar provisions that limit the liability of our directors and officers.

We have entered into indemnification agreements with our directors, executive officers and certain other officers pursuant to which they are provided indemnification rights that are broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our directors, executive officers and certain other officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors, executive officers and certain other officers in investigating or defending any such action, suit or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and officers. Prior to the completion of this offering, we expect to enter into new indemnification agreements with each of our directors, executive officers and certain other officers which will contain similar provisions.

The limitation of liability and indemnification provisions that are expected to be included in our new amended and restated certificate of incorporation, amended and restated bylaws and the indemnification agreements that we enter into with our directors, executive officers and certain other officers may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder’s investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or

was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made for breach of fiduciary duty or other wrongful acts as a director or executive officer and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law. Prior to the completion of this offering, we will enter into additional insurance arrangements to provide coverage to our directors and executive officers against loss arising from claims relating to public securities matters.

Certain of our non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement will provide for indemnification by the underwriters of us and our officers, directors and employees for certain liabilities arising under the Securities Act of 1933, as amended, or Securities Act, or otherwise.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Policies and Procedures for Related Party Transactions

Following the completion of this offering, our audit committee will have the primary responsibility for reviewing and approving or disapproving "related party transactions," which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed $120,000 and in which a related person has or will have a direct or indirect material interest. Upon the completion of this offering, our policy regarding transactions between us and related persons will provide that a related person is defined as a director, executive officer, nominee for director or greater than 5% beneficial owner of our common stock, in each case since the beginning of the most recently completed fiscal year, and any of their immediate family members. Our audit committee charter that will be in effect upon the completion of this offering will provide that our audit committee shall review and approve or disapprove any related party transactions.

PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our shares of common stock as of January 31, 2014 for:

- each person known to us to be the beneficial owner of more than 5% of our shares of common stock;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

We have determined beneficial ownership in accordance with the rules of the SEC and the information is not necessarily indicative of beneficial ownership for any other purpose. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially own, subject to community property laws where applicable. In computing the number of shares of our common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of our common stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of January 31, 2014. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

We have based percentage ownership of our common stock prior to this offering on 145,023,556 shares of our common stock outstanding as of January 31, 2014, which (i) includes 122,215,769 shares of common stock resulting from the conversion of our convertible preferred stock in connection with this offering, as if this conversion had occurred as of January 31, 2014 and (ii) excludes the effect of a : reverse stock split of our common stock, which will be effected prior to the completion of this offering. Percentage ownership of our common stock after this offering assumes the sale by us of shares of common stock in this offering.

Unless otherwise noted, the address of each beneficial owner listed on the table below is c/o Five9, Inc., Bishop Ranch 8, 4000 Executive Parkway, Suite 400, San Ramon, CA 94583. Beneficial ownership representing less than 1% is denoted with an asterisk (*). The statements concerning voting and investment power included in the footnotes to this table shall not be construed as admissions that such persons are the beneficial owners of such shares of common stock.

	Shares Beneficially Owned Prior to this Offering		Shares Beneficially Owned After this Offering	
Name of Beneficial Owner	Number	%	Number	%
Named Executive Officers and Directors:				
Michael Burkland(1)	8,975,657	6.0		
Barry Zwarenstein(2)	901,543	*		
Moni Manor(3)	75,796	*		
Jack Acosta(4)	328,125	*		
Kimberly Alexy(5)	36,458	*		
Jayendra Das(6)	9,716,824	6.7		
David DeWalt(7)	508,683	*		
Mitchell Kertzman(8)	33,649,533	23.2		
David S. Welsh(9)	28,698,722	19.8		
Tim Wilson(10)	—	*		
Robert Zollars(11)	21,874	*		
All current directors and executive officers as a group (14 persons)(12)	85,911,870	59.2		
5% Stockholders:				
Hummer Winblad Venture Partners V, L.P.(13)	33,649,533	23.2		
Entities affiliated with Adams Street Partners(14)	28,698,722	19.8		
Entities affiliated with Partech International(15)	25,250,846	17.4		
Mosaic Venture Partners(16)	25,229,941	17.4		
SAP Ventures Fund I, L.P.(17)	9,716,824	6.7		

(1) Includes 4,475,657 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(2) Includes 123,222 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(3) Includes 15,916 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(4) Consists of 328,125 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(5) Consists of 36,458 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(6) Consists of shares listed in footnote (17) below, which are held by SAP Ventures Fund I, L.P., or SAPV. Mr. Das, one of our directors, is a managing member of SAP Ventures (GPE) I, L.L.C., the general partner of SAPV.

(7) Consists of 508,683 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(8) Consists of shares listed in footnote (13) below, which are held by Hummer Winblad Venture Partners V, L.P., or HWVP. Mr. Kertzman, one of our directors, is a managing director of Hummer Winblad Venture Partners.

(9) Consists of shares listed in footnote (14) below, which are held by entities affiliated with Adams Street Partners. Mr. Welsh, one of our directors, is a partner with Adams Street Partners, LLC. Mr. Welsh was formerly a partner of Partech International, LLC.

(10) Mr. Wilson, one of our directors, is a non-managing member of (i) 47th Parallel, LLC, which is the managing member of Partech U.S. Partners IV, LLC, (ii) 48th Parallel, LLC, which is the investment general partner of AXA Growth Capital II L.P., and (iii) 45th Parallel LLC, which is the managing member of 46th Parallel, LLC, which is the managing member of Partech International Growth Capital I, LLC, Partech International Growth Capital II, LLC and Partech International Growth Capital III, LLC, but does not have voting control or investment power over the shares owned by Partech U.S. Partners IV, LLC, AXA Growth Capital II L.P., Partech International Growth Capital I, LLC, Partech International Growth Capital II, LLC, Partech International Growth Capital III, LLC, or 45th Parallel, LLC.

(11) Consists of 21,874 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014.

(12) Includes 2,615,154 shares issuable upon exercise of options exercisable within 60 days after January 31, 2014 held by our executive officers not listed in the table.

(13) Includes 175,582 shares issuable upon exercise of warrants exercisable within 60 days after January 31, 2014. These shares are held by Hummer Winblad Venture Partners V, L.P., as nominee for Hummer Winblad Venture Partners V, L.P. and Hummer Winblad Equity Partners V, L.L.C., its general partner. Mr. Kertzman, one of our directors, is a managing director of Hummer Winblad Equity Partners V, L.L.C., and may be deemed to have voting and investment power over the shares held by Hummer Winblad Venture Partners V, L.P. The address for these entities is Pier 33 South, The Embarcadero, San Francisco, California 94111.

(14) Adams Street 2008 Direct Fund, L.P., or AS 2008, is the record owner of 10,339,288 shares, Adams Street 2009 Direct Fund, L.P., or AS 2009, is the record owner of 8,942,760 shares, Adams Street 2010 Direct Fund, L.P., or AS 2010, is the record owner of 5,079,969 shares and Adams Street 2011 Direct Fund, L.P., or AS 2011, is the record owner of 4,336,705 shares. The shares owned by AS 2008, AS 2009, AS 2010 and AS 2011 may be deemed to be beneficially owned by Adams Street Partners, LLC, the managing member of the general partner of each of AS 2008, AS 2009, AS 2010 and AS 2011. David Brett, Jeffrey T. Diehl, Elisha P. Gould III, Michael S. Lynn, Robin P. Murray, Sachin Tulyani, Craig D. Waslin and David S. Welsh, each of whom is a partner of Adams Street Partners, LLC (or a subsidiary thereof) may be deemed to have shared voting and investment power over the shares owned by each of AS 2008, AS 2009, AS 2010 and AS 2011. The address for each of these entities is One North Wacker Drive, Suite 2200, Chicago, Illinois 60606.

(15) Consists of (i) 14,047,442 shares held by Partech U.S. Partners IV, LLC, or Partech US, 78,043 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014, (ii) 2,713,106 shares held by Partech International Growth Capital I LLC, or Partech I, 12,832 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014, (iii) 4,469,457 shares held by Partech International Growth Capital II LLC, or Partech II, 21,139 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014,

(iv) 2,713,110 shares held by Partech International Growth Capital III LLC, or Partech III, 12,832 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014, (v) 1,104,650 shares held by AXA Growth Capital II LP, or AXA, 5,224 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014, (vi) 98,369 shares held by 45th Parallel LLC, or 45th Parallel, 546 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014, and (vii) 98,369 shares held by PAR SF II, LLC, or Par SF, 546 shares of which are issuable upon exercise of warrants exercisable within 60 days after January 31, 2014. Vincent R. Worms is (A) the sole member of Par SF, (B) the managing member of 47th Parallel, LLC, which is the managing member of Partech US, (C) the managing member of 45th Parallel, which is the managing member of 46th Parallel, LLC, which is the managing member of Partech I, Partech II and Partech III, and (D) the managing member of 48th Parallel, LLC, which is the investment general partner of AXA, and he has voting and investment power over the securities held by Par SF, Partech US, 45th Parallel, Partech I, Partech II, Partech III and AXA. The address for these entities is 50 California Street, Suite 3200, San Francisco, CA 94111.

(16) Consists of shares held by Mosaic Venture Partners II, Limited Partnership, or Mosaic. 1369904 Ontario, Inc., or Ontario, as the general partner of Mosaic, has voting and investment control of the shares held by Mosaic. David Samuel is Managing Director of Ontario and may be deemed to share voting and investment power with respect to the shares held by Mosaic. The address for these entities is 6300 Northam Drive, Mississauga, Ontario, Canada L4V 1H7.

(17) SAP Ventures (GPE) I, L.L.C. is the general partner of SAPV. The shares owned by SAPV may be deemed to be beneficially owned by Nino Nikola Marakovic, Jayendra Das, David Armin Hartwig, Richard Douglas Higgins, Ing Jorg Sievert and Andreas Markus Weiskam, the managing members of SAP Ventures (GPE) I, L.L.C. who share voting and dispositive power over the shares held by SAPV. The address for these entities is 3412 Hillview Avenue, Palo Alto, CA 94304.

DESCRIPTION OF CAPITAL STOCK

The following description summarizes certain important terms of our capital stock, as they are expected to be in effect immediately prior to the completion of this offering. We expect to adopt an amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the completion of this offering, and this description summarizes the provisions that are expected to be included in such documents. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of the matters set forth in this section, you should refer to our amended and restated certificate of incorporation, amended and restated bylaws and the Stockholders' Agreement, which will be included as exhibits to the registration statement of which this prospectus forms a part, and to the applicable provisions of Delaware law.

General

Immediately following the completion of this offering, our authorized capital stock will consist of shares of capital stock, $ par value per share, of which:

shares are designated as common stock; and

shares are designated as preferred stock.

Assuming the conversion of all outstanding shares of our convertible preferred stock into shares of our common stock, which will occur in connection with this offering, as of December 31, 2013, there were shares of our common stock outstanding, held by stockholders of record, and no shares of our preferred stock outstanding. Following the conversion of our preferred stock and reverse stock split but before the consummation of this offering, we will have shares of common stock outstanding and no shares of preferred stock outstanding. Our board of directors is authorized to issue additional shares of our capital stock without stockholder approval, except as required by the listing standards of the .

Common Stock

Voting Rights

The holders of our common stock are entitled to one vote per share on any matter to be voted upon by stockholders. Our amended and restated certificate of incorporation does not provide for cumulative voting in connection with the election of directors, and accordingly, holders of more than 50% of the shares voting will be able to elect all of the directors. The holders of a majority of the shares of common stock issued and outstanding constitute a quorum at all meetings of stockholders for the transaction of business.

Dividends

The holders of our common stock are entitled to dividends if, as and when declared by our board of directors, from funds legally available therefor, subject to the preferential rights of the holders of our preferred stock, if any, and certain contractual limitations on our ability to declare and pay dividends. See "Dividend Policy."

Other Rights

Upon the consummation of this offering, no holder of our common stock will have any preemptive right to subscribe for any shares of our capital stock issued in the future.

Upon any voluntary or involuntary liquidation, dissolution, or winding up of our affairs, the holders of our common stock are entitled to share ratably in all assets remaining after payment of creditors and subject to prior distribution rights of our preferred stock, if any.

Preferred Stock

Following the consummation of this offering, no shares of our preferred stock will be outstanding. Our amended and restated certificate of incorporation will provide that our board of directors may, by resolution,

establish one or more classes or series of preferred stock having the number of shares and relative voting rights, designations, dividend rates, liquidation, and other rights, preferences, and limitations as may be fixed by them without further stockholder approval. The holders of our preferred stock may be entitled to preferences over common stockholders with respect to dividends, liquidation, dissolution, or our winding up in such amounts as are established by the resolutions of our board of directors approving the issuance of such shares.

The issuance of our preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by our stockholders and may adversely affect voting and other rights of holders of our common stock. In addition, issuance of preferred stock, while providing desirable flexibility in connection with possible acquisitions, financings and other corporate purposes, could make it more difficult for a third party to acquire a majority of our outstanding shares of voting stock. At present, we have no plans to issue any shares of preferred stock.

Options

As of January 31, 2014, we had outstanding options to purchase an aggregate of 29,554,972 shares of our common stock, with a weighted average exercise price of approximately $0.84 per share, under the 2004 Plan.

Warrants

As of January 31, 2014, we had outstanding warrants to purchase up to 31 shares of our common stock at an exercise price of $950 per share. These warrants are exercisable at any time on or before November 27, 2016, with respect to 13 shares, and August 8, 2017, with respect to 18 shares.

As of January 31, 2014, we had outstanding warrants to purchase up to 1,510,623 shares of our common stock, on an as-converted basis, at an exercise price of $0.1630 per share. These warrants are exercisable at any time on or before February 28, 2015, with respect to 122,700 shares, March 25, 2015, with respect to 277,500 shares, July 14, 2015, with respect to 122,699 shares, July 15, 2015, with respect to 184,044 shares, June 5, 2016, with respect to 128,834 shares, February 26, 2020, with respect to 521,472 shares, and June 30, 2020 with respect to 153,374 shares.

As of January 31, 2014, we had an outstanding warrant to purchase 52,054 shares of our common stock, on an as-converted basis, at an exercise price of $1.4408 per share. This warrant is exercisable at any time on or before October 18, 2023.

In February 2014, we issued warrants to purchase 711,462 shares of our common stock at an exercise price of $2.53 per share. These warrants are exercisable, once vested, at any time on or before February 20, 2024.

Registration Rights

After the completion of this offering, certain holders of our common stock and warrants to purchase our common stock will be entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in our Stockholders' Agreement. The shares of common stock into which certain of our warrants are convertible shall be deemed "Registrable Securities" for purposes of the registration rights under the Stockholders' Agreement. We and certain holders of our preferred stock are parties to the Stockholders' Agreement. The registration rights set forth in the Stockholders' Agreement will expire five years following the completion of this offering, or, with respect to any particular stockholder, when such stockholder is able to sell all of its shares pursuant to Rule 144 of the Securities Act or a similar exemption during any 90-day period. We will pay the registration expenses (other than underwriting discounts, commissions and stock transfer taxes) of the holders of the shares registered pursuant to the registrations described below. In an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares such holders may include. Our stockholders have waived their rights under the Stockholders' Agreement (i) to notice of this offering and (ii) to include their registrable shares in this offering. In addition, each stockholder that has registration rights has agreed not to sell, otherwise dispose of any securities or exercise registration rights without the prior written consent of the underwriters for a period of 180 days after the date of this prospectus, subject to certain terms and conditions. See "Underwriting" for additional information regarding such restrictions.

Demand Registration Rights

After the completion of this offering, pursuant to the Stockholders' Agreement, the holders of up to approximately shares of our common stock (including shares of common stock issuable upon exercise of our warrants) will be entitled to certain demand registration rights. At any time beginning 180 days after the effective date of this offering, the holders of at least 30% of these shares can request that we register the offer and sale of their shares. We are obligated to effect only two such registrations. Such request for registration must cover securities the anticipated aggregate public offering price of which is expected to exceed $10,000,000. If we determine that it would be seriously detrimental to us or our stockholders to effect such a demand registration, we have the right to defer such registration, not more than once in any 12-month period, for a period of up to 120 days from the date of receipt of the request from such holders.

Form S-3 Registration Rights

After the completion of this offering, pursuant to the Stockholders' Agreement, the holders of up to approximately shares of our common stock (including shares of common stock issuable upon exercise of our warrants) will be entitled to certain Form S-3 registration rights. Any such holder may make a written request that we register the offer and sale of its shares on a registration statement on Form S-3 if we are eligible to file a registration statement on Form S-3 so long as the request covers securities the anticipated aggregate public offering price of which is at least $1,000,000. These stockholders may make an unlimited number of requests for registration on Form S-3; however, we will not be required to effect a registration on Form S-3 if we have effected two such registrations within the 12-month period preceding the date of the request. In addition, we will not be required to effect such a registration in any jurisdiction in which we would be required to qualify to do business or to execute a general consent to service of process in effecting such registration. Finally, if we determine that it would be seriously detrimental to us and our stockholders to effect such a registration, we have the right to defer such registration, not more than once in any 12-month period, for a period of up to 90 days after receipt of the request of such holder or holders.

Piggyback Registration Rights

After the completion of this offering, pursuant to the Stockholders' Agreement, if we propose to register the offer and sale of our common stock under the Securities Act, in connection with the public offering of such common stock the holders of up to approximately shares of our common stock (including shares of common stock issuable upon exercise of our warrants) will be entitled to certain "piggyback" registration rights allowing the holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to (1) a Form S-3 registration, (2) a registration related to any employee benefit plan or (3) a registration on any registration form which does not include substantially the same information as would be required to be included in a registration statement covering the public offering of our common stock, the holders of these shares are entitled to notice of the registration and have the right, subject to certain limitations, to include their shares in the registration.

Anti-takeover Provisions

Delaware Anti-takeover Law

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which 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 by which such stockholder became an interested stockholder commenced, excluding

for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by 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

- on or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 ⅔% 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 involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to 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; and
- 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 at any time within three years immediately prior to the date of determination and any entity or person affiliated with or controlling or controlled by the entity or person.

Amended and Restated Certificate of Incorporation and Amended and Restated Bylaw Provisions

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- provide that our board of directors is classified into three classes of directors;
- provide that stockholders may remove directors only for cause;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- provide that our stockholders may not take action by written consent, and may only take action at annual or special meetings of our stockholders;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner, and also specify requirements as to the form and content of a stockholder’s notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our chief executive officer or the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors;

- provide that stockholders will be permitted to amend our amended and restated bylaws only upon receiving at least 66 2⁄3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class; and
- provide that certain provisions of our amended and restated certificate of incorporation may only be amended upon receiving at least 66 2⁄3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote, voting together as a single class.

Transfer agent and registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

Listing

We intend to apply to have our shares of common stock approved for listing on the New York Stock Exchange under the symbol “FIVN.”

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of common stock in the public market could adversely affect prevailing market prices. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of contractual and legal restrictions on resale described below, sales of substantial amounts of shares of common stock in the public market after the restrictions lapse could adversely affect the prevailing market price for our shares of common stock as well as our ability to raise equity capital in the future.

Based on the number of shares of common stock outstanding as of , 2014, upon completion of this offering, shares of common stock will be outstanding, assuming no exercise of the underwriters' option to purchase additional shares and no exercise of options. Only the shares sold in this offering will be freely tradable unless purchased by our "affiliates" as that term is defined in Rule 144 under the Securities Act. Except as set forth below, the remaining shares of common stock outstanding after this offering will be "restricted securities" as that term is defined in Rule 144 under the Securities Act and may be subject to lock-up agreements. These remaining shares will generally become available for sale in the public market as follows:

- no restricted shares will be eligible for immediate sale upon the closing of this offering;
- shares will be eligible for sale after 90 days from the date of this prospectus (subject to compliance with the terms of the lock-up agreement entered into by such holders);
- shares will be eligible for sale upon expiration of the lock-up agreements 181 days after the date of this prospectus; and
- the remainder of the restricted shares will be eligible for sale from time to time thereafter upon expiration of their respective one-year holding periods, subject to any volume limitations applicable to their holders, but could be sold earlier if the holders exercise any available registration rights.

Rule 144

In general, under Rule 144 as currently in effect, a person or persons who is an affiliate, or whose shares are aggregated and who owns shares that were acquired from the issuer or an affiliate at least six months ago, would be entitled to sell, within any three-month period, a number of shares that does not exceed the greater of (i) 1% of our then outstanding shares of common stock, which would be approximately shares of common stock immediately after this offering, or (ii) an amount equal to the average weekly reported volume of trading in our common stock on all national securities exchanges and/or reported through the automated quotation system of registered securities associations during the four calendar weeks preceding the date on which notice of the sale is filed with the SEC. Sales in reliance on Rule 144 are also subject to other requirements regarding the manner of sale, notice and availability of current public information about us.

A person or persons whose common shares are aggregated, and who is not deemed to have been one of our affiliates at any time during the 90 days immediately preceding the sale, may sell restricted securities in reliance on Rule 144(b)(1) without regard to the limitations described above, subject to our compliance with Exchange Act reporting obligations for at least three months before the sale, and provided that six months have expired since the date on which the same restricted securities were acquired from us or one of our affiliates, and provided further that such sales comply with the current public information provision of Rule 144 (until the securities have been held for one year). As defined in Rule 144, an "affiliate" of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that same issuer.

Rule 701

Subject to certain limitations on the aggregate offering price of a transaction and other conditions, Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written compensatory plan

or contract, including the 2004 Plan, may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under "Underwriting" and will become eligible for sale upon the expiration of the restrictions set forth in those agreements. We will file a registration statement on Form S-8 under the Securities Act to register common stock issuable under our equity incentive plans.

Lock-up agreements

We have agreed that we will not, without the prior written consent of the Representatives, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise) for a period of 180 days after the date of this prospectus, subject to certain exceptions.

All of our directors and executive officers and holders of substantially all of our outstanding stock, have agreed that, without the prior written consent of the Representatives, they will not directly or indirectly, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities directly or indirectly convertible into or exercisable or exchangeable for common stock (including without limitation, common stock or such other securities which may be deemed to be beneficially owned in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant) or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or such other securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock, for a period of 180 days after the date of this prospectus. Each of the lock-up agreements executed by our directors, executive officers and stockholders contain certain exceptions, including the disposition of shares of common stock purchased in open market transactions after the consummation of this offering and the establishment of a Rule 10b5-1 trading plan; provided, in the case of a 10b5-1 trading plan, that (i) such plan does not provide for the transfer of shares of common stock during the 180-day period, and (ii) no filing by any party under the securities laws or other public announcement shall be voluntarily made in connection with the establishment of such plan, and to the extent a public announcement or filing by any party is required under the securities laws regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of common stock may be made under such plan during the 180-day period. See "Underwriting."

Registration Rights

Upon the closing of this offering, the holders of shares of common stock (including shares of common stock issuable upon exercise of our warrants) will be entitled to rights with respect to the registration of their shares of common stock under the Securities Act, subject to the lock-up arrangement described above. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act (except for shares held by affiliates) immediately upon the effectiveness of such registration. Any sales of securities by these stockholders could adversely affect the trading price of our shares of common stock. See "Description of Capital Stock — Registration Rights."

Registration Statement on Form S-8

We intend to file a registration statement on Form S-8 under the Securities Act promptly after the completion of this offering to register shares of our common stock subject to outstanding options, as well as reserved for future issuance, under our equity incentive plans, including our ESPP. The registration statement on Form S-8 is expected to become effective immediately upon filing, and shares of our common stock covered by the registration statement will then become eligible for sale in the public market, subject to the Rule 144 limitations applicable to affiliates, vesting restrictions and any applicable market standoff agreements and lock-up agreements. See “Executive Compensation — Employee Benefit and Stock Plans” for a description of our equity incentive plans.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS RELEVANT TO NON-U.S HOLDERS

The following is a summary of certain U.S. federal income tax considerations relevant to the ownership and disposition of our common stock by non-U.S. holders, but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, Treasury regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those set forth below.

This summary is limited to non-U.S. holders who purchase our common stock issued pursuant to this offering and who hold shares of our common stock as capital assets within the meaning of Section 1221 of the Code (generally, for investment purposes). This summary does not address the tax considerations arising under the laws of any non-U.S., state or local jurisdiction or under U.S. federal gift and estate tax laws. In addition, this discussion does not address tax considerations applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

- banks, insurance companies or other financial institutions;
- persons subject to the alternative minimum tax;
- tax-exempt organizations;
- controlled foreign corporations, passive foreign investment companies and corporations that accumulate earnings to avoid United States federal income tax;
- brokers or dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- persons that own, or are deemed to own, more than five percent of our capital stock (except to the extent specifically set forth below);
- certain former citizens or former long-term residents of the United States;
- persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction" or other risk reduction transaction; or
- persons deemed to sell our common stock under the constructive sale provisions of the Code.

In addition, if a partnership (including an entity or arrangement classified as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner generally will depend on the status of the partner and upon the activities of the partnership. Accordingly, partnerships that hold our common stock, and partners in such partnerships, should consult their tax advisors.

YOU ARE URGED TO CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO YOUR PARTICULAR SITUATION, AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE UNITED STATES FEDERAL ESTATE OR GIFT TAX RULES, UNITED STATES ALTERNATIVE MINIMUM TAX RULES OR UNDER THE LAWS OF ANY STATE, LOCAL, NON-U.S. OR OTHER TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

Non-U.S. Holder Defined

For purposes of this discussion, you are a non-U.S. holder if you are any holder (other than a partnership or entity or arrangement classified as a partnership for U.S. federal income tax purposes) that is not:

- an individual citizen or resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in the United States or under the laws of the United States or any political subdivision thereof;
- an estate whose income is subject to U.S. federal income tax regardless of its source; or

- a trust (x) whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (y) which has made an election to be treated as a U.S. person.

Distributions

We have not made any distributions on our common stock, and we do not plan to make any distributions for the foreseeable future. However, if we do make distributions on our common stock, other than certain pro rata distributions of common stock, those payments will constitute dividends for U.S. tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. To the extent those distributions exceed both our current and our accumulated earnings and profits, they will constitute a return of capital and will first reduce your basis in our common stock, but not below zero, and then will be treated as gain from the sale of stock, subject to the tax treatment described below in "— Gain on Sale or Other Taxable Disposition of Common Stock."

Any dividend paid to you generally will be subject to U.S. withholding tax at a rate of 30% of the gross amount of the dividend, or such lower rate as may be specified by an applicable income tax treaty, except to the extent that the dividends are "effectively connected" dividends, as described below. In order to be eligible for a reduced treaty rate, you must provide us with an IRS Form W-8BEN or other appropriate version of IRS Form W-8 certifying qualification for the reduced rate. A non-U.S. holder of shares of our common stock eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent, which then will be required to provide certification to us or our paying agent, either directly or through other intermediaries.

We may withhold up to 30% of the gross amount of the entire distribution even if greater than the amount constituting a dividend, as described above, to the extent provided for in the Treasury Regulations. If tax is withheld on the amount of a distribution in excess of the amount constituting a dividend, then a refund of any such excess amounts may be obtained if a claim for refund is timely filed with the Internal Revenue Service, or the IRS.

Dividends received by you that are effectively connected with your conduct of a U.S. trade or business (and, if an income tax treaty applies, attributable to a permanent establishment or fixed base maintained by you in the United States) are exempt from such withholding tax. In order to obtain this exemption, you must provide us with an IRS Form W-8ECI or other applicable IRS Form W-8 properly certifying such exemption. Such effectively connected dividends, although not subject to withholding tax, are generally taxed at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition, if you are a corporate non-U.S. holder, dividends you receive that are effectively connected with your conduct of a U.S. trade or business may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

Gain on Sale or Other Taxable Disposition of Common Stock

You generally will not be required to pay U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our common stock unless:

- the gain is effectively connected with your conduct of a U.S. trade or business (and, if an income tax treaty applies, the gain is attributable to a permanent establishment or fixed base maintained by you in the United States);
- you are an individual who is present in the United States for a period or periods aggregating 183 days or more during the calendar year in which the sale or disposition occurs and certain other conditions are met; or
- our common stock constitutes a U.S. real property interest by reason of our status as a "United States real property holding corporation" for U.S. federal income tax purposes, or a USRPHC, at any time within the shorter of the five-year period preceding the disposition or your holding period for our common stock.

In general, we would be a USRPHC if interests in U.S. real property comprised at least 50% of the fair market value of our assets. We believe that we are not currently and will not become a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of our other business assets, there can be no assurance that we will not become a USRPHC in the future. Even if we become a USRPHC, however, as long as our common stock is regularly traded on an established securities market, such common stock will be treated as a U.S. real property interest only if you actually or constructively hold more than five percent of such regularly traded common stock at any time during the applicable period described above.

If you are a non-U.S. holder described in the first bullet above, you will generally be required to pay tax on the gain derived from the sale (net of certain deductions or credits) under regular graduated U.S. federal income tax rates generally applicable to U.S. persons, and corporate non-U.S. holders described in the first bullet above may be subject to branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. If you are an individual non-U.S. holder described in the second bullet above, you will be required to pay a flat 30% tax on the gain derived from the sale, which tax may be offset by U.S. source capital losses (even though you are not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses. You should consult any applicable income tax or other treaties that may provide for different rules.

Backup Withholding and Information Reporting

Generally, we must report annually to the IRS the amount of dividends paid to you, your name and address, and the amount of tax withheld, if any. A similar report will be sent to you. Pursuant to applicable income tax treaties or other agreements, the IRS may make these reports available to tax authorities in your country of residence.

Payments of dividends or of proceeds on the disposition of stock made to you may be subject to additional information reporting and backup withholding at a current rate of 28% unless you establish an exemption, for example by properly certifying your non-U.S. status on a Form W-8BEN or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that you are a U.S. person or that the conditions of any other exemption are not, in fact, satisfied.

Backup withholding is not an additional tax; rather, the U.S. income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may generally be obtained from the IRS, provided that the required information is furnished to the IRS in a timely manner.

Foreign Account Tax Compliance Act (or FATCA)

New rules under Sections 1471 through 1474 of the Code (“FATCA”) generally will impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our common stock paid to a “foreign financial institution” (as specially defined under these rules) unless such institution enters into (or is otherwise subject to) an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). FATCA also will generally impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our common stock paid to a non-financial foreign entity unless such entity provides the withholding agent with a certification identifying the direct and indirect U.S. owners of the entity or certifies that it does not have any substantial U.S. owners. Foreign financial institutions and non-financial foreign entities located in jurisdictions that have an intergovernmental agreement with the United States governing these withholding and reporting requirements may be subject to different rules. If an investor does not provide us with the information necessary to comply with the legislation, it is possible that distributions to such investor of certain withholdable payments, such as dividends, will be subject to the 30% withholding tax. Under certain transition rules, any obligation to withhold under FATCA with respect to dividends on our common stock will not begin until July 1, 2014 and with respect to gross proceeds on a

disposition of our common stock will not begin until January 1, 2017. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. Prospective investors are encouraged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in our common stock.

THE PRECEDING DISCUSSION OF UNITED STATES FEDERAL TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR UNITED STATES FEDERAL, STATE AND LOCAL AND NON-U.S. TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

UNDERWRITING

J.P. Morgan Securities LLC and Barclays Capital Inc., or the Representatives, are acting as the representatives of the underwriters in connection with this offering. Under the terms of an underwriting agreement, which will be filed as an exhibit to the registration statement, each of the underwriters named below has severally agreed to purchase from us, and we have severally agreed to sell, the respective number of shares of common stock shown opposite its name below:

Underwriters	Number of Shares
J.P. Morgan Securities LLC	
Barclays Capital Inc.	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Canaccord Genuity Inc.	
Needham & Company, LLC	
Pacific Crest Securities LLC	
Total	

The underwriting agreement provides that the underwriters' obligation to purchase shares of common stock depends on the satisfaction of the conditions contained in the underwriting agreement, including:

- the obligation to purchase all of the shares of common stock offered hereby (other than those shares of common stock covered by their option to purchase additional shares as described below), if any of the shares are purchased;
- the representations and warranties made by us to the underwriters are true;
- there is no material adverse change in our business or in the financial markets; and
- we deliver customary closing documents to the underwriters.

Commissions and Expenses

The following table summarizes the underwriting discounts and commissions we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to additional shares from us. The underwriting fee is the difference between the initial price to the public and the amount the underwriters pay to us for the shares we have agreed to sell to them.

Paid by Us	No Exercise	Full Exercise
Per Share	$	$
Total	$	$

The Representatives have advised us that the underwriters propose to offer the shares of common stock directly to the public at the public offering price on the cover of this prospectus and to selected dealers, which may include the underwriters, at such offering price less a selling concession not in excess of $ per share. After the offering, the Representatives may change the offering price and other selling terms.

The expenses of this offering, which are payable by us, are estimated to be approximately $ million (excluding underwriting discounts and commissions), which includes approximately $ that we have agreed to reimburse the underwriters for certain FINRA-related expenses incurred by them in connection with this offering.

Option to Purchase Additional Shares

We have granted the underwriters an option exercisable for 30 days after the date of this prospectus to purchase, from time to time, in whole or in part, up to an aggregate of shares of common stock at the

public offering price less underwriting discounts and commissions. To the extent that the underwriters exercise this option, each underwriter will be committed, so long as the conditions of the underwriting agreement are satisfied, to purchase a number of additional shares of common stock proportionate to that underwriter's initial commitment as indicated in the preceding table, and we will be obligated to sell the additional shares of common stock to the underwriters.

Lock-Up Agreements

We have agreed that we will not, without the prior written consent of the Representatives, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise) for a period of 180 days after the date of this prospectus, subject to certain exceptions.

All of our directors and executive officers and holders of substantially all of our outstanding stock, have agreed that, without the prior written consent of the Representatives, they will not directly or indirectly, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities directly or indirectly convertible into or exercisable or exchangeable for common stock (including without limitation, common stock or such other securities which may be deemed to be beneficially owned in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant) or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or such other securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock, for a period of 180 days after the date of this prospectus. Each of the lock-up agreements executed by our directors, executive officers and stockholders contain certain exceptions, including the disposition of shares of common stock purchased in open market transactions after the consummation of this offering and the establishment of a Rule 10b5-1 trading plan; provided, in the case of a 10b5-1 trading plan, that (i) such plan does not provide for the transfer of shares of common stock during the 180-day period, and (ii) no filing by any party under the securities laws or other public announcement shall be voluntarily made in connection with the establishment of such plan, and to the extent a public announcement or filing by any party is required under the securities laws regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of common stock may be made under such plan during the 180-day period.

The Representatives, in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time with or without notice. When determining whether or not to release common stock and other securities from lock-up agreements, the Representatives will consider, among other factors, the holder's reasons for requesting the release, the number of shares of common stock and other securities for which the release is being requested and market conditions at the time. In the event the Representatives release any common stock and other securities subject to the lock-up agreements held by our executive officers and directors, we have agreed to publicly announce the impending release or waiver at least two business days before the effective date of the release or waiver.

As described below under "Directed Share Program," any participants in the Directed Share Program shall be subject to a 180-day lock up with respect to any shares sold to them pursuant to that program. This lock up will have similar restrictions as the lock-up agreement described above for the officers and directors. Any shares sold in the Directed Share Program to our directors or officers shall be subject to the lock-up agreement described above.

Directed Share Program

At our request, the underwriters have reserved for sale at the initial public offering price up to 5% of the common stock being offered by this prospectus for sale to our employees, executive officers, directors, business associates and related persons who have expressed an interest in purchasing common stock in this offering. All participants that purchase shares of common stock as part of the directed share program will be subject to the 180-day lock-up restriction as described above in "—Lock-Up Agreements." We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Any reserved shares of our common stock that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of our common stock offered by this prospectus. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with sales of the reserved shares.

Offering Price Determination

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be negotiated between the Representatives and us. In determining the initial public offering price of our common stock, the Representatives will consider:

- the history and prospects for the industry in which we compete;
- our financial information;
- an assessment of management and our business potential and earnings prospects;
- the prevailing securities market conditions at the time of this offering; and
- the recent market prices of, and the demand for, publicly traded shares of generally comparable companies.

Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, liabilities arising from breaches of the representations and warranties contained in the underwriting agreement, and to contribute to payments that the underwriters may be required to make for these liabilities.

Stabilization, Short Positions and Penalty Bids

The underwriters may engage in stabilizing transactions, short sales and purchases to cover positions created by short sales, and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of our common stock, in accordance with Regulation M under the Exchange Act.

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- A short position involves a sale by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase in the offering, which creates the syndicate short position. This short position may be either a covered short position or a naked short position. In a covered short position, the number of shares involved in the sales made by the underwriters in excess of the number of shares they are obligated to purchase is not greater than the number of shares that they may purchase by exercising their option to purchase additional shares. In a naked short position, the number of shares involved is greater than the number of shares in their option to purchase additional shares. The underwriters may close out any short position by either exercising their option to purchase additional shares and/or purchasing shares in the open market. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through their option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.

- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions.
- Penalty bids permit the Representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the NYSE or otherwise and, if commenced, may be discontinued at any time.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the Representatives will engage in these stabilizing transactions or that any transaction, once commenced, will not be discontinued without notice.

Electronic Distribution

A prospectus in electronic format may be made available on internet sites or through other online services maintained by one or more of the underwriters and/or selling group members participating in this offering, or by their affiliates. In those cases, prospective investors may view offering terms online and, depending upon the particular underwriter or selling group member, prospective investors may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares for sale to online brokerage account holders. Any such allocation for online distributions will be made by the Representatives on the same basis as other allocations.

Other than the prospectus in electronic format, the information on any underwriter's or selling group member's website and any information contained in any other website maintained by an underwriter or selling group member is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter or selling group member in its capacity as underwriter or selling group member and should not be relied upon by investors in deciding whether to purchase any shares of common stock.

Stock Exchange

We intend to apply to list our shares of common stock on the NYSE under the symbol "FIVN."

Discretionary Sales

The underwriters have informed us that they do not intend to confirm sales to discretionary accounts that exceed 5% of the total number of shares offered by them.

Stamp Taxes

If you purchase shares of common stock offered in this prospectus, you may be required to pay stamp taxes and other charges under the laws and practices of the country of purchase, in addition to the offering price listed on the cover page of this prospectus.

Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities.

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and certain of our executive officers and may provide from time to time in the future certain commercial banking, financial

advisory, investment banking and other services for us and such affiliates and executive officers in the ordinary course of their business, including personal loans to certain of our executive officers, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of the issuer. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Selling Restrictions

The common stock is being offered for sale in those jurisdictions in the United States, Europe and elsewhere where it is lawful to make such offers.

European Economic Area

In relation to each Member State of the European Economic Area (each, a "Relevant Member State"), no offer of shares may be made to the public in that Relevant Member State other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of shares shall require the Company or the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive. In the case of any shares being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the representatives and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

This prospectus has been prepared on the basis that any offer of shares in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Relevant Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the Company nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

For the purpose of the above provisions, the expression "an offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

United Kingdom

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). The securities are only available to and any invitation, offer or agreement to subscribe purchase or otherwise acquire such securities will be enjoyed in only with relevant persons. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Dubai International Financial Centre

This prospectus supplement relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The shares to which this prospectus supplement relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus supplement you should consult an authorized financial advisor.

Australia

This prospectus is not a formal disclosure document and has not been lodged with the Australian Securities and Investments Commission, or ASIC. It does not purport to contain all information that an investor or their professional advisers would expect to find in a prospectus for the purposes of Chapter 6D.2 of the Australian Corporations Act 2001, or the Act, in relation to the securities or our company.

This prospectus is not an offer to retail investors in Australia generally. Any offer of securities in Australia is made on the condition that the recipient is a "sophisticated investor" within the meaning of section 708(8) of the Act or a "professional investor" within the meaning of section 708(11) of the Act, or on condition that the offer to that recipient can be brought within the exemption for 'Small-Scale Offerings' (within the meaning of section 708(1) of the Act). If any recipient does not satisfy the criteria for these exemptions, no applications for securities will be accepted from that recipient. Any offer to a recipient in Australia, and any agreement arising from acceptance of the offer, is personal and may only be accepted by the recipient.

If a recipient on-sells their securities within 12 months of their issue, that person will be required to lodge a disclosure document with ASIC unless either:

- the sale is pursuant to an offer received outside Australia or is made to a "sophisticated investor" within the meaning of 708(8) of the Act or a "professional investor" within the meaning of section 708(11) of the Act; or
- it can be established that our company issued, and the recipient subscribed for, the securities without the purpose of the recipient on-selling them or granting, issuing or transferring interests in, or options or warrants over them.

Hong Kong

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of the issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) or any rules made thereunder.

Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person, or any person pursuant to Section 275 (1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire

share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole whole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares under Section 275 except: (i) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (ii) where no consideration is given for the transfer; (iii) by operation of law; or (iv) as specified in Section 276(7) of the SFA.

By accepting this prospectus, the recipient hereof represents and warrants that he is entitled to receive it in accordance with the restrictions set forth above and agrees to be bound by limitations contained herein. Any failure to comply with these limitations may constitute a violation of law.

LEGAL MATTERS

Jones Day, Silicon Valley, will pass upon the validity of our shares of common stock offered by this prospectus. The underwriters have been represented by Goodwin Procter LLP, Menlo Park, California.

EXPERTS

The consolidated financial statements of Five9, Inc. as of December 31, 2012 and 2013, and for each of the years in the three-year period ended December 31, 2013, have been included herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

The financial statements of Face It, Corp., as of and for the years ended December 31, 2011 and 2012, included in this registration statement and prospectus have been audited by Moss Adams LLP, independent auditors, as stated in their report appearing in the Registration Statement. Such financial statements have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

CHANGE IN ACCOUNTANTS

(a) Dismissal of Independent Auditors

We dismissed Deloitte & Touche LLP (“Deloitte”) as our independent auditors effective June 5, 2012. Deloitte issued an audit report, dated September 1, 2011, on our consolidated financial statements for the three years ended December 31, 2010. Deloitte did not perform any audit or issue any audit reports on our consolidated financial statements subsequent to the year ended December 31, 2010. Deloitte subsequently communicated its audit report should no longer be associated with the consolidated financial statements for the year ended December 31, 2010. Deloitte has no outstanding audit reports associated with the Company’s consolidated financial statements.

During our fiscal years ended December 31, 2010 and 2011, and the subsequent period, (i) there were no disagreements (as that term is used in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) between the Company and Deloitte on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Deloitte, would have caused Deloitte to originally make reference thereto in its report that should no longer be relied upon on our audited consolidated financial statements for the year ended December 31, 2010, and (ii) there were no “reportable events” as such term is defined in Item 304(a)(1)(v) of Regulation S-K (a “Reportable Event”) other than a material error the Company communicated existed in its previously issued consolidated financial statements for the year ended December 31, 2010 that resulted in Deloitte’s communication that its audit report should no longer be associated with such consolidated financial statements and two material weaknesses in our internal control over financial reporting identified by Deloitte during its audit of our financial statements for our fiscal year ended December 31, 2010. With respect to the two material weaknesses, the Company did not have a sufficient number of accounting personnel with adequate technical expertise to ensure the preparation of its consolidated financial statements in accordance with U.S. generally accepted accounting principles and the Company had design deficiencies in general computer controls. Our audit committee discussed the material weaknesses with Deloitte and the Company authorized Deloitte to respond fully to the inquiries of KPMG LLP (“KPMG”) concerning these material weaknesses.

We have provided Deloitte with a copy of the disclosures set forth under the heading “Change in Accountants” included in this prospectus and have requested that Deloitte furnish a letter addressed to the Securities Exchange Commission stating whether or not Deloitte agrees with statements related to them made by the Company under the heading “Change in Accountants” in this prospectus. A copy of that letter is filed as Exhibit 16.1 to the registration statement of which this prospectus forms a part.

(b) Newly Appointed Independent Registered Public Accountant

We engaged KPMG as our independent registered public accounting firm effective June 18, 2012. The decision to change our principal independent registered public accounting firm was approved by our audit committee.

During our fiscal years ended December 31, 2010 and 2011, and the subsequent period preceding our engagement of KPMG as our independent registered public accounting firm in June 2012, we did not consult with KPMG on matters that involved the application of accounting principles to a specified transaction, the type of audit opinion that might be rendered on our financial statements or any other matter that was either the subject of a disagreement or Reportable Event disclosed above.

Our audit committee discussed the material error disclosed above in (a) with KPMG and the Company authorized KPMG to respond fully to the inquiries of Deloitte concerning the material error.

We remediated the material weaknesses disclosed above prior to December 31, 2012.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to our shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. Some items are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the shares of common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus as to the contents of any contract, agreement or any other document are summaries of the material terms of such contract, agreement or other document. With respect to each of these contracts, agreements or other documents filed as an exhibit to the registration statement, reference is made to the exhibits for a more complete description of the matter involved. A copy of the registration statement, and the exhibits and schedules thereto, may be inspected without charge at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, and copies of these materials may be obtained from those offices upon the payment of the fees prescribed by the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facility. The SEC maintains a web site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. The address of the SEC's website is http://www.sec.gov.

Upon completion of this offering, we will be required to file periodic reports, proxy statements and other information with the SEC pursuant to the Exchange Act. To comply with these requirements, we will file periodic reports, proxy statements and other information with the SEC. In addition, we intend to make available on or through our internet website, *http://www.five9.com*, our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Five9, Inc.:

We have audited the accompanying consolidated balance sheets of Five9, Inc. and subsidiaries (the Company) as of December 31, 2013 and 2012, and the related consolidated statements of operations and comprehensive loss, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 2013. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Five9, Inc. and subsidiaries as of December 31, 2013 and 2012, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2013, in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

Santa Clara, California
March 3, 2014

FIVE9, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

	December 31, 2012	December 31, 2013	Pro Forma Stockholders' Equity December 31, 2013 (unaudited)
ASSETS			
Current assets:			
Cash and cash equivalents	$ 5,961	$ 17,748	
Short-term investments	2,490	—	
Accounts receivable, net	5,441	6,970	
Prepaid expenses and other current assets	942	1,651	
Total current assets	14,834	26,369	
Property and equipment, net	10,874	11,607	
Intangible assets, net	—	3,065	
Goodwill	—	11,798	
Other assets	899	3,439	
Total assets	$ 26,607	$ 56,278	
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)			
Current liabilities:			
Accounts payable	$ 4,649	$ 4,306	
Accrued and other current liabilities	3,470	5,929	
Accrued federal fees	401	4,206	
Sales tax liability	105	98	
Notes payable	415	1,522	
Capital leases	3,572	4,857	
Deferred revenue	4,269	4,375	
Total current liabilities	16,881	25,293	
Revolving line of credit	—	12,500	
Accrued federal fees — less current portion	7,703	—	
Sales tax liability	3,195	5,350	
Notes payable — less current portion	16	7,095	
Capital leases — less current portion	4,191	4,358	
Convertible preferred stock warrant liability	1,979	3,935	$ —
Other long-term liabilities	709	715	
Total liabilities	34,674	59,246	
Commitments and contingencies (Note 10)			
Stockholders' equity (deficit):			
Convertible preferred stock, $0.001 par value; 108,458 and 125,115 authorized shares as of December 31, 2012 and 2013, respectively; 106,947 and 122,216 shares issued and outstanding as of December 31, 2012 and 2013, respectively; aggregate liquidation preference of $32,303 and $54,303 as of December 31, 2012 and 2013, respectively, actual; no shares issued and outstanding, pro forma (unaudited)	31,940	53,734	—
Common stock, $0.001 par value — 155,000 and 200,000 authorized shares as of December 31, 2012 and 2013, respectively; 14,016, and 21,975 shares issued and outstanding as of December 31, 2012 and 2013, respectively, actual; 145,754 shares issued and outstanding, pro forma (unaudited)	14	22	146
Additional paid-in capital	19,461	34,072	91,617
Accumulated deficit	(59,482)	(90,796)	(90,796)
Total stockholders' equity (deficit)	(8,067)	(2,968)	$ 967
Total liabilities and stockholders' equity (deficit)	$ 26,607	$ 56,278	

See accompanying notes to consolidated financial statements.

FIVE9, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except per share data)

	Year Ended December 31,		
	2011	2012	2013
Revenue	$ 43,188	$ 63,822	$ 84,132
Cost of revenue	24,563	39,306	48,807
Gross profit	18,625	24,516	35,325
Operating expenses:			
Research and development	8,739	13,217	17,529
Sales and marketing	10,207	16,808	28,065
General and administrative	6,990	11,546	18,053
Total operating expenses	25,936	41,571	63,647
Loss from operations	(7,311)	(17,055)	(28,322)
Other expense, net:			
Change in fair value of convertible preferred stock warrant liability	(55)	(1,674)	(1,871)
Interest expense	(457)	(557)	(1,080)
Other income, net	15	14	29
Total other expense, net	(497)	(2,217)	(2,922)
Loss before provision for income taxes	(7,808)	(19,272)	(31,244)
Provision for income taxes	64	62	70
Net loss	$ (7,872)	$ (19,334)	$ (31,314)
Net loss per share:			
Basic and diluted	$ (0.75)	$ (1.46)	$ (1.95)
Shares used in computing net loss per share:			
Basic and diluted	10,538	13,280	16,026
Pro forma net loss per share (unaudited):			
Basic and diluted			$ (0.22)
Shares used in computing pro forma net loss per share (unaudited):			
Basic and diluted weighted average			133,389
Other comprehensive loss:			
Net loss	$ (7,872)	$ (19,334)	$ (31,314)
Other comprehensive loss	—	—	—
Comprehensive loss	$ (7,872)	$ (19,334)	$ (31,314)

See accompanying notes to consolidated financial statements.

FIVE9, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(in thousands)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2010	71,645	$ 11,533	8,637	$ 9	$ 18,416	$ (32,276)	$ (2,318)
Issuance of Series B-2 convertible preferred stock (net of issuance costs of $92)	18,566	7,908	—	—	—	—	7,908
Conversion of related-party notes payable into shares of Series A-2 convertible preferred stock	3,833	624	—	—	—	—	624
Issuance of common stock upon exercise of stock options	—	—	2,778	2	107	—	109
Stock-based compensation	—	—	—	—	357	—	357
Net loss and comprehensive loss	—	—	—	—	—	(7,872)	(7,872)
Balance as of December 31, 2011	94,044	20,065	11,415	11	18,880	(40,148)	(1,192)
Issuance of Series C-2 convertible preferred stock (net of issuance costs of $125)	12,903	11,875	—	—	—	—	11,875
Issuance of common stock upon exercise of stock options	—	—	2,601	3	117	—	120
Stock-based compensation	—	—	—	—	464	—	464
Net loss and comprehensive loss	—	—	—	—	—	(19,334)	(19,334)
Balance as of December 31, 2012	106,947	31,940	14,016	14	19,461	(59,482)	(8,067)
Issuance of Series D-2 convertible preferred stock (net of issuance costs of $200)	15,269	21,794	—	—	—	—	21,794
Issuance of common stock and stock options to acquire Face It, Corp.	—	—	5,691	6	12,062	—	12,068
Issuance of common stock upon exercise of stock options	—	—	1,794	2	600	—	602
Issuance of restricted common stock	—	—	474	—	—	—	—
Stock-based compensation	—	—	—	—	1,949	—	1,949
Net loss and comprehensive loss	—	—	—	—	—	(31,314)	(31,314)
Balance as of December 31, 2013	122,216	$ 53,734	21,975	$ 22	$ 34,072	$ (90,796)	$ (2,968)

See accompanying notes to consolidated financial statements.

FIVE9, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2011	2012	2013
Cash flows from operating activities:			
Net loss	$ (7,872)	$ (19,334)	$ (31,314)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	1,539	2,624	4,415
Provision for doubtful accounts	51	214	89
Stock-based compensation	357	464	1,949
Loss (gain) on the disposal of property and equipment	48	7	(5)
Non-cash interest expense	41	22	6
Changes in fair value of convertible preferred stock warrant liability	55	1,674	1,871
Changes in operating assets and liabilities:			
Accounts receivable	(1,898)	(2,125)	(1,574)
Prepaid expenses and other current assets	(243)	(350)	(322)
Other assets	(157)	18	(136)
Accounts payable	927	1,988	196
Accrued and other current liabilities	1,083	250	1,429
Accrued federal fees and sales tax liability	4,183	4,353	2,325
Deferred revenue	1,074	1,354	106
Other liabilities	113	540	6
Net cash used in operating activities	(699)	(8,301)	(20,959)
Cash flows from investing activities:			
Purchases of property and equipment	(3,142)	(2,680)	(554)
Cash paid to acquire Face It, Corp., net of cash acquired of $128	—	—	(2,836)
Cash restricted for financing activities	(700)	—	(121)
Purchases of short-term investments	(3,581)	(2,490)	—
Proceeds from sale of short-term investments	—	3,581	2,490
Net cash used in investing activities	(7,423)	(1,589)	(1,021)
Cash flows from financing activities:			
Net proceeds from the issuance of convertible preferred stock	7,908	11,875	21,794
Proceeds from exercise of common stock options	109	120	702
Proceeds from notes payable	—	—	5,000
Repayments of notes payable	(635)	(743)	(810)
Payments of capital leases	(520)	(2,185)	(4,598)
Proceeds from equipment financing	2,981	1,418	—
Payments for deferred offering costs	—	(12)	(821)
Proceeds from revolving line of credit	—	—	18,500
Repayments on revolving line of credit	—	—	(6,000)
Net cash provided by financing activities	9,843	10,473	33,767
Net increase in cash and cash equivalents	1,721	583	11,787
Cash and cash equivalents:			
Beginning of period	3,657	5,378	5,961
End of period	$ 5,378	$ 5,961	$ 17,748
Supplemental disclosures of cash flow data:			
Cash paid for interest	$ 415	$ 501	$ 1,088
Cash paid for income taxes	20	89	132
Non-cash investing and financing activities:			
Conversion of related-party notes payable to Series A-2 convertible preferred stock	$ 624	$ —	$ —
Equipment obtained under capital lease	442	5,455	4,747
Equipment purchased and unpaid at period-end	472	933	10
Common stock and stock options issued in connection with acquisition	—	—	12,068
Deferred initial public offering costs incurred but unpaid at period-end	—	—	1,346
Conversion of accrued federal fees to note payable, net	—	—	4,075

See accompanying notes to the consolidated financial statements.

FIVE9, INC.

Notes to Consolidated Financial Statements

1. Description of Business and Summary of Significant Accounting Policies

Five9, Inc. and its wholly-owned subsidiaries (the "Company") is a provider of cloud contact center software. The Company was incorporated in Delaware in 2001 and is headquartered in San Ramon, California. The Company has offices in Europe and Asia which primarily provide research, development and customer support services.

Basis of Presentation and Liquidity

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). All intercompany transactions and balances have been eliminated in consolidation. As the Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), it can delay the adoption of new accounting standards until those standards would otherwise apply to privately-held companies. However, the Company has elected to comply with all new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth publicly-held companies. Under the JOBS Act, such election is irrevocable.

The Company has funded its operations since 2008 through convertible preferred stock financings with net proceeds totaling $53,734,000 through December 31, 2013, sales of its solution and debt financing under its credit and leasing agreements. However, the Company has historically incurred losses and negative cash flows from operations. As of December 31, 2013, the Company had an accumulated deficit of $90,796,000. Management of the Company expects that operating losses and negative cash flows from operations will continue through at least December 31, 2014. The Company's existing sources of liquidity include cash and cash equivalents of $17,748,000 as of December 31, 2013 and an additional $19,561,000 of net proceeds from a borrowing under a loan facility entered into in February 2014, with the ability to draw down an additional $10,000,000 from the same loan facility for up to one year. The amount of funding available under the Company's line of credit at all times is subject to a borrowing capacity formula based on monthly recurring revenues and a dollar-based retention rate. The Company's line of credit and notes payable require maintenance of a minimum cash balance of $5,500,000. The Company's line of credit and loan facility entered in February 2014 include the occurrence of a material adverse event, as defined in the agreements and determined by the lender, as an event of default.

While management believes that the Company's existing sources of liquidity are adequate to fund operations through at least December 31, 2014, the Company may need to curtail future discretionary expenses related to sales and marketing and administration under various scenarios if the planned registered initial public offering is not closed as expected. In addition, the Company may need to raise additional debt or equity financing to fund operations until it generates positive cash flows from profitable operations. There can be no assurance that such additional debt or equity financing will be available on terms acceptable to the Company, or at all.

Unaudited Pro Forma Shareholders' Deficit

In connection with the initial public offering of the Company's common stock (the "IPO"), all of the Company's outstanding shares of convertible preferred stock will automatically convert into shares of common stock. In addition, the Company's outstanding convertible preferred stock warrants will automatically be converted into warrants to purchase common stock and the Company's convertible preferred stock warrant liability will be reclassified to additional paid-in capital. The unaudited pro forma stockholders' deficit information, as set forth in the accompanying consolidated balance sheets, gives effect to the automatic conversion of all outstanding shares of convertible preferred stock and reclassification of the carrying value of the convertible preferred stock warrant liability to additional paid-in capital as of December 31, 2013. The shares of common stock issuable and proceeds expected to be received in the IPO are excluded from such pro forma information.

Use of Estimates

The preparation of consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. The significant estimates made by management affect revenue, the allowance for doubtful accounts, intangible assets, including goodwill, loss contingencies, including the Company's accrual for federal fees and sales tax liability, accrued liabilities, stock-based compensation, fair value calculations of the convertible preferred stock warrant liability, provision for income taxes and uncertain tax positions. Management periodically evaluates such estimates and they are adjusted prospectively based upon such periodic evaluation. Actual results could differ from those estimates.

Foreign Currency

The functional currency of the Company's foreign subsidiaries is the U.S. dollar. For these subsidiaries, the monetary assets and liabilities are re-measured into U.S. dollars at the current exchange rate as of the balance sheet date, and all non-monetary assets and liabilities are re-measured into U.S. dollars at historical exchange rates. Revenues and expenses are converted using average rates in effect on a monthly basis. Exchange gains and losses resulting from foreign currency transactions were not significant and are reported in other expense, net for the years ended December 31, 2011, 2012 and 2013.

Cash and Cash Equivalents

The Company considers highly liquid instruments with a maturity of three months or less at the date of purchase to be cash equivalents. The Company deposits cash and cash equivalents with financial institutions that management believes are of high credit quality. Cash equivalents consist of money market funds and certificates of deposit with original maturities of three months or less, and are stated at cost plus accrued interest, which approximates fair value. As of December 31, 2012 and 2013, the Company had restricted cash of $700,000 classified in other assets on the accompanying consolidated balance sheets, which related to a letter of credit issued to the Company's landlord with respect to its lease obligation for its corporate offices. As of December 31, 2013, the Company had an additional $121,000 of restricted cash classified in other assets on the accompanying consolidated balance sheet under a letter of credit related to an insurance policy. As of December 31, 2013, the Company was also required to maintain $5,500,000 in deposits in connection with its credit agreement with a lender as a compensating balance.

Short-Term Investments

The Company considers all investments with original maturities of more than three months but less than one year to be short-term investments. As of December 31, 2012, short-term investments consisted of certificates of deposit with a financial institution with original maturities of twelve months. The carrying values of all of the Company's short-term investments approximate fair value. Interest and dividends are included in interest income when earned.

Concentration Risks

Financial instruments, which potentially subject the Company to significant concentrations of credit risk, consist primarily of cash and cash equivalents, short-term investments and accounts receivable. A significant portion of the Company's cash and cash equivalents is held at one large reputable financial institution. Amounts in excess of insured limits were $7,922,000 and $16,569,000 as of December 31, 2012 and 2013, respectively. The Company has not experienced any losses in such accounts.

As of December 31, 2012 and 2013, no single client represented more than 10% of accounts receivable. For the years ended December 31, 2011, 2012 and 2013, no single client represented more than 10% of revenue.

Allowance for Doubtful Accounts

The Company records a provision for doubtful accounts based on historical experience and a detailed assessment of the collectability of its accounts receivable. In estimating the allowance for doubtful accounts, management considers, among other factors, the aging of the accounts receivable, historical write-offs and the

creditworthiness of each client. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major client's ability to meet its financial obligations, the Company's estimate of the recoverability of the amounts due could be reduced by a material amount.

The following table presents the changes in the accounts receivable allowance for bad debt (in thousands):

	2011	2012	2013
Balance, beginning of period	$ 9	$ 23	$ 54
Add: bad debt expense	51	214	89
Less: write-offs, net of recoveries	(37)	(183)	(101)
Balance, end of period	$ 23	$ 54	$ 42

Property and Equipment, Net

Property and equipment is stated at cost less accumulated depreciation and amortization, and is depreciated using the straight-line method over the estimated useful lives of the assets. Computer hardware, software and furniture and fixtures are depreciated over useful lives ranging from three to seven years, and leasehold improvements are depreciated over the respective lease term or useful life, whichever is shorter. Maintenance and repairs are charged to expense as incurred, and improvements and betterments are capitalized. When assets are retired or otherwise disposed of, the cost and accumulated depreciation and amortization are removed from the consolidated balance sheet and any resulting gain or loss is reflected in the consolidated statements of operations and comprehensive loss in the period realized.

The Company evaluates the recoverability of property and equipment for possible impairment whenever events or circumstances indicate that the carrying amount of such assets or asset groups may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amounts to the future undiscounted cash flows the assets or asset groups are expected to generate. If such evaluation indicates that the carrying amount of the assets or asset groups is not recoverable, the carrying amount of such assets or asset groups is reduced to fair value. No impairment losses have been recognized in any of the periods presented.

Goodwill and Other Intangible Assets

The Company records goodwill when the consideration paid in a purchase acquisition exceeds the fair value of the net tangible assets and the identified intangible assets acquired. Goodwill is not amortized, but instead is required to be tested for impairment annually and under certain circumstances. The Company will perform testing for impairment of goodwill at the beginning of its fourth quarter, or as events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. A qualitative assessment is first made to determine whether it is necessary to perform quantitative testing. This initial assessment includes, among other things, consideration of: (i) past, current and projected future earnings and equity; (ii) recent trends and market conditions; and (iii) valuation metrics involving similar companies that are publicly-traded and acquisitions of similar companies, if available. If this initial qualitative assessment indicates that it is more likely than not that impairment exists, a second analysis will be performed, involving a comparison between the estimated fair values of the Company's reporting unit with its respective carrying amount including goodwill. If the carrying value exceeds estimated fair value, there is an indication of potential impairment, and a third analysis is performed to measure the amount of impairment. The third analysis involves calculating an implied fair value of goodwill by measuring the excess of the estimated fair value of the reporting unit over the aggregate estimated fair values of the individual assets less liabilities. If the carrying value of goodwill exceeds the implied fair value of goodwill, an impairment charge is recorded for the excess.

Other intangible assets, consisting of acquired developed technology, domain names, customer relationships and non-compete agreements, are carried at cost less accumulated amortization. All other intangible assets have been determined to have definite lives and are amortized on a straight-line basis over their estimated remaining economic lives, ranging from three to seven years. Amortization expense related to developed technology is included in cost of revenue. Amortization expense related to customer relationships is included in sales and marketing expense. Amortization expense related to domain names and non-compete agreements is included in general and administrative expense.

Revenue Recognition

The Company's revenue consists of subscription services and related usage as well as professional services. The Company charges clients monthly subscription fees for access to the Company's solution. The monthly subscription fees are primarily based on the number of agent seats, as well as the specific Virtual Contact Center ("VCC") functionalities and applications deployed by the client. Agent seats are defined as the maximum number of named agents allowed to concurrently access the VCC cloud platform. Clients typically have more named agents than agent seats. Multiple named agents may use an agent seat, though not simultaneously. Substantially all of the Company's clients purchase both subscriptions and related usage. A small percentage of its clients subscribe to its platform but purchase telephony usage directly from a wholesale telecommunications service provider. The Company does not sell telephony usage on a stand-alone basis to any client. The related usage fees are based on the volume of minutes used for inbound and outbound client interactions. The Company also offers bundled plans, generally for smaller deployments, whereby the client is charged a single monthly fixed fee per agent seat that includes both subscription and unlimited usage in the contiguous 48 states and, in some cases, Canada. Professional services revenue is derived primarily from implementations, including application configuration, system integration, optimization, education and training services. Clients are not permitted to take possession of the Company's software.

The Company offers both annual and monthly contracts to its clients, with 30 days' notice required for changes in the number of agent seats. Larger clients typically choose annual contracts, which generally include an implementation and ramp period of several months. Fixed subscription fees (including bundled plans) are billed monthly in advance, while related usage fees are billed in arrears. Support activities include technical assistance for the Company's solution and upgrades and enhancements to the VCC cloud platform on a when-and-if-available basis, which are not billed separately.

The Company generally requires advance deposits from its clients based on estimated usage when such usage is not billed as part of a bundled plan. Fees for usage are applied against the advance deposit resulting in continuous consumption and therefore requires frequent replenishment of the deposit. Any unused portion of the deposit is refundable to the client upon termination of the arrangement, provided all amounts due have been paid. All fees, except usage deposits, are non-refundable.

Professional services are primarily billed on a fixed-fee basis and are performed by the Company directly, or clients may also choose to perform these services themselves or engage their own third-party service providers.

The Company's sales arrangements generally involve multiple deliverables, including subscription services and related usage as well as professional services, all of which have stand-alone value to the client. The Company allocates arrangement consideration to these deliverables based on the relative stand-alone selling price method in accordance with the selling price hierarchy, which includes: (i) Vendor Specific Objective Evidence ("VSOE") if available; (ii) Third-Party Evidence ("TPE") if VSOE is not available; and (iii) Best Estimate of Selling Price ("BESP") if neither VSOE nor TPE is available.

VSOE. The Company determines VSOE based on its historical pricing and discounting practices for the specific service when sold separately. In determining VSOE, the Company requires that a substantial majority of the selling prices for these services fall within a reasonably narrow pricing range. The Company limits its assessment of VSOE for each element to either the price charged when the same element is sold separately or the price established by management, having the relevant authority to do so, for an element not yet sold separately. The Company has not met the criteria to establish selling prices based on VSOE.

TPE. When VSOE cannot be established for deliverables in multiple element arrangements, the Company applies judgment with respect to whether it can establish a selling price based on TPE. TPE is determined based on competitor prices for similar deliverables when sold separately. The Company's services are significantly differentiated such that the comparable pricing of deliverables with similar functionality cannot be obtained. Furthermore, the Company is unable to reliably determine the stand-alone selling prices of similar deliverables sold by competitors. As a result, the Company has not met the criteria to establish selling prices based on TPE.

BESP. Since the Company is unable to establish a selling price using VSOE or TPE, it uses BESP in its allocation of arrangement consideration. The objective of BESP is to determine the price at which the Company would transact a sale if the product or service were sold on a stand-alone basis. The Company determines BESP for deliverables by considering multiple factors including prices it charges for similar offerings, market conditions and the competitive landscape. The Company limits the amount of allocable arrangement consideration to amounts that are fixed or determinable and that are not contingent on future performance or future deliverables.

The Company recognizes revenue for each unit of accounting when all of the following criteria have been met:

- persuasive evidence of an arrangement exists;
- delivery has occurred;
- the fee is fixed or determinable; and
- collection is reasonably assured.

Revenue allocated to the separate accounting units is recognized as follows:

- fixed subscription revenue is recognized on a straight-line basis over the applicable term, predominantly the monthly contractual billing period;
- variable usage revenue is recognized as actual usage occurs. Usage revenue in subscription arrangements that include bundled usage is recognized on a straight-line basis over the applicable term, as the Company cannot reliably estimate client usage patterns; and
- professional services revenue is recognized as services are performed using the proportional performance method, with performance measured based on labor hours, assuming all other revenue recognition criteria have been met.

At the time of each revenue transaction, the Company assesses whether fees under the arrangement are fixed or determinable and whether collection is reasonably assured. For arrangements where the fee is not fixed or determinable, the Company recognizes revenue as these amounts become due and payable. The Company assesses collection based on a number of factors, including past transaction history and the creditworthiness of the client. If the Company determines that collection of fees is not reasonably assured, it defers the revenue and recognizes revenue at such time when collection becomes reasonably assured, which is generally upon receipt of payment. The Company maintains a revenue reserve for potential credits to be issued in accordance with service level agreements or for other revenue adjustments. The revenue recognition standards include guidance relating to any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added and excise taxes. The Company records amounts billed to its clients for United Services Fund (“USF”) contributions and other regulatory costs on a gross basis in its consolidated statements of operations and comprehensive loss and records surcharges and sales, use and excise taxes billed to its clients on a net basis. The cost of gross USF contributions payable to the Universal Services Administration Company (“USAC”) and suppliers is presented as a cost of revenue in the consolidated statements of operations and comprehensive loss. Surcharges and sales, use and excise taxes incurred in excess of amounts billed to the Company’s clients are presented in general and administrative expense in the consolidated statements of operations and comprehensive loss.

Cost of Revenue

Cost of revenue consists primarily of fees that the Company pays to telecommunications providers for usage, personnel costs (including stock-based compensation), taxes due to federal agencies on usage fees, costs associated with the Company’s data centers, equipment and related costs, amortization of acquired technology and allocated facility costs. Personnel costs included as part of cost of revenue include those associated with support of the Company’s solution, clients and data center operations, as well as with providing professional services. Data center costs include costs to build out and setup, as well as colocation fees for the right to place the Company’s services in data centers owned by third parties.

Research and Development

Research and development expenses consist primarily of costs associated with personnel (including stock-based compensation), third-party contractors and allocated facility costs. Research and development costs are expensed as incurred. The Company reviews development costs incurred for internal-use software in the application development stage and assesses costs for capitalization. As of December 31, 2013, capitalized costs were not material.

Advertising Costs

Advertising costs are expensed as incurred and were $2,951,000, $4,699,000 and $7,296,000 for the years ended December 31, 2011, 2012 and 2013, respectively.

Commissions

Commissions consist of variable compensation earned by sales personnel. Sales commissions associated with the acquisition or renewal of a client contract are recognized as sales and marketing expense as incurred.

Stock-Based Compensation

All stock-based compensation granted to employees and directors is measured as the grant date fair value of the award and recognized as an expense in the consolidated statements of operations and comprehensive loss over the requisite service period, which is generally the vesting period. The Company estimates the fair value of stock options using the Black-Scholes option-pricing model. Compensation expense is recognized using the straight-line method net of estimated forfeitures.

Compensation expense for stock options granted to non-employees is calculated using the Black-Scholes option-pricing model and is recognized as an expense in the consolidated statements of operations and comprehensive loss over the service period on a straight-line basis. Compensation expense for non-employee stock options subject to vesting is revalued as of each reporting date until the stock options are vested.

The fair value of restricted stock awards is equal to the fair value of the Company’s common stock on the date of grant.

Convertible Preferred Stock Warrant liability

Freestanding convertible preferred stock warrants with provisions that potentially adjust the number of shares to be issued on settlement are classified as a liability on the Company’s consolidated balance sheets. The convertible preferred stock warrant liability is subject to re-measurement at each balance sheet date, and any change in fair value is recognized as a component of other expense, net. The Company will continue to adjust the liability for changes in fair value until the earlier of (i) the exercise or expiration of the warrants or (ii) the conversion of preferred stock into common stock which may occur automatically upon closing of a registered public offering for common stock or upon election by preferred stockholders, at which time all convertible preferred stock warrants will be converted into warrants to purchase common stock and the liability will be reclassified to additional paid-in capital.

Income Taxes

The Company accounts for income taxes using the asset and liability method. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. The Company records a valuation allowance to reduce its deferred tax assets to the amount of future tax benefit that is more likely than not to be realized. As of December 31, 2012 and 2013, the Company recorded a full valuation allowance against the net deferred tax assets because of its history of operating losses. The Company classifies interest and penalties on unrecognized tax benefits as income tax expense.

Deferred Offering Costs

Deferred offering costs consisted primarily of accounting and legal fees related to the Company's proposed IPO. There were $2,179,000 of deferred offering costs included in other assets on the Company's consolidated balance sheet as of December 31, 2013. Upon completion of the IPO contemplated herein, these amounts will be recorded as a reduction of stockholders' equity as an offset against the proceeds of the offering. If the offering is terminated, the deferred offering costs will be expensed.

Net Loss Per Share

The Company applies the two-class method to calculate basic and diluted net loss per share of common stock as shares of convertible preferred stock are participating securities due to their dividend rights. The two-class method is an earnings allocation method under which earnings per share is calculated for common stock considering a participating security's rights to undistributed earnings as if all such earnings had been distributed during the period. The Company's participating securities are not included in the computation of net loss per share in periods of net loss because the preferred shareholders have no contractual obligation to participate in losses.

Indemnification

Certain of the Company's agreements with clients include provisions for indemnification against liabilities if its services infringe a third-party's intellectual property rights. To date, the Company has not incurred any material costs as a result of such indemnification provisions and the Company has not accrued any liabilities related to such obligations in the consolidated financial statements as of December 31, 2012 or 2013.

Segment Information

The Company has determined that its Chief Executive Officer is its chief operating decision maker. The Company's Chief Executive Officer reviews financial information presented on a consolidated basis for purposes of assessing performance and making decisions on how to allocate resources. Accordingly, the Company has determined that it operates in a single reportable segment.

Recently Issued Accounting Pronouncements

In February 2013, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2013-02 "Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income." ASU No. 2013-02 requires an entity to disaggregate the total change of each component of other comprehensive income either on the face of the income statement or as a separate disclosure in the notes. The new guidance became effective for reporting periods beginning after December 15, 2012 and is applied prospectively. The Company adopted this guidance during the year ended December 31, 2013, and the adoption did not have any impact on its financial position, results of operations or cash flows.

In July 2013, the FASB issued a new accounting standard update on the financial statement presentation of unrecognized tax benefits. The new guidance provides that a liability related to an unrecognized tax benefit would be presented as a reduction of a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward if such settlement is required or expected in the event the uncertain tax position is disallowed. The new guidance becomes effective for the Company on January 1, 2014 and it should be applied prospectively to unrecognized tax benefits that exist at the effective date with retrospective application permitted. The Company is currently assessing the impact of this new guidance.

2. Acquisition of Face It, Corp.

On October 18, 2013 (the "Acquisition Date"), the Company completed its acquisition of Face It, Corp., a social engagement and mobile client care solution provider, pursuant to the Agreement and Plan of Merger (the "Agreement"). In accordance with the terms and subject to the conditions set forth in the Agreement, the Company acquired all of the outstanding equity securities of Face It, Corp. The acquisition was accounted for as a business combination in accordance with Accounting Standards Codifications Topic 805, "Business Combinations". The Company intends to integrate Face It, Corp. and its technology to add social engagement and mobile client care applications to its solution.

The Company acquired Face It, Corp. for a total purchase price of $15,032,000. The purchase price consisted of $2,964,000 of cash, 5,691,000 shares of common stock valued at $12,064,000, of which 1,213,000 shares were withheld in escrow; and 87,000 stock options with a total fair value of $115,000, of which $4,000 was allocated to the purchase price and $111,000 was allocated to post-combination stock-based compensation. Escrow shares were withheld in order to indemnify the Company from certain losses that may arise from any inaccuracies or breach of any of Face It, Corp.'s covenants, representations and warranties as of the Acquisition Date and were not treated as contingent consideration.

The total purchase price was allocated to the net assets acquired based upon their fair values as of the Acquisition Date as set forth below. The excess of the purchase price over the net assets acquired was recorded as goodwill. The goodwill represents Face It, Corp.'s assembled workforce, its know-how and the business development initiatives that allow Face It, Corp. to acquire new customers, create new technologies and generate revenue. Goodwill is not deductible for U.S. tax purposes. The following table summarizes the fair values of the assets acquired and liabilities assumed at the Acquisition Date (in thousands):

Tangible assets acquired	$ 177
Intangible assets:	
Developed technology	2,460
Customer relationships	520
Domain names	50
Non-compete agreements	140
Goodwill	11,798
Current liabilities	(113)
Total purchase price	**$15,032**

Upon the acquisition, the Company hired or contracted certain Face It, Corp.'s employees, including Face It, Corp.'s three founders (the "Founders"). In connection with the employment and service agreements, the Company issued 474,000 non-vested shares of restricted common stock to the Founders that are contingent upon continuing employment or services and therefore excluded from the purchase price of the acquisition (Note 7).

The fair values of the acquired intangible assets were determined using Level 3 inputs which are not observable in the market (Note 3). Details related to estimated useful lives and the valuation techniques utilized for estimating fair value of the intangible assets acquired are shown below:

Intangible Type	Valuation Technique	Useful Life
Developed technology	Excess earnings method	7 years
Customer relationships	Cost approach	5 years
Domain names	Relief from royalty method	5 years
Non-compete agreements	Modified discounted cash flow	3 years

The assets, liabilities and operating results of Face It., Corp. have been reflected in the consolidated financial statements from the Acquisition Date and approximately $42,000 of revenue and $797,000 of expenses related to the operations of Face It, Corp. have been included in the accompanying consolidated statement of operations and comprehensive loss for the year ended December 31, 2013. The Company expensed $574,000 of acquisition-related costs as general and administrative expenses in the consolidated statements of operations and comprehensive loss during the year ended December 31, 2013.

The following pro forma condensed financial information presents the results of operations of the Company and Face It, Corp. as if the acquisition had occurred on January 1, 2012. The pro forma financial information is provided for comparative purposes only and is not necessarily indicative of what the actual results would have been had the acquisition occurred at the beginning of fiscal year 2012 (unaudited and in thousands except for per share amounts):

	Pro Forma for the Years Ended December 31,	
	2012	2013
Revenue	$ 64,187	$ 84,260
Net loss	$(23,151)	$(32,787)

Pro forma net loss includes adjustments related to amortization expense in connection with intangible assets, interest expense on debt, stock-based compensation expense and acquisition-related costs.

3. Fair Value Measurements

The Company carries certain financial assets and liabilities consisting of money market funds, certificates of deposit and its convertible preferred stock warrant liability at fair value on a recurring basis. Fair value is based on the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 — Observable inputs which include unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs other than Level 1 inputs, such as quoted prices for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are based on management's assumptions, including fair value measurements determined by using pricing models, discounted cash flow methodologies or similar techniques.

The fair value of assets and liabilities carried at fair value was determined using the following inputs (in thousands):

	December 31, 2012			
	Total	Level 1	Level 2	Level 3
Assets				
Cash equivalents:				
Money market funds	$ 992	$ 992	$ —	$ —
Short-term investments:				
Certificates of deposit	2,490	—	2,490	—
Total Assets	$3,482	$ 992	$ 2,490	$ —
Liabilities				
Convertible preferred stock warrant liability	$1,979	$ —	$ —	$1,979

	December 31, 2013			
	Total	Level 1	Level 2	Level 3
Assets				
Cash equivalents:				
Money market funds	$ 738	$ 738	$ —	$ —
Liabilities				
Convertible preferred stock warrant liability	$3,935	$ —	$ —	$3,935

For the years ended December 31, 2012 and 2013, the Company had no unrealized gains or losses on cash and cash equivalents and short-term investments.

A reconciliation of the convertible preferred stock warrants measured and recorded at fair value on a recurring basis, using significant unobservable inputs (Level 3) is as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Balance as of beginning of period	$ 250	$ 305	$ 1,979
Changes in fair value of warrants	55	1,674	1,871
Issuance of Series D-2 convertible preferred stock warrant in connection with debt agreement	—	—	85
Balance as of end of period	$ 305	$ 1,979	$ 3,935

The Company acquired intangible assets of $3,170,000 in connection with its acquisition of Face It, Corp. in October 2013. The fair value of the intangible assets acquired was determined using level 3 inputs. Key assumptions include the level and timing of expected future cash flows, and discount rates consistent with the level of risk and the economy in general. If the income projections increase or decrease, the fair value of the intangible assets would increase or decrease accordingly, in amounts that will vary based on the timing of the projected revenue and the discount rate used to calculate the present value of the expected income.

4. Financial Statement Components

Cash and cash equivalents consisted of the following (in thousands):

	December 31,	
	2012	2013
Cash	$ 4,969	$ 17,010
Money market funds	992	738
Cash and cash equivalents	$ 5,961	$ 17,748

Accounts receivable, net consisted of the following (in thousands):

	December 31,	
	2012	2013
Trade accounts receivable	$ 5,141	$ 6,430
Unbilled trade accounts receivable, net of advance customer deposits	354	582
Allowance for doubtful accounts	(54)	(42)
Accounts receivable, net	$ 5,441	$ 6,970

Property and equipment, net consisted of the following (in thousands):

	December 31,	
	2012	2013
Computer and network equipment	$ 18,330	$ 18,851
Computer software	998	1,550
Development costs	285	285
Furniture and fixtures	616	792
Leasehold improvements	451	539
Property and equipment	20,680	22,017
Accumulated depreciation and amortization	(9,806)	(10,410)
Property and equipment, net	$ 10,874	$ 11,607

Depreciation and amortization expense was $1,539,000, $2,624,000 and $4,310,000 for the years ended December 31, 2011 2012 and 2013, respectively.

Property and equipment capitalized under capital lease obligations consist primarily of computer equipment and were as follows (in thousands):

	December 31,	
	2012	2013
Gross	$ 10,376	$ 15,123
Less: accumulated depreciation and amortization	(2,155)	(5,591)
Total	$ 8,221	$ 9,532

Accrued and other current liabilities consisted of the following (in thousands):

	December 31,	
	2012	2013
Accrued expenses	$ 1,174	$ 2,453
Accrued compensation and benefits	2,296	3,476
Accrued and other current liabilities	$ 3,470	$ 5,929

5. Intangible Assets

Intangible assets are being amortized on a straight-line basis, which reflects the pattern in which the economic benefits of the intangible assets are being utilized, over an estimated useful life ranging from three to seven years. The components of identifiable intangible assets, which were acquired in connection with the Company's acquisition of Face It, Corp. in October 2013 (Note 2) are as follows (in thousands):

	Estimated Fair Value	Accumulated Amortization	Net Carrying Amount	Weighted Average Remaining Life (years)
Developed technology	$ 2,460	$ 72	$ 2,388	6.8
Customer relationships	520	21	499	4.8
Domain names	50	2	48	4.8
Non-compete agreements	140	10	130	2.8
Total	$ 3,170	$ 105	$ 3,065	6.3

Amortization expense related to intangible assets was $105,000 for the year ended December 31, 2013. As of December 31, 2013, the expected future amortization expense for purchased intangible assets for each of the Company's years ending is as follows (in thousands):

2014	$ 512
2015	512
2016	503
2017	465
2018	442
2019 and beyond	631
	$ 3,065

6. Long-term Debt

Loan and Security Agreement

In March 2013, the Company entered into a loan and security agreement ("Loan and Security Agreement") with a lender for a revolving line of credit (the "Credit Facility") of up to $12,500,000. The Loan and Security Agreement is collateralized by substantially all the tangible assets of the Company. Under the terms of the Credit Facility, the balance outstanding cannot exceed the lesser of (i) $12,500,000 or (ii) an amount equal to the Company's monthly recurring revenue for the three months prior multiplied by the average Dollar-Based Retention Rate over the prior twelve months, less the amount accrued for the Company's USF obligation (accrued federal fees). The Credit Facility carries a variable annual interest rate of the prime rate (3.25% as of December 31, 2013) plus 1.25% and matures in March 2015. As of December 31, 2013, the full amount available under the Revolving Line of $12,500,000 was outstanding.

In connection with the Company's acquisition of Face It, Corp., the Company amended its Loan and Security Agreement and borrowed an additional $5,000,000 under a term loan (the "Term Loan") to be used for acquisition-related costs. Monthly interest-only payments are due on the advance at the prime rate plus 1.50% through September 2014. Principal and interest payments are due in equal monthly installments from October 2014 through the maturity of the Term Loan in March 2017. In connection with the Term Loan, the Company issued a warrant to purchase 52,000 shares of its Series D-2 convertible preferred stock at an exercise price of $1.44 a share. The fair value of this warrant of $85,000 was recorded as a discount against the debt and is being recognized as additional interest expense over the term of the loan.

The Loan and Security Agreement contains certain covenants, including the requirement that the Company maintain $5,500,000 of cash deposited with the lender for the term of the Loan and Security Agreement. The Company was in compliance with these covenants as of December 31, 2013. The Loan and Security Agreement remains senior to other debt, including debt issued subsequently.

Promissory Note

In July 2013, the Company entered into a promissory note with the USAC for $4,075,000 as a financing arrangement for that amount of accrued federal fees. The promissory note carries a fixed annual interest rate of 12.75% and is repayable in 42 equal monthly installments of principal and interest payments beginning in August 2013. As of December 31, 2013, $3,679,000 of this promissory note was outstanding and is included as notes payable in the accompanying consolidated balance sheet (Note 10).

Equipment Financing Line

In February 2010, the Company entered into an equipment loan agreement ("Equipment Loan Agreement") with a lender for the purposes of financing up to $1,700,000 of its capital equipment needs. Each borrowing against this facility is payable monthly over a three-year period and is collateralized by the specific assets financed by the funds drawn. Interest owed pursuant to each borrowing is determined by the specific monthly loan rate factor in effect for the individual borrowing, which factor is indexed to the yield for U.S. Treasury notes maturing closest to the date 36 months from the commencement of the loan. The monthly loan rate factor in effect at the initial borrowing in February 2010 was 3.33%. In connection with the Equipment Loan Agreement, the lender was issued warrants to purchase 521,000 shares of the Company's Series A-2 convertible preferred stock (Note 7–Warrant F).

In June 2010, the Equipment Loan Agreement was amended and the available loan amount was increased from $1,700,000 to $2,200,000 with the same terms and conditions as originally set forth. The full loan amount available under the Equipment Loan Agreement was drawn during 2010 and 2011. The principal balance outstanding as of December 31, 2012 and 2013 was $431,000 and $16,000, respectively. These balances are included as notes payable in the accompanying consolidated balance sheets. In connection with the amendment to the Equipment Loan Agreement, the lender was issued warrants to purchase 153,000 shares of the Company's Series A-2 convertible preferred stock (Note 7–Warrant G).

The Company's outstanding notes payable were as follows (in thousands):

	December 31, 2012	December 31, 2013
Notes payable	$ 431	$ 8,695
Revolving credit line	—	12,500
	431	21,195
Less discount	—	(78)
Net carrying value of debt	431	21,117
Current portion of debt	(415)	(1,522)
Total debt, net of current portion	$ 16	$ 19,595

Maturities of the Company's outstanding debt as of December 31, 2013 are as follows (in thousands):

Year ending December 31,	
2014	$ 1,556
2015	15,680
2016	3,340
2017	619
Total	$ 21,195

7. Stockholders' Deficit

Convertible Preferred Stock

The Company has outstanding Series A-2 convertible preferred stock ("Series A-2"), Series B-2 convertible preferred stock ("Series B-2"), Series C-2 convertible preferred stock ("Series C-2") and Series D-2 convertible preferred stock ("Series D-2").

The following table summarizes convertible preferred stock authorized and issued and outstanding as of December 31, 2012 (in thousands):

	Shares authorized	Shares issued and outstanding	Net proceeds	Aggregate liquidation preference
Series A-2	76,989	75,478	$ 12,157	$ 12,303
Series B-2	18,566	18,566	7,908	8,000
Series C-2	12,903	12,903	11,875	12,000
	108,458	106,947	$ 31,940	$ 32,303

The following table summarizes convertible preferred stock authorized and issued and outstanding as of December 31, 2013 (in thousands):

	Shares authorized	Shares issued and outstanding	Net proceeds	Aggregate liquidation preference
Series A-2	76,989	75,478	$ 12,157	$ 12,303
Series B-2	18,566	18,566	7,908	8,000
Series C-2	12,903	12,903	11,875	12,000
Series D-2	16,657	15,269	21,794	22,000
	125,115	122,216	$ 53,734	$ 54,303

The holders of the Company's convertible preferred stock have the following rights, preferences and privileges:

Liquidation — In the event of liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, the holders of Series A-2, Series B-2, Series C-2 and Series D-2 are entitled to receive, on an equal priority pari passu basis, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of common stock, an amount per share equal to $0.16, $0.43, $0.93 and $1.44, respectively (subject to adjustment for stock splits, stock dividends, reclassifications and like events), and any declared but unpaid dividends. After the holders of convertible preferred stock have received their preference, any remaining assets would be distributed ratably to the holders of convertible preferred stock and common stock on a pro rata and as converted to common stock basis. If upon liquidation, dissolution, or winding up of the Company, the assets available for distribution are insufficient to pay the liquidation preference in full, then the entire proceeds legally available for distribution will be distributed ratably among the holders of the convertible preferred stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive.

A liquidation, dissolution, or winding up of the Company is deemed to have occurred by any merger or consolidation of the Company in which its stockholders immediately prior to the transaction do not retain a majority of the voting power in the surviving corporation, or a sale or transfer of all or substantially all of the Company's assets.

Conversion — Each share of Series A-2, Series B-2, Series C-2 and Series D-2 is convertible at the option of the holder thereof into the number of fully paid and non-assessable shares of common stock that results from dividing the original issue price by the conversion price in effect at the time of the conversion, subject to adjustments for stock splits, stock dividends, reclassifications and like events. For all series of convertible preferred stock, the conversion price is equal to the original issuance price such that the conversion ratio to common stock is 1:1 as of all periods presented. All series of convertible preferred stock will automatically convert upon the earlier of (i) a firm commitment underwritten IPO of the Company's common stock where gross proceeds raised by the Company equal or exceed $35,000,000 at a per share price equal to or greater than $2.88 per share (appropriately adjusted) or (ii) the consent of holders holding at least 60% of each series of convertible preferred stock.

The issuance price of each series of convertible preferred stock exceeded the fair value of common stock on the date of issuance and there have been no subsequent adjustments to the conversion prices in the periods presented. Accordingly, no beneficial conversion amounts, measured as the intrinsic value of the conversion feature as of the issuance date, have resulted from issuances of convertible preferred stock.

Voting — The holders of each share of the Company's convertible preferred stock shall have the right to one vote for each share of common stock into which such convertible preferred stock could be converted. The holders of the Series A-2 have the right to elect two members of the board of directors, so long as at least 5,000,000 shares remain outstanding. The holders of the Series B-2 and Series D-2 each have the right to elect one member of the board of directors, so long as at least 1,000,000 shares remain outstanding of each series, respectively. The preferred stockholders, voting together as a class, are entitled to elect two members of the board of directors. The common stockholders are entitled to elect one member of the board of directors. Three members of the board of directors will be elected by the holders of a majority of the convertible preferred stock, voting as a separate class, and the holders of a majority of the common stock, voting as a separate class.

Dividends — The holders of shares of Series A-2, Series B-2, Series C-2 and Series D-2 are entitled to receive non-cumulative dividends equal to $0.016, $0.043, $0.093 and $0.144 per share, respectively, per annum (as adjusted for stock splits, stock dividends, reclassification and like events) when and if declared by the board of directors and on an equal pari passu basis, in preference to any dividend on shares of common stock. No dividends have been declared to date.

Warrants

Series A-2 Convertible Preferred Stock Warrants — The following table summarizes information about the convertible preferred stock warrants outstanding as of December 31, 2012 and 2013 (shares in thousands):

	Number of Shares	Exercise Price	Expiration
Warrant A	278	$ 0.163	March 2015
Warrant B	123	0.163	July 2015
Warrant C	123	0.163	February 2015
Warrant D	184	0.163	July 2015
Warrant E	129	0.163	June 2016
Warrant F	521	0.163	February 2020
Warrant G	153	0.163	June 2020
Total convertible preferred stock warrants	1,511		

Series D-2 Convertible Preferred Stock Warrants — As of December 31, 2013, there was a warrant outstanding for 52,000 shares of Series D-2 convertible preferred stock with an exercise price of $1.441 that expires in October 2023.

The Company estimates the fair value of each warrant on the date of issuance and at each reporting date using the Black-Scholes option-pricing model and using the assumptions noted in the below table. Expected volatility is based upon the historical and implied volatility of a peer group of publicly traded companies. The expected term of warrants represents the contractual term of the warrants. The risk-free rate for the expected term of the warrants is based on the U.S. Treasury Constant Maturity at the time of issuance. The fair value of the convertible preferred stock warrants at each valuation date was determined using the Black-Scholes option-pricing model with the following assumptions:

	December 31,	
	2012	2013
Fair value of Series A-2	$ 1.46	$ 2.69
Fair value of Series D-2	—	$ 2.81
Risk-free interest rate	0.25% to 1.18%	0.33% to 2.60%
Expected life	Remaining contractual life	Remaining contractual life
Expected dividends	—	—
Volatility	55.0 %	45.0 %

In connection with the closing of the IPO, each of the convertible preferred stock warrants automatically convert into a warrant to purchase shares of common stock on a one-for-one basis.

Common Stock

Common Stock — At December 31, 2013, there were 200,000,000 shares of common stock authorized, and 21,975,000 shares issued and outstanding. Holders of common stock are entitled to dividends, if and when declared by the board of directors.

Common Stock Subject to Repurchase or Forfeiture — In connection with the employment and service agreements related to the Company's acquisition of Face It, Corp. (Note 2), the Company issued 474,000 shares of non-vested restricted common stock that are contingent upon continuing employment or services and subject to forfeiture. The forfeiture rights lapse 50% on the first anniversary following the Acquisition Date and an additional 50% on the second anniversary following the Acquisition Date. These shares were valued at $1,005,000, based on the Acquisition Date fair value of the Company's common stock. This amount is being recorded as stock-based compensation on a straight-line basis over the two-year requisite service period. The

474,000 shares that are subject to forfeiture are included in issued and outstanding shares as of December 31, 2013. For the year ended December 31, 2013, $155,000 was included as stock-based compensation expense related to these shares.

In addition, the Company has the right to repurchase, at the original exercise price, unvested common shares pursuant to early exercise provisions upon termination of service of an employee. The consideration received for an exercise of an option is considered to be a deposit of the exercise price, and the related dollar amount recorded as a liability. The liability is reclassified as the award vests. The Company has recorded a liability in accrued liabilities of $100,000 related to 60,000 options that were exercised and are unvested at December 31, 2013. These 60,000 exercised but unvested shares that are subject to a repurchase right held by the Company are included in issued and outstanding shares as of December 31, 2013.

Common Stock Warrants — As of December 31, 2012 and 2013, the Company had outstanding warrants to purchase 31 shares of its common stock with an exercise price of $950 per share, which expire on various dates between 2016 and 2017.

Common Stock Reserved for Future Issuance — Shares of common stock reserved for future issuance relate to outstanding convertible preferred stock, warrants and stock options as follows (in thousands):

	December 31, 2013
Series A-2 convertible preferred stock	75,478
Series B-2 convertible preferred stock	18,566
Series C-2 convertible preferred stock	12,903
Series D-2 convertible preferred stock	15,269
Stock options outstanding	30,534
Stock options available for grant	1,217
Conversion of convertible preferred stock warrants and common stock warrants	1,563
Total shares of common stock reserved	155,530

Stock Option Plans

The Company currently has options issued under the Amended and Restated 2004 Equity Incentive Plan, as amended (the “2004 Plan”). The 2004 Plan was adopted in June 2004 and most recently amended in November 2013 to increase the total stock options available for issuance to 47,531,000 to eligible employees, non-employee consultants and directors. Under the terms of the 2004 Plan, the Company has the ability to grant incentive and nonstatutory stock options. Incentive stock options may be granted only to Company employees. Nonstatutory stock options may be granted to Company employees, directors and consultants. Such options are to be exercisable at prices, as determined by the board of directors, generally equal to the fair value of the Company’s common stock at the date of grant and have a term of 10 years. Options granted to employees generally vest over a four-year period, with an initial vesting period of 12 months for 25% of the grant and the remaining 75% of the shares vesting monthly on a ratable basis over the remaining 36 months. Options are exercisable for a maximum period of 10 years after the grant date. Options are exercisable upon vesting and vested options generally expire 90 days after termination of the optionee’s employment or relationship as a consultant or director, unless otherwise extended by the terms of the stock option agreement. Any unvested options or vested but unexercised options are returned to the Company.

As of December 31, 2013, there were options outstanding to purchase 30,534,000 shares of common stock under the 2004 Plan. As of December 31, 2013, 1,217,000 options were available for issuance under the 2004 Plan.

A summary of the Company's stock option activity as of December 31, 2011, 2012 and 2013 is as follows (in thousands, except per share data):

	Number of Shares Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Balance as of December 31, 2011	19,464	$ 0.12	7.81	$ 1,754
Options granted (weighted average fair value of $0.31 per share)	6,953	0.55		
Options exercised	(2,601)	0.05		550
Options forfeited	(1,667)	0.20		
Balance as of December 31, 2012	22,149	0.26	7.69	17,696
Options granted (weighted average fair value of $1.05 per share)	11,302	1.85		
Options exercised	(1,794)	0.39		2,145
Options forfeited	(1,123)	0.75		
Balance as of December 31, 2013	30,534	$ 0.82	7.68	$ 52,442
Options vested and expected to vest as of December 31, 2013	28,236	$ 0.76	7.55	$ 50,310
Options exercisable as of December 31, 2013	14,502	$ 0.20	6.07	$ 34,178

The Company has computed the aggregate intrinsic value amounts disclosed in the above table based on the difference between the original exercise price of the options and management's estimate of the fair value of the Company's common stock of $0.17, $1.03 and $2.53 as of December 31, 2011, 2012 and 2013, respectively.

The information about common stock options outstanding and exercisable as of December 31, 2013 is summarized as follows (in thousands, except years):

	Options Outstanding		Options Exercisable	
Exercise Prices	Number Outstanding	Weighted Average Life (Years)	Number Exercisable	Weighted Average Life (Years)
$0.03 to $0.07	8,897	4.98	8,859	4.98
$0.11 to $0.17	5,094	7.36	3,309	7.29
$0.24 to $0.65	3,591	8.32	1,334	8.25
$1.03 to $1.67	7,427	9.16	920	8.77
$2.12 to $2.53	5,524	9.90	79	9.82
$225.00 to $375.00	1	2.19	1	2.19
	30,534	7.68	14,502	6.07

Stock-based compensation expense for the years ended December 31, 2011, 2012 and 2013 is as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Cost of revenue	$ 17	$ 60	$ 194
Research and development	51	154	499
Sales and marketing	36	112	751
General and administrative	253	138	505
Total stock-based compensation	$ 357	$ 464	$ 1,949

As of December 31, 2013, there was $12,176,000 of total unrecognized compensation cost related to unvested stock options. That cost is expected to be recognized over a weighted average period of 3.5 years.

Stock-Based Awards to Employees — All stock-based compensation granted to employees and directors is measured at the grant date fair value of the award. The Company estimated the fair value of its common stock utilizing periodic contemporaneous valuations prepared by an independent third-party appraiser based upon several factors, including its operating and financial performance, progress and milestones attained in its business, and past sales of convertible preferred stock.

The Company estimates the fair value of each option award on the date of grant using the Black-Scholes option-pricing model and using the assumptions noted in the below table. Expected volatility is based upon the historical volatility of a peer group of publicly traded companies. The expected term of options granted is estimated by taking the average of the vesting term and the contractual term of the option. The risk-free rate for the expected term of the options is based on U.S. Treasury zero-coupon issues at the time of grant. The assumptions used to value options granted during the years ended December 31, 2011, 2012 and 2013 were as follows:

	Year Ended December 31,		
	2011	2012	2013
Expected term (years)	6.1	5.0 to 6.1	5.0 to 6.1
Volatility	66.0%	60.0%	59.0% to 60.0%
Risk-free interest rate	1.2% to 2.5%	0.7% to 1.1%	1.0% to 1.8%
Dividend yield	—	—	—

The Company recognized employee stock-based compensation expense for the years ended December 31, 2011, 2012 and 2013, which was calculated based upon awards ultimately expected to vest, and thus, this expense was reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Stock-Based Awards to Non-employees — The Company granted options to purchase shares of common stock to non-employees in conjunction with services performed. For non-employees the Company revalues the unvested portion of stock-based compensation using the Black-Scholes option-pricing model until performance is complete. As a result, the stock-based compensation will fluctuate as the fair value of the Company's common stock fluctuates. During the years ended December 31, 2011, 2012 and 2013, the Company granted options to purchase 1,278,000, 7,000 and 199,000 shares of common stock, respectively, to non-employees in conjunction with services performed. These options were valued at $120,000, $2,000 and $289,000 for the years ended December 31, 2011, 2012 and 2013, respectively, at the time of issuance. The assumptions used to value options granted to non-employees during the years ended December 31, 2011, 2012 and 2013 are as follows:

	Year Ended December 31,		
	2011	2012	2013
Contractual life (in years)	10.0	10.0	10.0
Volatility	66.0%	59.0%	59.0%
Risk-free interest rate	1.3% to 2.4%	1.7%	1.8% to 2.9%
Dividend yield	—	—	—

For the years ended December 31, 2011, 2012 and 2013, stock-based compensation expense to non-employees was $248,000, $59,000 and $76,000 respectively, and is included in total stock-based compensation expense in the table above.

In January 2012, in connection with a change in status from non-employee to employee, 876,000 options granted as non-employee awards commenced being accounted for as employee awards.

8. Net Loss Per Share and Unaudited Pro Forma Net Loss Per Share

Net Loss Per Share

The Company calculates its basic and diluted net loss per common share in conformity with the two-class method required for participating securities. Basic net loss per share is calculated by dividing net loss by the weighted average number of common shares outstanding during the period, and excludes any dilutive effects of employee stock-based awards and warrants. Diluted net income per share is computed giving effect to all potentially dilutive common shares, including common stock issuable upon exercise of stock options and warrants. As the Company had net losses for the years ended December 31, 2011, 2012 and 2013, all potential common shares were determined to be anti-dilutive.

The following table presents the calculation of basic and diluted net loss per share (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Net loss	$ (7,872)	$(19,334)	$(31,314)
Weighted average shares used in computing basic and diluted net loss per share	10,538	13,280	16,026
Basic and diluted net loss per share	$ (0.75)	$ (1.46)	$ (1.95)

The following securities were excluded from the calculation of diluted net loss per share attributable to common stockholders because their effect would have been anti-dilutive for the periods presented (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Convertible preferred stock	94,044	106,947	122,216
Stock options	19,464	22,149	30,534
Convertible preferred stock warrants and common stock warrants	1,511	1,511	1,563
Restricted common stock	—	—	533
Total	115,019	130,607	154,846

Unaudited Pro Forma Net Loss Per Share

Pro forma basic and diluted net loss per share was computed to give effect to the conversion of the Series A-2, Series B-2, Series C-2 and Series D-2 convertible preferred stock using the as-if converted method into common shares as though the conversion had occurred as of the beginning of the period or the original date of issuance, if later. Also, the numerator has been adjusted to reverse the fair value adjustments related to the convertible preferred stock warrants as they will become warrants to purchase common stock and at such time will no longer require periodic revaluation.

The following table presents the calculation of pro forma basic and diluted net loss per share (in thousands, except per share data):

	Year Ended December 31, 2013
Net loss	$ (31,314)
Pro forma adjustment to reflect change in fair value of convertible preferred stock warrant liability	1,871
Pro forma net loss	$ (29,443)
Shares:	
Weighted-average shares used in computing basic net loss per share	16,026
Pro forma adjustment to reflect assumed conversion of convertible preferred stock to occur in connection with the Company's expected initial public offering	117,363
Weighted-average shares used in computing basic and diluted pro forma net loss per share	133,389
Pro forma basic and diluted net loss per share	$ (0.22)

9. Income Taxes

The following table presents domestic and foreign components of loss before provision for income taxes for the periods presented (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Domestic	$(7,730)	$(19,493)	$(31,628)
Foreign	(78)	221	384
Loss before provision for income taxes	$(7,808)	$(19,272)	$(31,244)

The components of the provision for income taxes are as follows (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Current:			
State	$ 25	$ 8	$ 9
Foreign	39	54	61
Total provision for income taxes	$ 64	$ 62	$ 70

Income tax expense differed from the amounts computed by applying the U.S. federal income tax rate of 34% to pre-tax loss as a result of the following (in thousands):

	Year Ended December 31,		
	2011	2012	2013
Federal tax at statutory rate	$ (2,655)	$ (6,552)	$ (10,623)
Non-deductible expenses	172	670	1,383
State taxes	(235)	(191)	(786)
Stock-based compensation	—	126	444
Research and development credit	—	(56)	(339)
Other	183	(58)	(586)
Valuation allowance	2,599	6,123	10,577
Total provision for income taxes	$ 64	$ 62	$ 70

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The following table presents the significant components of the Company's deferred tax assets and liabilities for the periods presented (in thousands):

	Year Ended December 31,	
	2012	2013
Deferred tax assets:		
Net operating loss and credit carryforwards	$ 14,859	$ 26,076
Accrued liabilities	4,484	4,690
Allowance for doubtful accounts	38	98
Compensation accruals	358	439
Intangibles	30	27
Gross deferred tax assets	19,769	31,330
Valuation allowance	(19,068)	(29,841)
Net deferred tax assets	$ 701	$ 1,489
Deferred tax liability:		
Property and equipment	(701)	(370)
Amortized intangibles	—	(1,119)
Gross deferred tax liability	(701)	(1,489)
Net deferred taxes	$ —	$ —

A valuation allowance is provided for deferred tax assets where the recoverability of the assets is uncertain. The determination to provide a valuation allowance is dependent upon the assessment of whether it is more likely than not that sufficient future taxable income will be generated to utilize the deferred tax assets. Based on the weight of the available evidence, which includes the Company's historical operating losses, lack of taxable income, and the accumulated deficit, the Company provided a full valuation allowance against the net deferred tax assets. As of December 31, 2013, the Company had net operating loss carryforwards of approximately $68,356,000 for federal income taxes and $35,752,000 for state income taxes. If not utilized, these carryforwards will begin to expire in 2024 for federal purposes and 2014 for state purposes.

As of December 31, 2013, the Company had research and development credit carryforwards of approximately $1,031,000 and $842,000 for federal and state income taxes, respectively. If not utilized, the federal carryforwards will begin to expire in various amounts beginning in 2024. The state tax credit can be carried forward indefinitely.

Internal Revenue Code Section 382 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. Currently, the utilization of the net operating loss and tax credit carryforwards is restricted under Internal Revenue Code Section 382. In the event that the Company has a change of ownership, utilization of the net operating loss and tax credit carryforwards may be further restricted.

The Company recognizes in the consolidated financial statements the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position.

A reconciliation of the beginning and ending amount of unrecognized tax benefits (excluding interest and penalties) for the years ended December 31, 2011, 2012 and 2013, is as follows (in thousands):

	December 31,		
	2011	2012	2013
Unrecognized benefit — beginning of period	$ 712	$ 994	$ 1,075
Gross increases — current year tax positions	291	91	381
Gross decreases — prior year tax positions	(9)	(10)	(2)
Unrecognized benefit — end of period	$ 994	$ 1,075	$ 1,455

The unrecognized tax benefits of $1,075,000 and $1,455,000 as of December 31, 2012 and 2013, respectively, would have an impact on the Company's effective tax rate if recognized.

The Company is currently unaware of any uncertain tax positions that could result in significant additional payments, accruals or other material deviation in this estimate over the next 12 months.

The Company is subject to taxation in the United States, various states and several foreign jurisdictions. In general, the Company's U.S. federal and state income tax returns are subject to examination by tax authorities for years 2003 forward due to tax attributes carryover. The Company's foreign tax returns are open to audit under the statutes of limitations of the respective foreign countries in which the subsidiaries are located. The Company considers all undistributed earnings of its foreign subsidiaries indefinitely reinvested.

10. Commitments and Contingencies

Leases

The Company has operating lease agreements for office, research and development, and sales and marketing facilities in the United States that expire at various dates through 2018. The Company recognizes rent expense on a straight-line basis over the lease term and records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability. Rent expense was $585,000, $1,968,000 and $2,303,000 for the years ended December 31, 2011, 2012 and 2013, respectively.

The Company enters into capital leases to finance data center and other computer and networking equipment.

As of December 31, 2013, approximate remaining future minimum lease payments under non-cancelable leases are as follows (in thousands):

Year ending December 31,	Capital Leases	Operating Leases
2014	$ 5,505	$ 2,416
2015	3,536	1,802
2016	1,157	1,762
2017	37	1,689
2018	—	277
Total future minimum lease payment	$ 10,235	$ 7,946
Less — amount representing interest	(1,020)	
Total principal	9,215	
Capital lease obligation — current portion	(4,857)	
Capital lease obligation — net of current portion	$ 4,358	

Hosting and Telecommunication Usage Services

The Company has agreements with third parties to provide colocation hosting and telecommunication usage services. The agreements require payments per month for a fixed period of time in exchange for certain guarantees of network and telecommunication availability.

As of December 31, 2013, the future minimum payments under these arrangements are as follows (in thousands):

Year ending December 31,	Hosting Services	Usage Services
2014	$ 2,013	$ 4,024
2015	1,778	2,160
2016	1,317	—
2017	604	—
	$ 5,712	$ 6,184

Universal Services Fund Liability

During the third quarter of 2012, the Company determined that based on its business activities, it is classified as a telecommunications service provider for regulatory purposes and it should make direct contributions to the USF based on revenues it receives from the resale of interstate and international telecommunications services. Previously, the Company had believed that the telecommunications services were an integral part of an information service that the Company provides via its software and had instead made indirect USF contributions via payments to its wholesale telecommunications service providers. In order to comply with the obligation to make direct contributions, the Company has made a voluntary self-disclosure to the Federal Communications Commission (“FCC”) Enforcement Bureau and has registered with the Universal Service Administrative Company (“USAC”), which is charged by the FCC with administering the USF. The Company has filed exemption certificates with its wholesale telecommunications service providers in order to eliminate its obligation to reimburse such wholesale telecommunications service providers for their USF contributions calculated on services sold to the Company.

The Company’s registration with USAC subjects it to assessments for unpaid USF contributions, as well as interest thereon, due to its late registration and reporting of revenues. The Company will be required to pay assessments for periods prior to the Company’s registration. While the Company is in discussions with the FCC to limit such back assessments to the period 2008 through 2012, it is possible that it will be required to pay back

assessments for the period from 2003 through 2007. The Company will also face a regulatory and contractual challenge in seeking recovery or credit for its USF reimbursement payments previously made to its wholesale telecommunications service providers of up to $3,129,000 as of December 31, 2012 and 2013. Finally, the Company is exposed to the potential assessment by the FCC of monetary penalties due to its past failure to recognize its obligation as a USF contributor. The Company believes it may be able to reduce such penalties as a result of the Company's voluntary self-disclosure.

In July 2013, the Company and USAC agreed to a financing arrangement for the undisputed portion of the unpaid USF contributions and related interest for the periods 2008 through 2012 whereby the Company issued to USAC a promissory note payable in the amount of $4,075,000. The repayment terms of the promissory note payable are disclosed in Note 6. As of December 31, 2013, the balance of the promissory note payable was $3,679,000 and included in the notes payable amounts on the consolidated balance sheets. In addition to the promissory note payable, the Company had an accrued liability for USF contributions and related interest and penalties of $8,104,000 and $4,206,000 included in accrued federal fees on the consolidated balance sheets as of December 31, 2012 and 2013, respectively, of which $803,000 pertains to periods prior to 2008. For the years ended December 31, 2011, 2012 and 2013, the Company incurred expenses related to its USF obligations of $1,991,000, $3,245,000 and $3,873,000, respectively, which was recorded as a charge to cost of revenue. No amounts related to the potential recovery or credit of USF contributions paid by the Company to its wholesale telecommunications service providers were recognized in the accompanying consolidated financial statements.

State and Local Taxes and Surcharges

During 2011, the Company conducted an analysis of the taxability of sales of its subscription services. It was determined that the Company's activities may be asserted by a number of states to create nexus and thus an obligation to collect sales taxes on sales of subscriptions to clients in certain states. Prior to April 2012, the Company did not collect sales taxes related to these sales from its clients. In April 2012, the Company commenced collecting and remitting sales taxes on sales of subscription services in all applicable states. As of December 31, 2012 and 2013, the Company had an accrued sales tax liability related to its sales of subscriptions of $105,000 and $98,000, respectively.

During 2013, the Company further analyzed its activities and determined it may be obligated to collect and remit various state and local taxes and surcharges on its usage-based fees. The Company has not remitted state and local taxes on usage-based fees in any of the periods presented. As of December 31, 2012 and 2013, the Company accrued a sales tax liability for this contingency of $3,195,000 and $5,350,000, respectively. For the years ended December 31, 2011, 2012 and 2013, the Company recorded general and administrative expense related to its estimated sales tax liability on usage-based fees of $1,588,000, $1,607,000 and $2,155,000, respectively. The Company's estimate of the probable loss incurred under this contingency is based on analysis of the source location of its usage-based fees and the regulations and rules in each state.

Legal Matters

The Company is involved in various legal and regulatory matters arising from the normal course of business activities. In management's opinion, resolution of these matters is not expected to have a material impact on the Company's consolidated results of operations, cash flows, or its financial position. However, depending on the nature and timing of any such dispute, an unfavorable resolution of a matter could materially affect the Company's future consolidated results of operations, cash flows or financial position in a particular period.

The Company recognizes general and administrative expense for legal fees in the period the services are provided.

Patent Infringement Lawsuit

The Company is currently involved in one lawsuit as a defendant. In April 2012, a telecom solutions company named the Company in a patent infringement lawsuit in the U.S. District Court for the Eastern District of Texas seeking a permanent injunction, damages and attorneys' fees. The Company responded to the complaint and preliminary injunction request by asserting non-infringement and invalidity of the patent. In March 2013, the

court granted the Company's motion to transfer the case to the U.S. District Court for the Northern District of California. The Company has investigated the claims alleged in the complaint and believes that it has good defenses to the claims, and has not accrued a loss related to this matter as the Company does not believe that it is probable that a loss will be incurred.

Indemnification Agreements

In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to clients, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with its directors, officers and certain employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. No demands have been made upon the Company to provide indemnification under such agreements and thus there are no claims that the Company is aware of that could have a material effect on the Company's consolidated balance sheets, consolidated statements of operations and comprehensive loss, or consolidated statements of cash flows.

11. Retirement Plans

The Company has a 401(k) plan to provide tax deferred salary deductions for all eligible employees. Participants may make voluntary contributions to the 401(k) plan, limited by certain Internal Revenue Service restrictions. The Company is responsible for the administrative costs of the 401(k) plan. The Company does not match employee contributions.

12. Related-Party Transactions

One of the Company's directors had a minority ownership interest in one of the Company's data warehousing vendors. The Company incurred expenses to this vendor of $459,000 and $265,000 for the years ended December 31, 2012 and 2013. As of December 31, 2013, the Company had $2,000 outstanding to this vendor included in accounts payable on the accompanying consolidated balance sheet.

13. Geographical Information

Revenue by geographical location has been determined based on client billing address and has been estimated based on the amounts billed to clients during the period.

	Year Ended December 31,		
	2011	2012	2013
United States	$39,273	$57,185	$75,374
International	3,915	6,637	8,758
Total revenue	$43,188	$63,822	$84,132

The following table summarizes total property and equipment, net in the respective locations (in thousands):

	As of December 31,	
	2012	2013
United States	$10,364	$11,079
International	510	528
Property and equipment, net	$10,874	$11,607

14. Subsequent Events

In January 2014, the Company received a formal letter of demand notice from the Philippine Bureau of Internal Revenue ("BIR") related to investigation of income tax liabilities for calendar year 2010. The BIR has assessed the Company approximately $320,000 related to this matter. The Company is currently in the process of protesting such demand letter and based on the facts, circumstances and suitable documentary evidence to dispute the BIR's position, resolution of this matter is not expected to have a material impact on the Company's consolidated results of operations, cash flows or its financial position. The Company believes that the possibility of loss is not probable and estimable and accordingly no provision for the same has been recorded as of December 31, 2013.

In January 2014, the Company modified its corporate office lease to expand its existing space for an additional commitment of $615,000 over the term of the original lease.

In February 2014, the Company's board of directors granted options to purchase a total of 426,000 shares of common stock with a total fair value of $681,000.

In February 2014, the Company entered into a loan and security agreement with two lenders in a syndicate for a term loan of up to $30,000,000. At closing, the Company borrowed $19,561,000 under the term loan, net of $439,000 in debt costs, with the remaining $10,000,000 available to be borrowed until February 2015. The term loan bears interest at a variable per annum rate equal to the greater of 10% or LIBOR plus 9%. Interest is due and payable on the last business day of each month during the term of the loan. Monthly principal payments will be due beginning in February 2016 based on 1/60th of the outstanding balance at that time and continue until all remaining principal outstanding under the term loan are due and payable in February 2019. The term loan is secured by all assets of the Company and is subordinate to the Company's Loan and Security Agreement (Note 6). In connection with the loan and security agreement, the Company issued warrants for 711,462 shares of common stock with an exercise price of $2.53 per share.

We have evaluated subsequent events from the balance sheet date through March 3, 2014, the date at which the consolidated financial statements as of December 31, 2013 were available to be issued.

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors
and Stockholders of
Face It, Corp.

Report on Financial Statements

We have audited the accompanying financial statements of Face It, Corp. (also doing business as SoCoCare, Hyfiniti, Hold-Free Networks, and InAppCare) (the Company), which comprise the balance sheets as of December 31, 2011 and 2012, and the related statements of operations, stockholders' equity, and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2011 and December 31, 2012, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

/s/ Moss Adams LLP

Campbell, California
January 16, 2014

Face It, Corp.
Balance Sheets
(in thousands, except share and per share data)

	December 31, 2011	December 31, 2012	September 30, 2013 (unaudited)
Assets			
Current assets:			
Cash	$2,890	$ 1,192	$ 240
Accounts receivable	–	15	66
Prepaid expenses and other current assets	4	7	14
Total current assets	2,894	1,214	320
Property and equipment, net	9	6	5
Total assets	$2,903	$ 1,220	$ 325
Liabilities and stockholders' equity (deficit)			
Current liabilities:			
Accounts payable	$ 2	$ 4	$ 20
Accrued expenses and other current liabilities	23	55	174
Due to related party	–	1	–
Deferred rent, current portion	2	13	8
Customer advances	60	–	–
Deferred revenue, current portion	135	9	27
Total current liabilities	222	82	229
Due to related party, net of current portion	–	–	500
Deferred rent, net of current portion	–	4	–
Total liabilities	222	86	729
Stockholders' equity (deficit):			
Common stock $0.001 par value: 50,000,000 shares authorized at December 31, 2011 and 2012 and September 30, 2013 (unaudited); 41,852,885 shares issued and outstanding at December 31, 2011 and 2012 and September 30, 2013 (unaudited)	11	11	11
Additional paid-in capital	3,220	3,223	3,228
Accumulated deficit	(550)	(2,100)	(3,643)
Total stockholders' equity (deficit)	2,681	1,134	(404)
Total liabilities and stockholders' equity (deficit)	$2,903	$ 1,220	$ 325

The accompanying notes are an integral part of these financial statements.

Face It, Corp.
Statements of Operations
(in thousands)

	Year Ended December 31,		Nine Months Ended September 30,	
	2011	2012	2012 (unaudited)	2013 (unaudited)
Net revenue	$ 173	$ 365	$ 310	$ 128
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization shown separately below)	29	144	104	135
Sales and marketing	52	552	390	652
Research and development	388	1,120	846	692
General and administrative	44	102	56	187
Depreciation and amortization	2	2	1	1
Loss from operations	(342)	(1,555)	(1,087)	(1,539)
Other income (expense):				
Interest expense	(61)	–	–	(5)
Other income (expenses)	1	5	4	1
Total other income (expense)	(60)	5	4	(4)
Net loss	$(402)	$(1,550)	$ (1,083)	$ (1,543)

The accompanying notes are an integral part of these financial statements.

Face It, Corp.
Statement of Stockholders' Equity (Deficit)
(in thousands, except share data)

	Common stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount			
Balances at December 31, 2010	27,785,808	$ —	$ 66	$ (148)	$ (82)
Issuance of common stock	11,322,870	11	2,514	—	2,525
Conversion of 2010 Notes	502,055	—	112	—	112
Conversion of 2011 Notes	2,242,152	—	503	—	503
Issuance of stock warrants	—	—	25	—	25
Net loss	—	—	—	(402)	(402)
Balances at December 31, 2011	41,852,885	11	3,220	(550)	2,681
Issuance of stock warrants	—	—	3	—	3
Net loss	—	—	—	(1,550)	(1,550)
Balances at December 31, 2012	41,852,885	11	3,223	(2,100)	1,134
Stock-based compensation (unaudited)	—	—	5	—	5
Net loss (unaudited)	—	—	—	(1,543)	(1,543)
Balances at September 30, 2013 (unaudited)	41,852,885	$ 11	$ 3,228	$ (3,643)	$ (404)

The accompanying notes are an integral part of these financial statements.

Face It, Corp.
Statements of Cash Flows
(in thousands)

	Year Ended December 31,		Nine Months Ended September 30,	
	2011	2012	2012 (unaudited)	2013 (unaudited)
Cash used in operations				
Net loss	$ (402)	$(1,550)	$ (1,083)	$ (1,543)
Adjustments to reconcile net loss to cash used in operating activities:				
Depreciation	2	3	1	1
Stock-based compensation	—	—	—	5
Issuance of stock warrants	25	3	3	—
Non-cash interest expense	67	—	—	—
Changes in operating assets and liabilities:				
Accounts receivable	—	(15)	—	(51)
Prepaid expenses and other current assets	(4)	(3)	2	(7)
Accounts payable	(5)	2	(1)	16
Due to related party	—	1	—	(1)
Accrued expenses and compensation	16	32	(4)	119
Customer advances	—	(60)	(60)	—
Deferred revenue	105	(122)	(114)	18
Deferred rent	2	11	9	(9)
Net cash used in operations	(194)	(1,698)	(1,247)	(1,452)
Cash flows from investing activities:				
Purchases of property and equipment	(2)	—	—	—
Net cash used in investing activities	(2)	—	—	—
Cash flows from financing activities:				
Proceeds from issuance of debt	500	—	—	500
Proceeds from issuance of common stock	2,500	—	—	1,550
Repurchase of common stock	—	—	—	(1,550)
Net cash provided by financing activities	3,000	—	—	500
Net increase (decrease) in cash and cash equivalents	2,804	(1,698)	(1,247)	(952)
Cash and cash equivalents at beginning of period	86	2,890	2,890	1,192
Cash and cash equivalents at end of period	$2,890	$ 1,192	$ 1,643	$ 240
Non-cash financing and investing activities				
Conversion of convertible notes and accrued interest into common stock	$ 615	$ —	—	$ —
Discount on convertible notes	$ (52)	$ —	—	$ —

The accompanying notes are an integral part of these financial statements.

FACE IT, CORP.

NOTES TO FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2012 AND 2011
AND THE NINE MONTHS ENDED SEPTEMBER 30, 2013 AND 2012 (UNAUDITED)

1. NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Face It, Corp. (also doing business as SoCoCare, Hyfiniti, Hold-Free Networks, and InAppCare – collectively, the "Company"), was incorporated in the state of Nevada as Face It, Inc. in 2009. The Company later changed the name of the business to Face It, Corp. The Company develops and markets cloud-based customer contact solutions focused on social media and mobile applications to provide sophisticated customer interactions and provide users with useful analytics to enhance the customer experience. The Company is headquartered in San Diego, California, and began operations in April 2009 and exited the development stage in 2012.

Basis of Presentation — The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Use of Estimates — The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Certain Significant Risks and Uncertainties — The Company is subject to those risks common in technology-driven markets, including, but not limited to, ability to obtain additional financing, advances and trends in new technologies and industry standards, changes in certain strategic relationships or customer relationships, market acceptance of the Company's products, litigation or other claims against the Company, the hiring, training, and retention of key employees, new product introductions by competitors, and regulatory environment.

Unaudited Interim Financial Information — The accompanying balance sheet and statement of stockholders' equity (deficit) as of September 30, 2013, and the statements of operations, and cash flows for the nine months ended September 30, 2012 and 2013 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's financial position as of September 30, 2013 and results of operations and cash flows for the nine months ended September 30, 2012 and 2013. The financial data and the other information disclosed in these notes to the financial statements related to the nine month period is unaudited. The results of the nine months ended September 30, 2012 and 2013 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2013 or for any other interim period or other future year.

Cash — Cash consists of cash maintained in checking and savings accounts.

Concentration of Credit Risk — Financial instruments, which potentially subject the Company to significant concentrations of credit risk, consist primarily of cash and accounts receivable. A significant portion of the Company's cash is held at one large reputable financial institution. Amounts in excess of insured limits were $2,600,000 and $900,000 as of December 31, 2011 and 2012, respectively. There was no amount in excess of insured limits as of September 30, 2013 (unaudited). The Company has not experienced any losses in such accounts. The Company sells its services mostly to customers in North America.

Total revenues from customers that were 10% or greater of the respective total as of or for the years ended December 31, 2011 and 2012, and for the nine months ended September 30, 2012 and 2013 are as follows:

	Revenue			
	For the period ended			
	December 31,		September 30,	
Customer	2011	2012	2012	2013
			(unaudited)	
A	71%	*%	*%	*%
B	29%	38%	30%	46%
C	*%	59%	67%	30%
D	*%	*%	*%	12%

Total accounts receivable from customers that were 10% or greater of the respective total as of or for the years ended December 31, 2011 and 2012, and for the nine months ended September 30, 2013 are as follows:

	Accounts Receivable		
	As of		
	December 31,		September 30,
Customer	2011	2012	2013
			(unaudited)
B	*%	100%	39%
D	*%	*%	37%
E	*%	*%	21%

* Amount did not exceed 10% of total revenues or accounts receivable during the respective year.

Property and Equipment, net — Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Maintenance and repairs are charged to expense as incurred, and improvements and betterments are capitalized. When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the balance sheet and any resulting gain or loss is reflected in the statement of operations in the period realized. The Company's fixed assets consist primarily of furniture and fixtures and are depreciated over their useful life of five years.

Revenue Recognition —The Company's revenue consists of license, subscription and related usage as well as professional services. Revenue from subscription and related usage consists of fixed plan subscription fees for the delivery and support of the Company's hosted services through one of its main platforms: SoCoCare, InAppCare, and Hold-Free Networks, and variable usage-based fees. Professional services revenue may include development, implementation and training services.

The Company recognizes revenue when all of the following criteria have been met:

- Persuasive evidence of an arrangement exists;
- Delivery has occurred;
- The fee is fixed or determinable; and
- Collection is reasonably assured.

Access to and support for the Company's platforms are based on monthly user-based subscription fees, varying based on specific functionalities and services. Fixed subscription fees are primarily billed in advance on a monthly basis, while related usage fees are billed monthly in arrears. Support services include technical assistance for the Company's solution and upgrades and enhancements on a when-and-if available basis, which are not billed separately.

In cases where the developed software functions exclusively within the Company's hosted environment or when the customer has not taken title to the developed software ("Software-as-a- Service", or "SaaS arrangements"), subscription fees are recognized ratably over the applicable term and variable usage-based

fees are recognized as incurred. Typically, subscriptions automatically renew unless prior notice of cancellation is given by the customer. These fees are non-refundable, with the exception of some cases where credits may be given against usage-based fees for unplanned downtime. The Company does not have a history of providing such credits, so no reserve has been established.

At the time of each revenue transaction, the Company assesses whether fees under the arrangement are fixed or determinable and whether collection is reasonably assured. The Company assesses collection based on a number of factors, including past transaction history with the customer and the creditworthiness of the customer. If the Company determines that collection of fees is not reasonably assured, it defers the revenue and recognizes revenue at the time collection becomes reasonably assured, which is generally upon receipt of payment.

The Company's subscription service arrangements may involve multiple deliverables, including hosted services and related usage, which have stand-alone value to the customer, and professional services most commonly consisting of implementation and training. The Company has concluded that the implementation and training services do not have stand-alone value to the customer and are considered one unit of accounting.

For SaaS arrangements, the Company allocates revenue to the separate accounting units as follows:

- Fixed subscription revenue is recognized on a straight line basis over the applicable term, generally contractual monthly terms;
- Variable usage revenue is recognized as actual usage occurs as there is no additional obligation to the Company when billed;
- Professional services are recognized at the longer of the contractual term or estimated customer relationship period as these services do not have stand-alone value to the customer.

When contracts include acceptance clauses or when the Company has agreed to deliver software that is not yet generally available or requires further development prior to delivery, the Company defers all revenue under the arrangement until all products have been delivered and accepted by the customer.

The Company typically includes a warranty provision in its contracts for the functionality of the hosted solutions and workmanship of professional services. The Company does not have a history of claims under its warranty provision, and accordingly, has not recorded a warranty reserve.

Cost of Revenue — Costs of revenue consists primarily of payments to third-party providers for leases of data centers and servers, personnel costs associated with customer care and support of the Company's solution and data center operations, and for those employees providing application configuration, system integration, and education and training services to customers.

Research and Development — Research and development expenses include costs associated with the maintenance and ongoing development of the Company's technology, including compensation and employee benefits associated with the Company's engineering and research and development departments,

as well as costs for contracted services, supplies, and allocated facility costs. The Company reviews costs incurred in the application development stage and assesses such costs for capitalization. As of September 30, 2013, there were no capitalized costs.

Sales and Marketing — Sales and marketing expenses consist primarily of compensation and employee benefits of sales and marketing personnel and related support teams, certain advertising costs, travel, trade shows, marketing materials, and allocated facility costs.

General and Administrative — General and administrative expenses include facility costs, executive and administrative compensation and benefits, depreciation, professional service fees, insurance costs, and other general overhead costs.

Advertising Costs — The Company advertises its services primarily via online advertising. Costs associated with these advertising efforts are expensed as incurred in selling and marketing expense on the accompanying statements of operations, and were $23,000 and $4,000 for the years ended December 31, 2011 and 2012, respectively, and $4,000 (unaudited) and $3,000 (unaudited) for the nine months ended September 30, 2012 and 2013, respectively.

Stock-Based Compensation — The Company measures compensation expense for all stock-based payment awards, including stock options granted to employees, based on the estimated fair values on the date of grant. The fair value of each stock option granted is estimated using the Black-Scholes option pricing model. Stock-based compensation is recognized on a straight-line basis over the requisite service period, net of estimated forfeitures.

Common Stock Warrants — Freestanding and detachable warrants are valued based on their respective fair value or relative fair value on the issuance dates, estimated using the Black-Scholes option pricing model. These warrants have been evaluated and classified as equity on the Company's balance sheets.

Beneficial Conversion Features — Embedded conversion features that are in-the-money at the date of issuance are measured at intrinsic value and recorded as a reduction in the carrying amount of the related instrument and amortized as additional interest expense through the maturity date or the earliest date of conversion.

Income Taxes — The Company accounts for income taxes using an asset and liability approach. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Operating loss and tax credit carryforwards are measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized. As of December 31, 2011 and 2012 and as of September 30, 2013 (unaudited), the Company provided a full valuation allowance against its net deferred tax assets.

The Company recognizes the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date then only in an amount more likely than not to be sustained upon review by the tax authorities. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

Recently Issued Accounting Pronouncements

In December 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2011-11, Balance Sheet (Topic 210): Disclosures about Offsetting Assets and Liabilities. This newly issued accounting standard requires an entity to disclose both gross and net information about instruments and transactions eligible for offset in the statement of financial position as well as instruments and transactions executed under a master netting or similar arrangement and was issued to enable users of financial statements to understand the effects or potential effects of those arrangements on its financial position. This ASU is required to be applied retrospectively and is effective for fiscal years, and interim periods within those years, beginning on or after January 1, 2013. As this accounting standard only requires enhanced disclosure, the adoption of this standard is not expected to impact the Company's financial position or results of operations.

2. PROPERTY AND EQUIPMENT, NET

Property and equipment, net as of December 31, 2011 and 2012, and September 30, 2013 consisted of the following (in thousands):

	December 31, 2011	December 31, 2012	September 30, 2013 (unaudited)
Furniture and fixtures	$ 12	$ 12	$ 12
Less: accumulated depreciation	(3)	(6)	(7)
Net property and equipment	$ 9	$ 6	$ 5

3. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued and other current liabilities as of December 31, 2011 and 2012, and September 30, 2013 consisted of the following (in thousands):

	December 31, 2011	December 31, 2012	September 30, 2013 (unaudited)
Accrued compensation	$ —	$ 13	$ 90
Accrued contractor expenses	6	8	1
Legal and other professional services		34	78
Accrued interest	—	—	5
Other accrued expenses	17	—	—
Total	$ 23	$ 55	$ 174

4. CONVERTIBLE NOTES AND DETACHABLE WARRANTS

2010 Note – In January 2010, the Company issued a convertible note (the "2010 Note") with an underlying principal value of $100,000. The 2010 Note accrued simple interest at an annual rate of 7%, had a maturity date of September 30, 2012 and was convertible at the price paid by investors in the next equity financing ("Next Equity Financing") as defined under the 2010 Note agreement.

In connection with the issuance of the 2010 Note, the Company issued a warrant to purchase common stock at a price determined in the Next Equity Financing. Upon issuance, the warrant was determined to have a fair value of $33,000 using the Black-Scholes option valuation model, which was recorded as a discount against the 2010 Note. The 2010 Note discount and the $33,000 intrinsic value of the beneficial conversion feature of the warrant were being amortized into interest expense using the effective interest method.

In October 2011, the Company completed the "Next Equity Financing" with the issuance of 11,322,870 shares of common stock for gross proceeds of approximately $2,525,000. On the same date, the 2010 Note, including accrued interest, was converted into 502,055 shares of common stock. In addition to the conversion, a warrant for 224,215 shares of common stock was issued pursuant to the original terms of the warrant arrangement.

2011 Note – In September 2011, the Company issued a convertible note ("2011 Note") to a shareholder of the Company with an underlying principal value of $500,000. The 2011 Note accrued simple interest at an annual rate of 8%, had a maturity date of August 31, 2012 and was convertible into shares of common stock at a conversion price of $0.23, which was the fair market value of the Company's common stock on the date of issuance.

In October 2011, the 2011 Note, including accrued interest, was converted into 2,242,152 shares of common stock, pursuant to the original terms of the agreement.

5. LONG TERM RELATED PARTY DEBT

In August 2013, the Company entered into a loan agreement with a lender that allowed for term debt draws of up to $1.5 million. Under the terms of the agreement, the total principal outstanding, accrued interest of 12% per year and a financing fee of up to $3.0 million is due in August 2015 and the loan is collateralized by all of the Company's assets. In September 2013, the lender entered into a stock purchase agreement with the Company and consequently is a related party.

As of September 30, 2013, the entire $500,000 (unaudited) outstanding under the loan agreement was classified as non-current in the accompanying balance sheet.

6. STOCKHOLDERS' DEFICIT

Common Stock — As of December 31, 2011 and 2012, and September 30, 2013 (unaudited), the Company had 50,000,000 shares of common stock authorized and 41,852,885 shares of common stock issued and outstanding, respectively. In addition to common stock outstanding, shares of common stock are reserved for future issuance related to outstanding warrants and stock options as follows:

	December 31, 2012	September 30, 2013 (unaudited)
Stock options outstanding	—	709,646
Stock options available for grant	—	5,484,928
Exercise of common stock warrants	948,754	948,754
Total Shares Reserved	948,754	7,143,328

Stock Option Plans — The Company currently has options issued under its 2013 Equity Incentive Plan (the "2013 Plan"). The 2013 Plan was adopted in July 2013 and a total of 6,194,574 common shares were made available for issuance to eligible employees, non-employee consultants, and directors. Under the terms of the 2013 Plan, the Company has the ability to grant the following types of Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards and (vi) Other Stock Awards. Options generally vest over a four-year period, with an initial vesting period of 12 months for 25% of the grant and the remaining 75% of the shares vesting monthly on a ratable basis over the remaining 36 months. Options are exercisable for a maximum period of 10 years after the grant date. Options are exercisable upon vesting and vested options generally expire 90 days after termination of the optionee's employment or relationship as a consultant or director, unless otherwise extended by the terms of the stock option agreement. Any unvested options or vested but unexercised options are returned to the Company.

A summary of the Company's stock option activity as of September 30, 2013 is as follows (no options were granted prior to December 31, 2012):

	Number of Shares Outstanding	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Balance at December 31, 2012	—			
Options granted (weighted average fair value of $0.06 per share (unaudited)	709,646	$ 0.11		$ —
Options exercised (unaudited)	—			
Options forfeited (unaudited)	—			
Balance at September 30, 2013 (unaudited)	709,646	$ 0.11	6.08	$ —

	Number of Shares Outstanding	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Options vested and expected to vest—December 31, 2012	—	—	—	—
Options exercisable—December 31, 2012	—	—	—	—
Options vested and expected to vest—September 30, 2013 (unaudited)	709,646	$ 0.11	6.08	$ —
Options exercisable— September 30, 2013 (unaudited)	58,438	$ 0.11	6.08	$ —

The Company has computed the aggregate intrinsic value amounts disclosed in the above tables based on the difference between the original exercise price of the options and management's estimate of the fair value of the Company's common stock of $0.11 as of September 30, 2013 (unaudited).

The information about common stock options outstanding and exercisable at September 30, 2013 (unaudited), is summarized as follows:

	Options Outstanding		Options Exercisable	
Exercise Price	Number of Shares Outstanding	Weighted-Average Life (in Years)	Number of Shares Exercisable	Weighted-Average Life (in Years)
$ 0.11	709,646	6.08	58,438	6.08

For the 9 months ended September 30, 2013, the Company recorded approximately $5,000 (unaudited) as stock-based compensation expense. At September 30, 2013, there was approximately $40,000 (unaudited) of total unrecognized compensation cost related to unvested stock options. That cost is expected to be recognized over a weighted average period of 3.30 years.

Stock-based compensation expense for the nine months ended September 30, 2013 is as follows (in thousands):

	Nine Months Ended September 30, 2013 (unaudited)
Cost of revenue	$ 1
Sales and marketing	2
Research and development	1
General and administrative	1
Total	$ 5

Stock-Based Awards to Employees — All options granted were intended to be exercisable at a price per share not less than fair market value of the shares of the Company's stock underlying those options on their respective dates of grant. The Company estimated the fair value of its common stock utilizing valuations based on actual transactions involving the Company's common stock.

The Company estimates the fair value of each option award on the date of grant using the Black-Scholes option pricing model and using the assumptions noted in the below table. Expected volatility is based upon the historical volatility of a peer group of publicly traded companies. The expected term of options granted is estimated by taking the average of the vesting term and the contractual term of the option. The risk-free rate for the expected term of the options is based on the U.S. Treasury Constant Maturity at the time of grant. The assumptions used to value options granted during the nine months ended September 30, 2013 were as follows:

	Nine Months Ended September 30, 2013 (unaudited)
Expected term (years)	6.08
Volatility	60%
Risk-free interest rate	1.93%
Dividend yield	—

The Company recognized employee stock-based compensation expense for the nine months ended September 30, 2013 calculated based upon awards ultimately expected to vest, thus expense has been reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Common Stock Warrants — As of December 31, 2011 and 2012, and September 30, 2013 (unaudited), the Company had outstanding warrants to purchase 923,754, 948,754, and 948,754 shares of common stock, respectively, with exercise prices ranging from $0.001 to $0.223 per share, and with expiration dates between 2017 to 2021.

The Company estimated the fair value of each warrant on the date of issuance using the Black-Scholes option pricing model, which management determines approximates fair value, using the assumptions noted in the below table. Expected volatility is based upon the historical volatility of a peer group of publicly traded companies. The expected term of warrants represents the contractual term of the warrants. The risk-free rate for the expected term of the warrants is based on the U.S. Treasury Constant Maturity at the time of issuance.

The following table summarizes the valuation assumptions and other information related to all common stock warrants outstanding at September 30, 2013:

	Warrant A	Warrant B	Warrant C	Warrant D	Warrant E
Issuance Date	9/30/2011	9/30/2011	10/17/2011	11/17/2011	8/30/2012
Number of shares	263,823	285,808	224,215	149,908	25,000
Exercise price	$0.001	$0.001	$0.001	$0.223	$0.223
Expiration Date	September 2021	September 2021	March 2018	November 2021	August 2017
Expected term (years)	10.0	10.0	6.4	10.0	5.0
Volatility	66%	66%	66%	66%	55%
Risk-free interest rate	1.92%	1.92%	1.37%	1.96%	0.66%
Dividends	0%	0%	0%	0%	0%
Fair value per share on date of issuances	$ 0.001	$ 0.001	$0.222	$ 0.163	$ 0.105

7. INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The following table presents the significant components of the Company's deferred tax assets and liabilities for the periods presented (in thousands):

	December 31, 2011	December 31, 2012
Deferred tax assets:		
Net operating loss and credit carryforwards	$ 79	$ 720
Accrued liabilities	1	7
Gross deferred tax assets	80	727
Valuation allowance	(79)	(726)
Net deferred tax assets	1	1
Deferred tax liability:		
Fixed assets	(1)	(1)
Gross deferred tax liability	(1)	(1)
Net deferred tax assets	$ —	$ —

A valuation allowance is provided for deferred tax assets where the recoverability of the assets is uncertain. The determination to provide a valuation allowance is dependent upon the assessment of whether it is more likely than not that sufficient future taxable income will be generated to utilize the deferred tax assets. Based on the weight of the available evidence, which includes the Company's historical operating losses, lack of taxable income, and the accumulated deficit, the Company provided a full valuation allowance against the deferred tax assets resulting from the tax loss and credits carried forward. As of December 31, 2012, the Company had net operating loss carryforwards of approximately $1.8 million for federal income taxes and $1.7 million for state income taxes. If not utilized, these carryforwards will begin to expire in 2030 for both federal and state purposes.

As of December 31, 2012, the Company had research and development credit carryforwards of approximately, $1,000 and $0 for federal and state income taxes, respectively. If not utilized, the federal carryforwards will begin to expire in various amounts beginning in 2030. The state tax credit can be carried forward indefinitely.

Internal Revenue Code Section 382 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event that the Company had a change of ownership, utilization of the net operating loss and tax credit carryforwards may be restricted.

The Company recognizes in the financial statements the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position.

A reconciliation of the beginning and ending amount of unrecognized tax benefits (excluding interest and penalties) for the periods presented, is as follows (in thousands):

	December 31, 2011	December 31, 2012
Unrecognized benefit – beginning of period	$ 1	$ 1
Gross increases – current year tax positions	—	—
Gross decreases – prior year tax positions	—	—
Unrecognized benefit – end of period	$ 1	$ 1

The unrecognized tax benefits of approximately $1,000 and $1,000 as of December 31, 2011 and 2012, respectively, would have an impact on the Company's effective tax rate if recognized.

The Company's policy is to record interest and penalties related to unrecognized tax benefits as income tax expense. At December 31, 2012 and 2011 the Company had no cumulative interest and penalties related to the uncertain tax position.

The Company is currently unaware of any uncertain tax positions that could result in significant additional payments, accruals, or other material deviation in this estimate over the next 12 months.

The Company's federal and state returns are open to audit under the statute of limitations for all years presented in these financial statements due to unutilized net operating loss carryovers from such years.

8. COMMITMENTS AND CONTINGENCIES

Leases — The Company has operating lease agreements for office, data center, research and development, and sales and marketing space in the United States that expire at various dates through 2014. The Company recognizes rent expense on a straight-line basis over the lease term and records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability. Rent expense was approximately $8,000 and $158,000 for the years ended December 31, 2011 and 2012, respectively, and $119,000 (unaudited) and $150,000 (unaudited) for the nine months ended September 30, 2012 and 2013, respectively.

Approximate remaining future minimum lease payments under non-cancelable leases as of December 31, 2012, were as follows (in thousands):

Year ending December 31,	Operating Leases
2013	$ 234
2014	67
Total minimum lease payments	$ 301

9. SUBSEQUENT EVENTS

Subsequent events have been evaluated from December 31, 2012 through January 16, 2014.

Increase in authorized common shares – In October 2013, the Company increased the authorized common shares for issuance from 50,000,000 to 55,000,000; increasing the total number of authorized shares from 100,000,000 to 105,000,000 shares.

Issuance of stock awards – In October 2013, the Company issued 4,202,500 stock awards to certain persons and entities in exchange for services provided to the Company and 174,908 stock awards to certain persons in exchange for the cancellation of warrants previously issued to those persons under the terms of the 2013 Equity Incentive Plan at an exercise price of $0.223 per share.

Sale of the Company – In October 2013, 100% of the Company's assets and liabilities were acquired by Five9, Inc. ("Five9") in exchange for consideration of approximately $16,089,000. The purchase consideration consisted of cash of $2,941,000 and Five9 common stock and options for common stock valued at $13,148,000.

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

Effective October 18, 2013, Five9, Inc. ("the Company") completed an acquisition of Face It, Corp., also referred to as SoCoCare, a privately-held company that provides social engagement and mobile customer care applications.

The following unaudited pro forma condensed combined statement of operations was prepared using the acquisition method of accounting in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 805 "Business Combinations" ("ASC 805") and with the assumptions and adjustments described in the accompanying notes to the unaudited pro forma combined condensed financial statements. There are no significant differences between the accounting policies of the Company and Face It, Corp. The total cost of the acquisition has been allocated to the assets acquired and the liabilities assumed based upon their respective fair values as determined by the Company. The pro forma condensed combined financial statements do not include the realization of any cost savings from operating efficiencies, synergies or other restructurings resulting from the acquisition.

The unaudited pro forma condensed combined statement of operation is based on the respective historical consolidated statements of operations and the accompanying notes of the Company and Face It, Corp. The unaudited pro forma condensed combined statement of operations assumes that the acquisition took place as of January 1, 2013, the first day of the Company's 2013 fiscal year.

The unaudited pro forma condensed statement of operation is based on the assumptions set forth in the notes to such statements. The unaudited pro forma adjustments made in connection with the development of the unaudited pro forma information have been made solely for purposes of developing such unaudited pro forma information for illustrative purposes necessary to comply with the disclosure requirements of the Securities and Exchange Commission. The unaudited pro forma condensed combined financial statements do not purport to be indicative of the results of operations for future periods or the combined financial position or the results that actually would have been realized had the entities been a single entity during these periods.

The unaudited pro forma condensed combined statement of operations should be read in conjunction with the Company's historical consolidated financial statements and notes thereto included in the Company's amended Form S-1, as well as the historical consolidated financial statements and accompanying notes thereto of Face It, Corp. included in the amended Form S-1.

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS

	Five9, Inc. Year Ended December 31, 2013	Nine Months Ended September 30, 2013	Pro forma adjustments	Pro forma combined
Revenues	$ 84,132	$ 128	$ —	$ 84,260
Cost of revenues	48,807	135	280 (a)	49,222
Gross profit	35,325	(7)	(280)	35,038
Operating expenses:				
Research and development	17,529	692	399 (b)	18,620
Sales and marketing	28,065	652	83 (c)	28,800
General and administrative	18,053	188	(407)(d)	17,834
Total operating expenses	63,647	1,532	75	65,254
Loss from operations	(28,322)	(1,539)	(355)	(30,216)
Other income (expense), net:				
Interest expense	(1,080)	(5)	(191)(e)	(1,276)
Change in fair value of convertible preferred stock warrant liability	(1,871)	—	— (f)	(1,871)
Other income, net	29	1	—	30
Other income (expense), net	(2,922)	(4)	(191)	(3,117)
Loss before income taxes	(31,244)	(1,543)	(545)	(33,332)
Provision for income taxes	70	—	— (g)	70
Net loss	$ (31,314)	$ (1,543)	$ (545)	$ (33,402)
Net loss per share:				
Basic and diluted	$ (1.95)			$ (2.08)
Weighted average shares used for calculations:				
Basic and diluted	16,026			16,026

See accompanying notes

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

NOTE 1. BASIS OF PRO FORMA PRESENTATION

On October 18, 2013, the Company acquired Face It, Corp. to add social engagement and mobile customer care applications. Upon acquisition, Face It, Corp. merged into a wholly-owned subsidiary of the Company. The total purchase consideration, which was valued at $15,032,000, included $2,964,000 of cash, 5,691,000 shares of common stock valued at $12,064,000 and 87,000 options for common stock with a total fair value of $115,000, of which $4,000 allocated to the purchase consideration and $111,000 was allocated to post-combination stock-based compensation. Of the shares of common stock included in the purchase consideration, 1,213,000 shares were withheld in order to indemnify the Company from certain losses that may arise from any inaccuracies or breach of any of Face It, Corp.'s covenants, representations and warranties as of the acquisition date, and were not treated as contingent consideration. The Company incurred costs of $574,000 directly related to the acquisition of Face It, Corp., which were expensed as incurred.

Under the acquisition method of accounting, the total purchase price is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their fair values as of the date of acquisition. The pro forma purchase price adjustments are preliminary and have been made solely for the purpose of providing the unaudited pro forma condensed combined financial statements.

The excess of the purchase price over the tangible and identifiable intangible assets acquired and liabilities assumed has been allocated to goodwill.

The allocation of the purchase price at the acquisition date is as follows (dollars in thousands):

Tangible assets acquired	$ 177
Intangible assets:	
Developed technology	2,460
Customer relationships	520
Domain names	50
Non-compete agreements	140
Goodwill	11,798
Current liabilities	(113)
Net assets acquired	$15,032

Identifiable intangible assets

The fair value of the acquired developed technology was determined by discounting the estimated net future cash flows of the technology. The fair value of the acquired customer relationships was determined based on the estimated costs to replace such relationships. The fair value of the acquired domain names was determined by estimating a benefit from owning the asset rather than paying a royalty to a third party for the use of the asset. The fair value of the non-compete agreements was determined by estimating the cost savings of having these agreements in place. The following table sets forth the components of these intangible assets and their estimated useful lives (dollars in thousands):

	Estimated Fair Value	Estimated Useful Life
Developed technology	$ 2,460	7 years
Customer relationships	520	5 years
Domain names	50	5 years
Non-compete agreements	140	3 years
Total	$ 3,170	

NOTE 2. PRO FORMA ADJUSTMENTS

The following is a description of pro forma adjustments reflected in the unaudited pro forma condensed combined statement of operations:

a. Cost of Revenue

The adjustment reflects the amortization for acquired technology, which is being recognized in the statement of operations using a straight-line method over a term of 7 years.

b. Research and Development

The adjustment reflects stock compensation expense for the Founders' shares subject to forfeiture being recognized over the one and two year vesting periods.

c. Sales and Marketing

The adjustment reflects the amortization for the acquisition of customer relationships, which is being recognized in the statement of operations using a straight-line method over a term of 5 years.

d. General and Administrative

The adjustment reflects (i) the amortization for the domain names and non-compete intangible assets acquired, which are being recognized in the statement of operations using a straight-line method over a term of 5 and 3 years, respectively, (ii) stock compensation expense of $200,000 for the Founders' shares subject to forfeiture being recognized over the one and two year vesting periods, and (iii) the reduction of direct transaction-related costs of $652,000 for the year ended December 31, 2013.

e. Interest Expense

The adjustment reflects the interest expense associated with the Company's $5,000,000 term loan agreement which relates to the acquisition. The term loan carries a variable interest rate of prime rate plus 1.50%. The interest rate used to compute the pro forma interest expense adjustment was 4.75%, which was the rate in effect upon borrowing. An increase in the interest rate by 0.0125% would increase the interest expense by $4,000 for the year ended December 31, 2013.

f. Warrant Revaluation and Amortization

A pro forma adjustment for the revaluation and related amortization of the warrant issued in conjunction with the term loan was not made as it was not deemed feasible and not expected to be material.

g. Income Taxes

There is no income tax impact because the pro forma adjustments would impact the net deferred tax assets in the United States which have a corresponding full valuation allowance.

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Shares

Common Stock

Prospectus

J.P. Morgan **Barclays** **BofA Merrill Lynch**

Pacific Crest Securities **Canaccord Genuity** **Needham & Company**

, 2014

Part II: Information Not Required in Prospectus

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the issuance and distribution of the shares of common stock being registered. All amounts shown are estimates except for the SEC registration fee, FINRA filing fee and the exchange listing fee.

	Amount to be paid
SEC registration fee	$ 14,812
FINRA filing fee	$ 17,750
Printing and engraving expense	$ *
Legal fees and expenses	$ *
Accounting fees and expenses	$ *
Blue sky fees and expenses	$ *
NYSE listing fees	$ *
Transfer agent fees and expenses	$ *
Miscellaneous expenses	$ *
Total	$ *

* To be provided by amendment.

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with specified actions, suits and proceedings, other than a derivative action by or in the right of the corporation, if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification extends only to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such action and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification that may be granted by a corporation's certificate of incorporation, bylaws, disinterested director vote, stockholder vote, agreement or otherwise.

Our current amended and restated certificate of incorporation limits the liability of our directors for monetary damages for a breach of fiduciary duty as a director to the fullest extent permitted by the Delaware General Corporation Law. Consequently, our directors are not personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for (i) any breach of their duty of loyalty to our company or our stockholders; (ii) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or (iv) any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law. We expect to adopt a new amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, and which will contain similar provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law.

Our current amended and restated bylaws provide that we (i) will indemnify any person who was or is a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our directors or officers or, while a director or officer, is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and (ii) must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by us. We expect to adopt new amended and restated bylaws, which will become effective immediately prior to the completion of this offering, which will contain similar provisions that limit the liability of our directors and officers.

We have entered into indemnification agreements with our directors, executive officers and certain other officers pursuant to which they are provided indemnification rights that are broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our directors, executive officers and certain other officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors, executive officers and certain other officers in investigating or defending any such action, suit or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and officers. Prior to the completion of this offering, we expect to enter into new indemnification agreements with each of our directors, executive officers and certain other officers which will contain similar provisions.

The limitation of liability and indemnification provisions that are expected to be included in our new amended and restated certificate of incorporation, amended and restated bylaws and the indemnification agreements that we enter into with our directors, executive officers and certain other officers may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made for breach of fiduciary duty or other wrongful acts as a director or executive officer and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law. Prior to the completion of this offering, we will enter into additional insurance arrangements to provide coverage to our directors and executive officers against loss arising from claims relating to public securities matters.

The underwriting agreement to be filed as Exhibit 1.1 to this registration statement provides for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act and otherwise.

Item 15. Recent Sales of Unregistered Securities.

Except as set forth below, in the three years preceding the filing of this registration statement, we have not issued any securities that were not registered under the Securities Act.

Preferred Stock Issuances

On January 12, 2011, the Registrant sold 18,565,794 shares of its series B-2 preferred stock to twelve accredited investors at a purchase price per share of $0.4309 for aggregate gross proceeds of approximately $8.0 million.

On April 4, 2012, the Registrant sold 12,903,226 shares of its series C-2 preferred stock to twelve accredited investors at a purchase price per share of $0.9300 for aggregate gross proceeds of approximately $12.0 million.

On April 26, 2013, the Registrant sold 15,269,294 shares of its series D-2 preferred Stock to thirteen accredited investors at a purchase price per share of $1.4408 for aggregate gross proceeds of approximately $22.0 million

On October 18, 2013, the Registrant issued a warrant to purchase 52,054 shares of series D-2 preferred stock to an accredited investor in connection with amending its credit agreement.

On February 20, 2014, the Registrant issued warrants to purchase 711,462 shares of common stock to accredited investors in connection with entering into a loan and security agreement.

Stock Plan-Related Issuances

From January 1, 2011 through February 27, 2014, the Registrant granted to its directors, employees, consultants and other service providers options to purchase an aggregate of 25,074,995 shares of common stock under the Registrant's 2004 Plan at exercise prices ranging from $0.13 to $2.98 per share, for an aggregate exercise price of approximately $27.0 million.

From January 1, 2011 through February 27, 2014, the Registrant issued and sold to its directors, employees, consultants and other service providers an aggregate of 8,285,826 shares of common stock upon the exercise of options under the 2004 Plan at exercise prices ranging from $0.03 to $2.53 per share, for an aggregate purchase price of approximately $1.3 million.

On October 18, 2013, the Registrant issued options to purchase an aggregate of 87,402 shares of its common stock to three individuals in connection with its acquisition of all the outstanding shares of SoCoCare.

Stock Issued in Connection with Acquisition

On October 18, 2013, the Registrant issued 4,478,013 shares of its common stock to fifteen individuals and entities that were accredited investors in connection with its acquisition of all the outstanding shares of SoCoCare. The securities issued in connection with the SoCoCare acquisition were offered and sold in reliance upon an exemption from registration pursuant to Section 4(2) of the Securities Act in a transaction not involving a public offering. The Company made the determination that the exemption from registration provided by Section 4(2) of the Securities Act was available based on the representations of the investors which included, that each such investor was an "accredited investor" within the meaning of Rule 501 of Regulation D and that (i) such investor was acquiring the securities for its own account for investment and not with a view to, or for resale in connection with, any distribution within the meaning of the Securities Act, (ii) such investor agreed not to sell or otherwise transfer the securities unless they are registered under the Securities Act or an exemption or exemptions from such registration are available, (iii) such investor had the capacity to protect his or her own interests in connection with the purchase of the securities by virtue of his or her business or financial expertise or that of his or her professional advisors, and (iv) such investor was aware of the Company's business affairs and financial condition and acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities.

The issuances of options, shares upon the exercise of options, preferred stock and common stock described above were deemed exempt from registration under Section 4(2) of the Securities Act, and in certain circumstances, in reliance on Rule 701 promulgated thereunder as transactions by an issuer not involving a public offering or as transactions pursuant to compensatory benefit plans and contracts relating to compensation. All of the foregoing securities are deemed restricted securities for purposes of the Securities Act. The recipients of securities in the transactions exempt under Section 4(2) of the Securities Act represented that they were accredited investors and that they were acquiring the securities for investment purposes only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the stock certificates and instruments issued in such transactions.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

Exhibit number	Description
1.1*	Form of Underwriting Agreement.
2.1§#	Agreement and Plan of Merger, dated as of October 18, 2013, by and among the Registrant, Five9 Nevada Inc., Five9 Acquisition LLC, Face It, Corp. and the representative listed therein.
3.1	Amended and Restated Certificate of Incorporation, as currently in effect.
3.2*	Form of Amended and Restated Certificate of Incorporation, to be in effect upon the completion of this offering.
3.3	Amended and Restated Bylaws, as currently in effect.
3.4*	Form of Amended and Restated Bylaws, to be in effect upon the completion of this offering.
4.1*	Form of Common Stock Certificate.
4.2	Eighth Amended and Restated Stockholders' Agreement, dated October 18, 2013, among the Registrant and certain holders of its capital stock.
4.3	Form of Warrant to purchase shares of series A-2 preferred stock.
4.4	Warrant to purchase shares of series D-2 preferred stock issued to City National Bank.
4.5	Form of Warrant to purchase shares of common stock.
4.6	Form of Warrant to purchase shares of common stock issued to Fifth Street Finance Corp. and Fifth Street Mezzanine Partners V, L.P.
5.1*	Opinion of Jones Day.
10.1*+	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.
10.2+	Employment Agreement between the Registrant and Michael Burkland.
10.3+	Confirmation Letter between the Registrant and Barry Zwarenstein.
10.4+	Offer Letter between the Registrant and Dan Burkland and amendment.
10.5+	Offer Letter between the Registrant and Tom Schollmeyer and amendment.
10.6+	Offer Letter between the Registrant and David Milam.
10.7+	Offer Letter between the Registrant and Moni Manor.
10.8+	Five9, Inc. 2004 Equity Incentive Plan and related form agreements.
10.9*+	Five9, Inc. 2014 Equity Incentive Plan and related form agreements.
10.10*+	Five9, Inc. 2014 Employee Stock Purchase Plan.
10.11+	2013 Bonus Plan.
10.12+	Key Employee Severance Benefit Plan.
10.13	Office Lease for Bishop Ranch Building, dated December 16, 2011, between the Registrant and Alexander Properties Company.
10.14	Second Lease Addendum for Bishop Ranch Building, dated January 23, 2014, between the Registrant and Alexander Properties Company.
10.15	Loan and Security Agreement, dated March 8, 2013, by and between the Registrant and City National Bank.

Exhibit number	Description
10.16	First Amendment to Loan and Security Agreement, dated as of October 18, 2013, by and between the Registrant and City National Bank.
10.17	Consent and Second Amendment to Loan and Security Agreement, dated as of February 20, 2014, by and between the Registrant and City National Bank.
10.18	Loan and Security Agreement, dated as of February 20, 2014, by and among the Registrant, Five9 Acquisition LLC, Fifth Street Finance Corp. and Fifth Street Mezzanine Partners V, L.P. as lenders, and Fifth Street Finance Corp. as agent.
10.19	Equipment Lease Agreement, dated October 27, 2011, between the Registrant and Cisco Systems Capital Corporation.
10.20	Equipment Lease Agreement, dated November 8, 2012, between the Registrant and Winmark Capital Corporation.
10.21	Equipment Lease Agreement, dated December 16, 2010, between the Registrant and Fountain Partners.
10.22	Equipment Lease Agreement, dated November 1, 2010, between the Registrant and Hewlett-Packard Financial Services.
10.23§	Master Space Agreement, dated November 1, 2012, between the Registrant and Quality Investment Properties Metro, LLC.
10.24§	Addendum to Master Space Agreement, dated January 2, 2013, between the Registrant and Quality Investment Properties Metro, LLC.
10.25§	Master License and Service Agreement, dated November 1, 2011, between the Registrant and Coresite Coronado Stender, L.L.C. and Coresite Services, Inc.
10.26	Promissory Note, dated July 16, 2013, between the Registrant and Universal Service Administrative Company.
16.1	Letter from Deloitte & Touche LLP to the Securities and Exchange Commission.
21.1	Subsidiaries of the Company.
23.1	Consent of KPMG LLP, independent registered public accounting firm.
23.2	Consent of Moss Adams LLP, independent auditors.
23.3*	Consent of Jones Day (included in Exhibit 5.1).
24.1	Power of Attorney (see the signature page to this Registration Statement on Form S-1).

* To be filed by amendment.

§ Portions of this exhibit will be omitted pending a determination by the Securities and Exchange Commission as to whether these portions should be granted confidential treatment.

Pursuant to Item 601(b)(2) of Regulation S-K, the Registrant agrees to furnish supplementally a copy of any omitted exhibit or schedule to the Securities and Exchange Commission upon request.

\+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules

All financial statement schedules are omitted because the information called for is not required or is shown either in the consolidated financial statements or in the notes thereto. See the Index to Financial Statements included on page F-1 for a list of the financial statements and schedules included in this registration statement.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Ramon, State of California, on the 3rd day of March, 2014.

FIVE9, INC.

By: /s/ Michael Burkland
Michael Burkland
Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Michael Burkland and Barry Zwarenstein, and each of them, severally, his or her true and lawful attorneys-in-fact and agents with the power to act, with or without the other, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in his or her capacity as a director or officer or both, as the case may be, of the Company, to sign (i) any and all amendments (including post-effective amendments) to this Registration Statement, (ii) any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and (iii) all documents or instruments necessary, appropriate or desirable to enable the Company to comply with the Securities Act, other federal and state securities laws and other applicable United States and other laws in connection with this offering, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing whatsoever necessary, appropriate or desirable to be done in and about the premises, as fully to all intents and purposes as he or she might or could do or cause to be done in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signatures	Title	Date
/s/ Michael Burkland Michael Burkland	Director, Chief Executive Officer and President (Principal Executive Officer)	March 3, 2014
/s/ Barry Zwarenstein Barry Zwarenstein	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 3, 2014
/s/ Jack Acosta Jack Acosta	Director	March 3, 2014
/s/ Kimberly Alexy Kimberly Alexy	Director	March 3, 2014
/s/ Jayendra Das Jayendra Das	Director	March 3, 2014
/s/ David DeWalt David DeWalt	Director	March 3, 2014

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Signatures	Title	Date
/s/ Mitchell Kertzman Mitchell Kertzman	Director	March 3, 2014
/s/ David Welsh David Welsh	Director	March 3, 2014
/s/ Tim Wilson Tim Wilson	Director	March 3, 2014
/s/ Robert Zollars Robert Zollars	Director	March 3, 2014

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EXHIBIT INDEX

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21.1	Subsidiaries of the Company.
23.1	Consent of KPMG LLP, independent registered public accounting firm.
23.2	Consent of Moss Adams LLP, independent auditors.
23.3*	Consent of Jones Day (included in Exhibit 5.1).
24.1	Power of Attorney (see the signature page to this Registration Statement on Form S-1).

* To be filed by amendment.

§ Portions of this exhibit will be omitted pending a determination by the Securities and Exchange Commission as to whether these portions should be granted confidential treatment.

Pursuant to Item 601(b)(2) of Regulation S-K, the Registrant agrees to furnish supplementally a copy of any omitted exhibit or schedule to the Securities and Exchange Commission upon request.

\+ Indicates management contract or compensatory plan.

Exhibit 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

dated as of October 18, 2013

by and among

Five9, Inc., as Parent

Five9 Nevada Inc., as Merger Co.

Five9 Acquisition LLC, as Acquisition Co.

Face It, Corp., as the Company

and

the Representative

CONFIDENTIAL TREATMENT REQUESTED—CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION.

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EXHIBITS

Exhibit A	Form of Stockholders' Written Consent
Exhibit B-1	Form of Restricted Stock and Joinder Agreement
Exhibit B-2	Form of Option Consent
Exhibit C-1	Form of U.S. Founder Employment Agreement
Exhibit C-2	Form of Spanish Founder Employment Agreement
Exhibit C-3	Form of Spanish Employment Agreement
Exhibit D	Form of Founder Non-competition Agreement
Exhibit E	Form of Nevada Articles of Reverse Merger
Exhibit F-1	Form of Delaware Certificate of Forward Merger
Exhibit F-2	Form of Nevada Article of Forward Merger
Exhibit G	Form of Opinion of Morgan, Lewis & Bockius LLP
Exhibit H	Form of Letter of Transmittal

SCHEDULES

Disclosure Schedule
Schedule 1.2(b)(3) — Cash-Out Warrantholders
Schedule 1.2(b)(6) — Spanish Service Providers
Schedule 1.2(b)(8) — Other Service Providers
Schedule 1.2(b)(16) — Contracts to be Terminated or Amended
Schedule 1.2(b)(17) — Contracts Requiring Consent or Notice

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of October 18, 2013 (this "***Agreement***"), is by and among Five9, Inc., a Delaware corporation ("***Parent***"), Five9 Nevada Inc., a Nevada corporation and a direct wholly-owned subsidiary of Parent ("***Merger Co.***"), Five9 Acquisition LLC, a Delaware limited liability company and a direct wholly-owned subsidiary of Parent ("***Acquisition Co.***"), Face It, Corp., a Nevada corporation (the "***Company***") and the Representative. Certain capitalized terms used herein have the meanings assigned to them in Section 6.1.

BACKGROUND

Each of the respective Boards of Directors of Parent, Merger Co., Acquisition Co. and the Company has approved, and declared it advisable and in the best interests of its stockholders or shareholders, as the case may be, to consummate the business combination transaction and other transactions provided for herein, including the merger (the "***Reverse Merger***") of Merger Co. with and into the Company followed by the merger of the Company with and into Acquisition Co. (the "***Forward Merger***," and together with the Reverse Merger, the "***Merger***"), in accordance with the laws of their respective states of incorporation, including the Nevada Revised Statutes ("***NRS***") and the Delaware Limited Liability Company Act (the "***DLLCA***"), and upon the terms and subject to the conditions set forth herein.

The Parties intend that the Merger will qualify as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations to be conducted as an integrated plan in the manner contemplated by Revenue Ruling 2001-46, 2001-2-CB321 (the "***Revenue Ruling***") and, by approving the resolutions authorizing this Agreement, that this Agreement will constitute a "plan of reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations conducted as an integrated plan in the manner contemplated by the Revenue Ruling.

The board of directors of the Company has determined that this Agreement, the Merger and the other Transactions are advisable to and in the best interests of the Company's stockholders, has adopted this Agreement, the Merger and the other Transactions, and has recommended the Merger to the Company's stockholders.

Concurrently with the execution and delivery of this Agreement, stockholders of the Company holding Company Common Stock with sufficient voting power to approve this Agreement have delivered to Parent and the Company a written consent in the form of **Exhibit A** (the "***Stockholders' Written Consent***") approving this Agreement.

Concurrently with the execution and delivery of this Agreement, the stockholders of the Company are each entering into the Restricted Stock and Joinder Agreement, in the form of **Exhibit B-1** (the "***Restricted Stock and Joinder Agreement***"), the optionholders of the Company are each entering into the Option Consent Agreement, in the form of **Exhibit B-2** (the "***Option***

Consent"), and the warrantholders of the Company listed on Schedule 1.2(b)(3) (the "***Cash-Out Warrantholders***") have entered into certain warrant cancellation agreements (the "***Warrant Cancellation Agreements***"), which agreements provide for certain agreements, undertakings, representations, warranties, releases and waivers.

A portion of the Merger Consideration, constituting the Working Capital Holdback Amount, will be held back by Parent, as partial security for the obligations of the Indemnifying Securityholders hereunder with respect to the Working Capital.

A portion of the Merger Consideration, constituting the Indemnification Holdback Shares, will be held back by Parent, as partial security for the indemnification obligations of the Indemnifying Securityholders hereunder.

Each Indemnifying Securityholder has approved, and deems it advisable and in the best interests of such holder to authorize, the appointment of Robert Cell as the initial Representative pursuant to Section 4.10 for the purposes set forth herein.

As an inducement to Parent's entry into this Agreement, concurrently with the execution and delivery of this Agreement, each of Lance Fried and Edwin Margulies (the "***U.S. Founders***") is executing and delivering an employment agreement in the form attached hereto as **Exhibit C-1** (the "***U.S. Founder Employment Agreement***"), a non-competition agreement in the form attached hereto as **Exhibit D** (the "***Founder Non-competition Agreement***") and an employee proprietary information and inventions agreement in Parent's standard form (the "***PIIAs***").

As an inducement to Parent's entry into this Agreement, concurrently with the execution and delivery of this Agreement, Ran Ezerzer (the "***Spanish Founder***" and with the U.S. Founders, the "***Founders***"), is executing and delivering an employment agreement in the form attached hereto as **Exhibit C-2** (the "***Spanish Founder Employment Agreement***"), a Founder Non-competition Agreement and a PIIA.

As an inducement to Parent's entry into this Agreement, concurrently with the execution and delivery of this Agreement, the individuals listed on Schedule 1.2(b)(6) (the "***Spanish Service Providers***") are executing and delivering an employment agreement in the form attached hereto as **Exhibit C-3** (the "***Spanish Employment Agreement***") and a PIIA.

As an inducement to Parent's entry into this Agreement, concurrently with the execution and delivery of this Agreement, the individuals listed on Schedule 1.2(b)(8) (the "***Other Service Providers***") are executing and delivering employment offer letters with Parent and PIIAs.

In consideration of the foregoing and the respective representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon the terms and subject to the conditions in this Agreement, the Parties hereby agree as follows:

ARTICLE 1

MERGER

Section 1.1 The Merger. In accordance with the NRS, Merger Co. shall be merged with and into the Company pursuant to the articles of merger, substantially in the form of **Exhibit E** (the "***Articles of Reverse Merger***"), to be filed with the Secretary of State of the State of Nevada, concurrently with or as soon as practicable following the Closing. The Reverse Merger shall become effective at the time specified in the filed Articles of Reverse Merger (the "***Effective Time***"). The Company shall be the surviving entity (sometimes referred to as the "***Interim Surviving Entity***") in the Reverse Merger and shall succeed to and assume all the rights, title, obligations and liabilities of Merger Co. in accordance with the NRS. As part of an integrated plan and in accordance with the DLLCA and the NRS, the Company shall be merged with and into Acquisition Co., pursuant to the certificate of merger, substantially in the form of **Exhibit F-1** (the "***Delaware Certificate of Forward Merger***"), to be filed with the Secretary of State of the State of Delaware and pursuant to the articles of merger, substantially in the form of **Exhibit F-2** (the "***Nevada Articles of Forward Merger***," and together with the Delaware Certificate of Forward Merger, the "***Articles of Forward Merger***"), to be filed with the Secretary of State of the State of Nevada, as soon as practicable following the Reverse Merger. The Forward Merger shall become effective at the time specified in the filed Articles of Forward Merger. Acquisition Co. shall be the surviving entity (sometimes referred to as the "***Surviving Entity***") in the Forward Merger and shall succeed to and assume all the rights, title, obligations and liabilities of the Company in accordance with the DLLCA and the NRS.

Section 1.2 Closing.

(a) The closing of the Reverse Merger (the "***Closing***") will take place at the offices of Jones Day at 1755 Embarcadero Road, Palo Alto, California, concurrently with the execution of this Agreement or at such other time and place as the Parties agree in writing (the "***Closing Date***").

(b) At the Closing, the Company shall deliver to Parent the following agreements and instruments (each of which shall be in full force and effect) and other documents:

(1) the Restricted Stock and Joinder Agreements, executed by each stockholder of the Company;

(2) the Option Consents, executed by each optionholder of the Company;

(3) the Warrant Cancellation Agreements, executed by each of the Cash-Out Warrantholders;

(4) the U.S. Founder Employment Agreements, executed by each U.S. Founder;

(5) the Spanish Founder Employment Agreement, executed by the Spanish Founder;

(6) the Spanish Employment Agreements, executed by each of the Spanish Service Providers set forth on Schedule 1.2(b)(6);

(7) the Non-competition Agreements, executed by each U.S. Founder and the Spanish Founder;

(8) an offer letter with Parent, executed by each of the Other Service Providers to the Company set forth on Schedule 1.2(b)(8);

(9) a certificate, dated as of the Closing Date, of the president and chief executive officer of the Company, certifying that attached are true and correct copies of its Charter, bylaws, board of directors actions and stockholders' actions in connection with the Transactions;

(10) a long-form good standing certificate for the Company issued by the relevant Governmental Authority within five days of the Closing Date;

(11) confirmation of the good standings described in Section 1.2(b)(10) as of the Closing Date;

(12) a certificate of the president and chief executive officer of the Company setting forth or accompanying the following information and certifying that the information is accurate and complete:

(A) the Company Transaction Expenses as of immediately prior to the Closing;

(B) the Company Indebtedness as of immediately prior to the Closing; and

(C) a spreadsheet (the "***Spreadsheet***") in a form reasonably acceptable to Parent setting forth as of the Closing Date the following information relating to each of the Company Securityholders and the securities of the Company held by that Company Securityholder: (1) the name, address and, to the extent required by Law in connection with the Transactions, taxpayer identification number of the holder; (2) the type of security of the Company as to which the information described in the following clauses (3) to (15) is being provided; (3) the number of shares of Company Common Stock held by, or subject to the Company Warrants or Company Options held by, the holder and, in the case of outstanding Company Common Stock, the respective certificate numbers; (4) the exercise price per share in

effect as of the Closing Date for each Company Option and Company Warrant; (5) the tax status under Section 422 of the Code of each Company Option; (6) under the column heading "Cash Consideration at Closing," the aggregate amount of cash payable to the holder in respect of the cancellation of such holder's Company Common Stock or Company Warrants pursuant to Section 1.4 or Section 1.7; (7) under the column heading "Stock Consideration at Closing," the aggregate number of shares of Parent Common Stock issuable to the holder in respect of the cancellation of the holder's Company Common Stock or Company Warrants pursuant to Section 1.4 or Section 1.7 and clause (B) of the definition of Merger Consideration; (8) under the column heading "Converted Options" the aggregate number of shares of Parent Common Stock that will be subject to the Converted Options to be granted to such Company Securityholder as determined pursuant to Section 1.6; (9) under the column heading "Indemnification Holdback Contribution," the number of shares of Parent Common Stock comprising the Indemnification Holdback Shares that are attributable to the holder; (10) the Holdback Percentage attributable to the holder; (11) under the column heading "Working Capital Holdback Contribution," the amount of the Working Capital Holdback attributable to such holder; (12) under the column heading "Working Capital Share Reduction," the amount of any reduction in the number of shares of Parent Company Stock payable to such holder to reflect the difference between the Target Working Capital and the Estimated Closing Date Working Capital, if any; (13) the amount of the Tax withholdings attributable to each holder of Company Common Stock and Company Warrants; (14) with respect to Company Options, the grant date, the vesting start date, vesting schedule and the extent to which the vesting of such Company Option would be accelerated by the consummation of the Merger and the Transactions or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the consummation of the Merger (in the absence of any applicable waiver by any holder thereof); and (15) with respect to Company Options, confirmation that the holder of the Company Options is, as of immediately prior to the Closing, an employee of the Company and has entered into an offer letter with Parent, the Interim Surviving Entity, the Surviving Entity or any Subsidiary or Affiliate of Parent (such new offer letter, the "***New Service Agreement***").

(13) payoff letters from all holders of Company Indebtedness, in commercially reasonable form, specifying the amount necessary to be paid to discharge all obligations of the Company as of the Closing Date (including the principal amount, any prepayment premiums or fees or termination fees, any accrued interest and any expense reimbursement or other amounts due) under any Contracts between the Company and the holders of Company Indebtedness, as supplemented and amended, and providing for the release of all Encumbrances associated with the Company Indebtedness, the authorization of the Company to file termination statements with respect to the Encumbrances and the termination of all other obligations associated therewith upon the payment of such outstanding amounts;

(14) an opinion, dated as of the Closing, of Morgan, Lewis & Bockius LLP, counsel for the Company, in substantially the form of **Exhibit G** attached to this Agreement;

(15) a true, correct and complete copy of resolutions adopted by the Company's board of directors terminating the Company Stock Plan and authorizing any other actions requested by Parent with respect to any Employee Benefit Plans;

(16) evidence reasonably satisfactory to Parent that the Company has terminated or amended the Contracts listed in Schedule 1.2(b)(16), in accordance therewith;

(17) evidence reasonably satisfactory to Parent that the Company has received consent from the applicable counterparty or delivered notice with respect to the Contracts set forth in Schedule 1.2(b)(17);

(18) a certificate, in a form reasonably acceptable to Parent, to the effect that shares of Company Common Stock are not "U.S. real property interests" within the meaning of Section 897 of the Code, and a notice to the IRS, in accordance with the requirements of Treasury Regulations Section 1.897-2(h)(2), dated as of the Closing Date and executed by the Company, together with written authorization for Parent to deliver such notice to the IRS on behalf of the Company after the Closing;

(19) a certificate of the president and chief executive officer of the Company, in a form reasonably acceptable to Parent, certifying that (A) there has been no Material Adverse Effect on the Company and (B) there has been no material breach of the representations, warranties or covenants of this Agreement;

(20) evidence reasonably satisfactory to Parent of the termination of all Tax sharing, allocation, indemnity or similar agreements with respect to or involving the Company as of the Closing Date and termination of any further liability thereunder, if any;

(21) a copy on compact disc or DVD of all documents uploaded in the Data Room in electronic format acceptable to Parent and organized according to the hierarchy in which the Data Room was maintained;

(22) letters of resignation, in a form acceptable to Parent, effective immediately prior to the Effective Time, duly executed by each of the directors and officers of the Company;

(23) Stockholders' Written Consents from stockholders of the Company holding shares of Company Common Stock representing at least seventy five percent (75%) of the outstanding shares of Company Common Stock;

(24) a copy of the Articles of Reverse Merger executed by the Company; and

(25) evidence that the Invesco Financing Documents have been amended to the satisfaction of Parent to provide for the conversion of the outstanding principal and unpaid accrued interest thereon and $899,184.64 of the Invesco Financing Fee into Company Common Stock immediately prior to the Closing and that such conversion into Company Common Stock has been effected.

(c) At the Closing, Parent shall deliver to Invesco Capital AG the Invesco Financing Fee Amount.

Section 1.3 Effects of the Merger.

(a) At the Effective Time, the effect of the Reverse Merger shall be as provided in this Agreement, the Articles of Reverse Merger and the applicable provisions of the NRS, including Section 250 of Chapter 92A of the NRS.

(b) At the Effective Time, the articles of incorporation of the Interim Surviving Entity shall be amended and restated in its entirety to read as the articles of incorporation of Merger Co. in effect immediately prior to the Effective Time, except that the name of the corporation set forth in the first article thereof shall be "Five9 Nevada Inc.," and, as so amended, shall be the articles of incorporation of the Interim Surviving Entity until thereafter amended as permitted by the NRS and the articles of incorporation. The bylaws of Merger Co., as in effect immediately prior to the Effective Time, shall be amended so that all references therein to Merger Co. shall be references to the Interim Surviving Entity and, as so amended, shall be the bylaws of the Interim Surviving Entity until thereafter amended as provided therein or by the articles of incorporation or applicable Law.

(c) At the effective time of the Forward Merger, the effect of the Forward Merger shall be as provided in this Agreement, the Delaware Certificate of Forward Merger, the Nevada Articles of Forward Merger and the applicable provisions of the DLLCA and NRS, including Section 250 of Chapter 92A of the NRS.

(d) At the effective time of the Forward Merger, the operating agreement of the Surviving Entity shall be the operating agreement of the Acquisition Co. as is in effect immediately before the effective time of the Forward Merger, until thereafter amended in accordance with the DLLCA and such operating agreement, except that the operating agreement of the Acquisition Co. shall be amended to provide that the name of the Surviving Entity be changed to a name designated by Parent.

Section 1.4 Effects on Capital Stock. As of the Effective Time, by virtue of the Reverse Merger and without any action on the part of Merger Co., Parent or the Company, the following shall occur:

(a) Each share of Company Common Stock that is owned by Parent, Merger Co. or the Company shall automatically be canceled and shall cease to exist, and no consideration shall be delivered or deliverable in exchange therefor.

(b) Each issued and outstanding share of Company Common Stock (other than shares to be canceled in accordance with Section 1.4(a) and Dissenting Shares) shall be converted into the right to receive the Merger Consideration, as specified and allocated in this Section 1.4(b) and the Spreadsheet, without interest, subject to the obligation of the holder of such share of Company Common Stock to return to the applicable Indemnified Persons the amounts to the extent the holder has, at any time and from time to time, any unsatisfied payment obligations pursuant to this Agreement to the Indemnified Persons pursuant to Article 4 . All shares of Company Common Stock shall no longer be outstanding, shall automatically be canceled and shall cease to exist, and each holder of a certificate formerly representing any such shares of Company Common Stock (the "***Certificates***") shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration as allocated in this Section 1.4(b) and the Spreadsheet upon surrender of such Certificate in accordance with Section 1.5 or, with respect to Dissenting Shares, the right to demand payment for shares in accordance with the NRS.

(1) "***Merger Consideration***" means (A) an amount in cash equal to the quotient of (1) the amount, if any, set forth in the Spreadsheet in the row identifying the Company Securityholder holding the share under the column "Cash Consideration at Closing" divided by (2) the number of shares of Company Common Stock held by the holder thereof immediately prior to the Effective Time, (B) a number of shares of Parent Common Stock equal to the quotient of (1) the amount, if any, set forth in the Spreadsheet, in the row identifying the Company Securityholder holding the share of Company Common Stock, under the column "Stock Consideration at Closing" divided by (2) the number of shares of Company Common Stock held by the holder thereof immediately prior to the Effective Time, (C) subject to and in accordance with Section 1.9(d), an amount in cash equal to the quotient of (1) any amount that becomes payable by Parent to the former Company Securityholder who held the share of Company Common Stock as of immediately before the Effective Time divided by (2) the number of shares of Company Common Stock held by the holder as of immediately before the Effective Time, and (D) subject to and in accordance with Section 4.5, the number of shares of Parent Common Stock equal to the quotient of (1) the number of shares of Parent Common Stock, if any, distributable by Parent to the former Company Securityholder who held the share of Company Common Stock as of immediately before the Effective Time divided by (2) the number of shares of Company Common Stock held by the holder as of immediately before the Effective Time (the consideration described in clauses (B) and (D) being the "***Equity Consideration***").

(c) At the Closing, Parent shall issue 1,212,575 shares of Parent Common Stock in the names of the holders of Company Common Stock and Company Warrants, as specified on the Spreadsheet, comprising the aggregate of the number of shares set forth under the column "Indemnification Holdback Contribution" in the Spreadsheet (such shares that are held by Parent at any time and not released to Parent or distributed in accordance with Article 4, the "***Indemnification Holdback Shares***"). Parent will hold such shares back until they are distributed to the holders of Company Common Stock and Company Warrants under Section 4.5 or released to Parent under Section 4.5 to satisfy Liability Claims. At the Closing, Parent shall hold back the Working Capital Holdback Amount, and the Working Capital Holdback Amount shall be distributed according to Section 1.9.

(d) If there is a stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to shares of Parent Common Stock occurring after the date hereof and before the distribution of any Equity Consideration, all references in this Agreement to specified numbers of shares of Parent Common Stock, and all calculations that are based upon numbers of those shares (or fair value thereof) affected thereby, shall be equitably adjusted to the extent necessary to provide the Parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

(e) Of the Equity Consideration issued to the Founders, 20% shall be subject to Parent's repurchase option set forth in the Restricted Stock and Joinder Agreement applicable to such holder.

Section 1.5 Exchange of Certificates.

(a) Payment Procedures; Working Capital and Indemnification Holdback Contributions. The Company will mail to each holder of record of a Certificate (1) a letter of transmittal substantially in the form of **Exhibit H** (the "***Letter of Transmittal***") and (2) instructions for use in surrendering Certificates to Parent in exchange for consideration as specified and allocated in Section 1.4. Upon submission to Parent of a Certificate for cancellation, with a duly executed Letter of Transmittal and any required Form W-9 or Form W-8 and such other documents as may reasonably be required by Parent, the holder of such Certificate shall be entitled to receive in exchange therefor, subject to the next sentence, the Merger Consideration into which the shares formerly represented by such Certificate shall have been converted in accordance with Section 1.4, as set forth on the Spreadsheet, and the Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 1.5(a), each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender a portion of the Merger Consideration as contemplated by this Article 1. If any transfer of ownership of shares of Company Common Stock has not been registered in the Company's transfer records, payment may be made to a Person other than the Person in whose name the Certificate so surrendered is registered if such Certificate is properly endorsed or is otherwise in proper form reasonably acceptable to Parent for transfer, and the Person requesting such transfer or payment shall pay any transfer or other Tax required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such Tax has been paid or is not applicable. No interest shall be paid or will accrue on the cash payable or shares of Parent Common Stock issuable to holders of Certificates in accordance with this Article 1.

(b) No Further Ownership Rights in Company Common Stock. All cash and shares of Parent Common Stock paid or issued upon the surrender of Certificates in accordance with the terms of this Article 1, together with the right to receive any portion of the Working Capital Holdback Contribution and Indemnification Holdback Contribution hereunder, shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock represented by such Certificates, the stock transfer books of the Company shall be closed immediately upon the Effective Time and there shall be no further registration of transfers on the stock transfer books of the Interim Surviving Entity or the Surviving Entity of the shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Interim Surviving Entity or the Surviving Entity for any reason, they shall be canceled and exchanged for payment as provided in this Article 1, except as otherwise provided by Law.

(c) No Liability. None of Parent, the Interim Surviving Entity or the Surviving Entity shall be liable to any Person with respect to any cash or shares of Parent Common Stock delivered to a public official in accordance with any applicable abandoned property, escheat or similar Law. If any amounts payable in accordance with this Article 1 would otherwise escheat to or become the property of any Governmental Authority, any such amounts, to the extent permitted by applicable Law, immediately prior to the date on which such amounts would otherwise escheat or become the property of any Governmental Authority, shall become the property of the Surviving Entity, free and clear of all claims or interest of any Person previously entitled thereto.

(d) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the payment of any Merger Consideration with respect to the shares of Company Common Stock previously represented by such Certificate, require the owner of such lost, stolen or destroyed Certificate to provide an appropriate affidavit and executed indemnification agreement as indemnity against any claim that may be made against Parent, the Interim Surviving Entity, the Surviving Entity or any Affiliate of any of them with respect to such Certificate.

Section 1.6 Options.

(a) Prior to the Effective Time, the Company shall take all actions reasonably necessary or appropriate to provide that each outstanding option to purchase shares of Company Common Stock (each, a "***Company Option***") shall be cancelled as of the Effective Time and each holder of Company Options shall cease to have any rights with respect thereto, except as set forth in this Agreement.

(b) Prior to the Effective Time, the Company shall take all actions it reasonably determines necessary to provide that each Company Option, whether vested or unvested immediately prior to the Effective Time, that is held by an individual who remains an employee of or consultant to the Company as of immediately prior to the Effective Time

and who becomes an employee of or consultant to Parent, the Interim Surviving Entity, the Surviving Entity or any Subsidiary or Affiliate of Parent immediately after the Effective Time (each, a "***Continuing Employee***") and that has an exercise price per share that is less than the Total Per Share Company Value (such Company Option, an "***Eligible Option***") shall, by virtue of the Reverse Merger, be converted into the right to be granted a stock option by Parent under the Parent's Amended and Restated 2004 Equity Incentive Plan (the "***Parent Plan***") (such grant to occur following the Effective Time but in no event later than October 31, 2013) that represents the right to acquire a number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Common Stock subject to such Eligible Option as of immediately prior to the Closing, multiplied by (ii) the Option Conversion Ratio, with any fractional share resulting from such formula rounded down to the nearest whole share (each, a "***Converted Option***"). Each Converted Option shall be fully vested, shall be subject to the Exercise Restriction and shall otherwise be evidenced by a standard form of Parent stock option agreement under the Parent Plan. The per share exercise price of each Converted Option shall be equal to (A) the per share exercise price of the Eligible Option as of immediately prior to the Closing, divided by (B) the Option Conversion Ratio, rounded up to the nearest whole cent. As used in this Agreement, "***Option Conversion Ratio***" means a fraction, the numerator of which shall be the Total Per Share Company Value, and the denominator of which shall be equal to the greater of (x) the Parent Stock Per Share Valuation and (y) the October Per Share Value. For the avoidance of doubt, if the exercise price payable in respect of a share of Company Common Stock under a Company Option exceeds the Total Per Share Company Value, such Option shall be cancelled for no consideration at the Effective Time and the Optionholder shall have no further rights with respect thereto. "***October Per Share Value***" means the fair market value of a share of Parent Common Stock, as determined by Parent's board of directors not later than October 31, 2013, in a manner reasonably designed to comply with the requirements of Treasury Regulations Section 1.409A-1(b)(5) based on the third party valuation report prepared by Duff and Phelps on or about October 15, 2013. "***Total Per Share Company Value***" means the Total Per Share Company Value set forth in the Spreadsheet.

(c) ***.

(d) Prior to the Effective Time, the Company shall take all actions it reasonably determines necessary to provide that each Company Option that is not an Eligible Option shall be cancelled at the Effective Time for no consideration.

(e) Following the Effective Time, former holders of Company Options shall not have any right to acquire any equity securities of Parent, the Interim Surviving Entity or the Surviving Entity as a result of such Company Options, other than pursuant to the Converted Options and the Additional Options. Without limiting the foregoing, the Company shall take all actions it reasonably determines necessary to ensure that the Company will not at the Effective Time be bound by any options, stock appreciation rights, restricted stock units, warrants or other rights or agreements which would entitle any Person, other than Parent and its Subsidiaries, to own any capital stock of the Interim Surviving Entity or the Surviving Entity or to receive any payment in respect thereof.

(f) On or prior to the Effective Time, Parent shall take all actions necessary to ensure that Parent shall be able to grant the Converted Options and the Additional Options in accordance with the terms set forth in this Section 1.6, and reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Converted Options and Additional Options.

Section 1.7 Warrants.

(a) Treatment of Warrants. Each outstanding warrant to purchase shares of Company Common Stock (including all Cash-Out Warrants) (each, a "***Company Warrant***") shall terminate as of immediately before the Effective Time, and, from the Effective Time, no holder of any Company Warrants shall have any right to acquire any equity securities of Parent, the Interim Surviving Entity or the Surviving Entity as a result of such holder's Company Warrants (irrespective of the terms of such Company Warrant). At the Effective Time,

(1) each Company Warrant held by a Cash-Out Warrantholder shall be cancelled in consideration of payment to the holder of such Cash-Out Warrant of an amount in cash equal to the amount set forth in the Spreadsheet in the row identifying the holder of the Cash-Out Warrant under the column "Cash Consideration at Closing", subject in each case to applicable Tax withholdings as provided in Section 1.11, if any; and

(2) each other Company Warrant shall be exercised or exchanged for shares of Company Common Stock in the amounts set forth in the Spreadsheet as of immediately prior to the Effective Time and shall not be entitled to any additional payment or consideration.

(b) Payment. Parent shall, or shall cause the Interim Surviving Entity or the Surviving Entity to, pay to the holder of each Company Warrant the consideration, if any, for the Company Warrant pursuant to Section 1.7(a)(1) and (2) within three Business Days after the Closing Date.

Section 1.8 No Fractional Shares. Notwithstanding anything to the contrary contained herein, no fraction of a share of Parent Common Stock will be issued in connection with the Merger, and in lieu thereof, each holder of Company Common Stock shall receive from Parent an amount of cash equal to the product (rounded upwards or downwards to the nearest whole cent, with 0.5 of a cent rounded up) of such fraction of a share such holder would otherwise receive multiplied by the Parent Stock Per Share Valuation, subject to subject to applicable holdbacks, deductions and adjustments.

Section 1.9 Working Capital Adjustment.

(a) At least one Business Day before the Closing, the Company has delivered to Parent (x) a certificate, signed by the Chief Executive Officer and Chief Financial Officer of the Company, setting forth the Company's good faith best estimate of the Working Capital, including the components thereof, including but not limited to any amount to be paid by Parent at the Closing in cash to the Company for Working Capital purposes as reflected in the Spreadsheet, as of immediately before the Closing (the "***Estimated Closing Date Working Capital***") and (y) the work papers used to prepare such estimate. The Merger Consideration shall be adjusted to reflect any difference between the Estimated Closing Date Working Capital and the Target Working Capital, as set forth on the Spreadsheet, subject to any further adjustment pursuant to Section 1.9(d).

(b) Within 90 calendar days after the Closing Date, Parent may, at its option, prepare and deliver to the Representative (1) an unaudited balance sheet of the Company as of immediately before the Closing (the "***Closing Balance Sheet***") and (2) a statement setting forth the calculation of the Working Capital as of immediately after the Closing (after giving effect to any payment by the Company on or prior to Closing of any portion of Company Indebtedness and Company Transaction Expenses), including the components thereof, as calculated from the Closing Balance Sheet (the "***Closing Date Working Capital***"). The Closing Balance Sheet will be prepared in accordance with GAAP using the same method and methodologies that were used in the preparation of the Company's financial statements as of and for the year ended December 31, 2012 and Schedule 1.9(a) and will fairly present the financial position of the Company as of the Closing Date immediately before the Effective Time. Notwithstanding the foregoing, the Closing Balance Sheet need not account for the current portion of long-term debt that will be paid at the Closing or fixed assets in accordance with GAAP. Following the delivery of the Closing Balance Sheet and the statement of the Closing Date Working Capital, if any, Parent will provide the Representative and the Representative's representatives reasonable access to the books and records and employees of the Surviving Entity to the extent necessary to determine the accuracy of the Closing Balance Sheet and the statement of Closing Date Working Capital and will cause the employees of the Surviving Entity and Parent to reasonably cooperate with the Representative and the Representative's representatives in connection with their determination of the accuracy of the Closing Balance Sheet and the statement of Closing Date Working Capital.

(c) If Parent delivers a Closing Balance Sheet and a statement of Closing Date Working Capital pursuant to Section 1.9(b), the Representative will notify Parent in writing of any objections to the Closing Date Working Capital or Closing Balance Sheet within 30 calendar days after the Representative receives the Closing Date Working Capital and the Closing Balance Sheet. If the Representative does not notify Parent of any such objections by the end of that 30-day period, then the Closing Date Working Capital and the Closing Balance Sheet will each be considered final at the end of the last day of that 30-day period. If the Representative does notify Parent of any such objections by the end of that 30-day period and the Representative and Parent are unable to resolve their differences within 30 calendar days after the Representative gives Parent notice of the Representative's objection,

then the Representative and Parent will instruct their respective accountants to use commercially reasonable efforts to resolve such disputed items to their mutual satisfaction and to deliver a final Closing Date Working Capital and Closing Balance Sheet to the Representative and Parent as soon as possible. If the Representative's accountants and Parent's accountants are unable to resolve any such disputed items within 30 calendar days after receiving such instructions, then the remaining disputed items and the value attributable to them by each of the Representative and Parent will be submitted to a nationally recognized accounting firm mutually agreed by Parent and the Representative (the "***Working Capital Arbiter***") for resolution, and the Working Capital Arbiter will be instructed to determine the final Closing Date Working Capital and Closing Balance Sheet and to deliver its determination to the Representative and Parent as soon as possible. The Working Capital Arbiter will consider only those items and amounts in the Representative's and Parent's respective calculations of the Closing Date Working Capital that are identified as being items and amounts to which the Representative and Parent have been unable to agree. In resolving any disputed item, the Working Capital Arbiter may not assign a value to any item greater than the greatest value for such item claimed by the Representative or Parent or less than the smallest value for such item claimed by either of them. The Working Capital Arbiter's determination of the Closing Date Working Capital will be based solely on written materials submitted by the Representative and Parent (i.e., not on independent review) and on the definition of Working Capital included herein. The determination of the Working Capital Arbiter will be final, conclusive and binding upon the Parties. Parent, the Representative and the Company Securityholders each will not have any right to, and will not, institute any Action challenging such determination or with respect to the matters that are the subject of this Section 1.9, except that the foregoing will not preclude an Action to enforce such determination. If the Working Capital Arbiter's determination of Closing Date Working Capital is closer to the value initially asserted by Parent to the Working Capital Arbiter, then an amount equal to the costs of the Working Capital Arbiter shall be released from the Working Capital Holdback to Parent. If the Working Capital Arbiter's determination of Closing Date Working Capital is closer to the value initially asserted by the Representative to the Working Capital Arbiter, then Parent will pay the costs of the Working Capital Arbiter. Each of Parent and the Representative will cooperate with and assist the Working Capital Arbiter to determine the final Closing Date Working Capital and Closing Balance Sheet, including by making available and granting reasonable access to records and employees.

(d) Within five Business Days of the final determination of the Closing Date Working Capital in accordance with this Section 1.9,

(1) if the Estimated Closing Date Working Capital is greater than the Closing Date Working Capital, (x) Parent will retain such difference from the Working Capital Holdback Amount and cause an amount of cash equal to the excess, if any, of the Working Capital Holdback Amount over such difference to be promptly distributed to the former Company Securityholders pro rata according to their respective Holdback Percentages and (y) Parent will release to itself and cancel Indemnification Holdback Shares valued at the Parent Stock Per Share Valuation in an amount equal to any positive difference of (1) the amount by which the Estimated Closing Date Working Capital exceeds the Closing Date Working Capital minus (2) the remaining Working Capital Holdback Amount;

(2) if the Closing Date Working Capital is greater than the Estimated Closing Date Working Capital, Parent will cause an amount of cash equal to the sum of (x) that difference *plus* (y) the remaining Working Capital Holdback Amount to be promptly distributed to the former Company Securityholders pro rata according to their respective Holdback Percentages; and

(3) If the Estimated Closing Date Working Capital is equal to the Closing Date Working Capital or if Parent does not deliver to Representative a statement of Closing Date Working Capital within the time period set forth in Section 1.9(b), Parent will cause an amount of cash equal to the remaining Working Capital Holdback Amount to be promptly distributed to the former Company Securityholders pro rata according to their respective Holdback Percentages.

Following the completion of the payments provided for in clauses (1), (2) or (3) of this Section 1.9(d), the Company Securityholders will have no further rights to any amount of the Working Capital Holdback Amount.

Section 1.10 Dissenting Shares.

(a) Notwithstanding anything in this Agreement to the contrary and unless otherwise provided by the NRS , shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and that are owned by stockholders who have properly complied with the requirements to demand payment for their shares in accordance with the NRS ("***Dissenting Shares***") shall not be converted into the right to receive the Merger Consideration, unless and until such stockholders shall have failed to perfect or shall have effectively withdrawn or lost their right of payment under the NRS. Such stockholders instead shall be entitled to payment of the fair value of such Dissenting Shares in accordance with the NRS. If any such stockholder shall have failed to perfect or shall have effectively withdrawn or lost such dissenters' rights, each share of Company Common Stock held by such stockholder shall thereupon be deemed to have been converted into the right to receive and become exchangeable for, at the Effective Time, the Merger Consideration specified and allocated in Section 1.4.

(b) The Company shall give Parent (1) prompt notice of any demands for payment and assertions of dissenters' rights received by the Company, withdrawals of such demands and any other instruments served in connection with such demands and received by the Company or its representatives and (2) the opportunity to direct all negotiations and proceedings with respect to such demands consistent with the Company's obligations thereunder. The Company shall not, except with the prior written consent of Parent, (x) voluntarily make any payment, admission or statement against interest with respect to any such objection, (y) offer to settle or settle any such objection or (z) waive any failure by a former Company stockholder to timely deliver a written objection or to perform any other act perfecting dissenters' rights in accordance with the NRS.

Section 1.11 Tax Withholding. Parent, the Interim Surviving Entity and the Surviving Entity shall be entitled to deduct and withhold from amounts otherwise payable in accordance with this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under any Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Tax Authority by Parent, the Interim Surviving Entity or the Surviving Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by the Parent, the Interim Surviving Entity or the Surviving Entity.

Section 1.12 Tax Treatment of the Merger.

(a) Parent, the Company, Acquisition Co. and Merger Co. intend that the Merger be treated for federal income tax purposes as a "reorganization" under Section 368(a) of the Code (to which each of Parent and the Company are to be Parties under Section 368(b) of the Code), and Parent agrees that it will use its reasonable best efforts to cause the Forward Merger to occur as part of an integrated plan as soon as practicable following the consummation of the Reverse Merger. Each Party agrees to provide promptly to the other Parties such information and reporting documentation as may be necessary, proper or advisable to cause the Merger to qualify as a "reorganization" within the meaning of Section 368(a) of the Code.

(b) Parent, the Company and Merger Co. hereby adopt this Agreement as a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

(c) Each of the Parties shall, and shall cause its Affiliates to, report the Merger for all Tax purposes as a "reorganization" within the meaning of Section 368(a) of the Code unless otherwise required by applicable Law.

Section 1.13 Taking of Necessary Further Actions. Each of Parent, the Company and the Representative will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Interim Surviving Entity and the Surviving Entity with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Company immediately prior to the Effective Time are and will remain fully authorized in the name of the Company or otherwise to take, and shall take, upon request by Parent, all such lawful and necessary action.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the Disclosure Schedule (which disclosures shall identify the Section or Subsection of this Article 2 to which they apply but shall also qualify such other Sections or Subsections of this Agreement to the extent that it is reasonably apparent (with or without a specific cross-reference) on its face from a reading of the disclosure items that such disclosure is applicable to such other Section or Subsection), the Company represents and warrants to Parent, Merger Co. and Acquisition Co. as of the date hereof as follows:

Section 2.1 Organization and Powers. The Company (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted and (c) is qualified to do business in every jurisdiction where such qualification is required. The Company is not in violation of any of the provisions of its organizational documents, and no changes thereto are pending. Section 2.1 of the Disclosure Schedule lists (x) the officers and directors of the Company, (y) the jurisdictions in which the Company are qualified to do business and (z) the jurisdictions in which the Company has facilities, employs employees or conducts business. The Company has Made Available a true and correct copy of its certificate of incorporation, as amended to date (the "***Charter***") and bylaws, as amended to date, each in full force and effect on the date hereof (collectively, the "***Charter Documents***"), to Parent. The Board of Directors of the Company has not approved or proposed any amendment to any of the Charter Documents.

Section 2.2 Capitalization; Subsidiaries.

(a) The authorized capital stock of the Company consists of (i) 55,000,000 shares of Common Stock, of which 41,852,885 shares are issued and outstanding prior to the issuance of shares immediately prior to the Effective Time, 8,972,503 shares are to be issued immediately prior to the Effective Time as new stock grants, in satisfaction of obligations under outstanding Company Warrants and upon conversion of outstanding debt, and 709,646 shares are issuable upon exercise of outstanding Company Options, and (ii) 50,000,000 shares of preferred stock of the Company, of which none are outstanding. There are no declared or accrued but unpaid dividends with respect to any shares of Company Common Stock. There are no other issued and outstanding shares of Company Common Stock. The Spreadsheet sets forth, as of the date hereof, a true, correct and complete list of all of the Company Securityholders, their address (as reported to the Company by the Company Securityholder) and the number of shares of Company Common Stock, Company Options, Company Warrants or other rights to acquire Company Common Stock owned by each of them (including (1) all holders of outstanding Company Options, whether or not granted under the Company Stock Plan and (2) all holders of outstanding Company Warrants). With respect to Company Options, the Spreadsheet further indicates whether, as of the date hereof, the holder is or was an employee of the Company, the name of the plan under which the Company

Options were granted, the number of shares of Company Common Stock issuable upon the exercise of each such Company Option, the date of grant, the exercise price per share, whether such Company Option qualifies as an incentive stock option, the vesting schedule and expiration date thereof, including the extent to which any vesting has occurred as of the date hereof and the extent to which the vesting of such Company Option would be accelerated by the consummation of the Merger and the Transactions or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the consummation of the Merger (in the absence of any applicable waiver by any holder thereof), and any additional exercise, conversion or exchange rights relating thereto. With respect to Company Warrants, the Spreadsheet further indicates, as of the date hereof, the number of shares of Company Common Stock issuable upon the exercise of each such Company Warrant, the date of grant, the exercise price per share, the expiration date thereof, any conditions on exercise, including the extent to which the consummation of the Merger and the Transactions would alter any of the holder's rights pursuant to the Company Warrant, and any additional exercise, conversion or exchange rights relating thereto. All issued and outstanding shares of Company Common Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrance created by Law, the Charter Documents or any Contract to which the Company is a party or by which it is bound or of which it has knowledge.

(b) The terms of the Company Stock Plan and the applicable agreements for each Company Option permit the cancellation and, if applicable, cashing out and termination of Company Options as provided in this Agreement, without the consent or approval of the holders of such securities, the stockholders or otherwise and without any acceleration of the exercise schedules or vesting provisions in effect for such Company Options. True and complete copies of Company Options and all other agreements and instruments relating to or issued under the Company Stock Plan have been Made Available, including any amendments, modifications or supplements thereto, and there are no agreements to amend, modify or supplement such agreements or instruments from the forms thereof Made Available.

(c) Except for the Company Options set forth on the Spreadsheet, and outstanding Company Warrants as of immediately prior to the Effective Time, there are no Contracts 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 any Company Common Stock, Company Options or Company Warrants or obligating the Company to grant, extend, accelerate the vesting and/or waive any repurchase rights of, change the price of or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no Contracts relating to the purchase or sale of any Company Common Stock (1) between or among the Company and any of its stockholders or (2) between or among any of the Company's stockholders. All Company Options, Company Warrants and outstanding Company Common Stock were issued in compliance with all applicable securities Laws, and all shares of Company Common Stock repurchased by the Company were repurchased in compliance with all applicable securities Laws and all applicable rights of first refusal and other similar rights and limitations.

(d) There are no stockholder agreements, voting trusts or other agreements or understandings relating to the voting of any shares of Company Common Stock, and there are no agreements between the Company and any security holder or others, or among any holders of Company Common Stock, relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any Company Common Stock. As a result of the Reverse Merger, Parent will be the sole record and beneficial holder of all issued and outstanding Company Common Stock and all rights to acquire or receive any shares of Company Common Stock, whether or not such shares of Company Common Stock are outstanding.

(e) Except for the Company's Hold Free Networks 2013 Equity Incentive Plan (the "***Company Stock Plan***"), the Company has never adopted or maintained any stock option plan, program or arrangement, or other plan, program or arrangement providing for equity compensation. To the extent required under applicable Law, the Company's stockholders have properly approved and the Company has properly reserved for issuance the shares of Company Common Stock issuable under the Company Stock Plan. There are no outstanding or authorized restricted stock bonus, restricted stock purchase, restricted stock unit, stock appreciation, phantom stock, profit participation or other similar rights with respect to the Company.

(f) No bonds, debentures, notes or other Company Indebtedness (1) having the right to vote on any matters on which Company Securityholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (2) the value of which is in any way based upon or derived from capital or voting stock of the Company, are issued or outstanding.

(g) The Company has no Subsidiaries.

Section 2.3 Authority; Noncontravention.

(a) The Company has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Related Agreements to which it is a party and to consummate the Transactions. The execution, delivery and performance of this Agreement and the Related Agreements and the consummation of the Transactions by the Company have been duly authorized by all requisite corporate or comparable organizational action on the part of the Company and no further action is required on the part of the Company to authorize or adopt this Agreement or the Related Agreements to which it is a party, other than the approval of this Agreement by the Company's stockholders, which will be obtained on the date hereof. The Company's board of directors, by resolutions duly adopted (and not thereafter modified or rescinded) by unanimous vote (with no abstentions) at a meeting duly called and held or by unanimous written consent, has (a) approved this

Agreement, the Related Agreements, the Merger and the other Transactions, (b) determined that this Agreement and the terms and conditions of the Merger and the Transactions are advisable and in the best interests of the Company and its stockholders, and (c) recommended that all of the stockholders of the Company approve this Agreement. The affirmative vote or action by written consent of holders of a majority of the Company Common Stock are the only votes (or consents) required of the Company's stockholders to approve this Agreement under the NRS, the Charter Documents or any Contract to which the Company is a party (the "***Required Vote***"). This Agreement and the Related Agreements to which it is a party have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the other Parties, represents the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the effect of (1) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws now and hereunder in effect relating to the rights of creditors generally and (2) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

(b) The Company has notified or will notify the holders of Company Common Stock of the transactions contemplated hereby as and to the extent required by the terms and conditions of the Charter Documents, the NRS and as contemplated herein. The information prepared by the Company and furnished on or in any document mailed, delivered or otherwise furnished to the Company's stockholders in connection with the solicitation of their consent to, and approval of, this Agreement did not contain, and will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made not misleading.

(c) The execution, delivery and performance of this Agreement and the Related Agreements to which it is a party and the consummation of the Transactions by the Company do not and will not (1) conflict with, result in or constitute 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, renegotiation, modification or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person in accordance with, any provision of the organizational documents of the Company, (2) result in the creation of an Encumbrance on any properties or assets of the Company, (3) conflict with, result in or constitute a violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss or modification of any benefit under, or require consent, approval or waiver from any Person in accordance with any Contract, Permit or Law applicable to the Company or any of their respective properties or assets, (4) cause the Company, the Interim Surviving Entity, the Surviving Entity, Parent, Merger Co. or Acquisition Co. to become subject to, or become liable for the payment of, Tax or (5) otherwise have an adverse effect upon the ability of the Company to consummate the Transactions.

(d) No Permit or Order of, or registration or filing with or declaration or notification to, any Governmental Authority is required by or with respect to the Company in connection with the execution, delivery and performance of this Agreement or the Related Agreements to which it is a party or the consummation of the Transactions, except for the filing of the Articles of Reverse Merger and Articles of Forward Merger.

Section 2.4 Financial Statements. Section 2.4 of the Disclosure Schedule sets forth the Company's balance sheets as of and statement of operations and statement of cash flows for the year ended December 31, 2012 and its unaudited balance sheet as of and statement of operations and statement of cash flow for the eight-month period ended August 31, 2013 (collectively, the "***Financial Statements***"). The Financial Statements are true and correct, and present fairly the financial condition and results of operations of the Company as of the dates and for the periods indicated therein (subject, in the case of interim period financial statements, to normally recurring year-end adjustments, none of which individually or in the aggregate are material). There has been no change in the Company's accounting policies since December 31, 2012 (the "***Company Balance Sheet Date***"), except as described in the Financial Statements. The aggregate amount of Company Indebtedness, and the holders of such Indebtedness, on the date hereof is set forth in Section 2.4 of the Disclosure Schedule. All Company Indebtedness may be prepaid without penalty. The Company is not a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract relating to any transaction or relationship between or among the Company, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose Person on the other hand, or any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K promulgated under the Securities Act of 1933 (the "***Securities Act***")). All reserves that are set forth in or reflected in the Interim Balance Sheet are adequate. None of the Company or its officers, nor the Company's accounting advisor has identified or been made aware of any complaint, allegation, deficiency, assertion or claim, whether written or oral, regarding the standards for the Financial Statements, as set forth above, that has not been resolved. To the knowledge of the Company, there have been no instances of fraud by any officer or employee of the Company that occurred during any period covered by the Financial Statements.

Section 2.5 Absence of Certain Changes; Undisclosed Liabilities.

(a) Since the Company Balance Sheet Date, the Company has conducted its business, including the incurring and payment of expenses, only in the ordinary course of business and there has not occurred any change, event or condition (whether or not covered by insurance) that, individually or in the aggregate with any other changes, events or conditions, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect on the Company. Since the Company Balance Sheet Date, the Company has not paid any Transaction Expenses or incurred or paid any other extraordinary expenses.

(b) The Company has no Liabilities (whether or not required to be reflected in the Financial Statements in accordance with GAAP), except for those (1) reflected in,

reserved against or shown on the balance sheet included in the Financial Statements as of August 31, 2013 (the "***Interim Balance Sheet***"), (2) that have arisen or were incurred after the date of the Interim Balance Sheet (the "***Interim Balance Sheet Date***") in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of Law) and are reflected in the calculation of the Estimated Closing Date Working Capital and (3) are included in Company Indebtedness.

Section 2.6 Absence of Litigation. There is no Action pending or, to the knowledge of the Company, threatened against the Company or any of its assets, properties or officers or directors in their capacities as such. There is no Order against the Company or any of its assets or properties, or any of the Company's directors or officers in their respective capacities as such and, to the knowledge of the Company, there is no Basis therefor. There is no Action pending or, to the knowledge of the Company, threatened, against any Person who has a contractual right or a right pursuant to the Charter, NRS or other applicable Law to indemnification from the Company related to any Basis existing prior to the Effective Time, nor is there, to the knowledge of the Company, any Basis that would give rise to such Action. There is no Action pending or, to the knowledge of the Company, threatened, based on a claim of breach of fiduciary duty by the Company's directors or officers arising out of actions taken by the Company's directors or officers prior to the Effective Time, nor is there any Basis therefor. There is no Action by the Company pending, threatened or contemplated against any other Person.

Section 2.7 Restrictions on Business Activities. There is no Contract (including covenants not to compete) or Order binding upon the Company that has or could reasonably be expected to have, whether before or after consummation of the Transactions, the effect of prohibiting or impairing any current or future business practice of the Company, any acquisition of property (tangible or intangible) by the Company or the conduct of business by the Company as currently conducted or as proposed to be conducted by the Company. Without limiting the generality of the foregoing, the Company has not entered into any customer or other similar Contract that limits the freedom of the Company to engage or participate, or compete with any other person, in any line of business, market or geographic area, or to make use of any Company Intellectual Property, or any Contract under which the Company grants most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights and/or terms to any Person, or any Contract otherwise limiting the right of the Company to sell, distribute or manufacture any products or services, to purchase or otherwise obtain any software, products or services or to hire or solicit potential employees, consultants or independent contractors.

Section 2.8 Intellectual Property.

(a) Section 2.8(a) of the Disclosure Schedule (1) contains a complete and accurate list (by name) of all products and service offerings, including all Software, products and service offerings, of the Company that have been sold, licensed, distributed or otherwise disposed of, made available or used in connection with service offerings, as applicable

(collectively, the "***Company Products***"), or that the Company currently intends to sell, license, distribute or otherwise dispose of, make available or use in connection with service offerings, in the future, including any products or services offerings under development (collectively, the "***Developing Products***"), and (2) identifies, for each Company Product, whether the Company provides support or maintenance for the Company Product and, for each Developing Product, whether the Company intends to provide support or maintenance for the Developing Product.

(b) Section 2.8(b) of the Disclosure Schedule sets forth a complete and accurate list of (1) all Registered Intellectual Property included among the Company-Owned Intellectual Property (the "***Company Registered Intellectual Property***") and (2) all unregistered Trademarks included among the Company-Owned Intellectual Property. For each listed item, Section 2.8(b) of the Disclosure Schedule indicates, as applicable, the owner of such Company Intellectual Property, the countries in which such Company Intellectual Property is patented or registered, the patent or registration number, and the filing and expiration dates thereof.

(c) All of the Company-Owned Intellectual Property that is owned by the Company is wholly and exclusively owned by the Company free and clear of any options, rights, licenses, restrictions and Encumbrances (other than Customer License Agreements). Section 2.8(c) of the Disclosure Schedule sets for all of the Company-Owned Intellectual Property that is exclusively licensed to the Company. There is no Company-Owned Intellectual Property of which the Company is a joint owner or co-owner.

(d) The Company solely and exclusively owns all right, title and interest in and to the Company Products, the Developing Products and the Company Source Code, free and clear of all options, rights, licenses, restrictions or Encumbrances (other than Customer License Agreements), and the Company has not sold, transferred, assigned, promised or otherwise disposed of any rights or interests therein or thereto (other than Customer License Agreements).

(e) Section 2.8(e) of the Disclosure Schedule lists all Contracts (other than licenses for COTS Software) to which the Company is a party under which the Company is a licensee or has licensed or otherwise been granted rights to or in any Intellectual Property, Intellectual Property Rights or Software from a third party. No Person who has licensed Intellectual Property, Intellectual Property Rights or Software to the Company has ownership rights or license rights to improvements or other amendments made by the Company to such Intellectual Property, Intellectual Property Rights or Software.

(f) Section 2.8(f) of the Disclosure Schedule lists all Contracts (other than licenses for COTS Software) between the Company, on the one hand, and any other Person, on the other hand, wherein or whereby the Company has agreed to, or 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 of the Intellectual Property or Intellectual Property Rights of any third party.

(g) The Company Products, the Developing Products and the Company Source Code do not contain any Open Source Materials. Section 2.8(g) of the Disclosure Schedule lists all Open Source Materials used by the Company in the development of Company Products and Developing Products. The Company Products, the Developing Products and the Company Source Code are not subject to any terms of license of any such Open Source Materials that result in the grant of, or require the Company to grant, a license to any of the Company Products, the Developing Products or the Company Source Code. The Company is not in breach of any of the material terms of any license to any such Open Source Materials. No Company Products and Developing Products link with, use or include works distributed under the LGPL. The only Software licensed to the Company pursuant to the GNU General Public License is the MySQL Server Database.

(h) Except for COTS Software and the Intellectual Property, Intellectual Property Rights and Software licensed pursuant to the licenses set forth in Section 2.8(e) of the Disclosure Schedule, all Intellectual Property, Intellectual Property Rights and Software used in or necessary to the conduct of the business of the Company as presently conducted by the Company was created solely by either (1) employees of the Company acting within the scope of their employment who have validly and irrevocably assigned all of their rights, including Intellectual Property and Intellectual Property Rights, therein to the Company and have irrevocably waived any unassignable rights such as moral rights that they may possess in such Intellectual Property, Intellectual Property Rights and Software, or (2) other Persons who have validly and irrevocably assigned all of their rights therein, including Intellectual Property and Intellectual Property Rights, to the Company and have irrevocably waived any unassignable rights such as moral rights that they may possess in such Intellectual Property, Intellectual Property Rights and Software, and except as set forth in Section 2.8(h) of the Disclosure Schedule, no other Person owns or has any rights to any portion of such Intellectual Property, Intellectual Property Rights or Software (other than pursuant to Customer License Agreements).

(i) All Company-Owned Intellectual Property that is owned by the Company and all Company Products and Developing Products are fully transferable, alienable and licensable by the Company or its Affiliates without restriction and without payment to any Person, subject to Customer License Agreements.

(j) The operation of the business of the Company as it currently is conducted, and as has been conducted in the last six years, including the design, development, use, import, export, manufacture, licensing, sale or other disposition of Company Products (including the provision of related service offerings and the Developing Products) do not and have not infringed or misappropriated and do not infringe or misappropriate the Intellectual Property Rights of any Person, violate the rights of any Person (including rights to privacy or publicity), or constitute unfair competition or trade practices under the Laws of any

jurisdiction. The Company has not received any notice from any Person claiming that such operation or any Company Product or the provision of any related service offerings infringes or misappropriates or has infringed or misappropriated the Intellectual Property Rights of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction (nor, to the knowledge of the Company, does there exist any Basis therefor).

(k) Each item of Company Registered Intellectual Property is valid and subsisting, and all necessary registration, maintenance and renewal fees in connection with such Company Registered Intellectual Property have been paid and all necessary documents and articles in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property as of the date hereof. There are no actions that must be taken by the Company within 90 days of the date hereof, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or articles for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property.

(l) There is, and has been, no pending, decided or settled opposition, interference, reexamination, injunction, lawsuit, proceeding, hearing, investigation, complaint, arbitration, mediation, demand, decree, or any other dispute, disagreement, or claim ("***Dispute***") related to Company-Owned Intellectual Property that is owned by the Company or to its knowledge, any Company-Owned Intellectual Property that is exclusively licensed to the Company, nor, to the knowledge of the Company, has any Dispute been threatened, challenging the legality, validity, enforceability or ownership of any Company-Owned Intellectual Property or any Company Product or Developing Product, including the provision of any related service offerings. The Company has no knowledge and no reason to believe that there exists a Basis that would give rise to such a Dispute. The Company has not sent any notice of any Dispute related to Intellectual Property or Intellectual Property Rights, and there exists no Basis upon which the Company intends to assert any such Dispute. No Company-Owned Intellectual Property, Company Product or Developing Product is subject to any outstanding Order or other disposition of any Dispute.

(m) To the knowledge of the Company, there are no facts or circumstances that would render any Company-Owned Intellectual Property invalid or unenforceable. Without limiting the foregoing, to the knowledge of the Company, there is no information, material, fact, or circumstance, including any information or fact that would constitute prior art, that would render any Company Registered Intellectual Property invalid or unenforceable, or would adversely affect any pending application for any Company Registered Intellectual Property, and the Company has not knowingly misrepresented, or knowingly failed to disclose, and, to the knowledge of the Company, there is no misrepresentation or failure to disclose, any fact or circumstance in any application for any Company Registered Intellectual Property that would constitute fraud or a misrepresentation with respect to such application or that would otherwise effect the validity or enforceability of any such Company Registered Intellectual Property.

(n) In each case in which the Company has acquired any Intellectual Property or Intellectual Property Rights from any Person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Intellectual Property or Intellectual Property Rights (including the right to seek future damages with respect thereto) to the Company, and the Company has recorded each such assignment with the relevant governmental authorities, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(o) No material Intellectual Property or Intellectual Property Rights that are or were Company-Owned Intellectual Property have been permitted to lapse or enter the public domain.

(p) There is no Contract between the Company, on the one hand, and any other Person, on the other hand, with respect to any Intellectual Property, Intellectual Property Rights, Company Products or Developing Products under which there is currently any dispute regarding the scope of such Contract, or performance under such Contract, including with respect to any payments to be made or received by the Company thereunder, nor, to the knowledge of the Company, does there exist any Basis therefor.

(q) Neither the Company nor any other party acting on behalf of the Company has disclosed or delivered to any third party, or permitted the disclosure or delivery to any escrow agent or other party of, any Company Source Code (as defined below). No event has occurred, and no circumstance or condition exists, that (with or without notice, lapse of time or both) will, or would reasonably be expected to, require the disclosure or delivery by the Company or any Person acting on behalf of the Company to any third party of any Company Source Code. Section 2.8(q) of the Disclosure Schedule identifies each Contract under which the Company has deposited, or is or may be required to deposit, with an escrow agent or other third party, any Company Source Code. Neither the execution of this Agreement nor the consummation of any of the Transactions, in and of itself, would reasonably be expected to result in the release of any Company Source Code from escrow.

(r) Neither this Agreement nor the Transactions will result in (1) Parent, the Interim Surviving Entity or the Surviving Entity granting to any Person any right to or with respect to any Intellectual Property, Intellectual Property Rights or Software owned by, or licensed to, any of them, (2) Parent, the Interim Surviving Entity or the Surviving Entity being bound by, or subject to, any non-competition or other material restriction on the operation or scope of their respective businesses, or (3) Parent, the Interim Surviving Entity or the Surviving Entity being obligated to pay any royalties or other material amounts to any Person in excess of those amounts payable by any of them, respectively, in the absence of this Agreement or the Transactions.

(s) The Company has taken all customary and commercially reasonable steps that are necessary to protect the Company's rights in Trade Secrets of the Company, or Trade Secrets disclosed by any other Person to the Company. Without limiting the foregoing, the Company has, and enforces, a policy requiring each employee, consultant and contractor to execute an enforceable proprietary information, confidentiality and assignment agreement substantially in the Company's standard form, which form is set forth in Section 2.8(s) of the Disclosure Schedule. All current and former employees, consultants and contractors of the Company have executed such an agreement in substantially such standard form, and all former employees, consultants and contractors of the Company who were involved in, or who contributed to, the creation or development of any Company-Owned Intellectual Property, Company Product or Developing Product have executed such an agreement in substantially such standard form. No employee, officer, director or consultant, or, to the knowledge of the Company, advisor of the Company, is in violation of any term of any employment contract or any other contract or agreement, or any restrictive covenant, relating to the right to use Trade Secrets or proprietary information of others, and the employment of any such Person by the Company does not subject the Company to any liability to any third party.

(t) No (1) product, technology, service or publication of the Company, (2) material published or distributed by the Company, or (3) conduct or statement of the Company constitutes obscene material or a defamatory statement.

(u) None of the Company-Owned Intellectual Property was developed by or on behalf of, or using grants or any other subsidies of, any Governmental Authority or any university, and no government funding, facilities, faculty or students of a university, college, other educational institution or research center or funding from third parties was used in the development of Company-Owned Intellectual Property owned by the Company or any Company Product or Developing Product. No current or former employee, consultant or independent contractor of the Company who was involved in, or who contributed to, the creation or development of any Company-Owned Intellectual Property owned by the Company or any Company Product or Developing Product, has performed services for a 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.

(v) There are no material defects in any Company Product and there are no material errors in any published technical documentation, specifications, manuals, user guides, promotional material, benchmark test results, and other written materials related to, associated with or used or produced in the development of any Company Product. The Company has disclosed to Parent all information known to the Company relating to any performance or functionality problem or issue with respect to any Company Product which adversely affects, or may reasonably be expected to adversely affect, the value, functionality or fitness for the intended purposes of the Company Product. The Company has disclosed to Parent all information known to the Company relating to any performance or functionality problem or issue with respect to any Developing Product which may reasonably be expected to materially and adversely affect the value or functionality of the Developing Product.

(w) Except for the warranties and indemnities contained in those Contracts set forth in Section 2.8(w) of the Disclosure Schedule and warranties implied by Law, the Company has not given any warranties or indemnities relating to products or technology sold or services rendered by the Company.

(x) There are no pending or, to the knowledge of the Company, threatened claims for any product liability, backcharge, additional work, field repair or other claims by any third party (whether based on contract or tort and whether relating to personal injury, including death, property damage or economic loss) arising from (1) services rendered by the Company, (2) the sale, distribution, or installation of any Company Products, or (3) the operation of the Company's businesses during the period through and including the Closing Date. The operation and use of Company Products for their intended purposes complies with all applicable Laws, including any Law applicable to the users of any Company Product.

(y) The Company has (1) complied in all respects with their published privacy policies and internal privacy policies and guidelines, related contractual obligations with Customers and all applicable Laws relating to data privacy, data collection, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), disclosure and use of personally identifiable information (including personally identifiable information of employees, contractors, and third parties who have provided information to the Company) and (2) taken commercially reasonable measures to ensure that personally identifiable information is protected against loss, damage, and unauthorized access, use, modification, or other misuse. There has been no loss, damage, or unauthorized access, use, unauthorized transmission, modification, or other misuse of any such information by the Company or any of their employees or contractors. No Person (including any Governmental Authority) has made any claim or commenced any Action with respect to loss, damage, or unauthorized access, use, modification, or other misuse of any such personally identifiable information by the Company or any of its employees or contractors and, to the knowledge of the Company, there is no reasonable basis for any such claim or Action. The execution, delivery and performance of this Agreement and the consummation of the Merger complies with the Company's applicable privacy policies and with all applicable Laws relating to privacy and data security (including any such Laws in the jurisdictions where the applicable information is collected). The Company has at all times made all required disclosures to, and obtained any necessary consents from, users, customers, employees, contractors, Governmental Authorities and other applicable Persons required by Laws related to data privacy, data collection, data protection and data security and has filed any required registrations with the applicable data protection authority.

(z) The Company own or have a valid, enforceable right to access and use all Systems and have implemented commercially reasonable measures to protect the internal and external security and integrity of all Systems, and the data and information stored or

contained therein or transmitted thereby, including procedures reasonably expected to prevent unauthorized access and the introduction of viruses, worms, Trojan horses, "back doors" and other contaminants, bugs, errors or problems that disrupt their operation or have an adverse impact on the operation of other Software programs or operating systems, and the taking and storing on-site and off-site of back-up copies of critical data. There have been (i) no unauthorized intrusions or breaches of the security of the Systems and (ii) to the knowledge of the Company, no material failures or interruptions in the Systems. The Systems currently used by the Company are sufficient for the conduct of the business of the Company.

Section 2.9 Taxes.

(a) "***Tax***" means (1) any net income, corporate, capital gains, capital acquisitions, inheritance, deposit interest retention, gift, relevant contracts, alternative minimum, add-on minimum, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, estimated, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such item (domestic or foreign) (each, a "***Tax Authority***"), (2) any liability for the payment of any amounts of the type described in clause (1) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any taxable period, and (3) any liability for the payment of any amounts of the type described in clause (1) or (2) of this sentence as a result of being a transferee of or successor to any Person or as a result of any obligation to indemnify any other Person. "***Tax Return***" means any return, statement, report, claim for refund or form (including information returns, reports, attachments and schedules) required to be filed with respect to Taxes, including TD Form 90-22.1 and any return, statement, report or form of an affiliated, combined or unitary group, and any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such return, statement, report or form.

(b) The Company, and any affiliated, consolidated, combined, unitary or aggregate group for Tax purposes of which the Company is or has been a member, have properly completed and timely filed all Tax Returns required to be filed by them. All such Tax Returns are true and correct in all material respects and have been completed in accordance with Law, and the Company has timely paid or withheld and timely paid to the appropriate Tax Authority all Taxes due (whether or not shown to be due on such Tax Returns). No deficiencies for Taxes or other assessments relating to Taxes have been claimed, threatened, proposed or assessed in writing against the Company.

(c) The Interim Balance Sheet reflects all unpaid Taxes of the Company for periods (or portions of periods) through the Interim Balance Sheet Date. The Company has no liability for unpaid Taxes accruing after the Interim Balance Sheet Date, other than Taxes accruing in the ordinary course of business conducted after the Interim Balance Sheet Date.

There is (1) no claim for Taxes being asserted or that has been previously asserted against the Company that has resulted in a lien against the property of the Company, and there is no such current lien for Taxes, other than liens for Taxes not yet due and payable, (2) no audit of any Tax Return of the Company being conducted or threatened in writing by a Tax Authority, and (3) no extension of any statute of limitations on the assessment of any Taxes granted to the Company currently in effect. The Company has not been informed in writing by any jurisdiction that the jurisdiction may open an audit or other review of the Taxes of such entity or that the jurisdiction believes that such entity was required to file any Tax Return that was not filed.

(d) The Company (1) has not been or will not be required to include any adjustment in taxable income for any Tax period (or portion thereof) ending after the Closing in accordance with Section 481 of the Code or any comparable provision under state, local or foreign Law as a result of transactions or events occurring before the Closing, (2) has not filed any disclosure under Section 6662 of the Code or any comparable provision of state, local or foreign Law to prevent the imposition of penalties with respect to any Tax reporting position taken on any Tax Return, (3) has not engaged in a "reportable transaction," as defined in Section 6707A(c)(1) of the Code or Treasury Regulations Section 1.6011-4(b), (4) has not ever been a member of a consolidated, combined, unitary or aggregate group of which the Company was not the ultimate parent company, (5) has not been the "distributing corporation" or the "controlled corporation" (in each case, within the meaning of Section 355(a)(1) of the Code) with respect to a transaction described in or intended to be governed by Section 355 of the Code, (6) does not have any actual or potential liability under Treasury Regulations Section 1.1502-6 (or any comparable provision of state, local or foreign Law), as a transferee or successor, as a result of any contractual obligation, or otherwise for any Taxes of any Person other than the Company or (7) has not ever been a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

(e) The Company is not a party to or bound by any Tax sharing or Tax allocation agreement, nor does the Company have any liability or potential liability to another party under any such agreement.

(f) The Company has withheld or collected and timely paid over to the appropriate Tax authorities (or are properly holding for such timely payment) all Taxes required by Law to be withheld or collected by them.

(g) Section 2.9(g) of the Disclosure Schedule lists all income, franchise and similar Tax Returns (federal, state, local and foreign) filed with respect to the Company for taxable periods ended on or after January 1, 2010, indicates the most recent income, franchise or similar Tax Return for each relevant jurisdiction for which an audit has been completed or the statute of limitations has lapsed and indicates all Tax Returns that currently are the subject of an audit.

(h) There are no pending requests for rulings or determinations by or before a Tax Authority relating to Taxes of the Company. The Company has not obtained any consent or clearance from or entered into any settlement or arrangement with any Tax Authority that would be binding for any Tax period (or portion thereof) ending after the Closing Date.

(i) Each Company Option has been properly approved by the requisite corporate authority, and each option outstanding under the Company Stock Plan was issued with an exercise price for purposes of Section 409A of the Code that is no less than the fair market value of the underlying stock on the date of grant and/or is otherwise is exempt from Section 409A of the Code.

(j) No amount that could be received (whether in cash or property or the vesting of property) as a result of any of the Transactions by any employee, officer or director of the Company or any of their respective affiliates who is a "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Employee Benefit Plan could be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code). Section 2.9(j) of the Disclosure Schedule sets forth a complete list of each disqualified individual.

(k) The Company has not take any action or failed to take any action or knows of any fact, agreement, plan or other circumstance that would, to the knowledge of the Company, jeopardize the qualification of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

Section 2.10 Employee Benefit Plans.

(a) Section 2.10(a) of the Disclosure Schedule sets forth a complete list of (1) all "employee benefit plans," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("***ERISA***"), (2) all other severance pay, salary continuation, salary deferral, bonus, incentive, stock option, retirement, pension, profit sharing, deferred compensation, profit participation, phantom stock, stock purchase, stock appreciation right, equity-related right, leave of absence, layoff, vacation, day or dependent care, legal service, cafeteria, life insurance, health insurance, accident, disability, workers' compensation, supplemental unemployment, change in control, employment, retention, separation, or supplemental pension plans, practices, policies, contracts, agreements, programs, funds or arrangements of any kind, and (3) all other employee benefit plans, practices, policies, contracts, agreements, programs, funds or arrangements (whether written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic, currently effective or terminated) and any trust, escrow or similar agreement related thereto, whether or not funded, in respect of any present or former employees, directors, officers, consultants, or independent contractors of the Company that are sponsored, established, or maintained by the Company or any ERISA Affiliate, or with respect to which the Company or any ERISA Affiliate has made or is

required to make payments, transfers, or contributions, including each TriNet Plan (all of the above being collectively referred to as "***Employee Benefit Plans***"). The Company does not have and is not reasonably expected to have any present or future actual or contingent liability with respect to any plan of the type described in the preceding sentence other than the Employee Benefit Plans.

(b) True and complete copies of the following materials with respect to each Employee Benefit Plan have been Made Available to Parent, as applicable: (1) the current plan document together with all amendments thereto or, in the case of an unwritten Employee Benefit Plan, a written description thereof, (2) the current determination letter or opinion letter from the Internal Revenue Service ("***IRS***"), (3) the current summary plan description and all summaries of material modifications thereto, (4) the past three annual reports and associated summary annual reports, and (5) the current trust agreement, insurance contracts and other documents relating to the funding or payment of benefits under such Employee Benefit Plan, and (6) any other documents, forms or instruments relating to the Employee Benefit Plans as reasonably requested by Parent.

(c) Each Employee Benefit Plan that is not a TriNet Plan, and to the knowledge of the Company, each TriNet Plan, has been maintained, operated and administered in compliance in all material respects with its terms, the terms of any related documents or agreements and all applicable Laws. With respect to each Employee Benefit Plan that is not a TriNet Plan, and to the knowledge of the Company, with respect to each TriNet Plan, there have been no prohibited transactions or breaches of any of the duties imposed by ERISA on "fiduciaries" (within the meaning of Section 3(21) of ERISA) with respect to the Employee Benefit Plans that could result in any liability or excise tax under ERISA or the Code being imposed on the Company.

(d) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code is so qualified and has heretofore been determined by the IRS to be so qualified, and each trust created thereunder has heretofore been determined by the IRS to be exempt from tax under the provisions of Section 501(a) of the Code, and nothing has occurred since the date of any such determination that could reasonably be expected to give the IRS grounds to revoke such determination.

(e) Neither the Company nor any ERISA Affiliate has or has had an obligation to contribute to a "defined benefit plan" as defined in Section 3(35) of ERISA, a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, a "multiemployer plan" as defined in Section 3(37) of ERISA or Section 414(f) of the Code or a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(f) With respect to each group health plan benefiting any current or former employee, director, officer, consultant, or independent contractor of the Company that is subject to Section 4980B of the Code, the Company has complied in all material respects with the continuation coverage requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

(g) With respect to each Employee Benefit Plan that is not a TriNet Plan, and to the knowledge of the Company, with respect to each TriNet Plan, no Employee Benefit Plan is or at any time was funded through a "welfare benefit fund" as defined in Section 419(e) of the Code, and no benefits under any Employee Benefit Plan are or at any time have been provided through a voluntary employees' beneficiary association (within the meaning of subsection 501(c)(9) of the Code) or a supplemental unemployment benefit plan (within the meaning of Section 501(c)(17) of the Code).

(h) To the knowledge of the Company, there is no pending or threatened Action in or by any court or Governmental Authority with respect to any Employee Benefit Plan (other than routine claims for benefits in the ordinary course of business), nor is there any Basis for one to the knowledge of the Company.

(i) All (1) insurance premiums required to be paid by the Company with respect to, (2) benefits, expenses, and other amounts due and payable under, and (3) contributions, transfers, or payments required to be made to, any Employee Benefit Plan prior to the Closing Date will have been paid, made or properly accrued on the Financial Statements on or before the Closing Date.

(j) No Employee Benefit Plan provides benefits, including death or medical benefits, beyond termination of service or retirement other than (1) coverage mandated by Law or (2) death or retirement benefits under any Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(k) With respect to any insurance policy providing funding for benefits under any Employee Benefit Plan, to the knowledge of the Company, (1) there is no liability of the Company in the nature of a retroactive rate adjustment, loss sharing arrangement or other actual or contingent liability, nor would there be any such liability if such insurance policy was terminated at or after the Closing Date, and (2) no insurance company issuing any such policy is in receivership, conservatorship, liquidation or similar proceeding and, to the knowledge of the Company, no such proceedings with respect to any such insurance company are imminent.

(l) The Company has reserved all rights necessary to amend or terminate each of the Employee Benefit Plans without the consent of any other Person.

(m) All contributions required to be paid with respect to workers' compensation arrangements of the Company have been made or properly accrued as a liability in the Financial Statements.

(n) The Company has not agreed or committed to institute any plan, practice, policy, contract, agreement, program, fund or arrangement for the benefit of current or former employees, directors, officers, consultants, or independent contractors of the Company, other than the Employee Benefit Plans, or to make any amendments to any of the Employee Benefit Plans.

(o) Except for the Company Stock Plan, no Employee Benefit Plan provides benefits to any individual who is not either a current or former employee of the Company, or the dependents or other beneficiaries of any such current or former employee.

(p) There is no trade or business (whether or not incorporated) (1) under common control within the meaning of Section 4001(b)(1) of ERISA with the Company or (2) which together with the Company is treated as a single employer under Section 414(t) of the Code (any such trade or business, an "***ERISA Affiliate***").

(q) Neither the execution and delivery of this Agreement nor the consummation of the Transactions will, alone or in connection with any other event (including the termination of employment or service with Parent, the Company, the Interim Surviving Entity or the Surviving Entity following the Merger), (1) result in any payment (including severance, unemployment compensation or golden parachute) becoming due under any Employee Benefit Plan, (2) increase any benefits (including severance, deferred compensation and equity benefits) otherwise payable under any Employee Benefit Plan, (3) result in the acceleration of the time of payment or vesting of any such benefits to any extent, or (4) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person.

(r) Each Employee Benefit Plan that is a nonqualified deferred compensation plan (within the meaning of Section 409A(d)(1) of the Code) has been documented, operated and administered in full compliance with Section 409A of the Code and the applicable Treasury Regulations thereunder. With respect to each Employee Benefit Plan that is a nonqualified deferred compensation plan, the Transactions will not directly result in an acceleration or deferral of compensation under such plan or plans, and the Company will not otherwise accelerate or extend any deferral of any compensation under such plan or plans in connection with the Transactions.

(s) The term "***Foreign Benefit Plan***" shall mean any Employee Benefit Plan that is maintained outside of the United States. Each Foreign Benefit Plan has been offered, issued, maintained, operated and administered in compliance in all material respects with the applicable Law and collective bargaining agreement (including applicable Law regarding the form, funding and operation of the Foreign Benefit Plan). The Financial Statements accurately reflect the Foreign Benefit Plan liabilities and accruals for contributions required to be paid to the Foreign Benefit Plans, in accordance with applicable GAAP consistently applied. All contributions required to have been made to all Foreign Benefit Plans as of the Closing will have been made as of the Closing. There are no Actions pending

or, to the best of the Company's knowledge, threatened with respect to the Foreign Benefit Plans (other than routine claims for benefits in the ordinary course of business). There have not occurred, nor are there continuing any transactions or breaches of fiduciary duty under applicable Law with respect to any Foreign Benefit Plan which could adversely affect in a material manner (1) any Foreign Benefit Plan or (2) the condition of the Company.

Section 2.11 Employment Matters.

(a) The Company is not liable for any payment to any trust or other fund or to any Governmental Authority with respect to unemployment compensation benefits, workers compensation, social security or other benefits or obligations for employees, consultants or independent contractors (other than in accordance with Law or routine payments to be made in the ordinary course of business). There are no claims pending against the Company under any workers' compensation plan or policy, for unemployment compensation benefits or for long term disability. No person currently or previously employed by the Company or subcontracted by it has been involved in an accident in the course of such employment or subcontracting that would have caused other than minor injury nor has any such person been exposed to occupational health hazards in the service of the Company. There have been no claims (settled or unsettled) for injury or occupational health hazard against the Company by any employee or subcontractor.

(b) Since January 1, 2008, no Liability has been incurred by the Company for breach of employment Contracts or consulting Contracts to which the Company are a party nor has any liability been incurred under Law or otherwise for severance, unemployment compensation, golden parachute, bonus or otherwise accruing from the termination of any employment Contracts and consulting Contracts.

(c) Section 2.11(c) of the Disclosure Schedule sets forth a true, correct and complete list of all severance Contracts, employment Contracts and consulting Contracts to which the Company are a party or by which the Company is bound, or under which there is an outstanding obligation, copies of which have been previously Made Available to Parent, along with copies of form offer letters and employment Contracts used in each jurisdiction in which employees of the Company are based or located. The Company is not presently, nor has it been in the past, a party to or bound by any collective bargaining agreement or other labor union contract, no labor union contract or collective bargaining agreement is being negotiated by the Company. The Company does not have any duty to bargain with any labor organization. To the knowledge of the Company there have never been any activities or proceedings of any labor union to organize employees of the Company. There is no labor dispute, strike, slowdown, concerted refusal to work overtime or work stoppage against the Company pending now, that has occurred in the past, or, to the knowledge of the Company, threatened that would reasonably be expected to interfere with the business activities of the Company. The Company has not and is not engaged in any unfair labor practice.

(d) Section 2.11(d) of the Disclosure Schedule is a true, correct and complete list of the names, positions, date of commencement of employment or appointment to office and rates of compensation of all officers, directors, employees (regular, temporary, part-time or otherwise), consultants and independent contractors of the Company whether or not employed or retained directly by the Company or through a third party staffing agency ("***Workers***" or "***Worker***"), showing each such person's name, position, status as exempt or non-exempt (to the extent applicable under Law), base salary or wages, target incentive compensation and actual earned bonuses, and material fringe benefits for the current fiscal year and the most recently completed fiscal year, and severance or termination payment obligations payable in excess of mandatory Law. No Worker has given notice to the Company of such Worker's termination of service with the Company. To the knowledge of the Company, no such Worker intends to terminate his or her service with the Company. The employment of each of the employees of the Company are "at-will," and the Company does not have any obligation to provide any particular form or period of notice before terminating the employment of any of their respective employees, except as may be required under Law.

(e) There are no written personnel manuals, handbooks, policies, rules or procedures currently in effect applicable to any employee of the Company, other than those set forth in Section 2.11(e) of the Disclosure Schedule, true and complete copies of which have heretofore been Made Available to Parent.

(f) The Company does not have any accrued unpaid liabilities relating to its Workers other than for (1) salaries and fringe benefits since the last payroll period, (2) accrued but unused days of vacation, and (3) accrued but unpaid bonuses, all of which are identified in Section 2.11(f) of the Disclosure Schedule.

(g) There are no claims, disputes, grievances, or controversies pending or, to the knowledge of the Company, threatened or reasonably anticipated involving any Worker, group of Workers, or individual, including claims arising from wage and hour violations, misclassification of employees, contractors or Workers or hours worked. There are no charges, investigations, administrative proceedings or formal complaints of discrimination pending or, to the knowledge of the Company, threatened before any Governmental Authority against the Company pertaining to any Worker, nor is there any Basis for such a claim. The Company is not a party to a conciliation agreement, consent decree or other agreement or order with any federal, state or local agency of Governmental Authority with respect to employment practices.

(h) The Company is in compliance with all applicable visa and work permit requirements. No visa or work permit held by a Worker will expire during the six month period after the date hereof.

(i) The Company is and has been at all times in compliance in all material respects with all applicable Laws and collective bargaining agreements respecting employment, employment practices, terms and conditions of employment, worker

classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, hours of work, redundancies, reductions in force, mass layoffs, and plant closings. With respect to Workers, the Company: (1) 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 Workers, (2) is not liable for any arrears of wages, severance pay or any Taxes or any penalty or failure to comply with any of the foregoing, and (3) 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 for Workers (other than routine payments to be made in the normal course of business and consistent with past practice). The Company does not have any liability with respect to any misclassification of: (a) any person as an independent contractor rather than as an employee, (b) any Worker leased from another employer, or (c) any Worker currently or formerly classified as exempt from overtime wages. No claims have been made for discrimination, sexual or other harassment, or retaliation nor are any such claims threatened or pending nor is there any Basis for such a claim.

(j) The Company is in compliance with the Worker Readjustment and Notification Act (the "***WARN Act***") (29 U.S.C. § 2101) and any applicable state or other Laws regarding redundancies, reductions in force, mass layoffs, and plant closings, including all obligations to promptly and correctly furnish all notices required to be given thereunder in connection with any redundancy, reduction in force, mass layoff, or plant closing to affected employees, representatives, any state dislocated worker unit and local government officials, or any other governmental authority. The Company has not, in the six months prior to the date of this Agreement, taken any action that would constitute a "mass layoff" or "plant closing" within the meaning of the WARN Act or would otherwise trigger notice requirements or liability under any other state or local Law in the United States or Law of any other jurisdiction that is comparable to the WARN Act.

(k) No Worker is in violation of any term of any employment contract, non-disclosure, confidentiality agreement, or consulting agreement with the Company or non-competition agreement, non-solicitation agreement or any restrictive covenant with a former employer relating to the right of any such employee to be employed by or provide services to the Company because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others.

Section 2.12 Related Party Transactions. No officer or director or, to the knowledge of the Company, any stockholder, optionholder or warrantholder of the Company (nor any immediate family member of any of such Persons, or any trust, partnership or company in which any of such Persons has or has had an interest), has or has had, directly or indirectly, (a) any interest in any third party which furnished or sold, or furnishes or sells, services, products or technology that the Company furnishes or sells, or proposes to furnish or sell, (b) any interest in any third party that purchases from or sells or furnishes to the Company any goods or services or (c) any interest in any Contract to which the Company is a party, except that ownership of no more than one percent of the outstanding voting stock of a publicly traded company shall not be deemed to be an "interest in any entity" for purposes of this Section 2.12.

Section 2.13 Insurance. Section 2.13 of the Disclosure Schedule sets forth a true, correct and complete list of all policies of insurance and indemnity bonds issued at the request or for the benefit of the Company, all of which are in full force and effect. Such list includes the type of policy, form of coverage, policy number and insurer, coverage dates, annual premiums, named insured, limit of liability. True and complete copies of each listed policy have been Made Available to Parent. There is no claim pending under any of such policies or bonds. The Company is in compliance with the terms of such policies and bonds. To the knowledge of the Company, there is no threatened termination of, or premium increase with respect to, any of such policies or bonds, nor is there any Basis for any termination or premium increase. Section 2.13 of the Disclosure Schedule sets forth an accurate and complete list of all claims filed by the Company under any such policies or bonds.

Section 2.14 Compliance with Laws; Certain Business Practices.

(a) The Company has complied with, is not in material violation of, and has not received, nor to the knowledge of the Company is there any Basis for, any notices of suspected, potential or actual violation with respect to, any Laws or Permits with respect to the conduct of its business, or the ownership or operation of its business. No event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time or both) constitute, or result directly or indirectly in, a default under, a breach or violation of, or a failure to comply with, any Laws or Permits with respect to the conduct of the business of the Company or the ownership or operation of the Company. The Company owns or possesses all Permits that are necessary to conduct the business of the Company as presently conducted and as proposed to be conducted.

(b) There is no and there has not been any Action (other than Actions that have been terminated without any adverse consequences for the Company) or Order against the Company or agreement with respect to any alleged actual or potential violation of or failure to comply with any applicable Law.

(c) The Company or any of its directors, officers, employees, distributors or agents or any other Person acting on behalf of any such Person have, with respect to the business of the Company, directly or indirectly, (1) taken any action that would cause it to be in violation of the U.S. Foreign Corrupt Practices Act of 1977 or the OECD Convention on Combating Bribery of Foreign Public Officials in Business Transactions or any other Law applicable to the conduct of business with Governmental Authorities (collectively, the "***FCPA***"), (2) made, offered or authorized the use of, or used any funds or provided anything of value (A) for unlawful payments, contributions, gift, entertainment or other unlawful expenses or payments relating to political activity, (B) to foreign or domestic government officials or employees or any political party or campaign, (C) for a bribe, rebate, payoff, influence payment, kickback or other similar payment. The Company has delivered or made

available to Parent true, correct and complete copies of each arrangement in effect, if any, between the Company, on the one hand, and any foreign sales agent or foreign sales representative thereof, on the other hand.

(d) The Company has not applied for or received, is not or will not be entitled to or is not or will not be the beneficiary of, any grant, subsidy or financial assistance from any Governmental Authority.

(e) The Company has at all times conducted their export transactions in accordance with (A) all applicable U.S. export and re-export controls, including the United States Export Administration Act of 2001 and Regulations and Foreign Assets Control Regulations and (B) all other applicable import/export controls in other countries in which the Company conducts business. Section 2.14(e) of the Disclosure Schedule sets forth the true, complete and accurate export control classifications applicable to the Company's products, services, software and technologies.

Section 2.15 Minute Books. The minute books of the Company Made Available to Parent contain a complete and accurate summary of all meetings of directors and stockholders or actions by written consent thereof since its time of incorporation and reflect all transactions referred to in such minutes accurately.

Section 2.16 Brokers and Finders; Transaction Expenses. No Person has acted as a broker, finder or financial advisor for the Company or its Affiliates in connection with the negotiations relating to the Transactions, and no Person is entitled to any fee or commission or similar payment in respect thereof from the Company, Parent or any of their respective Affiliates based in any way on any agreement, arrangement or understanding made by or on behalf of the Company or its Affiliates.

Section 2.17 Customers. Section 2.17 of the Disclosure Schedule contains a true and complete list of each customer of the Company (each, a "***Continuing Customer***") who has (a) a continuing right to technical support or (b) a continuing right to Software updates, and sets forth by such Continuing Customers which Company Product they have the right to continuing support or updates for, the type of remaining support they have rights for, the duration of such remaining support or updates and their rights with respect to purchases of extension of support beyond discontinuation. Except as described in Section 2.17 of the Disclosure Schedule, all Continuing Customers are using Company Products and have rights to support, updates and replacements pursuant to the Company's standard Hosted Services agreement or terms of use, copies of which are attached to Section 2.17 of the Disclosure Schedule.

Section 2.18 Material Contracts. Except for Contracts listed in Section 2.18 of the Disclosure Schedule, the Company is not a party to or bound by any Contract (each, together with each Contract required to be disclosed on the Disclosure Schedule pursuant to any of the representations and warranties in this Article 2, a "***Material Contract***"), including:

(a) any advertising, agency, original equipment manufacturer, dealer, distributors, sales representative, joint marketing, joint development or joint venture Contract;

(b) any Contract between the Company and any Customer;

(c) any continuing Contract for the purchase of materials, supplies, equipment or services that involves the payment by the Company of more than $5,000 over the life of the Contract;

(d) any Contract pursuant to which the Company are obligated to provide services at price fixed before performance of such services (but excluding warranty and maintenance Contracts);

(e) any warranty or maintenance Contract pursuant to which the Company are obligated to provide services at a price fixed before performance of such services, for which the fully burdened cost of complete performance by the Company currently exceeds or is reasonably expected by the Company to exceed such price;

(f) any Contract that expires (or may be renewed at the option of any Person other than the Company so as to expire) more than one year after the date of this Agreement and involves more than $25,000 over the life of the Contract;

(g) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(h) any Contract wherein or whereby the Company has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, guarantee 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 another Person of the Intellectual Property or Intellectual Property Rights of any Person other than the Company and under which the liability of the Company for such obligation is not capped at a particular dollar amount or is capped in excess of $1 million;

(i) any Contract for any capital expenditure in excess of $5,000 individually or $25,000 in the aggregate;

(j) any Contract in accordance with which the Company is a lessor or lessee of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property and involving in the case of any such Contract more than $5,000 over the life of the Contract;

(k) any Contract in accordance with which the Company is a lessor or lessee of any real property;

(l) (1) any Contract providing rights to or that are based upon any Company Intellectual Property, and (2) any Contract providing for the development of any Software, content (including textual content and visual, photographic or graphics content), technology, Intellectual Property or Intellectual Property Rights for the Company, or providing for the purchase by or license to (or for the benefit or use of) the Company of any Software, content (including textual content and visual, photographic or graphics content), technology, Intellectual Property or Intellectual Property Rights, which Software, content, technology, Intellectual Property or Intellectual Property Rights is or are used or incorporated (or is contemplated by it to be used or incorporated) in connection with any aspect or element of any product, service or technology of the Company or sold or distributed by the Company;

(m) any Contract with any Person with whom the Company does not deal at arms' length;

(n) any Contract relating to the disposition or acquisition of assets or any interest in any business enterprise (whether by merger, sale of stock, sale of assets or otherwise) and any Contract providing for an earnout, except for the sale of products or services in the ordinary course of business;

(o) any Contract with any Governmental Authority, other than any Customer Contract;

(p) any Contract under which the Company's entering into this Agreement or the consummation of the Transactions would give rise to, or trigger the application of, any rights of any third party or any obligations of the Company that would come into effect upon the consummation of the Transactions;

(q) any Contract relating to settlement of any Action;

(r) any Contract that results in any Person holding a power of attorney from the Company;

(s) any hedging, futures, options or other derivative Contract; or

(t) any Contract with any investment banker, broker, advisor or similar Person, or any accountant, legal counsel or other person retained by the Company, in connection with this Agreement and the Transactions.

A true and complete copy of each Material Contract has been Made Available to Parent. All Material Contracts are in executed written form, and the Company has performed all of the obligations required to be performed by it and is entitled to all benefits under, and the Company is not in default of any provision in respect of, any Material Contract. Each of the Material Contracts is a valid and binding agreement of the Company and, to the knowledge of the Company, the other parties thereto, and there exists no default or event of default or event,

occurrence, condition or act, which could reasonably be expected to result in the Interim Surviving Entity or the Surviving Entity not enjoying all economic benefits that the Company enjoyed before the Closing and to which it is entitled post-Closing under any Material Contract. Following the Closing Date, the Interim Surviving Entity and the Surviving Entity will maintain the Company's rights under the Material Contracts without the payment of any additional amounts of consideration other than ongoing fees, royalties or payments that the Company would otherwise be required to pay in accordance with the terms of such Material Contracts had the Transactions not occurred.

Section 2.19 Property.

(a) The Company does not own and has never owned any real property.

(b) The Company has good and marketable title to all of the tangible properties and assets, real, personal and mixed, used or held for use in its business or, with respect to leased properties and assets, valid leasehold interests in such properties and assets which afford the Company peaceful and undisturbed leasehold possession of the properties and assets that are the subject of the leases, in each case free and clear of any Encumbrances, except (1) as reflected in the Interim Balance Sheet, (2) liens for Taxes not yet due and payable, and (3) such imperfections of title and Encumbrances that do not detract from the value or interfere with the present use of the property subject thereto or affected thereby and such properties and assets have been maintained in accordance with the ordinary course of business save for normal wear and tear. The Company has Made Available to Parent a true, correct and complete copy of each of its real property leases.

(c) The assets and properties owned, leased or licensed by the Company are in good condition and repair in all respects (subject to normal wear and tear) and constitute all of the properties necessary to conduct its business as currently conducted.

Section 2.20 Bank Accounts. Section 2.20 of the Disclosure Schedule sets forth a complete and correct list showing all Persons with which the Company maintains a bank, brokerage or other account containing cash or cash equivalents (collectively, "***Bank Accounts***") or safe deposit box, together with, as to each such Bank Account, the account number, the names of all signatories thereof and the authorized powers of each such signatory and, with respect to each such safe deposit box, the location and number thereof and the names of all persons having access thereto.

Section 2.21 Accredited Investor Status. As of the Closing, each holder of Company Common Stock and Company Warrants other than those listed on Schedule 1.2(b)(3) is an "accredited investor" as defined in Rule 501(a) of the Securities Act.

Section 2.22 Representations. No representation or warranty of the Company in this Agreement, nor any statement, certificate or other document furnished or to be furnished by the Company to Parent pursuant hereto, nor the exhibits and schedules hereto, contains or, on the

Closing Date, will contain any untrue statement of a material fact, or omits to state or, on the Closing Date, will omit to state, a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PARENT, MERGER CO. AND ACQUISITION CO.

Parent, Merger Co. and Acquisition Co. represent and warrant to the Company as follows:

Section 3.1 Organization and Power. Each of Parent, Merger Co. and Acquisition Co. (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted and (c) is qualified to do business in, and is in good standing in, every jurisdiction where the lack of such qualification would be reasonably likely to result in a Material Adverse Effect on Parent. Parent, Merger Co. and Acquisition Co. are not in violation of any of the provisions of their organizational documents, and no changes thereto are pending. Parent, Merger Co. and Acquisition Co. have each made available a true and correct copy of their charter and bylaws, each in full force and effect on the date hereof, to the Company. The board of directors of Parent has not approved or proposed any amendment to Parent's charter or bylaws since August 31, 2013.

Section 3.2 Authorization; Enforceability. Parent, Merger Co. and Acquisition Co. each has the power and authority to execute, deliver and perform its obligations under this Agreement and the Related Agreements to which it is a party and to consummate the Transactions. The execution, delivery and performance of this Agreement and the Related Agreements to which it is a party and the consummation of the Transactions by each of Parent, Merger Co. and Acquisition Co. have been duly authorized by all requisite corporate or comparable organizational action. Each of Parent, Merger Co. and Acquisition Co.'s board of directors, by resolutions duly adopted (and not thereafter modified or rescinded) by unanimous vote (with no abstentions) at a meeting duly called and held or by unanimous written consent, has (a) approved this Agreement, the Merger and the Transactions and (b) determined that this Agreement and the terms and conditions of the Merger and the Transactions are advisable and in the best interests of Parent, Merger Co. or Acquisition Co., as applicable, and their stockholders. This Agreement and the Related Agreements to which it is a party have been duly executed and delivered by Parent, Merger Co. and Acquisition Co. and, assuming due authorization, execution and delivery by the other Parties, represents the legal, valid and binding obligation of Parent, Merger Co. and Acquisition Co., enforceable against Parent, Merger Co. and Acquisition Co. in accordance with its terms, subject to the effect of (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws now and hereunder in effect relating to the rights of creditors generally and (b) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

Section 3.3 Noncontravention.

(a) The execution, delivery and performance of this Agreement and the consummation of the Transactions by Parent, Merger Co. and Acquisition Co. will not (1) conflict with, result in or constitute a material violation of or default under (with or without notice, lapse of time or both), give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss of any benefit under or require consent, approval or waiver from any Person in accordance with any provision of the organizational documents of Parent, Merger Co. or Acquisition Co. or (2) conflict with, result in or constitute a material violation of or default under (with or without notice, lapse of time or both) any Law applicable to Parent, Merger Co. or Acquisition Co.

(b) No Permit or Order of, or registration or filing with or declaration or notification to, any Governmental Authority is required by or with respect to Parent, Merger Co. or Acquisition Co. in connection with the execution, delivery and performance of this Agreement or the Related Agreements to which it is a party or the consummation of the Transactions, except for the filing of the Articles of Reverse Merger and the Articles of Forward Merger, except for registration or qualification (or taking such action as may be necessary to secure an exemption from registration and qualification) of the offer and sale of the shares of Parent Common Stock under applicable federal and state securities Laws.

Section 3.4 Merger Co. and Acquisition Co. Merger Co. is a wholly-owned subsidiary of Parent formed for the purpose of effecting the Merger. All of the issued and outstanding stock of Merger Co. are, and at the Effective Time will be, directly owned by Parent. There is no agreement outstanding pursuant to which any Person has any existing or contingent right to acquire any stock of Merger Co. Merger Co. owns no assets, has no Liabilities and has conducted no activities other than those necessary to effectuate the Merger. Acquisition Co. is a wholly-owned subsidiary of Parent formed for the purpose of effecting the Merger. All of the issued and outstanding membership interests of Acquisition Co. are, and at the effective time of the Forward Merger will be, directly owned by Parent. There is no agreement outstanding pursuant to which any Person has any existing or contingent right to acquire any membership interest of Acquisition Co. Acquisition Co. owns no assets, has no Liabilities and has conducted no activities other than those necessary to effectuate the Merger. Acquisition Co. is, and has since the date of its formation been, treated as an entity that is disregarded as separate from Parent for U.S. federal income tax purposes.

Section 3.5 Valid Issuance of Common Stock. The shares of Parent Common Stock, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be duly and validly issued, fully paid, nonassessable and free of any Encumbrances other than restrictions on transfer under the Parent Organizational Agreements and applicable state and federal securities laws. Based in part upon the representations of the Company Securityholders in the Restricted Stock and Joinder Agreements, the Option Consents or the Warrant Consents, as applicable, the shares of Parent Common Stock will be issued in compliance with all applicable federal and state securities Laws. The issuance of the shares of

Parent Common Stock in accordance with this Agreement is not and will not be subject to any preemptive rights or rights of first refusal and the issuance of the shares of Parent Common Stock will not trigger any anti-dilution or similar rights.

Section 3.6 Brokers and Finders. No Person has acted as a broker, finder or financial advisor for Parent in connection with the negotiations relating to the Transactions, and no Person is entitled to any fee or commission or similar payment in respect thereof from the Company, Parent or any of their respective Affiliates based in any way on any agreement, arrangement or understanding made by or on behalf of the Parent.

Section 3.7 Tax Treatment. Neither Parent nor any Subsidiary of Parent has taken any action or failed to take any action or knows of any fact, agreement, plan or other circumstance that would, to the knowledge of Parent, jeopardize the qualification of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

ARTICLE 4

INDEMNIFICATION

Section 4.1 Survival. The representations and warranties of the Company contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement will survive in full force and effect until *** after the Closing Date, *except* that (a) the representations and warranties made in *** will survive until ***, and (b) the Fundamental Representations (other than with respect to ***), will survive in full force and effect ***, *and except* that if, at any time on or prior to the date that a representation and warranty of the Company contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement would otherwise expire pursuant to this Section 4.1, Parent has delivered a Claims Notice pursuant to Section 4.6, then the Liability Claim asserted in the Claims Notice shall survive until the Liability Claim is fully and finally resolved. The representations and warranties of Parent, Merger Co. and Acquisition Co. contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement will survive in full force and effect until *** after the Closing Date. Except as otherwise expressly provided in this Agreement, each covenant hereunder will survive the Closing until its expiration pursuant to its terms or, if no term is specified, ***.

Section 4.2 Indemnification Holdback Shares. The Indemnification Holdback Shares will be available in accordance with this Article 4 to compensate the Indemnified Persons for Losses in accordance with this Article 4.

Section 4.3 Indemnification.

(a) From and after the Effective Time, subject to this Article 4, the holders of Company Common Stock immediately before the Effective Time who are allocated Indemnification Holdback Shares in the Spreadsheet (the "***Indemnifying Securityholders***")

will, by virtue of the Merger, severally and not jointly, indemnify and hold harmless Parent, the Interim Surviving Entity, the Surviving Entity, Parent's subsidiaries and the Company and their respective officers, directors, agents, attorneys, representatives and employees, and each Person who Controls or may Control Parent, the Interim Surviving Entity or the Surviving Entity (each of the foregoing, an "***Indemnified Person***") from and against any and all Losses, arising out of, relating to or resulting from the following:

(1) any misrepresentation or inaccuracy of any representation, warranty or certification made by the Company in this Agreement, the Disclosure Schedule, in accordance with the standard set forth in the preamble to Article 2 of this Agreement, or in the certificate delivered by the president and chief executive officer of the Company pursuant to Section 1.2(b)(19);

(2) any amount payable in respect of any claim of dissenter's rights, claim of appraisal or similar action with respect to shares of Company Common Stock (with Losses arising under this Section 4.3(a)(2) being equal to the excess of (A) any consideration awarded in any such claim or action plus any costs or expenses incurred in connection with any related claim or action over (B) the value of the Merger Consideration allocable to the shares of Company Common Stock that are the subject of the claim or action, as set forth in the Spreadsheet);

(3) any Taxes imposed on the Company related or attributable to any period or portion thereof ending on or before the Closing Date, but with respect to the Taxes for periods covered by the Financial Statements only to the extent that such Taxes exceed the amount of accrued liabilities for Taxes (not including for this purpose any Taxes that reflect timing differences between book and Tax income) reflected on the face of the Financial Statements rather than in any footnotes thereto (the "***Pre-Closing Tax Liabilities***");

(4) any Transaction Expenses unpaid as of immediately before the Effective Time to the extent not included in the calculation of Merger Consideration;

(5) any Company Indebtedness unpaid as of immediately before the Effective Time to the extent not included in the calculation of Merger Consideration;

(6) any amount by which (A) any positive difference of the Estimated Closing Date Working Capital minus the Closing Date Working Capital exceeds (B) the Working Capital Holdback Amount remaining after any release to Parent of the costs of the Working Capital Arbiter under Section 1.9(c);

(7) any error or inaccuracy in the Spreadsheet;

(8) fraud or willful misrepresentation by the Company (including that of its officers and directors in their capacities as such); or

(9) fraud or willful misrepresentation by any Indemnifying Securityholder.

(b) In the case of any Taxable period that includes but does not end on the Closing Date (a "***Straddle Period***"), the amount of Pre-Closing Tax Liabilities based on or measured by income or receipts or relating to any sales or use Tax will be determined based on an interim closing of the books as of the close of business on the Closing Date, and the amount of any Pre-Closing Tax Liabilities not based on or measured by income or receipts or relating to any sales or use Tax for a Straddle Period will be deemed to be the amount of such Tax for the entire period multiplied by a fraction, the numerator of which is the number of days in the portion of the Straddle Period ending at the end of the day that is the Closing Date and the denominator of which is the number of days in such Straddle Period. For purposes of this Section 4.3(b), any exemption, deduction, credit or other item that is calculated on an annual basis shall be allocated to the portion of the Straddle Period in the same manner as that set forth in the second clause of the prior sentence of this Section 4.3(b).

(c) In calculating the amount of any Losses in respect of any breach of or inaccuracy in any representation, warranty or certification, any materiality or Material Adverse Effect standard or qualification limiting the scope of such representation, warranty or certification will be disregarded.

Section 4.4 Limitations on Indemnification; Exclusive Remedy.

(a) Recovery by Indemnified Persons of their Losses in the aggregate will be subject to the following limitations:

(1) The Indemnifying Securityholders will not be liable to the Indemnified Persons for indemnification under Section 4.3(a)(1) until the aggregate amount of all Losses in respect of indemnification under Section 4.3(a)(1) exceeds $*** (the "***Basket***"); *provided, however,* that this limitation shall in no case apply to any Loss arising from any breach of the representations and warranties contained in Section 2.9 (Taxes).

(2) With respect to Losses claimed under Section 4.3(a)(1) other than for misrepresentations or inaccuracies in the Fundamental Representations, an Indemnified Person may recover all of its Losses in excess of the Basket only from the Indemnification Holdback Shares.

(3) With respect to Losses claimed under Section 4.3(a)(1) for misrepresentations or inaccuracies in the Fundamental Representations, an Indemnified Person may recover all of its Losses subject to Section 4.4(a)(1) (A) from the Indemnification Holdback Shares and (B) to the extent such Losses exceed the amount claimed from the Indemnification Holdback Shares in all unresolved or unsatisfied Liability Claims, directly from each Indemnifying Securityholder according to its Holdback Percentage of such Losses, up to the Merger Consideration received by the Indemnifying Securityholder.

(4) With respect to Losses claimed under Section 4.3(a)(2), Section 4.3(a)(3), Section 4.3(a)(4), Section 4.3(a)(5) or Section 4.3(a)(6), an Indemnified Person may recover all of its Losses from (A) the Indemnification Holdback Shares and (B) to the extent such Losses exceed the amount claimed from the Indemnification Holdback Shares in all unresolved or unsatisfied Liability Claims, directly from each Indemnifying Securityholder according to its Holdback Percentage of such Losses, up to the Merger Consideration received by the Indemnifying Securityholder.

(5) With respect to Losses claimed under Section 4.3(a)(7), Section 4.3(a)(8) or Section 4.3(a)(9), an Indemnified Person may recover such Losses at its sole discretion (A) from the Indemnification Holdback Shares, (B) directly from each Indemnifying Securityholder, according to its Holdback Percentage of such Losses, and (C) directly and without limitation from an Indemnifying Securityholder whose fraud or willful misrepresentation is the basis for the Liability Claims under Section 4.3(a)(9).

(b) Except as otherwise required by applicable Law, the Parties shall treat any indemnification payments made hereunder as an adjustment to the Merger Consideration as specified in Section 1.4 for accounting and Tax purposes.

(c) No Indemnifying Securityholder will have any right of contribution, right of indemnity or other right or remedy against Parent, the Interim Surviving Entity or the Surviving Entity in connection with any indemnification obligation or any other liability to which such Indemnifying Securityholder may become subject under or in connection with this Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, nothing herein will prevent any Indemnified Person from bringing an Action for fraud or willful misrepresentation against any Person, including any Indemnifying Securityholder, whose fraud or willful misrepresentation has caused such Indemnified Person to incur Losses or has limited the Losses recoverable by such Indemnified Person in such Action, and the ability to recover Losses with respect to such fraud or willful misrepresentation will not be limited by this Agreement.

Section 4.5 Indemnification Holdback Claim Period. The period during which claims for indemnification from the Indemnification Holdback Shares may be initiated (the "***Claim Period***") will commence at the Effective Time on the Closing Date and terminate at 11:59 p.m. California time on the date that is *** after the Closing Date (the "***Claim Period Expiration Date***"). On the Claim Period Expiration Date, (a) such portion of the Indemnification Holdback Shares determined based on the Indemnification Share Value as may be necessary in the reasonable judgment of Parent to satisfy any unresolved or unsatisfied Liability Claims for which Indemnified Persons seek recovery from the Indemnification Holdback Shares under any Claims Notice delivered by Parent to the Representative prior to the Claim Period Expiration Date will remain held back by Parent until such Liability Claims have been resolved or satisfied and (b) the remaining Indemnification Holdback Shares will be delivered to the Representative for

prompt distribution to the Indemnifying Securityholders pro rata according to their respective Holdback Percentages. Upon resolution after the Claim Period Expiration Date of any unresolved or unsatisfied Liability Claim for which Indemnified Persons seek recovery from the Indemnification Holdback Shares, Parent will deliver to the Representative for prompt distribution to the Indemnifying Securityholders pro rata according to their respective Holdback Percentages any remaining Indemnification Holdback Shares that are not held back under clause (a) of the preceding sentence in relation to any other unresolved or unsatisfied Liability Claims.

Section 4.6 Claims for Indemnification. At any time that an Indemnified Person desires to claim a Loss (a "***Liability Claim***") that it believes is or may be indemnifiable under Section 4.3, Parent will deliver a notice of such Liability Claim (a "***Claims Notice***") to the Representative. A Claims Notice will (a) be signed by an officer of Parent, (b) describe the Liability Claim in reasonable detail and (c) indicate the amount of the Loss that has been or may be paid, suffered, sustained or accrued by the Indemnified Persons. To the extent that the amount of a Loss is not determinable as of the date of delivery of a Claims Notice, Parent may deliver a Claims Notice stating the maximum amount of Loss that Parent in good faith estimates or anticipates that an Indemnified Person may pay or suffer, but Parent's provision of an estimated or anticipated amount of Loss will not limit the Loss recoverable or recovered by an Indemnified Person. No delay in or failure to give a Claims Notice by Parent to the Representative pursuant to this Section 4.6 will adversely affect any of the other rights or remedies that Parent has under this Agreement or alter or relieve any Parties of their obligations to indemnify the Indemnified Persons pursuant to this Article 4, except and to the extent that such delay or failure has materially prejudiced such Parties.

Section 4.7 Objections to Claims.

(a) The Representative may object to any Liability Claim set forth in such Claims Notice by delivering written notice to Parent of the Representative's objection (an "***Objection Notice***"). Such Objection Notice must describe the grounds for such objection in reasonable detail.

(b) If an Objection Notice is not delivered by the Representative to Parent within 30 days after receipt by the Representative of the Claims Notice, such failure to so object will be an irrevocable acknowledgment by the Representative and each Indemnifying Securityholder that the Indemnified Persons are entitled to indemnification under Section 4.3 for the Losses set forth in such Claims Notice in accordance with this Article 4.

(c) Notwithstanding anything to the contrary in this Agreement, the Indemnifying Securityholders do not have any individual right to object to any claim made in a Claims Notice under this Article 4. Any and all claims made in a Claims Notice on behalf of the Indemnified Persons may be objected to only by the Representative.

Section 4.8 Resolution of Objections to Claims; Satisfaction of Claims.

(a) If the Representative objects in writing to any Liability Claim made in any Claims Notice within 30 days after receipt of such Claims Notice, the Representative and Parent will attempt in good faith to agree upon the rights of the respective Parties with respect to each such claim. If the Representative and Parent should so agree, a memorandum setting forth such agreement will be prepared and signed by both of them, and Parent will release to itself and cancel Indemnification Holdback Shares in the amount agreed in such memorandum and, if applicable, each Indemnifying Securityholder will Satisfy the amount agreed to be delivered to Parent in such memorandum.

(b) If an agreement described in Section 4.8(a) is not reached after good-faith negotiation for a period of 30 days after delivery of an Objection Notice, either Parent or the Representative on behalf of the Indemnifying Securityholders may bring an Action against the other under Section 6.13 to resolve the dispute.

(c) To the extent that an Indemnified Person is permitted under this Article 4 to seek recovery directly against one or more Indemnifying Securityholders for Losses that Parent has not previously recovered out of the Indemnification Holdback Shares, then each such Indemnifying Securityholder will promptly, and in no event later than ten days after the final resolution of any dispute in accordance with this Section 4.8, Satisfy the amount equal to (1) its Holdback Percentage of the amount of Losses determined in accordance with this Section 4.8 or (2) if such Losses are recoverable from the Indemnifying Securityholders under Section 4.3(a)(7), Section 4.3(a)(8) or Section 4.3(a)(9), the full amount of such Losses. If the amount of the Losses so determined is an estimate, then the applicable Indemnifying Securityholder will be required to Satisfy the amount within five days of the date that the amount of such Losses is finally determined.

(d) The value of the Indemnification Holdback Shares or shares of Parent Common Stock that are released or transferred to Parent for cancellation to satisfy any Liability Claim (the "***Indemnification Share Value***") shall be the Fair Market Value on the date the related Claims Notice is delivered, except that the value of the Indemnification Holdback Shares that are released to Parent for cancellation to satisfy any Liability Claims under Section 4.3(a)(1) that are related to Section 2.8 (Intellectual Property) shall be the Parent Stock Per Share Valuation.

Section 4.9 Third-Party Claims.

(a) If Parent receives written notice of a third-party claim, including any dispute with a Governmental Authority with respect to Pre-Closing Tax Liabilities (a "***Third Party Claim***") that may result in a Liability Claim by or on behalf of an Indemnified Person, Parent will notify the Representative of such Third-Party Claim within 60 days after Parent becomes aware of any such Third Party Claim, which notice shall set forth such material information with respect to the Third Party Claim as is reasonably available to Parent, but no delay or failure on the part of Parent in notifying the Representative shall relieve the Representative and Indemnifying Securityholders from their obligations hereunder unless the Representative and the Indemnifying Securityholders are thereby materially prejudiced by such delay (and then solely to the extent of such material prejudice).

(b) If any Third Party Claim is asserted against an Indemnified Person, the Representative will be entitled, if the Representative so elects by written notice delivered to Parent within fourteen days after receiving Parent's notice of such claim, the opportunity to participate in, but not direct or conduct, any defense of such claim, except that the Representative shall not be provided such opportunity to the extent that Parent determines that such participation could result in the loss of any attorney-client privilege or right under the work-product doctrine of Parent or any Indemnified Person in respect of such claim. Such right of participation shall come at the sole cost and expense of the Representative and the Indemnifying Securityholders, and shall not permit recourse to the Indemnification Holdback Shares. The Representative's participation will be subject to Section 4.10(d). Parent will have the right in its sole discretion to consent to the entry of any judgment or settle any Third Party Claim, but no judgment or settlement of any such Third Party Claim without the consent of the Representative, which shall not be unreasonably withheld or delayed, will be determinative of the amount of Losses relating to such matter. If the Representative consents to any such judgment or settlement, neither the Representative nor any Indemnifying Securityholder will have any power or authority to object to the amount or validity of any claim by or on behalf of any Indemnified Person for indemnification hereunder with respect to such settlement. Notwithstanding any other provision of this Agreement, any costs and expenses of defense and investigation, including court costs and reasonable attorneys' fees incurred or suffered by the Indemnified Persons in connection with the defense of any third-party claim alleging matters that would be indemnifiable under Section 4.3, whether or not it is ultimately determined that the matter is indemnifiable under Section 4.3, will constitute Losses subject to indemnification under Section 4.3.

Section 4.10 Representative.

(a) For purposes of this Agreement, immediately and automatically upon the Required Vote, and without further action on the part of any Company Securityholder, each Company Securityholder shall be deemed to have consented to the appointment of Robert Cell as his, her or its representative and the attorney-in-fact for and on behalf of each such Company Securityholder, and the taking by the Representative of any and all actions and the making of any decisions required or permitted to be taken by him or her under this Agreement, including the disposition, settlement or other handling of all Liability Claims. The Company Securityholders will be bound by all actions taken by the Representative in connection with this Agreement, and Parent shall be entitled to rely on any notice or communication to or by, or decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Representative. Without limiting the generality of the foregoing, each decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of the Representative will constitute a decision of all of the Indemnifying Securityholders and any other Company Securityholders, and will be final, binding and conclusive upon each

Indemnifying Securityholder and any other Company Securityholder, and Parent may rely upon any such decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of the Representative as being that of each and every such Indemnifying Securityholder and Company Securityholder. Parent is hereby relieved from any liability to any Indemnifying Securityholder or other Company Securityholder for any acts done by it in accordance with such decision, act, consent or instruction of the Representative. All expenses, if any, incurred by the Representative in connection with the performance of his or her duties as the Representative will be borne and paid by the Indemnifying Securityholders according to their Holdback Percentages (the "***Representative Expenses***"). With respect to any Claims Notice delivered to the Representative that states a claim under Section 4.3(a)(9) with respect to an individual Indemnifying Securityholder or group of Indemnifying Securityholders, the Representative shall be entitled to rely on the directions of such Indemnifying Securityholder or Indemnifying Securityholders, as applicable, with no liability for any acts done in accordance with such direction. Following the termination of the Claim Period, the resolution of all Liability Claims and the satisfaction of all claims made by Indemnified Parties for Losses, the Representative shall have the right to recover Representative Expenses from the remaining Indemnification Holdback Shares prior to any distribution to the Indemnifying Securityholders. No bond will be required of the Representative, and the Representative will not receive any compensation for its services. Notices or communications to or from the Representative shall constitute notice to or from each of the Indemnifying Securityholders.

(b) In the event of a vacancy in the position of Representative (or refusal or incapability of the Representative to serve), holders of a majority in interest of the remaining Indemnification Holdback Shares shall appoint a new Representative by written consent within ten days after such vacancy and immediately thereafter send to Parent notice and a copy of the written consent appointing such new Representative signed by such holders of a majority in interest of the remaining Indemnification Holdback Shares; except that if the vacancy continues for more than ten days, Parent may appoint a successor Representative who will thereafter be a successor Representative hereunder. If there is not a Representative at any time, any obligation to provide notice to the Representative will be deemed satisfied if such notice is delivered to each of the Indemnifying Securityholders at their addresses last known to Parent, which will be the address set forth in the Spreadsheet unless Representative provides notice to Parent of a different address in the manner described in Section 6.3. Any successor Representative appointed by the holders of a majority interest of the remaining Indemnification Holdback Shares must have been a securityholder of the Company prior to the Effective Time or, in the case of a securityholder that is an entity, a partner, employee or affiliate of a securityholder of the Company prior to the Effective Time. The appointment of any successor Representative shall be subject to the approval of Parent, which shall not be unreasonably withheld.

(c) The Representative shall not be liable to any Indemnifying Securityholder for any act done or omitted hereunder as the Representative while acting in good faith and any act done or omitted in accordance with the advice of counsel or other

expert shall be conclusive evidence of such good faith. The Indemnifying Securityholders shall jointly and severally indemnify the Representative and hold him harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Representative and arising out of or in connection with the acceptance or administration of his or her duties hereunder.

(d) The Representative shall have reasonable access to information about the Interim Surviving Entity and the Surviving Entity and the reasonable assistance of the Company's former officers and employees who are employed by Parent or its Affiliates for purposes of performing his or her duties and exercising his or her rights hereunder. The Representative shall treat confidentially and not use or disclose the terms of this Agreement or any nonpublic information from or about the Parent, the Interim Surviving Entity and the Surviving Entity, or any Indemnified Person to anyone (except to the Indemnifying Securityholders or the Representative's employees, attorneys, accountants, financial advisors or authorized representatives on a need to know basis, in each case who agree to treat such information confidentially). The Representative shall enter into a separate confidentiality agreement prior to being provided access to such information if requested by Parent.

(e) By its signature to this Agreement, subject to the occurrence of the Required Vote, the initial Representative hereby accepts the appointment contained in this Agreement, as confirmed and extended by this Agreement, and agrees to act as the Representative and to discharge the duties and responsibilities of the Representative pursuant to the terms of this Agreement.

ARTICLE 5

TAX MATTERS

Section 5.1 Tax Returns.

(a) Parent shall prepare, or shall cause to be prepared, at the Parent's expense, all income Tax Returns in respect of the Company that relate to Tax periods ending on or before the Closing Date but that are required to be filed after the Closing Date.

(b) Parent shall prepare and timely file, or cause to be prepared and timely filed, at Parent's expense, any Straddle Period Tax Return (a "***Straddle Period Tax Return***") required to be filed by the Company for any Straddle Period.

(c) Parent and the Company shall not make any Tax elections or change any Tax method of accounting for any Pre-Closing Tax Period except to the extent such elections or changes do not increase the Taxes of the Company for a Pre-Closing Tax Period.

(d) No election under Section 338(g) of the Code shall be made with respect to the Company.

Section 5.2 Amendment of Tax Returns. Parent shall not amend any Tax Return of the Company that relates to a Tax period ending on or before the Closing Date or Straddle Period without the prior written consent of the Representative (which consent shall not be unreasonably withheld).

Section 5.3 Transfer Taxes. Any transfer, stamp, documentary, sales, use, registration, value-added and other similar Taxes (including all applicable real estate transfer Taxes) incurred in connection with this Agreement and the Transactions ("***Transfer Taxes***"), shall be paid by the Company Securityholders.

Section 5.4 Tax Refunds. Parent shall promptly pay, or cause to be promptly paid, by wire transfer of immediately available funds to the account(s) designated by the Representative, refunds of the Tax liabilities of the Company for any Pre-Closing Tax Period.

ARTICLE 6

GENERAL PROVISIONS

Section 6.1 Certain Defined Terms. As used in this Agreement, the following terms have the following meanings:

"Acquisition Co." has the meaning set forth in the Preamble.

"Action" means any criminal, judicial, administrative or arbitral action, audit, charge, claim, complaint, demand, grievance, hearing, inquiry, investigation, litigation, mediation, proceeding, subpoena or suit, whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or private arbitrator or mediator.

"A***dditional Option"*** has the meaning set forth in Section 1.6(c)

***"Affiliate*,"** when used with reference to any Person, means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such first Person.

"Agreement" has the meaning set forth in the Preamble.

"Articles of Forward Merger" has the meaning set forth in Section 1.1.

"Articles of Reverse Merger" has the meaning set forth in Section 1.1.

"Bank Accounts" has the meaning set forth in Section 2.20.

"Basis" means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction that could form the basis for any specific consequence.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in San Francisco, California.

"Cash and Cash Equivalents" as of a given time means (A) the Company's cash and cash equivalents, determined in accordance with GAAP as of such time and (B) to the extent not included in clause (A), all amounts paid by holders of Company Options or Company Warrants for the exercise of such Company Options before the Closing.

"Cash-Out Warrantholders" has the meaning set forth in the Recitals.

"Certificates" has the meaning set forth in Section 1.4(b).

"Charter" has the meaning set forth in Section 2.1.

"Charter Documents" has the meaning set forth in Section 2.1.

"Claim Period" has the meaning set forth in Section 4.5.

"Claim Period Expiration Date" has the meaning set forth in Section 4.5.

"Claims Notice" has the meaning set forth in Section 4.6.

"Closing" has the meaning set forth in Section 1.2(a).

"Closing Balance Sheet" has the meaning set forth in Section 1.9(b).

"Closing Date" has the meaning set forth in Section 1.2(a).

"Closing Date Working Capital" has the meaning set forth in Section 1.9(b).

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Company" has the meaning set forth in the Preamble.

"Company Balance Sheet Date" has the meaning set forth in Section 2.4.

"Company Common Stock" means the common stock of the Company.

"Company Indebtedness" means the aggregate of the following, determined in accordance with GAAP: (1) any liability of the Company (A) for borrowed money (including the current portion thereof), (B) under any reimbursement obligation relating to a letter of credit, bankers' acceptance or note purchase facility, or (C) evidenced by a bond, note, debenture or

similar instrument (including a purchase money obligation), (2) any liability of other Persons described in clause (1) that the Company has guaranteed, that is recourse to the Company or any of its assets or that is otherwise the legal liability of the Company, (3) accounts payable of the Company that were due and payable more than 60 days before the date of determination, (4) any liability of the Company under capitalized leases with respect to which the Company is liable, contingently or otherwise, as obligor, guarantor or otherwise, and accrued interest thereon, (5) any long-term liabilities of the Company, and (6) any deferred salary obligations, severance, bonus or similar change-in-control payments, and any income or employment Taxes and withholdings due on any such amounts, to current or former employees, consultants or other service providers of the Company pursuant to any plan, practice, policy, contract, agreement, program, fund or arrangement of the Company or any ERISA Affiliate in effect as of or prior to the Effective Time. For purposes of this Agreement, Company Indebtedness includes (1) any and all accrued interest, lender fees, prepayment premiums, make whole premiums or penalties and fees or expenses actually incurred (including attorneys' fees) associated with the prepayment of any Company Indebtedness or payable upon a change of control, and (2) any and all amounts of the nature described in clauses (1)(A), (B) or (C) owed by the Company to any of its Affiliates including any of its stockholders, optionholders, warrantholders or employees.

"Company Intellectual Property" means any and all Intellectual Property and Intellectual Property Rights owned by or licensed to the Company, or otherwise used or held for use in connection with the operation of the business of the Company.

"Company Option" has the meaning set forth in Section 1.6(a).

"Company-Owned Intellectual Property" means any and all Intellectual Property and Intellectual Property Rights that are owned by or exclusively licensed to the Company.

"Company Products" has the meaning set forth in Section 2.8(a).

"Company Registered Intellectual Property" has the meaning set forth in Section 2.8(b).

"Company Securityholders" means the holders of Company Common Stock, Company Options and Company Warrants.

"Company Source Code" means, collectively, any human readable Software source code, or any material portion or aspect of the Software source code, or any material proprietary information or algorithm contained, embedded or implemented in, in any manner, any Software source code, in each case for any Company Product, Developing Product or any Software owned by Company.

"Company Stock Plan" has the meaning set forth in Section 2.2(e).

"Company Transaction Expenses" means the Transaction Expenses of the Company.

"Company Warrant" has the meaning set forth in Section 1.7(a).

"Confidentiality Agreement" means the Mutual Nondisclosure Agreement, dated as of April 1, 2013, between Parent and the Company.

"Continuing Customer" has the meaning set forth in Section 2.17.

"Continuing Employee" has the meaning set forth in Section 1.6(b).

"Contract" means any contract, agreement, indenture, note, bond, loan, instrument, license, lease (including real and personal property leases), conditional sale contract, purchase or sales orders, mortgage, undertaking, commitment, understanding, undertaking, option, warrant, calls, rights or other enforceable arrangement or agreement, whether written or oral.

"Control" means, as to any Person, the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The verb ***"Control"*** and the term ***"Controlled"*** have the correlative meanings.

"Converted Option" has the meaning set forth in Section 1.6(b).

"Copyrights" has the meaning set forth in the definition of Intellectual Property Rights.

"COTS Software" shall mean generally available commercial off-the-shelf Software used solely in connection with the Company's internal operations, the source code of which has not been modified or customized by or for the Company and is licensed to the Company pursuant to a Contract that does not require any future payment(s), including any applicable maintenance and support fees, of more than $1,000 per user per year.

"Current Assets" means the Company's current assets, determined in accordance with GAAP using the same methodologies that were used in the preparation of the Company's financial statements as of and for the year ended December 31, 2012, including Cash and Cash Equivalents, accounts receivable (net of allowance for doubtful accounts), prepaid expenses, inventories (net of reserves for obsolescence) and deposits and other current assets.

"Current Liabilities" means the Company's current liabilities, determined in accordance with GAAP using the same methodologies that were used in the preparation of the Company's financial statements as of and for the year ended December 31, 2012, including accounts payable, accrued expenses and payroll liabilities (including bonus and severance payable).

"Customer License Agreements" means non-exclusive end user licenses to access or use the object code form of the Company Products granted to Customers.

"Databases" has the meaning set forth in the definition of Intellectual Property.

"Data Room" means the electronically accessible data room hosted by EMC Corporation provided in connection with the Transactions.

"Delaware Certificate of Forward Merger" has the meaning set forth in Section 1.1

"Developing Products" has the meaning set forth in Section 2.8(a).

"Disclosure Schedule" means the disclosure schedule dated as of the date hereof and delivered by the Company to Parent, Merger Co. and Acquisition Co.

"Dispute" has the meaning set forth in Section 2.8(l).

"Dissenting Shares" has the meaning set forth in Section 1.10(a).

"DLLCA" has the meaning set forth in the Recitals.

"Domain Names" has the meaning set forth in the definition of Intellectual Property.

"Effective Time" has the meaning set forth in Section 1.1.

"Eligible Option" has the meaning set forth in Section 1.6(b).

"Employee Benefit Plan" has the meaning set forth in Section 2.10(a).

"Encumbrance" means any mortgage, pledge, hypothecation, right of others, adverse claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, third party right or other right or interest, option, lien, charge, any hire purchase, lease or installment purchase agreement, right of first refusal, right of preemption or right to acquire, or other restriction or limitation, including any restriction on the right to vote, sell or otherwise dispose of the subject property, other than any restriction or limitation imposed by this Agreement.

"Equity Consideration" has the meaning set forth in Section 1.4(b)(1).

"ERISA" has the meaning set forth in Section 2.10(a).

"ERISA Affiliate" has the meaning set forth in Section 2.10(p).

"Estimated Closing Date Working Capital" has the meaning set forth in Section 1.9(a).

"Exercise Restriction" means that the Converted Options, regardless of vested status, (1) will not be exercisable until the earliest to occur of (a) the effective date of an underwritten initial public offering of a class of Parent's equity securities (an ***"IPO"***), (b) immediately prior to a change of control of Parent, and (c) the first anniversary of the Closing Date (such earliest date, the ***"Earliest Exercise Date"***), and (2) in the case that the continued service of the holder of Converted Options terminates with Parent or its affiliates for any reason prior to the Earliest Exercise Date, will remain exercisable following such termination of service until the earlier of (a) the date that is three months after the earlier of an IPO or the first anniversary of the Closing Date, or such longer period as provided in the option agreement governing such Converted Option and (b) the effective date of a change of control of Parent.

"Fair Market Value" means the fair market value of a share of Parent Common Stock as determined in good faith by Parent's board of directors.

"FCPA" has the meaning set forth in Section 2.14(c).

"Financial Controls" has the meaning set forth in Section 2.4.

"Financial Statements" has the meaning set forth in Section 2.4.

"Foreign Benefit Plan" has the meaning set forth in Section 2.10(s).

"Forward Merger" has the meaning set forth in the Recitals.

"Founder Non-competition Agreement" has the meaning set forth in the Recitals.

"Founders" has the meaning set forth in the Recitals.

"Fundamental Representations" ***.

"GAAP" has the meaning set forth in Section 2.4.

"Governmental Authority" means any governmental, regulatory or administrative authority, agency, body, commission or other entity, whether international, multinational, national, regional, state, provincial or of a political subdivision; any court, judicial body, arbitration board or arbitrator; any tribunal of a self-regulatory organization, or any instrumentality of any of the foregoing.

"Holdback Percentage" means, for each Company Securityholder, the quotient of (1) the number of Shares of Parent Common Stock set forth in the row identifying the Company Securityholder under the column heading "Total Parent Shares Issuable" in the Spreadsheet divided by (2) the total number of Shares of Parent Common Stock of all Company Securityholders set forth under the column heading "Total Parent Shares Issuable" in the Spreadsheet.

"Indemnification Holdback Contribution" means, for each Company Securityholder, the number of Shares of Parent Common Stock set forth in the row identifying the Company Securityholder under the column heading "Indemnification Holdback Contribution" in the Spreadsheet.

"Indemnification Holdback Shares" has the meaning set forth in Section 1.4(c).

"Indemnification Share Value" has the meaning set forth in Section 4.8(d).

"***Indemnified Person***" has the meaning set forth in Section 4.3(a).

"***Indemnifying Securityholders***" has the meaning set forth in Section 4.3(a).

"***Intellectual Property***" means any and all (1) technology, formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice); (2) technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, personnel and other information and materials; (3) customer lists, customer contact and registration information, customer correspondence and customer purchasing histories; (4) specifications, designs, models, devices, prototypes, schematics and development tools; (5) Software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter ("***Works of Authorship***"); (6) databases and other compilations and collections of data or information ("***Databases***"); (7) trademarks, service marks, logos and design marks, trade dress, trade names, fictitious and other business names, and brand names, together with all goodwill associated with any of the foregoing ("***Trademarks***"); (8) domain names, uniform resource locators and other names and locators associated with the Internet ("***Domain Names***"); (9) Trade Secrets; and (10) tangible embodiments of any of the foregoing, in any form or media whether or not specifically listed herein.

"***Intellectual Property Rights***" means any and all rights (anywhere in the world, whether statutory, common law or otherwise) relating to, arising from, or associated with Intellectual Property, including (1) patents and patent applications, utility models and applications for utility models, inventor's certificates and applications for inventor's certificates, and invention disclosure statements ("***Patents***"); (2) copyrights and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral and economic rights, however denominated) ("***Copyrights***"); (3) other rights with respect to Software, including registrations thereof and applications therefor; (4) industrial design rights and registrations thereof and applications therefor; (5) rights with respect to Trademarks, and all registrations thereof and applications therefor; (6) rights with respect to Domain Names, including registrations thereof and applications therefor; (7) rights with respect to Trade Secrets, including rights to limit the use or disclosure thereof by any person; (8) rights with respect to Databases, including registrations thereof and applications therefor; (9) publicity and privacy rights, including all rights with respect to use of a person's name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials; and (10) any rights equivalent or similar to any of the foregoing.

"***Interim Balance Sheet***" has the meaning set forth in Section 2.5(b).

"***Interim Balance Sheet Date***" has the meaning set forth in Section 2.5(b).

"***Interim Surviving Entity***" has the meaning set forth in Section 1.1.

"***Invesco Financing Documents***" means the Invesco Note Purchase Agreement, the Invesco Secured Promissory Note and the Invesco Security Agreement.

"***Invesco Financing Fee***" means the financing fee of $3,508,712.33, which is due and payable in connection with the Closing, under the Invesco Secured Promissory Note.

"***Invesco Financing Fee Amount***" means $2,609,527.69, the amount of the Invesco Financing Fee due on the Closing Date in accordance with the Invesco Secured Promissory Note.

"***Invesco Note Purchase Agreement***" means the note purchase agreement between the Company and Invesco Capital AG, dated as of August 26, 2013, as amended.

"***Invesco Secured Promissory Note***" means the secured promissory note issued by the Company to Invesco Capital AG, dated as of August 26, 2013, as amended.

"***Invesco Security Agreement***" means the security agreement between the Company and Invesco Capital AG, dated as of August 26, 2013, as amended.

"***IRS***" has the meaning set forth in Section 2.10(b).

"***knowledge of the Company***" or "***to the Company's knowledge***" means provided that each of Lance Fried, Edwin Margulies, and Ran Ezerzer has (1) made reasonable and diligent inquiry of those employees, agents, consultants, attorneys, accountants and other persons who would be expected to have knowledge as to the relevant matter and (2) reviewed the documents (whether written or electronic, including emails and email attachments) that were contained in books and records of the Company controlled or created by, delivered to or in possession of him or her, the actual knowledge of such persons; *provided*, *however*, that if these individuals have not made such reasonable and diligent inquiry or reviewed such documents, the definition shall mean the imputed knowledge of such persons if they had made such reasonable and diligent inquiry or reviewed such documents

"***Law***" means the law of any jurisdiction, whether international, multilateral, multinational, national, federal, state, provincial, local or common law, an Order or act, statute, ordinance, regulation, rule, collective bargaining agreement, extension order or code promulgated by a Governmental Authority.

"***Letter of Transmittal***" has the meaning set forth in Section 1.5(a).

"***LGPL***" has the meaning set forth in the definition of Open Source Materials.

"***Liabilities***" means any and all debts, liabilities and obligations of any kind, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or undeterminable, on- or off-balance sheet, including those arising under any Law, Action or Order and those arising under any Contract or otherwise.

"***Liability Claim***" has the meaning set forth in Section 4.6.

"***Losses***" means any and all deficiencies, losses, liabilities, damages, claims, suits, actions or causes of actions, demands, judgments, assessments, settlements, diminution in value, royalties, fines, interests, Taxes, penalties and costs and expenses, including legal, accounting and other costs and expenses of professionals, consultants and costs and expenses of ADR and courts incurred in connection with evaluating, investigating, defending, settling or satisfying any and all Actions, assessments, or judgments, and in seeking indemnification thereof.

Documents or other information and materials shall be deemed to have been "***Made Available***" by the Company if and only if the Company has posted such documents and information and other materials to the Data Room at least 24 hours prior to the execution and delivery of this Agreement by the Parties.

Any reference to an event, change, condition or effect being "***material***" with respect to any Person means any event, change, condition or effect that is material in relation to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations or results of operations of such Person and its Subsidiaries, taken as a whole.

"***Material Adverse Effect***" with respect to any Person means any effect that either alone or in combination with any other effect is materially adverse in relation to the condition (financial or otherwise), properties, assets, liabilities, business, operations, results of operations or prospects of such Person and its Subsidiaries, taken as a whole or the ability of such Person to perform its obligations hereunder or to consummate the Transactions.

"***Material Contract***" has the meaning set forth in Section 2.18.

"***Merger***" has the meaning set forth in the Recitals.

"***Merger Consideration***" has the meaning set forth in Section 1.4(b)(1).

"***Merger Co.***" has the meaning set forth in the Preamble.

"***Nevada Articles of Forward Merger***" has the meaning set forth in Section 1.1

"***New Service Agreement***" has the meaning set forth in Section 1.2(c).

"***NRS***" has the meaning set forth in the Recitals.

"***Objection Notice***" has the meaning set forth in Section 4.7(a).

"***October Per Share Value***" has the meaning set forth in Section 1.6(b).

"***Offer Letters***" has the meaning set forth in the Recitals.

"***Open Source Materials***" means Software or similar subject matter that is distributed or required to be distributed as "free software," "open source software" or under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License ("***LPGL***"), Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, the Artistic License, the Eclipse Public License, Netscape Public License, the Open Software License, the Sun Community Source License, the Sun Industry Standards License, the Sleepycat License, the Common Development and Distribution License, or any other license approved as an open source license by the Open Source Initiative (www.opensource.org) or any variant or derivative of any of the foregoing licenses. For the avoidance of doubt, this definition also includes shared Software and any changes, modifications and/or derivative works required to be distributed under the same license terms covering the original source code.

"***Option Consent***" has the meaning set forth in the Recitals.

"***Option Conversion Ratio***" has the meaning set forth in Section 1.6(b).

"***Order***" means any decision, ruling, charge, order, writ, judgment, injunction, decree, stipulation, determination, award or binding agreement issued, promulgated or entered by or with any Governmental Authority.

"***Other Service Providers***" has the meaning set forth in the Recitals to this Agreement.

"***Parent***" has the meaning set forth in the Preamble.

"***Parent Bylaws***" means the bylaws of Parent.

"***Parent Charter***" means the Amended and Restated Certificate of Incorporation of Parent.

"***Parent Common Stock***" means the common stock of Parent.

"***Parent Disclosure Schedule***" means the disclosure schedule dated as of the date hereof and delivered by Parent to the Company.

"***Parent Organizational Agreements***" means the Parent Charter, Parent Bylaws and the Parent Stockholders' Agreement.

"***Parent Plan***" has the meaning set forth in Section 1.6(b).

"***Parent Stock Per Share Valuation***" means $1.67, the fair market value per share of Parent Common Stock as of July 15, 2013 as set forth in a report prepared and delivered to the Parent by an independent third party appraiser.

"***Parent Stockholders' Agreement***" means Parent's Seventh Amended and Restated Stockholders' Agreement dated as of April 26, 2013.

"***Party***" means any of Parent, the Company, Merger Co. or the Representative.

"***Patents***" has the meaning set forth in the definition of Intellectual Property Rights.

"***Permit***" means any approval, authorization, consent, franchise, license, permit or certificate by any Governmental Authority.

"***Person***" means any natural person, general or limited partnership, corporation, limited liability company, joint venture, trust, firm, association or other legal or Governmental Authority.

"***PIIA***" has the meaning set forth in the Recitals.

"***Pre-Closing Tax Liabilities***" has the meaning set forth in Section 4.3(a)(3).

"***Pre-Closing Tax Period***" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending at the end of the Closing Date.

"***Registered Intellectual Property***" means any Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any state, government or other public legal authority, including any of the following: (1) issued Patents and Patent applications; (2) Trademark registrations, renewals and applications; (3) Copyright registrations and applications; and (4) Domain Name registrations.

"***Related Agreements***" means the Restricted Stock and Joinder Agreements and the Option Consents.

"***Representative***" means Robert Cell as of the date hereof and any successor appointed by the Indemnifying Securityholders or pursuant to Section 4.10(b).

"***Representative Expenses***" has the meaning set forth in Section 4.10(a).

"***Required Vote***" has the meaning set forth in Section 2.3(a).

"***Restricted Stock and Joinder Agreement***" has the meaning set forth in the Recitals.

"***Revenue Ruling***" has the meaning set forth in the Recitals.

"***Reverse Merger***" has the meaning set forth in the Recitals.

"***Satisfy***" means to either (a) wire transfer to Parent immediately available funds equal to the specified amount or (b) transfer to Parent for cancellation the number of shares of Parent Common Stock equal to the quotient of (1) the specified amount divided by (2) the Indemnification Share Value. To the extent clause (b) above applies, Parent shall be entitled to take all actions necessary to cancel the number of shares specified in clause (b) automatically without further action on the part of the Indemnifying Securityholder to the extent such Indemnifying Securityholder fails to promptly transfer such shares to Parent.

"***Securities Act***" has the meaning set forth in Section 2.4.

"***Software***" means all (1) computer programs and other software, including software implementations of algorithms, models, and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (2) computerized Databases and other computerized compilations and collections of data or information, including all data and information included in such Databases, compilations or collections; (3) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (4) descriptions, flow-charts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; and (5) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.

"***Spanish Employment Agreement***" has the meaning set forth in the Recitals.

"***Spanish Founder***" has the meaning set forth in the Recitals.

"***Spanish Founder Employment Agreement***" has the meaning set forth in the Recitals.

"***Spanish Service Providers***" has the meaning set forth in the Recitals.

"***Spreadsheet***" has the meaning set forth in Section 1.2(b)(12)(C).

"***Stockholders' Written Consent***" has the meaning set forth in the Recitals.

"***Straddle Period***" has the meaning set forth in Section 4.3(b).

"***Straddle Period Tax Return***" has the meaning set forth in Section 5.1(b).

"***Subsidiaries***" of any Person means any other Person (1) of which the first Person owns directly or indirectly 50% or more of the equity interest in the other Person or (2) of which (or in which) an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of which) is directly or indirectly owned or Controlled by the first Person, by such Person with one or more of its Subsidiaries or by one or more of such Person's other Subsidiaries or (3) in which the first Person has the contractual or other power to designate a majority of the board of directors or other governing body.

"***Surviving Entity***" has the meaning set forth in Section 1.1.

"Systems" means the computer, information technology and data processing systems, facilities and services used by the Company, including all Software, hardware, networks, communications facilities, Databases, websites, platforms, equipment and related systems and services used or planned to be used by the Company.

"Target Working Capital" means $159,172.

"Tax" has the meaning set forth in Section 2.9(a).

"Tax Authority" has the meaning set forth in Section 2.9(a).

"Tax Return" has the meaning set forth in Section 2.9(a).

"Third Party Claim" has the meaning set forth in Section 4.9(a).

"Total Per Share Company Value" has the meaning set forth in Section 1.6(b).

"Trademarks" has the meaning set forth in the definition of Intellectual Property.

"Trade Secrets" means information and materials not generally known to the public, including trade secrets and other confidential and proprietary information.

"Transaction Expenses" means all legal, broker, accounting, financial advisory, consulting, investment banking, finders, advisory and all other fees and expenses of third parties incurred by a Party or its stockholders or Affiliates in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the Transactions.

"Transactions" means the transactions contemplated by this Agreement and the Related Agreements.

"Transfer Taxes" shall have the meaning set forth in Section 5.3

"Treasury Regulations" means the regulations promulgated under the Code by the U.S. Department of the Treasury.

"TriNet" means TriNet HR Corporation.

"TriNet Plan" means an Employee Benefit Plan that is sponsored or maintained by TriNet under which any Workers may be eligible to receive compensatory payments or employee benefits in connection with the Company's engagement of TriNet.

"U.S. Founder" has the meaning set forth in the Recitals.

"U.S. Founder Employment Agreement" has the meaning set forth in the Recitals.

"WARN Act" has the meaning set forth in Section 2.11(j).

"Warrant Cancellation Agreement" has the meaning set forth in the Recitals.

"Worker" has the meaning set forth in Section 2.11(d).

"Working Capital" means the Current Assets minus the Current Liabilities as of immediately after the Closing, excluding any Company Indebtedness and Company Transaction Expenses.

"Working Capital Arbiter" has the meaning set forth in Section 1.9(c).

"Working Capital Holdback Amount" means $***.

"Works of Authorship" has the meaning set forth in the definition of Intellectual Property.

Section 6.2 Terms Generally; Interpretation. Except to the extent that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section, Subsection, Exhibit, Schedule or Recitals, such reference is to an Article, Section or Subsection of, an Exhibit or Schedule or the Recitals to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) the words "include," "includes" or "including" (or similar terms) are deemed to be followed by the words "without limitation";

(d) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) any gender-specific reference in this Agreement include all genders;

(f) the definitions contained in this Agreement are applicable to the other grammatical forms of such terms;

(g) a reference to any legislation or to any provision of any legislation will include any modification, amendment or re-enactment thereof, any legislative provision substituted therefore and all rules, regulations and statutory instruments issued or related to such legislation;

(h) if any action is to be taken by any Party pursuant to this Agreement on a day that is not a Business Day, such action will be taken on the next Business Day following such day;

(i) references to a Person are also to its permitted successors and assigns;

(j) unless indicated otherwise, mathematical calculations contemplated hereby will be made to the maximum number of significant digits stored and used in calculations by Microsoft Excel, but payments will be rounded to the nearest whole cent, after aggregating all payments due to or owed by a Person;

(k) "ordinary course of business" (or similar terms) will be deemed followed by "consistent with past practice";

(l) the Parties have participated jointly in the negotiation and drafting hereof; if any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision hereof; no prior draft of this Agreement nor any course of performance or course of dealing will be used in the interpretation or construction hereof;

(m) the contents of the Disclosure Schedule, the Parent Disclosure Schedule and the other Schedules form an integral part of this Agreement, and any reference to "this Agreement" shall be deemed to include the Schedules;

(n) no parol evidence will be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernable from a reading of this Agreement without consideration of any extrinsic evidence;

(o) although the same or similar subject matters may be addressed in different provisions of this Agreement, the Parties intend that, except as reasonably apparent on the face of the Agreement or as expressly provided in this Agreement, each such provision will be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content); and

(p) the doctrine of election of remedies will not apply in constructing or interpreting the remedies provisions of this Agreement or the equitable power of a court considering this Agreement or the Transactions.

Section 6.3 Notices. All notices, deliveries and other communications pursuant to this Agreement will be in writing and will be deemed given if delivered personally, telecopied or delivered by globally recognized express delivery service to the Parties at the addresses or facsimile numbers set forth below or to such other address or facsimile number as the Party to

whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such notice, delivery or communication will be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of telecopy, on the Business Day after the day that the Party giving notice receives electronic confirmation of sending from the sending telecopy machine, and (c) in the case of a globally recognized express delivery service, on the Business Day that receipt by the addressee is confirmed pursuant to the service's systems.

(a) if to Parent, Merger Co. or Acquisition Co.:

Five9, Inc.
4000 Executive Parkway, Suite 400,
San Ramon, CA 94583
Attention: Chief Financial Officer

with copies (which will not constitute notice) to:

Jones Day
1755 Embarcadero Rd.
Palo Alto, CA 94303
Attention: Tim Curry and David Chen
Facsimile: (650) 739-3900

(b) if to the Company before the Effective Time to:

Face It, Corp.
4225 Executive Drive, Suite 600
La Jolla, CA 92037
Attention: Lance Fried
Facsimile: (858) 225-3558

with a copy (which will not constitute notice) to:

Morgan, Lewis & Bockius LLP
3000 El Camino Real, Suite 700
2 Palo Alto Square
Palo Alto, CA 94306
Attention: Tom Kellerman
Facsimile: (650) 843-4001

(c) if to Representative:

Robert Cell

Phone:

with a copy (which will not constitute notice) to:

Morgan, Lewis & Bockius LLP
3000 El Camino Real, Suite 700
2 Palo Alto Square
Palo Alto, CA 94306
Attention: Tom Kellerman
Facsimile: (650) 843-4001

Section 6.4 Severability. If any term or provision of this Agreement or the application of any such term or provision to any Person or circumstance is held by final judgment of a court of competent jurisdiction or arbiter to be invalid, illegal or unenforceable in any situation in any jurisdiction, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. If the final judgment of such court or arbitrator declares that any term or provision hereof is invalid, void or unenforceable, the Parties agree to, as applicable, (a) reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or (b) replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid, illegal or unenforceable term or provision.

Section 6.5 Entire Agreement. This Agreement, the Confidentiality Agreement, the Related Agreements and the documents, instruments and other agreements specifically referred to herein or therein or delivered pursuant hereto or thereto, including all exhibits and schedules hereto and thereto, constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements, term sheets, letters of interest, correspondence (including e-mail) and undertakings, both written and oral, between the Company, on the one hand, and Parent, on the other hand, with respect to the subject matter hereof.

Section 6.6 Assignment. Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned or delegated by any Party by operation of Law or otherwise without the prior written consent of the other Parties and any attempt to do so will be void.

Section 6.7 No Third-Party Beneficiaries. Except as provided in Article 4, this Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person (including any current or former employees of the Company) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Nothing herein shall be deemed to amend the terms of employment of any employee of the Company or the terms of any Employee Benefit Plan. As of the Closing, all such employees will not be guaranteed employment by the Interim Surviving Entity, the Surviving Entity, Parent or any of their Affiliates for any fixed term.

Section 6.8 Amendment. Subject to applicable Law, the Parties may amend this Agreement at any time in accordance with an instrument in writing signed on behalf of each of the Parties, except that an amendment made subsequent to approval of this Agreement by the Company Securityholders shall not (a) alter or change the amount or kind of consideration to be received on conversion of the Company Common Stock, Company Options or Company Warrants or (b) alter or change any of the terms or conditions of this Agreement if such alteration or change would materially and adversely affect the holders of Company Common Stock, Company Options or Company Warrants. Subject to applicable Law, Parent and the Representative (on behalf of all of the Company Securityholders immediately prior to the Effective Time) may cause this Agreement to be amended at any time after the Effective Time by execution of an instrument in writing signed on behalf of Parent and the Representative (on behalf of all of the Company Securityholders immediately prior to the Effective Time), except that any amendment made in accordance with this sentence shall not (1) alter or change the amount or kind of consideration to be received on conversion of Company Common Stock, Company Options or Company Warrants or (2) alter or change any of the terms or conditions of this Agreement if such alteration or change would materially and adversely affect the Company Securityholders.

Section 6.9 Extension; Waiver. Any Party may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations and warranties made to such Party herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such Party contained herein. At any time after the Effective Time, the Representative (on behalf of all the Company Securityholders immediately prior to the Effective Time) and Parent may, to the extent legally allowed, (1) extend the time for the performance of any of the obligations or other acts of the other, (2) waive any inaccuracies in the representations and warranties made to Parent (in the case of a waiver by Parent) or made to the Company (in the case of a waiver by the Representative) herein or in any document delivered pursuant hereto and (3) waive compliance with any of the agreements or conditions for the benefit of Parent (in the case of a waiver by Parent) or made to the Company (in the case of a waiver by the Representative). Any agreement on the part of a Party to any such extension or waiver will be valid only if set forth in an instrument in writing signed on behalf of such Party. Without limiting the generality or effect of the preceding sentence, no delay in exercising any right under this Agreement will constitute a waiver of such right, and no waiver of any breach or default will be deemed a waiver of any other breach or default of the same or any other provision in this Agreement.

Section 6.10 Expenses. Except as otherwise expressly provided herein, whether or not the Closing occurs, Parent and the Company Securityholders each shall pay their respective expenses (including legal, accounting, investment banking, finders and advisory fees and expenses) incurred in connection with the negotiation and execution of this Agreement or the Related Agreements and the consummation of the transactions contemplated hereby and thereby.

Section 6.11 Confidentiality and Announcements.

(a) The terms of the Confidentiality Agreement shall continue in full force and effect according to its terms and shall apply to any information provided to the Parent or the Company pursuant to this Agreement.

(b) The Parent shall determine in its sole discretion whether any public announcement, press release or response to media inquiries regarding this Agreement, the Related Agreements or the Transactions may be made. Without the prior written approval of the Parent, in its sole discretion, the Representative and the Company Securityholders shall not, and shall cause their Affiliates and their representatives not to, make any announcement or disclosure to any Person regarding (i) this Agreement, the Related Agreements or the Transactions, or any discussions, memoranda, letters or agreements related hereto or thereto; (ii) the existence or terms of this Agreement or the Related Agreements; (iii) the existence of discussions and negotiations between or among the Parent, the Company, and the Company Securityholders or any of their respective representatives (including the Representative); or (iv) the consummation of the Transactions, except as and to the extent (1) disclosure is required by a Company Securityholder to its Tax or financial advisors for purposes of complying with such holder's Tax obligations or other reporting obligations under Law arising out of the Transactions, (2) disclosure is made by a Company Securityholder that is a venture capital fund to its current and prospective partners, subject to a duty of confidentiality, and is limited to the results of such holder's investment in the Company and such other information as is required to be disclosed by such holder pursuant to its partnership agreement, limited liability company agreement or comparable organizational agreement, or (3) the information disclosed is information which the Parent previously disclosed or confirmed to the public.

Section 6.12 Governing Law. Except to the extent a provision of Article 1 is required by Law to be governed by the NRS, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any such laws whose application would result in the application of the laws of another jurisdiction except the Federal laws of the United States of America.

Section 6.13 Dispute Resolution and Venue. From and after the Closing, any dispute, claim or controversy arising out of or relating to this Agreement or the Related Agreements or the breach, termination, enforcement, interpretation or validity hereof or thereof, including any request for specific performance, claim based on contract, tort, statute or constitution or the determination of the scope or applicability of this agreement to arbitrate, will be determined by arbitration in Santa Clara County, California before one arbitrator, except (1) with respect to any claim arising out of or based upon fraud, intentional misrepresentation or intentional breach of covenant, for which a Party may pursue remedy in any court of competent jurisdiction or by

arbitration as provided for in this Section 6.13 and (2) as provided in Section 1.9(c). The arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures, as modified in this Section 6.13. The arbitration shall be administered by JAMS in accordance with those rules.

(a) The arbitrator will have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration. The arbitration proceedings will be conducted in English.

(b) The arbitrator will have the power to order any remedy, including monetary damages, specific performance and all other forms of legal and equitable relief, except that the arbitrator will not have the power to order punitive damages. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g., motions for summary disposition).

(c) The arbitrator will have the power to continue the Indemnification Holdback Shares, any hearing or meeting date or the rendering of any award until the amount of an estimated or anticipated Loss set forth in a Claims Notice is finally determined.

(d) Each party to the arbitration will be entitled to the timely production by the other parties to the arbitration of relevant, non-privileged documents or copies thereof. If the parties are unable to agree on the scope and/or timing of such document production, the arbitrator will have the power, upon application of any party to the arbitration, to make all appropriate orders for the production of documents by any party to the arbitration or to authorize a party to the arbitration to seek the discovery of documents from Persons that are not parties to the arbitration.

(e) Before the arbitrator establishes the facts of the case, each party to the arbitration will be entitled to conduct depositions to provide non-privileged testimony that is relevant to the controversies, claims or disputes at issue. If the parties to the arbitration are unable to agree on the propriety, scope, number or timing of the deposition or depositions, the arbitrator, upon the application of any party to the arbitration, may make all appropriate orders in connection with the proposed deposition or depositions.

(f) The arbitrator may appoint expert witnesses only with the consent of all of the parties to the arbitration.

(g) The arbitrator’s fees and the administrative expenses of the arbitration will be paid equally by the parties thereto. Each party to the arbitration will pay its own costs and expenses (including attorney’s fees) in connection with the arbitration.

(h) The award rendered by the arbitrator will be executory, final and binding on the parties to the arbitration. The award rendered by the arbitrator may be entered into any court having jurisdiction, or application may be made to such court for judicial

acceptance of the award and an order of enforcement, as the case may be. Such court proceeding will disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.

(i) Except as required by Law, no Party may disclose the existence, contents or results of an arbitration brought in accordance with this Agreement, or the documents presented and evidence produced by its opposing Parties, or any analyses or summaries derived from such evidence. To the extent permitted by Law, the arbitration shall be considered and treated by the Parties as a confidential proceeding.

(j) Each Party hereby agrees that in connection with any such action process may be served in the same manner as notices may be delivered under Section 6.3 and irrevocably waives any defenses it may have to service in such manner.

(k) Each Party hereby agrees that this Agreement does not preclude any Party from (1) seeking provisional remedies in aid of arbitration, including specific performance or other equitable remedies, from any court of competent jurisdiction or (2) seeking judicial remedies for any matter not required to be resolved by arbitration hereunder in (x) the trial courts located in Santa Clara County, California or (y) the United States District Court for the Northern District of California. Each of the Parties consents to submit itself to the personal jurisdiction of the courts described in the first sentence of this subparagraph, agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other application, agrees that it will not bring any Action relating hereto or any of the Transactions in any other court, agrees that it will not assert as a defense that such Action may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or the Related Agreements may not be enforced in or by such courts, and agrees that mailing of process or other papers in connection with any such Actions in the manner provided in Section 6.3 or in such other manner as may be permitted by Law will be valid and sufficient service thereof.

Section 6.14 Counterparts. This Agreement may be executed in any number of counterparts, and by the different Parties in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by electronic delivery in Adobe Portable Document Format or other electronic format based on common standards will be effective as delivery of a manually executed counterpart of this Agreement.

[Signature page follows]

Parent, Merger Co., Acquisition Co. and the Company have caused this Agreement to be executed by their respective officers thereunto duly authorized, and Representative has executed this Agreement, in each case as of the date first written above.

FIVE9, INC.

By: /s/ Barry Zwarenstein
Name: Barry Zwarenstein
Title: Chief Financial Officer

FIVE9 NEVADA INC.

By: /s/ David Hill
Name: David Hill
Title: President and Chief Executive Officer

FIVE9 ACQUISITION LLC

By: /s/ David Hill
Name: David Hill
Title: President and Chief Executive Officer

[Signature page to Agreement and Plan of Merger]

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

FACE IT, CORP.

By: /s/ Lance Fried
Name: Lance Fried
Title: Chief Executive Officer

/s/ Robert Cell
Robert Cell, as Representative

[Signature page to Agreement and Plan of Merger]

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE
OF INCORPORATION OF
FIVE9, INC.

Five9, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies as follows:

1. The corporation was originally incorporated on March 13, 2001, under the name Five 9's Communications, Inc., pursuant to the DGCL.

2. Pursuant to Sections 242 and 245 of the DGCL, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

3. The terms and provisions of this Amended and Restated Certificate of Incorporation have been duly approved by written consent of the required number of shares of outstanding stock of the Corporation pursuant to Subsection 228(a) of the DGCL.

4. The text of the Amended and Restated Certificate of Incorporation reads in its entirety as follows:

I

The name of the corporation is "Five9, Inc."

II

The purpose of this Corporation is to engage in any lawful act or activity for which a Corporation may be organized under the DGCL.

III

The address of the Corporation's registered office in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent. The name of the registered agent at such location is Incorporating Services, Ltd.

IV

(A) Classes of Stock. This Corporation is authorized to issue two classes of stock to be designated Common Stock and Preferred Stock. The total number of shares of Common Stock that the Corporation is authorized to issue is 200,000,000 shares, $0.001 par value. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 125,114,511 shares, $0.001 par value, of which 76,988,078 shares, $0.001 par value, shall be designated Series A-2 Preferred Stock ("Series A-2 Stock"), 18,565,794 shares, $0.001 par value, shall be designated Series B-2 Preferred Stock ("Series B-2 Stock"), 12,903,226 shares, $0.001 par value, shall be designated Series C-2 Preferred Stock ("Series C-2 Stock") and 16,657,413 shares, $0.001 par value, shall be designated Series D-2 Preferred Stock ("Series D-2 Stock," collectively with the Series C-2 Stock, Series B-2 Stock and the Series A-2 Stock, the "Preferred Stock").

The relative powers, preferences, special rights, qualifications, limitations and restrictions granted to or imposed on the respective classes of the shares of capital stock or the holders thereof are as follows:

1. Dividends.

(a) The holders of Series D-2 Stock, Series C-2 Stock, Series B-2 Stock and Series A-2 Stock shall be entitled, when, as and if declared by the Board of Directors of the Corporation, to receive dividends, on an equal *pari passu* basis, out of assets of the Corporation legally available therefor, at the rate of $0.14408 per share of Series D-2 Stock per annum (adjusted for any subsequent stock splits, stock combinations, stock dividends, reclassifications, or recapitalizations ("Appropriately Adjusted")), $0.0930 per share of Series C-2 Stock per annum (Appropriately Adjusted), $0.04309 per share of Series B-2 Stock per annum (Appropriately Adjusted) and $0.01630 per share of Series A-2 Stock per annum (Appropriately Adjusted), payable in preference and prior to any payment of any dividend on the Common Stock of the Corporation. The Corporation shall neither declare nor pay dividends on any series of Preferred Stock unless they declare and pay dividends on each series of Preferred Stock as set forth above.

(b) The right to dividends on shares of the Preferred Stock shall not be cumulative, and no right shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

(c) In the event that dividends are paid on any share of Common Stock, the Corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

2. Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, distributions to the stockholders of the Corporation shall be made in the following manner:

(a) Preferred Stock Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily, the holders of Series D-2 Stock, Series C-2 Stock, Series B-2 Stock and Series A-2 Stock then outstanding shall be entitled to receive, on an equal priority *pari passu* basis, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to (i) $1.4408 per share of Series D-2 Stock (Appropriately Adjusted), $0.9300 per share of Series C-2 Stock (Appropriately Adjusted), $0.4309 per share of Series B-2 Stock (Appropriately Adjusted) and $0.1630 per share of Series A-2 Stock (Appropriately Adjusted), respectively, plus a further amount equal to any declared but unpaid dividends on such shares (collectively, but on a per share basis, the "Preferred Liquidation Amount"). If upon such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation are insufficient to provide for the cash payment in full of the

Preferred Liquidation Amount to each share of each series of Preferred Stock, then the entire amount of the assets and funds of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 2(a).

(b) Distribution after Payment of Liquidation Preference. After full payment has been made to the holders of Preferred Stock of the respective Preferred Liquidation Amounts per share, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of issued and outstanding Preferred Stock and Common Stock (on an as-if converted basis).

(c) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by or include, (A) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization after which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, fail to own at least 50% of the voting power of the surviving entity immediately following such consolidation, merger or reorganization in approximately the same relative percentages as prior to such consolidation, merger or reorganization, (B) any transaction or series of related transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred, but excluding (x) any consolidation or merger effected exclusively to change the domicile of the Corporation, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or indebtedness of the Corporation is cancelled or converted or a combination thereof, or (C) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation.

(d) Non-cash Distributions. If consideration other than cash is to be distributed in exchange for shares of the Corporation or if any of the assets of the Corporation are to be distributed other than in cash under Section 2(c) or for any purpose, then the Board of Directors of the Corporation shall in good faith determine the value of the assets to be distributed to the holders of Preferred Stock. The Corporation shall give prompt written notice to each holder of shares of Preferred Stock of the asset valuation. Notwithstanding the foregoing, any securities to be distributed to the stockholders shall be valued as follows:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 20 trading day period ending three (3) business days prior to the distribution under this Section 2(d) or the closing of the transaction or series of transactions under Section 2(c);

(ii) If traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the distribution under this Section 2(d) or the closing of the transaction or series of transactions under Section 2(c); and

(iii) If the securities are not traded on a securities exchange or over-the-counter, then the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than sixty percent (60%) of the outstanding shares of Preferred Stock, voting together as a single class, provided that if the Corporation and the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock are unable to reach an agreement, then by independent appraisal by an investment banker hired and paid for by the Corporation, but acceptable to the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock.

(e) Repurchase of Shares. In connection with the repurchase by this Corporation of its shares of Common Stock either (1) at cost (or such other price as may be agreed by the Board of Directors, including the approval of a majority of the Preferred Stock Directors (as defined below)) from officers, directors, or employees of, or consultants, advisors and others who provide services to, this Corporation or its subsidiaries ("Compensatory Shares") upon termination of such employment or services relationship pursuant to incentive stock plans, agreements or similar arrangements approved by the Board of Directors providing for the right of said repurchase between the Corporation and such persons ("Compensatory Share Repurchase Rights"), or (2) upon the exercise of any rights of first refusal held by the Corporation with respect to such shares, the Corporation may make any such repurchase without regard to preferential dividends arrears amounts and any preferential rights, as authorized by Section 500(b) of the California General Corporation Law ("CGCL").

3. Voting Rights.

(a) Generally. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Preferred Stock could be converted on the record date for the vote or consent of stockholders and, except as otherwise set forth herein or required by law, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote together with holders of the Common Stock as a single class upon the election of directors and upon any other matter submitted to a vote of stockholders, except those matters required by law to be submitted to a class or series vote or as otherwise provided in this Amended and Restated Certificate of Incorporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) Election of Directors. The Board of Directors shall be comprised of ten (10) directors. At each election of directors, (i) so long as at least 1,000,000 shares of Series D-2 Stock (Appropriately Adjusted) remain outstanding, the holders of a majority of the then outstanding Series D-2 Stock shall be entitled to elect one (1) member of the Corporation's

Board of Directors (the "Series D-2 Director"), (ii) so long as at least 1,000,000 shares of Series B-2 Stock (Appropriately Adjusted) remain outstanding, the holders of a majority of the then outstanding Series B-2 Stock shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "Series B-2 Director"), (iii) so long as at least 5,000,000 shares of Series A-2 Stock (Appropriately Adjusted) remain outstanding, the holders of a majority of the then outstanding Series A-2 Stock shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "Series A-2 Directors"), (iv) so long as a least 5,000,000 shares of Preferred Stock (Appropriately Adjusted) remain outstanding, the holders of a majority of the Preferred Stock shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "Preferred Director," together with the Series D-2 Director, the Series B-2 Director and the Series A-2 Directors, the "Preferred Stock Directors"), (v) the holders of a majority of the then outstanding Common Stock shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "Common Stock Director"), and (vi) three (3) directors shall be elected by the holders of a majority of the Preferred Stock, voting as a separate class, and the holders of a majority of the Common Stock, voting as a separate class (the "Mutual Directors"). No person entitled to vote at an election for directors may cumulate votes, to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115(b) of the CGCL. During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to voting, of such stockholder's intention to cumulate such votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(c) Removal; Vacancies. Any director who was elected by a specified series, class or classes of shares may only be removed during his or her term of office, with or without cause, by the affirmative vote of the holders of the shares of the series, class or classes of shares that initially elected such director; provided, however that at such times that the Corporation is subject to Section 2115(b) of the CGCL, unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election where the same total number of votes were cast (or if such action is taken by written consent, all shares entitled to consent were consented) and the entire number of directors authorized at the time of such director's most recent election were then being elected. Such vote may be given at a special meeting of such stockholders duly called or by an action by written consent for that purpose. With respect to directors elected by a specified series, class or classes of shares, any vacancy may be filled only by the affirmative vote or written consent of the shares of such specified series, class or classes of shares. A vacancy created by the removal of a director by court order may be filled only by the vote of the outstanding shares of the series, class or classes entitled to elect such director represented at a duly held meeting at which a quorum is present, or by an action by unanimous written consent for that purpose. Each director so elected shall hold office until the next annual meeting of stockholders or until a successor has been elected and qualified.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of the Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price for such series by the Conversion Price for such series, determined as hereinafter provided, in effect at the time of the conversion (the "Conversion Rate"). The Issuance Price for the Series D-2 Stock is $1.4408 per share, for the Series C-2 Stock is $0.9300 per share, for the Series B-2 Stock is $0.4309 per share and for the Series A-2 Stock is $0.1630 per share, respectively. The Conversion Price for the Series D-2 Stock, Series C-2 Stock, Series B-2 Stock and the Series A-2 Stock shall initially be $1.4408 per share, $0.9300 per share, $0.4309 per share and $0.1630 per share, respectively, such that the initial Conversion Rate for the Series D-2 Stock, Series C-2 Stock, Series B-2 Stock and the Series A-2 Stock shall be 1:1.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public in which the public offering price exceeds (prior to underwriter discounts or commissions and offering expenses) $2.88 per share (Appropriately Adjusted) and the aggregate gross proceeds (net of underwriter discounts, commissions and expenses) raised by the Corporation equal or exceed $35,000,000 (a "Qualified IPO"), (ii) with respect to the Series A-2 Stock only, on the date upon which the Corporation obtains the consent to such conversion of the holders of at least sixty percent (60%) of the shares of Series A-2 Stock then outstanding voting together as a single and separate class, (iii) with respect to the Series B-2 Stock only, on the date upon which the Corporation obtains the consent to such conversion of the holders of at least sixty percent (60%) of the shares of Series B-2 Stock then outstanding voting together as a single and separate class, (iv) with respect to the Series C-2 Stock only, on the date upon which the Corporation obtains the consent to such conversion of the holders of at least sixty percent (60%) of the shares of Series C-2 Stock then outstanding voting together as a single and separate class and (v) with respect to the Series D-2 Stock only, on the date upon which the Corporation obtains the consent to such conversion of the holders of at least sixty percent (60%) of the shares of Series D-2 Stock then outstanding voting together as a single and separate class. In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such public offering.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder 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 fractional shares of Common Stock. 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 Preferred Stock to be converted, or in the case of automatic conversion on the date of closing of the offering 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. Notwithstanding the foregoing, if the conversion is in connection with a transaction or series of related transactions described in Section 2(c) above, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or series of related transactions, in which event the person(s) entitled to receive the Common Stock issuable upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the final closing of such transaction or series of transactions.

(d) Fractional Shares. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the Corporation may pay cash equal to such fraction multiplied by the then effective Conversion Price or round such fractional share up to a whole share (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) Adjustment of Conversion Price. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If, at any time after the Filing Date (as defined below), the Corporation shall issue (or, pursuant to Section 4(e)(i)(A)(z) hereof, shall be deemed to have issued) any Common Stock other than "Excluded Stock" (as defined below) for a consideration per share less than the Conversion Price for a series of Preferred Stock in effect immediately prior to the issuance of such Common Stock (excluding stock dividends, subdivisions, split-ups,

combinations, dividends or recapitalizations which are covered by Sections 4(e)(iii), (iv), (v) and (vi)), the Conversion Price for such series of Preferred Stock in effect immediately after each such issuance shall forthwith (except as otherwise provided in this Section 4(e)) be adjusted to a price equal to the quotient obtained by multiplying such Conversion Price by a fraction (I) the numerator of which shall be (x) the number of shares of Common Stock outstanding at the close of business on the day immediately preceding the date of such issuance or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof shall be deemed to have been received) by the Corporation for the total number of additional shares of Common Stock so issued or sold would purchase at such Conversion Price then in effect for such series of Preferred Stock and (II) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issuance or sale (after giving effect to such issuance or sale) of the additional shares of Common Stock.

(A) For the purposes of any adjustment of the Conversion Price for each series of Preferred Stock pursuant to this clause (i), the following provisions shall be applicable:

(w) The number of shares of Common Stock outstanding shall include, in addition to the number of shares of Common Stock actually outstanding, (I) the number of shares of Common Stock into which the then outstanding shares of each series of Preferred Stock could be converted if fully converted on the day immediately preceding the issuance or sale or deemed issuance or sale of the additional shares of Common Stock; and (II) the number of shares of Common Stock which would be obtained through the exercise or conversion of all rights, options and convertible securities outstanding on the day immediately preceding the issuance or sale or deemed issuance or sale of the additional shares of Common Stock.

(x) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof.

(y) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors of the Corporation, in accordance with generally accepted accounting treatment; provided, however, that if, at the time of such determination, the Corporation's Common Stock is traded in the over-the-counter market or on a national or regional securities exchange, such fair market value as determined by the Board of Directors of the Corporation shall not exceed the aggregate "Current Market Price" (as defined below) of the shares of Common Stock being issued.

(z) In the case of the issuance of (i) options to purchase or rights to subscribe for Common Stock (directly or indirectly), (ii) securities by their terms convertible into or exchangeable for Common Stock (directly or indirectly), or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (x) and (y) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional minimum consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (x) and (y) above);

(3) on any change in the number of shares of Common Stock deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, other than a change resulting from the antidilution provisions of options, rights or securities, the Conversion Price of each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon the issuance of such options or rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(ii) "Excluded Stock" shall mean:.

(A) any shares of Common Stock issued upon conversion of any Preferred Stock;

(B) shares of Common Stock issued pursuant to the acquisition of another entity by the Corporation by merger, purchase of all or substantially all of the assets, purchase of a majority of the Corporation's outstanding voting stock, or other reorganization, provided such transaction and issuance is approved by the Board of Directors of the Corporation, including a majority of the Preferred Stock Directors;

(C) shares issued in connection with strategic transactions involving the Corporation and other entities, other than for primarily capital raising purposes, including the issuance of securities to financial lending institutions or in connection with commercial credit, equipment leasing or equipment financing arrangements, joint ventures, corporate partnering agreements, customer or vendor transactions, manufacturing, marketing or distribution arrangements and licensing, technology transfer or development arrangements; provided that such transactions and the issuance of shares is approved by the Board of Directors of the Corporation, including a majority of the Preferred Stock Directors;

(D) up to 6,023,056 shares of capital stock and/or stock options (plus an additional number of shares of capital stock or stock options that are cancelled or terminated without having been exercised and are again available for grant under the applicable plan) issued (including upon exercise of such stock options) to officers, employees, consultants or advisors pursuant to a stock grant, stock option or purchase plan or other employee stock incentive program approved by the Board of Directors, including a majority of the Preferred Stock Directors;

(E) securities issued in connection with a Qualified IPO undertaken by the Corporation pursuant to an effective registration statement under the Securities Act;

(F) shares of Common Stock and Preferred Stock issued or issuable upon the exercise of any warrants, options or rights that are outstanding as of the date that this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware (the "Filing Date");

(G) shares of Common Stock or other securities of the Corporation deemed to constitute Excluded Stock by the written consent of the holders of at least sixty percent (60%) of the series of Preferred Stock whose Conversion Rate would otherwise be adjusted pursuant to this Section 4 as a result of such issuance, voting as a single and separate class; and

(H) shares of Common Stock issued by way of dividends, stock splits, or other distributions on shares of Common Stock if appropriate adjustments are made in connection with such issuance pursuant to Sections 4(e)(iii), (iv), (v) or (vi).

All outstanding shares of Excluded Stock (including shares issuable upon conversion of the Preferred Stock) shall be deemed to be outstanding for all purposes of the computations of Section 4(e)(i) above.

(iii) If the number of shares of Common Stock outstanding at any time after the Filing Date is increased by a stock dividend payable in shares of Common Stock or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock, or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of each series of Preferred Stock shall be increased in proportion to such increase of outstanding shares (determined on an as-converted into Common Stock basis).

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price of each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of each series of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(v) In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of shares of Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Preferred Stock is then convertible.

(vi) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in a liquidation, dissolution or winding up of the Corporation under Section 2(c)), each share of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Preferred Stock into Common Stock. The provisions of this clause (vi) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(vii) If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the respective Conversion Price for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that each series of Preferred

Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of each series of Preferred Stock immediately before that change.

(viii) All calculations under this Section 4 shall be made to the nearest one-tenth of one cent ($0.001) or to the nearest one hundredth (1/100) of a share, as the case may be.

(ix) For the purpose of any computation pursuant to this Section 4(e), the "Current Market Price" at any date of one share of Common Stock, shall be determined in accordance with Section 2(d)(i) and (ii); provided, however, that if the quotations referred to in Section 2(d)(i) and (ii) are not available for the period required hereunder, Current Market Price shall be determined in good faith by the Board of Directors of the Corporation, including a majority of the Preferred Stock Directors.

(f) Minimal Adjustments. No adjustment in the Conversion Price for any series of Preferred Stock need be made if such adjustment would result in a change in the applicable Conversion Price of less than $0.001. Any adjustment of less than $0.001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of $0.001 or more in the applicable Conversion Price:

(g) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of fifty percent (50%) of the outstanding shares of such series of Preferred Stock, voting as a single and separate class. Any such waiver shall bind all future holders of shares of such series of Preferred Stock regarding the downward adjustment so waived.

(h) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation 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 the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Article IV 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 Preferred Stock against impairment. This provision shall not restrict the Corporation's right to amend its Certificate of Incorporation with the requisite stockholder consent provided for herein and in accordance with the DGCL.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate for any series of Preferred Stock pursuant to this Section 4, the 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 Preferred Stock a

certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversation Rate at the time in effect, and (iii) 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 such holder's shares of Preferred Stock.

(j) Notices of Record Date and Proposed Liquidation Distribution. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, or to exchange their shares of Common Stock and Preferred Stock (or other securities) for securities or other property deliverable upon a reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right. In the event of a liquidation distribution pursuant to Section 2 hereof, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to the date of such distribution a notice (i) certifying as to (x) the anticipated aggregate proceeds available for distribution to holders of Preferred Stock and Common Stock, (y) the amount expected to be distributed pursuant to Section 2 in respect of each share of Preferred Stock and each share of Common Stock and (z) the amount expected to be distributed pursuant to Section 2 in respect of each share of Preferred Stock if the holder of each such share of Preferred Stock converted such share of Preferred Stock into Common Stock immediately prior to the liquidation distribution and (ii) stating that the holders of shares of Preferred Stock may prior to such liquidation distribution convert their shares of such Preferred Stock into Common Stock at the then applicable Conversion Rate.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given upon personal delivery, when received when sent by facsimile, upon delivery by nationally recognized courier or three business days after deposit in the United Sates mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the Corporation's books.

(l) Reservation of Stock Issuable Upon Conversion. The 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 Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 Preferred Stock, the 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 purpose.

(m) Reissuance of Converted Shares. No shares of Preferred Stock which have been converted into Common Stock after the original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion cease to be a part of the authorized shares of the Corporation.

5. General Covenants.

(a) Preferred Class Vote. In addition to any other rights provided under applicable law or in this Amended and Restated Certificate of Incorporation, the Corporation shall not, either directly or by amendment through merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of the holders of not less than sixty percent (60%) of the outstanding shares of Preferred Stock voting together as a single class on an as-converted basis:

(i) create (by amendment of this Amended and Restated Certificate of Incorporation, reclassification, certificate of designation or otherwise) any new class or series of shares (or securities convertible into shares) having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock;

(ii) consummate or permit any liquidation, dissolution or winding up of the Corporation, including, without limitation, any liquidation, dissolution or winding up of the Corporation as described in Section 2(c) above;

(iii) repurchase its Common Stock (except as described in Section 2(e) above);

(iv) pay any dividend or distribution on any outstanding Preferred Stock or Common Stock, or conduct a redemption on any outstanding Preferred Stock or Common Stock;

(v) change the authorized number of directors of the Corporation;

(vi) amend this Amended and Restated Certificate of Incorporation;

(vii) effect an initial public offering of the Common Stock;

(viii) increase the authorized number of shares of any series of Preferred Stock; or

(ix) alter or change the rights, preferences or privileges of any series of Preferred Stock.

(b) Series B-2 Class Vote. In addition to any other rights provided under applicable law or in this Amended and Restated Certificate of Incorporation, the Corporation shall not, either directly or by amendment through merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series B-2 Stock voting as a single and separate class, amend, alter, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation in a manner that would adversely affect the Series B-2 Stock differently or disproportionately to the Series A-2 Stock, the Series C-2 Stock or the Series D-2 Stock.

(c) Series C-2 Class Vote. In addition to any other rights provided under applicable law or in this Amended and Restated Certificate of Incorporation, the Corporation shall not, either directly or by amendment through merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series C-2 Stock voting as a single and separate class, amend, alter, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation in a manner that would adversely affect the Series C-2 Stock differently or disproportionately to the Series A-2 Stock, the Series B-2 Stock or the Series D-2 Stock.

(d) Series D-2 Class Vote. In addition to any other rights provided under applicable law or in this Amended and Restated Certificate of Incorporation, the Corporation shall not, either directly or by amendment through merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series D-2 Stock voting as a single and separate class, amend, alter, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation in a manner that would adversely affect the Series D-2 Stock differently or disproportionately to the Series A-2 Stock, the Series B-2 Stock or the Series C-2 Stock.

6. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

V

The Corporation shall have a perpetual existence.

VI

The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

VII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized, subject to the provisions of Section 5 of Article IV hereof, to adopt, alter, amend or repeal the Bylaws of the Corporation without any action on the part of the stockholders.

VIII

(A) To the fullest extent permitted by the General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

(B) The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

IX

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 contained in the statutes) 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.

X

In the event that a non-employee director of the Corporation who is also a partner, member or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other entities (each, a "Fund") acquires knowledge of a potential transaction or matter in such person's capacity as a partner or employee of the Fund and that may be a corporate opportunity for both the Corporation and such Fund (a "Corporate Opportunity"), and provided that such director acts in good faith and such opportunity was not presented to such director in such director's capacity as a director of this Corporation or any of its subsidiaries, then: (i) such Corporate Opportunity shall belong to such Fund; (ii) such director shall, to the fullest extent permitted by law, have fully satisfied and fulfilled his or her fiduciary duty to the Corporation and its stockholders with respect to such Corporate Opportunity; and (iii) the Corporation, to the fullest extent permitted by law, waives any claim that such Corporate Opportunity constituted a corporate opportunity that should have been presented to the Corporation or any of its affiliates.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed this 30th day of December, 2013.

FIVE9, INC.

/s/ Michael Burkland

Michael Burkland
President and Chief Executive Officer

Exhibit 3.3

AMENDED AND RESTATED BYLAWS

OF

FIVE9, INC.

November 22, 2013

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ARTICLE I

STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place, if any, as may be designated from time to time by the Board of Directors (the "Board") of Five9, Inc. (the "Corporation"), the Chairman of the Board or the Chief Executive Officer or, if not so designated, at the principal office of the Corporation. The Board may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a) of the General Corporation Law of the State of Delaware (the "DGCL").

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board, the Chairman of the Board or the Chief Executive Officer (which date shall not be a legal holiday in the place, if any, where the meeting is to be held). The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders.

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by (a) the Board, (b) the Chairman of the Board or the Chief Executive Officer, and (c) the holders of shares entitled to cast not less than ten percent (10%) of the votes at the special meeting. The Board may postpone, reschedule or cancel any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the DGCL) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, if any, date and time of the meeting, the means of remote communications, if any,

by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting). The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the DGCL.

1.5 Voting List. The Secretary shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), 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, for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person, present

by means of remote communication in a manner, if any, authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders, annual or special, may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or, if directed to be voted on by the chairman of the meeting, by the stockholders present or represented at the meeting and entitled to vote thereon, although less than a quorum. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

1.8 Proxies. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by applicable law. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of the holders of shares of stock having a majority in voting power of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, the holders of a majority in voting power of the shares of stock of that class or series present or represented at the meeting and voting affirmatively or negatively on such matter), except when a different vote is required by applicable law, regulation applicable to the Corporation or its securities, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect.

1.10 Reserved.

1.11 Conduct of Meetings.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the

meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board, the Chairman of the Board, the Chief Executive Officer or the President shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law. Every vote taken by ballots shall be counted by a duly appointed inspector or duly appointed inspectors.

ARTICLE II

DIRECTORS

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of a Board, who may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. The total number of directors constituting the Board shall be as fixed in, or in the manner provided by, the Certificate of Incorporation. Election of directors need not be by written ballot. Directors need not be stockholders of the Corporation.

2.3 Chairman of the Board; Vice Chairman of the Board. The Board may appoint from its members a Chairman of the Board and a Vice Chairman of the Board, neither of whom need be an employee or officer of the Corporation. If the Board appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board and, if the Chairman of the Board is also designated as the Corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.7 of these Bylaws. If the Board appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board. Unless otherwise provided by the Board, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board.

2.4 Reserved.

2.5 Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve until the next annual meeting of stockholders and until the election and qualification of his or her successor, subject to his or her earlier death, disability, disqualification, resignation or removal.

2.6 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the whole Board shall constitute a quorum of the Board. If at any meeting of the Board there shall be less than a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.7 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the Certificate of Incorporation.

2.8 Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed only as provided in the Certificate of Incorporation and by applicable law.

2.9 Vacancies. Subject to the provisions of the Certificate of Incorporation and the rights of holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his or her predecessor.

2.10 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.11 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by the Board; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.12 Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, the Chief Executive Officer, the affirmative vote of a majority of the directors then in office, or by one director in the event that there is only a single director in office.

2.13 Notice of Special Meetings. Notice of the date, place and time of any special meeting of the Board shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least twenty-four (24) hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile or other means of electronic transmission, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least twenty-four (24) hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least seventy-two (72) hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board need not specify the purposes of the meeting.

2.14 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.15 Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee thereof. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.16 Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation with such lawfully delegable powers and duties as the Board thereby confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or

disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board may from time to time request. Except as the Board may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.17 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

ARTICLE III

OFFICERS

3.1 Titles. The officers of the Corporation may consist of a Chief Executive Officer, a President, a Chief Financial Officer, a Treasurer and a Secretary and such other officers with such other titles as the Board shall from time to time determine. The Board may appoint such other officers, including one or more Vice Presidents and one or more Assistant Treasurers or Assistant Secretaries, as it may deem appropriate from time to time.

3.2 Election. The officers of the Corporation shall be elected annually by the Board at its first meeting following the annual meeting of stockholders.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is duly elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation, disqualification or removal.

3.5 Resignation and Removal. Any officer may resign by delivering a written resignation to the Corporation at its principal office or to the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the directors then in office. Except as the Board may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the Corporation

3.6 Vacancies. The Board may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled, for such period as it may determine, any offices. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is duly elected and qualified, or until such officer's earlier death, resignation, disqualification or removal.

3.7 President; Chief Executive Officer. Unless the Board has designated another person as the Corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board. The President shall perform such other duties and shall have such other powers as the Board or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.8 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. The Board may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board.

3.9 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board, to attend all meetings of stockholders and the Board and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board) shall perform the duties and exercise the powers of the Secretary.

The chairman of any meeting of the Board or of stockholders may designate a temporary secretary to keep a record of any meeting.

3.10 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

3.11 Salaries. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board.

3.12 Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

ARTICLE IV

CAPITAL STOCK

4.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any shares of the authorized capital stock of the Corporation held in the Corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board in such manner, for such lawful consideration and on such terms as the Board may determine.

4.2 Stock Certificates; Uncertificated Shares. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the DGCL.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and 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 each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and 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.

Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL or, with respect to Section 151 of DGCL, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and 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.

4.3 Transfers. Shares of stock of the Corporation shall be transferable in the manner prescribed by law, the Certificate of Incorporation and in these Bylaws. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation or by transfer agents designated to transfer shares of stock of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

4.4 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate or uncertificated shares in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board may require for the protection of the Corporation or any transfer agent or registrar.

4.5 Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, 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 day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the 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; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

4.6 Regulations. The issue and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board may establish.

ARTICLE V

GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board, the fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board may otherwise designate, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer may waive notice, vote, consent, or appoint any person or persons to waive notice, vote or consent, on behalf of the Corporation, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this Corporation (with or without power of substitution), with respect to the securities of any other entity which may be held by this Corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

5.7 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9 Electronic Transmission. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE VI

AMENDMENTS

These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board or by the stockholders as expressly provided in the Certificate of Incorporation.

ARTICLE VII

INDEMNIFICATION AND ADVANCEMENT

7.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 7.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another

Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

7.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 7.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

7.3 Authorization of Indemnification. Any indemnification under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 7.1 or Section 7.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding set forth in Section 7.1 or Section 7.2 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

7.4 Good Faith Defined. For purposes of any determination under Section 7.3, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on good faith reliance on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 7.4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 7.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 7.1 or 7.2, as the case may be.

7.5 Right of Claimant to Bring Suit. Notwithstanding any contrary determination in the specific case under Section 7.3, and notwithstanding the absence of any determination thereunder, if a claim under Sections 7.1 or 7.2 of the Article VII is not paid in full by the Corporation within (i) ninety (90) days after a written claim for indemnification has been received by the Corporation, or (ii) thirty (30) days after a written claim for an advancement of expenses has been received by the Corporation, the claimant may at any time thereafter (but not before) bring suit against the Corporation in the Court of Chancery in the State of Delaware to recover the unpaid amount of the claim, together with interest thereon, or to obtain advancement of expenses, as applicable. It shall be a defense to any such action brought to enforce a right to indemnification (but not in an action brought to enforce a right to an advancement of expenses) that the claimant has not met the standards of conduct which make it permissible under the DGCL (or other applicable law) for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither a contrary determination in the specific case under Section 7.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the claimant has not met any applicable standard of conduct. If successful, in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim, including reasonable attorneys' fees incurred in connection therewith, to the fullest extent permitted by applicable law.

7.6 Expenses Payable in Advance. Expenses, including without limitation attorneys' fees, incurred by a current or former director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such current or former director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII.

7.7 Nonexclusivity of Indemnification and Advancement of Expenses. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's

official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that, subject to Section 7.11, indemnification of the persons specified in Sections 7.1 and 7.2 shall be made to the fullest extent permitted by law. The provisions of this Article VII shall not be deemed to preclude the indemnification of any person who is not specified in Section 7.1 or 7.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

7.8 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, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VII.

7.9 Certain Definitions. For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VII, references to "fines" shall include any excise taxes assessed on a person with respect of any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

7.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

7.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 7.5), the Corporation shall not be obligated to indemnify any director, officer, employee or agent in connection with an action, suit proceeding (or part thereof) initiated by such person unless such action, suit or proceeding (or part thereof) was authorized by the Board.

7.12 Contract Rights. The obligations of the Corporation under this Article VII to indemnify, and advance expenses to, a person who is or was a director or officer of the Corporation shall be considered a contract between the Corporation and such person, and no modification or repeal of any provision of this Article VII shall affect, to the detriment of such person, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

Exhibit 4.2

EIGHTH AMENDED AND RESTATED

STOCKHOLDERS' AGREEMENT

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EIGHTH AMENDED AND RESTATED STOCKHOLDERS' AGREEMENT

This Eighth Amended and Restated Stockholders' Agreement (this "**Agreement**") is made as of October 18th, 2013 (the "**Effective Date**") by and among Five9, Inc., a Delaware corporation (the "**Company**"), the Major Common Holders (as defined below), and the Holders (as defined below), each as listed on Exhibit A attached hereto.

RECITALS

WHEREAS, as a condition to the closing of the sale and issuance of shares of Series D-2 Preferred Stock of the Company (the **"Series D-2 Stock"**) pursuant to the Series D-2 Preferred Stock Purchase Agreement dated as of April 26, 2013 (the **"Purchase Agreement"),** the Prior Stockholders' Agreement (as defined below) was executed and delivered by the Major Common Holders, the Holders and the Company.

WHEREAS, the Company, the Major Common Holders and certain of the Holders are parties to that Seventh Amended and Restated Stockholders' Agreement dated as of April 26, 2013 (the **"Prior Stockholders' Agreement"**); and

WHEREAS, the parties desire to enter into this Agreement in order to (i) amend and restate the Prior Stockholders' Agreement in its entirety and replace it with this Agreement and (ii) revise Section 6 of this Agreement to reflect the increased size of the Company's Board of Directors pursuant to the Restated Certificate.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual premises and covenants set forth herein, the parties hereto agree to amend and restate the Prior Stockholders' Agreement as follows:

1. Definitions. For purposes of this Agreement:

(a) "**Acquisition**" shall mean the occurrence of any of the following events: (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization after which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, fail to own at least 50% of the voting power of the surviving entity immediately following such consolidation, merger or reorganization in approximately the same relative percentages as prior to such consolidation, merger or reorganization, (B) any transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred, but excluding in the case of (A) and (B) (x) any consolidation or merger effected exclusively to change the domicile of the Company or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted or a combination thereof, or (C) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(b) "**Affiliate**" shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. Without limiting the foregoing, (i) all directors and officers of a Person that is a corporation or company, all general partners and limited partners of a partnership or limited partnership, and all managing members and members of a Person that is a limited liability company, shall be deemed Affiliates of such Person for all purposes hereunder, (ii) in the case of an individual, Affiliate shall include (x) members of such specified Person's immediate family (as defined in Instruction 1 of Item 404(a) of Regulation S-K under the Securities Act) and (y) trusts, the trustee and all beneficiaries of which are such specified Person or members of such Person's immediate family as determined in accordance with the foregoing clause (x).

(c) "**Common Stock**" shall mean shares of the Company's common stock, $0.001 par value per share.

(d) "**Exchange Act**" shall mean the Securities Exchange Act of 1934 as amended, or any similar Federal statute and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time.

(e) "**Excluded Securities**" shall mean (i) any shares of Common Stock issued upon conversion of any Preferred Stock; (ii) shares of Common Stock issued pursuant to the acquisition of another entity by the Company by merger, purchase of substantially all of the assets or other reorganization, or in any transaction in which the Company's stockholders immediately prior to such transaction collectively own immediately after such transaction more than 51 % of the voting power of the surviving corporation or its parent, provided such transaction and issuance is approved by the Board of Directors of the Company (the "**Board**"), including a majority of the Preferred Stock Directors (as defined in Section 6.1); (iii) shares issued other than for primarily equity raising purposes, in connection with strategic transactions involving the Company and other entities, including the issuance of securities to financial lending institutions or in connection with commercial credit, equipment leasing or equipment financing arrangements, joint ventures, corporate partnering agreements, customer or vendor transactions, manufacturing, marketing or distribution arrangements and licensing, technology transfer or development arrangements; provided that such transaction and the issuance of shares is approved by the Board, including a majority of the Preferred Stock Directors; (iv) up to 6,023,056 shares of capital stock and/or stock options (plus an additional number of shares of capital stock or stock options that are cancelled or terminated without having been exercised and are again available for grant under the applicable plan) issued (including upon exercise of such stock options) to officers, employees, directors, consultants or advisors pursuant to a stock grant, stock option or purchase plan or other employee stock incentive program approved by the Board, including a majority of the Preferred Stock Directors; (v) securities issued in connection with the Qualified IPO; (vi) shares of Common Stock and Preferred Stock issued or issuable upon the exercise of any warrants, options or rights that are outstanding as of the Effective Date; (vii) shares of Common Stock issued by way of dividends,

stock splits, or other distributions on shares of Common Stock if appropriate adjustments are made in connection with such issuance pursuant to Sections 4(e)(iii), (iv) or (v) of the Company's Amended and Restated Certificate of Incorporation and (viii) shares of Preferred Stock issued pursuant to the Purchase Agreement.

(f) **"Exempt Transfer"** shall mean (i) Transfers of Shares pursuant to a Qualified IPO; (ii) Transfers pursuant to a Rule 144 Open Market Transaction, (iii) Transfers directly to, or for the benefit of a Holder's spouse or children, or to trusts, partnerships or any other entity for the benefit of such Person or Person's family primarily for estate planning purposes; (iv) Transfers by a Holder to his heirs, executors, personal representatives or other assigns as a result of his death and Transfers by a Holder to the heirs, executors, personal representatives or other assignors of an Affiliate of such Holder as a result of the death of such Affiliates; (v) Transfers without consideration by a Holder to his or its Affiliates (including with respect to Holders which are partnerships, Transfer to their partners); and (vi) Transfers by a Major Common Holder through bona fide gifts of up to an aggregate maximum of five percent (5%) of all Shares held by such Major Common Holder on the Effective Date; provided, however, that (x) Major Common Holders shall only be permitted to Transfer Shares which are fully vested and/or no longer subject to any repurchase right in favor of the Company and (y) any such Transfer shall not be to any entity deemed in good faith by the Board to be a competitor, or Affiliate of a competitor, of the Company. In addition, any Transferee pursuant to (iii), (iv), (v) and (vi) above, prior to the effectiveness of any Transfer, must first agree to be bound by Sections 6, 7, 8 and 10 of this Agreement.

(g) "**Form S-3**" shall mean such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the Securities and Exchange Commission (the "**SEC**") which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(h) "**Holder**" shall mean any Person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 2.11 hereof; provided, however, that a Major Common Holder shall only be deemed a Holder for the purposes of Sections 2.2, 2.4, 2.5, 2.6, 2.7, 2.8, 2.12 and 2.13 and shall not be entitled to any of the other rights granted to Holders under this Agreement.

(i) "**Major Common Holder**" shall mean any Person, other than any Investor (as defined in the Purchase Agreement) participating in any Closing (as defined in the Purchase Agreement) and any other owner of Preferred Stock on the Effective Date, who at any time after the Effective Date is an employee of the Company and owns and/or has the right to acquire shares of Common Stock which, in the aggregate, are equal to at least one percent (1.0%) of all Shares.

(j) "**New Securities**" shall mean any capital stock (or rights to acquire capital stock) of the Company other than Excluded Securities.

(k) "**Preferred Stock**" shall mean shares of the Company's Series D-2 Stock, Series C-2 Preferred Stock, Series B-2 Preferred Stock and Series A-2 Preferred Stock, $0.001 par value per share.

(l) "**Person**" shall mean an individual or company, partnership, limited liability company, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

(m) "**Qualified IPO**" shall mean the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of Common Stock for the account of the Company to the public in which the public offering price exceeds (prior to underwriter discounts or commissions and offering expenses) $2.88 per share (adjusted for any subsequent stock splits, stock dividends, reclassifications or recapitalizations) and the aggregate gross proceeds raised by the Company equal or exceed $35,000,000.

(n) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act and the declaration or ordering of effectiveness of such registration statement or document.

(o) "**Registrable Securities**" shall mean (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, any Preferred Stock; (iii) with respect to Sections 2.2, 2.4, 2.5, 2.6, 2.7, 2.8, 2.12 and 2.13 only, any Common Stock held by a Major Common Holder and (iv) the Common Stock issued upon the conversion or execution of any notes or warrants of the Company which notes or warrants were issued and outstanding prior to the execution of the Purchase Agreement; excluding in all cases, however, (1) any Shares sold by a Person in a transaction in which such person's rights under Section 2 hereof are not assigned, or (2) any Shares sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction.

(p) The number of shares of "**Registrable Securities then outstanding**" shall be determined by the number of shares of Common Stock outstanding which are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities which are, Registrable Securities.

(q) "**Rule 144 Open Market Transaction**" shall mean any bona fide public sale of Shares in an open market transaction under Rule 144 of the Securities Act (or any successor rule) if such sale is in compliance with the requirements of paragraphs (c), (d), (e), (f) and (g) of such Rule 144.

(r) "**Securities Act**;' means the Securities Act of 1933, as amended, or any similar Federal statute and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time.

(s) "**Shares**" shall mean, collectively, (a) all issued and outstanding shares of Common Stock, (b) all shares of Common Stock issuable under outstanding options, warrants and other rights of any kind to purchase Common Stock, directly or indirectly, and (c) all shares of Common Stock issuable pursuant to outstanding securities convertible into or exchangeable for Common Stock, directly or indirectly. Whenever this Agreement refers to a number or percentage of Shares, such number or percentage shall be calculated as if each of the Shares had been exchanged, exercised or converted into shares of Common Stock immediately prior to such calculation. For purposes of determining the number of Shares held by any Person, such Person shall be deemed to hold all Shares held by such Person's Affiliates. The total number of Shares held by all Major Common Holders and all Holders as of the Effective Date is listed on Exhibit A.

(t) The term "**Transfer**" shall mean (i) when used as a noun: any direct or indirect transfer, sale, short sale, assignment, pledge, hypothecation, encumbrance, gift, bequest, devise, descent or other disposition and (ii) when used as a verb: to directly or indirectly, whether voluntary, involuntarily, or by operation of law, transfer, sell, short sell, assign, pledge, hypothecate, encumber, gift, bequest, devise, descent or otherwise dispose of.

(u) "**Transferee**" shall mean any Person to whom Shares have been Transferred in compliance with the terms of this Agreement.

2. Registration Rights.

2.1 Request for Registration.

(a) If the Company shall receive at any time after the earlier of (i) three years from the date of this Agreement or (ii) six (6) months following the effective date of the first registration statement for a public offering of securities of the Company (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or a SEC Rule 145 transaction) (the **"Initial Registration"),** a written request from the Holders of at least thirty (30%) of the Registrable Securities then outstanding (the **"Initiating Holders")** that the Company file a registration statement under the Securities Act covering the registration of Registrable Securities with an aggregate offering price expected to exceed $10,000,000, then the Company shall, within ten (10) days of the receipt thereof, give written notice of such request to all Holders and shall, subject to the limitations of Section 2.1(b), use its best efforts to effect as soon as practicable the registration under the Securities Act of all Registrable Securities which the Holders request to be registered within twenty (20) days of the mailing of such written notice by the Company; provided, however, that the Company shall not be obligated to take any action to effect any such registration, qualification or compliance pursuant to this Section 2.1(a):

(i) During the period starting with the date one-hundred twenty (120) days prior to the Company's estimated date of filing of, and ending on the date one-hundred eighty (180) days immediately following the effective date of, any registration statement pertaining to securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan), provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective;

(ii) After the Company has effected two (2) such registrations pursuant to this Section 2.1 (a), and each such registration has been declared or ordered effective (counting for these purposes only registrations which have been declared or ordered effective);

(iii) If the Company shall furnish to such Holders a certificate signed by the Chief Executive Officer or President of the Company stating that in the good faith judgment of the Board it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed at such time, then the Company's obligation to use its best efforts to register, qualify or comply under this Section 2.1(a) shall be deferred for a period not to exceed 120 days from the date of receipt of the written request from the Holders; provided, however, that the Company may not utilize this right more than once in any twelve-month period.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 2.1 and the Company shall include such information in the written notice referred to in Section 2.1(a). In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.3(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company with the approval of a majority in interest of the Initiating Holders. Notwithstanding any other provision of this Section 2.1, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all Holders thereof, including the Initiating Holders, in the proportion (as nearly as practicable) that the amount of Registrable Securities of the Company owned by each Holder participating in such underwriting bears to the number of shares of Registrable Securities held by all such Holders; provided, however, that the number of shares of Registrable Securities to be included in any such underwriting shall not be reduced unless all other securities, including any shares offered by the Company, are first entirely excluded from the underwriting.

2.2 Company Registration. If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders, but excluding any registration pursuant to Section 2.10 hereof) any of its stock or other securities under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to the sale of securities to participants in a Company stock plan, or a registration on any form which does not include substantially the same information as would be required to be included in a registration

statement covering the sale of the Registrable Securities), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of written notice by the Company, the Company shall, subject to the provisions of Section 2.6, cause to be registered under the Securities Act all of the Registrable Securities that each such Holder has requested to be registered. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The registration expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof. The underwriting and cut-back requirements for any registration under this Section 2.2 are as set forth in Section 2.6 hereof.

2.3 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, and, upon the request of the holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for the earlier of one hundred twenty (120) days or until the distribution described in the Registration Statement has been completed if a shorter period (the "**Effectiveness Period**"); provided, however, that (i) the Effectiveness Period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company; and (ii) in the case of any registration of Registrable Securities on Form S-3 which are intended to be offered on a continuous or delayed basis, the Effectiveness Period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold up to 180 days, provided that Rule 415, or any successor rule under the Securities Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Securities Act governing the obligation to file a post effective amendment permit, in lieu of filing a post effective amendment which (A) includes any prospectus required by Section 10(a)(3) of the Securities Act or (B) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (A) and (B) above to be contained in periodic reports filed pursuant to Section 13 or 15(d) of the Exchange Act in the registration statement.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under the other securities or Blue Sky laws of such other jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and, as promptly as practicable thereafter, prepare and file with the SEC, and furnish without charge to the appropriate Holders and managing underwriters, if any, a supplement or amendment to such registration statement or prospectus which will correct such statement or omission and such copies thereof as the Holders and any underwriters may reasonably request.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 2, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 2, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities (to the extent the then applicable standards of professional conduct permit said letter to be addressed to the Holders).

(j) Use its best efforts to comply with, and remain in compliance with the Sarbanes-Oxley Act of 2002, as amended.

2.4 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

2.5 Expenses of Registration. The Company shall bear and pay all expenses incurred in connection with any registration, filing or qualification of Registrable Securities with respect to the registrations pursuant to Sections 2.1, 2.2 and 2.10 for each Holder (which right may be assigned as provided in Section 2.11), including (without limitation) all registration, filing, and qualification fees, printers and accounting fees relating or apportionable thereto, and the reasonable fees and expenses of one counsel selected by the selling Holders to represent the selling Holders, but excluding stock transfer taxes and any underwriting discounts and commissions relating to Registrable Securities.

2.6 Underwriting Requirements. In connection with any offering involving an underwriting of shares being issued by the Company, the Company shall not be required under Section 2.2 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as will not, in the opinion of the underwriters, jeopardize the success of the offering by the Company, but in no event will the amount of Registrable Securities of the selling Holders included in the offering be reduced below thirty percent (30%) of the total amount of securities included in such offering, unless such offering is the Initial Registration, in which case the selling Holders may be excluded entirely if the underwriters make the determination described above and no other stockholder's securities are included. If the underwriter determines in good faith that marketing factors require a limitation in the number of shares to be underwritten, subject to the limitations set forth herein, the number of shares that may be included in the underwriting shall be allocated first, to the Company; second to Holders other than Major Common Holders on a pro rata basis based on the ratio of the number of Registrable Securities then held by such Holders to the aggregate number of Registrable Securities then outstanding; third to Major Common Holders on a pro rata basis based on the ratio of the number of Registrable Securities then held by such Major Common Holders to the aggregate number of Registrable Securities then outstanding; and fourth to any other stockholder of the Company (other than a Holder) on a pro rata basis. For purposes of apportionment, any selling stockholder which is a Holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder," and any pro rata reduction with respect to such "selling stockholder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "selling stockholder," as defined in this sentence.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 2:

(a) The Company will indemnify and hold harmless each Holder, the officers, directors, partners, members and Affiliates of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any of the following statements, omissions or violations (collectively a "**Violation**") (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, officer, director and Affiliate of such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, officer, director or Affiliate of such Holder, underwriter or controlling person.

(b) Each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any officer, director, Affiliate or controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any Person intended to be indemnified pursuant to this Section 2.8(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, that, in no event shall any indemnity under this Section 2.8(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.

(d) If the indemnification provided for in this Section 2.8 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; provided, that, in no event shall any contribution by a Holder under this Section 2.8(d), together with any amounts under Section 2.8(b), exceed the gross proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control; provided, that, in no event shall any contribution or indemnification by such selling Holder under the provisions in such underwriting agreement exceed the gross proceeds from the offering received by such selling Holder.

(f) The obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 2, and otherwise.

2.9 Reports Under Securities Exchange Act of 1934. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) take such action, including the voluntary registration of its Common Stock under Section 12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

2.10 Form S-3 Registration. If the Company receives from any Holder or Holders of Registrable Securities a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder’s or Holders’ Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; provided, however, that

the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 2.10: (1) if Form S-3 is not available for such offering by the Holders; (2) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than $1,000,000; (3) if the Company shall furnish to the Holders a certificate signed by the Chief Executive Officer or President of the Company stating that in the good faith judgment of the Board, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than 90 days after receipt of the request of the Holder or Holders under this Section 2.10; provided, however, that the Company shall not utilize this right more than once in any twelve (12) month period; (4) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance; or (5) if the Company has effected two (2) registrations on Form S-3 at the request of the Holders during the prior twelve (12) month period.

(c) If the Holders initiating the registration request hereunder (the "**Participating Holders**") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as part of their request made pursuant to this Section and the Company shall include such information in the written notice referred to in Section 2.10(a). In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Participating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.3(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Participating Holders. Notwithstanding any other provision of this Section 2.10, if the underwriter advises the Participating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Participating Holders shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all Holders thereof, including the Participating Holders, in the proportion (as nearly as practicable) that the amount of Registrable Securities of the Company owned by each Holder bears to the number of shares of Registrable Securities then outstanding; provided, however, that the number of shares of Registrable Securities to be included in any such underwriting shall not be reduced unless all other securities, including any shares offered by the Company, are first entirely excluded from the underwriting.

(d) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. All expenses incurred in connection with a registration requested pursuant to Section 2.10, including (without limitation) all registration, filing, qualification, printer's and accounting fees, fees and disbursements of counsel for the Company and fees and disbursements of one counsel for the

selling Holder or Holders, but excluding stock transfer taxes, and any underwriter discounts or commissions associated with Registrable Securities, shall be borne by the Company. Registrations effected pursuant to this Section 2.10 shall not be counted as the demand for registration or registrations effected pursuant to Sections 2.1 or 2.2, respectively.

2.11 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to any of the following Transferees or assignees of Registrable Securities: (A) any such Transferee or assignee who holds, subsequent to such Transfer, twenty-five percent (25%) of the total number of shares of Registrable Securities (as adjusted for stock splits, bonuses, combinations, and the like) held by the transferor-Holder; or (B) any such Transferee or assignee who holds, subsequent to such Transfer, five percent (5%) of the total number of then-outstanding shares of Preferred Stock; or (C) a partner, limited partner, former partner, member, former member, stockholder, subsidiary, wholly-owned entity, parent or other Affiliate of a Holder; or (D) a Holder's family member or trust for the benefit of an individual Holder or any family member; provided that (i) the Company is, within a reasonable time after such Transfer, furnished with written notice of the name and address of such Transferee or assignee and the securities with respect to which such registration rights are being assigned and (ii) such assignment shall be effective only if immediately following such Transfer the Transferee agrees in writing to, and is bound by the terms and conditions of, this Agreement and such Transfer of any Registrable Securities is lawful under all applicable securities laws.

2.12 "Market Stand-Off' Agreement. Each Holder shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Registration (or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto); provided, however, that all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities are bound by and have entered into similar agreements.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Investor (and the shares or securities of every other Person subject to the foregoing restriction) until the end of such period.

2.13 Termination of Registration Rights. No Holder shall be entitled to exercise any right provided for in Sections 2.1, 2.2 and 2.10 after the earlier of (i) five (5) years following the consummation of the Qualified IPO, or (ii) as to a given Holder, when such Holder can sell all of such Holder's Registrable Securities in a consecutive ninety (90) day period pursuant to a Rule 144 Open Market Transaction.

2.14 Amendment of Registration Rights. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of at least sixty percent (60%) of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 2.14 shall be binding upon each Holder, Major Common Holder and the Company.

2.15 Limitations on Subsequent Registration Rights. The Company shall not, without the prior written consent of the Holders of at least sixty percent (60%) of the Registrable Securities, enter into any agreement (other than this Agreement) with any holder or prospective holder of any securities of the Company which would allow such holder or prospective holder (a) to include securities of the Company in any registration statement upon terms which are the same or more favorable to such holder or prospective holder than the terms on which holders of Registrable Shares may include shares in such registration unless such inclusion will not result in any reduction of the Registrable Securities included in such registration statement by the Holders or (b) to make a demand registration which could result in such registration statement being declared effective prior to the dates set forth in Section 2.1.

3. Information Rights.

3.1 Inspection. The Company shall permit each Holder holding (together with its Affiliates) an aggregate of at least 2,000,000 shares of Preferred Stock (appropriately adjusted for stock splits, stock dividends, recapitalizations, and the like) (each, a **"Major Holder"** and collectively, the **"Major Holders"),** at such Major Holder's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, at the Company's principal executive offices, at such reasonable times as may be requested by such Holder; provided, however, that the Company shall not be obligated pursuant to this Section 3.1 to provide access to any information which the Board determines in reasonably and in good faith is a trade secret or similar confidential information unless such Major Holder agrees in writing to hold such information in confidence.

3.2 Delivery of Financial Statements. The Company shall deliver to each Major Holder:

(a) as soon as practicable, but in no event later than thirty (30) days prior to the end of the Company's fiscal year, an annual capital budget and operating plan for the Company for the following fiscal year;

(b) as soon as practicable, but in no event later than one hundred eighty (180) days after the end of each fiscal year of the Company (unless otherwise waived by the Board (including all of the Preferred Stock Directors)), an audited balance sheet dated as of the last day of the applicable fiscal year, and statements of operations, cash flow and stockholders' equity for such fiscal year. Such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("**GAAP**"), and audited and certified by independent public accountants of nationally recognized standing approved by the Company's Board, including a majority of the Preferred Stock Directors;

(c) within thirty (30) days of the end of each fiscal quarter of the Company, an unaudited statement of operations and cash flow, and a balance sheet for and as of the end of such quarter, in reasonable detail and prepared in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes; and

(d) as soon as practicable after the end of each month, and in any event within twenty (20) days thereafter, an unaudited statement of operations and cash flow and balance sheet for such month, in reasonable detail and prepared in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes.

3.3 Maintenance of Books. The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied (except as noted therein), and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

3.4 Sarbanes-Oxley Compliance. At any time after the eighteen (18) month anniversary of the Effective Date, upon request of a majority of the Preferred Stock Directors, the Company shall diligently, promptly and expeditiously undertake and implement such reasonable procedures and controls related to financial reporting and measurement as would be required of a reporting Company under the Sarbanes-Oxley Act of 2002 (as amended and in effect at such time).

3.5 Termination of Information Rights. The covenants set forth in this Section 3 shall terminate as to Major Holders and be of no further force and effect upon the earlier to occur of (i) the consummation of the Qualified IPO or (ii) the closing date of an Acquisition.

4. Investors' Right of First Offer.

4.1 Right of First Offer. The Company hereby grants to each Major Holder, on the terms set forth in this Section 4, a right of first offer to purchase all or any part of such Major Holder's Pro Rata Share (as defined below) of the New Securities which the Company may, from time to time, propose to sell and issue (the "**Right of First Offer**"). The Major Holders may purchase said New Securities on the same terms and at the same price at which the Company proposes to sell the New Securities. For the purposes of this Section 4, a Major Holder's "**Pro Rata Share**" shall be that portion of the New Securities which equals the proportion that the number of shares of Common Stock (assuming conversion of all Shares then held by such Major Holder into Common Stock) then held by such Major Holder bears to the total number of Shares then outstanding.

4.2 Notice of Proposed Issuance. In the event the Company proposes to undertake an issuance of New Securities, it shall deliver to the Major Holders written notice (the "**Notice**") of its intention, describing the type of New Securities, the price, the terms upon which the Company proposes to issue the same, the date of the proposed issuance and a statement as to the number of days from receipt of such Notice within which the Major Holders must respond to such Notice. The Major Holders shall have twenty (20) days from the date of receipt of the

Notice to purchase any or all of the New Securities for the price and upon the terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased and forwarding payment for such New Securities to the Company if immediate payment is required by such terms, or in any event no later than the date of the proposed issuance as set forth in the Notice. If not all of the Major Holders elect to purchase their Pro Rata Share of the New Securities, then the Company shall promptly notify in writing the Major Holders who do so elect to purchase all of their Pro Rata Share of the New Securities and shall offer such subscribing Major Holder the right to acquire their Pro Rata Share of any unsubscribed New Securities. Each subscribing Major Holder shall have five (5) days after receipt of such notice (the "**Overallotment Notice Period**") to notify the Company in writing of its election to purchase all of its Pro Rata Share of the unsubscribed New Securities. If the Major Holders fail to exercise in full their Right of First Offer hereunder, the Company may sell any unsubscribed New Securities for which such Major Holder's Right of First Offer was not exercised, at a price and upon terms and conditions no more favorable then specified in the Notice, within sixty (60) days of the end of the Overallotment Notice Period.

4.3 Transfer of Rights. The Right of First Offer granted under this Section 4 may not be assigned or transferred, except that such right is assignable or transferable in the same circumstances as set forth for the transfer of registration rights set forth in Section 2.11 hereof; provided, however, that the provisions of this Section 4 shall be binding upon any such assignee or Transferee.

4.4 Termination of Rights. The Right of First Offer granted under this Section 4 shall expire upon the earlier to occur of the consummation of (i) a Qualified IPO or (ii) an Acquisition.

4.5 Limitations on Subsequent Rights. The Company shall not, without the prior written consent of at least sixty percent (60%) of the Registrable Securities then held by the Major Holders, enter into any agreement (other than this Agreement) with any holder or prospective holder of any securities of the Company which would grant such holder or prospective holder senior or superior first offer rights as to issuances of New Securities.

5. Employee Matters.

5.1 Proprietary Rights Agreement. Except as set forth in the Schedule of Exceptions attached to the Purchase Agreement, each current employee and consultant has and each future employee and consultant of the Company will enter into a proprietary information and inventions assignment agreement (which shall include a waiver of their moral rights in all intellectual property developed in connection with their employment with or work for the Company, as well as a non-solicitation covenant).

5.2 Voting By Major Common Holders. In addition to the obligations set forth in Section 6, at all times that any Major Common Holder is an employee or consultant of the Company, and at all times following the termination of employment, each Major Common Holder hereby covenants to and shall vote his or her Shares, whether at an annual meeting, special meeting or by written consent, in a manner consistent with the majority of all other holders of Shares.

6. Board of Directors.

6.1 Board Representation. In accordance with Section 3(b) of Article IV of the Company's Amended and Restated Certificate of Incorporation (as the same may be further amended from time to time, the "**Restated Certificate**"), the Company hereby agrees to take such actions as are necessary, and each of the Holders and Major Common Holders agrees to vote his, her or its Shares, including in accordance with any cumulative voting requirements, if applicable, and take such other actions as are necessary, to cause the Board to consist of nine (9) directors and to elect, whether at an annual meeting, special meeting or by written consent, and thereafter continue in office as directors of the Company as follows:

(a) so long as SAP Ventures Fund I, L.P. ("**SAPV**") or its Affiliates, holds at least 1,000,000 shares of Series D-2 Stock (appropriately adjusted for stock splits, stock dividends, recapitalizations, and the like), one (1) person nominated by SAPV shall be elected a director of the Company (the "**Series D-2 Director**") to serve as the Series D-2 Director (as defined in the Restated Certificate);

(b) so long as Adams Street 2011 Direct Fund, L.P. (the "**ASP Direct Fund**") or its Affiliates, holds at least 1,000,000 shares of Series B-2 Stock (appropriately adjusted for stock splits, stock dividends, recapitalizations, and the like), one (1) person nominated by ASP Direct Fund, or Adams Street Partners, LLC (together with the ASP Direct Fund, "**ASP**"), if the ASP Direct Fund ceases to hold Shares, shall be elected a director of the Company (the "**Series B-2 Director**") to serve as the Series B-2 Director (as defined in the Restated Certificate);

(c) so long as Hummer Winblad Venture Partners V, L.P. ("**HWVP**") or its Affiliates holds at least 2,000,000 Shares (appropriately adjusted for stock splits, stock dividends, recapitalizations, and the like), one (1) person nominated by HWVP shall be elected a director of the Company (the "**HWVP Series A-2 Director**") to serve as one of the Series A-2 Directors (as defined in the Restated Certificate);

(d) so long as Partech U.S. Partners IV, LLC or its Affiliates ("**PIV**") holds at least 2,000,000 Shares (appropriately adjusted for stock splits, stock dividends, recapitalizations, and the like), one (1) person nominated by PIV shall be elected a director of the Company (the "**PIV Series A-2 Director**" and, collectively with the HWVP Series A-2 Director, the "**Series A-2 Directors**") to serve as one of the Series A-2 Directors;

(e) one (1) person nominated by the unanimous approval of the directors then in office shall be elected a director of the Company to serve as the Preferred Director (as defined in the Restated Certificate), and collectively with the Series A-2 Directors, the Series B-2 Director and the Series D-2 Director, the "**Preferred Stock Directors**";

(f) the then Chief Executive Officer of the Company shall be elected a director of the Company to serve as the Common Stock Director (as defined in the Restated Certificate); and

(g) three (3) persons nominated by the unanimous approval of the Preferred Stock Directors and the Common Stock Director shall be elected directors of the Company to serve as the Mutual Directors (as defined in the Restated Certificate).

6.2 Board of Directors. As of the Effective Date, the Board shall consist of the following individuals:

Jai Das	Series D-2 Director
David Welsh	Series B-2 Director
Tim Wilson	PIV Series A-2 Director
Mitchell Kertzman	HWVP Series A-2 Director
Kimberly Alexy	Preferred Director
Michael Burkland	Common Stock Director
Jack Acosta	Mutual Director
David DeWalt	Mutual Director

6.3 Removals; Vacancies. The Company hereby agrees to take such actions as necessary, and each of the Major Common Holders and Holders agrees to vote a sufficient number of his, her or its Shares, including in accordance with any cumulative voting requirements, if applicable, and take such other actions as are necessary:

(a) for the removal of any director upon the request of the party or parties entitled to nominate such director (as provided in Section 6.1) and for the election to the Board of a substitute director nominated by such party or parties entitled to elect such replacement director in accordance with the provisions of Section 6.1;

(b) to ensure that any vacancy on the Board (occurring for any reason) shall be filled only in accordance with the provisions of Section 6.1; and

(c) to remove any former Chief Executive Officer of the Company from the Board immediately upon his or her ceasing to be the Chief Executive Officer of the Company for any reason.

6.4 Board Meetings. Unless otherwise approved by the Board (including a majority of the Preferred Stock Directors), the Board shall hold at least one (1) Board meeting per month.

6.5 Board Observer Rights. In the event that any of SAPV, ASP, HWVP, Mosaic Venture Partners or PIV no longer have the right to designate a director to the Board pursuant to the provisions of this Section 6, such Holder shall have the right to designate a representative **("Observer")** to attend all meetings of the Board, at its own expense, in a

non-voting observer capacity, and, in this respect, the Company shall, at the Company's expense, give such Observer copies of all notices, minutes and other materials that it provides to its directors; provided, however, that the Observer shall agree to hold in confidence and trust all information so provided to the same extent as if the Observer was a member of the Board, provided, further, that other than maintaining such confidentiality, such Observer shall have no duties (fiduciary or otherwise) to the Company. Meetings to be held by telephone conference and actions to be taken by consent shall not be prohibited provided notice is given to the Observer consistent with that provided to the directors. Notwithstanding the foregoing, the Company reserves the right to exclude such Observer from any meeting or decline to provide such Observer with access to any notices, minutes, consents or other materials ("**Materials**") provided to the directors by the Company if the Company reasonably believes, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege, or if in the Company's reasonable judgment such exclusion from the meeting or the access to the Materials is necessary either to protect the highly confidential and sensitive nature of the subject matter of the Board discussion, because of a potential or actual conflict of interest involving such Holder or its Observer, or because of the competitive nature of such subject matter.

6.6 No Liability for Election of Recommended Directors; Manner of Voting. None of the Company, any Major Common Holder, any Holder, nor any officer, director, stockholder, partner, employee or agent of any such party, makes any representation or warranty as to the fitness or competence of the nominee of any other party hereunder to serve on the Board by virtue of such party's execution of this Agreement or by the act of such party in voting for such nominee pursuant to this Agreement. The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent, or in any other manner permitted by applicable law.

6.7 Covenants of the Company. The Company agrees to use its best efforts to ensure that the rights granted hereunder are effective and that the parties hereto enjoy the benefits thereof. Such actions include, without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided above. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary, appropriate or reasonable in order to protect the rights of the parties hereunder against impairment.

6.8 Additional Shares. In the event that following the Effective Date any shares or other securities (other than any shares or securities of another corporation issued to the Company's stockholders pursuant to any Acquisition) are issued to any Holder or Major Common Holder on, or in exchange for, any of the Shares by reason of any stock dividend, stock split, consolidation of shares, reclassification or consolidation involving the Company, such shares or securities shall be deemed to be Shares for purposes of this Agreement and subject to the provisions hereof.

6.9 Termination. The provisions of this Section 6 shall terminate and shall be of no further force and effect on the earliest to occur of the consummation of (i) a Qualified IPO or (ii) an Acquisition.

7. Drag-Along Rights.

7.1 Right to Compel Sale. If Holders holding at least sixty percent (60%) of the then outstanding shares of Common Stock issued or issuable upon conversion of the Preferred Stock (collectively the "**Approving Stockholders**") and the Board, including a majority of the Preferred Stock Directors, approve an Acquisition (the "**Approved Sale**"), then each and every one of the Major Common Holders and Holders, including the Approving Stockholders (the "**Constituent Stockholders**"), agrees, subject to the final sentence of this Section 7.1, to (i) be present, in person or by proxy, as a holder of Shares, at all meetings for the vote of any of the above matters (and can be counted for the purposes of determining a quorum at such meetings) and vote all of their Shares in favor of the Approved Sale and in opposition of any proposals that could reasonably be expected to delay or impair the consummation of the Approved Sale, (ii) raise no objections to the Approved Sale or the process pursuant to which the Approved Sale was arranged, (iii) refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to the Approved Sale, (iv) take all actions required in connection with the Approved Sale, including without limitation voting all of his, her or its Shares in favor of any matter that could reasonably be expected to facilitate the Approved Sale; and if the Approved Sale is structured as a sale of the stock of the Company, each Constituent Stockholder agrees that it shall sell its Shares on the terms and conditions approved by the Approving Stockholders and the Board and (v) to cooperate with and execute and deliver such other documents as may be reasonably requested in connection with the transactions contemplated by the Approved Sale, including, without limitation, documents containing representations and warranties as to title, power and authority, such other representations, warranties and covenants as are approved by the Approving Stockholders and returning any written consent related to the Approved Sale in a prompt manner. Notwithstanding the foregoing, a Constituent Stockholder will only be required to take the actions set forth above in connection with an Approved Sale if (A) the terms of an Approved Sale do not provide that such Constituent Stockholder would receive less than the amount that would be distributed to such Constituent Stockholder in the event the proceeds of the sale of the Company were distributed in accordance with the Company's Certificate of Incorporation, as amended and in effect at such time; (B) all indemnification, escrow and other liabilities are allocated on a pro rata basis; (C) such Constituent Stockholder is not required to make representations and warranties or covenants regarding the Company or any other stockholder of the Company, (D) such Constituent Stockholder is not required to assume liability that exceeds the proceeds received by such Constituent Stockholder in the Approved Sale (other than for fraud or willful misrepresentation by such Constituent Stockholder) and (E) such Constituent Stockholder is not required to agree to a non-competition or non-solicitation covenant in connection with the Approved Sale.

7.2 Exercise of Right. The Approving Stockholders shall exercise their rights hereunder by delivery of written notice (the "**Approved Transfer Notice**") to the Company, and the Company shall deliver the Approved Transfer Notice to the other Constituent Stockholders at least fifteen (15) days prior to the expected closing date (the "**Expected Closing Date**") of the transactions contemplated by the Approved Sale. The Approved Transfer Notice shall include the form and amount of consideration per Share to be paid to each Approving Stockholder and Constituent Stockholder and all other material terms and conditions of the Approved Sale. If required to consummate the Approved Sale, on or before ten (10) days prior to the Expected Closing Date, each of the Constituent Stockholders shall deliver to the transfer agent of the

Company certificates representing the Shares held by such Constituent Stockholder, free and clear of any and all liens and encumbrances whatsoever, together with such other documents and instruments of transfer that the third-party acquiring the Company may reasonably request.

7.3 Failure to Consummate the Approved Sale. If within ninety (90) days after the Expected Closing Date, the Company and the Approving Stockholders have not completed the Approved Sale (unless such failure is due to any Constituent Stockholder's failure to surrender for transfer his or its certificates or take such other reasonable actions required to consummate the Approved Sale), the Company shall return to each of the Constituent Stockholders all stock certificates previously surrendered by the Constituent Stockholders in connection with the proposed Approved Sale, and all the restrictions on transfers contained herein with respect to the Shares of the Company shall again be in effect. Such a failure to complete the Approved Sale shall not be a breach of any Approving Stockholder's obligations under this Agreement and shall not constitute a waiver of the rights of the Approving Stockholders to again exercise their rights under this Section 7 at any time thereafter.

7.4 Legend on Share Certificates. Each certificate representing any Shares shall be endorsed by the Company with a legend reading substantially as follows:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A STOCKHOLDERS' AGREEMENT (AS AMENDED AND IN EFFECT FROM TIME TO TIME), A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE ISSUER, AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID AGREEMENT."

7.5 Termination. The provisions of this Section 7 shall terminate and shall be of no further force and effect on the earliest to occur of the consummation of (i) a Qualified IPO or (ii) an Acquisition.

8. Transfers by Major Common Holders.

8.1 Offering Notice. A Major Common Holder who proposes to Transfer any Shares other than in any Exempt Transfer (a "**Transferring Major Common Holder**") shall give the Company and all Major Holders (the "**Right Holders**") written notice (the "**Offering Notice**") of his, her or its intention to sell Shares (the "Offered Shares"), describing the Offered Shares (including the number of shares proposed to be sold and the proposed Transferee of the shares), the price and all other material terms and conditions upon which the Transferring Major Common Holder proposes to Transfer the Offered Shares. The Offering Notice shall be signed by (i) the Transferring Major Common Holder or his, her or its respective representative, and (ii) the proposed Transferee, and the Offering Notice shall constitute a binding agreement for the transfer of the Shares subject only to the First Refusal Right and Co-Sale Right (each as defined herein).

8.2 The Company's Option to Purchase. Within twenty (20) days after receipt of the Offering Notice containing all required information, the Company may elect to purchase any or all of the Offered Shares on the terms set forth in the Offering Notice, by delivery of written notice of such election to the Transferring Major Common Holder. Should the Company fail to purchase all of the Offered Shares in the manner provided above, the Company shall promptly give written notice (the **"Right Holders Notice**") to the Right Holders, specifying the number of Offered Shares not purchased by the Company (the **"Remaining Shares**").

8.3 Co-Sale and Right of First Refusal Rights.

(a) Co-Sale/Right of First Refusal. Subject to the Company's purchase rights under Section 8.2 above, each Right Holder shall have, pursuant to the terms of this Agreement, at its option, with respect to any proposed Transfer of any Shares by a Transferring Major Common Holder, either a right to sell (the "**Co-Sale Right**") or a right to purchase (a "**First Refusal Right**") up to its applicable Ratable Portion (as defined below) of the Offered Shares or Remaining Shares, as the case may be, at the same price and on the same terms and conditions as contained in the Offering Notice from the Transferring Major Common Holder. For the purposes of this Section 8, "**Ratable Portion**" shall mean: (i) with regard to the First Refusal Right, a number of Shares equal to the product obtained by multiplying (A) the aggregate number of Remaining Shares by (B) a fraction, (x) the numerator of which is the number of Shares at the time owned by such Right Holder, and (y) the denominator of which is the number of Shares then held by all Right Holders desiring to exercise the First Refusal Right, and (ii) with regard to the Co-Sale Right, a number of Shares equal to the product obtained by multiplying (A) the aggregate number of Remaining Shares by (B) a fraction, (x) the numerator of which is the number of Shares at the time owned by such Right Holder and (y) the denominator of which is the number of Shares then held by the Transferring Major Common Holder and all of the Right Holders that desire to exercise the Co-Sale Right.

(b) Exercise of Co-Sale/Right of First Refusal. Each Right Holder shall have twenty (20) days from receipt of the Right Holders Notice to exercise either its Co-Sale Right or its First Refusal Right with respect to the Remaining Shares in connection with such proposed Transfer by giving written notice to the Company and the Transferring Major Common Holder and stating therein (i) the number of Remaining Shares such Right Holder desires to purchase under the First Refusal Right, whether less than, equal to or greater than its Ratable Portion and (ii) if such Right Holder elects not to exercise its First Refusal Right, the number of Offered Shares such Right Holder desires to sell under its Co-Sale Right, whether less than, equal to, or greater than its Ratable Portion. If any Right Holder fails to exercise (x) its right to purchase all of its Ratable Portion under the First Refusal Right or (y) its rights to sell all of its Ratable Portion under the Co-Sale Right, the Right Holders requesting to purchase or sell, as the case may be, shares in excess of their Ratable Portion (the "**Overallotment Amount**") shall either purchase the number of the Remaining Shares as to which the First Refusal Rights were not exercised, or sell the number of Offered Shares as to which Co-Sale Rights were not exercised, on a Ratable Portion basis among such Right Holders until all Overallotment Amounts have been allocated among such Right Holders. Within five (5) days thereafter, the Company shall give notice (the "**Final Notice**") to each Right Holder and the Transferring Major Common Holder as to (i) the exact number of Offered Shares that each Right Holder has elected to purchase, if the First Refusal Right is being fully exercised, or (ii) the number of shares each Right Holder will be selling, if the Co-Sale Right is exercised.

(c) Consummation of First Refusal Rights Purchase.

(i) Purchase by the Company or Right Holders of Any Offered Shares. Should the Company and/or the Right Holders elect to purchase some or all of the Offered Shares, then on the later to occur of (i) the date set for consummation of the purchase under the Offering Notice, or (ii) fifteen (15) days after receipt of the Final Notice, any Right Holders participating in the purchase, shall deliver to the Company's outside legal counsel or other agent agreed upon by a majority of the participating Holders on the one hand and the Transferring Major Common Holder on the other (the "**Escrow Holder**")**,** such cash, notes, or other instruments as may be required to consummate their purchase. The Transferring Major Common Holder shall contemporaneously deliver the certificates evidencing the Offered Shares, together with blank stock transfer powers to the Escrow Holder. The Escrow Holder shall consummate the purchase in accordance with this Agreement by delivering the consideration for the Offered Shares to the Transferring Major Common Holder, causing any Remaining Shares purchased by Right Holders to be transferred to the names of the Right Holders on the books of the Company and canceling the certificates representing that portion of the Offered Shares purchased by the Company. The purchase by a Right Holder of any Offered Shares under the First Refusal Right is also subject in all cases to the execution and delivery by the Transferring Major Common Holder of a warranty that the Transferring Major Common Holder owns good and marketable title to such Offered Shares, free of all liens, encumbrances and claims of others and otherwise and has received all necessary consents to effect the Transfer, reasonably satisfactory in form and substance to such Right Holder and its legal counsel. The purchase price shall be paid, at the election of each Right Holder, either (i) in accordance with the terms contained in the Offering Notice or (ii) by wire transfer of immediately available funds, delivery of a check representing good funds, cancellation of indebtedness, or any combination of the foregoing.

(ii) Failure of the Company or Right Holders to Purchase All of the Offered Shares. Should the Company and/or the Right Holders not elect to purchase all of the Offered Shares, then, subject only to the right of Co-Sale set forth in Section 8.3(d) below, the Transferring Major Common Holder shall be entitled to Transfer the Offered Shares that are not purchased by the Company and/or the Right Holders to the proposed Transferee at the price specified in the Offering Notice and on other terms and conditions not materially different than those set forth in the Offering Notice; provided, however, that such Transfer must be consummated within ninety (90) calendar days after delivery of the Offering Notice to the Company and the other Right Holders, and any proposed sale of such Offered Shares after such ninety (90) day period may be made only by again complying with the procedures set forth above; provided that the Transferee prior to the effectiveness of the Transfer agrees to be bound by the terms of this Agreement.

(d) Right of Co-Sale Exercise. Notwithstanding anything to the contrary in Section 8.3(c)(ii), the Transferring Major Common Holder shall not be entitled to Transfer to the proposed Transferee, pursuant to the terms of the Offering Notice, more than that number of Offered Shares which equals the difference between (A)(i) the number of shares of Offered Shares as to which the Co-Sale Rights are exercised by the Right Holders, if any, plus (ii) the number of shares of Offered Shares as to which the First Refusal Right was exercised, and (B) the total number of Remaining Shares. Subject to the foregoing, the proposed Transferee shall purchase all Offered Shares from the Right Holders, if any, that such Right Holders have exercised their Co-Sale Rights, and the Transferring Major Common Holder simultaneously, if applicable.

8.4 Termination of Transfer Restrictions. The first refusal and co-sale rights granted under this Section 8 shall terminate upon the consummation of (i) a Qualified IPO, or (ii) an Acquisition, whichever is earlier to occur.

9. Covenants.

9.1 Special Board Approval Rights; Preferred Stock Protective Provisions. The Company shall not do or take any of the following actions without the prior approval of a majority of the Board, which approval shall include a majority of the Preferred Stock Directors:

(a) grant an exclusive license with respect to any material part of the Company's intellectual property;

(b) enter into any strategic alliance, partnership, joint venture or other transaction that is material to the business of the Company or otherwise out of the ordinary course of business; provided, however that this Section 9.1(b) shall not apply to customary original equipment manufacturer agreements, distribution agreements, non-exclusive licenses and other non-material agreements and arrangements;

(c) grant a security interest over any assets of the Company, except for customary factoring agreements which may require the Company to grant a security interest in or to its account receivables;

(d) make any single (or series of related) capital expenditure in excess of $250,000 unless such expenditure was disclosed in a budget previously approved by the Board;

(e) incur any indebtedness, other than trade payables and other indebtedness incurred in the ordinary course;

(f) give any guarantees or financial assistance to third parties;

(g) remove or replace the Chief Executive Officer of the Company;

(h) increase the remuneration of officers of the Company, or pay any bonus or other compensation to any employee or consultant of the Company in excess of $5,000, individually, unless such expenditure was disclosed in a budget previously approved by the Board;

(i) acquire any real property;

(j) change its auditors or accountants; or

(k) make any material change in the Company's accounting policies.

9.2 Stock Vesting. Unless otherwise approved by the Board of Directors (including a majority of the Preferred Stock Directors) or issued pursuant to agreements in effect as of the Effective Date, all existing and future stock options and other stock equivalents (an "**Equity Award**") issued to employees, directors, consultants and other service providers as initial grants shall not provide for acceleration of vesting and shall be subject to vesting as follows: (a) twenty-five percent (25%) of such Equity Award shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the Company, and (b) 1/36th of the balance of such Equity Award shall vest ratably over the subsequent thirty-six (36) months.

9.3 Repurchase Rights. Unless otherwise approved by the Board of Directors (including a majority of the Preferred Stock Directors), the Company will have the right to repurchase unvested restricted stock issued to employees, directors, consultants and other service providers at the holder's cost upon termination of employment or the cessation of providing services to the Company (for any reason, with or without cause).

9.4 Transfer of Shares. Unless otherwise approved by the Board of Directors (including a majority of the Preferred Stock Directors), the terms of any options or restricted stock issued by the Company shall prohibit the transfer of unvested shares by the holder and shall grant the Company a right of first refusal with respect to the transfer of vested shares.

9.5 Major Common Holders. The Company will use its commercially reasonable efforts to ensure that each Person who becomes a Major Common Holder after the Effective Date will be added as a party to this Agreement and will be bound by its terms.

9.6 Termination of Covenants. The covenants of the Company contained in this Section 9 shall terminate and not be applicable upon the consummation of (i) a Qualified IPO, or (ii) an Acquisition, whichever is earlier to occur.

10. Miscellaneous Matters.

10.1 Waivers and Amendments. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least sixty percent (60%) of the Registrable Securities then outstanding; provided, however, that (i) any amendment or waiver with respect to Section 6 shall require the vote or written consent of SAPV, ASP, PIV and HWVP, (ii) so long as at least 1,000,000 shares of Series B-2 Stock are issued and outstanding, any amendment or waiver with respect to Section 7 shall require the vote or written consent of the holders of at least fifty percent (50%) of the then outstanding shares of Common Stock issued or issuable upon conversion of the Series B-2 Stock, (iii) so long as at least 1,000,000 shares of Series D-2 Stock are issued and outstanding, any amendment or waiver with respect to Section 7 shall require the vote or written consent of the holders of at least fifty percent (50%) of the then outstanding shares of Common Stock issued or issuable upon conversion of the Series D-2 Stock and (iv) any amendment or waiver that affects the rights or obligations of one Holder in a materially different manner than any other Holder shall require the vote or written consent of such Holder. Notwithstanding the foregoing, any additional investors who purchase Registrable Securities may be added as parties to this Agreement without the consent of any of the holders of Registrable Securities.

10.2 Notices. All notices and other communications required or permitted hereunder shall be in writing and, except as otherwise noted herein, shall be deemed effectively given upon personal delivery, delivery by nationally recognized courier or upon deposit with the United States Post Office, (by first class mail, postage prepaid) addressed: (a) if to the Company, to the attention of the Chief Executive Officer at the address of the Company's principal executive office (or at such other address as the Company shall have furnished to the Holders in writing), (b) if to a Holder, at the latest address of such person shown on the Company's records and (c) if to a Major Common Holder, at the latest address of such person shown on the Company's records.

10.3 Descriptive Headings. The descriptive headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions hereof.

10.4 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Delaware as applied to agreements among Delaware residents, made and to be performed entirely within the State of Delaware without reference to the law of conflicts.

10.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument, but only one of which need be produced.

10.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

10.7 Specific Enforcement; Grant of Proxy. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach. Should the provisions of this Agreement be construed to constitute the granting of proxies, such proxies shall be deemed coupled with an interest and are irrevocable for the term of this Agreement.

10.8 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall benefit and bind the successors, assigns, heirs, executors and administrators of the parties to this Agreement.

10.9 Entire Agreement. This Agreement, together with the Purchase Agreement, constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof. This Agreement amends, supersedes and replaces in its entirety all other agreements between or among any of the parties with respect to the subject matter hereof and, upon the execution hereof by the requisite parties, the Prior Stockholders' Agreement is hereby terminated in its entirety.

10.10 Separability; Severability. Unless expressly provided in this Agreement, the rights and obligations of each Holder under this Agreement are several and not jointly held with any other Holders. Any invalidity, illegality or limitation on the enforceability of this Agreement with respect to any Holder shall not affect the validity, legality or enforceability of this Agreement with respect to the other Holders. If any provision of this Agreement is judicially determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

10.11 Stock Splits. All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, split, combination or other recapitalization of shares by the Company occurring after the Effective Date.

10.12 Aggregation of Stock. All shares of the Preferred Stock held or acquired by Affiliated entities or Persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

10.13 Amendment of Prior Stockholders' Agreement. The Prior Stockholders' Agreement is hereby amended in its entirety and restated herein. All provisions of, rights granted and covenants made in the Prior Stockholders' Agreement are hereby waived, released and superseded in their entirety and shall have no further force or effect.

10.14 Irrevocable Proxy and Power of Attorney. Each party to this Agreement hereby constitutes and appoints as the proxy of the party and hereby grants a power of attorney to the Chief Executive Officer of the Company, with full power of substitution, with respect to the election of persons as members of the Board in accordance with Section 6 hereto and votes regarding any Approved Sale pursuant to Section 7 hereof, and hereby authorizes the Chief Executive Officer of the Company to represent and to vote, if and only if the party (i) fails to vote or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of Section 6 or Section 7 of this Agreement, all of such party's Shares in favor of the election of persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Agreement or approval of any Approved Sale pursuant to and in accordance with the terms and provisions of Sections 6 and 7, respectively, of this Agreement or to take any action necessary to effect Sections 6 and 7, respectively, of this Agreement. Each of the proxy and power of attorney granted pursuant to the immediately preceding sentence is given in consideration of the agreements and covenants of the Company and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or expires or if earlier, until Section 6 or Section 7 terminates, as applicable. Each party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates or expires or if earlier, until Section 6 or Section 7 terminates, as applicable, purport to grant any other proxy or power of attorney with respect to any of the Shares, deposit any of the Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Eighth Amended and Restated Stockholders' Agreement on the Effective Date.

Five9, Inc.

/s/ Michael Burkland
Name: Michael Burkland
Title: Chief Executive Officer

(Signature Page to Eighth Amended and Restated Stockholders' Agreement)

"HOLDER"

SAP VENTURES FUND I, L.P.
By: SAP Ventures (GPE) I, L.L.C., a Delaware limited liability company, its general partner

/s/ David Hartwig
Name: David Hartwig
Title: Managing Member

By: SAP Ventures (GPE) I, L.L.C., a Delaware limited liability company, its general partner

/s/ R. Douglas Higgins
Name: R. Douglas Higgins
Title: Managing Member

(Signature Page to Eighth Amended and Restated Stockholders' Agreement)

“HOLDER”

ADAMS STREET 2008 DIRECT FUND, L.P.
By: ASP 2008 Direct Management, LLC, Its General Partner
By: Adams Street Partners, LLC, Its Managing Member

/s/ David Welsh
Name: David Welsh
Title: Partner

“HOLDER”

ADAMS STREET 2009 DIRECT FUND, L.P.
By: ASP 2009 Direct Management, LLC, Its General Partner
By: Adams Street Partners, LLC, Its Managing Member

/s/ David Welsh
Name: David Welsh
Title: Partner

“HOLDER”

ADAMS STREET 2010 DIRECT FUND, L.P.
By: ASP 2010 Direct Management, LLC, Its General Partner
By: Adams Street Partners, LLC, Its Managing Member

/s/ David Welsh
Name: David Welsh
Title: Partner

“HOLDER”

ADAMS STREET 2011 DIRECT FUND LP
By: ASP 2011 Direct Management LP, Its General Partner
By: ASP 2011 Direct Management LLC, Its General Partner
By: Adams Street Partners, LLC, Its Managing Member

/s/ David Welsh
Name: David Welsh
Title: Partner

"HOLDER"

Hummer Winblad Venture Partners V, L.P.
as nominee for
Hummer Winblad Venture Partners V, L.P. and
Hummer Winblad Equity Partners V, L.L.C., its General Partner

/s/ Mitchell Kertzman
Name: Mitchell Kertzman
Title: Managing Director

(Signature Page to Eighth Amended and Restated Stockholders' Agreement)

"HOLDER"

Mosaic Venture Partners II, Limited Partnership
By: 1369904 Ontario, Inc., its general partner

Name: David Samuel
Title: General Partner

(Signature Page to Eighth Amended and Restated Stockholders' Agreement)

"HOLDER"

Partech U.S. Partners IV LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

Partech International Growth Capital I LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

Partech International Growth Capital II LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

Partech International Growth Capital III LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

AXA Growth Capital II LP

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

45th Parallel LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

"HOLDER"

PAR SF II, LLC

/s/ Nicolas El Baze
Name: Nicolas El Baze
Title: Attorney-in-fact

EXHIBIT A

SCHEDULE OF MAJOR COMMON HOLDERS

Name and Address	Shares of Registrable Securities (including rights thereto)

SCHEDULE OF HOLDERS

Name and Address	Shares of Registrable Securities (including rights thereto)
SAP VENTURES FUND I, L.P. 3412 Hillview Avenue Palo Alto, California USA 94304	9,716,824
ADAMS STREET 2008 DIRECT FUND, L.P. 2500 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Fax: (650) 331-4861	10,339,288
ADAMS STREET 2009 DIRECT FUND, L.P. 2500 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Fax: (650) 331-4861	8,942,760
ADAMS STREET 2010 DIRECT FUND, L.P. 2500 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Fax: (650) 331-4861	5,079,969
Adams Street 2011 Direct Fund LP 2500 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Fax: (650) 331-4861	4,336,705
Hummer Winblad Venture Partners V, L.P. One Lombard Street San Francisco,, CA 94111 Fax: (415) 979-9601	33,649,533

Mosaic Venture Partners II, Limited Partnership FlatIron Building 49 Wellington St. East, 3rd Floor Toronto, ON Canada M5E1C9	25,229,861
Partech U.S. Partners IV LLC 50 California Street, Suite 3200 San Francisco, CA 94111	14,053,784*
Partech International Growth Capital I LLC 50 California Street, Suite 3200 San Francisco, CA 94111	2,713,106
Partech International Growth Capital II LLC 50 California Street, Suite 3200 San Francisco, CA 94111	4,469,457
Partech International Growth Capital III LLC 50 California Street, Suite 3200 San Francisco, CA 94111	2,713,110
AXA Growth Capital II LP 50 California Street, Suite 3200 San Francisco, CA 94111	1,104,650
45th Parallel LLC 50 California Street, Suite 3200 San Francisco, CA 94111	98,369
PAR SF II, LLC 50 California Street, Suite 3200 San Francisco, CA 94111	98,369
Total	122,545,785

* Includes 6,342 shares of the Company's common stock that may be distributed across affiliate funds of Partech U.S. Partners IV LLC listed in this Exhibit A.

Exhibit 4.3

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

FIVE9, INC.

WARRANT TO PURCHASE SHARES

This warrant (the "Warrant") is issued as of February 26, 2008, to (the "Investor") by Five9, Inc., a Delaware corporation (the "Company"), pursuant to the terms of that certain Convertible Secured Promissory Note and Warrant Purchase Agreement, dated as of February , 2008, as such agreement may be amended, modified or supplemented from time to time (the "Purchase Agreement"), in connection with the Investor's commitment to purchase certain Notes (as defined in the Purchase Agreement).

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth and set forth in the Purchase Agreement, the holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company up to the number of fully paid and nonassessable shares of Series A-2 Preferred Stock (the "Shares"), that equals the quotient obtained by dividing (a) the Warrant Coverage Amount (as defined below) by (b) the Exercise Price (as defined below).

2. Definitions.

(a) Exercise Price. The exercise price for the Shares shall be $0.163 per share (as adjusted for stock splits, stock dividends, recapitalizations, reclassifications, combinations and the like) (the "Exercise Price").

(b) Exercise Period. This Warrant shall be exercisable, in whole or in part, until the earliest to occur of (i) the seven (7)-year anniversary of the date hereof; or (ii) the issuance and sale of shares of the Company's common stock in the Company's first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Exercise Period").

(c) Warrant Coverage Amount. The term "Warrant Coverage Amount" means an amount equal to Eleven Thousand Four Hundred Forty-Seven Dollars and Ninety-Eight Cents ($11,447.98).

(d) Shares. The term "Shares" means shares of the Company's Series A-2 Preferred Stock.

3. Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 2(b) above, the holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

(i) the surrender of the Warrant, together with delivery of an executed notice of Exercise in the form attached as Exhibit A to the Secretary of the Company at its principal offices; and

(ii) the payment to the Company in cash, check or wire transfer of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.

4. Net Exercise. In lieu of cash exercising this Warrant pursuant to Section 3 above, the holder of this Warrant may elect to receive Shares equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election, in which event the Company shall issue to the holder hereof a number of Shares computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

Where

X — The number of Shares to be issued to the holder of this Warrant.

Y — The number of Shares purchasable under this Warrant.

A — The fair market value of one Share.

B — The Exercise Price (as adjusted to the date of such calculations).

For purposes of this Section 4, the fair market value of a Share shall mean the average of the closing bid and asked prices of Shares, or common stock issuable upon the conversion thereof, as applicable, quoted in the over-the-counter market in which the Shares, or common stock issuable upon the conversion thereof, as applicable, are traded or the closing price quoted on any exchange on which the Shares, or common stock issuable upon the conversion thereof, as applicable, are listed or the Nasdaq Global Market, whichever is applicable, as published in the Western Edition of The Wall Street Journal for the ten (10) trading days prior to the date of determination of fair market value (or such shorter period of time during which such stock was traded over-the-counter or on such exchange or the Nasdaq Global Market). If the Shares, or common stock issuable upon the conversion thereof, as applicable, are not traded on the over-the-counter market or on an exchange or the Nasdaq Global Market, the fair market value shall be the price per Share that the Company could obtain from a willing buyer for Shares sold by the Company from authorized but unissued Shares, as such prices shall be determined in good faith by the Company's Board of Directors, or, if this Warrant is exercised in connection with and contingent upon an initial public offering of the Company's capital stock, the fair market value shall be the price per share at which shares of the Company's stock are sold to the public as set forth in the final prospectus in connection with such offering.

5. Certificates for Shares. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased and, if this Warrant has not been fully exercised and has not expired, a new warrant representing the Shares not so purchased, shall be issued as soon as practicable thereafter, and in any event within thirty (30) days of the delivery of the subscription notice.

6. Issuance of Shares. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable, free from all taxes, liens and charges with respect to the issuance thereof and issued in compliance with all applicable federal and State securities laws.

7. Adjustment of Exercise Price and Number of Shares. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time prior to the expiration of this Warrant subdivide the Shares, by split-up or otherwise, or combine the Shares, or issue additional Shares as a dividend, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the Exercise Price, but the aggregate Exercise Price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 7(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. In case of any reclassification, capital reorganization or change in the capital stock of the Company (other than as a result of a subdivision, combination or stock dividend provided for in Section 7(a) above), then the Company shall make appropriate provision so that the holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at an aggregate Exercise Price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization or change by a holder of the same number of Shares as were purchasable by the holder of this Warrant immediately prior to such reclassification, reorganization or change. In any such case, appropriate provisions shall be made with respect to the rights and interest of the holder of this Warrant so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the Exercise Price per Share payable hereunder, provided the aggregate Exercise Price shall remain the same.

(c) Conversion. If all of the Company's outstanding Series A-2 Preferred Stock is redeemed or converted into shares of Common Stock, then this Warrant shall automatically become exercisable for that number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the Shares received thereupon had been simultaneously converted into shares of Common Stock, in each case immediately prior to such redemption or conversion. Appropriate provisions shall be made with respect to the rights and interests of the holder of this Warrant so that the provisions hereof shall thereafter be applicable with respect to any shares of Common Stock deliverable upon exercise hereof, and appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of shares of Common Stock purchasable under this Warrant (as adjusted) shall remain the same.

(d) Adjustments for Diluting Issuances. In the event of the issuance (a "Diluting Issuance") by the Company, after the date this Warrant was issued, of securities other than "Excluded Stock" (as defined in the Company's Fifth Amended and Restated Certificate of Incorporation, as amended from time to time (the "Certificate of Incorporation") at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with the Company's Certificate of Incorporation.

(e) Notice of Adjustment. When any adjustment is required to be made in the number or kind of Shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

(f) Assumption of Warrant.

If upon the closing of any Change of Control (as defined in the Notes) the successor entity assumes the obligations of this Warrant, then this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Change of Control. The Exercise Price shall be adjusted accordingly. The Company shall uses reasonable efforts to cause the surviving corporation to assume the obligations of this Warrant.

If upon the closing of any Change of Control the successor entity does not assume the obligations of this Warrant and Investor has not otherwise exercised this Warrant in full, then this Warrant shall be deemed to have been automatically converted pursuant to this Section 7(f) and thereafter Investor shall participate in the Change of Control on the same terms as other holders of the same class of securities of the Company.

8. No Fractional Shares or Scrip. No fractional Shares or scrip representing fractional Shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional Shares of the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

9. Representations of the Company. The Company represents that all corporate actions on the part of the Company, its officers, directors and stockholders necessary for the sale and issuance of this Warrant have been taken.

10. Restrictive Legend.

The Shares (unless registered under the Securities Act of 1933, as amended (the "Act")) shall be stamped or imprinted with a legend in substantially the following form:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

11. Warrants Transferable. Subject to compliance with the terms and conditions of this Section 11, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the holder hereof (except for transfer taxes), upon surrender of this Warrant properly endorsed or accompanied by written instructions of transfer (including the Form of Transfer attached hereto at Exhibit B). With respect to any

offer, sale or other disposition of this Warrant or any Shares acquired pursuant to the exercise of this Warrant prior to registration of such Warrant or Shares, the holder hereof agrees not to make any sale or other disposition of all or a portion of this Warrant or the Shares unless and until the transferee has agreed in writing for the benefit of the Company to be bound by the terms of this Warrant, including, without limitations, this Seciton 11, and the holder gives written notice to the Company prior thereto, describing briefly the manner of such sale or disposition, together with a written opinion of counsel reasonably satisfactory to the Company, or other evidence, if requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act as then in effect or any federal or state securities law then in effect) of this Warrant or the Shares and indicating whether or not under the Act certificates for this Warrant or the Shares to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law; provided, however, that the Company will not require a written opinion of such holder's counsel or any other evidence relating to registration or qualification for any transfers by the holder to any of the Investors (as such term is defined in the Purchase Agreement) or their Affiliates (as such term is defined in the Purchase Agreement). Upon receiving such written notice and satisfactory opinion or other evidence, if so required, the Company, as promptly as practicable, shall notify such holder that such holder may sell or otherwise dispose of this Warrant or such Shares, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 11 that the opinion of counsel or other evidence is not reasonably satisfactory to the Company, the Company shall so notify the holder promptly with details thereof after such determination has been made. Each certificate representing this Warrant or the Shares transferred in accordance with this Section 11 shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless in the opinion of counsel for the Company, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

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

13. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give holder (1) at least twenty (20) days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least twenty (20) days prior written notice of the date when the same will take place (and specifying the date on which the holders of stock will be entitled to exchange their stock for securities or other property deliverable upon the occurrence of such event).

14. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Series A-2 Preferred Stock a sufficient number of shares to provide for the issuance of Series A-2 Preferred Stock upon the exercise of this Warrant (and shares of its Common Stock for issuance on conversion of such Series A-2 Preferred Stock) and, from time to time, will take all steps necessary to amend its Certificate of Incorporation to provide sufficient reserves of shares of Series A-2 Preferred Stock issuable upon exercise of the Warrant (and shares of its Common Stock for issuance on conversion of such Series A-2 Preferred Stock). The Company agrees that, upon exercise of this Warrant, the Company's officers who are charged with the duty of executing stock certificates will have full authority to execute and issue the necessary certificates for shares of Series A-2 Preferred Stock upon the exercises of this Warrant.

15. Notices. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) give (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid; (b) upon delivery, if delivered by hand; (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid; or (d) one business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to the holder, at the holder's address as set forth on the signature page to the Purchase Agreement and (ii) if to the Company, at the address of its principal corporate offices (attention: Chief Executive Officer) or at such other address as a party may designate by ten (10) days advance written notice to the other party pursuant to the provisions above.

16. "Market Stand-Off" Agreement.

(a) In connection with the initial public offering of the Company's securities, the holder of this Warrant agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than those included in the registration) without the prior written consent of such underwriters, for such period of time (not to exceed one hundred eighty (180) days or such other period, not to exceed thirty (30) days after the expiration of the market stand-off period, as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendation and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4) (or any successor provisions or amendments thereto from the effective date of such registration as may be requested by the Company or the managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering, provided that all then officers of the Company, directors of the Company and any person who owns or has the right to acquire shares of the Company's securities which, in the aggregate, are at least One Percent (1%) of the outstanding securities of the Company enter into similar agreements.

(b) The obligations described in this Section 14 shall not apply to a registration relating solely to employee benefit plans, or to a registration relating solely to a transaction pursuant to Rule 145 under the Act.

(c) In order to enforce the foregoing covenants, the Company may impose stop-transfer instructions with respect to the securities of the holder.

17. Governing Law. This Warrant and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or of any other state.

18. Further Assurances: No Impairment. The Company agrees to fully cooperate with the holder of this Warrant to perform all additional acts reasonably requested by such holder to effect the purposes of the foregoing and the rights granted to such holder hereunder. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holder of this Warrant against impairment.

19. Replacement of Warrants. In the case of loss, theft or destruction of this Warrant, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

20. Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

21. Waivers; Amendments. This Warrant is one of a series of warrants issued pursuant to the Purchase Agreement of like tenor and effect. Any term, covenant, agreement or condition of this Warrant may be amended or waived if such amendment or waiver is in writing and is signed by the Company and the holders of a majority of the aggregate Warrant Coverage Amounts of all Warrants issued pursuant to the Purchase Agreement. No failure or delay by a holder in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. A waiver or consent given hereunder shall be effective only if in writing and in the specific instance and for the specific purpose for which given. Any amendment, waiver or consent effected in accordance with this Section 17 shall be binding upon the Company, each holder of a Warrant issued pursuant to the Purchase Agreement that is then outstanding, and each future holder of such a Warrant and their respective successors and assigns whether or not such party, assignee or other holder entered into or approved such amendment, waiver or consent.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Warrant is executed as of the date first referenced above.

COMPANY:

FIVE9, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Warrant is executed as of the date first referenced above.

INVESTOR:

By: _____

EXHIBIT A

NOTICE OF EXERCISE

TO: FIVE9INC.

_____

_____
Attention: Chief Executive Officer

1. The undersigned hereby elects to purchase Shares of pursuant to the terms of the attached Warrant.

2. By signing below, the undersigned, if not currently a party to the Third Amended and Restated Stockholders' Agreement among Five9, Inc. and the other parties that are signatories thereto, as amended, modified or supplemented from time to time, (the "Stockholders' Agreement"), shall become a party to the Stockholders' Agreement and the signature of the undersigned on this Notice of Exercise shall constitute an agreement to be bound by the Stockholders' Agreement as if the undersigned were an original signatory thereto as a "Holder" under the Stockholders' Agreement. The undersigned represents and warrants to the Company that he, she or it has been provided a copy of the Stockholders' Agreement and agrees to the foregoing.

3. Method of Exercise (Please initial the applicable blank):

- The undersigned elects to exercise the attached Warrant by means of a cash payment, and tenders herewith payment in full for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.
- The undersigned elects to exercise the attached Warrant by means of the net exercise provisions of Section 4 of the Warrant.

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

_____
(Name)

_____

_____
(Address)

_____
(Holder)

_____
(Signature)

_____
(Name)

_____
(Date)

_____
(Title)

EXHIBIT B

FORM OF TRANSFER

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto the right represented by the attached Warrant to purchase up to the number of Shares (as defined in the attached Warrant) of Five9, Inc. that equals the quotient obtained by dividing (a) the Warrant Coverage Amount (as defined in the attached Warrant and reduced by any amount with respect to which the attached Warrant has been partially exercised) by (b) the Exercise Price (as defined in the attached Warrant), and appoints attorney to transfer such right on the books of Five9, Inc. with full power of substitution in the premises.

Dated: _____

_____

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

Address: _____

_____

_____

Exhibit 4.4

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

WARRANT TO PURCHASE STOCK

Company:	Five9, Inc.
Number of Shares:	52,054
Type/Series of Stock:	Series D-2 Preferred Stock
Warrant Price:	$1.4408 per share
Issue Date:	October 18, 2013
Expiration Date:	October 18, 2023 (subject to Section 5.1 below)
Credit Facility:	This Warrant to Purchase Stock ("Warrant") is issued in connection with that certain Loan and Security Agreement of even date herewith between City National Bank and Five9, Inc. (the "Company").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, CITY NATIONAL BANK (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated Type/Series of Stock (the "Class") of the Company at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. Reference is made to Section 5.4 of this Warrant whereby City National Bank shall transfer this Warrant to its parent company, City National Corporation.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

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

where:

X = the number of Shares to be issued to Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);

A = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share; and

B = the Warrant Price.

1.3 Fair Market Value. If the Company's common stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market") and the Class is common stock, the fair market value of a Share shall be the closing price or last sale price of a share of common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's common stock is then traded in a Trading Market and the Class is a series of the Company's convertible preferred stock, the fair market value of a Share shall be the closing price or last sale price of a share of the Company's common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company multiplied by the number of shares of the Company's common stock into which a Share is then convertible. If the Company's common stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in common stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's certificate of incorporation upon the closing of a registered public offering of the Company's common stock. Upon the closing of an Acquisition (as defined below), and subject to Section 5.1 hereof, the successor entity shall assume the obligations of this Warrant, and this Warrant thereafter shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Company or its successor shall promptly issue to Holder a new Warrant for such new securities or other property. The new Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Conversion of Preferred Stock. If the Class is a class and series of the Company's convertible preferred stock, in the event that all outstanding shares of the Class are converted, automatically or by action of Holders thereof, into common stock pursuant to the provisions of the Company's certificate of incorporation, including, without limitation, in connection with the Company's initial, underwritten public offering and sale of its common stock pursuant to an effective registration statement under the Act (the "IPO"), then from and after the date on which all outstanding shares of the Class have been so converted, this Warrant shall be exercisable for such number of shares of common stock into which the Shares would have been converted had the Shares been outstanding on the date of such conversion, and the Warrant Price shall equal the Warrant Price in effect as of immediately prior to such conversion divided by the number of shares of common stock into which one Share would have been converted, all subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

2.4 Adjustments for Diluting Issuances. Without duplication of any adjustment otherwise provided for in this Section 2, the number of shares of common stock issuable upon conversion of the Shares shall be subject to anti-dilution adjustment from time to time in the manner set forth in the Company's certificate of incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.5 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, Class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which shares of the Class were last sold and issued prior to the Issue Date hereof in an arms-length transaction in which at least $500,000 of such shares were sold.

(b) All Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class, common stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into common stock or such other securities.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete, in all material respects, as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class; or

(d) effect an Acquisition (as defined below) or to liquidate, dissolve or wind up;

then, in connection with each such event, the Company shall give Holder:

(1) at least seven (7) Business Days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which Holders of outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

This Warrant will be deemed to be exercised pursuant to Section 1.2 hereof if the Company does not give written notice to Holder of a cash/public Acquisition as required by the terms hereof. Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

3.3 Registration Rights. The common stock into which the Shares are convertible, shall at the option of Holder, be "Registrable Securities", and Holder shall have the rights and obligations of a "Holder" under the Company's Seventh Amended and Restated Stockholders' Agreement dated as of April 26, 2013 among the Company and the holders named therein (the "Rights Agreement"). Simultaneously with the execution of this Warrant, the Holder shall execute and deliver to the Company a joinder to the Rights Agreement, thereby agreeing to be bound by all obligations and receive all rights to the Rights Agreement, to be held in escrow until the exercise of this Warrant. All shares of common stock issued upon exercise of this Warrant shall include any legends required under the Rights Agreement.

3.4 Information Rights. So long as the Holder holds this Warrant and/or any of the Shares, the Company shall deliver to the Holder (a) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company and (b) within thirty (30) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements, provided the Company need not provide such information for any period in which the Company has filed a periodic report on Form 10-K or Form 10-Q (as applicable) with the Securities and Exchange Commission.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF HOLDER.

Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

4.6 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term and Automatic Conversion.

(a) Term. Subject to the provisions of this Section 5, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific Time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

(c) Acquisitions. For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction. In the event of an Acquisition in which the consideration is solely cash and/or marketable securities, then this Warrant shall be deemed exercised in accordance with the provisions of Section 1.2 immediately prior to the closing of the Acquisition; otherwise, this Warrant shall terminate.

5.2 Legends. The Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE ISSUER TO CITY NATIONAL BANK DATED OCTOBER 18, 2013, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to City National Corporation (City National Bank's parent company) or any other affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. After receipt by City National Bank of the executed Warrant, City National Bank will transfer this Warrant to its parent company, City National Corporation. By its acceptance of this Warrant, City National Corporation hereby makes to the Company each of the representations and warranties set forth in Section 4 hereof and agrees to be bound by all of the terms and conditions of this Warrant as if the original Holder hereof. Subject to the provisions of Section 5.3, City National Corporation and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, City National Corporation or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee other than City National Corporation shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

5.5 Notices. All notices and other communications hereunder from the Company to Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

City National Bank, Technology and Venture Capital Banking
Attn: Rod Werner, Managing Director
150 California Street, 13th Floor
San Francisco, CA 94111
Telephone: 415-576-2715
Facsimile: 415-576-2811
Email: rod.werner@cnb.com

With a copy to:

City National Bank, Legal Department
Attn: Managing Counsel, Credit Unit
555 S. Flower Street, 18th Floor
Los Angeles, California 90071

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Five9, Inc.
Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, Ca 94583
Attn: David Hill
Facsimile: (925) 397-3460
Email: dhill@five9.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

5.10 "Market Stand-Off" Agreement. The Holder shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any common stock (or other securities) of the Company held by the Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Registration (as defined in the Rights Agreement) (or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto); provided, however, that all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities are bound by and have entered into similar agreements. In order to enforce the foregoing, the Company may impose stop-transfer instructions with respect to the Registrable Securities of the Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

5.11 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.12 Business Days. "Business Day" is any day that is not a Saturday, Sunday or a day on which City National Bank is closed.

[*Balance of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

“COMPANY”

FIVE9, INC.

By: /s/ David Hill
Name: David Hill
(Print)
Title: VP - Finance

“HOLDER”

CITY NATIONAL BANK

By: /s/ Larry Sherman
Name: Larry Sherman
(Print)
Title: Vice President

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase shares of the Common/Series D-2 Preferred [circle one] Stock of Five9, Inc. (the "Company") in accordance with the attached Warrant To Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

[ ] check in the amount of $ payable to order of the Company enclosed herewith

[ ] Wire transfer of immediately available funds to the Company's account

[ ] Cashless Exercise pursuant to Section 1.2 of the Warrant

[ ] Other [Describe] _____

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____
Holder's Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

COMPANY CAPITALIZATION TABLE

1

Exhibit 4.5

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR PURSUANT TO RULE 144 OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER ARE SUBJECT TO A LOCKUP PERIOD OF UP TO 180 DAYS FOLLOWING THE EFFECTIVE DATE OF CERTAIN REGISTRATION STATEMENTS OF THE COMPANY FILED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THIS WARRANT, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH LOCKUP PERIOD IS BINDING ON TRANSFEREES OF THIS WARRANT.

WARRANT TO PURCHASE STOCK

Corporation:	FIVE 9, INC., a Delaware corporation
Number of Shares:	(Subject to Section 1.8)
Class of Stock:	Series B Preferred (Subject to Section 1.8)
Initial Exercise Price:	$0.38 per share
Issue Date:	August 8, 2007
Expiration Date:	August 8, 2017 (Subject to Section 4.1)

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, or its assignee ("Holder") is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "Shares") of the corporation (the "Company") at the initial exercise price per Share (the "Warrant Price") all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Holder shall also deliver to the Company a check for the aggregate Warrant Price for the Shares being purchase.

1.2 Intentionally Omitted.

1.3 Intentionally Omitted.

1.4 Fair Market Value. If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares (or the closing price of the Company's stock into which the Shares are convertible) reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.5 Delivery of Certificate and New Warrant. Promptly after Holder exercises this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised and has not expired, a new warrant representing the Shares not so acquired.

1.6 Replacement of Warrants. On receipt of evidence reasonable satisfactory to the Company of the loss, theft, destruction or mutilation of this warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company, or in the case of mutilation, on surrender and cancellation of this warrant, the Company at its expense shall execute and deliver, in lieu of this warrant, a new warrant of like tenor.

1.7 Repurchase on Sale, Merger, or Consolidation of the Company.

1.7.1 "Acquisition." For the purpose of this warrant, "Acquisition" means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, or (b)

any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction; provided that, for the purposes of (a) and (b), above, any transaction involving only the license of the Company's trade name or a transaction in which the Company sells or issues its equity securities to investors (or their affiliates) in the Company as of the Issue Date, shall not be deemed an Acquisition.

1.7.2 Assumption of Warrant. If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly. The Company shall use reasonable efforts to cause the surviving corporation to assume the obligations of this warrant.

1.7.3. Nonassumption. If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant, in full, then Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

1.8 Adjustment in Underlying Preferred Stock Price and Exercise Price. If on or before August 8, 2008, the Company sells and issues to any investors preferred stock with aggregate gross proceeds to the Company of at least $1,400,000, this Warrant shall, concurrent with the issuance of such shares of preferred stock, automatically be adjusted to instead be exercisable for shares of the same series and class and bearing the same rights, preferences, and privileges of such shares of stock, with the Warrant Price hereunder adjusted to equal the per share purchase price of such stock, and the number of such shares subject to this Warrant adjusted to equal (i) Seventeen Thousand Dollars ($17,000), divided by (ii) such modified per share Warrant Price. Any adjustments made to the Warrant pursuant to this Section 1.8 shall be in addition to any adjustments made pursuant to Article 2, below.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2 Reclassification, Exchange or Substitution; Automatic Exchange of Warrant. (a) Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise of this warrant, Holder shall be entitled to receive, upon exercise of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable reclassifications, exchanges substitutions, or other events.

(b) Immediately upon the automatic conversion of the Company's Series A Preferred Stock as provided under the Company's Amended and Restated Certificate of Incorporation (any event triggering such automatic conversion of the Series A Preferred Stock is referred to as an "Automatic Exchange Event"), Holder shall, upon no less than ten (10) business days prior written notice from the Company, deliver this warrant to the Company for cancellation and exchange upon the effectiveness of the Automatic Exchange Event, and the Company immediately shall issue and deliver to the Holder a replacement warrant containing substantially the same terms as this warrant except that the replacement warrant shall be exercisable for that number of shares of the Company's

common stock issuable upon conversion of all shares of Series A Preferred Stock that could be purchased by Holder upon full exercise of this Warrant on the effective date of the Automatic Exchange Event.

2.3 Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionally decreased.

2.4 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this warrant shall be subject to adjustment, from time to time, in the manner set forth on Exhibit A.

2.5 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, 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 under this warrant by the Company, but shall at all times in good faith assist in carrying out all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

2.7 Fractional Shares. No fractional Shares shall be issuable upon exercise of the Warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional share interest by paying Holder amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.8 Shareholders' Agreement. Holder shall execute and become a party to the Stockholders' Agreement dated April 20, 2004 and all Shares (and any shares of common stock issued upon conversion thereof) shall be subject to all of the terms and conditions set forth in Sections 2.2 – 2.9, 2.11, 2.12, 7 and 8 thereof.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this warrant is not greater than the price at which the Shares were most recently sold before the Issue Date.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon its common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of common stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder (1) at least 20 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above, and (2) in the case of the matters referred to in (c) and (d) above at least 20 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event).

3.3 Information Rights. So long as the Holder holds this warrant and/or any of the Shares, the Company shall deliver to the Holder (a) promptly after mailing, copies of all communiques to the shareholders of the Company, (b) within ninety (90) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company certified by independent public accountants of recognized standing and (c) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

3.4 Registration Under Securities Act of 1933, as amended. The Company agree that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be subject to the registration rights set forth on Exhibit B.

ARTICLE 4. MISCELLANEOUS.

4.1 Terms: Notice of Expiration. This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until sixty (60) days after the end of any market stand-off (or "lock-up") period following the effective date of the Company's initial public offering; provided that the price per share of the Company's common stock in the public market (the "Public Price") is not less that the Initial Exercise Price in the event the Public Price is less than the Initial Exercise Price prior to the Expiration Date set forth above, the Expiration Date shall automatically be extended until such time as the public Price exceeds the Initial Exercise Price.

4.2 Legends. This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR PURSUANT TO RULE 144 OR AN OPINION OF COUNSEL REASONABLE SATISFACTORY TO THE CORPORATION AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER ARE SUBJECT TO A LOCKUP PERIOD OF UP TO 180 DAYS FOLLOWING THE EFFECTIVE DATE OF CERTAIN REGISTRATION STATEMENTS OF THE COMPANY FILED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THIS WARRANT. A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER, SUCH LOCKUP PERIOD IS BINDING ON TRANSFEREES OF THIS WARRANT AND THE SHARES.

4.3 Compliance with Securities Laws on Transfer. This warrant and the Shares issuable upon exercise of this warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company). The Company shall not require Holder to provide an

opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

4.4 Transfer Procedure. Subject to the provisions of Section 4.3, Holder may transfer all or part of this warrant or the Shares issuable upon exercise of this warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable); provided, however, that Holder may transfer all or part of this warrant to its affiliates, including, without limitation, Comerica Incorporated, at any time without notice to the Company, and such affiliate shall then be entitled to all the rights of Holder under this warrant and any related agreements, and the Company shall cooperate fully in ensuring that any stock issued upon exercise of this warrant is issued in the name of the affiliate that exercises the warrant. The terms and conditions of this warrant shall inure to the benefit of, and be binding upon, the Company and the holders hereof and their respective permitted successors and assigns. Unless the Company is filing financial information with the SEC pursuant to the Securities Exchange Act of 1934, the Company shall have the right to refuse to transfer any portion of this warrant to any person who directly competes with the Company.

4.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

4.6 Amendments. This warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

4.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

4.8 Governing Law. This warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

FIVE 9, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Authorized signatories under Corporate Resolutions to Borrow or an authorized signer(s) under a resolution covering warrants must sign the warrant.

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase _____ shares of the _____ stock of FIVE 9, INC. pursuant to the terms of the attached warrant, and tenders herewith payment of the purchase price of such shares in full.

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

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

or Registered Assignee

_____

(Signature)

_____

(Date)

EXHIBIT A

Anti-Dilution Provisions
(For Preferred Stock Warrants With Existing Anti-Dilution Protection)

In the event of the issuance (a "Diluting Issuance") by the Company, after the Issue Date of the warrant, of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions (the "Provisions") of the Company's Certificate of Incorporation which apply to Diluting Issuances.

Under no circumstances shall the aggregate Warrant Price payable by the Holder upon exercise of the warrant increase as a result of any adjustment arising from a Diluting Issuance.

EXHIBIT B

Registration Rights

The Shares (if common stock), or the common stock issuable upon conversion of the Shares, shall be deemed "registrable securities" or otherwise entitled to "piggy back" registration rights in accordance with the terms of the following agreement (the "Agreement") between the Company and its investor(s):

Stockholders' Agreement, dated as of April 20, 2004

The Company agrees that no amendments will be made to the Agreement, which would have an adverse impact on Holder's registration rights thereunder without the consent of Holder. By acceptance of the Warrant to which the Exhibit B is attached, Holder shall be deemed to be a party to the Agreement.

Exhibit 4.6

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

WARRANT TO PURCHASE STOCK

Company:	Five9, Inc.
Number of Shares:	
Type/Series of Stock	Common Stock
Warrant Price:	$2.53 per share
Issue Date:	February 20, 2014
Expiration Date:	February 20, 2024 (subject to Section 5.1 below)
Loan Agreement:	This Warrant to Purchase Stock ("Warrant") is issued in connection with that certain Loan and Security Agreement, dated February 20, 2014, by and among Fifth Street Finance Corp., Fifth Street Mezzanine Partners V, L.P., Five9, Inc. and Five9 Acquisition LLC (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, (together with any successor or permitted assignee or transferee of this Warrant or of any shares or other securities issued upon exercise hereof, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated Type/Series of Stock (the class or series of capital stock or other securities from time to time issuable upon exercise of this Warrant, the "Class") of Five9, Inc., a Delaware corporation (the "Company"), at the above-stated Warrant Price, all as set forth above and as adjusted from time to time pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

The Shares are purchasable hereunder only to the extent vested. The Shares shall vest as follows:

$$V = \frac{(W * X)}{Y} - Z$$

where,

V = the number of Shares that vest on each applicable Advancement Date;

W = the aggregate amount of Loan (whether or not repaid or prepaid) that has been advanced by Fifth Street Finance Corp. or its assignees or participants under the Loan Agreement (including, for purposes of clarity, all Loan advances made by Fifth Street Finance Corp. or its assignees or participants under the Loan Agreement on or prior to such Advancement Date); provided, however, that in no case will W exceed $20,000,000;

X = the maximum number of Shares issuable upon exercise of this Warrant (after giving effect, for purposes of clarity, to any adjustments to the Shares pursuant to Section 2 of this Warrant);

Y = $20,000,000; and

Z = the aggregate number of Shares previously vested hereunder (after giving effect, for purposes of clarity, to any adjustments to the Shares pursuant to Section 2 of this Warrant and treating, solely for purposes of implementing appropriate adjustments in the calculation of the equation above, any Shares that have been issued upon exercise of this Warrant prior to or on such Advancement Date as unissued Shares remaining subject to adjustment pursuant to Section 2 of this Warrant).

and where,

"Advancement Date" means each date that Loan funds are advanced under the Loan Agreement; and

"Loan" has the meaning set forth in the Loan Agreement.

1. Exercise.

1.1 Method of Exercise. Subject to the vesting provisions of this Warrant, Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

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

where:

X = the number of Shares to be issued to Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);

A = the fair market value (as determined pursuant to Section 1.3 below) of one Share; and

B = the Warrant Price.

1.3 Fair Market Value.

(a) If (i) this Warrant is exercised immediately prior to the effectiveness of the Company's registration statement for the initial public offering of the Company's common stock and (ii) the Class is common stock, then the fair market value of a Share shall be the initial public offering price per share of common stock specified in the final prospectus with respect to the public offering.

(b) If (i) this Warrant is exercised immediately prior to the effectiveness of the Company's registration statement for the initial public offering of the Company's common stock and (ii) the Class is a series of the Company's convertible preferred stock, then the fair market value of a Share shall be the initial public offering price per share of common stock specified in the final prospectus with respect to the public offering multiplied by the number of shares of the Company's common stock into which a Share is then convertible.

(c) If (i) the Company's common stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the counter market (a "Trading Market"), (ii) Sections 1.3(a) and (b) of this Warrant do not apply for determining the fair market value of a Share, and (iii) the Class is common stock, then the fair market value of a Share shall be the closing price or last sale price of a share of common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company (or, if applicable, the Business Day immediately before the date on which this Warrant is automatically exercised pursuant to Section 3.2 or Section 5.1(b) of this Warrant).

(d) If (i) the Company's common stock is then traded on a Trading Market, (ii) Sections 1.3(a) and (b) of this Warrant do not apply for determining the fair market value of a Share, and (iii) the Class is a series of the Company's convertible preferred stock, then the fair market value of a Share shall be the closing price or last sale price of a share of the Company's common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company (or, if applicable, the Business Day immediately before the date on which this Warrant is automatically exercised pursuant to Section 3.2 or Section 5.1(b) of this Warrant) multiplied by the number of shares of the Company's common stock into which a Share is then convertible.

(e) If Sections 1.3(a), (b), (c) and (d) of this Warrant do not apply for determining the fair market value of a Share, then the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time (not to exceed ten (10) Business Days) after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above (including, without limitation, an automatic exercise pursuant to Section 3.2 or Section 5.1(b) of this Warrant), the Company shall, if requested by Holder, deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement (without any obligations to post a bond or other security) reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

2. Adjustments to the Shares and Warrant Price. In order to prevent dilution of the purchase rights granted under this Warrant, the Warrant Price and the number of Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this Section 2.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in capital stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise of this Warrant, Holder shall be entitled to receive, upon exercise of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's certificate of incorporation upon the closing of a registered public offering of the Company's common stock. Upon the closing of an Acquisition (as defined in Section 5.1 below), and subject to

Section 5.1 hereof, the successor entity shall assume the obligations of this Warrant, and this Warrant thereafter shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Company or its successor shall promptly issue to Holder a new Warrant for such new securities or other property. The new Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustment upon Issuance of Common Stock. If, at any time after the Issue Date but prior to the date of effectiveness of the Company's registration statement for the initial public offering of the Company's common stock, the Company shall issue (or, pursuant to Section 2.3(d) below), shall be deemed to have issued) any common stock other than "Excluded Stock" (as defined in the Company's Amended and Restated Certificate of Incorporation ("Certificate of Incorporation")) for a consideration per share less than the Warrant Price in effect immediately prior to the issuance of such common stock (excluding stock dividends, subdivisions, split-ups, combinations, dividends or recapitalizations that are covered by Sections 2.1 and 2.2 above), the Warrant Price in effect immediately after each such issuance shall forthwith, except as provided herein, be adjusted to a price equal to the quotient obtained by multiplying such Warrant Price by a fraction (I) the numerator of which shall be (x) the number of shares of common stock outstanding at the close of business on the day immediately preceding the date of such issuance or sale, plus (y) the number of shares of common stock which the aggregate consideration received (or by the express provisions hereof shall be deemed to have been received) by the Company for the total number of additional shares of common stock so issued or sold would purchase at such Warrant Price then in effect and (II) the denominator of which shall be the number of shares of common stock outstanding at the close of business on the date of such issuance or sale (after giving effect to such issuance or sale) of the additional shares of common stock. Upon each such adjustment of the Warrant Price under this Section 2.3, the number of Shares shall be adjusted to the number of Shares determined by multiplying the Warrant Price in effect immediately prior to such adjustment by the number of Shares acquirable upon exercise of this Warrant immediately prior to such adjustment and dividing the product thereof by the Warrant Price resulting from such adjustment. For the purposes of any adjustment of the Warrant Price pursuant to this Section 2.3, the following provisions shall be applicable:

(a) The number of shares of common stock outstanding shall include, in addition to the number of shares of common stock actually outstanding, (I) the number of shares of common stock into which the then outstanding shares of each series of the Company's convertible preferred stock could be converted if fully converted on the day immediately preceding the issuance or sale or deemed issuance or sale of the additional shares of common stock; and (II) the number of shares of common stock which would be obtained through the exercise or conversion of all rights, options and convertible securities outstanding on the day immediately preceding the issuance or sale or deemed issuance or sale of the additional shares of common stock.

(b) In the case of the issuance of common stock for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any discounts or commission paid or incurred by the Company in connection with the issuance and sale thereof.

(c) In the case of the issuance of common stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors of the Company, in accordance with generally accepted accounting treatment; provided, however, that if, at the time of such determination, the Company's common stock is traded on a Trading Market, such fair market value per share of common stock as determined by the Board of Directors of the Company shall not exceed (i) if the shares of common stock are then traded on a securities exchange, the average of the closing prices of the common stock on such exchange over the 20 trading day period ending three (3) business days prior to such determination or (ii) if the shares of common stock are then traded over-the-counter, the average of the closing bid prices over the 30-day period ending three (3) business days prior to such determination; provided, however, that if such prices are not available for the period required, such fair market value shall be determined in good faith by the Board of Directors of the Company.

(d) In the case of the issuance of (i) options to purchase or rights to subscribe for common stock (directly or indirectly), (ii) securities by their terms convertible into or exchangeable for common stock (directly or indirectly), or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(1) the aggregate maximum number of shares of common stock deliverable upon exercise of such options to purchase or rights to subscribe for common stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 2.3(b) and 2.3(c) above), if any, received by the Company upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the common stock covered thereby;

(2) the aggregate maximum number of shares of common stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Company for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional minimum consideration, if any, to be received by the Company upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 2.3(b) and 2.3(c) above);

(3) on any change in the number of shares of common stock deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, other than a change resulting from the anti-dilution provisions of options, rights or securities, the Warrant Price shall forthwith be readjusted to such Warrant Price as would have been obtained had the adjustment made upon (x) the issuance of such options, rights or securities not exercised, converted or exchange prior to such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Warrant Price shall forthwith be readjusted to such Warrant Price as would have been obtained had the adjustment made upon the issuance of such options or rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of common stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

2.4 Minimal Adjustments. No adjustment in the Warrant Price need be made if such adjustment would result in a change in the Warrant Price of less than $0.001. Any adjustment of less than $0.001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of $0.001 or more in the Warrant Price.

2.5 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time (not less than ten (10) Business Days after the effectiveness of such adjustment) setting forth the adjustments to the Warrant Price, Class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

3. Representations and Covenants of the Company.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, Holder as follows:

(a) All Shares issuable upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class and other securities as will be sufficient to permit the exercise in full of this Warrant and, if applicable, the conversion of the Shares into common stock or such other securities.

(b) The Company's capitalization table attached hereto as Schedule 1 is true and complete, in all material respects, as of the Issue Date.

(c) This Warrant and the Shares issuable upon the exercise of this Warrant constitute "Excluded Securities" as such term is defined in the Company's Eighth Amended and Restated Stockholders' Agreement dated as of October 18, 2013, as amended by the First Amendment to Eighth Amended and Restated Stockholders' Agreement dated December 20, 2013 and the Second Amendment to Eighth Amended and Restated Stockholders' Agreement dated December 30, 2013 (as amended, the "Stockholders' Agreement").

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or securities into which the Class is convertible, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to holders of the outstanding shares of the Class or securities into which the Class is convertible any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights in which the Holder has no right to participate);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class or securities into which the Class is convertible; or

(d) effect an Acquisition (as defined below) or to liquidate, dissolve or wind up;

then, in connection with each such event, the Company shall give Holder:

(1) at least seven (7) Business Days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights

(and specifying the date on which holders of outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); provided that if a combination under (c) above takes place in connection with the Company's initial public offering, it shall be sufficient to provide in the notice that such combination will take place immediately prior to the effectiveness or closing of the initial public offering, as the case may be, even if the precise date for such event is not known at such time.

The Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

3.3 Registration Rights. The Shares (or if the Shares are a Class other than common stock, the shares of common stock into which the Shares are convertible) shall be "Registrable Securities" (as such term is defined in the Stockholders' Agreement) and Holder shall have the rights and obligations of a "Holder" under Section 2 of the Stockholders' Agreement.

3.4 Joinder to Stockholders' Agreement.

(a) Simultaneously with the execution of this Warrant, the Holder shall execute and deliver to the Company a joinder to the Stockholders' Agreement, thereby agreeing (subject to Section 3.5(b) below) to be bound by all obligations and receive all rights to the Stockholders' Agreement, to be held in escrow until the exercise of this Warrant. All shares of common stock issued upon exercise of this Warrant shall include any legends required under the Stockholders' Agreement.

(b) Notwithstanding Section 3.4(a) above, in addition to the limitations and protections currently set forth in the last sentence of Section 7.1 of the Stockholders' Agreement, in no event shall Holder be required to enter into a release of claims in connection with an "Approved Sale" in Holder's capacity as a lender or lender's agent to the Company or any parent or subsidiary of the Company.

3.5 Information Rights. So long as the Holder holds this Warrant and/or any of the Shares, the Company shall deliver to the Holder (a) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company and (b) within thirty (30) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements, provided the Company need not provide such information for any period in which the Company has filed a periodic report on Form 10-K or Form 10-Q (as applicable) with the Securities and Exchange Commission.

3.6 Listing of Shares. If shares or other securities of the Class are listed on any Trading Market at, or at any time after, the time this Warrant is exercised, the Company shall use commercially reasonable efforts to cause the Shares (or any securities issued upon conversion of the Shares, if applicable), upon such exercise, to be listed on such Trading Market.

3.7 Expenses and Taxes; Liabilities. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery of Shares upon exercise of this Warrant; provided that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of Shares to any person other than the Holder. Nothing contained in this Warrant shall be construed as imposing any liabilities on Holder to purchase any securities of the Company (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

4. Representations and Warranties of Holder.

Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

4.6 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

5. Miscellaneous.

5.1 Term and Automatic Conversion.

(a) Term. Subject to the vesting provisions of this Warrant and the provisions of this Section 5, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific Time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) that have vested in accordance with the provisions of this Warrant for which it shall not previously have been exercised, and the Company shall, if requested by Holder, within a reasonable time (not to exceed ten (10) Business Days), deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

(c) Acquisitions. For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction. In the event of an Acquisition in which the consideration is solely cash and/or marketable securities, then this Warrant, notwithstanding the provisions of Section 3.2 hereof and subject to the vesting provisions of this Warrant, shall be deemed exercised in accordance with the provisions of Section 1.2 immediately prior to the closing of the Acquisition; otherwise, this Warrant shall terminate.

5.2 Legends. The Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if applicable) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Section 5.3 of this Warrant, the initial Holder and each subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if applicable) to any transferee, provided, however, in connection with any such transfer, the initial Holder or any subsequent Holder, as applicable, will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if less than the entire Warrant is transferred); and provided further, that any subsequent Holder shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

5.5 Notices. All notices and other communications hereunder from the Company to Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

c/o Fifth Street Finance Corp.
White Plains Plaza
10 Bank Street, 12th Floor
White Plains, New York 10606
Attn: General Counsel
Fax: (914) 328-4214

With a copy to: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-1931
Attn: William F. Meehan, Esq.
Fax: (714) 546-9035
Email: wmeehan@rutan.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Five9, Inc.
Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, Ca 94583
Attn: David Hill
Facsimile: (925) 397-3460
Email: dhill@five9.com

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

Jones Day
1755 Embarcadero Road
Palo Alto, California 94303
Attn: Timothy R. Curry, Esq. and
Ruben A. Garcia, Esq.
Fax: (650) 739-3900
Email: tcurry@jonesday.com
rgarcia@jonesday.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought; provided, however, notwithstanding any other provision of this Warrant, the provisions of Section 2.3 of this Warrant will be deemed changed, waived, discharged or terminated, as applicable, if the holders of the Company's preferred stock change, waive, discharge or terminate (either generally or in a particular instance and either retroactively or prospectively) the provisions of Article IV(A)4(e) of the Certificate of Incorporation to the same extent as such change, waiver, discharge or termination and in a comparable manner.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature

page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

5.10 "Market Stand-Off" Agreement. The Holder shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any common stock (or other securities) of the Company held by the Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Registration (as defined in the Stockholders' Agreement) (or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto); provided, however, that all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities are bound by and have entered into similar agreements. In order to enforce the foregoing, the Company may impose stop-transfer instructions with respect to the Registrable Securities of the Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

5.11 Submission to Jurisdiction. THE COMPANY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN NEW YORK COUNTY, NEW YORK OR WESTCHESTER COUNTY, NEW YORK AND IRREVOCABLY AGREE THAT, SUBJECT TO THE HOLDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS WARRANT SHALL BE LITIGATED IN SUCH COURTS PROVIDED THAT NOTHING IN THIS WARRANT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE HOLDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE COMPANY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. THE COMPANY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON THE COMPANY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE COMPANY, AT THE ADDRESS SET FORTH IN THIS WARRANT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

5.12 Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND THE HOLDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS WARRANT. THE COMPANY AND THE HOLDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE

WAIVER IN ENTERING INTO THIS WARRANT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. THE COMPANY AND THE HOLDER WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

5.13 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.14 Business Days. “Business Day” is any day that is not a Saturday, Sunday or a day on which banking institutions in the city of New York, New York are authorized or obligated by law or executive order to close.

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IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

"COMPANY"

FIVE9, INC.

By: _____
Name: _____
Title: _____

"HOLDER"

By: _____
Name: _____
Title: _____

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase shares of the Common Stock of Five9, Inc. (the "Company") in accordance with the attached Warrant To Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

[ ] check in the amount of $ payable to order of the Company enclosed herewith

[ ] Wire transfer of immediately available funds to the Company's account

[ ] Cashless Exercise pursuant to Section 1.2 of the Warrant

[ ] Other [Describe]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____
Holder's Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

HOLDER:

_____

By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE 1

COMPANY CAPITALIZATION TABLE

Exhibit 10.2

EXECUTIVE EMPLOYMENT AGREEMENT

THIS EXECUTIVE EMPLOYMENT AGREEMENT (this "Agreement"), dated January 1, 2012 ("Effective Date"), is by and among **Five9, Inc.**, a Delaware corporation (the "Company") and **Michael Burkland** ("Burkland"), an individual resident of the State of California.

RECITALS:

WHEREAS, the Company previously engaged Burkland to provide consulting services to it through MJB Associates, Inc. ("MJB Associates");

WHEREAS, the Company desires to directly employ Burkland as its Chief Executive Officer and President during the Term (as defined below), and upon and subject to the terms provided herein;

WHEREAS, Burkland desires to provide such services to the Company;

WHEREAS, Burkland and the Company intend for this Agreement to govern the employment relationship between the parties from and after the Effective Date and supersedes the Consulting Agreement and all previous agreements, term sheets and negotiations with respect to the consulting or employment relationship between the parties; and

NOW, THEREFORE, in consideration of the premises, the parties hereto covenant and agree as follows:

SECTION 1. Term and Payment.

(a) Term of Employment. The initial term of this Agreement shall be for a period of (i) one (1) year after the Effective Date of this Agreement ("Initial Term"); or (ii) the date upon which Burkland's employment is terminated in accordance with Section 5. This Agreement shall be automatically renewed for additional one (1) year terms (each an "Extension Term") upon the expiration of the Initial Term and each Extension Term, unless either party gives the other party a written notice of termination not less than thirty (30) days prior to the date of expiration of the Initial Term or any Extension Term ("Termination Notice") (together, the Initial Term and all Extension Terms are referred to herein as the "Term"). Where the Agreement is terminated in accordance with Section 5 or upon Termination Notice, the Company shall pay to Burkland all compensation to which Burkland is entitled up through the effective date of termination according to its normal payroll practices, and any compensation due to Burkland pursuant to Section 6.

(b) Base Salary. In consideration of the services to be rendered under this Agreement by Burkland, the Company shall pay Burkland a gross salary at the rate of Three Hundred and Forty One Thousand, Two Hundred and Fifty Dollars ($341,250.00) per year, less applicable withholdings ("Base Salary"). The Base Salary shall be paid in accordance with the Company's normal payroll practices. Burkland's Base Salary will be reviewed from time to time in accordance with the established procedures of the Company for adjusting salaries for similarly situated employees and may be increased (but not reduced) in the sole discretion of the Company.

(c) Bonus. For each calendar year during the Term (commencing with 2012) Burkland shall be eligible to earn a bonus (the "Bonus"). The target amount of the aggregate Bonus payable for each year shall be determined by the Board each year (the "Target Bonus"), with the actual Bonus amount for each year to be determined in accordance with the following provisions, and the Target Bonus for 2012 shall be One Hundred and Eighty Three Thousand, Seven Hundred and Fifty Dollars ($183,750.00).

The Board, in consultation with Burkland, will establish, and document the Quarterly Performance Goals for the first, second, third and fourth quarters of 2012 and the Annual Goals for 2012 by no later than sixty (60) days after the Effective Date. Subsequent Performance Goals will be established in advance of the applicable performance period by the Board, in consultation with Burkland. The Board shall determine in good faith the amount of any Quarterly Bonus or Annual Bonus payable to Burkland pursuant to this Section 1(c) within thirty (30) days after the end of the quarter or year, as applicable, and the Company shall pay such amount as the Board shall determine not later than the last day of the second month following such quarter or year. Notwithstanding the foregoing, no portion of any Bonus shall be payable hereunder with respect to a particular quarter or year unless the Term and the Services of Burkland hereunder continue in effect through the last day of such quarter or year, as applicable.

(d) Stock Option Grant. The Company has previously granted Burkland a nonqualified stock option to purchase a number of shares of the Company's common stock pursuant to the Consulting Agreement between the parties and one or more additional grants in connection with Burkland's service to the Company (the "Options"). During the Term, the Options shall continue to vest according to the terms and conditions of such Options and the Company's Equity Incentive Plan. In the event that the Term is terminated under the circumstances described in Sections 6(a), 6(b), 6(d) or 6(e) below, and notwithstanding any contrary provision set forth in the Company's Equity Incentive Plan or any agreements evidencing such Options, Burkland shall have two (2) years after the date of the termination of Burkland's employment in which to exercise the Options (subject to earlier termination on the expiration date of the Options, or in connection with a change in control of the Company in which the successor corporation refuses to assume or replace the stock option as described in the Company's Equity Incentive Plan).

SECTION 2. Office and Duties.

(a) Chief Executive Officer and President. Burkland shall have the usual duties of the role of Chief Executive Officer ("CEO") and President of the Company, including, without limitation, managing the day-to-day business of the Company, developing the Company's strategic direction, business plans, and financing and capitalization opportunities, supervising the Company's executives, communicating with the Board and the Company's stockholders, and evaluating, negotiating, and executing significant business transactions on behalf of the Company, as well as such other duties as may be assigned to Burkland from time to time by the Board. Burkland shall report to the Board.

(b) Exclusivity. Burkland agrees, during the Term to (i) devote as much time and effort as reasonably necessary for the performance of his responsibilities under this Agreement, (ii) refrain from engaging in services of any kind (whether as an employee, independent contractor, owner, director, partner, advisor or in any other capacity) on behalf of a business that, as determined by the Board in its reasonable discretion, directly competes with the Company (or any of its subsidiaries or affiliates), and (iii) refrain from providing services of any kind or engage in any other business activity that would materially interfere with the performance of the duties of Burkland under this Agreement. Burkland's service on the boards of directors (or similar body) of other business entities, or the provision of other services thereto, is subject to the prior written approval of the Board, which shall not be unreasonably withheld. The Company shall have the right to require Burkland to resign from any board or similar body on which he may then serve if the Board reasonably determines that Burkland's service on such board or body interferes with the effective discharge of Burkland's duties and responsibilities to the Company or that any business related to such service is then in competition with any business of the Company or any of its affiliates, successors or assigns.

(c) Board Membership. Burkland shall serve as a member of the Board during the Term of this Agreement, and may be asked to serve as a director of one or more subsidiaries or affiliates of the Company. Upon the termination of Burkland's employment or the Term for any reason, Burkland shall be deemed to have resigned from the Board and from all other positions as an officer or director of any of the Company's subsidiaries or affiliates.

SECTION 3. Expenses. Burkland shall be entitled to reimbursement for reasonable travel expenses and other expenses incurred by Burkland in connection with Burkland's performance of his duties hereunder upon receipt of expense reports therefor in accordance with such reasonable procedures as the Company has heretofore or may hereafter establish.

SECTION 4. Benefits. Burkland will be entitled to participate in pension, profit sharing and other retirement plans, incentive compensation plans, vacation policies, group health, hospitalization and disability or other insurance plans, and other employee welfare benefit plans generally made available to other similarly-situated employees of the Company, in accordance with the benefit plans established by the Company, and as may be amended from time to time in the Company's sole discretion.

SECTION 5. At-Will Employment. The employment of Burkland shall be "at-will" at all times. The Company or Burkland may terminate Burkland's employment with the Company at any time, without any advance notice, for any reason or no reason at all, notwithstanding anything to the contrary contained in this Agreement or arising from any statements, policies or practices of the Company relating to the employment, discipline or termination of its employees. Following the termination of Burkland's employment, the Company shall pay to Burkland all compensation to which Burkland is entitled up through the date of termination, including Base Salary, Bonus and unreimbursed expenses. Thereafter, all obligations of the Company under this Agreement shall cease, other than those set forth in Section 6 and any other written agreements between Burkland and the Company.

SECTION 6. Company Termination Obligations.

(a) Death. Burkland's employment and the Term shall automatically terminate upon the death of Burkland and upon such event, Burkland's heirs shall be entitled to receive the amounts specified in Section 5 above. All other obligations of the Company under this Agreement shall cease, other than those set forth in Section 1(d) and any other written agreements between Burkland and the Company.

(b) Disability. Where the Company terminates Burkland's employment, the Term, including by a Termination Notice, because Burkland is unable to perform the essential duties required of Burkland, even taking into account reasonable accommodations that do not impose an undue burden on the Company, due to Burkland's illness, incapacity, or physical or mental disability for one or more periods totaling one hundred and twenty (120) days in the aggregate during any consecutive twelve (12) month period ("Disability"), the Company shall be required to pay Burkland the amounts specified in Section 5 above. All other obligations of the Company under this Agreement shall cease, other than those set forth in Section 1(d) any and other written agreements between Burkland and the Company.

(c) Termination by the Company for Cause. Where the Company terminates Burkland's employment or the Term, including by a Termination Notice, for Cause (as hereinafter defined), all obligations of the Company under this Agreement shall cease, other than those set forth in Sections 1(d) and 5 above and any other written agreements between Burkland and the Company. The Company may terminate Burkland's employment for Cause (as hereinafter defined), provided that it delivers a written notice to Burkland pursuant to a determination by the Board that Cause for such termination exists, which notice shall specifically set forth the nature of the Cause which is the reason for such termination. As used in this Agreement, "Cause" shall mean (i) fraud, embezzlement, willful misconduct; or a material violation of law engaged in by Burkland that is materially detrimental to the Company or any of its affiliates; (ii) Burkland's gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere by Burkland for a felony or a crime of moral turpitude that causes material harm to the Company's reputation; or (iv) a material breach by Burkland of any provision of this Agreement, any of the provisions of the Agreement Regarding Confidential Information, Intellectual Property, and Non-Solicitation between the parties ("Confidential Information Agreement"), or any provision of the Company's Code of Conduct that is applicable to the Company's employees; provided, if a cure is reasonably possible in the circumstances, that at least 15 days advance written notice of such breach has been provided to Burkland (which notice shall specifically set forth the nature of such breach), and Burkland fails to cure such breach within such 15-day period.

(d) Termination By the Company Without Cause or By Burkland For Good Reason. Where the Company terminates Burkland's employment or the Term, including by a Termination Notice, without Cause (other than by reason of Burkland's death or Disability), or Burkland terminates his employment or the Term, including by a Termination Notice, for Good Reason (as defined below), then in addition to the amounts specified in Section 5 and the extended option exercise period provided under Section 1(d), the Company shall pay to Burkland an amount equal to one (1) times the Base Salary as in effect on the date of such termination (the

"Termination Payment"). The Termination Payment shall be paid to Burkland in equal monthly installments on the last day of each of the twelve (12) calendar months following the calendar month in which Burkland's Separation from Service (as defined below) occurs; provided, however, that no such installment payment shall be paid to Burkland prior to the date that is sixty (60) days immediately following the date of Burkland's Separation from Service and any installment payment that otherwise would have been paid during such sixty (60) day period shall instead be paid with the first monthly installment payment that Burkland receives pursuant to the terms of this Section 6(d) following the end of such sixty (60) day period. The Termination Payment, if any, is contingent upon, and is, among other things, partial consideration for, Burkland (i) complying with the provisions of Sections 7 and 8 hereto, (ii) signing, delivering and not rescinding or revoking a general release of any and all known and unknown claims against the Company and its affiliates (including with respect to each of their respective directors, officers, employees, shareholders, agents and representatives), in a form reasonably acceptable to the Company and Burkland, with such release becoming effective within sixty (60) days following the date of Burkland's Separation from Service, and (iii) remaining available for a period of sixty (60) days after such termination to provide consulting services as reasonably requested by the Board. The payment of the Termination Payment and any payments pursuant to Section 5 shall be in lieu of any other payments, benefits, incentive compensation or other consideration to Burkland upon termination of Burkland's employment or the Term, including by a Termination Notice. All other obligations of the Company under this Agreement shall cease, other than those set forth in any other written agreements between Burkland and the Company.

For purposes of this Agreement, "Good Reason" shall mean a material default by the Company in the performance of its obligations hereunder, provided such default shall not have been corrected by the Company within 30 days of receipt by the Company of written notice from Burkland of the occurrence of such default, which notice shall specifically set forth the nature of such default. Material default under this Agreement shall include, without limitation, (i) the assignment to Burkland of any duties inconsistent (except in the nature of a promotion) with Burkland's position as CEO and President of the Company or a material adverse alteration in the nature or status of Burkland's responsibilities or the conditions of Burkland's engagement, (ii) the Company's failure to pay any of the compensation that has become due and payable to Burkland hereunder, and (iii) a relocation by the Company of Burkland's principal office more than thirty-five (35) miles from San Ramon, California that occurs without Burkland's prior written consent.

For purposes of this Agreement, a "Separation from Service" occurs when Burkland dies, retires, or otherwise has a termination of services with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-l(h)(1), without regard to the optional alternative definitions available thereunder.

(e) Change in Control. If a Change in Control of the Company (as defined below) occurs and more than fifty percent (50%) of any option granted to Burkland by the Company prior to such date is then outstanding and unvested, the vesting of that option shall accelerate such that (after giving effect to such acceleration and taking into account any portion of that option that had theretofore become vested and exercisable), that option shall have become vested and exercisable as of the Change in Control date with respect to fifty percent (50%) of the

total number of shares subject to that option. In addition, if the Company or its successor terminates Burkland's employment or the Term, including by a Termination Notice, other than for Cause (and other than by reason of Burkland's death or Disability) or Burkland resigns due to Good Reason at any time within a period of twelve (12) months following a Change in Control of the Company, then (i) any option granted to Burkland by the Company , to the extent outstanding and unvested (after giving effect to the accelerated vesting contemplated by the first sentence of this Section 6(e)), shall immediately become vested and exercisable with respect to fifty percent (50%) of the shares covered by the then-outstanding and unvested portion of that option, and (ii) the Company shall pay Burkland the Termination Payment in accordance with and subject to the provisions of Section 6(d). Any portion of any option granted to Burkland by the Company that is not vested after giving effect to the foregoing clauses shall terminate as of the date of such termination of Burkland's employment, the Term, including by a Termination Notice.

For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following on or after the Effective Date:

(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company),

(ii) a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger will, immediately after such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

(f) Section 409A. If Burkland is a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of his Separation from Service, he shall not be entitled to any payment of the Termination Payment until the earlier of (i) the date which is six (6) months after his Separation from Service for any reason other than death, or (ii) the date of his death. The provisions of this Section 6(f) shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the U.S. Internal Revenue Code. Any amounts otherwise payable to Burkland upon or in the six (6) month period following his Separation from Service that are not so paid by reason of this Section 6(f) shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after Burkland's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of his death).

SECTION 7. Burkland Termination Obligations.

(a) Return of Property. Burkland agrees that all property (including without limitation all equipment, tangible proprietary information, documents, records, notes, contracts and computer-generated materials) furnished to or created or prepared by Burkland incident to Burkland's employment belongs to the Company and shall be promptly returned to the Company upon termination of Burkland's employment or the Term for any reason.

(b) Litigation/Audit Cooperation. Following the termination of Burkland's employment or the Term for any reason, Burkland shall reasonably cooperate with the Company and/or any of its affiliates in connection with (a) any internal or governmental investigation or administrative, regulatory, arbitral or judicial proceeding involving the Company or any of its affiliates with respect to matters relating to the services provided by Burkland as a consultant, employee, officer, or director of the Company or its affiliates (collectively, "Litigation") or (b) for a two year period following the Termination Date, any audit of the financial statements of the Company or any of its affiliates ("Audit"). Burkland acknowledges that such cooperation may include, but shall not be limited to, Burkland making himself available to the Company or any of its affiliates (or their respective attorneys or auditors) upon reasonable notice for: (i) interviews, factual investigations, and providing declarations or affidavits that provide truthful information in connection with any Litigation or Audit; (ii) appearing at the request of the Company or any of its affiliates to give testimony without requiring service of a subpoena or other legal process; (iii) volunteering to the Company or any member of the Company Group pertinent information related to any Litigation or Audit; (iv) providing information and legal representations to the auditors of the Company or any of its affiliates, in a form and within a timeframe requested by the Board, with respect to the Company's or any of its affiliates' opening balance sheet valuation of intangibles and financial statements for the period in which MJB Associates or Burkland was engaged as a consultant, employee, officer or director to the Company or any of its affiliates; and (v) turning over to the Company or any of its affiliates any documents relevant to any Litigation or Audit that are or may come into the possession of MJB Associates or Burkland. The Company shall reimburse Burkland for reasonable expenses incurred in connection with providing the services under this Section 7(b), including lodging and meals, upon the submission of receipts by Burkland. The Company shall also compensate Burkland for each hour that he provides cooperation in connection with this Section 7(b) at an hourly rate equal to the Base Salary divided 12 divided by 175. Burkland shall submit invoices for any month in which he performs services pursuant to this Section 7(b) that details the amount of time and a description of the services rendered for each separate day that Burkland performed such services. The Company shall reimburse Burkland for such services rendered within fifteen (15) days of receiving such invoice.

(c) Continuing Obligations. Burkland understands and agrees that Burkland's obligations under Sections 7 and 8 herein (including Exhibit A) shall survive the termination of Burkland's employment for any reason and the termination of this Agreement.

SECTION 8. Confidential Information Agreement. Burkland agrees to sign and be bound by the terms of the Confidential Information Agreement, which is attached as Exhibit A.

SECTION 9. Representations and Warranties.

(a) Burkland represents and warrants to the Company that Burkland: (i) is not under any obligation, contract, agreement or understanding with any entity, firm, corporation or person which would restrict or prevent Burkland from rendering any services hereunder, assuming the obligations as herein provided and granting the rights granted hereunder; and (ii) does not have any other interest which would restrict, prevent, limit or impair, in any way, the Company from enjoying the full right to such services and the rights as herein provided or which is in any way inconsistent or in conflict with this Agreement. Burkland represents and warrants

to the Company that Burkland: (x) has the full right and authority to enter into this Agreement and render the services to the Company hereunder, (y) has the right and unrestricted ability to assign the Inventions to the Company as set forth in the Confidential Information Agreement (including, without limitation, the right to assign any Inventions created by their employees or contractors), and (z) shall not cause the Inventions to infringe upon any proprietary right of any person, whether contractual, statutory or under common law.

(b) All of Burkland's representations and warranties shall be true and correct upon execution hereof and shall survive for so long as Company has any rights under or in connection with this Agreement.

(c) The Company shall not seek any information from Burkland, the disclosure of which would violate any confidentiality agreements between Burkland and any of his previous employers. The Company shall indemnify and hold Burkland harmless from and against any and all liabilities, judgments, losses, claims, demands, damages, penalties, interest, costs and expenses of every kind whatsoever (including without limitation, reasonable attorneys' and accountants' fees and disbursements) suffered or incurred by either of them as a result or by reason of any breach or alleged breach by Burkland of his obligations under any such confidentiality agreements to the extent such breach or alleged breach is based on disclosure of confidential information by Burkland to the Company or any of its affiliates, provided, however, that Burkland does not engage in an intentional breach of any such confidentiality agreements and nothing in this Section 9(c) is intended to supersede the representations, warranties and covenants in Sections 9(a) and 9(b).

SECTION 10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or three (3) days after mailing if mailed by first-class, registered or certified mail, postage prepaid, addressed (a) if to Burkland, to the attention of Mike Burkland, , or to such other person(s) or address(es) as Burkland shall have furnished to the Company in writing; and (b) if to the Company, to the attention of the Board of Directors, Five9, Inc., 4000 Executive Parkway, Suite 400, San Ramon, California 94583, with a copy to Tim Curry, Esq., Jones Day, 1755 Embarcadero Road, Palo Alto, California 94303, or to such other person(s) or address(es) as the Company shall have furnished to Burkland in writing.

SECTION 11. Assignability. In the event that the Company shall be merged with, or consolidated into, any other corporation, or in the event that it shall sell and transfer substantially all of its assets to another corporation, the terms of this Agreement shall inure to the benefit of, and be assumed by, the corporation resulting from such merger or consolidation, or to which the Company's assets shall be sold and transferred.

SECTION 12. Entire Agreement. This Agreement, together with any agreement that evidences the Options and the Confidential Information Agreement, contains the entire agreement between the Company and Burkland with respect to the subject matter hereof. This Agreement cancels and supersedes any and all prior oral or written agreements between the Company and either MJB Associates or Burkland or both which relate to the subject matter of this Agreement. In the event of any inconsistency between this Agreement and agreements evidencing any Options, this Agreement shall control.

SECTION 13. Expenses. Each party shall pay its own expenses incident to the negotiation, execution, performance or enforcement of this Agreement, including all fees and expenses of its counsel for all such activities, except us otherwise herein specifically provided.

SECTION 14. Equitable Relief. Burkland recognizes and agrees that the Company's remedy at law for any breach of the provisions of Sections 7 and 8 hereof would be inadequate, and agrees that for breach of such provisions, the Company shall, in addition to such other remedies as may be available to it at law or in equity or as provided in this Agreement, be entitled to injunctive relief and to enforce its rights by an action for specific performance to the extent permitted by law.

SECTION 15. Waiver and Amendments. Any waiver, alteration, amendment or modification of any of the terms of this Agreement shall be valid only if made in writing and signed by the parties hereto; provided, however, that any such waiver, alteration, amendment or modification on the Company's behalf will not be effective unless authorized by the Board. No waiver by either of the parties hereto of their rights hereunder shall be deemed to constitute a waiver with respect to any subsequent occurrences or transactions hereunder unless such waiver specifically states that it is to be construed as a continuing waiver.

SECTION 16. Severability. If any provision of this Agreement shall be held or deemed to be, or shall in fact be, invalid, inoperative or unenforceable as applied to any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because of the conflicting of any provision with any constitution or statute or rule of public policy or for any other reason, such circumstance shall not have the effect of rendering the provision or provisions in question, invalid, inoperative or unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted in such jurisdiction or in such ease.

SECTION 17. Dispute Resolution. Any controversy arising out of or relating to the employment of Burkland hereunder , any termination of the Term, this Agreement, any agreement evidencing any stock option granted by the Company to Burkland, the enforcement or interpretation of any of such agreements, or because of an alleged breach, default, or misrepresentation in connection with any of the provisions of any such agreement, including (without limitation) any state or federal statutory claims, shall be submitted to arbitration in Santa Clara County, California, before a sole arbitrator selected from the American Arbitration Association or its successor ("AAA"), or if AAA is no longer able to supply the arbitrator, such arbitrator shall be selected from Judicial Arbitration and Mediation Services, Inc.; provided, however, that provisional injunctive relief may, but need not, be sought in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. The arbitration shall be administered by AAA pursuant to Employment Arbitration Rules. Judgment on the award may be entered in any court having jurisdiction.

The parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with any of the matters referenced in the first sentence of the first paragraph of this Section 17.

The parties agree that in any proceeding with respect to such matters, the prevailing party will be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party (other than forum costs associated with the arbitration which in any event shall be paid by the Company).

Without limiting the remedies available to the parties and notwithstanding the foregoing provisions of this Section 17, the parties acknowledge that any breach of any of the covenants or provisions contained in Sections 7 and/or 8 of this Agreement could result in irreparable injury to either of the parties hereto for which there might be no adequate remedy at law, and that, in the event of such a breach or threat thereof, the non-breaching party shall be entitled to obtain a temporary restraining order and/or a preliminary injunction and a permanent injunction restraining the other party hereto from engaging in any activities prohibited by any covenant or provision in Sections 7 and/or 8 of this Agreement or such other equitable relief as may be required to enforce specifically any of such covenants or provisions.

SECTION 18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or providing any provision of this Agreement, it shall not be necessary to product more than one of such counterparts. Signature pages hereto may be delivered by facsimile or PDF and shall have the same force and effect as an original.

SECTION 19. Section Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

SECTION 20. Gender. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

SECTION 21. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive law of the State of California without regard to its principles of conflicts of laws.

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement as of the date first above Written.

FIVE9, INC.

By: /s/ Mitchell Kertzman
Name: Mitchell Kertzman
Title: Director

MICHAEL BURKLAND

/s/ Michael Burkland
Mike Burkland

EXHIBIT A

AGREEMENT REGARDING CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY NON-SOLICITATION

five9
Call Centers On-Demand

Employee Name: Michael Burkland

AGREEMENT REGARDING CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY NON-SOLICITATION

In consideration of my employment or continued employment by Five 9, Inc., a Delaware corporation, or any parent division, subsidiary, affiliate, successor or assignee thereof (collectively, the "Company"), and the compensation and benefits paid to me from time to time by the Company, I agree as follows:

1. *Competitive Employment.* While I am employed by the Company, I agree that, other than for the Company, I will not, either directly or indirectly, either as a principal, agent, employee, employer, partner or shareholder (other than as an owner of 2% or less of the stock of a public corporation) or in any other capacity, engage in any manner in the business conducted by the Company or any of its divisions, subsidiaries or affiliates.

2. *Definition of Confidential Information.* I realize that my position with the Company creates a relationship of high trust and confidence with respect to Confidential Information owned by the Company, its clients or suppliers that may be learned or developed by me while employed by the Company. I further acknowledge that my access to such Confidential Information is contingent upon my execution of this Agreement. For purposes of this Agreement, "Confidential Information" includes all information that the Company desires to protect and keep confidential or that the Company is obligated to third parties to keep confidential, including but not limited to "Trade Secrets" to the full extent of the definition of that term under California law. It does not include "general skills, knowledge and experience" as those terms are defined under California law.

3. *Examples of Confidential Information.* Confidential Information includes, but is not limited to: computer programs; unpatented inventions, discoveries and improvements; marketing, manufacturing, organizational, operating and business plans; strategic models; research and development; the Company policies and manuals; sales forecasts; personnel information (including the identity of the Company employees, their responsibilities, competence and abilities, and compensation); medical information about employees; pricing and nonpublic financial information; current and prospective client lists and information on clients or their employees; information concerning planned or pending acquisitions or divestitures; and information concerning purchases of major equipment or property.

4. *General Skills, Knowledge and Experience.* If I leave the Company, I may take with me and use the general skills, knowledge and experience that I have learned or developed in my position or positions with the Company or others.

5. *Confidentiality Obligations*. During and after my employment with the Company, I will not (a) disclose, directly or indirectly, any Confidential Information to anyone outside of the Company or to any employees of the Company not authorized to receive such information or (b) use any Confidential Information other than as may be necessary to perform my duties at the Company. In no event will I disclose any Confidential Information to, or use any Confidential Information for the benefit of, any current or future competitor, supplier or client of the Company, whether on behalf of myself, any subsequent employer, or any other person or entity.

6. *Duration*. With respect to Trade Secrets, my obligations under paragraph 5 shall continue indefinitely or until such Trade Secret information has been made available generally to the public either by the Company or by a third party with the Company's consent or is otherwise not considered a Trade Secret under California law. With respect to Confidential Information which is not a Trade Secret (herein referred to as "Proprietary Information"), my obligations under paragraph 5 shall continue in duration until the first to occur of the following: (a) five (5) years has elapsed since termination of my employment with the Company for any reason, or (b) the Proprietary Information has been made available generally to the public either by the Company or by a third party with the Company's consent.

7. *Geographic Scope.* I understand that the Company has sales and operations facilities throughout the United States and in a number of foreign countries, that it purchases equipment and materials from suppliers located throughout the world, and that it expects to expand the scope of its international activities in the future. I therefore agree that my obligations under paragraph 5 shall extend worldwide.

8. *Former Employers.* I acknowledge that the Company expects me to respect and safeguard the trade secrets and confidential information of my former employers. I have not and will not disclose to the Company, use in the Company's business, or cause the Company to use, any information or material that is confidential to any former employer, unless such information is no longer confidential or the Company or I have obtained the written consent of such former employer to do *so.*

9. *Return of Property.* Upon termination of my employment with the Company or upon the Company's request, I will deliver to the Company all the Company's property in my possession, including notebooks, reports, manuals, programming data, listings and materials, engineering or patent drawings, patent applications, any other documents, file or materials which contain, mention or relate to Confidential Information, and all copies and summaries of such material whether in human- or machine-readable-only form, that I may have or that may come into my custody while employed by the Company.

10. *Restrictive Covenants*.

    (a) Non-Solicitation of Employees. While employed by the Company and for a period of twelve (12) months from the date of termination of my employment with the Company for any reason, I shall not directly or indirectly solicit, induce or encourage any the Company employee(s) to terminate their employment with the Company or to accept employment with any competitor, supplier or client of the Company, nor shall I cooperate with any others in doing or attempting to do so. As used herein, the term "solicit, induce or encourage" includes, but is not limited to, (i) initiating communications with a Company employee relating to possible employment, (ii) offering bonuses or additional compensation to encourage the Company's employees to terminate their employment with the Company and accept employment with a competitor, supplier or client of the Company, or (iii) referring the Company's employees to personnel or agents employed by competitors, suppliers or clients of the Company.

(b) Non-Solicitation of Customers. For a period of twelve (12) months from the date of termination of my employment with the Company for any reason, I agree that I will not, either directly or indirectly, as a principal, agent, contractor, employee, employer, partner or shareholder (other than as an owner of 2% or less of the stock of a public corporation) or in any other capacity, through the direct or indirect use of the Company's Confidential Information, solicit or engage in the business engaged in by the Company as of the date of termination of my employment ("Five9 Business") with any customer or client which was a customer or client, or a prospective customer or client, of the Company (provided I had responsibilities or duties with respect to, possessed Confidential Information regarding or was involved in the development of such customer or client or prospective customer or client), within the twelve (12) months immediately preceding my termination.

(c) I acknowledge that the restrictions set forth in this paragraph will not prevent me from obtaining gainful employment following termination of my employment with the Company.

(d) In the event that any provision of this paragraph is held to be unreasonable, a court may modify such provision in any manner which results in an enforceable restriction.

11. *Injunctive Relief.* I acknowledge that my violation of the foregoing confidentiality, non- solicitation and non-competition obligations will cause the Company irreparable harm. I agree that the Company is entitled to protection from such violations, including protection by injunctive relief, in addition to other remedies available under the law.

12. *Definition of Developments.* For purposes of this Agreement, "Developments" shall Mean all inventions, discoveries, developments, improvements, works of authorship and computer programs, ideas, concepts, enhancements, writings, graphics, designs, models, artwork, code, routines, compilations and related documentation (collectively, "Developments") that are or have been made, conceived, first reduced to practice or learned by me either solely or jointly with another or others while employed by the Company, including prior to the date hereof, whether or not they are patentable, copyrightable or subject to trade secret protection.

13. *Disclosure of Developments.* I will disclose promptly to the Company all Developments, including, to the extent not already done so, any Development made, conceived, first reduced to practice or learned by me either solely or jointly with another or others both prior to or after the date of this Agreement.

14. *Ownership of Developments.* I agree that, except as otherwise provided in paragraph 16 hereof, all Developments shall be the sole and exclusive property of the Company. Any Development for which copyright protection is available shall be considered a work made for hire. I agree to assign and do hereby assign, convey and transfer to the Company, or to some other legal entity ("Assignee") designated by the Company, all of my right, title and interest

in and to all Developments in all media throughout the world in perpetuity. Without limiting the foregoing, I hereby assign, convey and transfer to the Company or an Assignee all of my right, title and interest in and to any Developments (other than Excluded Developments, as defined below) created prior to this Agreement. I further agree to waive any moral or similar rights to the Developments.

15. *Protection of Developments.* The Company or Assignee shall have the right to use the Developments and obtain Letters Patent, Copyrights (as author or assignee) or other statutory or common law protections for Developments in any and all countries. I will provide the Company or Assignee such assistance as may be requested in order for the Company to obtain or otherwise secure, and from time to time enforce, U.S. or foreign Letters Patent, copyrights or other statutory or common law protections for Developments, including the execution of any and all documents that the Company or Assignee may wish to use or obtain or otherwise secure or enforce such rights, together with any assignments thereof to the Company or Assignee, and to the successors and assigns of the Company or Assignee, transferring all of my right, title and interest in any Development, and the right to apply for or otherwise obtain any such rights. The Company or Assignee shall have the sole right to determine what action, if any, to take with respect to any Development. If I am unavailable for any reason, I hereby appoint the Company, as my agent and attorneys-in-fact, to execute and file any document(s) and to do all other acts to establish the Company's or Assignee's ownership in, and further the prosecution, issuance, enforcement and maintenance of, any Development. All expenses incurred in obtaining and enforcing rights in Developments owned by or assigned to the Company shall be borne by the Company.

16. *Post-Employment Assistance*. If I am no longer employed by the Company, the Company or Assignee shall compensate me at a reasonable rate for time actually spent by me at the request of the Company or Assignee on the assistance referred to in paragraph 14. Such rate shall be determined by the Company and shall be based on my compensation at the time my employment with the Company was terminated. The Company or Assignee shall also reimburse me for pre-approved traveling and personal expenses incurred in complying with such request.

17. *Employee Inventions.* I understand that, as provided by California Labor Code § 2870, the provisions of paragraphs 12, 13 and 14 of this Agreement do not apply to an invention that I develop entirely on my own time and to which all of the following apply: (i) no equipment, supplies, facilities or trade secret information of Company are used, (ii) it is not related to Company's business or Company's actual or demonstrably anticipated research and development, and (iii) it does not result from any work performed by me for Company.

18. *Pre-Existing Developments*. I have identified at the end of this Agreement all Developments that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my employment with the Company and that I desire to exclude from operation of this Agreement ("Excluded Developments"). If there are no Developments listed, I represent that I have made no such Developments. If I incorporate or have prior to the date of this Agreement incorporated any Excluded Developments into any Company product or service or otherwise use or have used an Excluded Development for the Company's benefit as part of my Company employment activities, the Company is hereby granted and shall have a fully paid, nonexclusive, royalty-free, irrevocable, perpetual, worldwide, transferable

and sublicensable license to make, have made, modify, create derivative works, reproduce, use, offer to sell, sell, import and distribute such Excluded Developments (as may be improved or enhanced by or for Company) and any Company product or Company service incorporating such Excluded Developments.

19. *Payments.* With respect to any Development for which the Company seeks to obtain U.S. or foreign Letters Patent, the Company will pay me the sum of Five Hundred Dollars ($500) when I execute an assignment of the Development to the Company, or when I execute the first patent application and assignment covering the Development, whichever occurs first. Divisional or continuation-in-part applications shall be considered to cover separate Developments. The payment of the sum of Five Hundred Dollars ($500) shall relieve the Company of any obligation it may have had to make any further payments to me with respect to such Development. If there are several co-inventors, this sum shall be divided equally between them.

20. *Identification of Authorship.* The Company, its assignees and licensees are not required to designate me as the author of any Developments created as a work made for hire or assigned under this Agreement when any such work is distributed publicly, nor to make any such public distribution or any use thereof.

21. *Subsidiaries and Affiliates.* I understand and agree that this Agreement is executed by the Company on its own behalf and on behalf of each of its subsidiaries and affiliates, that my obligations under this Agreement shall apply equally to each of the Company's subsidiaries and affiliates and that such subsidiaries and affiliates may enforce this Agreement in their own names and if they were parties to this Agreement.

22. *Prior Agreements.* This Agreement supersedes all previous agreements relating to the same subject matter, including the Prior Agreement, except that the provisions of such previous agreements shall remain in effect with respect to any Developments disclosed by me to the Company prior to the date of this Agreement and this Agreement shall modify according to the terms hereof, but not terminate, any license or transfer of rights effected pursuant to such agreements. Any Development made or conceived during the term of such previous agreement but not disclosed until after the date of this Agreement shall be governed by the terms of this Agreement. The terms of this Agreement may only be modified in a writing signed by a senior officer of the Company.

23. *Severability.* If any provisions of this Agreement are held by a court to be void or unenforceable for any reason, the remaining provisions of this Agreement shall continue in full force and effect. If a court is of the opinion that any part of this Agreement is unreasonable, it may modify this Agreement to make it reasonable and enforceable in all respects.

24. *Recovery of Expenses.* I agree to pay to the Company the costs and reasonable attorney's fees by incurred by the Company, if it prevails in enforcing any or all of the terms of this Agreement.

25. *Survival of Obligations.* The provisions of paragraph 2-15 and 17-23 of this Agreement shall survive its termination.

26. *Assignment*.

(a) By the Employee. I understand and agree that my duties and responsibilities under this Agreement are personal in nature and that this Agreement shall not be assigned, transferred or shared by me with any other person or entity without the prior written notification to and written approval of the Company, which approval may be withheld in the sole discretion of the Company.

(b) By the Company. I acknowledge and agree that this Agreement and the rights and obligations of the Company hereunder may be assigned by the Company an affiliate or successor by purchase or otherwise of the Company without my prior written approval, upon notice to me.

27. *Notification of New Employer.* If I leave Company for any reason, I consent to Company notifying my new employer of my rights and obligations under this Agreement.

28. *Governing Law*. This Agreement shall be construed in accordance with laws governing contracts made and to be performed in the State of California without regard to its conflict of laws principles.

/s/ Michael Burkland	4-16-12
EMPLOYEE	Date

FIVE 9, INC.

/s/ Mitchell Kertzman	4-13-12
By: Mitchell Kertzman Title: CEO and President	Date

The following are pre-existing Developments not covered by paragraphs 12-14, in which I have any right, title or interest, and which were conceived or written either wholly or in part by me prior to my employment with the Company, but neither published nor filed in any Patent Office.

DESCRIPTION OF DOCUMENTS AND PATENTS (if applicable)

Title of Document	Date of Document	Name of Witness Document

Cloud Contact Center
Software

February 26, 2014

Barry Zwarenstein

Re: Confirmation of Terms of Employment by Five9, Inc.

Dear Barry:

I am very pleased to confirm the terms of your continuing employment with Five9, Inc., a Delaware corporation (the "***Company***"), in the position of Chief Financial Officer. This letter (the "***Clarifying Letter***") supersedes and replaces in their entirety our original offer letter with you, dated November 15, 2011 (the "***Prior Letter***"), and the Amendment to Offer Letter, dated March 19, 2012 (the "***Amendment to Prior Letter***").

Salary. Your current base salary is $336,095 per year (as adjusted from time to time, your "***Salary***"), less all applicable deductions required by law, which will be payable at the times and in the installments consistent with the Company's then current payroll practice. Your Salary is subject to periodic review and adjustment in accordance with the Company's policies in effect from time to time.

Incentive Compensation; Benefits. You continue to be eligible to participate in the Company's incentive compensation program as applicable to senior executives, currently at a target bonus amount of $128,655 per year. You also continue to be eligible to participate in the health and welfare benefit plans as maintained by the Company for its employees from time to time in accordance with the terms of those programs and plans. The Company reserves the right to change the terms of its programs and plans at any time.

Confidentiality. As an employee of the Company, you have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, you previously signed the Company's standard Agreement Regarding Confidential Information, Intellectual Property, Non-Solicitation (the "***Confidentiality Agreement***"), the terms of which are incorporated by reference herein and continue in full force and effect.

Severance & Accelerated Vesting Benefits. We remind you that employment with the Company is on an at will basis, meaning our employment relationship can be terminated by either of us for any reason, at any time, with or without prior notice and with or without cause. As of the date of this letter, on an involuntary termination of employment, you are eligible to receive the severance

benefits described on Attachment A to this Clarifying Letter. On the successful completion of the initial public offering of the Company's common stock, you will become a participant in the Company's Key Employee Severance Benefit Plan, as a Tier 2 participant, and your rights to severance and accelerated vesting on any termination of employment, whether or not in connection with a change of control of the Company, will be only as set forth in that Key Employee Severance Benefit Plan, and Attachment A will be of no further force or effect.

Section 409A. The Company intends that compensatory payments and benefits to you satisfy, to the greatest extent possible, the exemptions from the application of Section 409A of the Internal Revenue Code provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5), and 1.409A-(b)(9) and will be construed to the greatest extent possible as consistent with those provisions. For purposes of Section 409A and the regulations and other guidance thereunder and any state law of similar effect (collectively, "***Section 409A***"), all compensatory payments made by the Company (whether severance payments or otherwise) will be treated as a right to receive a series of separate payments and will at all times be considered a separate and distinct payment. Any payments and benefits that are not exempt from application of Section 409A will be interpreted and administered so as to comply with the requirements of Section 409A to the greatest extent possible. Therefore, if you are deemed by the Company at the time of your "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to alternative definitions thereunder) to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i), and if payments due to you on a separation from service are deemed to be "deferred compensation," then if delayed commencement of any portion of such payments is required to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, such payments will not be provided to you until the earliest of (a) the expiration of the six month period measured from the date of your separation from service (or, if required under Section 409A, the expiration of the applicable 18 month period), (b) the date of your death or (c) such earlier date as permitted under Section 409A without the imposition of adverse taxation, and on the first business day following the expiration of such applicable Section 409A(a)(2)(B)(i) period, all payments deferred by this paragraph will be paid in a lump sum to you, and any remaining payments due will be paid as originally provided and no interest will be due on any amounts so delayed.

Outside Activities. During your employment, you will continue to devote your best efforts to the performance of your duties to the Company. You may not engage in any activity that creates a conflict of interest with those duties or the Company's business (including any participation in a competitive business). During your employment, and with the prior consent of the Company's Chief Executive Officer, you may serve on the board of directors of up to two companies or organizations, provided no such entity is a competitor of the Company and your service does not materially interfere with your duties to the Company.

Entire Agreement. This Clarifying Letter constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Clarifying Letter, and supersedes any and all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof, including without limitation the Prior Letter and the Amendment to Prior Letter.

Please sign the enclosed copy of this Clarifying Letter in the space indicated and return it to me. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this Clarifying Letter and the attached documents, if any. Should you have anything else that you wish to discuss, please do not hesitate to call me.

We look forward to your continued employment with the Company.

Very truly yours,

/s/ Mike Burkland
Mike Burkland,
President & Chief Executive Officer

I have read and understood this Clarifying Letter and hereby acknowledge, accept and agree to the terms as set forth above and further acknowledge that no other commitments were made to me as part of the terms of my employment except as specifically set forth herein.

/s/ Barry Zwarenstein
Barry Zwarenstein

Date signed: February 26, 2014

Five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

www.five9.com

Attachment A

Severance Benefits. If your employment is terminated by the Company without Cause, or by you pursuant to a Constructive Termination, you will be entitled to receive severance equal to 6 months of your base salary, payable in accordance with the Company's customary payroll practices over those 6 months, and the Company will pay for your share of the premiums for continuation of your health benefits under COBRA for up to 6 months, as and when due to the carrier(s). All of the severance will be subject to applicable tax withholdings.

Additional Change in Control Severance Benefits. If a Change in Control (as defined below) occurs and your employment is terminated by the Company, either without Cause or due to Constructive Termination (both as defined below) at any time within a period of twelve (12) months following a Change in Control, each of your then-outstanding stock options, to the extent unvested, will immediately become vested and exercisable as to fifty percent (50%) of the then-unvested shares subject to each such option. Any portion of an option that is not vested after giving effect to the foregoing clause shall terminate as of the date of such termination of your employment.

Release and Payment Timing. You and the Company hereby acknowledge that you shall not be entitled to receive the severance benefits provided for in this letter or the acceleration of the vesting provided for in this letter unless you sign and do not revoke a general release of claims in the form provided by the Company. No severance will be paid prior to the 60th day after your termination, while waiting for the effectiveness of the release, and a lump sum catch up payment will be paid on that 60th day, with the balance paid on the original schedule.

Definitions.

"*Cause*" means (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company's reputation or (iv) a material breach of any provision of this letter or any provision of the Company's Code of Conduct that is applicable to the Company's employees; provided, however, that if a cure is reasonably possible in the circumstances, that at least 15 days' advance written notice of such breach has been provided (which notice shall specifically set forth the nature of such breach), and failure to cure such breach within such 15-day period.

"*Constructive Termination*" means a material default by the Company in the performance of its obligations under the letter setting forth your terms and conditions of employment, but only if the Company does not cure such default within 30 days after receipt by the Company of written notice from you identifying the nature of the default. Material default means: (i) the assignment to you of

any duties materially inconsistent (except in the nature of a promotion) with your position as Chief Financial Officer or a material adverse alteration in the nature or status of your responsibilities, (ii) the Company's failure to pay compensation that is due and payable to you, or (iii) a material adverse relocation by the Company of your principal office to a location that increases your one way commute by more than 35 miles. To claim Constructive Termination, you must give the Company written notice within 60 days after the initial existence of the event or action, (B) the event or action is not reasonably cured by the Company within 30 days after the Company receives written notice, and (C) your separation from service occurs within 30 days after the end of the cure period.

"*Change in Control*" means the occurrence of either (i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or (ii) a sale of all or substantially all of the assets of the Company (collectively, a "*Merger*"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

Exhibit 10.4

October 20, 2009

Mr. Dan Burkland

Dear Dan:

We are very pleased to offer you employment with Five 9, Inc. ("Company" or "Five9") for the position of Senior Vice President of Sales. In this position you will report to Mike Burkland, Chief Executive Officer. This is an exempt position, which carries considerable responsibility and which is integral to the continued development and success of our Company. This letter formally presents the specifics of our offer of employment, which you should read and carefully consider.

In this position, beginning on or about December 7, 2009 you will receive an annual base salary of $200,000, paid bi-monthly at a rate of $8,333.33 per pay period. Additionally, beginning on January 1, 2010 you will be eligible to earn a Quarterly Commission Bonus which is targeted at $31,250 per quarter, with the actual amount paid based upon the attainment of your specific sales objectives as set by the Company. In the case you over achieve these sales objectives, the Quarterly Commission Bonus will be limited to $62,500 per quarter. For the first 90 days of your employment your Quarterly Commission Bonus will be guaranteed to be at least $31,250. For the second 90 days of your employment your Quarterly Commission Bonus will be guaranteed to be at least $15,625. Payment of each Quarterly Commission Bonus requires that you are an employee in good standing at the end of each Quarterly period.

You will also be given a signing bonus equal to $30,000 which will be paid in three (3) equal installments of $10,000 each at the end of January 2010, February 2010 and March 2010. Payment of each installment requires that you are an employee in good standing at the end of each installment period.

Of course, all of the previously discussed compensation will be subject to standard payroll deductions and withholdings.

The Company has adopted an Equity Incentive Plan (the "Stock Option Plan"). Subject to approval by the Board of Directors, Company will grant you a nonqualified stock option (the "Initial Option") to purchase 1,507,607 shares of the Company's common stock at a price per share equal to the fair market value of a share of the Company's common stock on the date of the option grant as determined by the Board of Directors of Five9, Inc. The Initial Option will vest with respect to twenty-five percent (25%) of the shares subject to the Initial Option on the first anniversary of your start date. The

remaining seventy-five percent (75%) of the shares subject to the Initial Option will vest in thirty-six (36) substantially equal monthly installments thereafter. In each case, the vesting of the Initial Option is subject to your continued services to the Company through the respective vesting date.

Change in Control. If a Change in Control of the Company (as defined below) occurs and more than fifty percent (50%) of the Option is then outstanding and unvested, the vesting of the Option shall accelerate such that (after giving effect to such acceleration and taking into account any portion of the Option that had theretofore become vested and exercisable), the Option shall have become vested and exercisable as of the Change in Control date with respect to fifty percent (50%) of the total number of shares subject to the original Option grant. In addition, if your employment is terminated by the Company other than for Cause or due to Constructive Termination at any time within a period of twelve (12) months following a Change in Control of the Company, then (i) the Option, to the extent outstanding and unvested (after giving effect to the accelerated vesting contemplated above), shall immediately become vested and exercisable with respect to fifty percent (50%) of the shares covered by the then-outstanding and unvested portion. Any portion of the Option that is not vested after giving effect to the foregoing clause (i) shall terminate as of the date of such termination of your employment.

For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following on or after the Effective Date:

(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or

(ii) a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger will, immediately after such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

In the event you are terminated, without Cause, after the 180th day of employment with the Company, you will be entitled to receive a severance equal to 6 months of your then-current base salary and benefits (subject to standard withholding and payroll deductions), payable in accordance with the Company's customary payroll practices.

You will be entitled to 15 days of Paid Time-Off (PTO) per year. Your PTO will accrue at the rate of 1.25 days per month. As a full-time employee of the Company, you will be eligible to participate in Company-sponsored benefits and be a member of any employee benefit plans that the Company may establish and that are generally available to other employees of the Company. At the present time, these benefits include medical, dental and vision. In the near future, we will provide you more detailed information about these benefits, including eligibility rules.

Employment at the Company is “at will.” This means that you are free to resign at any time with or without Cause (defined below) or prior notice. Similarly, the Company is free to terminate our employment relationship with you at any time, with or without Cause or prior notice. As you know, Five9 is involved in a highly competitive and quickly evolving industry. Although your job duties, title, compensation and benefits, as well as the Company’s policies and procedures, may change from time-to-time, the “at-will” nature of your employment may only be changed in a document signed by you and the CEO of the Company. Your employment with the Company is subject to Five9’s general employment policies, many of which are described in the Five9 Employee Handbook.

You will devote your best efforts to the performance of your job for Company. While employed at Company, you will not undertake any other activity requiring your business time and attention, nor support (by way of investment or otherwise) any activity that may be competitive with the Company’s business or pose a conflict of interest with that business. You will follow the Company’s polices and procedures (including our policies protecting other employees against discrimination and sexual harassment) as described to you from time to time.

Your employment pursuant to this offer is contingent on the following: (1) your signing of the Company’s Proprietary Information and Inventions Assignment Agreement, which, among other things, requires that you will not, during your employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer and will not bring onto the Company’s premises any confidential or proprietary information of any former employer unless that employer has consented to such action in writing; (2) your ability to provide the Company with the legally-required proof of your identity and authorization to work in the United States; (3) our satisfaction that you will not be in violation of any non-compete, proprietary invention and information agreements, or any other similar agreement between you and any current or former employer; and (4) completion of satisfactory reference checking.

In the unlikely event of a dispute between Company and you arising out of your employment or the termination of your employment, we each agree to submit our dispute to binding arbitration in the City and County of Alameda, California. This means that there will be no court or jury trial of disputes between us concerning your employment or the termination of your employment. While this agreement to arbitrate is intended to be broad (and covers, for example, claims under state and federal laws prohibiting discrimination on the basis of race, sex, age, disability, family leave, etc.), it is not applicable to your rights under the California Workers' Compensation Law, which are governed under the special provisions of that law, or to enforcement of the attached agreement concerning confidential information and ownership of inventions.

Dan, we hope that you will accept our employment offer on the above terms and conditions, which can be modified only in a writing signed by the Company's Chief Executive Officer. This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral. We realize that this sounds a bit formal, but we want to make sure that you understand the important aspects of employment at Five9, before you make a decision about joining us. To accept our offer, please return one original copy of your signed offer letter to me at your earliest convenience.

Please contact me if you have any questions whatsoever about this letter or your employment. We are looking forward to you joining us as a member of the Five9 team.

Sincerely,

/s/ Mike Burkland

Mike Burkland
President and CEO

Agreed to and accepted on _____

/s/ Dan Burkland
(Signature)

Dan Burkland
(Print Name)

FIVE9, INC.

AMENDMENT TO OFFER LETTER

THIS AMENDMENT TO OFFER LETTER (this "**Amendment**") by and between Five9, Inc., a Delaware corporation (the "**Company**"), and Dan Burkland ("**Executive**" or "you") is made effective as of March 19, 2012 (the "**Effective Date**") under the terms and subject to the provisions provided below.

In consideration of the terms and conditions set forth below and Executive's continued employment with the Company, Executive and the Company agree to amend the Employment Offer Letter, dated October 20, 2009, between Executive and the Company, attached hereto as Exhibit A ("**Offer Letter**") as follows:

1. Cause. For purposes of the Offer Letter, "**Cause**" shall mean (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company's reputation or (iv) a material breach of any provision of this Offer Letter or any provision of the Company's Code of Conduct that is applicable to the Company's employees; provided, however, that if a cure is reasonably possible in the circumstances, that at least 15 days' advance written notice of such breach has been provided (which notice shall specifically set forth the nature of such breach), and failure to cure such breach within such 15-day period.

2. Constructive Termination. For purposes of this Offer Letter, "**Constructive Termination**" shall mean a material default by the Company in the performance of its obligations hereunder, provided such default shall not have been corrected by the Company within 30 days of receipt by the Company of written notice from you of the occurrence of such default, which notice shall specifically set forth the nature of such default. Material default under this Offer Letter shall include, without limitation, (i) the assignment to you of any duties inconsistent (except in the nature of a promotion) with your position as Senior Vice President of Sales of the Company or a material adverse alteration in the nature or status of your responsibilities, (ii) the Company's failure to pay any of the compensation that has become due and payable to you hereunder, and (iii) a relocation by the Company of your principal office more than thirty-five (35) miles from Pleasanton, California that occurs without your prior written consent.

3. Severance. In the event your employment is terminated by the Company, without Cause, or by you pursuant to a Constructive Termination, you will be entitled to receive severance equal to 6 months base salary (subject to standard withholding and payroll deductions), payable in installments in accordance with the Company's customary payroll practices. During the period in which you are paid a severance from the Company, the Company will pay for the continuation of your health benefits.

4. Acknowledgement and Waiver. Executive and the Company hereby acknowledge that Executive shall not be entitled to receive the severance benefits provided for in the Offer Letter unless the Executive signs and does not revoke a general release of claims in the form provided by the Company.

5. Other Terms. All other terms and conditions in the Offer Letter shall remain unchanged.

6. Miscellaneous.

A. Governing Law. The validity, interpretation, construction and performance of this Amendment shall be governed by the internal laws of the State of California, without regard to conflicts of law principles.

B. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original but both of which together shall constitute one and the same instrument.

C. Amendments; Entire Agreement. This Amendment and the Offer Letter may be amended or modified only by a written instrument executed by both the Company and the Executive. This Amendment and the Offer Letter set forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersede all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto in respect of the subject matter contained herein; and any prior agreement of the parties hereto in respect of the subject matter contained herein is hereby terminated and cancelled.

D. Executive's Acknowledgements. Executive acknowledges that Executive: (a) has read this Amendment; (b) has been represented in the preparation, negotiation, and execution of this Amendment by legal counsel of Executive's own choice or has voluntarily declined to seek such counsel; (c) understands the terms and consequences of this Amendment; (d) understands that this Amendment does not constitute a contract of employment or obligate the Company to retain Executive as an employee; and (e) understands that the law firm of Jones Day is acting as counsel to the Company in connection with the transactions contemplated by this Amendment, and is not acting as counsel for Executive.

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

FIVE9, INC.

By:

/s/ Michael Burkland

Michael Burkland
Title: Chief Executive Officer

/s/ Dan Burkland

Dan Burkland

Address:

EXHIBIT A

OFFER LETTER

Exhibit 10.5

Tom Schollmeyer

July 6, 2011

Dear Tom:

We are very pleased to offer you employment with Five 9, Inc. ("Company" or "Five9") for the position of Chief Technology Officer (CTO). This position will report to the CEO. You will be expected to devote a minimum of 40 hours per week to the performance of your duties with the Company. This is a position which carries considerable responsibility and which is integral to the continued development and success of our Company. This letter formally presents the specifics of our offer of employment, which you should read and carefully consider.

Your employment start date is July 25, 2011. In your position as CTO you will receive an annual base salary of $245,000 paid semi-monthly at a rate of $10,208.33 per pay period. In addition, you will be eligible to earn $70,000 of annual variable compensation which will be paid quarterly, and based on achievement of objectives.

The Company has adopted an Equity Incentive Plan (the "Stock Option Plan"). Subject to approval by the Board of Directors, you will be granted an option to purchase 1,280,000 shares of the Company's common stock under the Company's current Stock Option Plan. The per-share option exercise price will be equal to the per-share fair market value of the common stock on the date of the option grant as determined by the Board of Directors of Five9, Inc. Subject to the conditions above, the vesting start date for this stock option will be your start date as an employee of Five9. This option shall be subject to a four-year vesting restrictions (one-year cliff; monthly thereafter) and other standard provisions set forth in the Company's stock option documentation.

Change in Control. If a Change in Control of the Company (as defined below) occurs and your employment is terminated by the Company, other than for Cause, at any time within a period of twelve (12) months following a Change in Control of the Company, then the Option, to the extent outstanding and unvested shall immediately become vested and exercisable with respect to fifty percent (50%) of the shares covered by the then-outstanding and unvested portion. Any portion of the Option that is not vested after giving effect to the foregoing clause shall terminate as of the date of such termination of your employment.

For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following on or after the Effective Date:

(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or

(ii) a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger will, immediately after such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

In the event your employment is terminated by the Company, without Cause, you will be entitled to receive a severance equal to your monthly base salary times the number of months that you have been employed with the Company, up to a maximum of 9 months (subject to standard withholding and payroll deductions), payable in accordance with the Company's customary payroll practices. During the period in which you are paid a severance from the Company, the Company will pay for the continuation of your health benefits.

During your employment, you will have an expense allowance for travel and lodging related to your commute equal to the following maximums:

(i) Airfare – up to $31,500 per year

(ii) Parking – up to $5,800 per year

(iii) Lodging – up to $18,000 per year

For international travel, you will have approval to fly business class if you choose.

You will be entitled to 15 days of Paid Time-Off (PTO) per year. Your PTO will accrue at the rate of 1.25 days per month. As a full-time employee of the Company, you will be eligible to participate in Company-sponsored benefits and be a member of any employee benefit plans that the Company may establish and that are generally available to other employees of the Company. At the present time, these benefits include medical, dental and vision. In the near future, we will provide you more detailed information about these benefits, including eligibility rules.

Employment at the Company is “at will.” This means that you are free to resign at any time with or without Cause (defined below) or prior notice. Similarly, the Company is free to terminate our employment relationship with you at any time, with or without Cause or prior notice. As you know, Five9 is involved in a highly competitive and quickly evolving industry. Although your job duties, title, compensation and benefits, as well as the Company’s policies and procedures, may change from time-to-time, the “at-will” nature of your employment may only be changed in a document signed by you and the CEO of the Company. Your employment with the Company is subject to Five9’s general employment policies, many of which are described in the Five9 Employee Handbook.

You will devote your best efforts to the performance of your job for Company. While employed at Company, you will not support (by way of investment or otherwise) any activity that may be competitive with the Company’s business or pose a conflict of interest with that business. You will follow the Company’s policies and procedures (including our policies protecting other employees against discrimination and sexual harassment) as described to you from time to time.

Your employment pursuant to this offer is contingent on the following: (1) your signing of the Company’s Proprietary Information and Inventions Assignment Agreement, which, among other things, requires that you will not, during your employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer and will not bring onto the Company’s premises any confidential or proprietary information of any former employer unless that employer has consented to such action in writing; (2) your ability to provide the Company with the legally-required proof of your identity and authorization to work in the United States; (3) our satisfaction that you will not be in violation of any non-compete, proprietary invention and information agreements, or any other similar agreement between you and any current or former employer; and (4) completion of satisfactory reference checking.

In the unlikely event of a dispute between Company and you arising out of your employment or the termination of your employment, we each agree to submit our dispute to binding arbitration in the City and County of Alameda, California. This means that there will be no court or jury trial of disputes between us concerning your employment or the termination of your employment. While this agreement to arbitrate is intended to be broad (and covers, for example, claims under state and federal laws prohibiting discrimination on the basis of race, sex, age, disability, family leave, etc.), it is not applicable to your rights under the California Workers’ Compensation Law, which are governed under the special provisions of that law, or to enforcement of the attached agreement concerning confidential information and ownership of inventions.

Tom, we hope that you will accept our employment offer on the above terms and conditions, which can be modified only in writing as signed by the Company's Chief Executive Officer. This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral, including any other agreement between you and the Company regarding payment of any severance and/or stock option vesting acceleration. We realize that this sounds a bit formal, but we want to make sure that you understand the important aspects of employment at Five9, before you make a decision about joining us. To accept our offer, please return one original copy of your signed offer letter to me at your earliest convenience.

Please contact me if you have any questions whatsoever about this letter or your employment. We are looking forward to you joining us as a member of the Five9 team.

Sincerely,
/s/ Mike Burkland

Mike Burkland
CEO

Agreed to and accepted on 6-06-2011

/s/ Tom Schollmeyer
(Signature)

Tom Schollmeyer
(Print Name)

FIVE9, INC.

AMENDMENT TO OFFER LETTER

THIS AMENDMENT TO OFFER LETTER (this "**Amendment**") by and between Five9, Inc., a Delaware corporation (the "**Company**"), and Tom Schollmeyer ("**Executive**" or "you") is made effective as of March 19, 2012 (the "**Effective Date**") under the terms and subject to the provisions provided below.

In consideration of the terms and conditions set forth below and Executive's continued employment with the Company, Executive and the Company agree to amend the Employment Offer Letter, dated July 6, 2011, between Executive and the Company, attached hereto as Exhibit A ("**Offer Letter**") as follows:

1. Cause. For purposes of the Offer Letter, "**Cause**" shall mean (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company's reputation or (iv) a material breach of any provision of this Offer Letter or any provision of the Company's Code of Conduct that is applicable to the Company's employees; provided, however, that if a cure is reasonably possible in the circumstances, that at least 15 days' advance written notice of such breach has been provided (which notice shall specifically set forth the nature of such breach), and failure to cure such breach within such 15-day period.

2. Constructive Termination. For purposes of this Offer Letter, "**Constructive Termination**" shall mean a material default by the Company in the performance of its obligations hereunder, provided such default shall not have been corrected by the Company within 30 days of receipt by the Company of written notice from you of the occurrence of such default, which notice shall specifically set forth the nature of such default. Material default under this Offer Letter shall include, without limitation, (i) the assignment to you of any duties inconsistent (except in the nature of a promotion) with your position as CTO of the Company or a material adverse alteration in the nature or status of your responsibilities, (ii) the Company's failure to pay any of the compensation that has become due and payable to you hereunder, and (iii) a relocation by the Company of your principal office more than thirty-five (35) miles from Pleasanton, California that occurs without your prior written consent.

3. Change in Control. The section in the Offer Letter titled "Change in Control" is hereby amended and restated in its entirety to read as follows:

"Change in Control. If a Change in Control of the Company occurs and your employment is terminated by the Company, other than for Cause, or due to Constructive Termination at any time within a period of twelve (12) months following a Change in Control of the Company, then the Option, to the extent outstanding and unvested shall immediately become vested and exercisable with respect to fifty percent (50%) of the shares covered by the then-

outstanding and unvested portion. Any portion of the Option that is not vested after giving effect to the foregoing clause shall terminate as of the date of such termination of your employment.

For purposes of this Offer Letter, "Change in Control" shall mean the occurrence of any of the following on or after the Effective Date:

i. an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or

ii. a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger will, immediately after such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

In the event your employment is terminated by the Company, without Cause, or by you pursuant to a Constructive Termination, you will be entitled to receive a severance equal to your monthly base salary times the number of months that you have been employed with the Company, up to a maximum of 9 months (subject to standard withholding and payroll deductions), payable in accordance with the Company's customary payroll practices. During the period in which you are paid a severance from the Company, the Company will pay for the continuation of your health benefits."

4. Acknowledgement and Waiver. Executive and the Company hereby acknowledge that Executive shall not be entitled to receive the severance benefits provided for in the Offer Letter or the acceleration of the vesting provided for in the Offer Letter unless the Executive signs and does not revoke a general release of claims in the form provided by the Company.

5. Other Terms. All other terms and conditions in the Offer Letter shall remain unchanged.

6. Miscellaneous.

A. Governing Law. The validity, interpretation, construction and performance of this Amendment shall be governed by the internal laws of the State of California, without regard to conflicts of law principles.

B. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original but both of which together shall constitute one and the same instrument.

C. Amendments; Entire Agreement. This Amendment and the Offer Letter may be amended or modified only by a written instrument executed by both the Company and the Executive. This Amendment and the Offer Letter set forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersede all prior agreements,

promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto in respect of the subject matter contained herein; and any prior agreement of the parties hereto in respect of the subject matter contained herein is hereby terminated and cancelled.

D. Executive's Acknowledgements. Executive acknowledges that Executive: (a) has read this Amendment; (b) has been represented in the preparation, negotiation, and execution of this Amendment by legal counsel of Executive's own choice or has voluntarily declined to seek such counsel; (c) understands the terms and consequences of this Amendment; (d) understands that this Amendment does not constitute a contract of employment or obligate the Company to retain Executive as an employee; and (e) understands that the law firm of Jones Day is acting as counsel to the Company in connection with the transactions contemplated by this Amendment, and is not acting as counsel for Executive.

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

FIVE9, INC.

By:

/s/ Michael Burkland

Michael Burkland
Title: Chief Executive Officer

/s/ Tom Schollmeyer

Tom Schollmeyer

Address:

EXHIBIT A

OFFER LETTER

June 22, 2012

David Milam

Dear David:

Subject to final approval by the Board of Directors, we are very pleased to offer you employment with Five9, Inc. ("Company" or Five9") for the position of Chief Marketing Officer (CMO). This position will report to the CEO. This is a position which carries considerable responsibility and which is integral to the continued development and success of our Company. This letter formally presents the specifics of our offer of employment, which you should read and carefully consider.

Your expected employment start date is September 14, 2012. In your position as CMO, you will receive a base annual salary of $270,000 paid semi-monthly at a rate of $11,250 per pay period. In addition, you will be eligible to earn an annual bonus of up to $120,000 of annual variable compensation which will be paid quarterly and based on achievement of objectives.

The Company has adopted an Equity Incentive Plan (the "Stock Option Plan"). Subject to approval by the Board of Directors, you will be granted an option to purchase 1,416,000 shares of the Company's common stock under the Company's current Stock Option Plan. The per-share option exercise price will be equal to the per-share fair market value of the common stock on the date of the option grant as determined by the Board of Directors of Five9, Inc. Subject to the conditions above, if the option to purchase 1,416,000 shares is granted, the vesting start date for this stock option will be your start date as an employee of Five9. This option shall be subject to a four-year vesting restrictions (one-year cliff; monthly thereafter) and other standard provisions set forth in the Company's stock option documentation.

Change in Control. If a Change in Control of the Company (as defined below) closes prior to the first anniversary of your employment start date then the Initial Option shall immediately become vested and exercisable with respect to twenty five percent (25%) of the shares subject to the Initial Option ("Single Trigger"). Furthermore, if a Change in Control of the Company (as defined below) closes at any time during your employment and your employment is terminated by the Company, other than for Cause, or you resign due to a Constructive Termination (both as defined below) at any time within a period of twelve (12) months following a Change in Control of the Company ("Double Trigger"), then the Initial Option, to the extent outstanding and unvested shall immediately become vested and exercisable with respect to fifty percent (50%) of the then-unvested portion of the Initial Option; provided that if such Change in Control closes prior to the first anniversary of your employment start date, then upon the Double Trigger, only an additional 25% of the shares subject to the Initial Option shall vest and become exercisable (in addition to the 25% that will vest upon the Single Trigger, for a total accelerated vesting of 50% of the shares subject to the Initial Option.). Any portion of the Option that is not vested after giving effect to the foregoing clause shall terminate as of the date of such termination of your employment.

For purposes of this Agreement, “Change in Control” shall mean the occurrence of any of the following on or after the Start Date:

(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or

(ii) a sale of all or substantially all of the assets of the Company (collectively, a “Merger”), so long as, in either case, the Company’s stockholders of record immediately prior to such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

In the event your employment is terminated by the Company, without Cause, or by your pursuant to a Constructive Termination, you will be entitled to receive a severance equal to your monthly base salary times the number of months that you have been employed with the Company, up to a maximum of 6 months (subject to standard withholding and payroll deductions), payable in accordance with the Company’s customary payroll practices. During the period in which you are paid a severance from the Company, the Company will pay for the continuation of your health benefits.

For purposes of this Agreement, “Cause” shall mean (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company’s reputation or (iv) a material breach of any provision of this Offer Letter or any provision of the Company’s Code of Conduct that is applicable to the Company’s employees; provided, however, that if a cure is reasonable possible in the circumstances, that at least 15 days’ advance written notice of such breach has been provided (which notice shall specifically set forth the nature of such breach), and failure to cure such breach within such 15-day period.

For purposes of this Agreement, “Constructive Termination” shall mean a material default by the Company in the performance of its obligations hereunder, provided such default shall not have been corrected by the Company within 30 days of receipt by the Company of written notice from you of the occurrence of such default, which notice shall specifically set forth the nature of such default Material default under this Agreement shall include, without limitation, (i) the assignment to you of any duties inconsistent (except in the nature of a promotion) with your position as CMO of the Company or a material adverse alteration in the nature or status of your responsibilities, (ii) the Company’s failure to pay any of the compensation that has become due and payable to you hereunder and (iii) a relocation by the Company of your principal office more than thirty-five (35) miles from San Ramon, California that occurs without your prior written consent.

Acknowledgement and Waiver. Executive and the Company hereby acknowledge that Executive shall not be entitled to receive the severance benefits provided for in the Offer Letter or the acceleration of the vesting provided for in the Offer Letter unless the Executive signs and does not revoke a general release of claims in the form provided by the Company.

You will be entitled to 15 days of Paid Time-Off (PTO) per year. Your PTO will accrue at the rate of 1.25 days per month. As a full-time employee of the Company, you will be eligible to participate in Company-sponsored benefits and be a member of any employee benefit plans that the Company may establish and that are generally available to other employees of the Company. At the present time, these benefits include medical, dental and vision. In the near future, we will provide you more detailed information about these benefits, including eligibility rules.

Employment at the Company is “at will.” This means that you are free to resign at any time with or without Cause (defined below) or prior notice. Similarly, the Company is free to terminate our employment relationship with you at any time, with or without Cause or prior notice. As you know, Five9 is involved in a highly competitive and quickly evolving industry. Although your job duties, title, compensation and benefits, as well as the Company’s policies and procedures, may change from time-to-time, the “at-will” nature of your employment may only be changed in a document signed by you and the CEO of the Company. Your employment with the Company is subject to Five9’s general employment policies, many of which are described in the Five9 Employee Handbook.

You will devote your best efforts to the performance of your job for Company. While employed at Company, you will not undertake any other activity requiring your business time and attention, nor support (by way of investment or otherwise) any activity that may be competitive with the Company’s business or pose a conflict of interest with that business. However, you may sit on up to 3 outside advisory boards (or board of directors) with other companies, provided that they are not competitive to Five9. You will follow the Company’s policies and procedures (including our policies protecting other employees against discrimination and sexual harassment) as described to you from time to time.

Your employment pursuant to this offer is contingent on the following: (1) your signing of the Company’s Proprietary Information and Inventions Assignment Agreement, which, among other things, requires that you will not, during your employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer and will not bring onto the Company’s premises any confidential or proprietary information of any former employer unless that employer has consented to such action in writing; (2) your ability to provide the Company with the legally-required proof of your identity and authorization to work in the United States; (3) our satisfaction that you will not be in violation of any non-compete, proprietary invention and information agreements, or any other similar agreement between you and any current or former employer; and (4) completion of satisfactory reference checking.

In the unlikely event of a dispute between Company and you arising out of your employment or the termination of your employment, we each agree to submit our dispute to binding arbitration in the City and County of Alameda, California. This means that there will be no court or jury trial of disputes between us concerning your employment or the termination of your employment. While this agreement to arbitrate is intended to be broad (and covers, for example, claims under state and federal laws prohibiting

discrimination on the basis of race, sex, age, disability, family leave, etc.), it is not applicable to your rights under the California Workers' Compensation Law, which are governed under the special provisions of that law, or to enforcement of the attached agreement concerning confidential information and ownership of inventions.

David, we hope that you will accept our employment offer on the above terms and conditions, which can be modified only in writing as signed by the Company's Chief Executive Officer. This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral, including any other agreement between you and the Company regarding payment of any severance and/or stock option vesting acceleration. We realize that this sounds a bit formal, but we want to make sure that you understand the important aspects of employment at Five9, before you make a decision about joining us. To accept our offer, please return one original copy of your signed offer letter to me at your earliest convenience.

Please contact me if you have any questions whatsoever about this letter or your employment. We are looking forward to you joining us as a member of the Five9 team.

Sincerely,

/s/ Mike Burkland
Mike Burkland
Chief Executive Officer

Agreed to and accepted on Aug 28, 2012

/s/ David Bruce Milam
(Signature)

David Bruce Milam
(Print Name)

Cloud Contact Center
Software

July 18, 2013

Moni Manor

Dear Moni:

Subject to final approval by the Board of Directors, we are very pleased to offer you employment with Five9, Inc. ("Company" or Five9") for the position of Executive Vice President of Products. This position will report to Mike Burkland, CEO. In this position you will be eligible to work from your home office up to two days per week. This is a position which carries considerable responsibility and which is integral to the continued development and success of our Company. This letter formally presents the specifics of our offer of employment, which you should read and carefully consider.

Your expected employment start date is July 25, 2013. In your position as Executive Vice President of Products, you will receive a base annual salary of $275,000 paid semi-monthly at a rate of $11,458.33 per pay period. You will be eligible for a merit increase during the company's next annual compensation review the percentage of which will be calculated on a pro-rated basis from your date of hire. In addition, you will be eligible to earn an annual bonus of up to $110,000 of annual variable compensation which will be paid quarterly and based on achievement of objectives, subject to standard withholding and payroll deductions. Your first quarterly bonus will be pro-rated from your date of hire.

The Company has adopted an Equity Incentive Plan (the "Stock Option Plan"). Subject to approval by the Board of Directors, you will be granted an option to purchase 1,629,334 shares of the Company's common stock (which represents 1% of the Company's current shares outstanding) under the Company's current Stock Option Plan (the "Initial Option"). The per-share option exercise price of the Initial Option will be equal to the per-share fair market value of the common stock on the date of the option grant as determined by the Board of Directors of Five9, Inc. Subject to the conditions above, if the Initial Option is granted, the vesting start date for such Initial Option will be your start date as an employee of Five9. This option shall be subject to vesting over a four-year period (one-year 25% cliff; monthly thereafter) and other standard provisions set forth in the Company's stock option documentation.

Change in Control. If a Change in Control of the Company (as defined below) closes during your employment prior to full vesting of the Initial Option, then the Initial Option shall immediately become vested and exercisable with respect to an additional twenty-five percent (25%) of the then-unvested portion of the Initial Option ("Single Trigger"). Furthermore, if a Change in Control of the Company (as defined below) closes at any time during your employment and your employment is terminated by the Company, other than for Cause, or you resign due to a Constructive Termination (both as defined

below) at any time within a period of eighteen (18) months following the Change in Control of the Company ("Double Trigger"), then the Initial Option, to the extent outstanding and unvested shall immediately become vested and exercisable with respect to an additional twenty-five percent (25%) of the then-unvested portion of the Initial Option.

For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following on or after the Start Date:

(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or sale of more than 50% of the outstanding voting stock of the Company), or

(ii) a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as, in either case, the Company's stockholders of record immediately prior to such Merger, hold less than 50% of the voting power of the surviving or acquiring entity.

In the event your employment is terminated by the Company, without Cause, or by you pursuant to a Constructive Termination, you will be entitled to receive a severance up to six times your monthly base salary with the following ramp up schedule: termination from 0-60 days equals 3 months of severance, termination from 61-120 days equals 4 months of severance, termination from 121-180 days equals 5 months of severance and termination after 181 days of employment equals six months of severance. Any severance received is subject to standard withholding and payroll deductions and is payable in accordance with the Company's customary payroll practices. During the period in which you are paid a severance from the Company, the Company will pay for the continuation of your health benefits.

For purposes of this Agreement, "Cause" shall mean (i) fraud, embezzlement, willful misconduct or a material violation of law that is materially detrimental to the Company or any of its affiliates; (ii) gross negligence with respect to the Company or any of its affiliates that causes material harm to the Company or any affiliate; (iii) conviction or plea of guilty or nolo contendere for a felony or a crime of moral turpitude that causes material harm to the Company's reputation or (iv) a material breach of any provision of this Offer Letter or any provision of the Company's Code of Conduct that is applicable to the Company's employees; provided, however, that if a cure is reasonable possible in the circumstances, that at least 15 days' advance written notice of such breach has been provided (which notice shall specifically set forth the nature of such breach), and failure to cure such breach within such 15-day period.

For purposes of this Agreement, "Constructive Termination" shall mean a material default by the Company in the performance of its obligations hereunder, provided such default shall not have been corrected by the Company within 30 days of receipt by the Company of written notice from

you of the occurrence of such default, which notice shall specifically set forth the nature of such default. Material default under this Agreement shall include, without limitation, (i) the assignment to you of any duties inconsistent (except in the nature of a promotion) with your position as Executive Vice President of Products of the Company or a material adverse alteration in the nature or status of your responsibilities, (ii) the Company's failure to pay any of the compensation that has become due and payable to you hereunder and (iii) a relocation by the Company of your principal office more than thirty-five (35) miles from San Ramon, California or more than fifty (50) miles from Mountain View that occurs without your prior written consent.

Acknowledgement and Waiver. Executive and the Company hereby acknowledge that Executive shall not be entitled to receive the severance benefits provided for in the Offer Letter or the acceleration of the vesting provided for in the Offer Letter unless the Executive signs and does not revoke a general release of claims in the form provided by the Company.

You will be entitled to 20 days of Paid Time-Off (PTO) per year. Your PTO will accrue at the rate of 6.67 hours per pay period. As a full-time employee of the Company, you will be eligible to participate in Company-sponsored benefits and be a member of any employee benefit plans that the Company may establish and that are generally available to other employees of the Company. At the present time, these benefits include medical, dental and vision. In the near future, we will provide you more detailed information about these benefits, including eligibility rules.

Employment at the Company is "at will." This means that you are free to resign at any time with or without Cause (defined below) or prior notice. Similarly, the Company is free to terminate our employment relationship with you at any time, with or without Cause or prior notice. As you know, Five9 is involved in a highly competitive and quickly evolving industry. Although your job duties, title, compensation and benefits, as well as the Company's policies and procedures, may change from time-to-time, the "at-will" nature of your employment may only be changed in a document signed by you and the CEO of the Company. Your employment with the Company is subject to Five9's general employment policies, many of which are described in the Five9 Employee Handbook.

You will devote your best efforts to the performance of your job for Company. While employed at Company, you will not undertake any other activity requiring your business time and attention, nor support (by way of investment or otherwise) any activity that may be competitive with the Company's business or pose a conflict of interest with that business. You will follow the Company's policies and procedures (including our policies protecting other employees against discrimination and sexual harassment) as described to you from time to time.

Your employment pursuant to this offer is contingent on the following: (1) your signing of the Company's Proprietary Information and Inventions Assignment Agreement, which, among other things, requires that you will not, during your employment with the Company, improperly use or

disclose any proprietary information or trade secrets of any former employer and will not bring onto the Company's premises any confidential or proprietary information of any former employer unless that employer has consented to such action in writing; (2) your ability to provide the Company with the legally-required proof of your identity and authorization to work in the United States.

In the unlikely event of a dispute between Company and you arising out of your employment or the termination of your employment, we each agree to submit our dispute to binding arbitration in the County of Contra Costa, California. This means that there will be no court or jury trial of disputes between us concerning your employment or the termination of your employment. While this agreement to arbitrate is intended to be broad (and covers, for example, claims under state and federal laws prohibiting discrimination on the basis of race, sex, age, disability, family leave, etc.), it is not applicable to your rights under the California Workers' Compensation Law, which are governed under the special provisions of that law, or to enforcement of the attached agreement concerning confidential information and ownership of inventions.

Moni, we hope that you will accept our employment offer on the above terms and conditions, which can be modified only in writing as signed by the Company's Chief Executive Officer. This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral, including any other agreement between you and the Company regarding payment of any severance and/or stock option vesting acceleration. We realize that this sounds a bit formal, but we want to make sure that you understand the important aspects of employment at Five9, before you make a decision about joining us. To accept our offer, please return one original copy of your signed offer letter to me at your earliest convenience.

Please contact me if you have any questions whatsoever about this letter or your employment. We are looking forward to you joining us as a member of the Five9 team.

Five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

www.five9.com

Cloud Contact Center Software

Sincerely,

Mike Burkland
Chief Executive Officer

Agreed to and accepted on 7/20/2013

/s/ Moni Manor
(Signature)

Moni Manor
(Print Name)

Five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

www.five9.com

Exhibit 10.8

EXECUTION VERSION

Five 9, Inc.

Amended and Restated
2004 Equity Incentive Plan

1. Purpose. The purpose of the Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company by offering them an opportunity to participate in the Company's future performance through awards of Options, Restricted Stock and Stock Bonuses. Capitalized terms not defined in the text are defined in Section 23.

2. Shares Subject to the Plan.

2.1 Number of Shares Available. Subject to Sections 2.2 and 18, the total number of Shares reserved and available for grant and issuance pursuant to the Plan shall be 27,566,776[1] Shares. Subject to Sections 2.2 and 18, Shares shall again be available for grant and issuance in connection with future Awards under the Plan that: (a) are subject to issuance upon exercise of an Option but cease to be subject to such Option for any reason other than exercise of such Option; (b) are subject to an Award granted hereunder but are forfeited; or (c) are subject to an Award that otherwise terminates without Shares being issued.

2.2 Adjustment of Shares. In the event that the number of outstanding Shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company without consideration, then (a) the number of Shares reserved for issuance under the Plan; (b) the Exercise Prices of and number of Shares subject to outstanding Options; and (c) the number of Shares subject to other outstanding Awards shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and compliance with applicable securities laws; *provided*, *however*, that fractions of a Share shall not be issued but shall either be paid in cash at Fair Market Value or shall be rounded up to the nearest Share, as determined by the Committee.

3. Eligibility. ISOs (as defined in Section 5 below) may be granted only to employees (including officers and directors who are also employees) of the Company, or of a Parent or Subsidiary of the Company. All other Awards may be granted to employees, officers, directors, consultants and advisors of the Company or any Parent, Subsidiary or Affiliate of the Company; *provided*, *however*, such grantees are persons described in Rule 701(c) promulgated under the Securities Act; and *provided further*, *however*, such consultants and advisors are natural persons who render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction. A person may be granted more than one Award under the Plan.

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[1] Total number of Shares reserved for grant and issuance pursuant to the Plan was increased to 33,102,615 as of March 30, 2011, increased to 39,763,404 as of April 27, 2012, increased to 44,210,905 as of April 24, 2013; and increased to 47,531,331 as of November 22, 2013.

4. Administration.

4.1 Committee Authority. The Plan shall be administered by the Committee or the Board acting as the Committee. Subject to the general purposes, terms and conditions of the Plan, and to the direction of the Board, the Committee shall have full power to implement and carry out the Plan. The Committee shall have the authority to:

(a) construe and interpret the Plan, any Award Agreement and any other agreement or document executed pursuant to the Plan;

(b) prescribe, amend and rescind rules and regulations relating to the Plan;

(c) select persons to receive Awards;

(d) determine the form and terms of Awards;

(e) determine the number of Shares or other consideration subject to Awards;

(f) determine whether Awards will be granted singly, in combination, in tandem with, in replacement of, or as alternatives to, other Awards under the Plan or any other incentive or compensation plan of the Company or any Parent, Subsidiary or Affiliate of the Company;

(g) Subject to Section 16.1, grant waivers of Plan or Award conditions;

(h) determine the vesting, exercisability and payment of Awards;

(i) correct any defect, supply any omission, or reconcile any inconsistency in the Plan, any Award or any Award Agreement;

(j) determine whether an Award has been earned; and

(k) make all other determinations necessary or advisable for the administration of the Plan.

4.2 Committee Discretion. Any determination made by the Committee with respect to any Award shall be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time, and such determination shall be final and binding on the Company and all persons having an interest in any Award under the Plan. The Committee may delegate to one or more officers of the Company the authority to grant an Award under the Plan to Participants who are not Insiders of the Company.

4.3 Exchange Act Requirements. If the Company is subject to the Exchange Act, the Company will take appropriate steps to comply with the disinterested director requirements of Section 16(b) of the Exchange Act, including but not limited to, the appointment by the Board of a Committee consisting of not less than two (2) persons (who are members of the Board), each of whom is a Disinterested Person.

5. Options. The Committee may grant Options to eligible persons and shall determine whether such Options shall be Incentive Stock Options within the meaning of the Code ("ISOs") or Nonqualified Stock Options ("NSOs"), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may be exercised, and all other terms and conditions of the Option, subject to the following:

5.1 Form of Option Grant. Each Option granted under the Plan shall be evidenced by an Award Agreement which shall expressly identify the Option as an ISO or NSO ("Stock Option Agreement"), and be in such form and contain such provisions (which need not be the same for each Participant) as the Committee shall from time to time approve, and which shall comply with and be subject to the terms and conditions of the Plan.

5.2 Date of Grant. The date of grant of an Option shall be the date on which the Committee makes the determination to grant such Option, unless otherwise specified by the Committee. The Stock Option Agreement and a copy of the Plan will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3 Exercise Period. Options shall be exercisable within the times or upon the events determined by the Committee as set forth in the Stock Option Agreement; *provided*, *however*, that no Option shall be exercisable after the expiration of ten (10) years from the date the Option is granted, and provided further that no ISO granted to a person who directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company ("Ten Percent Stockholder") shall be exercisable after the expiration of five (5) years from the date the Option is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number or percentage as the Committee determines.

5.4 Exercise Price. The Exercise Price shall be determined by the Committee when the Option is granted; *provided* that (i) the Exercise Price of an Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant; and (ii) the Exercise Price of an ISO granted to a Ten Percent Stockholder shall not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased may be made in accordance with Section 8 of the Plan.

5.5 Method of Exercise. Options may be exercised only by delivery to the Company of a written stock option exercise agreement (the "Exercise Agreement") in a form approved by the Committee (which need not be the same for each Participant), stating the number of Shares being purchased, the restrictions imposed on the Shares, if any, and such representations and agreements regarding Participant's investment intent and access to information and other matters, if any, as may be required or desirable by the Company to comply with applicable securities laws, together with appropriate payment of the Exercise Price for the number of Shares being purchased.

5.6 Termination. Notwithstanding the exercise periods set forth in the Stock Option Agreement, exercise of an Option shall always be subject to the following:

(a) If the Participant is Terminated for any reason except death or Disability, then the Participant may exercise such Participant's ISOs only to the extent that such ISOs would have been exercisable upon the Termination Date no later than three (3) months after the Termination Date (or such shorter time period as may be specified in the Stock Option Agreement). Except as provided in Section 5.6(b) below, any ISO that remains exercisable after three (3) months after the Termination Date shall be deemed an NSO. No Option may be exercised later than the expiration date of the Options.

(b) If the Participant is Terminated because of death or Disability (or the Participant dies within three (3) months of such Termination), then Participant's Options may be exercised only to the extent that such Options would have been exercisable by Participant on the Termination Date and must be exercised by Participant (or Participant's legal representative or authorized assignee) no later than twelve (12) months after the Termination Date (or such shorter time period as may be specified in the Stock Option Agreement), but in any event no later than the expiration date of the Options; *provided*, *however*, that in the event of Termination due to Disability other than as defined in Section 22(e)(3) of the Code, any ISO that remains exercisable after three (3) months after the Termination Date shall be deemed an NSO.

5.7 Limitations on Exercise. The Committee may specify a reasonable minimum number of Shares that may be purchased on any exercise of an Option; *provided*, *however*, that such minimum number will not prevent Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.8 Limitations on ISOs. The aggregate Fair Market Value (determined as of the date of grant) of Shares with respect to which ISOs are exercisable for the first time by a Participant during any calendar year (under the Plan or under any other incentive stock option plan of the Company or any Affiliate, Parent or Subsidiary of the Company) shall not exceed One Hundred Thousand Dollars ($100,000). If the Fair Market Value of Shares on the date of grant with respect to which ISOs are exercisable for the first time by a Participant during any calendar year exceeds One Hundred Thousand Dollars ($100,000), the Options for the first One Hundred Thousand Dollars ($100,000) worth of Shares to become exercisable in such calendar year shall be ISOs and the Options for the amount in excess of One Hundred Thousand Dollars ($100,000) that become exercisable in that calendar year shall be NSOs. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date of the Plan to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, such different limit shall be automatically incorporated herein and shall apply to any Options granted after the effective date of such amendment.

5.9 Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor; *provided*, *however*, that any such action may not without the written consent of Participant, impair any of Participant's rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered shall be treated in accordance with Section 424(h) of the Code. The Committee may reduce the Exercise Price of outstanding Options without the consent of Participants affected by a written notice to them; *provided*, *however*, that the Exercise Price may not be reduced below the minimum Exercise Price that would be permitted under Section 5.4 of the Plan for Options granted on the date the action is taken to reduce the Exercise Price.

5.10 No Disqualification. Notwithstanding any other provision in the Plan, no term of the Plan relating to ISOs shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify the Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

6. Restricted Stock. A Restricted Stock Award is an offer by the Company to sell to an eligible person Shares that are subject to restrictions ("Restricted Stock"). The Committee shall determine to whom an offer will be made, the number of Shares the person may purchase, the price to be paid (the "Purchase Price"), the restrictions to which the Shares shall be subject, and all other terms and conditions of the Restricted Stock Award, subject to the following:

6.1 Form of Restricted Stock Award. All purchases under a Restricted Stock Award made pursuant to the Plan shall be evidenced by an Award Agreement ("Restricted Stock Purchase Agreement") that shall be in such form (which need not be the same for each Participant) as the Committee shall from time to time approve, and shall comply with and be subject to the terms and conditions of the Plan. The offer of Restricted Stock shall be accepted by the Participant's execution and delivery of the Restricted Stock Purchase Agreement and full payment for the Shares to the Company within thirty (30) days, unless otherwise provided for by the Committee, from the date the Restricted Stock Purchase Agreement is delivered to the person. If such person does not execute and deliver the Restricted Stock Purchase Agreement along with full payment for the Shares to the Company within thirty (30) days, then the offer shall terminate, unless otherwise determined by the Committee.

6.2 Purchase Price. The Purchase Price of Shares sold pursuant to a Restricted Stock Award shall be determined by the Committee at the time of grant. Payment of the Purchase Price may be made in accordance with Section 8 of the Plan.

6.3 Restrictions. Restricted Stock Awards shall be subject to such restrictions as the Committee may impose. The Committee may provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions, in whole or in part, based on length of service, performance or such other factors or criteria as the Committee may

determine. Restricted Stock Awards which the Committee intends to qualify under Code section 162(m) shall be subject to a performance-based goal. Restrictions on such stock shall lapse based on one or more of the following performance goals: stock price, market share, sales increases, earning per share, return on equity, cost reductions, or any other similar performance measure established by the Committee. Such performance measures shall be established by the Committee, in writing, no later than the earlier of (a) ninety (90) days after the commencement of the performance period with respect to which the Restricted Stock Award is made and (b) the date as of which twenty-five percent (25%) of such performance period has elapsed.

7. Stock Bonuses.

7.1 Awards of Stock Bonuses. A Stock Bonus is an award of Shares (which may consist of Restricted Stock) for services rendered to the Company or any Parent, Subsidiary or Affiliate of the Company. A Stock Bonus may be awarded for past services already rendered to the Company, or any Parent, Subsidiary or Affiliate of the Company pursuant to an Award Agreement (the "Stock Bonus Agreement") that shall be in such form (which need not be the same for each Participant) as the Committee shall from time to time approve, and shall comply with and be subject to the terms and conditions of the Plan. Subject to Section 7.2 herein, a Stock Bonus may be awarded upon satisfaction of such performance goals as are set out in advance in Participant's individual Award Agreement (the "Performance Stock Bonus Agreement") that shall be in such form (which need not be the same for each Participant) as the Committee shall from time to time approve, and shall comply with and be subject to the terms and conditions of the Plan. Stock Bonuses may vary from Participant to Participant and between groups of Participants, and may be based upon such other criteria as the Committee may determine.

7.2 Code Section 162(m). A Stock Bonus that the Committee intends to qualify for the performance-based exception under Code section 162(m) shall only be awarded based upon the attainment of one or more of the following performance goals: stock price, market share, sales increases, earning per share, return on equity, cost reductions, or any other similar performance measure established by the Committee. Such performance measures shall be established by the Committee, in writing, no later than the earlier of: (a) ninety (90) days after the commencement of the performance period with respect to which the Stock Bonus award is made; and (b) the date as of which twenty-five percent (25%) of such performance period has elapsed.

7.3 Terms of Stock Bonuses. The Committee shall determine the number of Shares to be awarded to the Participant and whether such Shares shall be Restricted Stock. If the Stock Bonus is being earned upon the satisfaction of performance goals pursuant to a Performance Stock Bonus Agreement, then the Committee shall determine: (a) the nature, length and starting date of any period during which performance is to be measured (the "Performance Period") for each Stock Bonus; (b) the performance goals and criteria to be used to measure the performance, if any; (c) the number of Shares that may be awarded to the Participant; and (d) the extent to which such Stock Bonuses have been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Stock Bonuses that are subject to different Performance Periods and different performance goals and other criteria. The number of Shares may be fixed or may vary in accordance with such performance goals and criteria as may

be determined by the Committee. The Committee may adjust the performance goals applicable to the Stock Bonuses to take into account changes in law and accounting or tax rules and to make such adjustments as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships.

7.4 Form of Payment. The earned portion of a Stock Bonus may be paid currently or on a deferred basis with such interest or dividend equivalent, if any, as the Committee may determine. Payment of the Purchase Price may be made in accordance with Section 8 of the Plan.

7.5 Termination During Performance Period. If a Participant is Terminated during a Performance Period for any reason, then such Participant shall be entitled to payment (whether in Shares, cash or otherwise) with respect to the Stock Bonus only to the extent earned as of the date of Termination in accordance with the Performance Stock Bonus Agreement, unless the Committee shall determine otherwise.

8. Payment For Share Purchases.

8.1 Payment. Subject to applicable laws, the consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Committee (and, in the case of an ISO, shall be determined at the time of grant). In addition to any other types of consideration and methods of payment the Committee may determine, payment for Shares purchased pursuant to the Plan may be made in cash (by check) or, where expressly approved for the Participant by the Committee and where permitted by law:

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by surrender of Shares that either (1) have been paid for within the meaning of SEC Rule 144; or (2) were obtained by Participant in the public market;

(c) by waiver of compensation due or accrued to Participant for services rendered;

(d) by tender of property;

(e) with respect only to purchases upon exercise of an Option, and provided that a public market for the Company's stock exists:

(1) through a "same day sale" commitment from Participant and a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "Dealer") whereby the Participant irrevocably elects to exercise the Option and to sell a portion of the Shares so purchased to pay for the Exercise Price, and whereby the Dealer irrevocably commits upon receipt of such Shares to forward the Exercise Price directly to the Company; or

(2) through a "margin" commitment from Participant and a Dealer whereby Participant irrevocably elects to exercise the Option and to pledge the Shares so purchased to the Dealer in a margin account as security for a loan from the Dealer in the amount of the Exercise Price, and whereby the Dealer irrevocably commits upon receipt of such Shares to forward the Exercise Price directly to the Company; or

(f) with respect only to purchases upon exercise of an Option:

(1) In the event that the Option is exercised immediately prior to the closing by the Company of a "corporate transaction" as defined in Section 18.1 below, or the closing of the initial public offering of the Company's Common Stock pursuant to a registration statement under the Securities Act (the "Initial Public Offering"), in lieu of exercising the Option in the manner provided above, the Participant may elect to receive shares equal to the value of the Option (or the portion thereof being canceled) by surrender of the Option at the principal office of the Company together with notice of such election in which event the Company shall issue to holder a number of shares of Common Stock computed using the following formula:

$$X = Y \frac{(A - B)}{A}$$

Where X = The number of shares of Common Stock to be issued to the Participant.

Y = The number of shares of Common Stock purchasable under the Option (at the date of such calculation).

A = The fair market value of one share of Common Stock (at the date of such calculation).

B = The Purchase Price (as adjusted to the date of such calculation).

(2) For purposes of this Section 8.1(f), the fair market value of the Company's Common Stock shall be the price per share which the Company receives for a single share of Common Stock in the corporate transaction, or, if the Option is exercised in connection with the Initial Public Offering, the fair market value of the Company's Common Stock shall be equal to the mid-price of the range of prices set forth in the registration statement relating to the Initial Public Offering or, if a subsequent amendment thereto sets forth a different range of prices (other than a "pricing amendment" setting forth a single, final price) then the mid-price of the range of prices set forth in such amendment; or

(g) by any combination of the foregoing.

9. Withholding Taxes.

9.1 Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under the Plan, the Company may require the Participant to remit to the Company an amount sufficient to satisfy federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for such Shares. Whenever, under the Plan, payments in satisfaction of Awards are to be made in cash, such payment shall be net of an amount sufficient to satisfy federal, state, and local withholding tax requirements.

9.2 Stock Withholding. When, under applicable tax laws, a Participant incurs tax liability in connection with the grant, exercise or vesting of any Award that is subject to tax withholding and the Participant is obligated to pay the Company the amount required to be withheld, the Committee may allow the Participant to satisfy the minimum withholding tax obligation by electing to have the Company withhold from the Shares to be issued that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld, determined on the date that the amount of tax to be withheld is to be determined (the "Tax Date"). All elections by a Participant to have Shares withheld for this purpose shall be made in writing in a form acceptable to the Committee and shall be subject to the following restrictions:

(a) the election must be made on or prior to the applicable Tax Date;

(b) once made, then except as provided below, the election shall be irrevocable as to the particular Shares as to which the election is made;

(c) all elections shall be subject to the consent or disapproval of the Committee;

(d) if the Participant is an Insider and if the Company is subject to Section 16(b) of the Exchange Act: (1) the election may not be made within six (6) months of the date of grant of the Award, except as otherwise permitted by SEC Rule 16b-3(e) under the Exchange Act, and (2) either (A) the election to use stock withholding must be irrevocably made at least six (6) months prior to the Tax Date (although such election may be revoked at any time at least six (6) months prior to the Tax Date), or (B) the exercise of the Option or election to use stock withholding must be made in the ten (10) day period beginning on the third day following the release of the Company's quarterly or annual summary statement of sales or earnings; and

(e) in the event that the Tax Date is deferred under Section 83 of the Code, the Participant shall receive the full number of Shares with respect to which the exercise occurs, but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

10. Privileges of Stock Ownership. No Participant shall have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant. After Shares are issued to the Participant, the Participant shall be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; *provided*, *however*, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company shall be subject to the same restrictions as the Restricted Stock.

11. Transferability. Subject to Section 16.1, Awards granted under the Plan, and any interest therein, shall not be transferable or assignable by the Participant, and may not be made subject to execution, attachment or similar process, otherwise than by will or by the laws of descent and distribution or as consistent with the specific Plan and Award Agreement provisions relating thereto. During the lifetime of the Participant an Award shall be exercisable only by the Participant, and any elections with respect to an Award, may be made only by the Participant.

12. Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) in the Award Agreement a right of first refusal to purchase all Shares that a Participant (or a subsequent transferee) may propose to transfer to a third party.

13. Certificates. All certificates for Shares or other securities delivered under the Plan shall be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed.

14. Escrow; Pledge of Shares. To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. In connection with any pledge of the Shares, Participant shall be required to execute and deliver a written pledge agreement in such form as the Committee shall from time to time approve.

15. Exchange and Buyout of Awards. The Committee may, at any time or from time to time, authorize the Company, with the consent of the respective Participants, to issue new Awards in exchange for the surrender and cancellation of any or all outstanding Awards. The Committee may at any time buy from a Participant an Award previously granted with payment in cash, Shares (including Restricted Stock) or other consideration, based on such terms and conditions as the Committee and the Participant shall agree.

16. Securities Law and Other Regulatory Compliance. An Award shall not be effective unless such Award is in compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in the Plan, the Company shall have no obligation to issue or deliver certificates for Shares under the Plan prior to (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable, and/or (b) completion of any registration or other qualification of such shares under any state or federal law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company shall be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company shall have no liability for any inability or failure to do so.

16.1 Option Compliance with the Exemption Provided by Rule 12h-1(f). Notwithstanding any other provision in the Plan or any Award Agreement, if, at the end of the Company's most recently completed fiscal year, (a) the aggregate of the number of Option Holders (plus the number of other holders of all other outstanding compensatory stock options to purchase Shares) by whom Options (or other compensatory stock options to purchase Shares) are "held of record" (as such term is used in Section 12(g) of the Exchange Act (e.g., not including securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act)), equals or exceeds either (i) two thousand (2,000) persons or (ii) five hundred (500) persons who are not "accredited investors" (as such term is defined by the SEC), and (b) the Company's "total assets" as defined by Rule 12g5-2 promulgated under the Exchange Act exceed $10 million, then the following restrictions shall apply to Option Holders during any period during which the Company does not have a class of its securities registered under Section 12 of the Exchange Act and is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act (i.e., when the Company is "relying on the exemption provided by Rule 12h-1(f)"): (A) the Options and, prior to exercise, the Shares to be issued upon exercise of the Options may not be transferred until the Company is no longer relying on the exemption provided by Rule 12h-1(f), except: (1) to a "family member" of the Option Holder (as defined in Rule 701(c)(3) promulgated under the Securities Act) through gifts or domestic relations orders, (2) to a guardian upon the disability of the Option Holder, or (3) to an executor upon the death of the Option Holder (collectively, the "Permitted Option Transferees"); *provided*, *however*, that the following transfers are permitted: (x) transfers by the Option Holder to the Company, and (y) transfers in connection with a change of control or other acquisition transaction involving the Company, if after such transaction the Options no longer remain outstanding and the Company is no longer relying on the exemption provided by Rule 12h-1(f); and *provided further*, that any Permitted Option Transferees may not further transfer the Options; (B) except as otherwise provided in (A) above, the Options and Shares to be issued upon exercise of the Options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any "put equivalent position" as defined by Rule 16a-1(h) promulgated under the Exchange Act, or

any "call equivalent position" as defined by Rule 16a-1(b) promulgated under the Exchange Act by the Option Holder prior to exercise of an Option until the Company is no longer relying on the exemption provided by Rule 12h-1(f); and (C) at any time that the Company is relying on the exemption provided by Rule 12h-1(f), the Company shall deliver to Option Holders (whether by physical or electronic delivery or by written notice of the availability of the information on an internet site (and of any password needed to access the information if the internet site is password-protected)) the information required by Rules 701(e)(3), (4), and (5) promulgated under the Securities Act, every six (6) months, including financial statements that are not more than one hundred eighty (180) days old; *provided*, *however*, that the Company may condition the delivery of such information upon the Option Holder's agreement to maintain the confidentiality of such information.

17. No Obligation to Employ. Nothing in the Plan or any Award granted under the Plan shall confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent, Subsidiary or Affiliate of the Company or limit in any way the right of the Company or any Parent, Subsidiary or Affiliate of the Company to terminate Participant's employment or other relationship at any time, with or without cause.

18. Corporate Transactions.

18.1 Assumption or Replacement of Awards by Successor. In the event of (a) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company and the Awards granted under the Plan are assumed or replaced by the successor corporation, which assumption shall be binding on all Participants); (b) a dissolution or liquidation of the Company; (c) the sale of substantially all of the assets of the Company; or (d) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company, any or all outstanding Awards may be assumed or replaced by the successor corporation (if any), which assumption or replacement shall be binding on all Participants. In the alternative, the successor corporation may substitute equivalent Awards or provide substantially similar consideration to Participants as was provided to stockholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in place of outstanding Shares of the Company held by the Participant, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Participant.

In the event such successor corporation (if any) refuses to assume or replace any outstanding Awards, as provided above, pursuant to a transaction described in this Subsection 18.1, such Awards (whether or not vested and/or exercisable, but after giving effect to any accelerated vesting required in the circumstances pursuant to the following provisions of this Section 18.1) shall terminate upon the occurrence of such transaction, provided that the holder of such Award shall be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding and vested Options in accordance with their terms before the termination of the Awards (except that in no case shall more than ten days' notice of the impending termination be required). With respect to any Award granted to any

person who was employed with or providing services to the Company or any Parent, Subsidiary or Affiliate of the Company at any time on or before February 23, 2010, to the extent such Award is then outstanding and unvested, such Award shall automatically become fully vested and, in the case of Options, exercisable upon (or, as may be necessary to effectuate the purposes of this acceleration, immediately prior to) such a transaction (with the holder of such Award receiving notice and opportunity to exercise such vested Options as provided in the preceding sentence). With respect to any Award granted to any person who commences employment with or providing services to the Company or any Parent, Subsidiary or Affiliate of the Company at any time after February 23, 2010, such Award shall not automatically become vested in connection with such a transaction, provided that the Board may, in its sole discretion, provide in the applicable Award Agreement or by an amendment thereto for the accelerated vesting of one or more such Awards to the extent such Awards are outstanding upon such a transaction or such other events or circumstances as the Board may provide. Notwithstanding the foregoing provisions, if an Award recipient is a party to an employment or other agreement with the Company or one of its Affiliates that contains express provisions regarding the acceleration of vesting of equity awards (in connection with a termination of employment, change in control of the Company or otherwise) and would provide greater benefits to such recipient in the circumstances than those provided in this Section 18.1, the provisions of such employment or other agreement shall control as to Awards held by such recipient.

18.2 Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either (a) granting an Award under the Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under the Plan if the terms of such assumed award could be applied to an Award granted under the Plan. Such substitution or assumption shall be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under the Plan if the other company had applied the rules of the Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award shall remain unchanged (except that the exercise price and the number and nature of Shares issuable upon exercise of any such option will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price.

19. Adoption and Stockholder Approval. The Plan became effective on the date that it was originally adopted by the Board (the "Effective Date"). The Plan was originally approved by the stockholders of the Company, consistent with applicable laws, within twelve months before or after the Effective Date. Upon the Effective Date, the Board may grant Awards pursuant to the Plan; *provided*, *however*, that: (a) no Option may be exercised prior to initial stockholder approval of the Plan; (b) no Option granted pursuant to an increase in the number of Shares approved by the Board shall be exercised prior to the time such increase has been approved by the stockholders of the Company; and (c) in the event that stockholder approval is not obtained within the time period provided herein, all Awards granted hereunder shall be cancelled, any Shares issued pursuant to any Award shall be cancelled and any purchase of Shares hereunder shall be rescinded. After the Company becomes subject to Section 16(b) of the Exchange Act, the Company will comply with the requirements of Rule 16b-3 (or its successor), as amended, with respect to stockholder approval.

20. Term of Plan/Governing Law. The Plan will terminate ten (10) years from the Effective Date or, if earlier, the date of stockholder approval of the Plan. The Plan shall be governed by and construed in accordance with the laws of the State of Delaware.

21. Amendment or Termination of Plan. The Board may at any time terminate or amend the Plan in any respect, including without limitation amendment of any form of Award Agreement or instrument to be executed pursuant to the Plan; *provided*, *however*, that the Board shall not, without the approval of the stockholders of the Company, amend the Plan in any manner that requires such stockholder approval pursuant to the Code or the regulations promulgated thereunder as such provisions apply to ISO plans or pursuant to the Exchange Act or Rule 16b-3 (or its successor), as amended, thereunder. Any amendment, suspension or termination of the Plan shall not affect Awards already granted, and such Awards shall remain in full force and effect as if the Plan had not been amended, suspended or terminated, unless mutually agreed otherwise between the Participant and the Company, which agreement must be in writing and signed by the Participant and the Company.

22. Nonexclusivity of the Plan. Neither the adoption of the Plan by the Board, the submission of the Plan to the stockholders of the Company for approval, nor any provision of the Plan shall be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock options and bonuses otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

23. Definitions. As used in the Plan, the following terms shall have the following meanings:

"**Affiliate**" means any corporation that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another corporation, where "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to cause the direction of the management and policies of the corporation, whether through the ownership of voting securities, by contract or otherwise.

"**Award**" means any award under the Plan, including any Option, Restricted Stock or Stock Bonus.

"**Award Agreement**" means, with respect to each Award, the signed written agreement between the Company and the Participant setting forth the terms and conditions of the Award.

"**Board**" means the Board of Directors of the Company.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Committee**" means the committee appointed by the Board to administer the Plan, or if no committee is appointed, the Board.

"**Company**" means Five 9, Inc., a corporation organized under the laws of the State of Delaware, or any successor corporation.

"**Continuous Status as an Employee, Director or Consultant**" means that the employment, director or consulting relationship with the Company, any Parent, or Subsidiary, is not interrupted or terminated. Continuous Status as an employee, director or consultant shall not be considered interrupted in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company. For purposes of ISOs, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract.

"**Disability**" means a disability, whether temporary or permanent, partial or total, as determined by the Committee.

"**Disinterested Person**" means a director who has not, during the period that person is a member of the Committee and for one (1) year prior to service as a member of the Committee, been granted or awarded equity securities pursuant to the Plan or any other plan of the Company or any Parent, Subsidiary or Affiliate of the Company, except in accordance with the requirements set forth in Rule 16b-3(c)(2)(i) (and any successor regulation thereto) as promulgated by the SEC under Section 16(b) of the Exchange Act, as such rule is amended from time to time and as interpreted by the SEC.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exercise Price**" means the price at which a holder of an Option may purchase the Shares issuable upon exercise of the Option.

"**Fair Market Value**" means, as of any date, the value of a share of the Company's Common Stock determined as follows:

(a) if such Common Stock is then quoted on the Nasdaq National Market, its last reported sale price on the Nasdaq National Market or, if no such reported sale takes place on such date, the average of the closing bid and asked prices;

(b) if such Common Stock is publicly traded and is then listed on a national securities exchange, the last reported sale price or, if no such reported sale takes place on such date, the average of the closing bid and asked prices on the principal national securities exchange on which the Common Stock is listed or admitted to trading;

(c) if such Common Stock is publicly traded but is not quoted on the Nasdaq National Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on such date, as reported by The Wall Street Journal, for the over-the-counter market; or

(d) if none of the foregoing is applicable, by the Board in good faith.

"**Insider**" means an officer or director of the Company or any other person whose transactions in the Company's Common Stock are subject to Section 16 of the Exchange Act.

"**Option**" means an award of an option to purchase Shares pursuant to Section 5.

"**Option Holder**" means a Participant to whom one or more Options is granted under the Plan or, if applicable, such other person who holds one or more outstanding Options.

"**Parent**" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if at the time of the granting of an Award under the Plan, each of such corporations other than the Company owns stock possessing fifty percent (50%), or more, of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"**Participant**" means a person who receives an Award under the Plan.

"**Plan**" means this Five 9, Inc. 2004 Equity Incentive Plan, as amended from time to time.

"**Restricted Stock Award**" means an award of Shares pursuant to Section 6.

"**Rule 12h-1(f)**" means Rule 12h-1(f) promulgated under the Exchange Act.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Shares**" means shares of the Company's Common Stock reserved for issuance under the Plan, as adjusted pursuant to Sections 2 and 18, and any successor security.

"**Stock Bonus**" means an award of Shares, or cash in lieu of Shares, pursuant to Section 7.

"**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of granting of the Award, each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%), or more, of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"**Termination**" or "**Terminated**" means, for purposes of the Plan with respect to a Participant, that the Participant has ceased to provide services as an employee, director, consultant or adviser, to the Company or a Parent, Subsidiary or Affiliate of the Company, except in the case of sick leave, military leave, or any other leave of absence approved by the

Committee; *provided*, *however*, that such leave is for a period of not more than three months, or reinstatement upon the expiration of such leave is guaranteed by contract or statute. The Committee shall have sole discretion to determine whether a Participant has ceased to provide services and the effective date on which the Participant ceased to provide services (the "Termination Date").

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24. Execution. To record the adoption of the Plan by the Board and the amendment and restatement of the Plan as set forth herein, the Company has caused its authorized officer to execute the same as of June 4, 2012.

Five 9, Inc.

/s/ Michael Burkland
Michael Burkland
President and Chief Executive Officer

2013 Five9 Bonus Plan

Five9 maintains an employee bonus incentive plan as part of the company's compensation strategy to attract and retain top level talent.

Participation

Eligibility for Employees to participate in the bonus plan is requested by their manager. Final approval from the CEO is required for an employee to be eligible to participate in the bonus plan.

Eligibility for Executives to participate in the bonus plan is approved by the Board of Directors (Board) Compensation Committee.

Target Award

The target award is the amount, at 100% performance achievement, payable under the Plan to a Participant for the Performance Period. Target Awards will be pro-rated from the date of hire or date of approval if approved after a Performance Period has already commenced.

Goal Amount

Employee bonuses are set as an annual dollar amount as recommended by the employee's manager and approved by the CEO.

Executive bonuses are set as an annual dollar amount as approved by the Board.

Performance Period

The performance period is the period of time for the measurement of the performance criteria that must be met to receive a bonus.

Employee bonuses are set as an annual target with quarterly payouts. The CEO has an annual bonus with quarterly payouts as well as a discretionary bonus paid out annually upon approval by the Board.

Performance Criteria

Five9, in its sole discretion, will determine the performance goals applicable to any Target Award. Performance goals for any Participant may include individual and/or corporate goals.

Achievement

Achievement of corporate goals is measured by corporate achievement of revenue and normalized cash flow goals as outlined in Appendix A.

Achievement of individual employee goals is measured by the employees' managers.

Right to Receive Award

A participant must be an employee of Five9 on the date of bonus payment to receive their bonus payment, unless otherwise determined by Five9 Management or the Board.

Timing of Payment

Payment of each award will be made as soon as practicable as determined by Five9 Management and the Board after the end of the Performance Period during which the award was earned. Bonus amounts will be processed through payroll with applicable state and federals tax withholding for bonus payments.

Payment in the Event of Death

If a Participant dies prior to the payment of the award, the award will be paid to the estate of the Participant.

Amendment, Termination and Duration

The Bonus Plan is provided at the discretion of Five9. Five9 reserves the right to administer, modify or terminate the Plan with or without notice.

2013 Performance Goals

In 2013 there were four quarterly Performance Periods, ending on March 31, June 30, September 30 and December 31. For each quarter there were two corporate performance goals: Revenue weighted at 80% and Normalized Cash Flow weighted at 20%. The chart below illustrates the Revenue and Normalized Cash Flow targets for each of the 2013 Performance Periods.

2013 Performance Period	Revenue Target (in millions)	Normalized Cash Flow Target (in millions)
Q1	$19,481	($5,862)
Q2	$20,445	($7,290)
Q3	$23,294	($6,556)
Q4	$27,385	($3,391)

Normalized Cash Flow is EBITA less principal and interest amounts paid on debt.

Achievement of Corporate Goals

Achievement of Revenue is on a sliding scale from 90%-110% of goal achievement with payout on a 3 to 1 scale. The chart below illustrates the funding multiple that will apply to each quarterly 2013 Revenue Performance Goal.

Goal Achievement as %	Bonus Pool Funding as %
90	70
91	73
92	76
93	79
94	82
95	85
96	88
97	91
98	94
99	97
100	100
101	103
102	106
103	109
104	112
105	115
106	118
107	121
108	124
109	127
110	130

The Normalized Cash Flow corporate goal is payable at either 100% or 0%. To achieve 100% the actual Normalized Cash Flow must be no more than $100k less than the target. If the Normalized Cash Flow is lower than this threshold, the achievement of this goal is 0%.

Exhibit 10.12

FIVE9, INC.

KEY EMPLOYEE SEVERANCE BENEFIT PLAN

1. Introduction. This Five9, Inc. Key Employee Severance Benefit Plan (the "***Plan***") is established by Five9, Inc. (the "***Company***") on the IPO Date. The Plan provides for severance benefits to selected employees of the Company. This document constitutes the Summary Plan Description for the Plan.

2. Definitions. For purposes of the Plan, the following terms are defined as follows:

(a) "*Base Salary*" means the Participant's base salary in effect immediately prior to the date of the Qualifying Termination, ignoring any reduction in base salary that forms the basis for Constructive Termination.

(b) "***Bonus***" means the Participant's target annual cash incentive compensation award for the year in which the Qualifying Termination occurs, as of immediately prior to the Qualifying Termination, ignoring the effect of any reduction in base salary that forms the basis for Constructive Termination.

(c) "***Board***" means the Board of Directors of the Company.

(d) "***Cause***" has the meaning defined in the Company's 2014 Equity Incentive Plan.

(e) "***Change in Control***" has the meaning defined in the Company's 2014 Equity Incentive Plan, but only if such transaction is also a change in the ownership or effective control of the Company, or a change in the ownership of a substantial portion of the Company's assets, as described in Treasury Regulation Section 1.409A-3(i)(5).

(f) "***Change in Control Termination***" means (i) an Involuntary Termination Without Cause, or (ii) a Constructive Termination, in either case that occurs within three (3) months prior to, on or within twelve (12) months after a Change in Control.

(g) "***Code***" means the Internal Revenue Code of 1986, as amended.

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Constructive Termination***" means the Participant's resignation from all positions he or she then holds with the Company, resulting in a Separation from Service, because one of the following events or actions is undertaken without the Participant's written consent: (i) a material diminution in the Participant's authority, duties or responsibilities as in effect as of immediately prior to a Change in Control (which, in the case of the CEO, CFO and General Counsel, would include a failure to remain as the primary executive, financial or legal officer, respectively, of the resulting combined entity); (ii) a material reduction in the Participant's annual base salary as in effect as of immediately prior to a Change in Control (other than a reduction that affects all senior executives of the Company to a similar degree), which the parties agree is a reduction of ten percent (10%) or more; (iii) a material adverse change in the geographic location of the principal offices at which the Participant must perform the Participant's services as of immediately prior to a Change in Control, which the parties agree is a

change that increases the Participant's one way commute by more than forty (40) miles; or (iv) the successor entity or surviving corporation in the Change in Control refuses to materially assume and comply with the terms of this Plan. An event or action will not give the Participant grounds for Constructive Termination unless (A) the Participant gives the Company written notice within sixty (60) days after the initial existence of the event or action that the Participant intends to resign in a Constructive Termination due to such event or action; (B) the event or action is not reasonably cured by the Company within thirty (30) days after the Company receives written notice from the Participant; and (C) the Participant's Separation from Service occurs within thirty (30) days after the end of the cure period.

(j) "***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

(k) "***Involuntary Termination Without Cause***" means a Participant's involuntary termination of employment by the Company, resulting in a Separation from Service, for a reason other than death, disability or Cause.

(l) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(m) "***Participant***" means each individual who is employed by the Company and has received and returned a signed Participation Notice.

(n) "***Participation Notice***" means the latest notice delivered by the Company to a Participant informing such Participant that he or she is eligible to participate in the Plan, in substantially the form attached hereto as **Exhibit A**.

(o) "***Plan Administrator***" means the Board or any committee of the Board duly authorized to administer the Plan. The Plan Administrator may, but is not required to be, the Compensation Committee of the Board (the "***Compensation Committee***"). The Board may at any time administer the Plan, in whole or in part, notwithstanding that the Board has previously appointed a committee to act as the Plan Administrator.

(p) "***Qualifying Termination***'' means (i) an Involuntary Termination Without Cause that does not occur three (3) months prior to, on or within twelve (12) months after a Change in Control, or (ii) a Change in Control Termination.

(q) "***Section 409A***" means Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect.

(r) "***Separation from Service***" means a "separation from service" within the meaning of Treasury Regulations Section 1.409A-1(h), without regard to any alternative definition thereunder.

(s) "***Severance Period***" means the number of months of severance that the Participant is eligible to receive under this Plan, as set forth on the Participant's Participation Notice.

3. Eligibility for Benefits.

(a) **Eligibility; Exceptions to Benefits**. Subject to the terms of the Plan, the Company will provide the benefits described in Section 4 to the affected Participant. A Participant will not receive benefits under the Plan (or will receive reduced benefits under the Plan) in the following circumstances, as determined by the Plan Administrator, in its sole discretion:

(i) The Participant's employment is terminated by either the Company or the Participant for any reason other than a Qualifying Termination.

(ii) The Participant has not entered into the Company's standard form of Proprietary Information and Inventions Assignment Agreement (the "***Proprietary Information Agreement***").

(iii) The Participant has failed to execute and allow to become effective the Release (as defined and described below) within sixty (60) days following the Participant's Separation from Service.

(iv) The Participant has failed to return all Company Property. For this purpose, "***Company Property***" means all paper and electronic Company documents (and all copies thereof) created and/or received by the Participant during his or her period of employment with the Company and other Company materials and property that the Participant has in his or her possession or control, including, without limitation, Company files, notes, drawings records, plans, forecasts, reports, studies, analyses, proposals, agreements, financial information, research and development information, sales and marketing information, operational and personnel information, specifications, code, software, databases, computer-recorded information, tangible property and equipment (including, without limitation, leased vehicles, computers, computer equipment, software programs, facsimile machines, mobile telephones, servers), credit and calling cards, entry cards, identification badges and keys, and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof, in whole or in part). As a condition to receiving benefits under the Plan, a Participant must not make or retain copies, reproductions or summaries of any such Company documents, materials or property. However, a Participant is not required to return his or her personal copies of documents evidencing the Participant's hire, termination, compensation, benefits and stock options and any other documentation received as a stockholder of the Company.

(b) **Relation to Other Agreements and/or Plans**. This Plan, including the Participant's signed Participation Notice, sets forth his or her entire rights to receive severance on a Qualifying Termination. By accepting participation in this Plan, the Participant irrevocably waives his or her rights to any severance benefits (including vesting acceleration) to which the Participant may be entitled pursuant to any offer letter, employment agreement, severance agreement, equity award agreement or any other similar agreement with the Company, or any other Company benefit plan, that is in effect on the date he or she signs the Participation Notice, other than any acceleration of vesting benefits on a change in control transaction as provided under the Company's equity incentive plans.

(c) **Termination of Benefits**. A Participant's right to receive benefits under the Plan will terminate immediately if, at any time prior to or during the period for which the Participant is receiving benefits under the Plan, the Participant, without the prior written approval of the Plan Administrator:

(i) willfully breaches a material provision of the Proprietary Information Agreement and/or any obligations of confidentiality, non-solicitation, non-disparagement, no conflicts or non-competition set forth in the Participant's employment agreement, offer letter or under applicable law;

(ii) solicits any of the Company's then current employees to leave the Company's employ for any reason or interferes in any other manner with employment relationships at the time existing between the Company and its then current employees; or

(iii) induces any of the Company's then current clients, customers, suppliers, vendors, distributors, licensors, licensees, or other third party to terminate their existing business relationship with the Company or interferes in any other adverse manner with any existing business relationship between the Company and any then current client, customer, supplier, vendor, distributor, licensor, licensee, or other third party.

4. Payments and Benefits. Except as may otherwise be provided in the Participant's Participation Notice, in the event of a Qualifying Termination, the Company will provide the payments and benefits described in this Section 4, subject to the terms of the Plan.

(a) **Cash Severance**. The Company will make a lump sum payment of "***Cash Severance***" to the Participant in an amount equal to his or her Base Salary for the Participant's Severance Period, plus, in the case of a Change in Control Termination, an additional amount equal to his or her Bonus for the Severance Period, in each case, determined by the chart below. The Cash Severance will be paid in a lump sum on the sixtieth (60) day after the date of the Participant's Separation from Service.

Tier	Position Level	Severance Period– Involuntary Termination Without Cause (Base Salary only)	Severance Period – Change in Control Termination (Base Salary + Bonus)
1	Chief Executive Officer	12 months	18 months
2	Chief Financial Officer and General Counsel	9 months	15 months
3	Executive Officers	6 months	12 months
4	Selected Vice Presidents (as designated by the Plan Administrator)	4 months	6 months

(b) **Health Insurance Premiums**. If the Participant timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (together with any state law of similar effect, "***COBRA***"), the Company will pay the full amount of the Participant's COBRA premiums, or will provide coverage under the Company's self-funded broad based health insurance plans, on behalf of the Participant, including coverage for the Participant's eligible dependents, until the earliest of (i) the end of the number of months in the Participant's Severance Period, (ii) the expiration of the Participant's eligibility for the continuation coverage under COBRA, or (iii) the date when the Participant becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the date of the Qualifying Termination through the earliest of (i) through (iii), the "***COBRA Payment Period***"). However, if at any time the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including, without limitation, the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums or credit under the self-funded plan, the Company will instead pay the Participant, on the first day of each month of the remainder of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premiums for that month (or, in the case of a self-funded plan, the monthly cost of such coverage), subject to tax withholdings and deductions. On the sixtieth (60) day following the Participant's Separation from Service, the Company will make the first payment under this paragraph equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such sixtieth (60) day, with the balance of the payments paid thereafter on the original schedule. In all cases, if the Participant becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the COBRA Payment Period, the Participant must immediately notify the Company of such event. For purposes of this paragraph, any applicable insurance premiums that are paid by the Company will not include any amounts payable by the Participant under a Section 125 health care reimbursement plan, which amounts, if any, are the sole responsibility of the Participant.

(c) **Double Trigger Vesting**. In the event of a Qualifying Termination that is a Change in Control Termination, each of the Participant's then outstanding and unvested compensatory equity awards will become fully (100%) vested, and, as applicable, become exercisable, effective as of immediately prior to the Qualifying Termination.

5. Additional Requirements.

(a) **Release**. To be eligible to receive any benefits under the Plan, a Participant must sign a general waiver and release, in substantially one of the forms attached hereto as **Exhibit B**, **Exhibit C**, or **Exhibit D**, as appropriate (the "***Release***"), and such Release must become effective in accordance with its terms, in each case within sixty (60) days following the Qualifying Termination (the "***Release Date***"). The Plan Administrator, in its sole discretion, may modify the form of the required Release to comply with applicable law, and any such Release may be incorporated into a termination agreement or other agreement with the Participant.

(b) **Certain Reductions**. The Plan Administrator will reduce a Participant's benefits under the Plan by any other statutory severance obligations or severance obligations (including pay in lieu of notice) payable to the Participant by the Company (or any successor thereto) that are due in connection with the Participant's Qualifying Termination and that are in the same form as the benefits provided under the Plan (e.g., salary or bonus replacement, health insurance coverage, equity award vesting credit). Without limitation, this reduction includes a reduction for any benefits required pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act (the "***WARN Act***"), (ii) any Company policy or practice providing for the Participant to remain on the payroll for a limited period of time after being given notice of the termination of the Participant's employment, and (iii) any required salary continuation, notice pay, statutory severance payment or other payments required by local law, as a result of the Qualifying Termination. The benefits provided under the Plan are intended to satisfy, to the greatest extent possible, and not to provide benefits duplicative of, any and all statutory and contractual obligations of the Company in respect of the form of benefits provided under the Plan that may arise out of a Qualifying Termination, and the Plan Administrator will so construe and implement the terms of the Plan. Reductions will be applied on a retroactive basis, with benefits previously provided being recharacterized as benefits pursuant to the Company's statutory or other contractual obligations. The payments pursuant to the Plan are in addition to, and not in lieu of, any accrued but unpaid salary, bonuses or employee welfare benefits to which a Participant is entitled for the period ending with the Participant's Qualifying Termination.

(c) **Mitigation**. Except as otherwise specifically provided in the Plan, a Participant will not be required to mitigate damages or the amount of any payment provided under the Plan by seeking other employment or otherwise, nor will the amount of any payment provided for under the Plan be reduced by any compensation earned by a Participant as a result of employment by another employer or any retirement benefits received by such Participant after the date of the Participant's termination of employment with the Company.

(d) **Indebtedness of Participants**. If a Participant is indebted to the Company on the effective date of his or her Qualifying Termination, the Company reserves the right to offset the payment of any benefits under the Plan by the amount of such indebtedness. Such offset will be made in accordance with all applicable laws. The Participant's execution of the Participation Notice constitutes knowing written consent to the foregoing.

(e) **Parachute Payments**. Except as otherwise expressly provided in an agreement between a Participant and the Company, if any payment or benefit the Participant would receive in connection with a Change in Control from the Company or otherwise (a "***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then such Payment will be equal to the Reduced Amount. The "***Reduced Amount***" will be either (A) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (B) the largest portion, up to and including the total, of the Payment, whichever amount ((A) or (B)), after taking into account all applicable federal, state, provincial, foreign and local employment taxes, income taxes and the Excise Tax (all computed at the highest applicable marginal rate), results in the Participant's receipt, on an after-tax basis, of the greatest economic benefit notwithstanding that all or some portion of the

Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction will occur in the following order: (1) reduction of cash payments; (2) cancellation of accelerated vesting of stock awards other than stock options; (3) cancellation of accelerated vesting of stock options; and (4) reduction of other benefits paid to the Participant. Within any such category of Payments (that is, (1), (2), (3) or (4)), a reduction will occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A and then with respect to amounts that are. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of the Participant's applicable type of stock award (i.e., earliest granted stock awards are cancelled last).

6. Tax Matters.

(a) **Application of Section 409A**. It is intended that all of the benefits provided under the Plan satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulations Sections 1.409A-1 (b)(4), 1.409A-1 (b)(5) and 1.409A-1 (b)(9), and the Plan will be construed to the greatest extent possible as consistent with those provisions. To the extent not so exempt, the Plan (and any definitions in the Plan) will be construed in a manner that complies with Section 409A and incorporates by reference all required definitions and payment terms. For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulations Section 1.409A-2(b)(2)(iii)), a Participant's right to receive any installment payments under the Plan will be treated as a right to receive a series of separate payments and, accordingly, each installment payment under the Plan will at all times be considered a separate and distinct payment. If the Plan Administrator determines that any of the payments upon a Separation from Service provided under the Plan (or under any other arrangement with the Participant) constitutes "deferred compensation" under Section 409A and if the Participant is a "specified employee" of the Company, as such term is defined in Section 409A(a)(2)(B)(i), at the time of his or her Separation from Service, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the payments upon a Separation from Service will be delayed as follows: on the earlier to occur of (i) the date that is six (6) months and one (1) day after the effective date of the Participant's Separation from Service, or (ii) the date of the Participant's death (such earlier date, the "***Delayed Initial Payment Date***"), the Company will (A) pay to the Participant a lump sum amount equal to the sum of the payments upon Separation from Service that the Participant would otherwise have received through the Delayed Initial Payment Date if the commencement of the payments had not been delayed pursuant to this paragraph, and (B) commence paying the balance of the payments in accordance with the applicable payment schedules set forth above. No interest will be due on any amounts so deferred.

(b) **Withholding**. All payments and benefits under the Plan will be subject to all applicable deductions and withholdings, including, without limitation, obligations to withhold for federal, state, provincial, foreign and local income and employment taxes.

(c) **Tax Advice**. By becoming a Participant in the Plan, the Participant agrees to review with the Participant's own tax advisors the federal, state, provincial, local and foreign tax consequences of participation in the Plan. The Participant will rely solely on such advisors and

not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) will be responsible for his or her own tax liability that may arise as a result of becoming a Participant in the Plan.

7. Reemployment. In the event of a Participant's reemployment by the Company during the period of time in respect of which severance benefits have been provided, the Company, in its sole and absolute discretion, may require such Participant to repay to the Company all or a portion of such severance benefits as a condition of reemployment.

8. Clawback; Recovery. All payments and severance benefits provided under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason," Constructive Termination or any similar term under any plan of or agreement with the Company.

9. Right to Interpret Plan; Amendment or Termination.

(a) **Exclusive Discretion**. The Plan Administrator will have the exclusive discretion and authority to establish rules, forms and procedures for the administration of the Plan and to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, without limitation, the eligibility to participate in the Plan, the amount of benefits paid under the Plan and any adjustments that need to be made in accordance with the laws applicable to a Participant. The rules, interpretations, computations and other actions of the Plan Administrator will be binding and conclusive on all persons.

(b) **Amendment or Termination**. The Company reserves the right to amend or terminate the Plan, any Participation Notice issued pursuant to the Plan or the benefits provided hereunder at any time; *provided*, *however*, that no such amendment or termination will apply to any Participant who would be adversely affected by such amendment or termination unless such Participant consents in writing to such amendment or termination. Notwithstanding the foregoing, this Plan shall terminate on the fifth anniversary of the IPO Date. Any action amending or terminating the Plan or any Participation Notice will be in writing and executed by a duly authorized officer of the Company.

10. No Implied Employment Contract. The Plan will not be deemed (a) to give any employee or other person any right to be retained in the employ of the Company, or (b) to interfere with the right of the Company to discharge any employee or other person at any time, with or without cause, which right is hereby reserved.

11. Legal Construction. The Plan will be governed by and construed under the laws of the State of California (without regard to principles of conflict of laws), except to the extent preempted by ERISA.

12. Claims, Inquiries and Appeals.

(a) **Applications For Benefits And Inquiries**. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is set forth in Section 14(e).

(b) **Denial of Claims**. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application and of the applicant's right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

(i) the specific reason or reasons for the denial;

(ii) references to the specific Plan provisions upon which the denial is based;

(iii) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and

(iv) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described in Section 12(d).

The notice of denial will be given to the applicant within ninety (90) days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional ninety (90) days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial ninety (90) day period.

The notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) **Request for a Review**. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within sixty (60) days after the application is denied. A request for a review will be in writing and will be addressed to:

Five9, Inc.
Attn: Compensation Committee
4000 Executive Pkwy, Ste 400
San Ramon, CA 94583

A request for review must set forth all of the grounds on which it is based, all facts in

support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) will have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and other information relating to his or her claim. The applicant (or his or her representative) will be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review will take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) **Decision on Review**. The Plan Administrator will act on each request for review within sixty (60) days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional sixty (60) days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial sixty (60) day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the Plan Administrator confirms the denial of the application for benefits, in whole or in part, the notice will set forth, in a manner designed to be understood by the applicant, the following:

(i) the specific reason or reasons for the denial;

(ii) references to the specific Plan provisions upon which the denial is based;

(iii) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and

(iv) a statement of the applicant’s right to bring a civil action under Section 502(a) of ERISA.

(e) **Rules and Procedures**. The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant’s own expense.

(f) **Exhaustion Of Remedies**. No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 12(a), (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 12(c), and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to an applicant’s claim or appeal within the relevant time limits specified in this Section 12, the applicant may bring legal action for benefits under the Plan pursuant to Section 502(a) of ERISA.

13. **Basis of Payments to and from the Plan**. All benefits under the Plan will be paid by the Company. The Plan will be unfunded, and benefits hereunder will be paid only from the general assets of the Company.

14. Other Plan Information.

(a) **Plan Sponsor**. The Company is the "Plan Sponsor," as that term is used in ERISA.

Five9, Inc.
4000 Executive Pkwy, Ste 400
San Ramon, CA 94583

(b) **Employer and Plan Identification Numbers**. The Employer Identification Number assigned to the Plan Sponsor by the Internal Revenue Service is 94-3394123. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 525.

(c) **Ending Date for Plan's Fiscal Year**. The date of the end of the fiscal year for the purpose of maintaining the Plan's records is December 31.

(d) **Agent for the Service of Legal Process**. The agent for the service of legal process with respect to the Plan is:

Five9, Inc.
Attn: Chairman of the Compensation Committee
4000 Executive Pkwy, Ste 400
San Ramon, CA 94583

Service of legal process may also be made upon the Plan Administrator.

(e) **Plan Administrator**. The Plan Administrator of the Plan is:

Five9, Inc.
Attn: Compensation Committee
4000 Executive Pkwy, Ste 400
San Ramon, CA 94583

The Plan Sponsor's and Plan Administrator's telephone number is (925) 201-2000. The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

15. Statement of ERISA Rights.

Participants in the Plan (which is a welfare benefit plan sponsored by Five9, Inc.) are entitled to certain rights and protections under ERISA. If you are a Participant, you are considered a participant in the Plan for the purposes of this Section 15 and, under ERISA, you are entitled to:

Receive Information About Your Plan and Benefits

(a) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(b) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Plan Administrator may make a reasonable charge for the copies; and

(c) Receive a summary of the Plan's annual financial report, if applicable. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within thirty (30) days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in a state or federal court.

If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

16. General Provisions.

(a) **Plan Document Controls**. In the event of any inconsistency between this Plan document and any other communication regarding this Plan, this Plan document controls.

(b) **Notices**. Any notice, demand or request required or permitted to be given by either the Company or a Participant pursuant to the terms of the Plan will be in writing and will be deemed given when delivered personally, when received electronically (including email addressed to the Participant's Company email account and to the Company email account of the Company's Chairman of the Compensation Committee), or deposited in the U.S. Mail, First Class with postage prepaid, and addressed to the parties, in the case of the Company, at the address set forth in Section 14(a), in the case of a Participant, at the address as set forth in the Company's employment file maintained for the Participant as previously furnished by the Participant or such other address as a party may request by notifying the other in writing.

(c) **Transfer and Assignment**. The rights and obligations of a Participant under the Plan may not be transferred or assigned without the prior written consent of the Company. The Plan will be binding upon any surviving entity resulting from a Change in Control and upon any other person who is a successor by merger, acquisition, consolidation or otherwise to the business formerly carried on by the Company without regard to whether or not such person or entity actively assumes the obligations hereunder. Notwithstanding the foregoing, on a Participant's death, any vested amounts owed to such Participant will be paid to his or her estate.

(d) **Waiver**. Any party's failure to enforce any provision or provisions of the Plan will not in any way be construed as a waiver of any such provision or provisions, nor prevent any party from thereafter enforcing each and every other provision of the Plan. The rights granted to the parties herein are cumulative and will not constitute a waiver of any party's right to assert all other legal remedies available to it under the circumstances.

(e) **Severability**. Should any provision of the Plan be declared or determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

(f) **Section Headings**. Section headings in the Plan are included only for convenience of reference and will not be considered part of the Plan for any other purpose.

Exhibit A

FIVE9, INC.

Key Employee Severance Benefit Plan
Participation Notice

To: _____

Date: _____

Five9, Inc. (the "***Company***") has adopted the Five9, Inc. Key Employee Severance Benefit Plan (the "***Plan***"). The Company is providing you this Participation Notice to inform you that you have been designated as a Participant in the Plan. A copy of the Plan document is attached to this Participation Notice. The terms and conditions of your participation in the Plan are as set forth in the Plan and this Participation Notice, which together constitute the Summary Plan Description for the Plan.

You are a Tier [ ] Participant.

You understand that by accepting your status as a Participant in the Plan, any of your stock options that have been considered to be "incentive stock options" prior to the date hereof, if applicable, may cease to qualify as "incentive stock options" as a result of the vesting acceleration benefit provided in the Plan. By accepting participation, you represent that you have either consulted your personal tax or financial planning advisor about the tax consequences of your participation in the Plan, or you have knowingly declined to do so.

Please return to the Company's Chief Executive Officer a copy of this Participation Notice signed by you. Please retain a copy of this Participation Notice, along with the Plan document, for your records.

_____
(*Signature*)

_____
(*Date*)

Exhibit B

Release Agreement
[Employees Age 40 or Over; Individual Termination]

I understand and agree completely to the terms set forth in the Five9, Inc. Key Employee Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company, affiliates of the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company or an affiliate of the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my Proprietary Information Agreement.

Except as otherwise set forth in this Release, I hereby generally and completely release the Company and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and their partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct or omissions occurring at any time prior to and including the date I sign this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress and discharge in violation of public policy; and (e) all federal, state, provincial and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("***ADEA***") and the federal Employee Retirement Income Security Act of 1974 (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in my Release: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company or its affiliate to which I am a party; the charter, bylaws or operating agreements of the Company or its affiliate; or under applicable law; or (b) any rights which cannot be waived as a matter of law. In addition, I understand that nothing in this Release prevents me from filing, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission or the U.S. Department of Labor, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding.

I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, and that the consideration given under the Plan for the waiver and release in the preceding paragraph hereof is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not do so); (c) I have twenty-one (21) days to consider this Release (although I may choose voluntarily to sign this Release earlier); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an officer of the Company; and (e) this Release will not be effective until the date upon which the revocation period has expired, which will be the eighth (8th) day after I sign this Release.

I hereby represent that I have been paid all compensation owed and for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act, or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

PARTICIPANT:

_____

(*Signature*)

By: _____

Date: _____

Exhibit C

Release Agreement
[Employees Age 40 or Over; Group Termination]

I understand and agree completely to the terms set forth in the Five9, Inc. Key Employee Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company, affiliates of the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company or an affiliate of the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my Proprietary Information Agreement.

Except as otherwise set forth in this Release, I hereby generally and completely release the Company and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and its and their partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct or omissions occurring at any time prior to and including the date I sign this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress and discharge in violation of public policy; and (e) all federal, state, provincial and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("***ADEA***") or the federal Employee Retirement Income Security Act of 1974 (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in my Release: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company or its affiliate to which I am a party; the charter, bylaws or operating agreements of the Company or its affiliate; or under applicable law; or (b) any rights which cannot be waived as a matter of law. In addition, I understand that nothing in this Release prevents me from filing, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission, or the U.S. Department of Labor, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, and that the consideration given under the Plan for the waiver and release in the preceding paragraph hereof is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (c) I have forty-five (45) days to consider this Release (although I may choose voluntarily to sign this Release earlier); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an office of the Company; (e) this Release will not be effective until the date upon which the revocation period has expired, which will be the eighth (8th) day after I sign this Release; and (f) I have received with this Release a detailed list of the job titles and ages of all employees who were terminated in this group termination and the ages of all employees of the Company in the same job classification or organizational unit who were not terminated.

I hereby represent that I have been paid all compensation owed and for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act, or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than forty-five (45) days following the date it is provided to me.

PARTICIPANT:

_____

(*Signature*)

By: _____

Date: _____

Exhibit D

Release Agreement
[Employees Under Age 40]

I understand and agree completely to the terms set forth in the Five9, Inc. Key Employee Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company, affiliates of the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company or an affiliate of the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my Proprietary Information Agreement.

Except as otherwise set forth in this Release, I hereby generally and completely release the Company and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and its and their partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct or omissions occurring at any time prior to and including the date I sign this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress and discharge in violation of public policy; and (e) all federal, state, provincial and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended) or the federal Employee Retirement Income Security Act of 1974 (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in my Release: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company or its affiliate to which I am a party; the charter, bylaws or operating agreements of the Company or its affiliate; or under applicable law; or (b) any rights which cannot be waived as a matter of law. In addition, I understand that nothing in this Release prevents me from filing, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission, or the U.S. Department of Labor, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Release.

I hereby represent that I have been paid all compensation owed and for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act, or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than fourteen (14) days following the date it is provided to me.

PARTICIPANT:

_____

(*Signature*)

By: _____

Date: _____

Exhibit 10.13

FIVE9, INC.

BISHOP RANCH—BUILDING LEASE

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BISHOP RANCH

BUILDING LEASE

This Lease is made and entered into this 16th day of December**, 2011,** by and between **Alexander Properties Company, a California limited partnership,** (hereinafter "Landlord") and **five9, Inc., a Delaware corporation** (hereinafter "Tenant"). For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises (the "Premises") crosshatched on Exhibit A containing **46,414** rentable square feet known as **Suite 400**, located on the fourth floor of **4000 Executive Parkway**, Building P (including all tenant improvements thereto, the "Building"), located at San Ramon, California 94583. The Building is part of a Complex containing the Building and **two (2)** other buildings (the "Complex"). The Complex, which contains **631,578 rentable** square feet, the land on which the Complex is situated (the "Land"), the common areas of the Complex, any other improvements in the Complex and the personal property used by Landlord in the operation of the Complex (the "Personal Property") are herein collectively called the "Project." Landlord shall pay the cost of "Suite Improvements" (as such term is defined in the work letter attached hereto as Exhibit B, the "Work Letter") and as shown on the attached Exhibit C.

2. TERM

2.1 Term. The term of this Lease shall commence on the "Commencement Date" hereinafter defined to be the earlier of the date Landlord delivers possession of the Premises to Tenant with all of the Suite Improvements Substantially Completed, as defined in Exhibit B, or the date Landlord would have completed the Premises and tendered the Premises to Tenant if Substantial Completion had not been delayed by the number of days specified in any and all Tenant Delay Notices given by Landlord as described in Exhibit B. The term of this Lease shall end on the date (the "Expiration Date") that is the sixth (6th) year anniversary of the Commencement Date, unless sooner terminated pursuant to this Lease.

2.2 Delay in Commencement. The Commencement Date is scheduled to occur on **March 1, 2012** (the "Scheduled Commencement Date"), but if there are "Scheduled Commencement Adjustment Days" (referred to in Paragraph 25.9 of this Lease and Exhibit B), then the Scheduled Commencement Date shall be that date which is the same number of days after **March 1, 2012** as the sum of the Scheduled Commencement Adjustment Days. If for any reason the Commencement Date does not occur on or before the Scheduled Commencement Date, except as otherwise provided in this Lease, Landlord shall not be liable for any damage thereby nor shall such inability affect the validity of this Lease or the obligations of Tenant hereunder. If the Commencement Date has not occurred

Please Initial

Tenant ( )
Landlord ( )

within sixty (60) days after the Scheduled Commencement Date, Tenant at its option, to be exercised by giving Landlord written notice within thirty (30) days after the end of such sixty (60) day period, may terminate this Lease and, upon Landlord's return of any monies previously deposited by Tenant, the parties shall have no further rights or liabilities toward each other.

2.3 Acknowledgment of Commencement Date. Upon determination of the Commencement Date, Landlord and Tenant shall execute a written acknowledgment of the Commencement Date and Expiration Date in the form attached hereto as Exhibit G.

3. RENT

3.1 Base Rent. Except as otherwise provided in this Lease, Tenant shall pay to Landlord monthly as base rent ("Base Rent") for the Premises in advance on the Commencement Date and on the first day of each calendar month thereafter during the term of this Lease without deduction, offset, prior notice or demand, in lawful money of the United States of America, the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS ($100,563.67).** For any prorations of Base Rent due to changes in the Premises on a day other than the first or last day of the month, the portion of Base Rent on a square foot basis associated with an increase or decrease in the size of the Premises shall be calculated by multiplying the number of days that the space was part of the Premises by the daily Base Rent defined to be the monthly Base Rent per square foot for said space divided by thirty (30). **Notwithstanding the foregoing, Base Rent shall be abated for the initial twelve (12) full calendar months of the term of this Lease.**

On or before the date that is three (3) business days after the date this Lease is fully executed by Landlord and Tenant, Tenant shall pay to Landlord the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS ($100,563.67)** to be applied against Base Rent when it becomes due.

3.2 Adjustments to Base Rent. Intentionally Deleted

3.3 Amounts Constituting Rent. All amounts payable or reimbursable by Tenant under this Lease, including late charges and interest, "Operating Cost Payments" (as defined in Paragraph 5), and amounts payable or reimbursable under the Work Letter and the other Exhibits hereto, shall constitute "Rent" and be payable and recoverable as such. Base Rent is due and payable as provided in Paragraph 3.1—"Base Rent", Operating Cost Payments are due and payable as provided in Paragraph 5.3—"Notice and Payment", and all other Rent payable to Landlord on demand under the terms of this Lease, unless otherwise set forth herein, shall be payable within thirty (30) days after written notice from Landlord of the amounts due. Except as otherwise provided in this Lease, all Rent shall be paid to Landlord without deduction or offset in lawful money of the United States of America at the address for notices or at such other place as Landlord may from time to time designate in writing.

Please Initial

Tenant ( )
Landlord ( )

4. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall pursuant to the terms and conditions of Paragraph 25.20, provide Landlord with a Letter of Credit in the amount of **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS ($700,000.00)** as Security. At such time that Tenant is relieved of its obligation to post the Letter of Credit Tenant shall deposit with Landlord the sum of **ONE HUNDRED THOUSAND FIVE HUNDRED SIXTY-THREE AND 67/100 DOLLARS ($100,563.67)** as a Security Deposit (the "Security Deposit"). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including the provisions relating to the payment of any Rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit to cure such default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) upon the expiration of the Lease term and Tenant's vacating the Premises; provided, however, that Landlord may elect in its reasonable discretion to retain a portion of the Security Deposit in an amount composed of any or all of the following: (i) any unpaid amounts owed to Landlord pursuant to this Lease, (ii) the cost of any damage (excluding normal wear and tear or damage resulting from the approved installation of wall hangings by Landlord) to the Premises, (iii) the costs of removing any personal property refuse or debris left in the Premises at the expiration of the Lease, and (iv) any sums underpaid by Tenant with respect to Operating Costs for the calendar year in which the Lease ends under Paragraph 5 if Landlord determines there will be an increase in Operating Expenses for said calendar year. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer the Security Deposit to Landlord's successor-in-interest and provided that such successor-in-interest agrees in writing to assume the obligations of Landlord under this Lease, Landlord shall be released from liability for the return of the Security Deposit or the accounting therefor. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of any Regulations, now or hereafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

5. TAX AND OPERATING COST INCREASES

5.1 Definitions. For purposes of this paragraph, the following terms are herein defined:

(a) Base Year: The calendar year in which this Lease commences.

(b) Operating Costs: Operating Costs shall include all actual costs and expenses of ownership, management, operation, repair and maintenance of the Project (excluding depreciation of the improvements in the Project and all amounts paid on loans of Landlord) applicable to the term of the Lease computed in accordance with "tax basis

Please Initial

Tenant ( )
Landlord ( )

accounting" (as defined below) principles consistently applied, including by way of illustration but not limited to: real property taxes, taxes assessed on the Personal Property, any other governmental impositions imposed on or by reason of the ownership, operation or use of the Project, and any tax in addition to or in lieu thereof, including taxes covered by Paragraph 5.4, if any, whether assessed against Landlord or Tenant or both; parts; equipment; supplies; insurance premiums; license, permit and inspection fees; cost of services and materials (including property management fees); cost of compensation (including employment taxes and benefits) of all persons who perform duties connected with the management, operation, maintenance and repair of the Project; costs of providing utilities and services, including water, gas, electricity, sewage disposal, rubbish removal, janitorial, gardening, security, parking, window washing, supplies and materials, and signing (but excluding services not uniformly available to substantially all of the Project tenants); costs of capital improvements (i) required to cause the Project to comply with all laws, statutes, ordinances, regulations, rules and requirements of any governmental or public authority, including, without limitation, the Americans with Disabilities Act of 1990 (the "ADA") (collectively, "Legal Requirements") which become effective after the Commencement Date, or (ii) which reduce Operating Costs, such costs, together with interest on the unamortized balance at the rate of eight percent (8%) per annum, to be amortized over the useful life or payback period whichever is shorter provided that such amortized costs of capital improvements shall only be included in Operating Costs to the extent of the reduction in Operating Costs; costs of maintenance and replacement of landscaping; legal, accounting and other professional services incurred in connection with the operation of the Project and the calculation of Operating Costs; and rental expense or a reasonable allowance for depreciation of the Personal Property. If the Project is not at least ninety-five (95%) percent occupied for any calendar year during the term of this Lease, Operating Costs that vary with occupancy shall be adjusted to the amount which would have been incurred if the Project had been at least ninety-five (95%) percent occupied for the year. "**Tax basis** accounting" is defined to mean accounting in accordance with the Internal Revenue Code and related rules, regulations, rulings, and applicable case law applied by Landlord on a consistent basis in reporting income and expense, including the capitalization of costs and related depreciation, to the Internal Revenue Service.

Notwithstanding the foregoing, Operating Costs shall not include the following:

(1) Depreciation and amortization, except as provided for above.

(2) Costs of capital improvements except as provided for above.

(3) Costs to acquire or install sculpture, paintings or other objects of art.

(4) Costs incurred in connection with upgrading the Building or Project to comply with disability, life, fire, safety codes, ordinances, statutes, or other laws or Legal Requirements in effect on or prior to the Commencement Date including, without limitation, the ADA, and penalties or damages incurred due to such non-compliance.

(5) Advertising and promotional expenses.

Please Initial

Tenant ( )
Landlord ( )

(6) Real estate broker's or other leasing commissions, attorneys' fees, architects' fees and other costs incurred in connection with negotiations or disputes with tenants or prospective tenants of the Building or Project, other than disputes as to the common areas.

(7) Costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants or other occupants in the Project or vacant space in the Project.

(8) Repairs or other work occasioned by fire, windstorm, or other casualty and public liability claims, to the extent such are covered by insurance proceeds, the cost of which is included in Operating Costs, and costs incurred by Landlord in connection with or made necessary by the actual or threatened exercise by governmental authorities (or other entities with power of eminent domain) of the power of eminent domain.

(9) Costs, other than Operating Costs, specially billed to Tenant or any other specific tenants, such as (but not limited to) janitor service, or electrical usage or other services or benefits provided to certain tenants but not to tenants of the Project generally.

(10) Costs incurred to remedy or monitor any Hazardous Materials condition except if caused by Tenant.

(11) Interest or penalties or other costs resulting from (a) late payment of any operating expense by Landlord (unless Landlord in good faith disputes a charge and subsequently loses or settles that dispute); or (b) any amount payable by Landlord to any tenant resulting from Landlord's default in its obligations to that tenant.

(12) Costs incurred in installing, operating and maintaining any commercial concession or specialty service that is not necessary for Landlord's provision, management, maintenance and repair of the Project. The following are examples of these specialty services: observatory; broadcasting facilities (other than the life-support and security system for the Project); luncheon club, cafeteria, or other dining facility; newsstand; flower services; shoeshine service; carwash; and athletic or recreational club.

(13) Any compensation paid to clerks, attendants, or other persons in commercial concessions in the Project that are operated by Landlord.

(14) Debt service, interest, payment of principal on mortgages or other financing costs or expenses.

(15) Rental payments to any ground lessor.

(16) Expenses incurred in enforcing obligations of other tenants of the Building or Project;

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Tenant ( )
Landlord ( )

(17) Salaries and other compensation of executive officers of the managing agent of the Building or Project above the grade of senior Project manager;

(18) Costs of any service provided to any one tenant of the Project but not to tenants of the Project generally;

(19) Fines or penalties due to violations by Landlord of Legal Requirements.

(20) Costs, fees and compensation paid to Landlord, or to Landlord's subsidiaries or affiliates, for services to the Building or Project (including but not limited to management services) in excess of the cost for the same scope of services using union labor and rendered by an unaffiliated third party of comparable skill, competence, stature and reputation for a Class A office Project of similar size.

(21) Landlord's general corporate or partnership overhead and general administrative expenses.

(22) Fees or dues for trade associations.

(23) Entertainment, dining or travel expenses for any purpose.

(24) Rentals for equipment ordinarily considered to be of a capital nature (such as elevators and HVAC systems).

(25) All additions to Building or Project reserves including bad debts and rent loss reserves.

(26) The cost of repairing any latent defects in the original construction of the Building or Project.

(27) The cost of any political or charitable donations;

(28) Repair costs resulting from the negligence of Landlord or others.

(29) Costs incurred in connection with making any additions to, or building additional stories on, the Buildings in the Project or their plazas, or adding buildings or other structures to the Project.

(30) Landlord's gross receipts taxes for the Building or Project, personal and corporate income taxes, inheritance and estate taxes, franchise, gift and transfer taxes, and any real estate taxes payable or assessed for any period outside the term of the Lease.

(31) Special assessments or special taxes initiated as a means of financing improvements to the Building or Project and the surrounding areas thereof.

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Tenant ( )
Landlord ( )

(32) Any annual increase in Controllable Operating Costs (as defined below) over the base year in excess of four percent (4%), on a cumulative basis, over the cost of such Controllable Operating Costs for the prior year. “Controllable Operating Costs” include only the following costs: Cost incurred in property management fees, security and landscaping.

5.2 Tenant’s Share. If Operating Costs during any calendar year following the Base Year exceed the rentable square footage of the Complex multiplied by **$11.80** (the “Expense Stop”), Tenant shall pay to Landlord a sum which is equal to “Tenant’s Share” of such excess (“Operating Cost Payment”). “Tenant’s Share” means **7.35%**, which is calculated by dividing the rentable square footage of the Premises by the rentable square footage of the Complex as such rentable square footages are set forth in Paragraph 1, and multiplying such number by 100.

5.3 Notice and Payment. Landlord shall, at or as soon as practicable after the start of each calendar year subsequent to the Base Year (but no later than April 30th), provide Tenant with a Statement (the “Statement”) of the amount of the Operating Cost Payment for the preceding calendar year, and the amount of any payment due from Tenant to Landlord or from Landlord to Tenant, taking into account any payments made by Tenant for such preceding calendar year Operating Cost Payment. In addition, Statement shall include an amount which Landlord estimates will be Tenant’s Operating Cost Payment for the current calendar year, and one-twelfth (1/12th) of the amount thereof shall be added to the monthly Base Rent payments required to be made by Tenant in such year. If the amounts Tenant has paid during the year towards the current year’s Operating Cost Payment is less than or exceeds the amount required using said one-twelfth (1/12th) addition to Base Rent starting with the first month of the calendar year covered by such statement, then within thirty (30) days after receipt of the Statement, Tenant shall pay in cash any sums owed Landlord or, if applicable, Tenant shall receive a credit against any rent next accruing for any sum owed Tenant.

In no event will Tenant be entitled to receive the benefit of a reduction in Operating Costs below the Expense Stop costs.

For any partial calendar year at the termination of this Lease, Tenant’s Share of any increases in Operating Costs for such year over the Expense Stop shall be prorated on the basis of a 365-day year by computing Tenant’s Share of the increases in Operating Costs for the entire year and then prorating such amount for the number of days this Lease was in effect during such year. Notwithstanding the expiration or termination of this Lease, and within thirty (30) days after Tenant’s receipt of Landlord’s statement regarding the determination of increases in Operating Costs for the calendar year in which this Lease expires or terminates, Tenant shall pay to Landlord or Landlord shall pay to Tenant, as the case may be, an amount equal to the difference between Tenant’s Share of the increases in Operating Costs for such year (as prorated) and the amount previously paid by Tenant toward such increases. This provision shall survive the expiration or sooner termination of this Lease provided that Landlord shall have no right to collect any deficiency in Tenant’s Operating Cost Payment more than three hundred sixty-five (365) days following the expiration or sooner termination of this Lease.

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Tenant ( )
Landlord ( )

5.4 Additional Taxes. Tenant shall pay as a component of Operating Costs, Tenant's Share of any and all taxes payable by Landlord, whether or not now customary or within the contemplation of the parties hereto (i) upon, allocable to or measured by the area of the Building, (ii) upon all or any portion of the Rent payable hereunder and under other leases of space in the Building, including any gross receipts tax or excise tax levied with respect to the receipt of such Rent, or (iii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Building or an portion thereof; provided that such taxes are applicable to the term of this Lease and not otherwise excluded from Operating Costs.

5.5 Tenant's Right to Audit. The annual Statement of Operating Costs for the preceding year shall be provided by Landlord on or before April 30th of each calendar year after the Base Year of the Lease term. Within ninety (90) days after receipt of the Statement, Tenant shall be entitled, upon ten (10) days prior written notice ("Inspection Notice") and during normal business hours, at Landlord's office or such other place as Landlord shall reasonably designate, to inspect and examine those books and records of Landlord relating to the determination of Operating Costs for only the immediately preceding calendar year. Any third party engaged by Tenant to inspect or examine the books and records shall be a certified public accountant from a nationally or regionally recognized accounting firm and such accountant shall not be compensated on a contingency fee or similar basis. Should Tenant elect to inspect such records, Tenant's inspection shall be completed and the results thereof submitted to Landlord no later than two (2) months after Tenant's notification to Landlord of its intent to inspect Landlord's books and records. Tenant shall be deemed to have waived its right to inspect Landlord's books and records if Tenant fails to timely deliver the Inspection Notice, or fails to timely complete the inspection (unless Landlord was the cause of the delay). If, after inspection and examination of such books and records, Tenant disputes the amounts of Operating Costs charged by Landlord, Tenant may, by written notice to Landlord, request an independent audit of such books and records. The independent audit of the books and records shall be conducted by a certified public accountant ("CPA") acceptable to both Landlord and Tenant. If, within thirty (30) days after Landlord's receipt of Tenant's notice requesting an audit, Landlord and Tenant are unable to agree on the CPA to conduct such audit, then Landlord may designate a nationally recognized accounting firm not then employed by Landlord or Tenant to conduct such audit. The audit shall be limited to the determination of the amount of Operating Costs for the subject calendar year. If the audit discloses that the amount of Operating Costs billed to Tenant was incorrect, the appropriate party shall pay to the other party the deficiency or overpayment, as applicable. All costs and expenses of the audit shall be paid by Tenant unless the audit shows that Landlord overstated Operating Costs for the subject calendar year by more than five percent (5%), in which case Landlord shall pay all costs and expenses of the audit (not to exceed $10,000.00). Tenant and Tenant's representatives shall keep any information gained from such audit confidential and shall not disclose it to any other party. The exercise by Tenant of its audit rights hereunder shall not relieve Tenant of its obligation to timely pay all sums due hereunder, including, without limitation, the disputed Operating Costs.

6. USE

6.1 Use. The Premises shall be used and occupied by Tenant for general and executive office purposes and for no other purpose without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

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Tenant ( )
Landlord ( )

6.2 Suitability. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the Building or with respect to the suitability of either for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in the Work Letter. Except with respect to the latent defects in the Suite Improvements (as defined in Exhibit B), the taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in satisfactory condition unless within ten (10) days after such date Tenant shall give Landlord written notice specifying in reasonable detail the respects in which the Premises or the Building were not in satisfactory condition.

6.3 Access. Tenant shall have access to the Premises and the parking granted hereunder twenty-four (24) hours a day, seven (7) days a week.

6.4 Uses Prohibited.

(a) Tenant shall not do nor permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy covering said Building or any part thereof or any of its contents, nor shall Tenant sell or permit to be kept, used or sold in or about said Premises any articles which may be prohibited by a standard form policy of fire insurance.

(b) Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall not bring onto the Premises any apparatus, equipment or supplies that may overload the Premises or the Building or any utility or elevator systems or jeopardize the structural integrity of the Building or any part thereof.

(c) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with, and at its sole cost and expense shall promptly comply with, any Legal Requirement now in force or which may hereafter be enacted or promulgated relating to the condition, use or occupancy of the Premises, excluding structural changes not relating to or affecting the condition, use or occupancy of the Premises or Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Legal Requirement, shall be conclusive of the fact as between Landlord and Tenant.

7. SERVICE AND UTILITIES

7.1 Landlord's Obligations. Provided Tenant is not in default hereunder, Landlord shall furnish to the Premises during reasonable hours of generally recognized business days, to be determined by Landlord, and subject to the rules and regulations of the Building, water, gas and electricity suitable for the intended use of the Premises, heat and air conditioning required in Landlord's reasonable

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Tenant ( )
Landlord ( )

judgment for the comfortable use and occupancy of the Premises, scavenger, janitorial services as described in Exhibit E attached hereto, window washing service and elevator service customary in similar Class A office buildings in the competing geographical areas. Landlord shall also maintain and keep lighted the common lobbies, hallways, stairs and toilet rooms in the Building.

(a) Landlord's current hours of operation in Bishop Ranch (hereinafter "Hours of Operation") are 7 a.m. to 7 p.m., Monday through Friday, excepting holidays (New Year's Day, President's Day, Memorial Day, July 4th (Independence Day), Labor Day, Thanksgiving, and Christmas Day). In the event the holiday falls on a weekend, the business day closest to the holiday will be considered to be the holiday. The building and its services are available to Tenant 24 hours a day, seven (7) days a week, 365 days a year. The after hours rate for air conditioning and heating service after Landlord's Hours of Operation is currently $75.00 per hour, per floor. This rate is subject to adjustment based upon the decrease or increase in utilities as charged by Landlord's utility provider.

7.2 Tenant's Obligation. Tenant shall pay for, prior to delinquency, all telephone and all other materials and services, not expressly required to be paid by Landlord, which may be furnished to or used in, on or about the Premises during the term of this Lease.

7.3 Tenant's Additional Requirements

(a) Tenant shall pay for heat and air-conditioning furnished at Tenant's request during non-business hours and/or on non-business days on an hourly basis at a reasonable rate established by Landlord. Tenant shall not use in excess of reasonable amounts for a like tenant of the Project (as reasonably determined by Landlord) ("Building Standard Amounts") of electricity, water or any other utility without Landlord's prior written consent, which consent Landlord may refuse. If Landlord reasonably determines that Tenant is using water, electricity, or other utilities (excluding those used in server rooms or data centers) in excess of "Building Standard Amounts", th Landlord may cause a water meter or electric current meter to be installed in the Premises so as to measure the amount of water and electric current consumed for any such excess use. The cost of such meters and of installation, maintenance and repair thereof shall be paid by Tenant and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the city in which the Building is located or by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed to measure any such excess use, Landlord shall have the right to reasonably estimate the amount of such use through qualified personnel. In addition, Landlord may impose a reasonable charge for the use of any additional or unusual janitorial services required by Tenant because of any Suite Improvements different from or above Building Standard Amounts, carelessness of Tenant or the nature of Tenant's business (including hours of operation). Notwithstanding the foregoing, any equipment that runs twenty-four (24) hours per day, seven (7) days per week or HVAC units that are installed in Tenant's server room or for Tenant's special equipment shall be sub-metered.

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Tenant ( )
Landlord ( )

(b) If any lights other than those designated as Building Standard Materials on Exhibit B are used in the Premises which increase the cost of sustaining the temperature otherwise maintained by the air conditioning system, Landlord may install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. In addition, if any lights other than those designated as Building Standard Materials on Exhibit B are used in the Premises, Tenant shall pay the cost to replace any worn or dead bulbs or tubes.

(c) In no event shall Tenant (i) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet or (ii) maintain at any time an electrical demand load in excess of four (4) watts per square foot of usable area of the Premises.

7.4 Nonliability. Except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of Rent, by reason of Landlord's failure to furnish any of the foregoing when due to "Force Majeure Events" (as defined in Paragraph 25.9). If failure to furnish the foregoing is within Landlord's reasonable control and Tenant is unable to occupy all or any portion of the Premises due to such failure, Tenant shall be entitled to an abatement of Base Rent commencing with the fifth (5th) consecutive day of such failure or the fifth (5th) day of such failure in any thirty (30) day period, unless prior thereto Landlord commences to cure such failure and thereafter diligently proceeds with such cure not to exceed sixty (60) days. Any failure to furnish any of the foregoing shall not constitute an eviction of Tenant, constructive or otherwise and, notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not be entitled to terminate this Lease on account of such failure. Landlord shall not be liable under any circumstances for consequential damages, however occurring, through or in connection with failure to furnish any of the foregoing.

8. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS

8.1 Maintenance and Repairs

(a) Landlord's Obligations. Landlord shall maintain in good order, condition and repair the structural and common areas of the Building, and the basic heating, ventilating, air conditioning, electrical, plumbing, fire protection, life safety, security and mechanical systems of the Building (the "Building Systems"), and shall cause the common areas of the Building to comply with all Legal Requirements (including, without limitation, the ADA), provided that any maintenance and repair caused by the acts or omissions of Tenant or Tenant's agents, employees, invitees, visitors (collectively "Tenant's Representatives") shall be paid for by Tenant. Notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not have the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the foregoing in good order, condition and repair, nor shall Landlord be liable under any circumstances for any consequential damages or loss of business, however occurring, through or in connection with any such failure.

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Tenant ( )
Landlord ( )

(b) Tenant's Obligations

(1) Tenant, at Tenant's sole cost and expense, except for services furnished by Landlord pursuant to Paragraph 7 hereof, shall maintain the Premises in good order, condition and repair including the interior surfaces of the ceilings, walls and floors, all doors, interior windows, and all plumbing pipes, electrical wiring, switches, fixtures, lights which are not those designated as Building Standard Materials on Exhibit B, and equipment installed for the use of the Premises, and shall cause the Premises to comply with all Legal Requirements (including, without limitation, the ADA) which become effective after the Commencement Date. Notwithstanding any law to the contrary that may now or hereafter exist, Tenant shall not have the right to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

(2) In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such work and diligently prosecute it to completion and after the notice and cure periods set out in Paragraph 18.1(e), Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest from the date expended by Landlord until paid by Tenant at the "Default Rate," as defined below. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work. As used in this Lease, "Default Rate" shall mean the lesser of twelve percent per annum (12%) or the maximum rate permitted by law.

(c) Compliance with Law. Landlord and Tenant shall each do all acts required to comply with all applicable Legal Requirements relating to their respective maintenance and repair obligations as set forth herein.

8.2 Alterations and Additions

(a) Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without obtaining the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed.

(b) Landlord may impose as a condition to the aforesaid consent such requirements as Landlord may deem necessary in its reasonable discretion, including without limitation thereto, performing the work itself, specifying the manner in which the work is done, and selecting the contractor by whom the work is to be performed and the times during which it is to be accomplished. Tenant shall pay to Landlord upon demand an amount equal to the reasonable costs and expenses for time spent by Landlord's employees or contractors in supervising, approving and administering such alterations.

(c) All such alterations, additions or improvements, all other Above-Standard Improvements (as defined in Paragraph 25.19), and all work performed under the Work Letter shall be the property of Landlord and shall remain upon and be surrendered with the Premises, unless Landlord upon Landlord's consent to the installation of same, Landlord provides written notice to Tenant that Tenant shall remove all or any part of same.

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Tenant ( )
Landlord ( )

(d) All articles of personal property and all business and trade fixtures, machinery and equipment, cabinetwork, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the Lease term when Tenant is not in default hereunder.

9. ENTRY BY LANDLORD

Landlord and Landlord's agents shall upon twenty-four (24) hours notice (except in the case of an emergency, in which case, as soon as practicable) have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers and, as permitted under this Lease, to alter, improve or repair the Premises and any portion of the Building (and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing the entrance to the Premises shall not be blocked thereby). Upon twenty-four (24) hours prior notice during the last six (6) months of the Lease term, Landlord or Landlord's agents may access the Premises to show it to prospective tenants and post "for lease" signs. Landlord shall conduct its activities under this Paragraph 9 in a manner that will minimize inconvenience to Tenant without incurring additional expense to Landlord. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord and Landlord's agents shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord or Landlord's agents by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof. Tenant shall not be released from its obligations under this Lease nor be entitled to any abatement of Rent on account of Landlord's entry under this Paragraph, and Tenant hereby waives any minor inconvenience occasioned thereby. Upon any entry on the Premises by Landlord or Landlord's agents, such entrants shall comply with Tenant's reasonable security requirements provided to Landlord in writing from time to time, and Tenant shall be permitted to have a representative present at all times.

10. LIENS

Tenant shall keep the Premises and the Building free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed, materials furnished or obligations incurred by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand with interest at the Default Rate until paid. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least three (3) business days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Premises.

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Tenant ( )
Landlord ( )

11. INDEMNITY

11.1 Indemnity.

(a) Subject to Paragraph 12.4, Tenant shall protect, indemnify, defend and hold Landlord, its partners, members, officers, shareholders, directors, employees, agents and property managers harmless from and against any and all losses, damages, costs, claims, attorneys' fees, expenses, liability, fines, and penalties arising from (i) any default or breach by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease by Tenant or (ii) any gross negligence or willful misconduct of Tenant or Tenant Representative in, on, or about the Premises, or any part of the Project, either during or prior to occupancy or during the term of this Lease. Notwithstanding the foregoing, in no event shall Tenant be liable for indirect or consequential damages of Landlord (including lost profits) however occurring.

(b) Subject to Paragraph 12.4, Landlord shall protect, indemnify, defend and hold Tenant, its partners, members, officers, shareholders, directors and employees harmless from and against any and all losses, damages, costs, claims, attorneys' fees, expenses, liability, fines, and penalties arising from (i) any default or breach by Landlord in the observance or performance of any of the terms, covenants or conditions of this Lease by Landlord or (ii) any gross negligence or willful misconduct of Landlord or Landlord Representative in, on, or about the Premises, or any part of the Project, either during or prior to occupancy or during the term of this Lease. Notwithstanding the foregoing, in no event shall Landlord be liable for indirect or consequential damages of Tenant (including lost profits) however occurring.

11.2 Exemption of Landlord from Liability. Except in the event of Landlord's gross negligence or willful misconduct, Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, telephone cabling or wiring, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Building, nor shall Landlord be liable for consequential damages however occurring.

12. INSURANCE

12.1 Coverage. Tenant shall, at all times during the term of this Lease, and at its own cost and expense, procure and continue in force the following insurance coverage:

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Tenant ( )
Landlord ( )

(a) Commercial General Liability Insurance with a combined single limit for personal or bodily injury and property damage of not less than **$3,000,000** or such other level of coverage that Landlord may require in its reasonable judgment.

(b) Fire and Extended Coverage Insurance, including vandalism and malicious mischief coverage, covering and in an amount equal to the full replacement value of all fixtures, furniture and improvements installed in the Premises by or at the expense of Tenant.

12.2 Insurance Policies. The aforementioned minimum limits of policies shall in no event limit the liability of Tenant hereunder. The aforesaid insurance shall name Landlord and its partners, property manager, and mortgagees as an additional insured. Said insurance shall be with companies having a rating of not less than A-, XI in "Best's Insurance Guide". Tenant shall furnish from the insurance companies or cause the insurance companies to furnish certificates of coverage. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Landlord may carry. Tenant shall, at least twenty (20) days prior to the expiration of such policies, furnish Landlord with evidence of renewals or binders. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge Tenant the premiums together with a reasonable handling charge and Default Interest from the date paid by Landlord, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by Tenant, provided such blanket policies expressly afford coverage to the Premises and to Tenant as required by this Lease.

12.3 Landlord's Insurance. During the term of this Lease Landlord shall maintain in effect insurance on the Building against fire, extended coverage perils and vandalism and malicious mischief (to the extent such coverages are available), with responsible insurers licensed to do business in California, insuring the Building in an amount equal to at least ninety-five percent (95%) of the replacement cost thereof, excluding foundations, footings and underground installations. Landlord may, but shall not be obligated to, carry additional commercially reasonable insurance against additional perils and/or in greater amounts.

12.4 Waiver of Subrogation. Tenant and Landlord hereby waive and release any and all right of recovery, whether arising in contract or tort, against the other, including employees and agents, arising during the term of this Lease for any and all loss or damage to any property located within or constituting a part of the Building or Complex, which loss or damage arises from the perils that could be insured against under the ISO Causes of Loss-Special Form Coverage including any deductible thereunder (whether or not the party suffering the loss or damage actually carries such insurance, recovers under such insurance or self insures the loss or damage) or which right of recovery arises from loss of earnings or rents resulting from loss or damage caused by such a peril. This mutual waiver is in addition to any other waiver or release contained in this Lease. Landlord and Tenant shall each have their insurance policies issued in such form as to waive any right of subrogation which might otherwise exist.

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Landlord ( )

13. DAMAGE OR DESTRUCTION.

13.1 Landlord's Duty to Repair. If all or a substantial part of the Premises are rendered untenantable or inaccessible by damage to all or any part of the Project from fire or other casualty then, unless either party elects to terminate this Lease pursuant to Paragraphs 13.2 or 13.3, Landlord shall, at its expense, use its commercially reasonable efforts to repair and restore the Premises and/or access thereto, as the case may be, to substantially their former condition to the extent permitted by the then applicable codes, laws and regulations; provided, however, that Tenant rather than Landlord shall be obligated at Tenant's expense to repair or replace Tenant's personal property, trade fixtures and any items or improvements that are required to be covered by Tenant's insurance under Paragraph 12.1(b).

If Landlord is required or elects to repair damage to the Premises and/or access thereto, this Lease shall continue in effect but Tenant's Base Rent and Operating Cost Payments from the date of the casualty through the date of substantial completion of the repair shall be abated by a proportionate amount based on the portion of the Premises that Tenant is prevented from using by reason of such damage or its repair; provided, however, that if the casualty is the result of the willful misconduct or negligence of Tenant or Tenant's Representatives, there will be no such rental abatement. In no event shall Landlord be liable to Tenant by reason of any injury to or interference with Tenant's business or property arising from fire or other casualty or by reason of any repairs to any part of the Project made necessary by such casualty.

13.2 Landlord's Right to Terminate. In the event of a casualty to the Project, Landlord may elect to terminate this Lease, effective as of the last day of the calendar month in which such election is made, under the following circumstances:

(a) Where, in the reasonable judgment of Landlord, the damage cannot be substantially repaired and restored under applicable laws and governmental regulations within one (1) year after the date of the casualty;

(b) Where, in the reasonable judgment of Landlord, adequate proceeds are not, for any reason, made available to Landlord from Landlord's insurance policies to make the required repairs;

(c) Where the Project is damaged or destroyed to the extent that the cost to repair and restore the Project exceeds twenty-five percent (25%) of the full replacement cost of the Project, whether or not the Premises are damaged or destroyed; or

(d) Where the damage occurs within the last twelve (12) months of the term of the Lease.

If any of the circumstances described in this Paragraph 13.2 arise, Landlord must notify Tenant in writing of that fact within ninety (90) days of the date of the casualty and in such notice Landlord must also advise Tenant whether Landlord has elected to terminate the Lease.

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13.3 Tenant's Right to Terminate. Tenant shall have the right to terminate this Lease if all or a substantial part of the Premises are rendered untenantable or inaccessible by damage to all or any part of the Project from fire or other casualty, provided that such casualty is not the result of the willful misconduct or negligence of Tenant or Tenant's Representatives, but only under the following circumstances:

(a) Tenant may elect to terminate this Lease if Landlord had the right under Paragraph 13.2 to terminate this Lease but did not elect to so terminate and Landlord failed to commence the required repair within ninety (90) days after the date it received proceeds to commence such repair. In such event, Tenant may terminate this Lease as of the date of the casualty by notice to Landlord given before the earlier of the date on which Landlord commences such repair or ten (10) days after the expiration of such ninety (90)-day period; or

(b) Tenant may elect to terminate this Lease in the circumstance described in Subparagraph 13.2(a). In such event, Tenant may terminate this Lease as of the date of the casualty by notice to Landlord given within thirty (30) days after Landlord's notice to Tenant pursuant to Paragraph 13.2.

13.4 Exclusive Rights. Landlord and Tenant each hereby agree that, notwithstanding any law to the contrary that may now or hereafter exist, neither party shall have any right to terminate this Lease in the event of any damage or destruction under any circumstances other than as provided in Paragraphs 13.2 and 13.3.

14. CONDEMNATION

If all or a material portion of the Premises shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right at its option, exercisable within thirty (30) days of receipt of notice of such taking, to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of the Premises. If any part of the Building other than the Premises shall be so taken or appropriated, Landlord shall have the right at its option to terminate this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for Tenant's unamortized cost of leasehold improvements, so long as such award to Tenant does not decrease the value of the award that would otherwise be made to Landlord in such taking or condemnation. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of Premises so made unusable bears to the rented area of the Premises immediately prior to the taking, and Landlord, at Landlord's cost, shall restore the Premises remaining to an architectural whole with the Base Rent reduced in proportion to what the area taken bears to the Premises prior to the taking. No temporary

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taking of the Premises and/or of Tenant's rights therein or under this Lease shall give Tenant the right to terminate this Lease or to any abatement of Rent thereunder. Any award made to Tenant by reason of any such temporary taking where Landlord does not terminate this Lease shall belong entirely to Tenant so long as said award does not diminish Landlord's award.

15. ASSIGNMENT AND SUBLETTING

15.1 Landlord's Consent Required. Except as provided in Paragraph 15.10, Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (each a "Transfer"), and shall not sublet the Premises or any part thereof, without the prior written consent of Landlord and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease.

15.2 Reasonable Consent.

(a) If Tenant complies with the following conditions, Landlord shall not unreasonably withhold its consent to the subletting of the Premises or any portion thereof or the assignment of this Lease. Tenant shall submit in writing to Landlord (i) the name and legal composition of the proposed subtenant or assignee; (ii) the nature of the business proposed to be carried on in the Premises; (iii) the terms and provisions of the proposed sublease; (iv) such reasonable financial information as Landlord may request concerning the proposed subtenant or assignee; and (v) the form of the proposed sublease or assignment. Within ten (10) business days after Landlord receives all such information it shall notify Tenant whether it approves such assignment or subletting or if it elects to proceed under Paragraph 15.8 below.

(b) The parties hereto agree and acknowledge that, among other circumstances for which Landlord could reasonably withhold its consent to a sublease or assignment, it shall be reasonable for Landlord to withhold its consent where (i) the assignee or subtenant (a "Transferee") does not itself occupy the entire portion of the Premises assigned or sublet, (ii) Landlord reasonably disapproves of the Transferee's reputation or the character of the business to be conducted by the Transferee at the Premises, (iii) the Transferee's business entails the operation of a call center, or (iv) the assignment or subletting would materially increase the burden on the Building services or the number of people occupying the Premises.

15.3 Excess Consideration. If Landlord consents to the assignment or sublease, Landlord shall be entitled to receive as additional Rent hereunder fifty percent (50%) of any consideration paid by the Transferee for the assignment or sublease and, in the case of a sublease, fifty percent (50%) of the excess of the rent and other consideration payable by the subtenant over the amount of Base Rent and Operating Cost Payments payable hereunder applicable to the subleased space.

15.4 No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting, and the Transferee shall be jointly and severally liable with Tenant for the payment of Rent (or that portion applicable to the subleased space in the case of a sublease) and for the performance of all other terms and provisions of the Lease. The consent by

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Landlord to any assignment or subletting shall not relieve Tenant and any such Transferee from the obligation to obtain Landlord's express written consent to any subsequent assignment or subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

15.5 Attorneys' Fees. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with reviewing any proposed assignment or sublease (not to exceed $3,000.00).

15.6 Transfer of Ownership Interest. Intentionally Deleted

15.7 Effectiveness of Transfer. No permitted assignment by Tenant shall be effective until Landlord has received a counterpart of the assignment and an instrument in which the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of assignment. The voluntary, involuntary or other surrender of this Lease by Tenant, or a mutual cancellation by Landlord and Tenant, shall not work a merger, and any such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any or all of such subleases.

15.8 Landlord's Right to Space. Notwithstanding any of the above provisions of this Paragraph 15 to the contrary, if Tenant notifies Landlord that it desires to assign this Lease or sublet all or any part of the Premises, Landlord, in lieu of consenting to such assignment or sublease, may elect to terminate this Lease (in the case of an assignment or a sublease of the entire Premises), or to terminate this Lease as it relates to the space proposed to be subleased by Tenant (in the case of a sublease of less than the entire Premises). In such event, this Lease (or portion thereof) will terminate on the date the assignment or sublease was to be effective, and Landlord may lease such space to any party, including the prospective Transferee identified by Tenant.

15.9 No Net Profits Leases. Intentionally Deleted

15.10 Permitted Assignment or Sublease. Notwithstanding any provision to the contrary in Paragraph 15, Tenant, so long as Tenant notifies Landlord in writing at least thirty (30) days prior to any such sublease or assignment and so long as Tenant provides Landlord with a fully executed copy of any such sublease or assignment, shall not be required to obtain Landlord's consent to an assignment of the Lease or sublease of the Premises to an entity which controls, is controlled by or is under common control with Tenant or which succeeds to substantially all of Tenant's assets and business by merger, reorganization or purchase. All other such subparagraphs of Paragraph 15 shall apply to this Paragraph 15.10 and shall remain in effect.

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16. SUBORDINATION

16.1 Subordination. Tenant agrees that upon execution and delivery of a Subordination and Non-Disturbance Agreement in a form reasonably acceptable to Tenant and executed by any mortgagee or holder of a first deed of trust or ground lessor of the Complex this Lease, at Landlord's option, shall be subject and subordinate to all ground or underlying leases which may hereafter be executed affecting all or any part of the Project, and to the lien of any first mortgages or first deeds of trust (each a "First Mortgage") in any amount or amounts whatsoever now or hereafter placed on or against the Land or Building, Landlord's interest or estate therein, or any ground or underlying lease, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. Notwithstanding the foregoing, if any mortgagee or trustee of a First Mortgage or ground lessor shall elect to have this Lease prior to the lien of its First Mortgage or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such First Mortgage or ground lease, whether this Lease is dated prior to or subsequent to the date of said First Mortgage or ground lease or the date of the recording thereof.

16.2 Junior Liens. Tenant hereby agrees that this Lease shall be superior to the lien of any present or future mortgages or deeds of trust that are junior to any First Mortgage.

16.3 Subordination Agreements. Not more than once in any twelve (12) month period during the Lease term, if this Lease is subordinate to a First Mortgage or a ground lease, Tenant will execute and deliver to Landlord within ten (10) days of written demand from Landlord and without charge therefor, such further commercially reasonable instruments evidencing the subordination of this Lease to any First Mortgage or ground lease, or the subordination of any First Mortgage or ground lease to such Lease, pursuant to Paragraph 16.1, as the case may be, as may be required by Landlord.

16.4 Attornment. If this Project is transferred to any purchaser pursuant to or in lieu of proceedings to enforce any mortgage, deed of trust or ground lease (collectively, "Encumbrance"), and this Lease is either prior to such Encumbrance or the mortgagee or trustee of a First Mortgage or ground lessor of the Project elects to have this Lease survive such transfer, Tenant shall attorn to such purchaser and recognize such purchaser as the landlord under this Lease, and this Lease shall continue as a direct lease between such purchaser and Tenant.

17. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and performing its other covenants and conditions under this Lease, Tenant shall have the quiet possession of the Premises for the term of this Lease as against any persons or entities lawfully claiming by, through or under Landlord, subject, however, to the terms of this Lease and of any Encumbrance.

18. DEFAULT; REMEDIES

18.1 Default. The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

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(a) Tenant fails to pay Rent when due and such failure continues for five (5) days after Landlord's written notice that the same is due;

(b) Tenant fails to deliver any subordination agreement requested by Landlord within the period described in Paragraph 16 and such failure continues for five (5) days after Landlord's second written notice that the same is due;

(c) Tenant fails to deliver any estoppel certificate requested by Landlord within the period described in Paragraph 22 and such failure continues for five (5) days after Landlord's second written notice that the same is due;

(d) Tenant Transfers or attempts to Transfer this Lease without complying with the provisions of Paragraph 15;

(e) Tenant fails to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for twenty (20) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said twenty (20) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion;

(f) Tenant abandons the Premises and fails to pay Rent; or

(g) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition seeking relief under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

18.2 Remedies. Upon the occurrence of an Event of Default, Landlord may, at any time thereafter exercise the following remedies, which shall be in addition to any other rights or remedies now or hereafter available to Landlord at law or in equity:

(a) Maintain this Lease in full force and effect and recover Rent as it becomes due, without terminating Tenant's right to possession irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to relet the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such reletting occurs, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting and other costs of subletting, including but not limited to

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brokers' commissions, attorneys' fees and expenses of removal of Tenant's personal property, trade fixtures, alterations and leasehold improvements; (ii) second, to the payment of Rent then due and payable; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the Rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

(b) Terminate Tenant's right to possession of the Premises at any time by written notice to Tenant, in which case Tenant shall immediately surrender possession of the Premises to Landlord. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's personal property and trade fixtures, its acceptance of keys to the Premises from Tenant or its exercise of any other rights and remedies under this Paragraph 18.2, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises. If Landlord terminates Tenant's right to possession in writing, Landlord shall be entitled to recover from Tenant all damages as provided in California Civil Code Section 1951.2 or any other applicable existing or future law, ordinance or regulation providing for recovery of damages for such breach, including but not limited to the following:

(1) The reasonable cost of recovering the Premises; plus

(2) The reasonable cost of removing Tenant's alterations, trade fixtures and Above-Standard Improvements; plus

(3) All unpaid Rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in subparagraph (a) above, together with interest at the Default Rate, on such sums from the date such Rent is due and payable until the date of the award of damages; plus

(4) The amount by which the Rent which would be payable by Tenant hereunder, including Operating Cost Payments as reasonably estimated by Landlord, from the date of termination until the date of the award of damages exceeds the amount of such rental loss Tenant proves could have been reasonably avoided, together with interest at the Default Rate on such sums from the date such Rent is due and payable until the date of the award of damages; plus

(5) The amount by which the Rent which would be payable by Tenant hereunder, including Operating Cost Payments, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve Bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

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(6) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

(c) During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's personal property, and trade fixtures from the Premises. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any Rent then due, after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord in its sole discretion deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, preparation for and conducting such sale, and attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in subparagraph (a) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's reentering and taking possession of the Premises or removing and storing Tenant's personal property pursuant to this Paragraph, and Tenant shall hold Landlord harmless from and against any loss, cost or damage resulting from any such act. No reentry by Landlord shall constitute or be construed as a forcible entry by Landlord.

(d) Landlord may cure the Event of Default at Tenant's expense. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Default Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant.

18.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of Base Rent or Operating Costs Payments is not received by Landlord or Landlord's designee within five (5) days of the date such amount shall be due, or if any installment of other Rent is not received by Landlord or Landlord's designee on or before the date such amount shall be due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

18.4 Interest. In addition to the late charges referred to above which are intended to defray Landlord's costs resulting from late payments, any late payment of Rent shall, at Landlord's option, bear interest from the due date of any such payment to the date the same is paid at the Default Rate, provided, however, that if Landlord imposes a late charge on any overdue payment, such overdue payment shall not begin to bear interest under this Paragraph 18.4 until thirty (30) days after the due date thereof.

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18.5 Default by Landlord.

(a) Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to any mortgagee, trustee or ground lessor of the Project (each a "Holder") provided that the name and address has been furnished to Tenant in accordance with Paragraph 25.14, specifying that Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion ("Landlord Default").

(b) In the event of a Landlord Default, Tenant, at its option, without further notice or demand, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein:

(1) to pursue the remedy of specific performance; and

(2) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease.

(c) Nothing in Paragraph 18.5(b) shall relieve Landlord from its obligations hereunder, nor shall Paragraph 18.5(b) be construed to obligate Tenant to perform Landlord's repair obligations. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately, Tenant may immediately undertake such repairs and Landlord shall reimburse Tenant for its actual costs within thirty (30) days from receipt of invoices for any such repair.

19. PARKING

Tenant and Tenant's employees, invitees and customers shall have the right to use the parking areas of the Building at a ratio of three (3) spaces per 1,000 square feet of the Premises and subject to such regulations and charges as Landlord shall reasonably adopt from time to time, and subject to the right of Landlord to restrict the use by Tenant and Tenant's Representatives when in the reasonable judgment of Landlord such use is excessive for the parking area in relationship to the reasonable use required by other Tenants. If Landlord becomes obligated under applicable laws or regulations or any other directive of any governmental or quasi-governmental authority to pay or assess fees or charges for parking in the Building's parking area, Tenant shall pay such amounts to Landlord as additional Rent.

20. RELOCATION OF PREMISES Intentionally Deleted

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21. MORTGAGEE PROTECTION.

Tenant agrees to give any Holder, by registered mail, a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing (by way of written notice delivered to Tenant in accordance with Paragraph 25.14) of the address of such Holder. If Landlord shall have failed to cure such default within the time period set forth in Paragraph 18.5 the Holder shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be reasonably necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Encumbrance, if necessary to effect such cure), and this Lease shall not be terminated so long as such remedies are being diligently pursued.

22. ESTOPPEL CERTIFICATES.

(a) Upon ten (10) days' written notice from Landlord, Tenant shall execute and deliver to Landlord, in form provided by or satisfactory to Landlord, a commercially reasonable certificate stating that this Lease is in full force and effect, describing any amendments or modifications hereto, acknowledging that this Lease is subordinate or prior, as the case may be, to any Encumbrance and stating any other information Landlord may reasonably request, including the term of this Lease, the monthly Base Rent, the estimated Operating Cost Payments, the date to which Rent has been paid, the amount of any security deposit or prepaid Rent, whether either party hereto is in default under the terms of the Lease, whether Landlord has completed its construction obligations hereunder and any other information reasonably requested by Landlord. Any person or entity purchasing, acquiring an interest in or extending financing with respect to the Project shall be entitled to rely upon any such certificate.

(b) If Landlord desires to finance or refinance the Building, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender unless Tenant's financial statements are publically available. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord and its agents and lenders in confidence and shall be used only for the purposes herein set forth. Notwithstanding anything to the contrary in this Lease, upon ten (10) days' written notice from Tenant, Landlord shall provide to Tenant a commercially reasonable certificate containing reasonably requested factual statements executed by Landlord in favor of Tenant or any party extending credit to Tenant.

23. SURRENDER, HOLDING OVER

23.1 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in its condition on the Commencement Date, except for reasonable wear and tear and damage from casualty or condemnation; provided, however, that prior to the expiration or termination of this Lease Tenant shall remove from the Premises all Tenant's personal property, trade fixtures, alterations and other Above-Standard Improvements that Tenant has the right or is required by Landlord to remove under the provisions of this Lease. To the extent installed by Tenant, Tenant shall also be responsible for removal of all telephone cables and wires, CRT, data and telephone equipment, and any other form of cabling in the Premises. If any of such removal is not

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completed at the expiration or termination of this Lease, Landlord may remove the same at Tenant's expense. Any damage to the Premises or the Building caused by such removal shall be repaired promptly by Tenant or, if Tenant fails to do so, Landlord may do so at Tenant's expense, in which event Tenant shall immediately reimburse Landlord for such expenses together with interest at the Default rate until so paid. Tenant's obligations under this Paragraph 23.1 shall survive the expiration or termination of this Lease. Upon expiration or termination of this Lease or of Tenant's possession, Tenant shall surrender all keys to the Premises or any other part of the Building and shall make known to Landlord the combination of locks on all safes, cabinets and vaults that may be located in the Premises.

23.2 Holding Over. If Tenant remains in possession of the Premises after the expiration or termination of this Lease, Tenant's continued possession shall be on the basis of a tenancy at the sufferance of Landlord, and Tenant shall continue to comply with or perform all the terms and obligations of the Tenant under this Lease, except that the Base Rent during Tenant's holding over shall be one hundred fifty percent (150%) of the monthly Base Rent payable in the last month prior to the termination or expiration hereof. Tenant shall indemnify and hold Landlord harmless from and against all claims, liability, damages, costs or expenses, including reasonable attorneys fees and costs of defending the same, incurred by Landlord and arising directly from Tenant's failure to timely surrender the Premises, including Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises by reason of such failure to timely surrender the Premises; but in no event shall Tenant be liable for indirect or consequential damages.

24. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of Hazardous Materials (as defined below) in violation of any Legal Requirements. Tenant shall not allow the storage or use of such substances or materials in violation of any Legal Requirement the storage and use of such substances or materials, nor allow to be brought into the Project any such materials or substances except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such substances or materials. "Hazardous Materials" means any substances, materials or wastes currently or in the future deemed defined in any Legal Requirement as "hazardous substance", "toxic substances", "contaminants", "pollutants" or words of similar import. For the avoidance of doubt, Hazardous Materials shall include those described in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever notify Tenant that such lender or governmental agency requires testing to ascertain whether or not there has been any release of Hazardous Materials on account of Tenant's use or occupancy of the Premises, then Tenant shall promptly notify Landlord of the same, and the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to the Premises. Landlord shall have the right, but not the obligation, to enter the Premises at any reasonable time to perform any required testing, to confirm Tenant's compliance with the provisions of this Paragraph, and to perform Tenant's obligations under this Paragraph if Tenant has failed to do so. In addition, Tenant shall execute affidavits, representations and the like from time to time (but not more often than once every twelve (12) months) at Landlord's request concerning Tenant's actual knowledge regarding the presence of Hazardous Materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in

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this Lease from any release of Hazardous Materials on the Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the lease term. Notwithstanding the foregoing, Tenant shall be permitted to use Hazardous Materials customarily used in the ordinary course of office work.

24.1 Landlord's Warranty/Hazardous Materials. Landlord represents and warrants to Tenant that Landlord has no knowledge and has received no notice of any Hazardous Materials; neither the Premises, the Common Areas, the Building or the Complex is contaminated with or contains any Hazardous Materials or materials as of the Commencement Date. Landlord shall indemnify, defend, protect and hold Tenant harmless from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs of expenses (including reasonable attorney's fees) arising as a result of any Hazardous Materials which exist within the Complex, Common Areas, Building or Premises before or after the Commencement Date which are not brought onto the Premises, Building or Complex by Tenant.

25. MISCELLANEOUS

25.1 Attornment. Upon any transfer by Landlord of Landlord's interest in the Premises or the Building (other than a transfer for security purposes only), Tenant agrees to attorn to any transferee or assignee of Landlord, provided that such transferee assumes in writing the obligations of Landlord under this Lease.

25.2 Captions; Attachments; Defined Terms

(a) The captions of the paragraphs of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any paragraph of this Lease. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. When required by the contents of this Lease, the singular includes the plural. Wherever the term "including" is used in this Lease, it shall be interpreted as meaning "including, but not limited to," the matter or matters thereafter enumerated.

(b) Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed to constitute part of this Lease and are incorporated herein.

(c) The words "Landlord" and "Tenant" as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. The obligations of this Lease as to a Tenant which consists of husband and wife shall extend individually to their sole and separate property as well as community property.

25.3 Entire Agreement. This Lease along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises, and this Lease and the exhibits and attachments may be altered, amended or revoked only by instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

Please Initial

Tenant ( )
Landlord ( )

25.4 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

25.5 Costs of Suit

(a) If Tenant or Landlord brings any action for the enforcement or interpretation of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees. The "prevailing party" will be determined by the court before whom the action was brought based upon an assessment of which party's major arguments or positions taken in the suit or proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision.

(b) Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or material furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant covenants to save and hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof, and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in or in connection with such litigation.

25.6 Time; Joint and Several Liability. Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or in equity.

25.7 Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by Tenant, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

25.8 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant,

Please Initial

Tenant ( )
Landlord ( )

term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

25.9 Force Majeure. In the event Landlord or Tenant is delayed, interrupted or prevented from performing any of its obligations under this Lease (except the obligation to pay money to the other party hereto), including Landlord's obligations under the Work Letter, and such delay, interruption or prevention is due to fire, act of God, governmental act, strike, labor dispute, unavailability of materials or any other cause outside the reasonable control of Landlord or Tenant, as applicable (each a "Force Majeure Event"), then the time for performance of the affected obligations of Landlord or Tenant, as applicable, shall be extended for a period equivalent to the period of such delay, interruption or prevention. With respect to obligations of Landlord or Tenant required to be performed prior to the Commencement Date, each day of delay under this Paragraph 25.9 shall result in one (1) Scheduled Commencement Adjustment Day.

25.10 Landlord's Liability. The term "Landlord", as used in this Lease, shall mean only the owner or owners of the Project at the time in question. Notwithstanding any other term or provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord's interest in the Project as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord or against Landlord's stockholders, directors, officers or partners on account of any of Landlord's obligations or actions under this Lease. In addition, in the event of any conveyance of title to the Building or the Project, then from and after the date of such conveyance, Landlord shall be relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance. Upon any conveyance of title to the Building or the Project, the grantee or transferee, by accepting such conveyance, shall be deemed to have assumed Landlord's obligations to be performed under this Lease from and after the date of transfer, subject to the limitations on liability set forth above in this Paragraph 25.10. In no event will Landlord or Tenant be liable under this Lease for consequential or indirect damages or loss of profits.

25.11 Consents and Approvals. Wherever the consent, approval, judgment or determination of Landlord is required or permitted under this Lease, Landlord may exercise its good faith business judgment in granting or withholding such consent or approval or in making such judgment or determination without reference to any extrinsic standard of reasonableness, unless the provision providing for such consent, approval, judgment or determination specifies that Landlord's consent or approval is not to be unreasonably withheld, or that such judgment or determination is to be reasonable, or otherwise specifies the standards under which Landlord may withhold its consent.

The review and/or approval by Landlord of any item to be reviewed or approved by Landlord under the terms of this Lease or any Exhibits hereto shall not impose upon Landlord any liability for accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Project under this Lease, and no third parties, including Tenant or Tenant's Representatives or any person or entity claiming by, through or under Tenant, shall have any rights hereunder.

Please Initial

Tenant ( )
Landlord ( )

25.12 Signs. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Building, any signs, notices, drapes, shutters, blinds or displays of any type without the prior consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall include Tenant in the Building directories located in the Building. In addition Tenant shall have signage rights equivalent to similarly situated tenants of the Building on the Building monument sign and the entry doors of the Premises. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof, exterior of the Building, and in any area of the Building not leased to Tenant such signs, notices, displays and similar items as Landlord deems appropriate in the proper operation of the Building and consistent with the operation of a Class A office building.

25.13 Rules and Regulations. Tenant and Tenant's Representatives shall observe and comply fully and faithfully with all reasonable and nondiscriminatory rules and regulations adopted by Landlord for the care, protection, cleanliness and operation of the Building and its tenants including those annexed to this Lease as Exhibit D and any reasonable and nondiscriminatory modification or addition thereto adopted by Landlord, provided Landlord shall give written notice thereof to Tenant. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Building of any of said rules and regulations. In the event of any conflict between the rules and regulations (whether annexed hereto as Exhibit D or later adopted) and this Lease, this Lease shall prevail.

25.14 Notices. All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be personally delivered, sent in the United States mail, certified or registered, postage prepaid, or sent by private messenger, addressed to the Landlord or Tenant respectively at the addresses set forth below:

Landlord:	**Tenant:**
Alexander Properties Company	**five9, Inc.**
One Annabel Lane, Suite 201	**4000 Executive Parkway, Suite 400**
San Ramon, CA 94583	**San Ramon, CA 94583**

or such other address as shall be established by notice to the other pursuant to this paragraph. Notices personally delivered or delivered by private messenger shall be deemed delivered when received at the address for such party designated pursuant to this paragraph. Notices sent by mail shall be deemed delivered on the earlier of the third business day following deposit thereof with the United States Postal Service or the delivery date shown on the return receipt prepared in connection therewith. Notwithstanding the foregoing, Landlord shall have the right, upon notice to Tenant thereof, to eliminate personal delivery as an effective means of notice hereunder.

25.15 Authority. Tenant represents and warrants that (i) it is a duly organized corporation and validly existing entity, (ii) the persons signing on behalf of such corporation are duly authorized to execute and deliver this Lease on behalf of Tenant and (iii) this Lease is binding upon Tenant in accordance with its terms. Landlord

Please Initial

Tenant ( )
Landlord ( )

represents and warrants that (i) it is a duly organized partnership and validly existing entity, (ii) the persons signing on behalf of such partnership are duly authorized to execute and deliver this Lease on behalf of Landlord and (iii) this Lease is binding upon Landlord in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the board of directors of said corporation authorizing or ratifying the execution of this Lease.

25.16 Lease Guaranty. Intentionally Deleted

25.17 Brokers. Tenant and Landlord warrant and represent to each other that in the negotiating or making of this Lease neither the representing party nor anyone acting on its behalf has dealt with any real estate broker or finder who might be entitled to a fee or commission for this Lease other than Colliers International, whose commission is to be paid by Landlord pursuant to a separate agreement. Tenant and Landlord agree to indemnify and hold each other harmless from any claim or claims, including costs, expenses and attorney's fees incurred by indemnified party asserted by any other broker or finder for a fee or commission based upon any dealings with or statements made by the indemnifying party or its agents, employees or representatives.

25.18 Reserved Rights. Landlord retains and shall have the rights set forth below, exercisable without liability to Tenant for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set-off or abatement of Rent, to reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, layout and nature of the common areas and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of common areas. Notwithstanding the foregoing, in the exercise of the aforesaid reserved rights, Landlord (i) shall not at anytime unreasonably interfere with Tenant's use, occupancy or access to the Premises or parking rights granted hereunder; (ii) shall not materially reduce Tenant's rights under this Lease; (iii) shall not reduce the level of any service provided by Landlord hereunder; (iv) shall provide Tenant reasonable advance written notice thereof; and (v) shall not increase Tenant's obligations hereunder (including any obligation to pay rent).

25.19 Tenant's Taxes. Tenant shall pay before delinquency (whether levied on Landlord or Tenant), any and all taxes assessed upon or measured by (i) Tenant's equipment, furniture, fixtures and other personal property located in the Premises, (ii) any improvements or alterations made to the Premises prior to or during the term of this Lease paid for by Tenant ("Above-Standard Improvements"), or (iii) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. For the purpose of determining said amounts, figures supplied by the County Assessor as to the amount so assessed shall be conclusive. Tenant shall comply with the provisions of any law, ordinance or rule of the taxing authorities which require Tenant to file a report of Tenant's property located in the Premises.

Please Initial

Tenant ( )
Landlord ( )

25.20 Letter of Credit.

(a) Upon the execution of this Lease, Tenant shall deliver to Landlord a standby, at sight, clean, irrevocable, non-documentary and unconditional Letter of Credit issued by and drawable upon a money-center bank (a bank which accepts deposits, maintains accounts, has a local San Francisco Bay Area office and which will negotiate a letter of credit) (hereinafter referred to as the "Issuing Bank"), and has combined capital, surplus and undivided profits of not less than **FIVE HUNDRED MILLION AND NO/100 DOLLARS ($500,000,000.00)**, which Letter of Credit (i) shall name Landlord as beneficiary, (ii) be in the amount of **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS ($700,000.00)**, (iii) have a term of not less than three (3) years, (iv) permit multiple drawings, (v) be fully transferable by Landlord without the payment of any fees or charges, (vi) require that any draw on the Letter of Credit be made only upon receipt by the issuing Bank of a written letter from landlord certifying that an Event of Default has occurred and is then continuing, and (vii) provide that it is governed by the uniform Customs and Practice for Documentary Credits (1993 revisions), and otherwise be in form and content reasonably satisfactory to Landlord. The Letter of Credit shall have a term expiration date or be renewed annually for a period of three (3) years from the Commencement Date. If upon any transfer, any fees or charges shall be so imposed, then such fees or charges shall be payable solely by Tenant and the Letter of Credit shall so specify. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter, unless the Issuing Bank sends notice (the "Non-Renewal Notice") to Landlord by certified mail, return receipt requested, not less than forty-five (45) days next preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. Landlord shall have the right, after its receipt of the Non-Renewal Notice and until the expiration of the Letter of Credit to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall hold the proceeds of the Letter of Credit pursuant to the terms of this Paragraph 25.20 as cash security deposit.

(b) If an Event of Default in respect of any of the terms, covenants or conditions of this Lease, including the payment of rent, Landlord may apply or retain the whole or any part of the cash security so deposited or may notify the Issuing Bank and thereupon receive all or a portion of the monies represented by the Letter of Credit and hold such proceeds pursuant to the terms of this Paragraph 25.20 as a cash security deposit. The Landlord may use or apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any Monthly Base Rent or any other sums due as a result of the Event of Default including (a) any sum which Landlord may expend or may be required to expend by reason of Tenant's Event of Default in respect of any of the terms, covenants or conditions of this Lease, and/or (b) and damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrue or accrues before or after summary proceedings or other reentry by Landlord. Drawing upon the Letter of Credit shall be conditioned upon the presentation to the Issuing Bank of a certified statement executed by an authorized member, officer or general partner of Landlord that an Event of Default has occurred and is continuing under the Lease and Landlord is exercising its right to draw upon the Letter of Credit. If it is necessary for Landlord to apply or retain any part of the Letter of Credit, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full **SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS ($700,000.00)** on hand at all times until (but not including) the **thirty-seventh (37th)** full calendar month of the term of this Lease. If Tenant shall fully and faithfully comply with all of the material terms, covenants and conditions of this Lease, the Letter of Credit, shall be returned to Tenant on the first (1st) day of the thirty-seventh (37th) full calendar month of the Lease. In the event of a sale of the real property or the Building or a master leasing of the Building, Landlord shall have the right to

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Tenant ( )
Landlord ( )

transfer the Letter of Credit, and within five (5) business days after notice of such sale or leasing, Tenant, at its sole cost, shall arrange for the transfer of the Letter of Credit to the new landlord, as designated by Landlord in the foregoing notice or have the Letter of Credit reissued in the name of the new landlord and Landlord shall thereupon be released by Tenant from all liability for the return of such security, provided that the new landlord assumes thereupon in writing the obligations of Landlord hereunder. Upon such assumption by new landlord, Tenant shall look solely to the new landlord for the return of the Letter of Credit and the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord. Tenant further covenants and agrees that it shall not assign or encumber or attempt to assign or encumber the Letter of Credit designated herein as security and that neither Landlord nor its successors or assignees shall be bound by any such agreement, encumbrances, attempted assignment or attempted encumbrance.

25.21 Right to Terminate. Landlord hereby grants Tenant with a one (1) time right to terminate this Lease (the "Right to Terminate") effective on the last day of the forty-eighth (48th) full calendar month of the term of this Lease (the "Termination Effective Date"). In the event Tenant elects to exercise this Right to Terminate, Tenant shall notify Landlord in writing no sooner than **thirteen (13)** months and no later than **twelve (12)** months prior to the Termination Effective Date. In the event of such notification Tenant shall pay Landlord a Termination Fee equal to $25.00 per rentable square foot of the Premises, with such fee being due and payable in full concurrently with the delivery of Tenant's notice that it is exercising its Right to Terminate. If said payment is not made within this time frame, Tenant's notice hereunder shall be deemed void.

25.22 Right of First Refusal. Landlord hereby grants Tenant a right of first refusal to lease (the "Right of First Refusal") any space in excess of 5,000 rentable square feet that is available as of the date this Lease has been fully executed or becomes available during the term of this Lease, the "Refusal Space". If and at such time as Landlord has received an expression of interest by a third party in leasing the Refusal Space, Landlord shall notify Tenant in writing of such interest, stating the location, the rentable area, and the basic business terms under which Landlord proposes to lease the Refusal Space", each a "First Refusal Notice". Tenant shall have seven (7) days after receipt of a Refusal Notice to deliver to Landlord, in writing, its notice that it is exercising its rights hereunder, the "Exercise Notice" on the terms set forth in the First Refusal Notice. Notwithstanding the foregoing, in the event Tenant delivers an Exercise Notice, and Tenant has at least four (4) years remaining on the term of this Lease, then notwithstanding the terms of the First Refusal Notice, Landlord shall provide Tenant with suite improvements comparable to those delivered to Tenant as of the Commencement Date (e.g. similar carpet, quantities on a pro rata basis of walls, doors, hardware, lighting, electrical outlets and finishes), the rate of Base Rent shall be $26.00 per rentable square foot per annum, there shall be no free rent and the expiration date for the Refusal Space shall be coterminous with the expiration date of this Lease. In the event Tenant delivers an Exercise Notice and there is less than four (4) years remaining on the term of this Lease then all of the terms and conditions in the First Refusal Notice shall be applicable on any Exercise Notice delivered by Tenant.

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Tenant ( )
Landlord ( )

If Tenant does not timely deliver an Exercise Notice, then Landlord shall be free to lease the Refusal Space to another party, provided, however, if Landlord fails to lease the Refusal Space within six (6) months of the delivery of the First Refusal Notice to Tenant or the economic terms stated in the First Refusal Notice improve by a value of seven percent (7%) or more in favor of the proposed tenant, then Landlord shall reoffer the Refusal Space to Tenant by sending another First Refusal Notice to Tenant stating the then-current terms.

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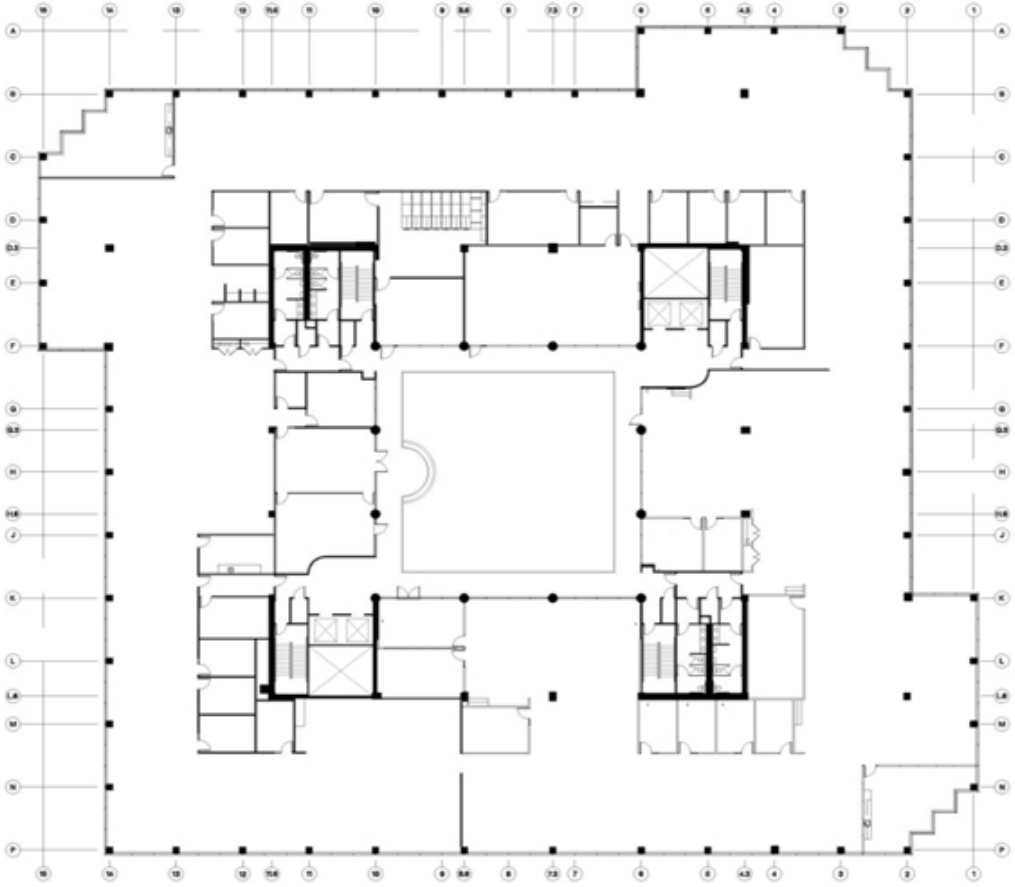
Tenant ( )
Landlord ( )

Landlord and Tenant have executed this Lease on the date and year set forth at the beginning of this Lease.

Landlord:	**Tenant:**
Alexander Properties Company, **a California limited partnership**	**five9, Inc.** **a Delaware corporation**
By: **/s/ Jim Clancy** **Title:** **CFO**	**By:** **/s/ Michael Burkland** **Title:** **CEO**
By: **/s/ Steve Barale** **Title:** **Controller**	**By:** _____ **Title:** _____

EXHIBIT A



46,414 RSF
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 400
San Ramon, CA 94583

Please Initial

Tenant ( )
Landlord ( )

EXHIBIT B

ATTACHED TO AND FORMING A PART OF
LEASE AGREEMENT

DATED AS OF **, 2011**

BETWEEN

ALEXANDER PROPERTIES COMPANY, AS LANDLORD,

AND

FIVE9, AS TENANT ("LEASE")

WORK LETTER

2. Suite Improvements. Landlord shall in a good and workmanlike manner and in compliance with all then-current Legal Requirements construct and install in the Premises the improvements and fixtures described in this Exhibit B and as shown on Exhibit C (the "Suite Improvements"). Improvements consisting of the type and materials (or alternates approved by Landlord), which approval shall not be unreasonably withheld, described on Schedule 1 attached hereto as Exhibit B are referred to herein as "Building Standard Materials". All Suite Improvements other than (a) "Building Shell" (as described in Schedule 1) or (b) those that utilize materials in addition to, substitution for or modification of the Building Standard Materials are called herein "Above-Standard Suite Improvements".

2.1. Plans.

(a) On or before **December 14, 2011**, Tenant will submit to Landlord a plan showing details and specifications sufficient to permit Landlord's contractor and subcontractors to price and construct the Suite Improvements. Such plans shall hereinafter be referred to as the Construction Drawings.

2.2. Construction. Upon Landlord's receipt of the Construction Drawings, approved by Tenant, Landlord shall proceed with reasonable diligence to cause the Suite Improvements to be Substantially Completed on or prior to the Scheduled Commencement Date. The Suite Improvements shall be deemed to be "Substantially Completed" when they have been completed in accordance with the Final Construction Drawings except for finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list". (The definition of Substantially Completed shall also define the terms "Substantial Completion" and "Substantially Complete.") Punch list items shall be corrected by Landlord within thirty (30) days of Tenant's occupancy.

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Tenant ( )
Landlord ( )

2.3. Cost of Suite Improvements. See Paragraph 1 of the Lease entitled PREMISES.

2.4. Landlord's Profit and Overhead. Intentionally Deleted

2.5. Tenant Delays.

Tenant shall be responsible for, and shall pay to Landlord, any and all costs and expenses incurred by Landlord in connection with any delay in the commencement or completion of any Suite Improvements and any increase in the cost of Suite Improvements (whether or not Above-Standard Suite Improvements) caused by (i) Tenant's failure to deliver the items described above within the time periods required above, (ii) any changes or modifications in the work requested by Tenant following approval of the Construction Drawings, or (iii) any other delay requested or caused by Tenant (collectively, "Tenant Delays"). Notwithstanding the foregoing, no Tenant Delay shall be deemed to have occurred unless and until Landlord gives written notice to Tenant specifying the action, inaction or occurrence constituting the Tenant Delay and the number of days of such Tenant Delay ("Tenant Delay Notice"). Notwithstanding anything to the contrary, each day of Tenant Delay will result in one (1) Scheduled Commencement Adjustment Day. In the event of a Tenant Delay, Landlord's obligation to deliver Substantial Completion may, at Landlord's option, be extended by one (1) day for each day of a Tenant Delay and Rent shall commence on the scheduled Commencement Date or as the case may be Free Rent will be reduced on a day for day basis for each day of Tenant Delay.

3. Commencement of Term. Upon Substantial Completion of the Suite Improvements, Landlord shall deliver possession of the Premises to Tenant. The Commencement Date will be the earlier of Substantial Completion of the Suite Improvements or the date Landlord would have completed the Premises and tendered the Premises to Tenant if Substantial Completion had not been delayed by the number of days specified in any and all Tenant Delay Notices given by Landlord as described in Paragraph 1.5.

4. Access to Premises. Landlord, at its reasonable discretion, shall allow Tenant or Tenant's Representatives to enter the Premises prior to the Substantial Completion to permit Tenant to make the Premises ready for its use and occupancy; provided, however, that prior to such entry of the Premises, Tenant shall provide evidence reasonably satisfactory to Landlord that Tenant's insurance, as described in Paragraph 12 of the Lease, shall be in effect as of the time of such entry. Such permission may be revoked at any time upon twenty-four (24) hours written notice, and Tenant or its Representatives shall not unreasonably interfere with Landlord or Landlord's contractor in completing the Building or the Suite Improvements. Tenant agrees that Landlord shall not be liable in any way for any injury, loss or damage which may occur to any of Tenant's property placed upon or installed in the Premises prior to the Commencement Date, the same being at Tenant's sole risk, and Tenant shall be liable for all injury, loss or damage to persons or property arising as a result of such entry of the Premises by Tenant or its Representatives.

Please Initial

Tenant ( )
Landlord ( )

5. Ownership of Suite Improvements. All Suite Improvements, whether or not Above-Standard Suite Improvements, and whether installed by Landlord or Tenant, shall become a part of the Premises, shall be the Property of Landlord and, unless Landlord elects otherwise as provided in the Lease, shall be surrendered by Tenant with the Premises, without any compensation to Tenant, at the expiration or termination of the Lease.

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Tenant ( )
Landlord ( )

SCHEDULE 1 TO EXHIBIT B

BUILDING SHELL

* All core areas, elevator lobbies and restrooms complete.
* Main HVAC loop in place ready to receive mixing boxes for zoning.
* Main fire sprinkler risers and grid in place ready for drop down.
* After receipt of Tenant's approved Construction Drawings, all perimeter walls sheetrocked and ready for finish.
* Tenant side of core partitions are to be fire taped.
* Board over window heads to be finish taped.
* Column Furring at exterior columns is to be finish taped.
* Electrical service to closets on floor.
* Telephone sleeve to closets on floor.

BUILDING STANDARD MATERIALS

Electrical and Lighting

* Prismatic fixtures with dual switches.
* Indirect lighting is an alternate and must be approved by Landlord.

HVAC — (Typical installation per Tenant's Plan)

* One zone per 800 usable square feet.
* Individual pneumatic thermostats per 800 usable square feet.

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Tenant ( )
Landlord ( )

Fire Sprinklers — (Typical installation per Tenant's Plan)

* One 165 degree rate, semi-recessed sprinkler head per 144 usable square feet.

Partitions and Doors

* 5/8-inch drywall on 2-1/2 inch steel studs with smooth finish.
* Solid core oak doors 36" x 96".
* Aluminum door jambs.
* Schlage "D" locks and latchsets.

Paint

* Kelly Moore or equal.

Ceiling Assembly

* USG: Aurora Reveal Tile.

Grid

* Donn DXL

Carpet, Tile and Base

* Carpet: 38 oz. Bigelow or carpet tile of equal cost.
* Armstrong Imperial Modern Excelon Tile or equal.
* 3/8 inch nylon composition pad.
* 4 inch rubber top set base or equal.

Window Covering

* Mini Blinds.

Please Initial

Tenant ( )
Landlord ( )

EXHIBIT C

SPACE PLAN

TO BE PROVIDED

Please Initial

Tenant ( )
Landlord ( )

EXHIBIT D

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed, affixed or otherwise displayed by Tenant on or to any part of the outside or inside of the Building or the Premises without the prior written consent of Landlord and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises; provided, however that Tenant may request Landlord to furnish and install a building standard window covering at all exterior windows at Tenant's cost. Tenant shall not install any radio or television antenna, loud speaker, or other device on or about the roof area or exterior walls of the Building.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. The halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to the common areas by persons with whom Tenant normally deals in the ordinary course of its business unless such persons are engaged in illegal activities. In no event may Tenant go upon the roof of the Building.

3. Landlord will furnish Tenant with 50 keys to the Premises, free of charge. Additional keys shall be obtained only from Landlord and Landlord may make a reasonable charge for such additional keys. No additional locking devices shall be installed in the Premises by Tenant, nor shall any locking devices be changed or altered in any respect without the prior written consent of Landlord. All locks installed in the Premises excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to Landlord), shall be keyed to the Building master key system. Landlord may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Premises.

4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be deposited therein and Tenant shall bear the expense of any breakage, stoppage or damage resulting from its violation of this rule.

5. Tenant shall not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings or installation of wallpaper or paint shall be permitted except with the prior written consent of the Landlord and as the Landlord may direct.

Please Initial

Tenant ( )
Landlord ( )

6. Tenant may use the freight elevators in accordance with such reasonable scheduling as Landlord shall deem appropriate. Tenant shall schedule with Landlord, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Building which moving shall occur after 5:30 p.m. or on weekend days if required by Landlord; and Tenant shall reimburse Landlord upon demand for any additional security or other charges incurred by Landlord as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Building must be acceptable to Landlord. The floors, corners and walls of elevators and corridors used for moving of equipment or other items in or out of the Project must be adequately covered, padded and protected and, Landlord may provide such padding and protection at Tenant's expense if Landlord determines that such measures undertaken by Tenant or Tenant's movers are inadequate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment or furnishings brought into the Building and also the times and manner of moving the same in or out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant. There shall not be used in any space, or in the public halls of the Building, either by any Tenant or others, any hand trucks except those equipped with rubber tires and side guards.

7. Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall in no way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitor or any other employee or any other person. Janitor service will not be furnished on nights when rooms are occupied after 9:30 p.m. Window cleaning shall be done only by Landlord.

8. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or flammable, combustible or noxious fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring Buildings or premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way.

9. The Premises shall not be used for the storage of merchandise except as such storage may be incidental to the use of the Premises for general office purposes. Tenant shall not occupy or permit any portion of the Premises to be occupied for the manufacture or sale of

Please Initial

Tenant ( )
Landlord ( )

liquor, narcotics, or tobacco in any form. The Premises shall not be used for lodging or sleeping or for any illegal purposes. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory approved portable equipment for brewing coffee, tea and similar beverages and of microwave ovens approved by Landlord shall be permitted provided that such use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

10. Landlord will direct electricians as to where and how telephone wires and any other cables or wires are to be installed. No boring or cutting for cables or wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

11. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by the Landlord. Tenant shall bear the expense of repairing any damage resulting from a violation of this rule or removal of any floor covering.

12. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Landlord. In its use of such, Tenant shall not obstruct or permit the obstruction of walkways, ingress and egress to the Building and tenant spaces and at no time shall Tenant park vehicles which will create traffic and safety hazards or create other obstructions.

13. On Saturdays, Sundays and legal holidays all day, and on other days between the hours of 7:00 p.m. and 7:00 a.m. the following day, access to the Building or to the halls, corridors, elevators, or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage. In case of invasion, mob, riot, public excitement, or other commotion, the Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the Tenants and protection of property in the Building and the Building. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays and legal holidays all day, and on other days between the hours of 7:00 p.m. and 7:00 a.m. and during such further hours as Landlord may deem advisable for the adequate protection of said Building and the property of its tenants, and to implement such additional security measures as Landlord deems appropriate for such purposes. The cost of such additional security measures, as reasonably allocated by Landlord to Tenant, shall be reimbursed by Tenant within thirty (30) days after receipt of Landlord's demand therefor.

14. Tenant shall see that the doors of the Premises are closed and securely locked before leaving the Building and must observe strict care and caution that all water faucets, water apparatus and utilities are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity shall likewise be carefully shut off, so as to prevent waste or damage and for any default or carelessness Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors, all tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules and orders of the fire department with respect to ingress and egress.

Please Initial

Tenant ( )
Landlord ( )

15. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

16. Landlord shall attend to the requests of Tenant after notice thereof from Tenant by telephone, in writing or in person at the Office of the Landlord. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from the Landlord.

17. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.

18. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Landlord and Tenant also shall provide Landlord with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations.

19. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of those Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Project.

20. Canvassing, soliciting, peddling or distribution of handbills or other written material in the Building and Project is prohibited and Tenant shall cooperate to prevent same.

21. Landlord reserves the right to (i) select the name of the Project and Building and to make such change or changes of name, street address or suite numbers as it may deem appropriate from time to time, (ii) grant to anyone the exclusive right to conduct any business or render any service in or to the Building and its tenants, provided such exclusive right shall not operate to require Tenant to use or patronize such business or service or to exclude Tenant from its use of the Premises expressly permitted in the Lease, and (iii) reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, layout and nature of the common areas and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of common areas. Tenant shall not refer to the Project by any name other than the name as selected by Landlord (as same may be changed from time to time), or the postal address, approved by the United States Post Office. Without the written consent of Landlord, Tenant shall not use the name of the Building or Bishop Ranch in connection with or in promoting or advertising the business of Tenant or in any respect except as Tenant’s address.

Please Initial

Tenant ( )
Landlord ( )

22. Tenant shall store all its trash and garbage within the Premises until removal of same to such location in the Project as may be designated from time to time by Landlord. No material shall be placed in the Project trash boxes or receptacle if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Ramon without being in violation of any law or ordinance governing such disposal.

23. Landlord shall furnish heating and air conditioning during the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, except for holidays. In the event Tenant requires heating and air conditioning during off hours, Saturdays, Sundays or holidays, Landlord shall on notice provide such services at the rate established by Landlord from time-to-time. Landlord shall have the right to control and operate the public portions of the Building and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Tenants, in such manner as it deems best for the benefit of the Tenants generally.

24. The directory of the Building will be provided for the display of the name and location of tenants and Landlord reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by Landlord and, if so approved, a charge will be made for each such name.

25. Except with the prior written consent of Landlord, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or common area adjacent to the Premises for the sale of newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.

26. The word "Tenant" occurring in these Rules and Regulations shall mean Tenant and Tenant's Representatives. The word "Landlord" occurring in these Rules and Regulations shall mean Landlord's assigns, agents, clerks, employees and visitors.

ACKNOWLEDGED AND ACCEPTED:

Landlord:	Tenant:
By: /s/ Jim Clancy	By: /s/ Michael Burkland
Date: 12/16/11	Date:

EXHIBIT E

JANITORIAL SPECIFICATIONS

The following specific janitorial services will be provided in accordance with provisions of Paragraph 7.1, Landlord's Obligations:

OFFICE AREAS (DAILY)

1. Empty all waste baskets and disposal cans, if liners used, replace as necessary.
2. Spot dust desks, chairs, file cabinets, counters and furniture.
3. Spot vacuum all carpets and walk-off mats; spot as necessary.
4. Sweep all hard surface floors with treated dust mop.

OFFICE AREAS (WEEKLY)

1. Vacuum carpets completely, including around base boards, etc.
2. Perform low dusting of furniture.
3. Dust window sills and ledges.

OFFICE AREAS (QUARTERLY)

1. Perform all high dusting of doors, sashes, moldings, etc.
2. Dust mini blinds as needed.

OFFICE AREA CORRIDORS AND LOBBIES (DAILY SERVICE)

1. Vacuum carpets and dust mop any hard floors.
2. Spot clean carpets of all spillage.
3. Clean all thresholds.

OFFICE AREA CORRIDORS AND LOBBIES (WEEKLY)

1. Perform all high dusting of doors, sashes, moldings, etc.
2. Vacuum and clean all ceiling vents.
3. Polish any metal railings, placards, etc.

Please Initial

Tenant ( )
Landlord ( )

STAIRWAYS (DAILY)

1. Sweep all hard surface steps.
2. Dust banisters.

STAIRWAYS (WEEKLY)

1. Sweep all hard surfaces.
2. Spot mop all spills as needed.

RESTROOMS COMMON AREA (DAILY SERVICE)

1. Empty all waste containers and replace liners as needed.
2. Clean all metal, mirrors, and fixtures.
3. Sinks, toilet bowls and urinals are to be kept free of scale.
4. Clean all lavatory fixtures using disinfectant cleaners.
5. Wash and disinfect underside and tops of toilet seats.
6. Wipe down walls around urinals.
7. Refill soap, towel, and tissue dispensers.
8. Wet mop tile floors with disinfectant solution.
9. Refill sanitary napkin machines as necessary.

RESTROOMS COMMON AREA (WEEKLY)

1. Perform high dusting and vacuum vents.
2. Use germicidal solution in urinal traps, lavatory traps, and floor drains.

RESTROOMS COMMON AREA (MONTHLY)

1. Scrub floors with power machine.
2. Wash down all ceramic tile and toilet compartments.

ELEVATORS (DAILY)

1. Vacuum floors.
2. Clean thresholds.
3. Spot walls and polish surfaces.

GENERAL

All glass entry doors to offices, corridors, or lunch rooms are to be cleaned as necessary.

Please Initial

Tenant ( )
Landlord ( )

EXHIBIT F

DOOR SIGN, DIRECTORY STRIP AND MAIL BOX REQUEST

1. I, the undersigned hereby authorize Landlord to order one glass door sign. The business name on it shall read: (All lettering must be left justified, no logos.)

   — — — — — — — — — — — — — — — — —
   (17 characters max)

   — — — — — — — — — — — — — — — — —
   (17 characters max)

   — — — — — — — — — — — — — — — — —
   (17 characters max)

2. The lobby directory strip shall read:

   — — — — — — — — — — — — — — — — —
   (23 characters max)

3. The floor directory strip shall read:

   — — — — — — — — — — — — — — — — —
   (23 characters max)

   g h f Arrow Direction? (Circle one)

4. The mail box strip shall read:

   _____

5. Daily Contact Name: _____

   Phone: _____ Fax: _____

   Email: _____

   Signed: _____ Date: _____

Street Address:	4000 Executive Parkway
Suite No:	400
Building:	P
Complex:	Bishop Ranch 8

EXHIBIT G

COMMENCEMENT OF LEASE

It is hereby agreed to that

(a) the "Commencement Date" under that certain Lease dated **, 2011** and between **Alexander Properties Company** as Landlord and **five9** as Tenant, covering Premises located at 4000 Executive Parkway, **Suite 400**, is **, 2012**,

(b) the "Expiration Date" thereof is **5:00 P.M.** on **, 2018,** and

(c) Landlord has completed all of its construction obligations under the Work Letter, except for the following punch list items, which shall be completed by Landlord in accordance with the Lease and the Work Letter attached thereto.

ACKNOWLEDGED AND ACCEPTED:

Landlord:	Tenant:
By: _____	**By:** /s/ Michael Burkland
Date _____	**Title:** CEO

SECOND LEASE ADDENDUM

THIS SECOND LEASE ADDENDUM IS MADE AND ENTERED INTO THIS 23 DAY OF **January**, 2014, BY AND BETWEEN **ALEXANDER PROPERTIES COMPANY, A CALIFORNIA LIMITED PARTNERSHIP** (HEREINAFTER REFERRED TO AS "LANDLORD") AND **FIVE9, INC., A DELAWARE CORPORATION** (HEREINAFTER REFERRED TO AS "TENANT").

IT IS AGREED BETWEEN LANDLORD AND TENANT TO MODIFY THE LEASE DATED **DECEMBER 16, 2011** AND THE FIRST LEASE ADDENDUM DATED **OCTOBER 24, 2012** (HEREINAFTER REFERRED TO AS "LEASE") IN THE FOLLOWING MANNER:

Section 1. PREMISES

Subsection 1.1 Description. The size of the Premises is hereby increased by **5,510 rentable square feet**, located on the fifth floor of Building **P**, **4000 Executive Parkway**, **Suite 515** (hereinafter referred to as "**Expansion Space B**") for a new total of **67,987 rentable square feet** as shown on the attached Exhibit A, effective upon substantial completion of Expansion Space B as evidenced by the execution of Exhibit G attached (hereinafter referred to as the **"Effective Date"**). On the Effective Date **Suite 515** will hereinafter become a part of **Suite 520**.

Subsection 1.2 Work of Improvement. Landlord agrees at its cost and expense to provide and install the improvements shown on the attached Exhibit C. Any changes to Exhibit C which have been approved by Tenant that increase the cost of the work shall be paid for by Tenant prior to the commencement of construction. Tenant shall be solely responsible for the installation and cost of its phone and data cabling.

Section 3. RENT

Subsection 3.1 Rent. The Base Rent shall hereby increase from **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS ($138,713.30)** per month to **ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-NINE AND 55/100 DOLLARS ($151,799.55)** per month effective on the Effective Date. The Rental Rate for Expansion Space B is $28.50 per rentable square foot per annum.

Please Initial

Tenant (MB)
Landlord (JC)

Section 4. SECURITY DEPOSIT.

The amount in the second sentence of this Section 4 is hereby increased from **ONE HUNDRED THIRTY-EIGHT THOUSAND SEVEN HUNDRED THIRTEEN AND 30/100 DOLLARS ($138,713.30)** per month to **ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-NINE AND 55/100 DOLLARS ($151,799.55).**

Section 5. TAX AND OPERATING COST INCREASES

Subsection 5.2 Tenant's Share. On the Effective Date Tenant's Share of Operating Costs shall be increased from **9.89%** to **10.76%**.

Section 25 MISCELLANEOUS

Subsection 25.21 Right to Terminate. It is expressly understood and agreed that Tenant's Right To Terminate hereunder shall not apply to Expansion Space A and B, and that the Lease Expiration Date for Expansion Space A and B is **February 28, 2018**.

Please Initial

Tenant ( )
Landlord (JC)

With the exception of the modifications set out above, all other terms, covenants and agreements of the Lease shall remain in full force and effect.

Landlord:

Alexander Properties Company,
a California limited partnership

By: /s/ Jim Clancy
Title: CFO

By: /s/ Steve Barale
Title: Controller

Date: 1/24/14

Tenant:

five9, Inc.
a Delaware Corporation

By: /s/ Michael Burkland
Title:

By:
Title:

Date:

Expansion Space B:

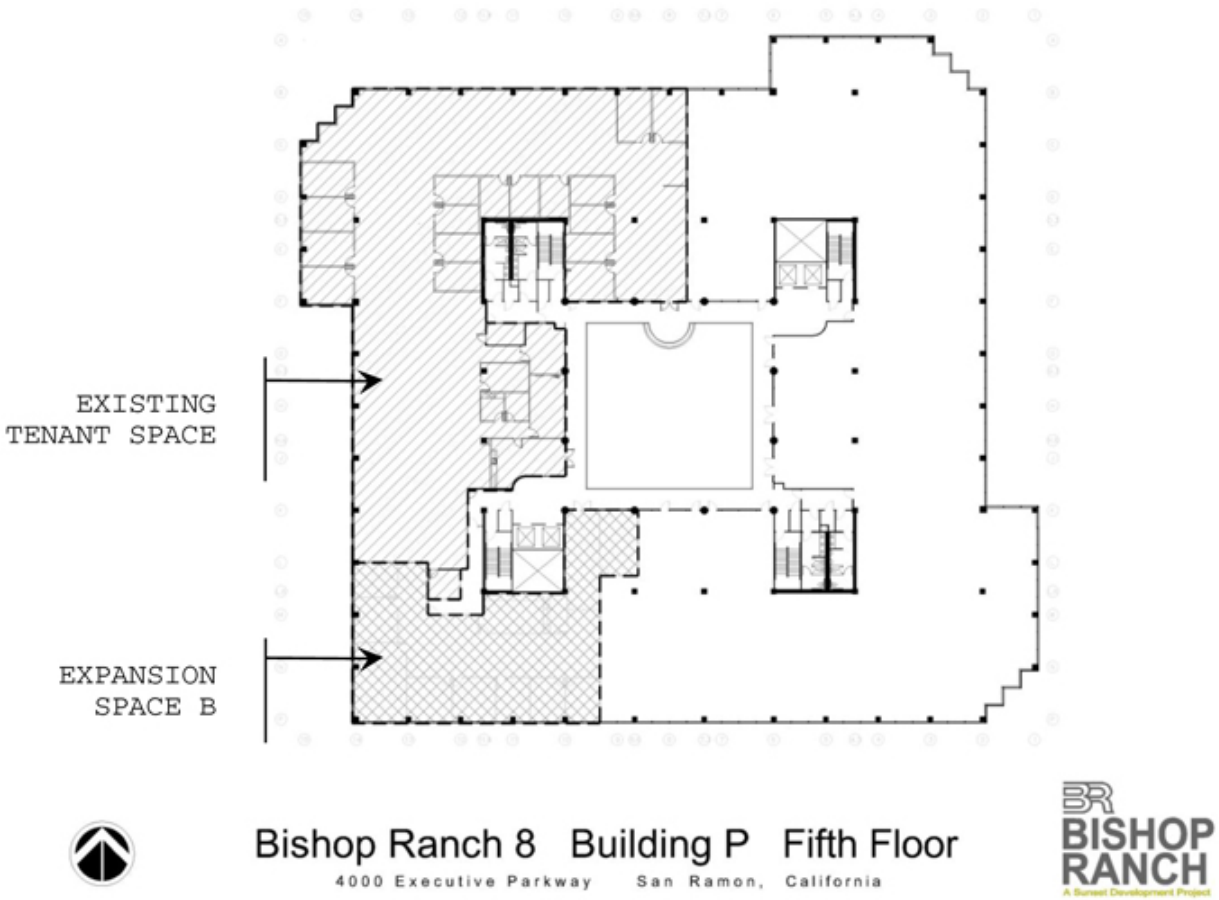
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 515
San Ramon, CA 94583

Existing Premises:

Bishop Ranch 8, Building P
4000 Executive Parkway, Suites 400/520
San Ramon, CA 94583

EXHIBIT A

FLOOR PLAN



5,510 RSF
Bishop Ranch 8, Building P
4000 Executive Parkway, Suite 515
San Ramon, CA 94583

Please Initial

Tenant ( )
Landlord ( )

EXHIBIT C

SPACE PLAN

TO BE PROVIDED

EXHIBIT G

COMMENCEMENT OF SECOND LEASE ADDENDUM

It is hereby agreed to that as of **, Expansion Space B** located at **4000 Executive Parkway, Suite 515**, described in the Second Lease Addendum dated , by and between **ALEXANDER PROPERTIES COMPANY** as Landlord and **FIVE9, INC.** as Tenant, was occupied by Tenant and that said Second Lease Addendum is in full force and effect.

ACKNOWLEDGED AND ACCEPTED:

Landlord:

By: _____

Date:

Tenant:

By: _____

Date:

FIVE 9, INC.

CITY NATIONAL BANK

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** is entered into as of March 8th, 2012 (this "Agreement"), by and between City National Bank ("Bank") and **FIVE 9, INC.** ("Borrower").

RECITALS

Borrower wishes to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

"Accounts" means all presently existing and hereafter arising accounts, contract rights, payment intangibles, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Advance" or "Advances" means a cash advance or cash advances under the Revolving Facility.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise; and each of such Person's senior executive officers, directors, and partners.

"Bank Expenses" means all: reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank's reasonable attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Bank Services" means any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "Bank Services Agreement").

"Borrower's Books" means all of Borrower's books and records including: ledgers; records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Borrowing Base" means an amount equal to the Monthly Recurring Revenue for the three months prior to such date multiplied by the average dollar based retention rate (expressed as a percentage) over the twelve months prior to such date, minus the USF Reserve, in each case as determined by Bank with reference to the most recent Borrowing Base Certificate.

"Borrowing Base Certificate" means a certificate substantially in the form of **Exhibit C** hereto.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Change in Control" shall mean a transaction in which any "person" or "group" (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such "person" or "group" to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

"Closing Date" means the date of this Agreement.

"Code" means the California Uniform Commercial Code.

"Collateral" means the property described on **Exhibit A** attached hereto.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards, or merchant services issued or provided for the account of that Person; and (iii) all obligations arising under any agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by Bank in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof.

"Credit Extension" means each Advance or any other extension of credit by Bank for the benefit of Borrower hereunder.

"Daily Balance" means the amount of the Obligations owed at the end of a given day.

"Default" means any circumstance that, with the passage of time or giving of notice, would constitute an Event of Default.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

"GAAP" means generally accepted accounting principles as in effect from time to time.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

"Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following: Copyrights, Trademarks and Patents; all trade secrets, all design rights, claims for damages by way of past, present and future infringement of any of the rights included above, all licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and all proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

"Inventory" means all inventory in which Borrower has or acquires any interest, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower, and any other agreement entered into in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents or (iii) the value or priority of Bank's security interests in the Collateral.

"Monthly Recurring Revenue" means, for any applicable period, the gross revenue received by Borrower during such period on a recurring basis (and not extraordinary gains or other payments outside the ordinary course of business), including subscription and usage revenue.

"Negotiable Collateral" means all letters of credit of which Borrower is a beneficiary, notes, drafts, instruments, securities, documents of title, and chattel paper, and Borrower's Books relating to any of the foregoing.

"Obligations" means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

"Permitted Indebtedness" means:

(a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed in the Schedule and any extensions, renewals and replacements of such Indebtedness;

(c) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens," provided (i) such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness and the cost of installation or improvement thereof and (ii) such Indebtedness does not exceed **$**15,000,000 in the aggregate at any given time (inclusive of all equipment financing arrangements set forth on the Schedule);

(d) Indebtedness consisting of trade payables incurred in the ordinary course of business;

(e) Subordinated Debt;

(f) Indebtedness of Borrower to any Subsidiary;

(g) Indebtedness of any Subsidiary to Borrower solely to the extent such Indebtedness constitutes a Permitted Investment under clause (d) of such defined term;

(h) guarantees by any Subsidiary of Indebtedness of Borrower or any other Subsidiary, in each case to the extent that the Indebtedness is permitted under this Agreement;

(i) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business; and

(j) Indebtedness of Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed in the Schedule;

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Bank and (iv) Bank's money market accounts;

(c) deposits in deposit accounts listed on the Schedule or maintained in accordance with Sections 6.9 and 7.7;

(d) Investments in the form of equity securities issued by any wholly owned Subsidiaries of Borrower formed after the Closing Date so long as Borrower complies with the requirements of Section 6.7; other Investments in wholly owned Subsidiaries existing as of the Closing Date solely to the extent necessary to maintain such Subsidiary's operations in support of Borrower's business in the ordinary course consistent with past transfer pricing practices; and other Investments in wholly owned Subsidiaries existing after the Closing Date that are in compliance with Section 6.7 solely to the extent necessary to establish such Subsidiary's operations as datacenters in support of Borrower's business, and maintain such Subsidiary's operations in the ordinary course and consistent with past transfer pricing practices;

(e) loans or advances made by any Subsidiary to Borrower or any other Subsidiary;

(f) loans or advances made to employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of $100,000 in the aggregate at any one time outstanding; and

(g) notes payable, or stock or other securities issued by account debtors to Borrower or any Subsidiary pursuant to negotiated agreements with respect to settlement of such account debtor's Accounts in the ordinary course of business, consistent with past practices.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Schedule or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank's security interests;

(c) Liens (i) upon or in any equipment acquired or held by Borrower or any of its Subsidiaries (including pursuant to a lease arrangement) to secure the purchase price and the costs of installation or improvement of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment and the installation or improvement thereof, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) Liens of materialmen, mechanics, warehousemen, carriers, artisan's or other similar Liens arising in the ordinary course of Borrower's business or by operation of law, which are not past due or which are being contested in good faith by appropriate proceedings and for which reserves satisfactory to Bank have been established, and do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Borrower or any Subsidiary;

(e) pledges and deposits (other than any Lien imposed by ERISA) made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(f) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business (other than obligations in respect of the payment for borrowed money);

(g) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;

(h) Liens arising from leases, subleases, licenses or sublicenses granted to others in the ordinary course of business not interfering in any material respect with the business of Borrower or any Subsidiary, and not interfering with any interest or title of a lessor under any lease;

(i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by Borrower or any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, provided that such accounts are subject to an account control agreement in favor of Bank, in form and substance satisfactory to Bank to the extent required under this Agreement; and

(j) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) and (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

"Permitted Transfers" means

(a) Transfers of Inventory in the ordinary course of business;

(b) Transfers of non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business;

(c) Transfers of used, worn-out, surplus or obsolete Equipment;

(d) Transfers of property of any Subsidiary to Borrower or any other Subsidiary;

(e) Transfers of Intellectual Property of Borrower with an aggregate value not to exceed $7,000,000 to any Subsidiary that is in compliance with Section 6.7, to the extent such Transfer is necessary to effectuate the purposes of Borrower's corporate restructuring, along with up to $1,000,000 in cash used for start-up capital/operating costs for such Subsidiary, provided that prior to such Transfer(s), (i) Borrower has provided to Bank pro forma financial statements or other information and details regarding the restructuring and the property being transferred, in form and substance reasonably satisfactory to Bank and (ii) Borrower has received at least $9,000,000 in cash proceeds from the sale of its equity securities;

(f) dispositions of accounts receivable in connection with the compromise, settlement or collection thereof consistent with past practices; and

(g) dispositions of assets that are not otherwise permitted under this Section 7.1 so long as the aggregate fair market value of all such assets disposed of under this clause (f) do not exceed $250,000 during any calendar year.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means the U.S. Prime Rate that appears in The Wall Street Journal from time to time, whether or not such announced rate is the lowest rate available from Bank.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Financial Officer and the Vice President Finance of Borrower.

"Revolving Facility" means the facility under which Borrower may request Bank to issue Advances, as specified in Section 2.1(a) hereof.

"Revolving Line" means a credit extension of up to Twelve Million Five Hundred Thousand Dollars ($12,500,000).

"Revolving Maturity Date" means the second anniversary of the Closing Date.

"Schedule" means the schedule of exceptions attached hereto and approved by Bank, if any, including any updates to such Schedule, as such may be delivered by Borrower to Bank from time to time, and accepted by Bank in its sole discretion.

"Subordinated Debt" means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms reasonably acceptable to Bank (and identified as being such by Borrower and Bank).

"Subsidiary" means any corporation, company or partnership in which (i) any general partnership interest or (ii) more than 50% of the stock or other units of ownership which by the terms thereof has the ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"USF Reserve" means, for so long as Borrower has any potential obligations to the federal Universal Service Fund (USF) for contributions owing to the USF with respect to its failure to make direct contributions to the USF prior to its voluntary self-disclosure in November 2012, the estimated payment amount (including penalty and interest) owing to the USF, which, as of the Closing Date, is $5,000,000.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto.

2. LOAN AND TERMS OF PAYMENT.

(a) Revolving Advances.

(i) Subject to and upon the terms and conditions of this Agreement, Borrower may request Advances in an aggregate outstanding amount not to exceed the lesser of (i) the Revolving Line or (ii) the Borrowing Base. Subject to the terms and conditions of this Agreement, amounts borrowed pursuant to this Section 2.1(a) may be repaid and reborrowed at any time prior to the Revolving Maturity Date, at which time all Advances under this Section 2.1(a) shall be immediately due and payable. Borrower may prepay any Advances without penalty or premium.

(ii) Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission or telephone no later than 11:00 a.m. Pacific time, on the Business Day the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of **Exhibit B** hereto. Bank is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee of a Responsible Officer, or without instructions if in Bank's discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer or a designee thereof, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance except for damages or losses caused by Bank's gross negligence or willful misconduct. Bank will credit the amount of Advances made under this Section to a deposit account of Borrower maintained with Bank (or such other account maintained at Bank as Borrower notifies the Bank) on the Business Day the Advance is to be made.

(iii) Borrower will use the proceeds of the Advances for working capital needs or general corporate purposes.

2.2 Overadvances. If the aggregate amount of the outstanding Advances exceeds the lesser of the Revolving Line or the Borrowing Base at any time, Borrower shall immediately pay to Bank, in cash, the amount of such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) Interest Rates. Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding Daily Balance thereof, at a rate per annum equal to one and one quarter percent (1.25%) above the Prime Rate.

(b) Late Fee; Default Rate. If any payment is not made within ten (10) days after the date such payment is due, then at Bank's option, Borrower shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at Bank's option, at a rate equal to three (3) percentage points above the interest rate applicable immediately prior to the occurrence of such Event of Default.

(c) Payments. Interest hereunder shall be due and payable on the last business day of each month during the term hereof. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts or against the Revolving Line, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) Computation. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.4 Crediting Payments. So long as no Event of Default has occurred and is existing, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence and during the continuation of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Pacific Time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Withholding. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto) other than income, franchise or branch profit taxes imposed on (or measured by) Bank's net income by the United States of America. Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, for any such tax, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section shall survive the termination of this Agreement.

2.6 Fees. Borrower shall pay to Bank the following:

(a) Facility Fee. On the Closing Date and on the first anniversary of the Closing Date, a facility fee equal to $30,000, which shall be nonrefundable; and

(b) Bank Expenses. On the Closing Date, all Bank Expenses incurred through the Closing Date, including reasonable attorneys' fees and expenses (which are estimated not to exceed $20,000) and, after the Closing Date, all Bank Expenses incurred after the Closing Date, including reasonable attorneys' fees and expenses, within 10 days after Bank's demand therefor.

2.7 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

(a) this Agreement;

(b) a certificate of the Secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) UCC National Form Financing Statement;

(d) a certificate of insurance naming Bank as loss payee and additional insured;

(e) payment of the fees and Bank Expenses then due specified in Section 2.6 hereof;

(f) current financial statements of Borrower;

(g) an audit of the Collateral, the results of which shall be satisfactory to Bank; and

(h) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

(a) timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1;

(b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Credit Extension as though made at and as of each such date (except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2;

(c) no Default or Event of Default shall be continuing or would exist after giving effect to such Credit Extension; and

(d) no event or circumstance has occurred that could reasonably be expected to have a Material Adverse Effect.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. To secure prompt repayment of any and all Obligations and prompt performance by Borrower of each of its covenants and duties under the Loan Documents, Borrower grants Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral. Except for Permitted Liens which have priority solely by operation or law or Liens described in clause (c) of the definition of Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof. If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any.

4.2 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all Negotiable Collateral, all financing statements and other documents that Bank may reasonably request, in form reasonably satisfactory to Bank, to perfect and continue the perfection of Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents. Borrower from time to time may deposit with Bank specific time deposit accounts to secure specific Obligations. Borrower authorizes Bank to hold such balances in pledge and to decline to honor any drafts thereon or any request by Borrower or any other Person to pay or otherwise transfer any part of such balances for so long as the Obligations are outstanding.

4.3 Right to Inspect. Bank (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours but no more than twice a year (unless an Event of Default has occurred and is continuing), to inspect Borrower's Books and to make copies thereof and to check, test, and appraise the Accounts and Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Borrower and each Subsidiary is an organization duly existing under the laws of its jurisdiction of organization and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's certificate of incorporation or bylaws, nor will they constitute an event of default under any material agreement to which Borrower is a party or by which Borrower is bound. Borrower is not in default under any material agreement to which it is a party or by which it is bound.

5.3 No Prior Encumbrances. Borrower has good and marketable title to its property, free and clear of Liens, except for Permitted Liens.

5.4 Bona Fide Accounts. The Accounts are bona fide existing obligations. The property and services giving rise to such Accounts has been delivered or rendered to the account debtor or to the account debtor's agent for immediate and unconditional acceptance by the account debtor. Except as disclosed in the Schedule or other written notice provided to Bank, Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor owing Accounts in excess of $100,000.

5.5 Merchantable Inventory. All Inventory is in all material respects of good and marketable quality, free from all material defects (ordinary wear and tear excepted), except for Inventory for which adequate reserves have been made.

5.6 Intellectual Property. Borrower and its Subsidiaries own, or is licensed to use, all Intellectual Property necessary to its business. Neither Borrower nor its Subsidiaries have licensed its Intellectual Property, except for non-exclusive licenses granted to customers in the ordinary course of business. Each of the Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any material part of the Intellectual Property violates the rights of any third party. Except as set forth in the Schedule, Borrower's rights as a licensee of Intellectual Property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service. Borrower is not a party to, or bound by, any agreement that restricts the grant by Borrower of a security interest in Borrower's rights under such agreement.

5.7 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, in the five years prior to the Closing Date, Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof or such other address provided to Bank in compliance with Section 7.2. All Borrower's Inventory and Equipment is located at the location set forth in Section 10 hereof or as set forth in the Schedule or such other location with respect to which Borrower is in full compliance with Section 7.10.

5.8 Litigation. Except as set forth in the Schedule, there are no material actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency.

5.9 No Material Adverse Change in Financial Statements. All consolidated (and consolidating, if requested by Bank) financial statements delivered by Borrower under Section 6.3 fairly present in all material respects Borrower's financial condition as of the date thereof and Borrower's consolidated (and consolidating, if requested by Bank) results of operations for the period then ended. There has not been a material adverse change in the consolidated (or the consolidating, if applicable) financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

5.10 Solvency, Payment of Debts. Borrower is solvent and able to pay its debts (including trade debts) as they become due.

5.11 Regulatory Compliance. Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and no event has occurred resulting from Borrower's failure to comply with ERISA that could result in Borrower's incurring any material liability. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower and each Subsidiary have not violated any material statutes, laws, ordinances or rules applicable to it.

5.12 Environmental Condition. None of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in material accordance with applicable law; to the best of Borrower's knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for

closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

5.13 Taxes. Except to the extent provided for in Section 6.6, Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein.

5.14 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments, the Subsidiaries listed on the Schedule or Subsidiaries with respect to which Borrower is in full compliance with Section 6.7.

5.15 Government Consents. Borrower and each Subsidiary have obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted.

5.16 Deposit and Securities Accounts. Borrower and each Subsidiary maintain deposit or securities accounts only as set forth in the Schedule or such other accounts that are subject to an account control agreement in favor of Bank to the extent required under this Agreement, in form and substance satisfactory to Bank.

5.17 Full Disclosure. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading in light of the circumstances when made.

6. AFFIRMATIVE COVENANTS.

Borrower shall do all of the following:

6.1 Good Standing. Borrower shall maintain its and each of its Subsidiaries' organizational existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which it is required under applicable law, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.

6.3 Financial Statements, Reports, Certificates. Borrower shall deliver the following to Bank: (a) within thirty (30) days after the last day of each month, a report on Monthly Recurring Revenue, together with a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of **Exhibit C** hereto, if such certificate is requested by Bank; (b) as soon as available, but in any event within thirty (30) days after the end of each month, a Borrower prepared consolidated balance sheet, income, and cash flow statement covering Borrower's consolidated (and consolidating, if requested by Bank) operations during such period, prepared in accordance with GAAP, consistently applied, in a form reasonably acceptable to Bank along with a Compliance Certificate signed by a Responsible Officer in substantially the form of **Exhibit D** hereto; (c) as soon as available, but in any event within one hundred eighty (180) days after the end of Borrower's fiscal year, draft audited

consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied and with all notes, (d) as soon as available but no later than two hundred forty (240) days after the end of Borrower's fiscal year, audited consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified opinion on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank; (e) copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and, if applicable, all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (f) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of $250,000 or more, or any commercial tort claim acquired by Borrower in an amount in excess of $100,000; (g) as soon as available, but in any event no later than 45 days after the beginning of each of Borrower's fiscal years, annual operating and financial projections (including income statements, balance sheets and cash flow statements presented in a monthly format) for such fiscal year, as approved by Borrower's board of directors, in a form consistent with those previously delivered to Bank; and (h) such other information as Bank may reasonably request from time to time, including upon Bank's request, consolidating annual financial statements of Borrower and its Subsidiaries prepared by Borrower in accordance with GAAP, consistently applied and with all notes.

6.4 Audits. Bank shall have a right from time to time hereafter to audit Borrower's Collateral in accordance with Section 4.3.

6.5 Inventory; Returns. Borrower shall keep all Inventory in good and marketable condition, free from all material defects (ordinary wear and tear excepted) except for Inventory for which adequate reserves have been made. Returns and allowances, if any, as between Borrower and its account debtors shall be in the ordinary course of business and in accordance with the usual customary practices of Borrower consistent with past practices prior to the date of this Agreement. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims, where the return, recovery, dispute or claim involves more than Fifty Thousand Dollars ($50,000).

6.6 Taxes. Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

6.7 Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary, Borrower shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or control agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets (other than Intellectual Property) of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank that in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Notwithstanding the foregoing, no newly formed or acquired Subsidiary that is a controlled foreign corporation (as defined in the IRC) will be required to become a co-borrower hereunder, nor will Borrower be required to pledge more than 65% of the equity interests of any new formed or acquired Subsidiary that is a controlled foreign corporation.

6.8 Insurance.

(a) Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain insurance relating to Borrower's business, ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Bank, showing Bank as an additional loss payee thereof, and all liability insurance policies shall show the Bank as an additional insured and shall specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason. Upon Bank's request, Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations.

6.9 Accounts. On and after the earlier to occur of (i) April 30, 2013 or (ii) the date upon which an aggregate of $5,000,000 in Advances are outstanding, Borrower shall maintain and shall cause each of its Subsidiaries to maintain a majority of its cash and cash equivalents located in the United States in depository, operating, and investment accounts with Bank. On and after the earlier to occur of (i) March 31, 2013 or (ii) the date upon which an aggregate of $3,000,000 in Advances are outstanding, Borrower shall at all times maintain a balance of unrestricted cash with Bank of at least $3,500,000. Borrower may maintain deposit accounts in countries outside the United States, provided the aggregate balance maintained in such accounts does not exceed more than 5% of the aggregate amounts paid to support Borrower's operations in the ordinary course of business in those countries. Borrower shall cause all balances in certificates of deposit as of the Closing Date to be invested within 180 days of the Closing Date in accounts or certificates of deposit maintained with, or issued by, Bank.

6.10 Financial Covenants. None.

6.11 Intellectual Property Rights.

(a) Borrower shall provide Bank, on an annual basis, a report of all applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any. Borrower shall (i) give Bank not less than 30 days prior written notice of the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed, and (ii) prior to the filing of any such applications or registrations, shall execute such documents as Bank may reasonably request for Bank to maintain its perfection in the accounts receivable arising out of such intellectual property rights to be registered by Borrower, and upon the request of Bank, shall file such documents simultaneously with the filing of any such applications or registrations. Upon filing any such applications or registrations with the United States Copyright Office, Borrower shall promptly provide Bank with (i) a copy of such applications or registrations, without the exhibits, if any, thereto, (ii) evidence of the filing of any documents requested by Bank to be filed for Bank to maintain the perfection and priority of its security interest in the accounts receivable arising out of such intellectual property rights, and (iii) the date of such filing.

(b) Bank may audit Borrower's Intellectual Property to confirm compliance with this Section, provided such audit may not occur more often than twice per year, unless an Event of Default has occurred and is continuing. Bank shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section to take but which Borrower fails to take, after 15 days' notice to Borrower. Borrower shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section.

6.12 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to affect the purposes of this Agreement.

7. NEGATIVE COVENANTS.

Borrower shall not do any of the following:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: Permitted Transfers.

7.2 Change in Business; Change in Control or Executive Office. Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto); experience the departure of or a change in Borrower's Chief Executive Officer from the individual holding such office as of the Closing Date and a replacement is not appointed by Borrower's board of directors within 60 days, or materially cease to conduct business in the manner conducted by Borrower as of the Closing Date; or suffer or permit a Change in Control; or without thirty (30) days prior written notification to Bank, relocate its chief executive office or state of incorporation or change its legal name; or without Bank's prior written consent, change the date on which its fiscal year ends.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, except that a Subsidiary may merge or consolidate with Borrower or any other Subsidiary.

7.4 Indebtedness. Create, incur, guarantee, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens, or enter into any agreement with any Person other than Bank not to grant a security interest in, or otherwise encumber, any of its property, other than in connection with Permitted Liens, or permit any Subsidiary to do so.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, or permit any of its Subsidiaries to do so, except that Borrower may repurchase the stock of former employees pursuant to stock repurchase agreements as long as an Event of Default does not exist prior to such repurchase or would not exist after giving effect to such repurchase, and the aggregate amount of such repurchase does not exceed $100,000 in any fiscal year.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; or maintain or invest any of its property with a Person other than Bank or permit any of its Subsidiaries to do so unless such Person has entered into an account control agreement with Bank in form and substance reasonably satisfactory to Bank (other than deposit accounts located outside of the United States or specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of employees); or suffer or permit any Subsidiary to be a party to, or be bound by, an agreement that restricts such Subsidiary from paying dividends or otherwise distributing property to Borrower. Notwithstanding the foregoing, Borrower's operating account at Comerica Bank need not be subject to a control agreement if such account is closed by April 30, 2013; Borrower's money market account at Comerica Bank need not be subject to a control agreement for so long as such account serves solely as cash collateral for the standby letter of credit issued by Comerica Bank; and Borrower's certificates of deposit maintained at Comerica Bank shall be subject to an account control agreement with Bank in form and substance reasonably satisfactory to Bank on and after the 30th day following the Closing Date, until the maturity of such certificate(s) of deposit, at which time such amounts shall be transferred to Borrower's accounts at Bank in accordance with Section 6.9.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in the ordinary course of Borrower's business and upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of any subordination agreement entered into with Bank, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 Inventory and Equipment. Store the Inventory or the Equipment with a bailee, warehouseman, or other third party unless the third party has been notified of Bank's security interest and Bank (a) has received an acknowledgment from the third party that it is holding or will hold the Inventory or Equipment for Bank's benefit or (b) is in pledge possession of the warehouse receipt, where negotiable, covering such Inventory or Equipment. Store or maintain any Equipment or Inventory at a location other than the locations set forth in Section 10 of this Agreement and the Schedule or such other locations as Borrower has given Bank thirty (30) days prior written notice thereof.

7.11 Compliance. Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, or violate any law or regulation, in each case which could reasonably be expected to have a Material Adverse Effect, or permit any of its Subsidiaries to do any of the foregoing.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay, when due, any of the Obligations hereunder;

8.2 Covenant Default.

(a) If Borrower fails to perform any obligation under Article 6 (other than Section 6.1 and 6.2) or violates any of the covenants contained in Article 7 of this Agreement; or

(b) If Borrower fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement (including Section 6.1 and 6.2), in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten day period or cannot after diligent attempts by Borrower be cured within such ten day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made.

8.3 Material Adverse Effect. If there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect;

8.4 Attachment. If any portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within fifteen (15) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within fifteen (15) days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Credit Extensions will be required to be made during such cure period);

8.5 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

8.6 Other Agreements. If there is a default or other failure to perform in any agreement to which Borrower is a party or by which it is bound resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of $250,000 or which could reasonably be expected to have a Material Adverse Effect;

8.7 Intentionally omitted;

8.8 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least $250,000 shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of fifteen (15) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment); or

8.9 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

9. BANK'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(d) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and

to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(e) In accordance with applicable law, set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a limited license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(g) Dispose of the Collateral by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(h) Bank may credit bid and purchase at any public sale; and

(i) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) receive and open all mail addressed to Borrower for the purpose of collecting the Accounts; (c) notify all account debtors with respect to the Accounts to pay Bank directly; (d) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (e) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (f) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (g) demand, collect, receive, sue, and give releases to any account debtor for the monies due or which may become due upon or with respect to the Accounts and to compromise, prosecute, or defend any action, claim, case or proceeding relating to the Accounts; (h) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (i) sell, assign, transfer, pledge, compromise, discharge or otherwise dispose of any Collateral; (j) execute on behalf of Borrower any and all instruments, documents, financing statements and the like to perfect Bank's interests in the Accounts and file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; and (k) do all acts and things necessary or expedient, in furtherance of any such purposes. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions hereunder is terminated.

9.3 Accounts Collection. In addition to the foregoing, at any time after the occurrence and during the continuation of an Event of Default, Bank may notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount of such Account. During the existence of an Event of Default, Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrower: (a) make payment of the same or any part thereof to the extent such amounts relate to protecting or maintaining the Collateral; (b) set up such reserves as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.6 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

9.6 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the instance and for the purpose for which it was given.

9.7 Demand; Protest. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, electronic mail, or by telefacsimile to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to Borrower: FIVE 9, INC.
Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, CA 94583
Attn: David Hill
FAX: (925) 397-3460
email: dhill@five9.com

If to Bank: City National Bank
150 California Street, 13th Floor
San Francisco, CA 94111
Attn: Rod Werner, Managing Director
FAX: (415)576-2811
email: rod.werner@cnb.com

And

City National Bank
Legal Department
Attn: Managing Counsel, Credit Unit
555 S. Flower Street, 18th Floor
Los Angeles, CA 90071

Such notices or demands will be deemed delivered when received or, if sent by electronic mail or telefacsimile, when receipt is acknowledged by the recipient. The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank submits to the jurisdiction of the state and Federal courts located in the County of Los Angeles, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

If the jury waiver set forth in this Section is not enforceable, then any dispute, controversy or claim arising out of or relating to this Agreement, the Loan Documents or any of the transactions contemplated therein shall be settled by judicial reference pursuant to Code of Civil Procedure Section 638 et seq. before a referee sitting without a jury, such referee to be mutually acceptable to the parties or, if no agreement is reached, by a referee appointed by the Presiding Judge of the California Superior Court for Los Angeles County. This Section shall not restrict a party from exercising remedies under the Code or from exercising pre-judgment remedies under applicable law.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Any sale, transfer, assignment or grant of participation in all or any part of, or any interest in, Bank's obligations, rights and benefits to any Person that is a direct competitor of Borrower shall require the prior written consent of Borrower, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, following an Event of Default, or in connection with the sale or disposition of Bank or all or a portion of Bank's loan portfolio, Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder to any Person.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), in each case except for losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. Neither this Agreement nor the Loan Documents can be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Notwithstanding the foregoing, Borrower shall deliver all original signed documents requested by Bank no later than ten (10) Business Days following the initial Advance.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Bank has any obligation to make Credit Extensions to Borrower. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality; Disclosure. In handling any confidential information of Borrower or any Subsidiary, Bank and all employees and agents of Bank, including but not limited to accountants, shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the Subsidiaries or Affiliates of Bank in connection with their present or prospective business relations with Borrower so long as such Subsidiaries or Affiliates comply with the provisions of this Section 12.8, (ii) to prospective transferees or purchasers of any interest in the loans, provided that they are similarly bound by confidentiality obligations, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank; or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information. Borrower authorizes Bank to disclose its relationship with Borrower, including use of Borrower's logo in Bank's promotional materials.

12.9 Patriot Act Notice. Bank notifies Borrower that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the " Patriot Act "), it is required to obtain, verify and record information that identifies Borrower, which information includes names and addresses and other information that will allow Bank to identify the Borrower in accordance with the Patriot Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

FIVE 9, INC.

By: /s/ David Hill
Title: Vice President—Finance

CITY NATIONAL BANK

By: /s/ Larry Sherman
Title: VP/Relationship Manager

DEBTOR: **FIVE 9, INC.**

SECURED PARTY: **CITY NATIONAL BANK**

EXHIBIT A

COLLATERAL DESCRIPTION ATTACHMENT
TO LOAN AND SECURITY AGREEMENT

All personal property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), commercial tort claims, deposit accounts, securities accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding the foregoing, the Collateral shall not include:

(x) any copyrights, patents, trademarks, servicemarks and applications therefor, now owned or hereafter acquired, or any claims for damages by way of any past, present and future infringement of any of the foregoing (collectively, the "Intellectual Property"); provided, however, that the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the "Rights to Payment"). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the Closing Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in the Rights to Payment;

(y) any Equipment not financed by Bank or rights of Borrower as a licensee to the extent the granting of a security interest therein (i) would be contrary to applicable law or (ii) is prohibited by or would constitute a default under any agreement or document governing such property (but only to the extent such prohibition is enforceable under applicable law); provided that upon the termination or lapsing of any such prohibition, such property shall automatically be part of the Collateral; and provided further that the provisions of this paragraph shall in no case exclude from the definition of "Collateral" any Accounts, proceeds of the disposition of any property, or general intangibles consisting of rights to payment, all of which shall at all times constitute "Collateral"; and provided further that any Equipment financed by Bank will at all times constitute "Collateral"; and

(z) voting equity interests in a controlled foreign corporation (as defined in the United States Internal Revenue Code) solely to the extent such equity interests represents more than 65% of the total combined voting power of all classes of equity interests of such controlled foreign corporation.

EXHIBIT B
LOAN ADVANCE/PAYDOWN REQUEST FORM
DEADLINE FOR SAME DAY PROCESSING IS 3:00 P.M, Pacific Time
DEADLINE FOR WIRE TRANSFERS IS 1.30 P.M, Pacific Time

TO: _____ DATE: _____ TIME: _____
FAX #: _____

FROM: _____ Borrower's Name FROM: _____ Authorized Signer's Name FROM: _____ Authorized Signature (Borrower) PHONE #: _____ FROM ACCOUNT#: _____ (please include Note number, if applicable) TO ACCOUNT #: _____ (please include Note number, if applicable)	TELEPHONE REQUEST (For Bank Use Only): The following person is authorized to request the loan payment transfer/loan advance on the designated account and is known to me. _____ Authorized Requester & Phone # _____ Received by (Bank) & Phone # _____ Authorized Signature (Bank)

REQUESTED TRANSACTION TYPE	REQUESTED DOLLAR AMOUNT	For Bank Use Only
PRINCIPAL INCREASE* (ADVANCE)	$_____	Date Rec'd:
PRINCIPAL PAYMENT (ONLY)	$_____	Time:
		Comp. Status: YES NO
OTHER INSTRUCTIONS:		Status Date:
		Time:
		Approval:

All representations and warranties of Borrower stated in the Loan Agreement are true, correct and complete in all material respects as of the date of the telephone request for and advance confirmed by this Borrowing Certificate, including without limitation the representation that Borrower has paid for and owns the equipment financed by the Bank; provided, however, that those representations and warranties the date expressly referring to another date shall be true, correct and complete in all material respects as of such date.

***IS THERE A WIRE REQUEST TIED TO THIS LOAN ADVANCE? (PLEASE CIRCLE ONE) YES NO**
If YES, the Outgoing Wire Transfer Instructions must be completed below.

OUTGOING WIRE TRANSFER INSTRUCTIONS	Fed Reference Number	Bank Transfer Number
The items marked with an asterisk (*) are required to be completed.		
*Beneficiary Name		
*Beneficiary Account Number		
*Beneficiary Address		
Currency Type	US DOLLARS ONLY	
*ABA Routing Number (9 Digits)		
*Receiving Institution Name		
*Receiving Institution Address		
*Wire Amount	**$**	

EXHIBIT C

BORROWING BASE CERTIFICATE

Borrower: FIVE 9, INC. Lender: City National Bank
Commitment Amount: $12,500,000

MONTHLY RECURRING REVENUE		
1. Monthly Recurring Revenue (three months)	$	_____
2. Average dollar based retention rate (trailing 12 months)		_____%
3. Product of No. 1 times No. 2	$	_____
4. Less: USF Reserve	$	_____
5. Availability after USF Reserve (#3 minus #4)	$	_____
BALANCES		
6. Maximum Loan Amount	$	12,500,000
7. Total Funds Available [Lesser of #5 or #6]	$	_____
8. Present balance owing on Line of Credit	$	_____
9. Availability (#7 minus #8)	$	_____

The undersigned represents and warrants that the foregoing is true, complete and correct, and that the information reflected in this Borrowing Base Certificate complies with the representations and warranties set forth in the Loan and Security Agreement between the undersigned and City National Bank.

FIVE 9, INC.

By: _____
Authorized Signer

EXHIBIT D
COMPLIANCE CERTIFICATE

TO: CITY NATIONAL BANK

FROM: FIVE 9, INC.

The undersigned authorized officer of FIVE 9, INC. hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof (except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made). Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenant	Required	Complies	
Monthly Recurring Revenue Report/BBC	Monthly within 30 days	Yes	No
Monthly financial statements + Compliance Cert.	Monthly within 30 days	Yes	No
Annual financial statements (draft)	FYE within 180 days	Yes	No
Annual financial statements (CPA Audited)	FYE within 240 days	Yes	No
Cash balance in CNB Accounts	$3,500,000	Yes	No
Financial projections	Within 45 days of fiscal year beginning	Yes	No
IP Report	Annual	Yes	No

Financial Covenant	Required	Actual	Complies
None.			

Comments Regarding Exceptions: See Attached.

Sincerely,

SIGNATURE

TITLE

DATE

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER

Date: _____

Verified: _____
AUTHORIZED SIGNER

Date: _____

Compliance Status Yes No

Exhibit 10.16

FIRST AMENDMENT
TO
LOAN AND SECURITY AGREEMENT

This First Amendment to Loan and Security Agreement is entered into as of October 18th, 2013 (this "***Amendment***"), by and between CITY NATIONAL BANK ("***Bank***") and FIVE9, INC. ("***Borrower***").

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of March 8, 2013, as amended from time to time (the "***Agreement***"). The parties desire to amend the Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. The following terms are added to Section 1.1 or amended, as follows:

"Credit Extension" means each Advance, Term Advance or any other extension of credit by Bank for the benefit of Borrower hereunder.

"First Amendment Date" means October 18th, 2013.

"Guarantor Subsidiary" means a Subsidiary that executes a Guaranty.

"Guaranty" means an Unconditional Guaranty in form and substance reasonably acceptable to Bank.

"Term Advance" means a cash advance under Section 2.1(b).

"Term Maturity Date" means March 31, 2017.

2. Clause (h) is added to the defined term, "Permitted Investments", as follows:

(h) Investments in Guarantor Subsidiaries in an aggregate amount of up to $500,000 outstanding at any time.

3. Section 2.1(b) is added to the Agreement, as follows:

(b) Term Advance. Subject to and upon the terms and conditions of this Agreement, Borrower may request, and Bank shall lend, one Term Advance to Borrower on the First Amendment Date in a principal amount of Five Million Dollars ($5,000,000). Borrower shall use the proceeds of the Term Advance in connection with the transaction involving Hyfiniti, and pay related costs over the year following that transaction. Borrower shall make interest-only payments on the principal amount of the Term Advance on the last Business Day of each month, beginning October 31,

2013 and continuing through September 30, 2014. Beginning October 31, 2014, and continuing on the last day of each succeeding month, Borrower shall make equal monthly payments of principal, plus accrued interest, on the Term Advance. On the Term Maturity Date, Borrower shall pay Bank an amount equal to all accrued but unpaid interest and any outstanding principal of the Term Advance. Borrower may prepay all, but not less than all, of the Term Advance, provided that Borrower shall pay a prepayment fee equal to one percent (1.0%) of the amount of any prepayment made on or before the first anniversary of the First Amendment Date, which fee shall be due at the time of such prepayment.

4. Section 2.3(a) is amended to read as follows: "**(a) Interest Rates.** Except as set forth in Section 2.3(b), (i) the Advances shall bear interest, on the outstanding daily balance thereof, at a floating rate per annum equal to one and one quarter percent (1.25%) above the Prime Rate and (ii) the Term Advance shall bear interest, on the outstanding daily balance thereof, at a floating rate equal to one and one half percent (1.50%) above the Prime Rate.

5. Section 8.7 is added to the Agreement, to read as follows:

8.7 Guaranty. If any Subsidiary Guarantor fails to perform any obligation under its Guaranty, or if any Guaranty ceases to be in full force and effect.

6. Upon the date that Borrower's cash at Bank is less than $5,500,000 (the "Trigger Date"), Borrower shall deliver to Bank a term sheet reasonably acceptable to Bank providing for a net new equity investment in Borrower of not less than $20,000,000 (the "New Equity"). Borrower shall deliver to Bank evidence reasonably acceptable to Bank that Borrower has received the proceeds of the New Equity within forty-five (45) days following the Trigger Date.

7. Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all agreements entered into in connection with the Agreement.

8. Borrower represents and warrants that the representations and warranties contained in the Agreement are true and correct as of the date of this Amendment, and that no Event of Default has occurred and is continuing.

9. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

10. As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

(a) this Amendment;

(b) a Warrant to Purchase Stock;

(c) the Guaranty;

(d) payment of a fee of $12,500, plus all Bank Expenses incurred through the date hereof;

(e) copies of the agreements relating to the merger involving Face It Corp.; and

(f) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

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IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

FIVE9, INC.

By: /s/ David Hill
Title: Vice President—Finance

CITY NATIONAL BANK

By: /s/ Larry Sherman
Title: Vice President

Exhibit 10.17

CONSENT AND SECOND AMENDMENT
TO LOAN AND SECURITY AGREEMENT

This Consent and Second Amendment to Loan and Security Agreement is entered into as of February 20, 2014 (this "***Amendment***"), by and between CITY NATIONAL BANK ("***Bank***") and FIVE9, INC. ("***Borrower***").

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of March 8, 2013, as amended by that certain First Amendment to Loan and Security Agreement dated as of October 18, 2013 (as the same may from time to time be further amended, modified, supplemented or restated, the "***Agreement***").

Borrower has requested that Bank consent to certain indebtedness (the "***Fifth Street Debt***") pursuant to a Loan and Security Agreement dated as of February 20, 2014 (the "***Fifth Street Loan Agreement***") by and between Borrower, and FIVE9 ACQUISITION LLC, a Delaware limited liability company, and FIFTH STREET FINANCE CORP., a Delaware corporation ("***Fifth Street***"), and FIFTH STREET MEZZANINE PARTNERS V, L.P, a Delaware limited partnership ("***FSMP***", and together with Fifth Street, the "***Fifth Street Lenders***"), and Bank has agreed to do so in accordance with this Amendment. Additionally, the parties desire to amend the Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. Bank consents to Borrower's entering into the Fifth Street Loan Agreement, the incurrence of the Fifth Street Debt pursuant thereto, the granting of a security interest in substantially all its personal property to secure its obligations under the Fifth Street Loan Agreement, and the repayment of the Fifth Street Debt to the extent permitted under the Subordination Agreement by and between the Fifth Street Lenders and Bank dated as of the date hereof ("***Subordination Agreement***").

2. Borrower grants and pledges to Bank a continuing security interest in the Collateral, as described on Exhibit A hereto, to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrower of its covenants and duties under the Loan Documents. Borrower authorizes Bank to file such amendment to financing statements as Bank determines appropriate in connection with such grant, and to record the Intellectual Property Security Agreement entered into by and between Borrower and Bank, dated as of the date herewith (the "***IPSA***"), as further evidence of Bank's Lien in the Collateral.

3. The following terms are added to Section 1.1 or amended, as follows:

"FSMP" means FIFTH STREET MEZZANINE PARTNERS V, L.P, a Delaware limited partnership.

"Fifth Street" means FIFTH STREET FINANCE CORP., a Delaware corporation.

"Fifth Street Debt" means all indebtedness incurred by Borrower pursuant to the Fifth Street Loan Agreement.

"Fifth Street Lenders" means Fifth Street and FSMP.

"Fifth Street Loan Agreement" means that certain Loan and Security Agreement dated as of February 20, 2014 by and between Borrower, and FIVE9 ACQUISITION LLC, a Delaware limited liability company, and Fifth Street and FSMP.

"Second Amendment Date" means February 20, 2014.

4. Clause (e) of the defined term, "Permitted Indebtedness", is amended in its entirety to read as follows:

(e) Subordinated Debt, including but not limited to, the Fifth Street Debt.

5. Clause (k) is added to the defined term "Permitted Lien" as follows:

(k) Liens securing the obligations of Borrower and its Subsidiaries under the Fifth Street Loan Agreement.

6. Section 6.11 (Intellectual Property Rights) is amended in its entirety to read as follows:

6.11 Registration of Intellectual Property Rights

(i) Borrower shall register or cause to be registered on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as the case may be, those registrable intellectual property rights now owned or hereafter developed or acquired by Borrower, to the extent that Borrower, in its reasonable business judgment, deems it appropriate to so protect such intellectual property rights.

(ii) Borrower shall promptly give Bank written notice of any applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any.

(iii) shall (i) give Bank not less than 15 days prior written notice of the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed; (ii) prior to the filing of any such applications or registrations, execute such documents as Bank may reasonably request for Bank to maintain its perfection in such intellectual property rights to be registered by Borrower; (iii) upon the request of Bank, either deliver to Bank or file such documents simultaneously with the filing of any such applications or registrations; (iv) upon filing any such applications or registrations, promptly provide Bank with a copy of such applications or registrations together with any exhibits, evidence of the filing of any documents requested by Bank to be filed for Bank to maintain the perfection and priority of its security interest in such intellectual property rights, and the date of such filing.

(iv) Borrower shall execute and deliver such additional instruments and documents from time to time as Bank shall reasonably request to perfect and maintain the perfection and priority of Bank's security interest in the Intellectual Property.

(v) Borrower shall (i) protect, defend and maintain the validity and enforceability of the trade secrets, Trademarks, Patents and Copyrights that are material to its business, (ii) use commercially

reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) not allow any material Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld.

(vi) Bank may audit Borrower's Intellectual Property to confirm compliance with this Section 6.11, provided such audit may not occur more often than twice per year, unless an Event of Default has occurred and is continuing. Bank shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section 6.11 to take but which Borrower fails to take, after 15 days' notice to Borrower. Borrower shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 6.11.

(vii) Borrower shall promptly notify Bank in writing of any event which may be reasonably expected to materially and adversely affect the value, utility of, or Borrower's claim of ownership in or right to use any of the material Intellectual Property.

7. Section 6.12 (Further Assurances) is amended in its entirety to read as follows:

6.12 Further Assurances.

At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to affect the purposes of this Agreement.

In the event Borrower acquires an interest in real property after the Second Amendment Date, Borrower shall deliver to Bank a fully executed mortgage or deed of trust over such real property in form and substance reasonably satisfactory to Bank, together with such title insurance policies, surveys, appraisals, evidence of insurance, legal opinions, environmental assessments and other documents and certificates as shall be reasonably required by Bank.

As a condition to granting to any Person a Lien in any property in which Bank does not have a first priority security interest, Borrower shall first grant a Lien to Bank in such property, and take such actions at Borrower's expense as Bank reasonably requests to perfect and maintain the first priority of such Lien.

8. A new Section 7.12 (Intellectual Property) is added to the Agreement to read as follows:

7.12 Intellectual Property

(a) Borrower shall not amend or permit the amendment of any Intellectual Property licenses in a manner that could materially impair the value of the Intellectual Property or the Lien on and security interest in the Intellectual Property created therein by this Agreement or any Loan Documents.

(b) Borrower shall not incorporate into any proprietary software licensed or distributed by Borrower that is material to generating revenue any third-party code that is licensed pursuant to any open source license, in a manner that would require or condition the use or distribution of such software on, the disclosing, licensing or distribution of any Borrower source code.

(c) Borrower shall not enter into any Intellectual Property license material to the conduct of the business of Borrower unless Borrower has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such license to Bank.

9. Exhibit A attached to the Agreement is replaced with Exhibit A attached hereto.

10. Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all agreements entered into in connection with the Agreement.

11. Borrower represents and warrants that the representations and warranties contained in the Agreement are true and correct in all material respects as of the date of this Amendment (except to the extent such representations or warranties relate to a specific date), and that no Event of Default has occurred and is continuing.

12. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

13. As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

(a) this Amendment;

(b) the Subordination Agreement;

(c) a certificate of the Secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Amendment;

(d) UCC National Form Financing Statement amendments;

(e) the IPSA;

(f) an Affirmation and Amendment of Guaranty;

(g) a copy of the Fifth Street Loan Agreement and all ancillary documents thereto, as in effect as of the Second Amendment Date;

(h) payment of a fee of $32,500; and

(i) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

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IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

FIVE9, INC.

By: /s/ David Hill

Name: David Hill

Title: VP Finance

CITY NATIONAL BANK

By: /s/ Larry Sherman

Name: Larry Sherman

Title: Vice President

DEBTOR: **FIVE9, INC.**

SECURED PARTY: **CITY NATIONAL BANK**

EXHIBIT A

COLLATERAL DESCRIPTION ATTACHMENT
TO LOAN AND SECURITY AGREEMENT

All personal property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), commercial tort claims, deposit accounts, securities accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding the foregoing, the Collateral shall not include:

(x) any Equipment not financed by Bank or rights of Borrower as a licensee to the extent the granting of a security interest therein (i) would be contrary to applicable law or (ii) is prohibited by or would constitute a default under any agreement or document governing such property (but only to the extent such prohibition is enforceable under applicable law); provided that upon the termination or lapsing of any such prohibition, such property shall automatically be part of the Collateral; and provided further that the provisions of this paragraph shall in no case exclude from the definition of "Collateral" any Accounts, proceeds of the disposition of any property, or general intangibles consisting of rights to payment, all of which shall at all times constitute "Collateral"; and provided further that any Equipment financed by Bank will at all times constitute "Collateral"; and

(y) voting equity interests in a controlled foreign corporation (as defined in the United States Internal Revenue Code) solely to the extent such equity interests represents more than 65% of the total combined voting power of all classes of equity interests of such controlled foreign corporation.

Exhibit 10.18

LOAN AND SECURITY AGREEMENT

DATED AS OF FEBRUARY 20, 2014

by and among

FIVE9, INC.
and
FIVE9 ACQUISITION LLC
collectively, Borrower,

and

FIFTH STREET FINANCE CORP.
as Agent and Lender,

and

FIFTH STREET MEZZANINE PARTNERS V, L.P.,
as Lender

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is dated as of February 20, 2014 and entered into by and among (i) FIVE9, INC., a Delaware corporation (the "Lead Borrower") and FIVE9 ACQUISITION LLC, a Delaware limited liability company (jointly and severally, individually and collectively, "Borrower"), (ii) FIFTH STREET FINANCE CORP., a Delaware corporation (together with its successors and assigns, "FSFC"), FIFTH STREET MEZZANINE PARTNERS V, L.P., a Delaware limited partnership (together with its successors and assigns, "FSMP"), and the other lenders identified on the signature pages hereof (such lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), and (iii) FIFTH STREET FINANCE CORP., a Delaware corporation, as the administrative agent and collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"). In consideration of the mutual covenants contained herein and benefits to be derived herefrom the parties hereto hereby agree as follows (all capitalized terms herein shall have the meanings ascribed thereto in Annex A hereto):

SECTION 1
AMOUNTS AND TERMS OF LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Borrower contained herein:

(a) Term Loan. The Lenders (severally, not jointly) agree to make a term loan (the "Loan") to Borrower in an amount equal to Thirty Million Dollars ($30,000,000) (the "Loan Commitment"). FSMP agrees to fund Ten Million Dollars ($10,000,000) of the Loan Commitment and FSFC agrees to fund Twenty Million Dollars ($20,000,000) of the Loan Commitment. Amounts borrowed under the Loan and repaid may not be reborrowed.

(b) Unconditional Obligation to Pay. Borrower hereby unconditionally promises to pay all Obligations as and when due hereunder.

(c) Note. The Loan shall be evidenced by one or more notes substantially in the forms executed by Borrower on the date hereof (each a "Note" and collectively, the "Notes"). Neither the original nor a copy of any Note shall be required, however, to establish or prove any Obligation. In the event that a Note is ever lost, mutilated, or destroyed, Borrower shall execute a replacement thereof and deliver such replacement to Lender.

(d) Purpose. The proceeds of the Loan shall be used to pay fees and expenses incurred in connection with this Agreement and Related Transactions and for working capital and general corporate purposes of the Borrower not otherwise prohibited by this Agreement or the other Loan Documents.

(e) Funding.

(i) Subject to the terms of this Agreement and satisfaction of the conditions set forth in Section 7.1 hereof, the Lenders shall make the following advances to Borrower on the Closing Date (collectively, the "Initial Advance"): FSMP shall advance Ten Million Dollars ($10,000,000) of the Loan and FSFC shall advance Ten Million Dollars ($10,000,000) of the Loan. Other than the Initial Advance, FSMP shall have no funding obligations hereunder.

(ii) Subject to Borrower's compliance with the conditions set forth in Section 7.2 hereof, from the Closing Date through and including February 20, 2015 (the "Outside Funding Date"), the portion of the Loan not advanced on the Closing Date shall be available to Borrower in subsequent advances (each, an "Additional Advance") from FSFC. Each request for an Additional Advance by Borrower to FSFC shall be made in the form substantially similar to the Form of Additional Advance Request attached hereto as Exhibit 1.1. In addition to the conditions set forth in Section 7.2 hereof, any such Additional Advances under the Loan shall be subject to the following:

(a) The aggregate amount of the Initial Advance and all Additional Advances outstanding at any time shall not exceed the Loan Commitment.

(b) Additional Advances shall only be available until the Outside Funding Date.

(c) Additional Advances shall be in the amount of at least One Million Dollars ($1,000,000).

1.2 Interest and Payment Terms.

(a) Rate. Interest shall accrue on the outstanding balance of the Loan at a per annum rate equal to the greater of either (A) ten percent (10%) or (B) the LIBOR Rate and shall be payable as follows:

(i) Current Pay. Accrued interest on the unpaid principal balance of the Loan shall be payable monthly in arrears, in immediately available funds, on the last day of each month (the "Payment Date"). The initial Payment Date hereunder shall be February 28, 2014.

(ii) Principal Amortization. In addition to the interest payments described above, commencing on the Amortization Payment Start Date and continuing on each Payment Date thereafter, Borrower shall make, in immediately available funds, monthly principal payments on the Loan each an amount equal to (A) twenty percent (20%) of the outstanding principal balance of the Loan on the Amortization Payment Start Date divided by (B) twelve. Principal amortization payments shall be applied ratably among the Lenders.

(b) Calculation of Payments. If any payment on the Loan becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon

shall be payable at the then applicable rate during such extension. Interest under the Loan shall be calculated on the basis of a 360 day year for the number of days elapsed in each interest period.

(c) Default Rate. So long as an Event of Default has occurred and is continuing under Section 6.1(a), (f), or (g) and without notice of any kind, or so long as any other Event of Default has occurred and is continuing and at the election of the Required Lenders, after written notice thereof to Borrower, the interest rate applicable to the Loan shall be increased by four percentage points (4%) per annum above the rate of interest otherwise applicable hereunder ("Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate. Interest at the Default Rate shall accrue from the initial date of such Event of Default until that Event of Default is waived and shall be payable upon demand, but in any event, shall be payable on the next Payment Date.

(d) Maximum Lawful Rate. Notwithstanding anything to the contrary set forth in this Section 1.2, if a court of competent jurisdiction determines in a final non-appealable order that the rate of interest payable hereunder exceeds the highest rate of interest permissible under law (the "Maximum Lawful Rate"), then so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable hereunder shall be equal to the Maximum Lawful Rate; provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by the Lenders, is equal to the total interest that would have been received had the interest rate payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in Sections 1.2(a) through (c), unless and until the rate of interest again exceeds the Maximum Lawful Rate, and at that time this paragraph shall again apply. In no event shall the total interest received by the Lenders pursuant to the terms hereof exceed the amount that the Lenders could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate. If the Maximum Lawful Rate is calculated pursuant to this paragraph, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 1.2(d) a court of competent jurisdiction shall determine by a final, non-appealable order that the Lenders have received interest hereunder in excess of the Maximum Lawful Rate, the Lenders shall, to the extent permitted by applicable law, promptly apply such excess as specified in Section 1.6 and thereafter shall refund any excess to Borrower or as such court of competent jurisdiction may otherwise order.

(e) LIBOR Rate Unascertainable; Illegality; Increased Costs.

(i) In the event that the Agent shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR then the Agent shall forthwith give notice by telephone of such determination. If such notice is given, any portion of

the Loans which were accruing interest with reference to the LIBOR shall bear interest at the Adjusted Prime Rate beginning on the date such notice is provided to Borrower. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to elect to have the Loan bear interest at the Adjusted Prime Rate.

(ii) If any requirement of law or any change therein or in the interpretation or application thereof shall hereafter make it unlawful for any Lender in good faith to make or maintain the portion of the Loans bearing interest at the LIBOR Rate, the Loan shall automatically bear interest at the Adjusted Prime Rate on the next succeeding Payment Date or within such earlier period as required by applicable law. Borrower hereby agrees promptly to pay such Lender (within ten (10) days of such Lender's written demand therefor), any additional amounts necessary to compensate such Lender for any reasonable and out-of-pocket costs incurred by such Lender in making any conversion from the LIBOR Rate to the Adjusted Prime Rate in accordance with this Agreement, including, without limitation, any interest or fees payable by such Lender to lenders of funds obtained by it in order to make or maintain the Loan hereunder.

(f) Mandatory Prepayments. Subject to the terms of the Intercreditor Agreement, concurrently with the receipt by Borrower or any of their Subsidiaries of the net proceeds (i) of the issuance of any Indebtedness for borrowed money (other than Permitted Indebtedness) including any Subordinated Debt, (ii) of any disposition of assets (other than a disposition of assets permitted under Section 3.7 below), (iii) from any Casualty Event in excess of $500,000, (iv) from the issuance of, or otherwise on account of, any Stock of any Subsidiary of Borrower (other than equity issuances by a Subsidiary of Borrower to Borrower or a Subsidiary of Borrower), and (v) from any Extraordinary Receipts in excess of $500,000, Borrower shall prepay the Loan in an amount equal to one hundred percent (100%) of such net proceeds, subject to the prepayment fee described in Section 1.3(b) below. Nothing in this Section 1.2(f) shall be construed to permit or waive any Default or Event of Default that may arise from any incurrence of any events described herein and not otherwise permitted under the terms of this Agreement. Notwithstanding anything in this Section 1.2(f) to the contrary, if Borrower notifies the Agent that it intends to apply the net proceeds from a Casualty Event (or a portion thereof) to acquire (or replace or rebuild) tangible assets to be used in the business of Borrower within 360 days after receipt of such net proceeds, then no prepayment is required pursuant to this Section 1.2(f) in respect of such net proceeds; provided that to the extent of any such net proceeds have not been so applied by the end of such 360-day period, a prepayment is required at such time in an amount equal to such net proceeds that have not been so applied.

1.3 Fees.

(a) Advisory Fees. On the date hereof, Borrower shall pay to the Lenders an aggregate advisory fee of $400,000, as follows: (i) to FSMP an advisory fee in the amount of $150,000, (ii) to FSFC an advisory fee in the amount of $150,000, and (iii) to FSFC an advisory fee in the amount of $100,000, all in immediately available funds, which fees shall be deemed fully earned on the date hereof, and shall not be credited to any other payment required hereunder.

(b) Prepayment. Borrower may prepay all or a portion of the Loan at any time. Any such prepayment shall be applied ratably among the Lenders. If Borrower (A) voluntarily prepays any portion of the Loan, or (B) pursuant to any mandatory prepayment set forth in Sections 1.2(f), prepays, in one or a related series of transactions, all amounts outstanding under the Loan, Borrower shall pay to the Lenders, as liquidated damages and compensation for the costs of being prepared to make funds available hereunder, an amount equal to the Applicable Percentage multiplied by the sum of the portion of the principal amount of the Loan paid after acceleration or prepaid. As used herein, the term "Applicable Percentage" shall mean (x) three percent (3.0%), in the case of a prepayment on or prior to the second anniversary of the Closing Date, (y) two percent (2.0%), in the case of a prepayment after the second anniversary of the Closing Date but on or prior to the third anniversary thereof, and (z) one percent (1.0%), in the case of a prepayment after the third anniversary of the Closing Date but on or prior to the date occurring ninety (90) days prior to the Maturity Date. Borrower acknowledges that the Lenders shall suffer damages on account of the early payment of the Loan and that the Applicable Percentage is a reasonable calculation of the Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from prepayment.

(c) Expenses and Attorneys' Fees. Borrower agrees to promptly pay all reasonable and out-of-pocket fees, charges, costs and expenses (including reasonable attorneys' fees and expenses, accounting, consulting, brokerage or other similar professional fees and expenses and travel expenses) incurred by the Agent and/or any Lender in connection with any matters contemplated by or arising out of the Loan Documents, including in connection with the examination, review, due diligence investigation, documentation, negotiation, closing of the transactions contemplated herein and in connection with the continued administration of the Loan Documents including any amendments, modifications, subordination or intercreditor agreements, consents and waivers. Borrower agrees to promptly pay all fees, charges, costs and expenses (including reasonable fees, charges, costs and expenses of attorneys, auditors, appraisers, consultants and advisors) incurred by the Agent and/or any Lender in connection with any Event of Default, work-out in respect of the Loan or any action or efforts by the Agent and/or any Lender to preserve, protect, collect or enforce any Loan Document or any rights or remedies of the Agent and/or Lender in connection with the Collateral or to collect any payments due from Borrower hereunder (whether or not actually instituted in connection with such efforts). All fees, charges, costs and expenses for which Borrower is responsible under this Agreement shall be deemed part of the Obligations when incurred, secured by the Collateral and payable upon demand; provided, however, that Borrower may remit any such fees, charges, costs and expenses as a part of its first regularly scheduled accounts payable processing following such demand.

1.4 Payments. All payments by Borrower of the Obligations shall be without deduction, defense, setoff or counterclaim and shall be made in Dollars and in same day funds and delivered to the Agent for the account of the applicable Lender by wire transfer to the

account of such applicable Lender specified by Agent from time to time or such other place as the Agent may from time to time designate in writing to Borrower. Borrower shall receive credit on the day of receipt for funds received by the Lenders by 12:00 noon (New York Time). In the absence of timely receipt, such funds shall be deemed to have been paid on the next Business Day.

1.5 Maturity. In all events, and under all circumstances, unless sooner paid, all Obligations shall be immediately due and payable in full on the Maturity Date.

1.6 Application and Allocation of Payments. So long as no Event of Default has occurred and is continuing, (i) payments made to the Lenders shall be applied, first, ratably to Fees and reimbursable expenses of the Agent and the Lenders then due and payable pursuant to any of the Loan Documents; and (ii) payments matching specific scheduled payments then due shall be applied to those scheduled payments. Payments made when an Event of Default has occurred and is continuing shall be applied in accordance with Section 6.4. Borrower hereby irrevocably waives the right to direct the application of any and all payments received from or on behalf of Borrower when an Event of Default exists, and Borrower hereby irrevocably agrees that the Lenders shall have the continuing exclusive right to apply any and all such payments against the Obligations of Borrower as the Lenders may deem advisable, notwithstanding any previous entry by the Lenders in the Loan Account or any other books and records.

1.7 Loan Account. The Agent shall maintain a loan account (the "Loan Account") on its books to record: all credit extensions, all payments made by Borrower, and all other debits and credits as provided in this Agreement with respect to the Loan or any other Obligations. All entries in the Loan Account shall be made in accordance with the Agent's customary accounting practices as in effect from time to time. The balances in the Loan Account, as recorded on the Agent's most recent printout or other written statement, shall, absent manifest error, be presumptive evidence of the amounts due and owing to the Lenders by Borrower; provided that any failure to so record or any error in so recording shall not limit or otherwise affect Borrower's duty to pay the Obligations. The Agent shall render to Borrower a monthly accounting of transactions with respect to the Loan setting forth the balances of the Loan Account for the immediately preceding month. Notwithstanding any provision herein contained to the contrary, the Lenders may elect (which election may be revoked) to dispense with the issuance of the Note to any Lender and may rely on the Loan Account as evidence of the amount of Obligations from time to time owing to it.

1.8 Taxes.

(a) No Deductions. Any and all payments or reimbursements made hereunder or under any Note by Borrower shall be made free and clear of and without deduction for any and all Charges, taxes, levies, imposts, deductions or withholdings, and all liabilities with respect thereto of any nature whatsoever imposed by any taxing authority other than Excluded Taxes. If Borrower shall be required by law to deduct any such amounts from or in respect of any sum payable hereunder to the Lenders, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, the Lenders receive an amount equal to the sum they would have received had no such deductions been made.

(b) Changes in Tax Laws. In the event that, subsequent to the Closing Date, (1) any changes in any existing law, regulation, treaty or directive from any Governmental Authority or in the interpretation or application thereof by any Governmental Authority, (2) any new law, regulation, treaty or directive from any Governmental Authority enacted or any new interpretation or application thereof, or (3) compliance by any Lender with any directive (whether or not having the force of law) from any Governmental Authority made or issued after the Closing Date:

(i) does or shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, the other Loan Documents or the Loan made hereunder, or change the basis of taxation of payments to any Lender of principal, fees, interest or any other amount payable hereunder (except for Excluded Taxes); or

(ii) does or shall impose on any Lender any other condition or increased cost in connection with the transactions contemplated hereby or participations herein (except for Excluded Taxes);

and the result of any of the foregoing is to increase the cost to any Lender of making or continuing the Loan hereunder, as the case may be, or to reduce any amount receivable hereunder, then, in any such case, Borrower shall promptly pay to such Lender, upon its demand, any additional amounts necessary to compensate such Lender, on an after-tax basis, for such additional cost or reduced amount receivable, determined by such Lender with respect to this Agreement or the other Loan Documents. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify Borrower of the event by reason of which such Lender has become so entitled. The Lender shall promptly notify Borrower if the event underlying Lender's claim to any additional amounts pursuant to this Section is no longer applicable. A certificate as to any additional amounts payable pursuant to the foregoing sentence and a calculation thereof in reasonable detail submitted by such Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes.

(c) Delivery Requirements. Any Lender (or Lender's transferee and Participant) that is not a "U.S. Person" as defined in Section 7701(a)(30) of the IRC (a "Non-U.S. Lender") shall deliver to Borrower and the Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of whichever of the following is applicable: (i) duly completed copies of IRS Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed copies of IRS Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under section 871(h) or 881(c) of the IRC, (x) a certificate to the effect that such Non-U.S. Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the IRC, (B) a "10 percent shareholder" of the Borrower within the meaning of section 871(h)(3) or 881(c)(3)(B) of the IRC, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the IRC and (y) duly completed copies of IRS Form W-8BEN (or any subsequent versions thereof or successors thereto), (iv) duly completed copies of IRS Form W-8IMY, together with forms and certificates

described in clauses (i) through (iii) above (and additional IRS Form W-8IMYs) as may be required or (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; provided, however, that if a change in applicable laws has occurred prior to the date on which any such delivery would otherwise be required that renders any such form inapplicable or would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender so advises Borrower and the Agent, then such Lender shall not be required to provide such form. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Lender shall deliver the appropriate forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver. In addition, each Lender that is not a Non-U.S. Lender shall deliver to the Borrower and the Agent two copies of IRS Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

1.9 Security Agreement.

(a) Grant. To secure Borrower's prompt, punctual, and faithful performance of all and each of the Obligations, Borrower hereby grants to the Agent for the benefit of the Secured Parties a continuing security interest in and to, and collaterally assigns and pledges to the Agent for the benefit of the Secured Parties, the following, and each item thereof, whether now owned or now due, or in which the Borrower has an interest, or hereafter acquired, arising, or to become due, or in which Borrower obtains an interest, and all products, Proceeds, substitutions, and accessions of or to any of the following (all of which, together with any other property in which the Secured Parties may in the future be granted a security interest is referred to herein as the "Collateral"):

(i) all Accounts and accounts receivable;

(ii) all Contracts and Contract Rights;

(iii) all Chattel Paper;

(iv) all Deposit Accounts;

(v) all Documents and Documents of Title;

(vi) all Equipment;

(vii) all Financial Assets;

(viii) all Fixtures;

(ix) all General Intangibles;

(x) all Goods;

(xi) all Instruments;

(xii) all Intellectual Property;

(xiii) all Inventory;

(xiv) all Investment Property;

(xv) all Letters of Credit and Letter of Credit Rights;

(xvi) all Payment Intangibles;

(xvii) all Pledged Interests;

(xviii) all Securities and Securities Accounts;

(xix) all Supporting Obligations;

(xx) all Commercial Tort Claims listed on the Perfection Certificate or described in any notice sent to the Agent pursuant to Section 2.20;

(xxi) all policies and certificates of insurance, money, cash, or other property and all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing; all distributions, monies, fees, payments, compensations and proceeds now or hereafter becoming due and payable with respect to the Pledged Interests whether payable as profits, distributions, asset distributions, repayment of loans or capital or otherwise;

(xxii) all books and records pertaining to the Collateral and/or to the operation of Borrower's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained, together with all other assets and personal property of Borrower; and

(xxiii) all other property and assets of Borrower not otherwise described above;

(xxiv) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing and all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing including the right of stoppage in transit.

(b) Excluded Property. Notwithstanding the foregoing, "Collateral" shall not include (x) more than 65% of the voting Stock of each Foreign Subsidiary directly held by each Borrower if to do so would cause material adverse tax consequences for such Borrower; provided, that immediately upon any amendment of the IRC that would allow the pledge of a greater percentage of such Stock without material adverse tax consequences, "Collateral" shall include such greater percentage of Stock of such Foreign Subsidiary from that time forward, (y) any intent to use application for a trademark that would otherwise be deemed invalidated, cancelled or abandoned due to the grant of a Lien thereon unless and until such time as the grant of such Lien will not affect the validity of such trademark and (z) any rights or interests in any lease, license, contract, or agreement, as such or the assets subject thereto if under the terms of such lease, license, contract, or agreement, or applicable law with respect thereto, the valid grant of a Lien therein or in such assets to the Agent is prohibited and such prohibition has not been or is not waived or the consent of the other party to such lease, license, contract, or agreement has not been or is not otherwise obtained or under applicable law such prohibition cannot be waived; provided, however, the foregoing exclusions shall in no way be construed (i) to apply if any such prohibition would be rendered ineffective under the Code (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law (including the United States bankruptcy code) or principles of equity, (ii) so as to limit, impair or otherwise affect the Agent's unconditional continuing Liens upon any rights or interests of Borrower in or to the Proceeds thereof (including proceeds from the sale, license, lease or other disposition thereof), including monies due or to become due under any such lease, license, contract, or agreement (including any Accounts or other Receivables Collateral), or (iii) to apply at such time as the condition causing such prohibition shall be remedied and, to the extent severable, "Collateral" shall include any portion of such lease, license, contract, agreement or assets subject thereto that does not result in such prohibition.

(c) Authorization to File.

(i) Borrower hereby authorizes the Agent to file financing statements, without notice to Borrower, with all appropriate jurisdictions in order to maintain, perfect or protect Secured Parties' interest or rights hereunder, which financing statements may indicate the Collateral as "all assets of the debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in the Agent's discretion.

(ii) Each Borrower hereby further authorizes the Agent to file with the United States Patent and Trademark Office and the United States Copyright Office (and any successor office and any similar office in any United States state or other country) this Agreement and/or such other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Borrower hereunder, without the signature of such Borrower where permitted by law, and naming such Borrower as debtor, and the Agent as secured party.

(iii) Each Borrower hereby ratifies its authorization for the Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof.

1.10 Joint and Several Liability; Waivers.

(a) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrower to accept joint and several liability for the Loan and the other Obligations hereunder. Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrower parties hereto, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event each other Borrower will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each Borrower under the provisions of this Section constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower.

(b) The provisions of this Section are made for the benefit of each of the Agent and each Lender and their respective successors and assigns, and may be enforced by the Agent or by any Lender from time to time against any Borrower as often as occasion therefor may arise and without requirement on the part of the Agent or any Lender or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section shall remain in effect until the Termination Date.

(c) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agent for the account of the Lenders with respect to any of the Obligations or any Collateral until the Termination Date. Any claim which any Borrower may have against the other Borrower with respect to any payments to the Agent for the account of the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the Termination Date and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its

assets, whether voluntary or involuntary, all Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to the other Borrower therefor. Each Borrower hereby waives and relinquishes any and all suretyship defenses and all rights and remedies accorded by applicable law to sureties or guarantors.

(d) Each Borrower hereby designates the Lead Borrower as that Borrower's agent to obtain the Loan hereunder, the proceeds of which shall be available to each Borrower for those uses as those set forth in Section 1.1(d). As the disclosed principal for its agent, each Borrower shall be obligated to the Lenders on account of the Loan so made hereunder as if made directly by the Lenders to that Borrower, notwithstanding the manner by which the Loan is recorded on the books and records of Lead Borrower and of any Borrower. Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of all other Borrowers as if the Borrower so assuming were each other Borrower.

SECTION 2
AFFIRMATIVE COVENANTS

Borrower agrees that from and after the date hereof and until the Termination Date:

2.1 Payment and Performance of Obligations. Borrower shall pay each payment Obligation when due (or when demanded, if payable on demand) and shall promptly, punctually, and faithfully perform each other Obligation.

2.2 Locations; Perfection Certificate. Borrower shall provide at least ten (10) days prior written notice to the Lenders of any proposed change in (i) its legal name, (ii) the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral with a value in excess of $500,000 owned by it is located (including the establishment of any such new office or facility), (iii) its identity or type of organization, corporate or legal structure, or (iv) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction). Such Borrower agrees (A) not to effect or permit any such change unless all filings have been made under the Code or otherwise that are required in order for the Lenders to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral subject only to Permitted Encumbrances and (B) to take all action reasonably satisfactory to the Lenders to maintain the perfection and priority of the security interest of the Lenders for the benefit of the Lenders in the Collateral intended to be granted hereunder. Each Borrower agrees to promptly provide the Lenders with certified organizational documents reflecting any of the changes described in the preceding sentence. The Lenders may rely on opinions of counsel as to whether any or all UCC financing statements of the Borrowers need to be amended as a result of any of the changes described herein. If any Borrower fails to provide information to the Lenders about such changes on a timely basis, the

Lenders shall not be liable or responsible to any party for any failure to maintain a perfected security interest in such Borrower's property constituting Collateral, for which the Lenders needed to have information relating to such changes.

2.3 Compliance With Laws and Contractual Obligations. Borrower will (a) comply with and shall cause each of its Subsidiaries to comply with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including, without limitation, laws, rules, regulations and orders relating to taxes, employer and employee contributions, securities, employee retirement and welfare benefits, environmental protection matters and employee health and safety) as now in effect and which may be imposed in the future in all jurisdictions in which Borrower or any of its Subsidiaries is now doing business or may hereafter be doing business and (ii) the obligations, covenants and conditions contained in all Contractual Obligations of Borrower or any of its Subsidiaries, other than, with respect to the foregoing clauses (i) and (ii), those laws, rules, regulations, orders and provisions of such Contractual Obligations the noncompliance with which could not be reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and (b) maintain or obtain and shall cause each of its Subsidiaries to maintain or obtain all licenses, qualifications and permits now held or hereafter required to be held by Borrower or any of its Subsidiaries, for which the loss, suspension, revocation or failure to obtain or renew, could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. This Section shall not preclude Borrower or its Subsidiaries from contesting any taxes or other payments, if they are being diligently contested in good faith in a manner which stays enforcement thereof and if appropriate expense provisions have been recorded in conformity with GAAP.

2.4 Maintenance of Properties; Insurance. Borrower will maintain or cause to be maintained in good repair, working order and condition (ordinary wear and tear excepted) all properties used in the business of Borrower and its Subsidiaries and will make or cause to be made all appropriate repairs, renewals and replacements thereof. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, business interruption insurance and public liability and property damage insurance with respect to its business and properties and the business and properties of its Subsidiaries against loss or damage of the kinds customarily carried or maintained by corporations of established reputation engaged in similar businesses and will deliver evidence thereof to the Agent. Borrower shall cause the Lenders, pursuant to endorsements and/or assignments in form and substance reasonably satisfactory to the Agent, to be named as lender's loss payee in the case of casualty insurance, additional insured in the case of all liability insurance and assignee in the case of all business interruption insurance, in each case for the benefit of the Agent. In the event Borrower fails to maintain insurance coverage required by this Agreement, the Agent or any Lender may purchase insurance at Borrower's expense to protect the Agent's and the Lenders' interests in the Collateral. This insurance may, but need not, protect Borrower's interests. The coverage purchased by the Agent or Lenders may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Collateral. Borrower may later cancel any insurance purchased by the Agent or Lenders, but only after providing the Agent and the Lenders with evidence that Borrower has obtained insurance as required by this Agreement. If the Agent or Lenders purchase insurance for the Collateral as provided hereby, Borrower will be responsible for the costs of that insurance, including interest and other Charges imposed by the Agent and Lenders in connection with the placement of the insurance, until the effective date of

the cancellation or expiration of the insurance. The costs of such insurance may be added to the Obligations. The costs of such insurance may be more than the cost of insurance Borrower is able to obtain on its own.

2.5 Inspection. Upon reasonable notice, Borrower shall permit any authorized representatives of the Agent and/or any Lender to visit, audit, appraise and inspect the Collateral and Borrower's and its Subsidiaries' financial and accounting records, and to make copies and take extracts therefrom, and to discuss its and their affairs, finances and business with its and their officers and certified public accountants, at such reasonable times during normal business hours and as often as may be reasonably requested; provided that while any Event of Default has occurred and is continuing no notice to Borrower shall be required. Borrower shall reimburse the Agent and the Lenders for their reasonable and out-of-pocket costs and expenses incurred in connection with two such visits, audits, collateral audits, appraisals or inspections in any calendar year or otherwise when an Event of Default has occurred and is continuing.

2.6 Organizational Existence. Borrower will and will cause its Subsidiaries to at all times preserve and keep in full force and effect its organizational existence, its good standing status in the jurisdiction of its organization.

2.7 Environmental Matters. Borrower shall and shall cause each Person within its control to: (a) conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws the noncompliance with which could not be reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; (b) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary (or reasonably requested by the Lenders) to comply with such Environmental Laws; (c) notify the Lenders promptly after Borrower or any Person within its control becomes aware of any violation of Environmental Laws or any Release on, in, under, or about any Real Estate; and (d) promptly forward to the Agent a copy of any order, notice, request for information or any communication or report received by Borrower or any Person within its control in connection with any such violation or Release whether or not any Governmental Authority has taken or threatened any action in connection with any such violation, Release or other matter.

2.8 Pension Plans. Borrower and its Subsidiaries shall (i) deliver to the Agent promptly, and in any event within 30 days, any notice, letter or communication received by Borrower or its Subsidiaries from the PBGC, the IRS or any other Governmental Authority with respect to any Plan, if such notice could result in any material liability to Borrower or its Subsidiaries, (ii) provide the Agent with copies of any annual report filed by Borrower or its Subsidiaries with the PBGC in connection with any Plan, promptly after the filing thereof, and (iii) notify the Agent prior to terminating any Plan if such termination could result in any material liability to Borrower or its Subsidiaries.

2.9 Landlords' Agreements, Mortgagee Agreements, Bailee Letters and Real Estate Purchases. Borrower shall use commercially reasonable efforts to obtain a landlord's agreement, mortgagee agreement, bailee letter or customs broker agreement, as applicable, from each lessor of leased property, mortgagee of owned property, bailee or customs broker with respect to any warehouse or other location where Collateral with a value in excess of $500,000 is stored or located, which agreement or letter shall contain a waiver or subordination of all Liens or claims

that the landlord, mortgagee or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Agent. After the Closing Date, no real property or warehouse space shall be leased by Borrower or any Subsidiary, other than leases in effect as of the Closing Date, and no Inventory shall be shipped to a processor or converter under arrangements established after the Closing Date without the prior written consent of the Agent or unless and until a reasonably satisfactory landlord agreement, bailee letter or customs broker agreement, as appropriate, shall first have been obtained with respect to such location. Borrower shall and shall cause its Subsidiaries to timely and fully pay and perform their obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located unless such obligations are being contested in good faith. Borrower shall not hold any of its assets or property for sale on consignment.

2.10 Meetings; Board Observer Rights. Borrower will hold meetings of its board of directors/board of managers (the "Board") in regular intervals and on an as needed basis, consistent with past practices. Borrower shall provide the Agent with all of the notices, information and other materials that are distributed to the Board and shall provide the Agent with a notice and agenda of each meeting of the Board all at the same time and in the same manner as such notices, agenda, information and other materials are provided to the members of the Board; provided, that such materials provided to the Agent in connection with such meetings may be redacted or excluded to the extent that the Board reasonably determines that such exclusion or redaction is reasonably necessary (i) to preserve the attorney-client privilege, (ii) because of a potential or actual conflict of interest involving the Agent or the Lenders or their representative including strategic discussions regarding financings, or (iii) because they relate to matters too sensitive to be shared with non-Board members or because of the competitive nature of the matter. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Agent shall have the right to elect to have one representative present (whether in person or by telephone) in a non-voting observer capacity at all meetings of the Board and Borrower shall reimburse the Agent for the expenses (including travel expenses) incurred by the Agent in such representative attending the meetings of the Board; provided, that such representative may be excluded from such meetings to the extent that the Board reasonably determines that such exclusion is required for the matters described in clauses (i) through (iii) above. The Agent's representative shall hold all materials and information provided or obtained hereunder in confidence and in trust (and shall not disclose such materials or information) to the same extent as if such representative was a member of the Board.

2.11 Intellectual Property.

(a) On a continuing basis, Borrower shall, at its sole cost and expense:

(i) promptly following its becoming aware thereof, notify the Agent of any materially adverse determination in any proceeding or the institution of any proceeding in any federal, state or local court or administrative body or in the United States Patent and Trademark Office or the United States Copyright Office regarding Borrower's claim of ownership in or right to use any of the material Intellectual Property, Borrower's right to register such Intellectual Property or its right to keep and maintain such registration in full force and effect;

(ii) not permit to lapse or become abandoned any material Intellectual Property as presently used and operated and as contemplated by this Agreement, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property, in each case except as shall be consistent with commercially reasonable business judgment;

(iii) upon Borrower obtaining knowledge thereof, promptly notify the Lenders in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of any of the material Intellectual Property or the rights and remedies of the Agent or the Lenders under any Collateral Document in relation thereto including a levy or threat of levy or any legal process against the Intellectual Property or any portion thereof;

(iv) not license the Intellectual Property other than non-exclusive licenses entered into by Borrower in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that could materially impair the value of the Intellectual Property or the Lien on and security interest in the Intellectual Property created therein by the Collateral Documents, without the consent of the Lenders;

(v) diligently keep adequate records respecting its Intellectual Property;

(vi) furnish to the Agent from time to time upon the Agent's reasonable request therefor reasonably detailed statements and amended schedules further identifying and describing the Intellectual Property and such other materials evidencing or reports pertaining to the Intellectual Property as the Agent may from time to time reasonably request;

(vii) not incorporate into any proprietary software licensed or distributed by Borrower that is material to generating revenue any third-party code that is licensed pursuant to any open source license, in a manner that would require or condition the use or distribution of such software on, the disclosing, licensing or distribution of any Borrower source code; and

(viii) not enter into any Intellectual Property license material to the conduct of the business of Borrower unless Borrower has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such license to the Agent for the benefit of the Secured Parties.

(b) In accordance with the terms of this Agreement, if Borrower shall at any time after the date hereof (A) obtain any rights to any additional Intellectual Property or (B) become entitled to the benefit of any additional Intellectual Property or any registration, renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property or any improvement on any Intellectual Property the provisions hereof shall automatically apply thereto.

(c) Borrower shall commence and prosecute such applications for protection of the Intellectual Property material to its business and suits, proceedings or other actions

to prevent the infringement, misappropriation, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect such Intellectual Property. Upon the occurrence and during the continuance of any Event of Default, the Lenders shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property and/or bring suit in the name of Borrower or the Lenders to enforce the Intellectual Property and any license thereunder.

2.12 Future Intellectual Property. To the extent not already disclosed in writing to the Lenders, if Borrower (i) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any Patent or the registration of any Trademark, then Borrower shall disclose the foregoing to the Agent and shall execute such intellectual property security agreements and other documents and take such other actions as the Agent may request in its good faith business judgment to perfect and maintain a perfected security interest in favor of the Secured Parties in such property. If Borrower decides to register any Copyrights or mask work in the United States Copyright Office, Borrower shall: (i) provide the Agent with at least fifteen (15) days prior written notice of Borrower's intent to register such Copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (ii) execute an intellectual property security agreement and such other documents and take such other actions as the Agent may request in their good faith business judgment to perfect and maintain a perfected security interest in favor of the Secured Parties in the Copyrights or mask works intended to be registered with the United States Copyright Office; and (iii) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the Copyright or mask work application(s) with the United States Copyright Office. Borrower shall promptly provide to the Agent copies of all applications that it files for Patents or for the registration of Trademarks, Copyrights or mask works, together with evidences of the recording of the intellectual property security agreement required for the Agent to perfect and maintain a perfected security interest in such property.

2.13 Patriot Act. Borrower hereby acknowledges that the Agent and the Lenders seek to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, Borrower hereby represents, warrants and agrees that: (i) none of the cash or property that Borrower or any of its Subsidiaries will pay or will contribute to the Agent or the Lenders has been or shall be derived from, or related to, any activity of Borrower or its Subsidiaries that is deemed criminal under United States law; and (ii) no contribution or payment by Borrower or any of its Subsidiaries to the Agent or the Lenders, to the extent that they are within Borrower's and/or its Subsidiaries' control shall cause the Agent or any Lender to be in violation of the United States Bank Secrecy Act, the United States International Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. Borrower shall promptly notify the Agent if any of these representations ceases to be true and accurate regarding either Borrower or any of its Subsidiaries. Borrower agrees to provide the Agent any additional information regarding either Borrower or any of its Subsidiaries that the Agent deem necessary or reasonably convenient to ensure compliance with all applicable laws concerning money laundering and similar activities. Borrower understands and agrees that if at any time it is discovered that any of the foregoing representations are incorrect, or if otherwise required by applicable law or

regulation related to money laundering similar activities, the Agent or the Lenders may undertake appropriate actions to ensure compliance with applicable law or regulation. Borrower further understands that the Agent and/or the Lenders may release confidential information about either Borrower and its Subsidiaries and, if applicable, any underlying beneficial owners, to proper authorities if the Agent and/or the Lenders in its sole discretion, determines that it is in the best interests of the Agent and/or the Lenders to do so under the laws set forth in subsection (ii) above.

2.14 Payment of Taxes and Claims. Borrower will, and will cause each of its Subsidiaries to, pay (i) 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 (ii) 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 (other than a Permitted Encumbrance) upon any of their respective 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 (other than a Lien for Taxes and claims not yet due and payable) against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such material Tax or claim.

2.15 Receivables Collateral.

(a) Each Borrower shall keep and maintain at its own cost and expense complete records of each Account, including records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Each Borrower shall, at such Borrower's sole cost and expense, upon the Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver copies of all tangible evidence of Accounts, including copies of all documents evidencing Accounts and any books and records relating thereto to the Lenders or to their representatives.

(b) Other than in the ordinary course of business consistent with its past practice, such Borrower will not (i) grant any extension of the time of payment of any receivable, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

2.16 Maintenance of Security Interest. Each Borrower shall maintain the security interest created by this Agreement, subject to Permitted Encumbrances, and shall defend such security interest against the claims and demands of all Persons whomsoever (other than with respect to Permitted Encumbrances).

2.17 Further Assurances.

(a) In the event Borrower acquires an interest in real property after the Closing Date, Borrower shall deliver to the Agent a fully executed mortgage or deed of trust over such real property in form and substance reasonably satisfactory to the Agent, together with such title insurance policies, surveys, appraisals, evidence of insurance, legal opinions, environmental assessments and other documents and certificates as shall be reasonably required by the Agent.

(b) Borrower shall (i) cause each Person, upon its becoming a Subsidiary of Borrower other than a Foreign Subsidiary if to do so would cause material adverse tax consequences for Borrower (provided that this shall not be construed to constitute consent by the Agent or by any Lender to any transaction not expressly permitted by the terms of this Agreement), promptly to join this Agreement as a "Borrower" and to grant to the Agent for the benefit of the Secured Parties a security interest in the real, personal and mixed property of such Person to secure the Obligations and (ii) pledge, or cause to be pledged, to the Agent for the benefit of the Secured Parties, all of the Stock of such Subsidiary to secure the Obligations (subject to the provisions of Section 1.9(b)). The documentation for such joinder, security and pledge shall be substantially similar to the Loan Documents executed concurrently herewith with such modifications as are reasonably requested by the Agent and shall include such certificates, votes, authorizations and legal opinions consistent with the certificates, votes, authorizations and legal opinions required to be delivered on the Closing Date.

(c) Upon the written request of the Agent, each Borrower shall take such further actions, and execute and deliver to the Agent such additional assignments, documents, reports, agreements, supplements, powers and instruments, as the Agent may in its reasonable judgment deem necessary or appropriate, wherever required by law, in order to evidence the debt, or perfect, preserve and protect the security interest in the Collateral as provided herein and the rights and interests granted to the Agent and Secured Parties hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Agent or permit the Agent to exercise and enforce their rights, powers and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Borrower shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Agent from time to time upon reasonable request such lists, descriptions and designations of the Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. If an Event of Default has occurred and is continuing, the Agent may institute and maintain, in their own names or in the name of any Borrower, such suits and proceedings as the Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and expense of the Borrowers.

2.18 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Borrower represents and warrants that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect

the security interest granted by each Borrower to the Agent for the benefit of the Secured Parties pursuant to this Agreement in respect of the Collateral as of the date hereof are listed on Schedule 2.18 hereto. Each Borrower represents and warrants that all such filings, registrations and recordings have been delivered to the Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule 2.18. Each Borrower agrees that at the sole cost and expense of the Borrowers, (i) such Borrower shall furnish to the Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail and (ii) at any time and from time to time, upon the written request of the Agent, such Borrower shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Agent may reasonably request, including the filing of any financing statements, continuation statements and other documents (including this Agreement) under the Code (or other applicable laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of control agreements as provided hereunder, all in form reasonably satisfactory to the Agent and in such offices (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office) wherever required by applicable law in each case to perfect, continue and maintain a valid, enforceable, security interest in the Collateral (subject only to Permitted Encumbrances) as provided herein and to preserve the other rights and interests granted to the Agent hereunder, as against the Borrowers and third parties (other than with respect to Permitted Encumbrances), with respect to the Collateral.

2.19 Letter-of-Credit Rights. Subject to the terms of the Intercreditor Agreement, if such Borrower is at any time a beneficiary under a letter of credit for more than $100,000 now or hereafter issued in favor of such Borrower (each a, "Letter of Credit"), such Borrower shall promptly notify the Agent thereof and such Borrower shall, at the written request of the Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Agent of, and to pay to the Agent, the proceeds of, any drawing under the Letter of Credit or (ii) arrange for the Agent to become the beneficiary of such Letter of Credit, with the Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in this Agreement.

2.20 Commercial Tort Claims. If any Borrower shall at any time hold or acquire a Commercial Tort Claim involving a potential payment to such Borrower of more than $100,000, such Borrower shall promptly notify the Agent in writing signed by such Borrower of the brief details thereof and grant to the Agent for the benefit of the Secured Parties in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Lenders.

SECTION 3
NEGATIVE COVENANTS

Borrower agrees that from and after the date hereof until the Termination Date:

3.1 Indebtedness. Borrower shall not and shall not cause or permit its Subsidiaries directly or indirectly to create, incur, assume, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, other than Permitted Indebtedness.

3.2 Liens and Related Matters.

(a) No Liens. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of Borrower's or such Subsidiary's property or assets, whether now owned or hereafter acquired, or any income or profits therefrom, except Permitted Encumbrances.

(b) No Negative Pledges. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly enter into or assume any agreement (other than the Loan Documents or the agreements with respect to the Senior Debt) prohibiting the creation or assumption of any Lien in favor of the Agent for the benefit of the Secured Parties upon its properties or assets, whether now owned or hereafter acquired, including, without limitation, with respect to any of Borrower's Intellectual Property.

(c) No Restrictions on Subsidiary Distributions to Borrower. Except as provided herein or the agreements with respect to the Senior Debt, Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to: (1) pay dividends or make any other distribution on any of such Subsidiary's Stock owned by Borrower or any other Subsidiary; (2) pay any Indebtedness owed to Borrower or any other Subsidiary; (3) make loans or advances to Borrower or any other Subsidiary; or (4) transfer any of its property or assets to Borrower or any other Subsidiary.

(d) Permitted Restrictions. The restrictions set forth in Section 3.2(b) and (c) are subject to (i) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder, (ii) restrictions and conditions imposed by any agreement relating Permitted Indebtedness if such restrictions or conditions apply only to the property or assets securing such Permitted Indebtedness and (iii) customary provisions in leases and other contracts restricting the assignment thereof.

3.3 Investments. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly make or own any Investment in any Person except:

(a) Borrower and its Subsidiaries may make and own Investments in cash or Cash Equivalents;

(b) Borrower and its Subsidiaries may make loans and advances to employees for moving, entertainment, travel, medical and other similar expenses in the ordinary course of business not to exceed $100,000 in the aggregate at any time outstanding;

(c) Investments in the form of equity securities issued by Subsidiaries;

(d) So long as no Event of Default has occurred and is continuing or would result therefrom, Investments in Subsidiaries to the extent necessary to (i) maintain such Subsidiary's operations in support of Borrower's business in the ordinary course consistent with past transfer pricing practices, and (ii) to establish a Subsidiary after the Closing Date with respect to such Subsidiary's operations as a datacenter in support of Borrower's business in an amount under this clause (ii) not to exceed $7,000,000 in the aggregate for any such Subsidiary formed after the Closing Date.

(e) loans or advances made by any Subsidiary to Borrower or by any Subsidiary that is not a Borrower to any other Subsidiary;

(f) Investments constituting Permitted Acquisitions; and

(g) notes payable, or stock or other securities issued by account debtors to Borrower or any Subsidiary pursuant to negotiated agreements with respect to settlement of such account debtor's Accounts in the ordinary course of business, consistent with past practices.

3.4 Contingent Obligations. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create or become or be liable with respect to any Contingent Obligation or guaranty the obligations of any other Person except for (a) Permitted Indebtedness and (b) those resulting from endorsement of negotiable instruments for collection in the ordinary course of business.

3.5 Restricted Payments. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Payment, except that (a) wholly-owned Subsidiaries of Borrower may make Restricted Payments to Borrower, (b) Borrower may make Restricted Payments consisting of Stock and (c) Borrower may repurchase Stock of former employees pursuant to stock repurchase agreements as long as an Event of Default does not exist prior to such repurchase or would exist after giving effect to such repurchase and the aggregate amount of such repurchases does not exceed $100,000 in any Fiscal Year.

3.6 Restriction on Fundamental Changes. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly: (a) amend, modify or waive any term or provision of its organizational documents, including its articles of incorporation, certificates of designations pertaining to preferred stock, by-laws, certificate of formation, partnership agreement or operating agreement in any manner which changes the number of members of the Board or which negatively affects the Agent or any Lender; (b) enter into any transaction of merger or consolidation; (c) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); or (d) acquire by purchase or otherwise all or any substantial part of the business or assets of any other Person other than in connection with a Permitted Acquisition. Notwithstanding anything to the contrary herein, upon not less than five (5) Business Days' prior written notice to the Agent, (i) any Borrower may consolidate or merge into another Borrower or any Subsidiary may merge into Borrower, in each case with Borrower as the survivor, or (ii) any Subsidiary may merge into another Subsidiary.

3.7 Disposal of Assets. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly convey, sell (including, without limitation, enter into sale/leaseback transactions), lease, sublease, transfer or otherwise dispose of, or grant any Person an option to acquire, in one transaction or a series of related transactions (each, a "Transfer"), any of its property, business or assets, whether now owned or hereafter acquired, except for Permitted Transfers.

3.8 Transactions with Affiliates. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly enter into or permit to exist any material transaction (including the purchase, sale, lease or exchange of any property or the rendering of any management, consulting, investment banking, advisory or any other services) with any Affiliate except transactions in the ordinary course of and pursuant to the reasonable requirements of the business of either Borrower or any of its Subsidiaries and upon fair and reasonable terms which are no less favorable to any Borrower or any of its Subsidiaries than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

3.9 Conduct of Business. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly engage in any business other than businesses of the type presently conducted by Borrower or any Subsidiary, or reasonably related thereto.

3.10 Changes Relating to Indebtedness. Borrower shall not directly or indirectly change or amend the terms of the Senior Debt if such amendment is prohibited under the Intercreditor Agreement. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly change or amend the terms of any Subordinated Debt if the effect of such amendment is to: (a) increase the interest rate on such Indebtedness; (b) accelerate the dates upon which payments of principal or interest are due on such Indebtedness; (c) make more restrictive any event of default or add or make more restrictive any covenant with respect to such Indebtedness; (d) change the redemption or prepayment provisions of such Indebtedness; (e) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); or (f) increase the portion of interest payable in cash with respect to any Indebtedness for which interest is payable by the issuance of payment-in-kind notes or is permitted to accrue.

3.11 Fiscal Year. Borrower shall not change its Fiscal Year or permit any of its Subsidiaries to change their respective fiscal years.

3.12 Press Release. Borrower agrees that neither it nor its Affiliates will in the future issue any press releases announcing the execution of this Agreement without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Lenders.

3.13 Subsidiaries. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly establish, create or acquire any new Subsidiary, except Subsidiaries that have complied with Section 2.17(b).

3.14 Bank Accounts. Borrower shall not hereafter establish and maintain any Deposit Account (other than an Excluded Account) unless (1) the applicable Borrower shall have given

the Lenders ten (10) Business Days' prior written notice of its intention to establish such new Deposit Account, (2) such depositary bank shall be reasonably acceptable to the Agent, and (3) such depositary bank and such Borrower shall have duly executed and delivered a control agreement with respect to such Deposit Account. No Borrower shall grant Control of any Deposit Account to any person other than the Agent or Senior Lender.

3.15 ERISA. Borrower shall not and shall not cause or permit any ERISA Affiliate to, cause or permit to occur an ERISA Event to the extent such ERISA Event could reasonably be expected to have a Material Adverse Effect.

3.16 Sale Leasebacks. Borrower shall not and shall not cause or permit any of its Subsidiaries to engage in any sale leaseback, synthetic lease or similar transaction involving any of its assets.

SECTION 4
FINANCIAL COVENANTS/REPORTING

Borrower covenants and agrees that from and after the date hereof until the Termination Date, Borrower shall perform and comply with all covenants in this Section 4.

4.1 Financial Statements and Other Reports. Borrower will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of Financial Statements in conformity with GAAP (it being understood that monthly Financial Statements are not required to have footnote disclosures and are subject to year-end adjustments). Borrower will deliver each of the Financial Statements and other reports described below to the Agent, all in form reasonably acceptable to the Agent.

(a) Monthly Financials. As soon as available and in any event within thirty (30) days after the end of each month (including the last month of Borrower's Fiscal Year), Borrower will deliver to the Agent (i) electronically in Microsoft Excel format the unaudited consolidated balance sheets of Borrower and its Subsidiaries, as at the end of such month, and the related unaudited consolidated statements of income, profits and losses, and cash flow for such month and for the period from the beginning of the then current Fiscal Year of Borrower, and (ii) an accounts receivable aging report.

(b) Quarterly Financials. As soon as available and in any event within forty-five (45) days after the end of each Fiscal Quarter, Borrower will deliver to the Agent electronically in Microsoft Excel format the unaudited consolidated balance sheets of Borrower and its Subsidiaries, as at the end of such Fiscal Quarter, and the related unaudited consolidated statements of income, profits and losses, stockholders' equity and cash flow for such month and for the period from the beginning of the then current Fiscal Year of Borrower.

(c) Year-End Financials. As soon as available and in any event within one hundred twenty (120) days after the end of each Fiscal Year of Borrower, Borrower will deliver to the Agent (1) the consolidated and consolidating balance sheets of Borrower and its Subsidiaries, as at the end of such year, and the related consolidated statements of

income, and statement of retained earnings for such Fiscal Year, and (2) a report with respect to the consolidated Financial Statements from a firm of Certified Public Accountants selected by Borrower and reasonably acceptable to the Agent, which report shall be prepared in accordance with Statement of Auditing Standards No. 58 (the "Statement") "Reports on Audited Financial Statements" and such report shall be "Unqualified" (as such term is defined in such Statement).

(d) Accountants' Reports. Promptly upon receipt thereof, Borrower will deliver to the Agent copies of all material reports and "management letters" or similar letters submitted by Borrower's firm of certified public accountants in connection with each annual, interim or special audit or review of any type of the Financial Statements or related internal control systems of Borrower and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their services.

(e) Management Reports. Together with each delivery of Financial Statements of Borrower pursuant to Sections 4.1(b), Borrower will deliver to the Agent, in electronic form and hard copy, a management report (1) describing the operations and financial condition of Borrower and its Subsidiaries for the applicable period then ended and the portion of the current Fiscal Year then elapsed (or for the Fiscal Year then ended in the case of year-end financials) and (2) discussing the reasons for any significant variations. The information above and the Financial Statements shall be presented in reasonable detail and shall be certified by the chief financial officer of Borrower to the effect that such information fairly presents the results of operations and financial condition of Borrower and its Subsidiaries as at the dates and for the periods indicated.

(f) Projections. As soon as available and in any event no later than 45 days of the beginning of each of Borrower's Fiscal Years, Borrower will deliver to the Agent Projections of Borrower and its Subsidiaries for the forthcoming fiscal year, month by month.

(g) Filings and Press Releases. After the completion of a Qualified IPO, promptly upon their becoming available, Borrower will deliver copies of (1) all Financial Statements, reports, notices and proxy statements sent or made available by Borrower or any of its Subsidiaries to their Stockholders, (2) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Borrower or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission, any Governmental Authority or any private regulatory authority, and (3) all press releases and other written statements made available by Borrower or any of its Subsidiaries to the public concerning developments in the business of any such Person. Borrower is deemed to have complied with the requirements of this Section if such Financial Statements, reports, notices, proxy statements, registration statements, prospectuses, press releases or other statements are posted on its website or are made available on the Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval System.

(h) Events of Default, Etc. Promptly upon any officer of Borrower obtaining knowledge of any of the following events or conditions, Borrower shall deliver copies of all notices given or received by Borrower or any of its Subsidiaries with respect to any such event or condition and a certificate of Borrower's chief executive officer specifying the nature and period of existence of such event or condition and what action Borrower or any of its Subsidiaries has taken, is taking and proposes to take with respect thereto: (1) any Event of Default or Default; (2) any notice that any Person has given to Borrower or any of its Subsidiaries or any other action taken with respect to a claimed default or event or condition of the type referred to in Section 6.1(b); (3) any event or condition that could reasonably be expected to result in any Material Adverse Effect; (4) any event of default with respect to any Indebtedness of Borrower or any of its Subsidiaries, or (5) any change in Borrower's chief executive officer or chief financial officer (without regard to the title(s) actually given to the Persons discharging the duties customarily discharged by officers with those titles).

(i) Litigation. Promptly upon any officer of Borrower obtaining knowledge of (1) the institution of any action, charge, claim, demand, suit, proceeding, petition, governmental investigation, tax audit or arbitration now pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries ("Litigation") not previously disclosed by Borrower to the Agent, or (2) any material development in any action, suit, proceeding, governmental investigation or arbitration at any time pending against or affecting Borrower or any property of Borrower that, in each case under the preceding clauses (1) and (2), could reasonably be expected to have a Material Adverse Effect, Borrower will promptly give notice thereof to the Agent and provide such other information as may be reasonably available to Borrower to enable the Lenders and its counsel to evaluate such matter.

(j) Notice of Corporate and other Changes. Borrower shall provide prompt written notice of (1) all jurisdictions in which Borrower becomes qualified after the Closing Date to transact business, (2) any change after the Closing Date in the authorized and issued Stock of Borrower or any Subsidiary of Borrower or any amendment to their articles or certificate of incorporation, by-laws, partnership agreement or other organizational documents; and (3) any Subsidiary created or acquired by Borrower or any of its Subsidiaries after the Closing Date, such notice, in each case, to identify the applicable jurisdictions, capital structures or Subsidiaries, as applicable. The foregoing notice requirement shall not be construed to constitute consent by the Agent or any Lender to any transaction referred to above which is not expressly permitted by the terms of this Agreement.

(k) Conference Call. On a monthly basis, Borrower shall make its chief executive officer, chief financial officer and vice president of finance (without regard to the title(s) actually given to the Persons discharging the duties customarily discharged by officers with those titles) available for a telephone conference to discuss with the Agent Borrower's financial condition and other matters relevant to the Agent and/or the Lenders. The Agent shall initiate such call and shall provide Borrower with at least five (5) Business Days prior notice of such conference call.

(l) Other Information. With reasonable promptness, Borrower will deliver such other information and data with respect to itself or any Subsidiary as from time to time may be reasonably requested by the Agent.

(m) Taxes. Borrower shall provide the Lenders prompt written notice of (i) the execution or filing with the IRS or any other Governmental Authority of any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges by Borrower or any of its Subsidiaries and (ii) any agreement by Borrower or any of its Subsidiaries or request directed to Borrower or any of its Subsidiaries to make any adjustment under IRC Section 481(a), by reason of a change in accounting method or otherwise, that could reasonably be expected to have a Material Adverse Effect.

(n) Notices Under Other Indebtedness. Borrower shall provide the Agent copies of all certificates (including borrowing base certificates), notices, and other information delivered to Borrower by, or received by Borrower from, any other lender, including the Senior Lender, contemporaneously with such delivery or promptly after such receipt.

(o) Notices of Modifications. Borrower shall promptly provide the Agent copies of all amendments, consents or waivers entered into from time to time with respect to the Senior Debt.

(p) Notices of Investments. Borrower shall provide the Agent notice of Investments made, or to be made, pursuant to Section 3.3(d)(ii) hereof. Borrower may comply with the requirements of this Section if such notice is provided to Lender via the requirements set forth in Section 4.1(e), (f), (j), (k) or (l) above.

4.2 Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in accordance with GAAP as in effect from time to time. Financial Statements and other information furnished to the Agent pursuant to Section 4.1 or any other section (unless specifically indicated otherwise) shall be prepared in accordance with GAAP as in effect at the time of such preparation subject in the case of any interim Financial Statements to year-end adjustments and the absence of footnotes; provided that no Accounting Change shall affect financial covenants, standards or terms in this Agreement unless such change is required to comply with GAAP; provided further that Borrower shall prepare footnotes to the Financial Statements required to be delivered hereunder that show the differences between the Financial Statements delivered (which reflect such Accounting Changes) and the basis for calculating financial covenant compliance (without reflecting such Accounting Changes). All such adjustments described in clause (c) of the definition of the term Accounting Changes resulting from expenditures made subsequent to the Closing Date (including capitalization of costs and expenses or payment of pre-Closing Date liabilities) shall be treated as expenses in the period the expenditures are made.

4.3 Capital Expenditures. Borrower shall not incur or contract to incur Capital Expenditures of more than (a) $12,000,000 in the aggregate during the 2014, 2015 or 2016 Fiscal

Years and (b) $15,000,000 in the aggregate during any Fiscal Year thereafter. If Borrower's Capital Expenditures in any Fiscal Year are less than $12,000,000, then fifty percent (50%) of such difference ("Carry-Over Amount") may be carried forward to the succeeding Fiscal Year ("Succeeding Fiscal Year") to increase the limitation on Capital Expenditures for such Succeeding Fiscal Year; provided, that the Carry-Over Amount applicable to a Succeeding Fiscal Year may not be used in that Fiscal Year until the amount permitted above to be expended in such Fiscal Year has first been used in full and the Carry-Over Amount applicable to a particular Succeeding Fiscal Year may not be carried forward to another Fiscal Year.

SECTION 5
REPRESENTATIONS AND WARRANTIES

To induce the Agent and the Lender to enter into the Loan Documents and to make the Loan, Borrower represents, warrants and covenants to the Agent and to the Lenders that the following statements are, after giving effect to the Related Transactions, will remain true, correct and complete until the Termination Date:

5.1 Disclosure. No representation or warranty of Borrower contained in this Agreement, the Financial Statements referred to in Section 5.5, the other Related Transactions Documents or any other document, certificate or written statement furnished to the Agent by or on behalf of Borrower in connection with the Loan Documents or the Related Transaction Documents, when taken as a whole, contains any untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made, it being recognized by the Agent and the Lenders that the projections and forecasts provided by Borrower to the Agent and the Lenders in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

5.2 No Material Adverse Effect. From December 18, 2013, until the Closing Date, there have been no events or changes in facts or circumstances affecting the business of Borrower which individually or in the aggregate have had or could reasonably be expected to have a Material Adverse Effect and that have not been disclosed herein or in the attached Schedules.

5.3 No Conflict. The consummation of the Related Transactions does not and will not violate or conflict with any laws, rules, regulations or orders of any Governmental Authority applicable to the Borrower, or violate or conflict with, result in a breach of, or constitute a default (with due notice or lapse of time or both) under any Contractual Obligation or organizational documents of Borrower or any of its Subsidiaries except if such violations, conflicts, breaches or defaults could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and except as to which applicable consents or waivers have been obtained.

5.4 Organization, Powers, Capitalization and Good Standing.

(a) Organization and Powers. Borrower and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and qualified to do business in all states where such qualification is required except where failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Borrower and each of its Subsidiaries has all requisite organizational power and authority to own and operate its properties, to carry on its business as now conducted, to enter into each Related Transactions Document to which it is a party and to incur the Obligations, grant liens and security interests in the Collateral and carry out the Related Transactions.

(b) Capitalization. As of the Closing Date: (i) the authorized Stock of each of Borrower and each of its Subsidiaries is as set forth on Schedule 5.4(b); (ii) all issued and outstanding Stock of Borrower and each of its Subsidiaries is validly issued, fully paid, nonassessable (except for Directors' qualifying shares in the case of Foreign Subsidiaries), free and clear of all Liens; (iii) the identity of the holders of the Stock of Borrower and each of its Subsidiaries and the percentage of their fully diluted ownership of the Stock of each of Borrower and each of its Subsidiaries is set forth on Schedule 5.4(b); and (iv) no Stock of Borrower or any of its Subsidiaries, other than those described above, is issued and outstanding. Except as provided in Schedule 5.4(b), as of the Closing Date, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from Borrower or any of its Subsidiaries of any Stock of any such entity.

(c) Binding Obligation. This Agreement is, and the other Related Transactions Documents when executed and delivered will be, the legally valid and binding obligations of Borrower, each enforceable against Borrower in accordance with its terms (except as may be limited by applicable bankruptcy or insolvency laws and by general principles of equity).

(d) Compliance with Obligations. Borrower represents and warrants that it (i) is in compliance and each of its Subsidiaries is in compliance with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority and the obligations, conditions and covenants contained in all Contractual Obligations other than those laws, rules, regulations, orders and provisions of such Contractual Obligations the noncompliance with which could not be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (ii) maintains and each of its Subsidiaries maintains all licenses, qualifications and permits referred to in Section 2.3 above.

(e) Insurance. Borrower represents and warrants that it and each of its Subsidiaries currently maintains all material properties as set forth in Section 2.4 above and maintains all insurance described in Section 2.4 above.

5.5 Financial Statements. All Financial Statements concerning Borrower and its Subsidiaries required to be delivered hereunder to the Agent or the Lenders have been prepared

in accordance with GAAP consistently applied and do or will fairly present in all material respects the financial condition of the entities covered thereby as at the dates thereof and the results of their operations for the periods then ended, subject to, in the case of unaudited Financial Statements, the absence of footnotes, and normal year-end adjustments.

5.6 Perfection Certificate. All information set forth on the Perfection Certificate is accurate and complete, and Borrower's exact legal name is correct on the signature page hereof.

5.7 Intellectual Property. Borrower and each of its Subsidiaries owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the financial condition, business or operations of Borrower and its Subsidiaries and all such Intellectual Property owned by Borrower that is registered or the subject of a pending application is identified on the Perfection Certificate. All such Intellectual Property is valid, subsisting, unexpired and enforceable, has not been abandoned. Borrower represents and warrants that (a) consummation and performance of this Agreement will not result in the invalidity, unenforceability or impairment of any such Intellectual Property, or in default or termination of any License; (b) there are no outstanding holdings, decisions, consents, settlements, decrees, orders, injunctions, rulings or judgments that would limit, cancel or question the validity or enforceability of any such Intellectual Property or Borrower's rights therein or use thereof; (c) to Borrower's knowledge, the operation of Borrower's business and Borrower's use of Intellectual Property in connection therewith, does not infringe or misappropriate the intellectual property rights of any other Person; (d) no action or proceeding is pending or, to Borrower's knowledge, threatened against the Borrower or any Subsidiary, either (i) seeking to limit, cancel or question the validity of any Intellectual Property or Borrower's ownership interest or rights therein which action or proceeding is reasonably likely to be adversely determined and, if adversely determined, could reasonably be expected to have a Material Adverse Effect on the value of any such Intellectual Property, none of the proprietary software license or distributed by Borrower that is material to generating revenue for Borrower is subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license) that would require, or condition the use or distribution of such software, on the disclosure, licensing or distribution of any source code of the proprietary software, or (ii) alleging that any such Intellectual Property, or Borrower's use thereof in the operation of its business, infringes or misappropriates the intellectual property rights of any Person which action or proceeding is reasonably likely to be adversely determined and, if adversely determined, could reasonably be expected to have a Material Adverse Effect on the value of any such Intellectual Property and (e) to Borrower's knowledge, there has been no Material Adverse Effect on Borrower's rights in its material trade secrets as a result of any unauthorized use, disclosure or appropriation by or to any Person, including Borrower's current and former employees, contractors and agents.

5.8 Investigations, Audits, Etc. As of the Closing Date (except as previously disclosed to the Lenders), neither Borrower nor any of its Subsidiaries is the subject of any review or audit by the IRS or any governmental investigation concerning the violation or possible violation of any law.

5.9 Employee Matters. (a) Neither Borrower nor any of its Subsidiaries nor any of their respective employees is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending with respect to the employees of Borrower or any of its

Subsidiaries and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of Borrower or any of its Subsidiaries, (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of Borrower, threatened between Borrower or any of its Subsidiaries and its respective employees, other than employee grievances arising in the ordinary course of business which could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and (d) hours worked by and payment made to employees of Borrower and each of its Subsidiaries comply with the Fair Labor Standards Act and each other federal, state, local or foreign law applicable to such matters.

5.10 Solvency. Borrower and its Subsidiaries (on a consolidated basis) are Solvent, both before and after giving effect to the transactions contemplated by this Agreement and the other Loan Documents.

5.11 Litigation; Adverse Facts. There are no judgments outstanding against Borrower or any of its Subsidiaries or affecting any property of Borrower or any of its Subsidiaries, nor is there any Litigation pending, or threatened in writing, against Borrower or any of its Subsidiaries that is reasonably likely to be adversely determined and, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

5.12 Margin Regulations; Use of Proceeds. No part of the proceeds of the Loan will be used for "buying" or "carrying" "margin stock" within the respective meanings of such terms under Regulation U, T, or X of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect or for any other purpose that violates the provisions of the regulations of the Board of Governors of the Federal Reserve System. Borrower nor any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purposes of "buying" or "carrying" any "margin stock" within the respective meanings of such terms under Regulation U, T, or X. If requested by the Agent or any Lender, Borrower will furnish to the Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G 3 or FR Form U-1, as applicable, referred to in Regulation U.

5.13 Ownership of Property; Liens. As of the Closing Date, the real estate ("Real Estate") listed in the Perfection Certificate constitutes all of the real property leased, subleased, or used by Borrower or any of its Subsidiaries. Borrower and each of its Subsidiaries also has good and marketable title to, or valid leasehold interests in, all of its personal property and assets (subject to Permitted Encumbrances). Other than Permitted Encumbrances, as of the Closing Date, none of the properties and assets of Borrower or any of its Subsidiaries are subject to any Liens, and there are no facts, circumstances or conditions known to Borrower that may result in any Liens (including Liens arising under Environmental Laws) against the properties or assets of Borrower or any of its Subsidiaries. No Borrower nor any of its Subsidiaries owns fee title to any real property.

5.14 Perfected Priority Liens. The security interests granted pursuant to this Agreement will constitute valid perfected security interests in all of the Collateral in favor of the Lenders as collateral security for the Obligations, enforceable in accordance with the terms hereof (except as may be limited by applicable bankruptcy or insolvency laws and by general

principles of equity) against all creditors of each Borrower and any Persons purporting to purchase any Collateral from any Borrower and are prior to all other Liens on the Collateral except for Permitted Encumbrances which, pursuant to the terms of this Agreement, are permitted to have priority over the Secured Parties' Liens thereon.

5.15 Environmental Matters. As of the Closing Date: (i) Borrower and its Subsidiaries are and have been in compliance, in all material respects, with all Environmental Laws; (ii) there is no Litigation arising under or related to any Environmental Laws; (iii) no notice has been received by Borrower or any of its Subsidiaries identifying any of them as a "potentially responsible party" or requesting information pursuant to any Environmental Law, and to the knowledge of Borrower, there are no facts, circumstances or conditions that may result in Borrower or its Subsidiaries being identified as a "potentially responsible party" under any Environmental Law; and (iv) Borrower has provided to the Lenders copies of all environmental reports, reviews, audits and other written information pertaining to actual or potential Environmental Liabilities of Borrower or its Subsidiaries.

5.16 ERISA.

(a) Schedule 5.16 lists all Plans and separately identifies all Pension Plans, including Title IV Plans, Multiemployer Plans, ESOPs and Welfare Plans, including all Retiree Welfare Plans. Copies of all such listed Plans, together with a copy of the latest form IRS/DOL 5500-series for each such Plan have been made available to the Agent. To the Borrower's knowledge, nothing has occurred, which would cause the loss of the qualified status of any Qualified Plan. Each Plan is in material compliance with the applicable provisions of ERISA and the IRC, including the timely filing of all reports required under the IRC or ERISA. Neither Borrower nor any ERISA Affiliate has failed to make any contribution or pay any amount due as required by either Section 412 of the IRC or Section 302 of ERISA or the terms of any such Plan. Neither Borrower nor any ERISA Affiliate has engaged in a "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the IRC, in connection with any Plan, that is reasonably likely to subject Borrower to a material tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the IRC.

(b) Except as set forth in Schedule 5.16: (i) Borrower does not maintain or sponsor any Title IV Plan; (ii) there are no pending, or to the knowledge of Borrower, threatened claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any Person as fiduciary or sponsor of any Plan; and (iii) neither Borrower nor any ERISA Affiliate has incurred or reasonably expects to incur any liability as a result of a complete or partial withdrawal from a Multiemployer Plan.

5.17 Brokers. No broker or finder acting on behalf of Borrower or its Affiliates brought about the obtaining, making or closing of the Loan or the Related Transactions, and neither Borrower nor its Affiliates have any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.18 Insurance. Schedule 5.18 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by Borrower, as well as a summary of the key business terms of each such policy such as deductibles, coverage limits and term of policy. Borrower and its Subsidiaries maintain insurance in amounts and on terms reasonably adequate in relation to the nature of Borrower and its Subsidiaries businesses and assets (and covering such risks as are customarily insured against by Persons of established reputation engaged in the same or a similar business and similarly situated), under policies believed by Borrower and its Subsidiaries to be valid and enforceable and issued by the insurers set forth on Schedule 5.18. Neither Borrower nor its Subsidiaries is in default of any obligation under any such policy.

5.19 Intentionally Omitted.

5.20 Patriot Act. Borrower certifies that, to the Borrower's knowledge, neither Borrower nor any of its Subsidiaries has been designated, and is not owned or controlled, by a "suspected terrorist" as defined in Executive Order 13224. Borrower hereby acknowledges that the Agent and the Lenders seek to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, Borrower hereby represents, warrants and agrees that: (i) none of the cash or property that Borrower or any of its Subsidiaries will pay or will contribute to Agent for the benefit of the Lenders has been or shall be derived from, or related to, any activity by Borrower or any of its Subsidiaries that is criminal under United States law; and (ii) no contribution or payment by Borrower or any of its Subsidiaries to Agent for the benefit of the Lenders, to the extent that they are within Borrower's and/or its Subsidiaries' control shall cause Agent or the Lenders to be in violation of the United States Bank Secrecy Act, the United States International Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. Borrower shall promptly notify the Agent if any of these representations ceases to be true and accurate regarding either Borrower or any of its Subsidiaries. Borrower agrees to provide the Agent any additional information regarding either Borrower or any of its Subsidiaries that the Agent deems necessary or reasonably convenient to ensure compliance with all applicable laws concerning money laundering and similar activities.

5.21 Payment of Taxes. All federal, state and local income tax returns and other material reports of Borrower and each of its Subsidiaries required by law 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 Borrower and each of its Subsidiaries and upon each of their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, excepting, however, those taxes, assessments or charges which are in the process of being resolved or being actively contested by Borrower 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.

5.22 Deposit Accounts. As of the date hereof, (i) no Borrower has opened or maintains any Deposit Accounts other than the accounts listed in the Perfection Certificate and (ii) the Agent has a perfected security interest in each Deposit Account (other than an Excluded Account) listed on the Perfection Certificate which security interest is perfected by Control.

5.23 Investment Property. As of the date hereof each Borrower represents and warrants as follows: (1) it has no Securities Accounts other than those listed in the Perfection Certificate, (2) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting Pledged Interests with respect to which the Agent has a perfected security interest in such Pledged Interests, and (3) it has entered into a duly authorized, executed and delivered control agreement with respect to each Securities Account listed in Perfection Certificate with respect to which the Agent has a perfected security interest in such Securities Accounts by Control.

5.24 Commercial Tort Claims. As of the date hereof, Borrower represents and warrants that no Borrower holds any Commercial Tort Claims other than those listed in the Perfection Certificate.

SECTION 6
DEFAULT, RIGHTS AND REMEDIES

6.1 Event of Default. "Event of Default" shall mean the occurrence or existence of any one or more of the following:

(a) Payment. Failure to pay any (1) installment or other payment of principal of any Loan, or any interest on any Loan, when due or (2) any other amount due under this Agreement or any of the other Loan Documents due within three (3) Business Days after the same shall have become due and payable; or

(b) Default in Other Agreements. (1) Borrower or any of its Subsidiaries fails to pay when due or within any applicable grace period any principal or interest on Indebtedness (other than the Loan) or any Contingent Obligations in an amount in excess of $250,000, or (2) breach or default of Borrower or any of its Subsidiaries, or the occurrence of any condition or event, with respect to any Indebtedness (other than the Loan) or any Contingent Obligations in an amount in excess of $250,000, if the effect of such breach, default or occurrence is to cause or to permit the holder or holders then to cause such Indebtedness or Contingent Obligations to become or be declared due prior to their stated maturity; or

(c) Breach of Certain Provisions. Failure of Borrower to perform or comply with any term or condition contained in Section 2.5 (Inspection), Section 3 (Negative Covenants), Section 4.1 (Financial Reports), or Section 4.3 (Capital Expenditures); or

(d) Breach of Warranty. Any representation, warranty, certification or other statement made or furnished to the Agent or any Lender by Borrower in any Loan Document or in any statement or certificate at any time given by such Person in writing pursuant or in connection with any Loan Document is false in any material respect on the date made; or

(e) Other Defaults Under Loan Documents. Borrower defaults in the performance of or compliance with any term contained in this Agreement or the other Loan Documents (other than occurrences described in other provisions of this Section 6.1

for which a different grace or cure period is specified, or for which no cure period is specified and which constitute immediate Events of Default) and such default is not remedied or waived within thirty (30) days after the earlier of (1) receipt by Borrower of notice from the Agent of such default or (2) the date which Borrower actually knows of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (1) A court enters a decree or order for relief with respect to Borrower in an involuntary case under the Bankruptcy Code, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state law; or (2) the continuance of any of the following events for 60 days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against Borrower, under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, or over all or a substantial part of its property, is entered; or (c) a receiver, trustee or other custodian is appointed without the consent of Borrower, for all or a substantial part of the property of Borrower; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (1) Borrower commences a voluntary case under the Bankruptcy Code, or consents 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 consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) Borrower makes any assignment for the benefit of creditors; or (3) the Board of Directors of Borrower adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 6.1(g); or

(h) Judgment and Attachments. Any money judgment, writ or warrant of attachment, or similar process (other than those described elsewhere in this Section 6.1) involving (1) an amount in any individual case in excess of $50,000 or (2) an amount in the aggregate at any time in excess of $100,000 (in either case to the extent not adequately covered by insurance in Agent's sole discretion as to which the insurance company has acknowledged coverage) is entered or filed against Borrower or any of its assets and remains, in the case of either (1) or (2) above, undischarged, unvacated, unbonded, or unstayed for a period of thirty (30) days or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder; or

(i) Dissolution. Any order, judgment or decree is entered against Borrower decreeing the dissolution or split up of Borrower and such order remains undischarged or unstayed for a period in excess of ten (10) days; or

(j) Solvency. Borrower ceases to be Solvent, fails to pay its debts as they become due or admits in writing its present or prospective inability to pay its debts as they become due; or

(k) Invalidity of Loan Documents. Any material provision of the Loan Documents for any reason, other than a partial or full release in accordance with the

terms thereof, ceases to be in full force and effect or is declared to be null and void, or Borrower denies that it has any further liability under any Loan Documents to which it is party, or gives notice to such effect; or

(l) Change of Control. A Change of Control occurs; or

(m) Subordinated Indebtedness. The failure of Borrower or any creditor of Borrower or any of its Subsidiaries to comply with the terms of any subordination or intercreditor agreement or any subordination provisions of any note or other document running to the benefit of the Agent or the Lenders, or if any such document becomes null and void; or

(n) Uninsured Casualty Loss. The occurrence of any uninsured loss, theft, damage, or destruction of or to any portion of the Collateral, which uninsured loss, theft, damage or destruction could reasonably be expected to have a Material Adverse Effect; or

(o) ERISA Default. A Reportable Event shall occur which the Agent, in its reasonable discretion, shall determine in good faith constitutes grounds for the termination by the PBGC of any Plan or for the appointment by the appropriate United States district court of a trustee for any Plan, or if any Plan shall be terminated or any such trustee shall be requested or appointed, or if Borrower is in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan resulting from such entity's complete or partial withdrawal from such Plan involving amounts in excess of $250,000; or

(p) Labor or Business Disruption. The occurrence of any strike, lockout, labor dispute or embargo, which in any such case causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of Borrower if such event or circumstance is not covered by business interruption insurance and would have a Material Adverse Effect; or

(q) Material Adverse Change. The occurrence of any event of circumstance that results in a Material Adverse Effect; or

(r) Senior Debt. The occurrence of any of the following: (i) Borrower fails to pay any amounts due under the Senior Debt (after giving effect to any applicable notice and/or grace period), (ii) Senior Lender accelerates the Senior Debt and/or declares same to be due prior to the stated maturity, or (iii) the occurrence of any blockage period or standstill period or similar events pursuant to the Intercreditor Agreement.

6.2 Acceleration and other Remedies.

(a) Upon the occurrence of any Event of Default described in Sections 6.1(f) or 6.1(g), all of the Obligations shall automatically become immediately due and payable, Lenders' obligation hereunder to make Loans to Borrower shall immediately terminate, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other requirements of any kind, all of which are hereby expressly waived by Borrower.

(b) Upon the occurrence and during the continuance of any Event of Default other than described in Sections 6.1(f) or 6.1(g), the Agent, at the direction of the Required Lenders may, at their option, declare all or any portion of the Loans and all or any portion of the other Obligations to be, and the same shall forthwith become, immediately due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other requirements of any kind, all of which are hereby expressly waived by Borrower.

(c) Upon the occurrence and during the continuance of any Event of Default other than described in Sections 6.1(f) or 6.1(g), the Lenders may, at their option, terminate its obligation hereunder to make Loans to Borrower.

(d) Upon the occurrence and during the continuation of any Event of Default, the Agent, at the direction of the Required Lenders may exercise any other remedies which may be available under the Loan Documents or applicable law, including all remedies provided under the Code.

(e) Except as otherwise provided for in this Agreement, Borrower waives, to the extent not prohibited by applicable law: (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Agent for the benefit of the Lenders on which Borrower may in any way be liable, and hereby ratifies and confirms whatever such the Agent may do in this regard, (ii) all rights to notice and a hearing prior to the Agent's taking possession or control of, or to the Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the Agent, at the direction of the Required Lenders to exercise any of its remedies, and (iii) the benefit of all valuation, appraisal, marshaling and exemption laws.

6.3 Performance by the Agent. If Borrower shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Agent may perform or attempt to perform such covenant, duty or agreement on behalf of Borrower after the expiration of any cure or grace periods set forth herein if the Agent deems such covenant duty or agreement necessary or reasonably desirable to repair, insure, maintain, preserve, collect, or realize upon any of the Collateral. In such event, Borrower shall, at the request of the Agent, promptly pay any amount reasonably expended by the Agent in such performance or attempted performance to the Agent, together with interest thereon at the Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, it is expressly agreed that neither Agent nor any Lender shall have any liability or responsibility for the performance of any obligation of Borrower under this Agreement or any other Loan Document.

6.4 Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of a Default or Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by the Agent for the account of the Lenders from or on behalf of Borrower, and, subject to the terms of this Agreement, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Default or Event of Default against the Obligations in such manner as the Agent may deem advisable, consistent with the terms hereof, notwithstanding any previous application by the Agent and (b) in the absence of a specific determination by the Lenders with respect thereto, the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied, ratably among the Lenders as follows: first to the payment of Fees and expenses pursuant to Section 1.3(c) then due and payable, second, to accrued interest on the Loan (including any interest which but for the provisions of the Bankruptcy Code, would have accrued on such amounts), third, to reduce the outstanding principal balance of the Loan; and fourth to any other obligations of Borrower owing to the Lenders under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

6.5 Rights of Enforcement. The Agent shall have all of the rights and remedies of a secured party upon default under the Code, in addition to which the Agent shall have all and each of the following rights and remedies:

(a) To collect the Receivables Collateral with or without the taking of possession of any of the Collateral.

(b) To receive any and all income, distributions, proceeds or other property received or paid in respect of the Pledged Interests.

(c) To register in the name of the Agent or its nominee (if not already so registered) all of the Pledged Interests, and Lender or its nominee may thereafter exercise (i) all voting and all equity and other rights pertaining to the Pledged Interests and (ii) any and all rights of conversion, exchange, and subscription and any other rights, privileges or options pertaining to such Pledged Interests as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of Borrower or upon the exercise by Borrower or the Agent of any right, privilege or option pertaining to such Pledged Interests, and in connection therewith, the right to deposit and deliver any and all of the Pledged Interests with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine), all without liability except to account for property actually received by it, but the Agent shall not have any duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(d) To apply the Receivables Collateral or the proceeds of the Collateral towards (but not necessarily in complete satisfaction of) the Obligations in accordance with the provisions of this Agreement.

(e) To take possession of all or any portion of the Collateral. Each Borrower hereby acknowledges that the Obligations arose out of a commercial transaction, and agrees that if an Event of Default shall have occurred and be continuing, the Agent shall have the right to an immediate writ of possession without notice of a hearing.

(f) To exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Agent were the sole and absolute owner thereof (and Borrower agrees to take all such action as may be reasonably appropriate to give effect to such right).

(g) To sell, lease, or otherwise dispose of any or all of the Collateral, in its then condition or following such preparation or processing as the Agent deems advisable and with or without the taking of possession of any of the Collateral.

(h) To apply to the Obligations any balances and deposits in any Deposit Accounts of the Borrower which the Agent, as a secured party, holds or is in control of.

(i) To appoint a receiver for the properties and assets of each Borrower, and each Borrower hereby consents to such rights and such appointment and hereby waives any objection such Borrower may have thereto or the right to have a bond or other security posted by the Agent.

(j) To exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the Loan Documents.

(k) The powers conferred on the Agent on behalf of the Secured Parties, hereunder are solely to protect Secured Parties' interests in the Collateral and shall not impose any duty upon the Agent to exercise any such powers. The Agent shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, or employees shall be responsible to Borrower for any act or failure to act hereunder, except for its or their gross negligence or willful misconduct.

6.6 Sale of Collateral.

(a) The Agent on behalf of the Secured Parties, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law or otherwise required hereby) to or upon Borrower or any other Person (all and each of which demands, presentments, protests, advertisements and notices, or other defenses, are hereby waived to the extent permitted under applicable law), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or

sales, in the over-the-counter market, at any exchange, broker's board or office of any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best in its sole discretion, for cash or on credit or for future delivery without assumption of any credit risk. The Agent shall have the right, without notice or publication, to 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 such sale, and any such sale may be made at any time or place to which the same may be adjourned without further notice. The Agent and Secured Parties shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of any Borrower, which right or equity of redemption, to the extent permitted by law, is hereby waived or released.

(b) Borrower recognizes that the Agent may be unable to effect a public sale of any or all of the Pledged Interests, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Borrower acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the Agent and the Secured Parties than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of being a private sale. The Agent and the Secured Parties shall be under no obligation to delay a sale of any of the Pledged Interests for the period of time necessary to permit Borrower or any Issuer to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if Borrower or Issuer would agree to do so.

Borrower further shall use its commercially reasonable efforts to do or cause to be done all such other acts as may be reasonably necessary to make any sale or sales of all or any portion of the Pledged Interests pursuant to this Section 6.6 valid and binding and in compliance with any and all other requirements of applicable law. Borrower further agrees that a breach of any of the covenants contained in this Section 6.6 will cause irreparable injury to the Agent and the Secured Parties, that the Agent and the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.6 shall be specifically enforceable against Borrower, and Borrower hereby waives, to the extent permitted by law, and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under this Agreement, or any defense relating to the Agent's or the Secured Parties' willful misconduct, bad faith or gross negligence.

(c) No Secured Party shall incur any liability as a result of the sale of any Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner, it being agreed that some or all of the Collateral is or may be of one or more types that threaten to decline speedily in value and that are not customarily sold in a

recognized market. Borrower hereby waives, to the extent permitted by law, any claims against the Agent and the Secured Parties arising by reason of the fact that the price at which any of the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Agent or the Secured Parties accept the first offer received and does not offer any Collateral to more than one offeree, provided that the Agent and the Secured Parties have acted in a commercially reasonable manner in conducting such private sale.

(d) Borrower agrees that no Secured Party shall have any general duty or obligation to make any effort to obtain or pay any particular price for any Pledged Interests or other Collateral sold by the Secured Parties pursuant to this Agreement. The Secured Parties, may, in their sole discretion, among other things, accept the first offer received, or decide to approach or not to approach any potential purchasers.

(e) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Agent shall provide Borrower with such notice as may be practicable under the circumstances), the Agent shall give Borrower at least ten (10) days prior written notice of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Borrower agrees that such written notice shall satisfy all requirements for notice to Borrower which are imposed under the Code or other applicable law with respect to the Agent's exercise of the Agent's rights and remedies upon default.

(f) The Agent or any Secured Party may purchase the Collateral, or any portion of it at any sale held under this Section.

(g) The Agent shall apply the proceeds of any exercise of the Agent's rights and remedies under this Article towards the Obligations in accordance with this Agreement.

6.7 Occupation of Business Location. In connection with the Agent's exercise of the Agent's rights under this Section, the Agent may enter upon, occupy, and use any premises owned or occupied by Borrower. The Agent shall not be required to remove any of the Collateral from any such premises upon the Agent's taking possession thereof, and may render any Collateral unusable to Borrower. In no event shall the Agent be liable to Borrower for use or occupancy by the Agent of any premises pursuant to this Article, nor for any charge (such as wages for Borrower's employees and utilities) incurred in connection with the Agent's exercise of the Agent's Rights and Remedies.

6.8 Assembly of Collateral. The Agent may require Borrower to assemble the Collateral and make it available to the Agent at Borrower's sole risk and expense at a place or places which are reasonably convenient to both the Agent and Borrower.

6.9 Rights and Remedies. The rights, remedies, powers, privileges, and discretions of the Agent hereunder (herein, the "Agent's Rights and Remedies") shall be cumulative and not

exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agent in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of the Agent's Rights and Remedies and all of the Agent's rights, remedies, powers, privileges, and discretions under any other agreement or transaction are cumulative, and not alternative or exclusive, and may be exercised by the Agent at such time or times and in such order of preference as the Agent in its sole discretion may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Obligations.

SECTION 7
CONDITIONS TO THE LOAN

7.1 Conditions to the Loan. The Lenders shall not be obligated to make the Loan on the Closing Date, or to take, fulfill, or perform any other action hereunder, until the following conditions have been satisfied or provided for in a manner reasonably satisfactory to the Agent and to Lenders, or waived in writing by the Agent on behalf of the Lenders:

(a) Loan and Security Agreement; Loan Documents. This Agreement or counterparts hereof shall have been duly executed by, and delivered to, Borrower and the Agent; and the Agent shall have received such documents, instruments, certificates, agreements and legal opinions as the Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including each of the documents, instruments, certificates, agreements and legal opinions set forth on the closing agenda annexed hereto as Exhibit 7.1, all in form and substance reasonably satisfactory to the Agent in all respects.

(b) Approvals. The Agent shall have received satisfactory evidence that Borrower has obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents and the consummation of the Related Transactions and the operation of Borrower's business.

(c) Payment of Fees. Borrower shall have paid the Fees required to be paid on the Closing Date in the respective amounts specified in Section 1.3, and shall have reimbursed the Agent and the Lenders, and their respective counsel, for all fees, costs and expenses of closing presented as of the Closing Date in accordance with and to the extent required under Section 1.3(c).

(d) Capital Structure; Other Indebtedness; Material Contracts; Tax Effect. The capital structure and governing documents of Borrower and the terms and conditions

of all Indebtedness and all other material contracts of Borrower and all documentation relating to the structure of the Borrower and the tax effects after giving effect to this Agreement shall be acceptable to the Agent in its sole discretion.

(e) Due Diligence. The Agent shall have completed its business and legal due diligence, including, without limitation, legal, contractual, insurance and other reviews, and the results thereof shall have been satisfactory in form and substance to the Agent in its sole discretion.

(f) Distribution of Proceeds Statement. The Agent shall have received a statement of the planned distribution of proceeds from the Loan.

(g) Pro Forma Balance Sheet. The Agent shall have received Pro Forma opening balance sheets for Borrower, which are satisfactory in form and substance to the Agent in its in their sole discretion.

(h) Representations and Warranties. All representations and warranties contained herein shall be true and correct, in all material respects.

(i) No Default. No Default or Event of Default shall exist hereunder.

(j) No Adverse Change. No event shall have occurred or failed to occur, which occurrence or failure is or could reasonably be expected to have a materially adverse effect upon the Borrower's financial condition when compared with such financial condition at the date of the most recently delivered financial statements. In addition, no event shall have occurred or failed to occur since December 18, 2013, which materially adversely affects any market, economic or political conditions, as determined by the Agent in its sole discretion.

7.2 Condition to Loan. The obligation of any Lender to make a Loan on the occasion of a borrowing by Borrower shall be subject to the further conditions precedent that

(a) The representations and warranties contained herein are true and correct, in all material respects as of the date of such borrowing (except for those representations and warranties which by their terms refer to a specified prior date).

(b) No Event of Default or Default shall exist hereunder.

(c) Borrower shall pay to the Lender funding an Additional Advance, concurrently with the Additional Advance made by such Lender, a fee in the amount of one percent (1%) of such Additional Advance.

(d) There have been no events or changes in facts or circumstances affecting the business of Borrower which individually or in the aggregate have had or could reasonably be expected to have a Material Adverse Effect and that have not been otherwise disclosed to the Lenders.

SECTION 8
MISCELLANEOUS

8.1 Indemnities. Borrower agrees to indemnify, defend, pay, and hold the Agent, Lenders, and their respective officers, directors, employees, agents, and attorneys (the "Indemnitees") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses (including all reasonable fees and expenses of counsel to such Indemnitees) of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Indemnitee as a result of such Indemnitees being a party to this Agreement or the transactions consummated pursuant to this Agreement or otherwise relating to any of the Related Transactions including all costs, expenses, liabilities, and damages as may be suffered by any Indemnitee in connection with (i) the Collateral; (ii) the occurrence of any Default or Event of Default; (iii) in connection with or arising out of any presence or Release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any of its Subsidiaries, or (iv) the exercise of any rights or remedies under any of the Loan Documents (each of claims which may be defended, compromised, settled, or pursued by the Indemnitee with counsel of its selection, but at the expense of Borrower) other than to the extent determined by a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the applicable Person's own gross negligence or willful misconduct. This indemnification shall survive payment of the Loan and/or any termination, release, or discharge executed by the Agent or the Lenders in favor of the Borrower. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower agrees to make the maximum contribution to the payment and satisfaction thereof which is permissible under applicable law.

8.2 Power of Attorney. Borrower hereby irrevocably constitutes and appoints the Agent (acting through any officer of the Agent) for the benefit of the Secured Parties as Borrower's true and lawful attorney, with full power of substitution, following the occurrence of and during the continuation of an Event of Default, to take any of the following actions: (i) prosecute, defend, compromise, or release any action relating to the Collateral; (ii) sign change of address forms to change the address to which Borrower's mail is to be sent to such address as the Agent shall designate; receive and open Borrower's mail; (iii) endorse the name of Borrower in favor of the Agent upon any and all checks, drafts, notes, acceptances, or other items or instruments; sign and endorse the name of Borrower on, and receive as secured party, any of the Collateral, any invoices, schedules of Collateral, freight or express receipts, or bills of lading, storage receipts, warehouse receipts, or other documents of title respectively relating to the Collateral; (iv) sign the name of Borrower on any notice to Borrower's Account Debtors or; sign Borrower's name on any proof of claim in any bankruptcy proceeding of any Account Debtors, and on notices of lien, claims of mechanic's liens, or assignments or releases of mechanic's liens securing the Accounts; (v) take all such action as may be necessary to obtain the payment of any letter of credit and/or banker's acceptance of which Borrower is a beneficiary; (vi) file any claims or take any action or institute any proceeds that the Agent may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Agent and the Secured Parties with respect to the Collateral; (vii) to execute, in connection with the sale provided for herein, any endorsement, assignments, or other instruments of conveyance or transfer with respect to the Collateral, including, without limitation, to transfer or cause the transfer of the Collateral, or any part thereof, on the books of the Issuer, to the name of

the Agent or any nominee; (viii) to cause Borrower to issue new certificates relating to the Pledged Interests and deliver same to the Agent; (ix) to affix to any certificates and documents representing the Pledged Interests, the stock powers delivered with respect thereto; (x) use, license or transfer any or all General Intangibles of Borrower; and (xi) take any other action as the Agent in its sole discretion deems reasonably necessary or appropriate to preserve, protect and enforce the security interests granted hereunder. In connection with all powers of attorney described above, Borrower hereby grants unto the Agent (acting through any of its officers) full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as Borrower might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. All powers conferred upon the Agent herein, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of the Agent.

8.3 Amendments and Waivers. Except for actions expressly permitted to be taken by the Agent as specifically set forth in this Agreement or in any other Loan Document, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower and Agent and the Required Lenders (or, all Lenders to the extent expressly required elsewhere in this Agreement) and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by Agent and all the Lenders directly affected thereby and Borrower, do any of the following: (i) lower the applicable interest rate; (ii) release any material portion of the Collateral (except for releases expressly required or permitted pursuant to this Agreement or the other Loan Documents); (iii) increase the Loan amount (other than as a result of disbursements made to fund interest, or other costs, expenses or attorneys' fees incurred in connection with the Obligations, all as permitted elsewhere in this Agreement and the other Loan Documents); (iv) forgive or reduce any principal, interest or fees due under the Loan or the Obligations or extend the time for the payment of any such principal, interest or fees; (v) change the percentage specified in the definition of the Required Lenders; (vi) extend the Maturity Date, postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document, or (vii) amend or modify this Section or any provision of this Agreement providing for consent or other action by all Lenders.

8.4 Notices. Any notice or other communication required shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied (with hard copy to follow by U.S. mail), sent by overnight courier service or U.S. mail and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax, on the date of transmission if properly transmitted on a Business Day before 4:00 p.m. New York Time; (c) if delivered by overnight courier, one (1) Business Day after delivery to the courier properly addressed; or (d) if delivered by U.S. mail, four (4) Business Days after deposit with postage prepaid and properly addressed.

Notices shall be addressed as follows:

If to any Borrower:	Five9, Inc. 4000 Executive Parkway, Suite 400 San Ramon, CA 94583 Attn: Mr. Barry Zwarenstein, Chief Financial Officer
If to the Agent or any Lender:	c/o Fifth Street Finance Corp. White Plains Plaza 10 Bank Street, 12th Floor White Plains, New York 10606 Attn: General Counsel Fax: (914) 328-4214
With a copy to:	Rutan & Tucker, LLP 611 Anton Boulevard, Suite 1400 Costa Mesa, California 92626-1931 Attn: William F. Meehan, Esq. Fax: (714) 546-9035

8.5 Obligations Absolute; Failure or Indulgence Not Waiver; Remedies Cumulative. The payment and performance by Borrower of all of the Obligations shall be absolute and unconditional, irrespective of any defense or rights of set-off, recoupment or counterclaim Borrower might otherwise have against any Agent or the Lenders, and Borrower shall pay and perform all of the Obligations, free of any deductions and without abatement, diminution, recoupment, counterclaim or set-off. Until the Termination Date, Borrower shall (a) not suspend or discontinue any payments required pursuant to the Note, this Agreement or any other Loan Document; and (b) perform and observe all of the other terms and provisions of this Agreement or any other Loan Documents. No failure or delay on the part of Agent or any Lender to exercise, nor any partial exercise of, any power, right or privilege hereunder or under any other Loan Documents shall impair such power, right, or privilege or be construed to be a waiver of any Default or Event of Default. All rights and remedies existing hereunder or under any other Loan Document are cumulative to and not exclusive of any rights or remedies otherwise available.

8.6 Marshaling; Payments Set Aside. Neither Agent nor the Lenders shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes payment(s) or Agent on behalf of the Lenders enforces Liens or Agent exercises its right of set-off, and such payment(s) or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent conveyances or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

8.7 Intentionally Omitted.

8.8 Right of Set-Off. Borrower hereby grants to the Agent and each Lender a lien, security interest and right of setoff as security for all Obligations, whether now existing or

hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of any Lender, any entity under the control of any Lender and its successors and assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived, to the extent permitted by law, by Borrower), upon the occurrence of and during the continuation of an Event of Default the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower and any guarantor even though unmatured and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE THE LENDERS TO EXERCISE THEIR RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

8.9 Severability. The invalidity, illegality, or unenforceability in any jurisdiction of any provision under the Loan Documents shall not affect or impair the remaining provisions in the Loan Documents.

8.10 Headings. Section and subsection headings are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes or be given substantive effect.

8.11 Applicable Law. THIS AGREEMENT AND EACH OF THE OTHER LOAN DOCUMENTS WHICH DOES NOT EXPRESSLY SET FORTH APPLICABLE LAW SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

8.12 Successors and Assigns. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of Borrower, the Lenders and their respective successors and permitted assigns (including, in the case of Borrower, a debtor-in-possession on behalf of such Borrower), except as otherwise provided herein or therein. Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Lender. Any such purported assignment, transfer, hypothecation or other conveyance by Borrower without the prior express written consent of the Lenders shall be void. Any Lender may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents in accordance with Section 8.26. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of Borrower, or the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

8.13 No Fiduciary Relationship; Limited Liability. No provision in the Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty owing to Borrower by Agent or by Lenders. Borrower agrees that neither Agent nor the

Lenders shall have liability to Borrower (whether sounding in tort, contract or otherwise) for losses suffered by Borrower in connection with, arising out of, or in any way related to the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless and to the extent that it is determined that such losses resulted from the breach of their affirmative obligations under this Agreement or the gross negligence or willful misconduct of the party from which recovery is sought as determined in each case by a final non-appealable order by a court of competent jurisdiction. Neither Agent nor the Lenders shall have any liability with respect to, and Borrower hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by Borrower in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

8.14 Construction. Agent, Lenders and Borrower acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review the Loan Documents with its legal counsel and that the Loan Documents shall be construed as if jointly drafted by Agent on behalf of the Lenders hereunder and Borrower.

8.15 Confidentiality. Agent and the Lenders agree to exercise their best efforts to keep confidential any non-public information delivered pursuant to the Loan Documents and not to disclose such information to Persons other than (i) to Persons employed by or engaged by Agent, by Lenders and/or their partners, assignees or participants including attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services so long as such persons are made aware of the confidential nature of such information and instructed to keep such information confidential, (ii) as required to be made by any Agent or Lender to any regulatory or governmental agency or pursuant to legal process, (iii) consisting of general portfolio information that does not identify Borrower or (iv) to the extent reasonably required in connection with a Securitization Transaction so long as the recipient thereof is subject to an agreement containing provisions substantially similar as those in this Section. The obligations of Agent and, if applicable, Lenders under this Section shall supersede and replace the obligations of Agent and, if applicable, Lenders under any confidentiality agreement in respect of this financing executed and delivered such Person prior to the date hereof. With Borrower's prior approval, Agent and the Lenders may use the name of the Borrower and its logo, identifying images, and other Trademarks in connection with such Agent and/or the Lender's marketing materials and may identify Borrower as a portfolio company of such Agent or the Lenders and/or their Affiliates.

8.16 CONSENT TO JURISDICTION. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN NEW YORK COUNTY, NEW YORK OR WESTCHESTER COUNTY, NEW YORK AND IRREVOCABLY AGREE THAT, SUBJECT TO THE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. BORROWER EXPRESSLY SUBMITS AND

CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

8.17 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENT, AND THE LENDERS HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. BORROWER, AGENT AND THE LENDERS ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER, AGENT, AND THE LENDERS WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

8.18 Survival of Warranties and Certain Agreements. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the making of the Loan and the execution and delivery of the Note. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Borrower set forth in as 1.3 and 8.1 shall survive the Termination Date.

8.19 Entire Agreement. This Agreement, the Note and the other Related Transaction Documents embody the entire agreement among the parties hereto and supersede all prior commitments, agreements, representations, and understandings, whether oral or written, relating to the subject matter hereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. All Exhibits, Schedules and Annexes referred to herein are incorporated in this Agreement by reference and constitute a part of this Agreement.

8.20 Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

8.21 Delivery of Termination Statements and Mortgage Releases. Upon the Termination Date, and so long as no suits, actions proceedings, or claims are pending or threatened against any Indemnitee asserting any damages, losses or liabilities that are indemnified liabilities hereunder, Agent on behalf of the Lenders shall release the Liens granted

hereunder and under the other Loan Documents and deliver to Borrower termination statements and mortgage releases and other documents necessary or appropriate to evidence the termination of the Liens securing payment of the Obligations, all at the expense of Borrower.

8.22 Intentionally Omitted.

8.23 Protection of Collateral. The Lenders' sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Code or otherwise, shall be to use reasonable care. Borrower hereby agrees that any Lender shall be deemed to have used reasonable care with respect to Collateral in its possession if it deals with such Collateral in the same manner as such Lender deals with similar securities and property for its own account. None of the Lenders or any of their directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose.

8.24 Permitted Senior Debt. The Agent and Lenders acknowledge and agree that Borrower entered into the Loan and Security Agreement dated as of March 8, 2013 (as amended or otherwise modified), between Lead Borrower and City National Bank (as such Person may be replaced, the "Senior Lender"), pursuant to which Borrower incurred a secured senior revolving facility, ACH line facility and term loan (as such revolving facility, ACH line facility and term loan may be extended, modified, refinanced or renewed, the "Senior Debt") in an amount not to exceed Seventeen Million Seven Hundred Thousand Dollars $17,700,000 ($12,500,000 of which is the revolving facility), which Senior Debt is subject to a certain Subordination Agreement of even date herewith by and between the Senior Lender and Agent (as amended from time to time, the "Intercreditor Agreement"). Such Senior Debt shall be secured only by the "Collateral" as such term is defined and used in the Intercreditor Agreement.

8.25 Additional Waivers.

(a) Borrower (and all guarantors, endorsers, and sureties of the Obligations) make each of the waivers included in Section (b), below, knowingly, voluntarily, and intentionally, and understands that the Agent and the Lenders, in establishing the loans and other financial accommodations to or for the account of Borrower as provided herein, whether not or in the future, are relying on such waivers.

(b) BORROWER, ENDORSER, AND SURETY RESPECTIVELY WAIVES THE FOLLOWING TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:

(i) Except as otherwise specifically required hereby, notice of non-payment, demand, presentment, protest and all forms of demand and notice, both with respect to the Obligations and the Collateral.

(ii) Except as otherwise specifically required hereby or by any other Loan Document or by applicable law, the right to notice and/or hearing prior to the Agent's or the Lenders' exercising of rights and remedies upon the occurrence and continuation of an Event of Default.

(iii) Any claim to consequential, special, or punitive damages.

(iv) Any right to require any Agent to (a) proceed against Borrower or any other person or (b) to proceed against or exhaust any other security held by any Agent at any time or (c) to pursue any other remedy in any Agent's power before exercising any right or remedy under this Agreement.

8.26 Syndication and Participation.

(a) Borrower acknowledges that any Lender may, at its option, sell participation interests in (a "Participation"), the Loan to one or more participants (each, a "Participant"). Borrower agrees with each present and future Participant that if an Event of Default should occur, each present and future Participant shall have all of the rights and remedies of a Lender with respect to any deposit due from any Participant to the Borrower. The execution by a Participant of a participation agreement with any Lender, and the execution by the Borrower of this Agreement, regardless of the order of execution, shall evidence an agreement between Borrower and said Participant in accordance with the terms of this Section 8.26(a).

(b) With the prior written consent of Borrower, which consent shall not be unreasonably withheld, any Lender may also, at its option, sell with novation all or any part of its right, title and interest in, and to, and under the Loan (the "Syndication"), to one or more additional lenders. Each additional lender shall enter into an assignment and assumption agreement (the "Assignment and Assumption") assigning a portion of the rights and obligations under the Loan, and pursuant to which the additional lender accepts such assignment and assumes the assigned obligations. Notwithstanding the foregoing, Borrower's prior written consent shall not be required in connection with any Lender's exercise of any of its rights under this Section 8.26(b)(i) when an Event of Default exists or (ii) in connection with any Syndication to an Affiliate of any Lender or an Approved Fund.

8.27 Agent and Lenders. Borrower and the Lenders acknowledge and agree as follows:

(i) The liabilities of each Lender shall be several and not joint. No Lender shall be responsible for the obligations of any other Lender. Each Lender shall be liable to Borrower only for their respective proportionate shares of the Loan. Each Lender acknowledges that it has received and approved the form of all of the Loan Documents. Upon reasonable prior notice to the Agent by any Lender, such files and records will be made available to such Lender and its representatives and agents, at the above-described location, for inspection and copying during normal business hours. If for any reason any Lender shall fail or refuse to abide by its obligations under this Agreement, no other Lender shall be relieved of their obligations, if any, hereunder, including their obligation (if any) to make an advance to Borrower. Notwithstanding the foregoing, the other Lenders shall have the right, but not the obligation, at their sole option, to make the defaulting Lender's advance.

(ii) FSFC is hereby appointed by each Lender as the initial Agent hereunder and shall act as the administrative and collateral agent for the Lenders. FSFC accepts such appointment subject to the terms and conditions of this Agreement. Each Lender agrees that the Agent shall serve as its contractual representative hereunder and under each other Loan Document, and each Lender irrevocably authorizes the Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth in this Agreement and the other Loan Documents. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent; it being expressly understood and agreed that the use of the word "Agent" is for convenience only, that FSFC (or any successor Agent) is merely the representative of the Lenders, and only has the contractual duties set forth herein. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Lenders are expressly entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to the Agent, the Lenders agree that the Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, and (c) perform, exercise, and enforce any and all other rights and remedies of the Lenders and the Secured Parties with respect to Borrower, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents. Without limiting the foregoing, Agent is specifically directed and authorized to execute and deliver the Intercreditor Agreement (and any amendments, modifications, waivers and notices thereto) and each Lender acknowledges and agrees that it shall be bound by the terms of the Intercreditor Agreement as a "Subordinated Creditor" therein. The provisions of this Section 8.27 are solely for the benefit of Agent and the Lenders, and neither Borrower nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof.

(iii) Any proceeds realized under the Loan Documents, or as a result of the exercise of any rights pursuant to the Loan Documents, shall be distributed by Agent to the extent available in accordance with the terms of this Agreement. The Lenders hereby acknowledge that the Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Agent may execute any of its duties as the Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to Lenders, except as to money or

securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Agent and the Lenders and all matters pertaining to the Agent's duties hereunder and under any other Loan Document. The Agent, in its administration of the Loan and the Loan Documents and in its administration of this Agreement, may rely upon any notice, certificate, instrument, document, letter, electronic mail, facsimile, or other paper and upon any telephone call believed by the Agent in good faith to be genuine and to have been signed or made by or on behalf of the authorized person purporting to do so, and shall not be liable hereunder on account of any such good faith reliance, except as a result of the Agent's gross negligence, fraud or willful misconduct.

(iv) Notwithstanding any provision to the contrary in this Agreement, the Agent shall not have any duties or responsibilities except those expressly set forth herein and no covenants, functions, responsibilities, duties, obligations or liabilities of Agent shall be implied by or inferred from this Agreement or any other Loan Document.

(v) Each Lender hereby empowers and authorizes the Agent to execute and deliver to Borrower on their behalf the security agreement(s) and all related financing statements and any financing statements, agreements, documents or instruments as shall be necessary or appropriate to effect the purposes of this Agreement and the other Loan Documents. Each Lender hereby empowers and authorizes the Agent to execute and deliver to Borrower on their behalf any agreements, documents or instruments as shall be necessary or appropriate to effect any releases of Collateral which shall be permitted or required by, or approved under, the terms of this Agreement or of any other Loan Document.

(vi) Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not Agent. The Lenders and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, Borrower, or any Affiliate of Borrower and any Person who may do business with or own securities of Borrower or any Affiliate of Borrower, all as if they were not serving in such capacities hereunder and without any duty to account therefor to each other.

(vii) The Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver possession or control of such Collateral to the Agent or in accordance with the Agent's instructions.

(viii) Lenders agree to reimburse, defend, indemnify the Agent and hold the Agent harmless, ratably in proportion to their respective portion of the loans and commitments hereunder for, from and against: (a) any amounts not reimbursed by

Borrower for which the Agent is entitled to reimbursement by Borrower under the Loan Documents; (b) any other costs or expenses incurred by the Agent on behalf of the Lenders, in connection with (i) the preparation, execution, delivery, administration and enforcement of the Loan Documents, and (ii) the protection of the Collateral; and (c) any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of (i) the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby, (ii) the protection of the Collateral, or (iii) the enforcement of any of the terms of the Loan Documents or of any such other documents; provided that no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Agent. The obligations of the Lenders shall survive payment and performance of the Obligations and the termination of this Agreement. All payments under this indemnity shall be made to the Agent within ten (10) Business Days after any demand for such payment that is accompanied by a description of the amounts so payable.

(ix) The Agent may resign at any time by giving written notice thereof to the Lenders and Borrower, such resignation to be effective upon the appointment of a successor Agent or, if no successor Agent has been appointed, forty-five (45) days after the retiring Agent gives notice of its intention to resign. The Agent may be removed at any time with or without cause by written notice received by the Agent from the Required Lenders, such removal to be effective on the date specified by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint, on behalf of Borrower and the Lenders, a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders within thirty days after the resigning Agent's giving notice of its intention to resign, then the resigning Agent may appoint, on behalf of Borrower and the Lenders, a successor Agent. Notwithstanding the previous sentence, the Agent may at any time without the consent of Borrower or any Lender, appoint any of its Affiliates as a successor Agent hereunder. If the Agent has resigned or been removed and no successor Agent has been appointed, the Lenders may perform all the duties of the Agent hereunder and Borrower shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with the Lenders. Upon the effectiveness of the resignation or removal of the Agent, the resigning or removed Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Agent, the provisions of this Section shall continue in effect for the benefit of such Agent in respect of any actions taken or omitted to be taken by it while it was acting as Agent hereunder and under the other Loan Documents.

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Witness the due execution hereof by the respective duly authorized officers of the undersigned as of the date first written above.

BORROWER:

FIVE9, INC.,
a Delaware corporation

By: /s/ David Hill
Name: David Hill
Title: VP Finance

FIVE9 ACQUISITION LLC,
a Delaware limited liability company

By: /s/ David Hill
Name: David Hill
Title: CEO

[signatures continued on following page]

LENDERS:

AS LENDER AND AGENT:

FIFTH STREET FINANCE CORP.,
a Delaware corporation

By: Fifth Street Management LLC,
a Delaware limited liability company, its Agent

By: /s/ Ivelin M. Dimitrov
Ivelin M. Dimitrov, Chief Investment Officer

AS LENDER:

FIFTH STREET MEZZANINE PARTNERS V, L.P.,
a Delaware limited partnership

By: FSMP V GP, LLC,
a Delaware limited liability company,
its General Partner

By: /s/ Bernard D. Berman
Bernard D. Berman, Manager

ANNEX A

to

LOAN AND SECURITY AGREEMENT

DEFINITIONS

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings set forth in the Agreement and the following terms which are defined in the Code are used herein as so defined: Accounts, Chattel Paper, Commercial Tort Claim, Deposit Account, Document, Documents of Title, Electronic Chattel Paper, Financial Asset, Letter-of-Credit Right, Securities, Securities Account, Securities Intermediary, Tangible Chattel Paper.

"Account Debtor" means any Person who is or may become obligated to Borrower under, with respect to, or on account of, an Account, Chattel Paper or General Intangible (including a payment intangible).

"Accounting Changes" means: (a) changes in accounting principles required by GAAP and implemented by Borrower; (b) changes in accounting principles recommended by Borrower's certified public accountants and implemented by Borrower; and (c) changes in carrying value of Borrower's or any of its Subsidiaries' assets, liabilities or equity accounts resulting from (i) the application of purchase accounting principles (SFAS 141R and/or 142 and FASB 109) to the Related Transactions or (ii) as the result of any other adjustments that, in each case, were applicable to, but not included in, the Pro Forma.

"Accounts" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Person, including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all such Person's rights in, to and under all purchase orders or receipts for goods or services, (c) all of such Person's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to such Person for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Person or in connection with any other transaction (whether or not yet earned by performance on the part of such Person), and (e) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Adjusted Prime Rate" shall mean the Prime Rate in effect from time to time plus the difference, if a positive number, or minus the difference, if a negative number, (in each case expressed as a percentage) between (a) LIBOR on the date LIBOR was last applicable to the Loan, and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan.

"Affiliate" means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, 5% or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, (c) each of such Person's officers, directors, joint venturers and partners and (d) in the case of Borrower, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of Borrower. For the purposes of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Loan and Security Agreement (including all schedules, subschedules, annexes and exhibits hereto), as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Amortization Payment Deferral Option" means Borrower's option to extend the Amortization Payment Start Date for a period of twelve (12) months from the then existing Amortization Payment Start Date, subject to Borrower's compliance with the Amortization Payment Deferral Conditions.

"Amortization Payment Deferral Conditions" means the following conditions, which shall be met at the time of Borrower's election of any Amortization Payment Deferral Option:

(a) No Event of Default or Default shall exist hereunder;

(b) Borrower shall provide notice to the Agent at least ten (10) days prior to the applicable Amortization Payment Start Date of its request to exercise an Amortization Payment Deferral Option;

(c) Borrower's revenue growth (which, for purposes of this calculation shall not include revenue growth attributable to any Permitted Acquisitions) for the calendar year most recently ended, as compared to the immediately preceding calendar year, is at least fifteen percent (15%); and

(d) Borrower shall have received gross proceeds (before underwriting discounts, commissions and expenses) from a Qualified IPO of at least One Hundred Million Dollars ($100,000,000).

"Amortization Payment Start Date" means February 29, 2016 unless otherwise extended by Borrower's election of an Amortization Payment Deferral Option.

"Applicable Percentage" has the meaning ascribed to it in Section 1.3(b).

"Approved Fund" means any fund, investment vehicle or special purpose entity that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business that is administered or managed by (a) any Lender, (b) an Affiliate of any Lender or (c) an entity or an Affiliate of an entity that administers or manages any Lender.

"Bankruptcy Code" means the provisions of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. or any other applicable bankruptcy, insolvency or similar laws.

"Board" has the meaning ascribed to it in Section 2.10.

"Borrower" has the meaning ascribed to it in the Preamble.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York.

"Capital Expenditures" means all expenditures for any fixed assets or improvements or for replacements, substitutions or additions thereto, that are required to be capitalized under GAAP.

"Capital Lease" means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

"Capital Lease Obligation" means, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

"Carry-Over Amount" has the meaning ascribed to it in Section 4.3.

"Cash Equivalents" means, at any time, (a) any evidence of Indebtedness with a maturity date of one (1) year or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with a maturity of one (1) year or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $1,000,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of one (1) year or less issued by a corporation (except an Affiliate of Borrower) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody's Investors Service, Inc.; and (d) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (c) above.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

"Change of Control" means the occurrence of any of the following:

(a) prior to a Qualified IPO, any event, transaction or occurrence resulting in Permitted Holders, in the aggregate, either directly or indirectly, ceasing to own and control all of the voting rights associated with greater than forty percent (40%) of all classes of the outstanding voting stock (excluding options and warrants) of Borrower;

(b) intentionally omitted;

(c) any transaction or series of related transactions in which the stockholders of Lead Borrower who were not stockholders immediately prior to the first such transaction own more than fifty percent (50%) of the voting stock of Lead Borrower immediately after giving effect to such transaction or related series of such related transactions;

(d) on or after a Qualified IPO, any Person or "group" (as such term is defined in Section 13(d)(3) of the Exchange Act) (other than Permitted Holders), shall have acquired beneficial ownership (as such term is defined in Rule 13(d)(3) of the General Rules and Regulations promulgated by the SEC under the Exchange Act), directly or indirectly, of Stock of Borrower (or other securities convertible into such Stock) representing the greater of (i) 40% or more of the combined voting power of all Stock of Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board, or (ii) the percentage of the outstanding Stock of Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board then held by the Permitted Holders; or

(e) Lead Borrower fails to own and control, directly or indirectly, 100% of the Stock of each other Borrower.

"Charges" means all federal, state, county, city, municipal, local, foreign or other governmental taxes (including premiums and other amounts owed to the PBGC at the time due and payable), levies, assessments, charges, liens, claims or encumbrances upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of Borrower, (d) Borrower's ownership or use of any properties or other assets, or (e) any other aspect of Borrower's business.

"Chattel Paper" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by Borrower, wherever located.

"Closing Date" means February 20, 2014.

"Code" means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Agent or any Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "Code" means the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

"Collateral" means the property covered by Section 1.9 hereof and the other Collateral Documents and any other property, real or personal, tangible or intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Secured Parties to secure the Obligations or any portion thereof.

"Collateral Documents" means this Agreement, any guaranties of the obligations (together with any collateral therefor), and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations or any portion thereof.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability of that Person: (i) with respect to Guaranteed Indebtedness and with respect to any Indebtedness, lease, dividend or other obligation of another Person if the purpose or intent of the Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (iii) under any foreign exchange contract, currency swap agreement, interest rate swap agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, (iv) under any agreement, contract or transaction involving commodity options or future contracts, (v) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, (vi) pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another or (vii) earnouts and similar payment obligations while they are contingent. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.

"Contracts" means, collectively, with respect to each Borrower, all Licenses, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Borrower and any third party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

"Contract Rights" means any right to payment under a Contract not yet earned by performance and not evidenced by an Instrument or Chattel Paper.

"Contractual Obligations" means, as applied to any Person, 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, including without limitation, the Related Transactions Documents.

"Control" means (i) in the case of each Deposit Account, "control," as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, "control," as such term is defined in Section 8-106 of the UCC, and (iii) in the case of any Commodity Contract, "control," as such term is defined in Section 9-106 of the UCC.

"Copyright License" means, with respect to any Person, rights under any agreement now or hereafter entered into by such Person either granting and/or acquiring any right to use any Copyrights, including the right to collect royalties or other license payments.

"Copyrights" means, with respect to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all copyrights (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country, jurisdiction or any political subdivision thereof; and (b) all derivatives, reissues, extensions or renewals thereof.

"Default" means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning ascribed to it in Section 1.2(c).

"Disclosure Schedules" means the Schedules prepared by Borrower and denominated as Schedules in the Index of Appendices to the Agreement.

"Dollars" or "$" means lawful currency of the United States of America.

"EBITDA" means, for any period, consolidated net income for such period before provision for payment of interest expense and Federal, state, local and foreign income taxes, plus depreciation and amortization to the extent deducted from such net income, in all cases for Borrower and its consolidated subsidiaries as determined in accordance with GAAP.

"Environmental Laws" means all applicable federal, state, local and foreign laws, statutes, ordinances, codes, rules, permits, standards and regulations, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).

"Environmental Liabilities" means, with respect to any Person, all liabilities, obligations, responsibilities, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, and other costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, investigation, proceeding or demand by any Person, including any arising under or related to any Environmental Laws, or in connection with any Release or threatened Release or presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

"Environmental Permits" means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

"Equipment" for any Person, means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by such Person, wherever located and, in any event, including all such Person's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

"Equity Documents" shall mean the Warrants and all documents, instruments and agreements executed or delivered pursuant thereto, as each may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations promulgated thereunder.

"ERISA Affiliate" means, with respect to Borrower, any trade or business (whether or not incorporated) that, together with Borrower, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

"ERISA Event" means, with respect to Borrower or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan; (b) the withdrawal of Borrower or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of Borrower or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by Borrower or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within thirty (30) days; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 or 4245 of ERISA; or (i) the loss of a Qualified Plan's qualification or tax exempt status; or (j) the termination of a Plan described in Section 4064 of ERISA.

"ESOP" means a Plan that is intended to satisfy the requirements of Section 4975(e)(7) of the IRC.

"Event of Default" has the meaning ascribed to it in Section 6.1.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Accounts" means any accounts used exclusively for payroll, payroll taxes and other employee wage and benefit payments to or for Borrower's employees.

"Excluded Taxes" means (a) taxes based upon, or measured by, any Lender's or other recipient's overall net income, or overall net profits (including franchise taxes imposed in lieu of such taxes and/or United States federal branch profits taxes), but only to the extent such taxes are imposed by a taxing authority (i) in a jurisdiction in which such Lender or such other recipient is organized or (ii) in a jurisdiction which such Lender or such other recipient's principal office is located and (b) with respect to such Lender or other recipient, any United States federal withholding tax imposed on amounts payable to Lender or such other recipient by reason of the failure of such Lender or such other recipient to comply with its obligations under Section 1.8(c), unless such failure is due to a change in applicable laws after the Closing Date.

"Extraordinary Receipts" means any cash proceeds received by Borrower or any Subsidiary not in the ordinary course of business (other than proceeds of the type described in Sections 1.2(f)(i), through (iv)) from (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments and (c) purchase price adjustments received in connection with any sale or acquisition.

"Fair Labor Standards Act" means the Fair Labor Standards Act, 29 U.S.C. §201 et seq.

"Fees" means any and all fees payable to the Agent or any Lender pursuant to the Agreement or any of the other Loan Documents.

"Financial Statements" means the consolidated and consolidating income statements, statements of cash flows and balance sheets of Borrower and its Subsidiaries delivered in accordance with Section 4.1.

"Fiscal Quarter" means any of the quarterly accounting periods of Borrower ending on March 31, June 30, September 30 and December 31 of each year.

"Fiscal Year" means any of the annual accounting periods of Borrower ending on December 31 of each year.

"Fixtures" means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by Borrower.

"Foreign Subsidiary" means any Subsidiary of Borrower which is organized under the laws of a jurisdiction other than the United States of America or any state or Governmental Authority thereof.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied.

"General Intangibles" means, for any Person, "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by such Person, including all right, title

and interest that such Person may now or hereafter have in or under any Contractual Obligation, all payment intangibles, customer lists, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Person or any computer bureau or service company from time to time acting for such Person.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guaranteed Indebtedness" means, as to any Person, any obligation of such Person guaranteeing, providing comfort or otherwise supporting any Indebtedness, lease, dividend, or other obligation ("primary obligation") of any other Person (the "primary obligor") in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business) or (e) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"Hazardous Material" means any substance, whose nature and/or quantity, use, manufacture, disposal, storage, transport or effect render it subject to federal, state or local regulation, investigation, remediation, mitigation or removal as potentially injurious to public health or welfare or the environment.

"Indebtedness" means, with respect to any Person, without duplication (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property payment, but excluding obligations to trade creditors incurred in the ordinary course of business, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and the present value (discounted at the rate of 10%) of future rental payments under all synthetic leases, (f) all obligations of such Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all Indebtedness referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, and (i) "earnouts" and similar payment obligations that have been earned in full as of such date and are not contingent.

"Indemnitees" has the meaning ascribed to it in Section 8.1.

"Instruments" means, for any Person, all "instruments," as such term is defined in the Code, now owned or hereafter acquired by such Person, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"Intellectual Property" means any and all Licenses, Patents, Copyrights, Trademarks (including the goodwill associated with such Trademarks), and all know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement.

"Intercreditor Agreement" is defined in Section 8.24.

"Inventory" means, for any Person, any "inventory," as such term is defined in the Code, now owned or hereafter acquired by such Person, wherever located, including inventory, merchandise, goods and other personal property that are held by or on behalf of such Person for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in such Person's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

"Investment" means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of any Stock, or other ownership interest in, any other Person, and (ii) any direct or indirect loan, advance or capital contribution by Borrower or any of its Subsidiaries to any other Person.

"Investment Property" means, for any Person, all "investment property," as such term is defined in the Code, now owned or hereafter acquired by such Person, wherever located, including: (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of such Person, including the rights of such Person to any securities account and the financial assets held by a Securities Intermediary in such securities account and any free credit balance or other money owing by any Securities Intermediary with respect to that account; (iii) all securities accounts of such Person; (iv) all commodity contracts of such Person; and (v) all commodity accounts held by such Person.

"IRC" means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Lead Borrower" has the meaning ascribed to it in the Preamble.

"Lender" and "Lenders" have the meanings ascribed to them in the Preamble.

"Letter of Credit" has the meaning ascribed to it in Section 2.19.

"LIBOR Rate" shall mean LIBOR plus nine percent (9%) per annum.

"LIBOR" shall mean, for any Fiscal Quarter, the quoted offered rate (expressed in a percentage) for three-month United States dollar deposits with leading banks in the London interbank market that appears as of 11:00 a.m. (London time) on the first LIBOR Business Day of such Fiscal Quarter as it appears in the ICE Benchmark Administration's Secured Financial Transaction Protocol service or through a third-party redistributor of such information, which shall note an average ICE Benchmark Administration Limited Fixing for US Dollar (such page currently being ICE LIBOR USD 3 Month page and formerly BBA LIBOR USD 3 Month), as determined by the Lenders. The establishment of LIBOR by the Lenders shall be final and binding, absent manifest error.

"LIBOR Business Day" shall mean a day upon which (i) United States dollar deposits may be dealt in on the London interbank markets and (ii) commercial banks and foreign exchange markets are open in London, England and in New York.

"License" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower or any of its Subsidiaries.

"Lien" means any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference,

priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Code or comparable law of any jurisdiction).

"Litigation" has the meaning ascribed to it in Section 4.1(i).

"Loan" has the meaning ascribed to it in Section 1.1(a).

"Loan Account" has the meaning ascribed to it in Section 1.7.

"Loan Commitment" has the meaning ascribed to it in Section 1.1(a).

"Loan Documents" means the Agreement, the Note, the Collateral Documents, and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Agent for the benefit of Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower and delivered to the Agent and/or the Lenders in connection with the Agreement or the transactions contemplated thereby, but excluding any Equity Documents. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements, replacements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, or financial condition of Borrower and/or its Subsidiaries, taken as a whole, (b) Borrower's ability to pay the Loan or any of the other Obligations in accordance with the terms of the Agreement and the other Loan Documents, (c) the Collateral (including the value of the Collateral) or the Secured Parties' Liens on the Collateral or the priority of such Liens, or (d) the Agent and/or any Lender's rights and remedies under the Agreement and the other Loan Documents.

"Maturity Date" means February 20, 2019.

"Maximum Lawful Rate" has the meaning ascribed to it in Section 1.2(d).

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, and to which Borrower or any ERISA Affiliate is making, is obligated to make or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

"Note" has the meaning ascribed to it in Section 1.1(c).

"Obligations" means all loans, advances, debts, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or

determinable), owing by Borrower to the Agent and/or any Lender, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the Agreement or any of the other Loan Documents, but excluding any obligations arising under the Equity Documents. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against Borrower in bankruptcy, whether or not allowed in such case or proceeding), Fees, Charges, expenses, attorneys' fees and any other sum chargeable to Borrower under the Agreement or any of the other Loan Documents.

"Participant" is defined in Section 8.26.

"Participation" is defined in Section 8.26.

"Patent License" means, with respect to any Person, rights under any agreement now or hereafter entered into by such Person, either granting any right with respect to any Patents and/or acquiring any rights to any Patents or applications for Patents, including the right to collect royalties or other license payments.

"Patents" means, with respect to any Person, all of the following in which such Person now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other jurisdiction, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other jurisdiction, including 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 or any other patent jurisdiction, and (b) all reissues, continuations, continuations in part or extensions thereof.

"Payment Date" is defined in Section 1.2(a).

"Payment Intangible" as defined in the Code and also any General Intangible under which the Account Debtor's primary obligation is a monetary obligation.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" means a Plan described in Section 3(2) of ERISA.

"Perfection Certificate" means the Perfection Certificate issued by Borrower in connection with this Agreement.

"Permitted Acquisition" means any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of any Stock, or other ownership interest in, any other Person or any purchase or other acquisition of all or any substantial part of the business or assets of any other Person (an "Acquisition") so long as:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual;

(b) Borrower has provided the Agent with (i) written notice of the proposed Acquisition promptly upon the execution of any letter of intent in connection therewith or concurrently with Borrower's notification to the Board of such proposed Acquisition, but in all events at least thirty

(30) days prior to the anticipated closing date of the proposed Acquisition and, (ii) not later than two Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the then current drafts of acquisition agreement and other material documents relative to the proposed Acquisition;

(c) Borrower has provided the Agent with its due diligence package relative to the proposed Acquisition;

(d) the subject assets or Stock, as applicable, are being acquired directly by Borrower and, in the case with an acquisition of Stock, Borrower shall comply with Section 2.17(b);

(e) a Qualified IPO has occurred;

(f) total cash consideration for any single Acquisition or series of related acquisitions shall not exceed the greater of (i) $10,000,000 and (ii) thirty-five percent (35%) of Borrower's consolidated revenue for the twelve month period ending on the last day of the most recent Fiscal Quarter for which Borrower has provided Financial Statements to the Agent as provided in Section 4.1(b), in each case for all Acquisitions consummated in the immediately preceding twelve months;

(g) the total cash consideration payable in respect of all Permitted Acquisitions shall not exceed (i) if Borrower has received gross proceeds (before underwriting discounts, commissions and expenses) of at least $100,000,000 from a Qualified IPO, then $20,000,000 in the aggregate, (ii) if Borrower has received gross proceeds (before underwriting discounts, commissions and expenses) of less than $100,000,000 but greater than or equal to $80,000,000 from a Qualified IPO, then a pro rata portion of the $20,000,000 in the aggregate based on the ratio of (A) gross proceeds (before underwriting discounts, commissions and expenses) Borrower has received from a Qualified IPO to (B) $100,000,000 and (iii) if Borrower has received gross proceeds (before underwriting discounts, commissions and expenses) of less than $80,000,000 from a Qualified IPO, then $0;

(h) the Acquisition shall be in a substantially similar line of business as Borrower (or, for an Acquisition of assets, shall be of a kind used in Borrower's line of business); and

(i) Borrower's Stock shall not have traded on any securities exchange for more than twenty percent (20%) below the Stock's Qualified IPO price for the thirty (30) consecutive trading days prior to the proposed Acquisition (such price being proportionately adjusted from time to time to take into account the effect of any stock splits, reverse stock splits, stock dividends, and similar applicable, proportional stock transactions occurring from time to time).

"Permitted Encumbrances" means the following encumbrances:

(a) Liens for taxes or assessments or other Charges of any Governmental Authority not yet due and payable or which are being contested in good faith by appropriate proceedings and with adequate reserves;

(b) Liens incurred or deposits made securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation or securing the performance of tenders, bids, leases, contracts (other than for the repayment of Indebtedness) and other similar obligations (excluding Liens under ERISA);

(c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which Borrower is a party as lessee made in the ordinary course of business;

(d) Liens of materialmen, mechanics, warehousemen, carriers, artisan's or other similar Liens arising in the ordinary course of Borrower's business or by operation of law, which are not past due or which are being contested in good faith by appropriate proceedings and for which reserves satisfactory to the Agent have been established, and do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Borrower or any Subsidiary;

(e) Liens arising from leases, subleases, licenses or sublicenses granted to others in the ordinary course of business not interfering in any material respect with the business of Borrower or any Subsidiary, and not interfering with any interest or title of a lessor under any lease;

(f) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which Borrower is a party;

(g) any attachment or judgment lien not constituting an Event of Default;

(h) zoning restrictions, easements, licenses, or other restrictions on the use of any Real Estate or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use, value, or marketability of such Real Estate;

(i) presently existing or hereafter created Liens in favor of the Agent for the benefit of the Secured Parties;

(j) Lien on specific Equipment provided that such Liens only attach to such Equipment, are incurred in connection with the acquisition, installation or improvement thereof and the aggregate amount secured by same does not exceed the amount of Indebtedness permitted pursuant subsection (d) of the definition of "Permitted Indebtedness";

(k) Liens existing on the date hereof and renewal, refinancing and extensions (without increase in underlying Indebtedness) thereof which Liens are set forth on Schedule 3.2;

(l) Liens in favor of Senior Lender to secure the Senior Debt and any renewal, refinancing and extensions thereof;

(m) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by Borrower or any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements;

(n) Liens consisting of rights of first refusal, co-sale and first refusal rights with respect to Stock; and

(o) Liens securing products, credit services, and financial accommodations provided to Borrower or any of its Subsidiaries, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, foreign exchange services and any extension, renewal or refinancing thereof, provided the aggregate amount secured by same does not exceed the amount of Indebtedness permitted pursuant to subsection (j) of the definition of "Permitted Indebtedness."

"Permitted Holder" means any of Adams Street Partners, Hummer Winblad Venture Partners, SAP Ventures, Partech U.S. Partners or Partech International Growth Capital, or any of their Affiliates.

"Permitted Indebtedness" means:

(a) Indebtedness under the Related Transaction Documents;

(b) Indebtedness pursuant to a Contingent Obligation permitted under Section 3.4;

(c) Indebtedness as set forth on Schedule 3.1 and any extension, renewal or refinancing thereof so long as the principal amount thereof is not increased;

(d) Indebtedness secured by a Lien described in clause (j) of the definition of "Permitted Encumbrance" provided (i) such Indebtedness does not exceed the lesser of cost or fair market value of the equipment financed with such Indebtedness and the costs of installation or improvement thereof and (ii) such Indebtedness does not exceed $15,000,000 in the aggregate at any time (inclusive of any equipment financing arrangements set forth on Schedule 3.1);

(e) unsecured Subordinated Debt not to exceed $1,000,000 in the aggregate, provided, however, that the Agent may, from time to time in its sole discretion, permit Borrower to incur unsecured Subordinated Debt in excess of such amount;

(f) Indebtedness of Borrower to any Subsidiary, or any Subsidiary to Borrower, solely to the extent such Investment is permitted under Section 3.3;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations of such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds and other similar obligations, in each case provided in the ordinary course of business;

(i) the Senior Debt and any extension, renewal or refinancing thereof so long as the principal amount thereof is not increased; and

(j) Indebtedness in respect of products, credit services, and financial accommodations provided to Borrower or any of its Subsidiaries, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, foreign exchange services and any extension, renewal or refinancing thereof so long as the principal amount thereof is not increased, provided such Indebtedness does not exceed $2,000,000 in the aggregate at any time (inclusive of any letters of credit set forth on Schedule 3.1).

"Permitted Transfer" means:

(a) Transfers of Inventory in the ordinary course of business;

(b) Transfers of non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business;

(c) Transfers of used, worn-out, surplus or obsolete Equipment;

(d) Transfers of property of any Subsidiary to Borrower or of any Subsidiary that is not required to be a Borrower under this Agreement to any other Subsidiary;

(e) Transfers of Equipment of Borrower or any Subsidiary to (i) any Subsidiary (other than a Foreign Subsidiary) and (ii) any Foreign Subsidiary in an aggregate amount not to exceed $100,000 in any calendar year, in each case that is in compliance with Section 2.17(b), to the extent such Transfer is necessary for such Subsidiary's operations;

(f) dispositions of accounts receivable in connection with the compromise, settlement or collection thereof consistent with past practices; and

(g) dispositions of assets that are not otherwise permitted so long as the aggregate fair market value of all such assets disposed of under this clause (g) do not exceed $250,000 during any calendar year.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Plan" means, at any time, an "employee benefit plan," as defined in Section 3(3) of ERISA, that Borrower or any ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by Borrower.

"Pledged Interests" means all Pledged Stock and all other shares, capital stock, membership interest, partnership interest or other equity interests of, and all other right, title and interest now owned or hereafter acquired by Borrower, regardless of class or designation, together with (a) all additional options, warrants, share appreciation right and other rights now or hereafter acquired by Borrower in respect of such shares, capital stock, membership interest,

partnership interest or other equity interests (whether in connection with any capital increase, recapitalization, reclassification, or reorganization or otherwise) and all other property, rights or instruments of any description at any time issued or issuable as an addition to or in substitution or replacement for such shares, capital stock or other equity interests; (b) all certificates, instruments, or other writings representing or evidencing such interests, and all accounts and general intangibles arising out of, or in connection with, such interests; (c) any and all moneys or property due and to become due to Borrower now or in the future in respect of such interests or to which Borrower may now or in the future be entitled in its capacity as a member, shareholder or other equity holder, whether by way of a dividend, distribution, return of capital or otherwise; (d) all other claims which Borrower now has or may in the future acquire in its capacity as a member, shareholder or other equity holder against such entity and its property; (e) all rights of Borrower under any formation documents; and (f) all other agreements, if any, to which Borrower is a party from time to time which relate to its ownership of such interest, including, without limitation, all voting and consent rights of Borrower arising thereunder or otherwise in connection with Borrower's ownership of such interests.

"Pledged Stock" shall mean the shares of Stock listed on Schedule I, together with any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of the Stock of any Person that may be issued or granted to, or held by, any Borrower while this Agreement is in effect.

"Prime Rate" means the rate of interest which is announced and/or published in the Money Rates section of *The Wall Street Journal* from time to time as the prime rate (or if a range of rates is announced and/or published, the Prime Rate shall mean the highest of such rates).

"Pro Forma" means the unaudited consolidated balance sheets of Borrower and its Subsidiaries prepared in accordance with GAAP as of the Closing Date after giving effect to the Related Transactions.

"Proceeds" include, without limitation, "Proceeds" as defined in the Code, and the proceeds of each type of property described in Section 1.9.

"Projections" means Borrower's forecasted consolidated: (a) balance sheets; (b) profit and loss statements; and (c) cash flow statements, consistent with the historical Financial Statements of Borrower, together with appropriate supporting details and a statement of underlying assumptions.

"Qualified IPO" means the sale by Borrower or any direct or indirect parent of Borrower of its common Stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the Securities & Exchange Commission in accordance with the Securities Act.

"Qualified Plan" means a Pension Plan that is intended to be tax-qualified under Section 401(a) of the IRC.

"Real Estate" has the meaning ascribed to it in Section 5.13.

"Receivables Collateral" shall mean Borrower's Accounts, Contract Rights, General Intangibles, Payment Intangibles, Chattel Paper, Instruments, Documents of Title, Documents, Securities, letters of credit for the benefit of the Borrower, and bankers' acceptances held by the Borrower, and any other rights to payment.

"Related Transactions" means the borrowing of the Loan, the issuance of the Warrants, the payment of all Fees, costs and expenses associated with all of the foregoing in each case as contemplated herein and the execution and delivery of all of the Related Transactions Documents.

"Related Transactions Documents" means the Loan Documents, the Equity Documents, and all other agreements or instruments executed in connection with the Related Transactions.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

"Restricted Payment" means, with respect to any Person (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution in respect of Stock; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Person's Stock or any other payment or distribution made in respect thereof, either directly or indirectly, other than any such payment made to redeem securities of such Person held by an employee, officer or director upon death, disability, retirement or termination; (c) any payment or prepayment of principal or premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to the Loan (except in accordance with the terms hereof) or any Subordinated Debt; (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Person now or hereafter outstanding, other than any such payment made to redeem securities of such Person held by an employee, officer or director upon death, disability, retirement or termination; (e) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of such Person's Stock or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (f) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Person other than payment of compensation to Stockholders who are employees of such Person and other senior management of such Person or severance payments upon the termination thereof; and (g) any payment of management fees (or other fees of a similar nature), or out-of-pocket expenses in connection therewith by any Person to any Stockholder of such Person or its Affiliates.

"Retiree Welfare Plan" means, at any time, a Welfare Plan that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant's termination of employment, other than continuation coverage provided pursuant to Section 4980B of the IRC and at the sole expense of the participant or the beneficiary of the participant.

"Required Lenders" means, at any time, Lenders who hold more than 50% of the aggregate amount of outstanding Loans and unfunded commitments.

"Securities Act" means the Securities Act of 1933.

"Secured Parties" means, collectively, the Lenders and the Agent.

"Securitization Transaction" means any financing transaction undertaken by any Lender or an Affiliate of any Lender that is secured, directly or indirectly, by the Note or any portion thereof or any interest therein, including any sale, whole loan sale, commercial paper warehouse transaction, asset securitization, secured loan or other transfer.

"Senior Debt" has the meaning ascribed to it in Section 8.24.

"Senior Lender" has the meaning ascribed to it in Section 8.24.

"Solvent" means, with respect to any Person on a particular date, that on such date if such Person is not "insolvent" as defined in the Code. The amount of contingent liabilities (such as Litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

"Stock" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act).

"Stockholder" means, with respect to any Person, each holder of Stock of such Person.

"Subordinated Debt" means any Indebtedness of Borrower subordinated to the Obligations in a manner and form satisfactory to the Agent in is sole discretion, as to right and time of payment and as to any other rights and remedies thereunder.

"Subsidiary" means, with respect to any Person, (a) any corporation of which an aggregate of more than 50% of the outstanding Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of 50% or more of such Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of Borrower.

"Succeeding Fiscal Year" has the meaning ascribed to it in Section 4.3.

"Supporting Obligation" has the meaning given that term in the Code and also refers to a Letter-of-Credit Right or secondary obligation which supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

"Taxes" means any present or future income, excise, stamp or franchise taxes and other taxes, assessments, imposts, duties, deductions, fees, withholdings or similar charges, and all liabilities with respect thereto of any nature whatsoever imposed by any Governmental Authority.

"Termination Date" means the date on which (a) the Loan has been repaid in full, (b) all other Obligations (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted in accordance with the terms of this Agreement) under the Agreement and the other Loan Documents have been completely discharged; and (c) Borrower shall not have any further right to borrow any monies under this Agreement.

"Title IV Plan" means a Pension Plan (other than a Multiemployer Plan), that is covered by Title IV of ERISA, and that Borrower or any ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

"Trademark License" means, with respect to any Person, rights under any agreement now or hereafter entered into by such Person either granting and/or acquiring any right to use any Trademark, including the right to collect royalties or other license payments.

"Trademarks" means, with respect to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all trademarks, trade names, corporate names, business names, trade dress, trade styles, service marks, mask works, logos, internet domain names, other source or business identifiers (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including 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 or territory thereof, or any other country, jurisdiction or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

"Transfer" has the meaning ascribed to it in Section 3.7.

"Warrants" means a certain Warrants to Purchase Stock issued on the Closing Date by Borrower in favor of the Lenders.

"Welfare Plan" means a Plan described in Section 3(1) of ERISA.

Rules of construction with respect to accounting terms used in the Agreement or the other Loan Documents shall be as set forth or referred to in this Annex A. All other undefined terms contained in any of the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code to the extent the same are used or defined therein; in the

event that any term is defined differently in different Articles or Divisions of the Code, the definition contained in Article or Division 9 shall control. Unless otherwise specified, references in the Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in the Agreement. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to the Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in the Agreement or any such Annex, Exhibit or Schedule.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; the word “or” is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of Borrower, such words are intended to signify that Borrower has actual knowledge or awareness of a particular fact or circumstance or that Borrower, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance.

EXHIBIT 1.1

FORM OF ADDITIONAL ADVANCE

EXHIBIT 1.1
TO LOAN AND SECURITY AGREEMENT

FORM OF ADDITIONAL ADVANCE REQUEST

TO: FIFTH STREET FINANCE CORP., a Delaware corporation, as Agent under that certain Loan and Security Agreement dated February 20, 2014 ("**Loan and Security Agreement**"). Initially capitalized terms not otherwise defined herein shall have the meaning ascribed such term in the Loan and Security Agreement.

FROM: FIVE9, INC., a Delaware corporation, and FIVE9 ACQUISITION LLC, a Delaware limited liability company (jointly and severally, individually and collectively, "**Borrower**").

Borrower hereby requests an Additional Advance in the amount and on the date set forth below:

Amount of requested Additional Advance:	$
Requested date Additional Advance to be made:	$

The undersigned represents and warrants that each of the conditions to an Additional Advance in Sections 1.1(e)(ii) and 7.2 of the Loan and Security Agreement is satisfied and no Default or Event of Default exists under the Loan and Security Agreement.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Agent Use Only

Received By: _____

Date: _____

Verified By: _____

Date: _____

EXHIBIT 7.1

CLOSING AGENDA

AGENDA OF ITEMS REQUIRED FOR CLOSING OF PROPOSED
$30,000,000 SECOND LIEN LOAN ARRANGEMENT
BY
FIFTH STREET FINANCE CORP. (“Lender”)
TO
FIVE9, INC.
AND
FIVE9 ACQUISITION LLC (collectively, “Borrower”)

Legend: (i) B = Borrower; (ii) BC = Borrower’s Counsel; (iii) L= Lender; (iv) LC = Lender’s Counsel

Agenda Number	Item	Responsible Party	Status
	I. LOAN DOCUMENTS		
1.1	Note	LC	Final
	a. $10mm (FSMP V)		
	b. $20mm (FSFC)		
1.2	Loan and Security Agreement	LC	Final
1.3	Schedules to Loan and Security Agreement	BC	Final
1.4	Exhibits to Loan and Security Agreement	LC	Final
1.5	UCC Financing Statements	LC	Final
1.6	Intercreditor Agreement	Senior Lender Counsel	Final
1.7	IP Filings	LC	Final
	a. Trademarks Collateral Assignment and Security Agreement		
	b. Patent Collateral Assignment and Security Agreement		
	c. Copyright Collateral Assignment and Security Agreement		
1.8	Landlord’s Consent	LC	Post-closing
	-San Ramon HQ		
1.9	Perfection Certificate for each Borrower	B/BC	Final
1.10	Fifth Street Funding Memorandum	LC	Final
1.11	Post-Closing Letter	LC	Final

Agenda Number	Item	Responsible Party	Status
	II. ENTITY AND ORGANIZATIONAL DOCUMENTATION		
	For Each Borrower		
2.1	(a) Certificates of Good Standing	BC	Received
	(b) Certificates of Good Standing/Foreign Qualification, as appropriate	BC	Received
	(c) Member's Certificate of incumbency and authority, attaching organizational documents and resolutions (if LLC)/Secretary's Certificate of incumbency and authority, attaching organizational documents and resolutions (if corporation)	BC	Final
	(d) Certificate of Formation (if LLC)/Articles of Organization (if corporation)	BC	Received
	(e) Operating/LLC Agreement (if LLC)/Bylaws (if corporation)	BC	Received
	(f) Votes, Consents, Resolutions authorizing transaction and loan	BC	Final
2.2	List of Senior Management Team	B	Received
2.3	Organizational Chart	B	Received
	III. EQUITY DOCUMENTS		
3.1	Warrants	LC	Final
3.2	Joinder to Stockholders Agreement	BC	Final
3.3	Lock-up Agreements	BC	Final
3.4	Capitalization Table	B/BC	Received
	IV. MISCELLANEOUS		
4.1	Copies of all Senior Loan Documents and draft of any amendments	B/BC	Received
4.2	Pro Forma Balance Sheet	B	Received
4.3	Copies of all Material Contracts/summaries	BC	Received
4.4	UCC, Litigation, Bankruptcy and Tax Lien Searches (for Borrower and any related parties)	LC	Received

Agenda Number	Item	Responsible Party	Status
4.5	Evidence of Insurance (Acord 27 (4/2004 version) and Acord 25S forms) ****See attached insurance requirements****	BC	Received
4.6	Legal Opinion of Borrower's counsel regarding enforceability, and due authorization	BC	Final
4.7	Lease for each location	BC	Received
4.8	Payment of loan fees, servicing fees, legal fees and other loan expenses	B	At closing
4.9	Financial Statements, operating results and budgets for most recent periods as requested by Lender	BC	Received
4.10	Satisfactory review of QofE and other reports	L/B	Received

SCHEDULE I

Pledged Stock

Issuer	Type of Interest	# Shares (%)	Certificate
Five9 Acquisition LLC	Membership interest	100 Units (100%)	N/A
Five9 Inc. Ireland Limited	Ordinary shares	100 (100%)	N/A
Five9 Philippines, Inc.	Capital stock	108,536 (100%)	N/A
Five9.ru	LLC interest	N/A (100%)	N/A
Five9 India Private Limited (dormant)	Shares	(unknown)	(unknown)
2058413 Ontario Inc. (in process of being dissolved)	Shares	(unknown)	(unknown)

* All Pledged Stock held by Five9, Inc.

** Percentage is calculated without giving effect to directors qualifying interests or similar interests

SCHEDULE 2.18

Security Interest Filings

Borrower	Jurisdiction
Five9, Inc.	Delaware Secretary of State
Five9 Acquisition LLC	Delaware Secretary of State

SCHEDULE 3.1

Indebtedness

Borrower has existing equipment lease lines of credit with the following providers:

Provider	Outstanding Balance (12/31/13)	Available Amount
Atel	$ 15,899.48	$ 0
Fountain	$ 888,146.04	$ 0
HP	$1,187,672.04	$ 0
Cisco	$3,176,974.75	$ 0
Winmark	$3,961,925.03	$1,670,000.00
Total	$9,230,617.34	$1,670,000.00

Borrower has arranged for City National Bank to issue irrevocable standby letter of credit ISB00000942 for the benefit of Alexander Properties Company in the original amount of $700,000 in connection with Borrower's lease with Alexander Properties Company for its corporate headquarters.

Borrower has arranged for City National Bank to issue irrevocable standby letter of credit ISB00000939 for the benefit of International Fidelity Insurance Company in the original amount of $121,349 in connection with the posting of a bond with the California Public Utilities Commission.

Letter Agreement Promissory Note dated as of July 16, 2013, between Five9, Inc. and Universal Service Administrative Company with respect to contributions to Universal Service Fund.

SCHEDULE 3.2

Liens

Borrower has agreed to maintain $700,000 in an account at City National Bank to secure its reimbursement obligations under irrevocable standby letter of credit ISB00000942 for the benefit of Alexander Properties Company in the original amount of $700,000 in connection with Borrower's lease with Alexander Properties Company for its corporate headquarters.

Borrower has agreed to maintain $121,349 in an account at City National Bank to secure its reimbursement obligations under irrevocable standby letter of credit ISB00000939 for the benefit of International Fidelity Insurance Company in the original amount of $121,349 in connection with the posting of a bond with the California Public Utilities Commission.

SCHEDULE 5.4(b)

Capitalization

Subsidiaries:

Subsidiary	Holder	Percentage Held
Five9 Acquisition LLC	Five9, Inc.	100%
Five9 Inc. Ireland Limited	Five9, Inc.	100%
Five9 Philippines, Inc.	Five9, Inc.	100%
Five9.ru	Five9, Inc.	100%
Five9 India Private Limited (dormant)	Five9, Inc.	100%
2058413 Ontario Inc. (in process of being dissolved)	Five9, Inc.	100%
Five9 Inc. Ireland Limited, Sucursal en Espana	Five9 Inc. Ireland Limited	100%

* Percentage is calculated without giving effect to directors qualifying interests or similar interests

Lead Borrower:

(Attached)

SCHEDULE 5.16

ERISA

The company has the following Plans:

A Group Insurance Policy with Anthem Blue Cross for health care coverage for its employees and their dependents.

A Group Agreement with Kaiser Foundation Health Plan, Inc. for health care coverage for its employees and their dependents.

An insurance policy agreements with the following entities: Guardian Dental (dental insurance); VSP (vision insurance); and Guardian (life, short term, and long term insurance) for its employees and their dependents.

A standard 401K plan for U.S. employees (Borrower does not make any contributions to this plan on behalf of its employees).

SCHEDULE 5.18

Insurance

(Attached)

Exhibit 10.19

BILLING INFORMATION

Lessee: Five 9, Inc.

Agreement to Lease Equipment No: 9383-MM001-0

Providing timely and accurate invoices for each of your lease transactions is important to Cisco Systems Capital Corporation (CSCC). Please verify and/or complete the information below and return this with the signed Agreement.

1. **Billing Address**: Our records indicate invoices for this lease should be sent to the following address . If this is not correct, please indicate the correct information in the space provided.

   7901 Stoneridge Drive _____
   Pleasanton, CA 94588 _____

2. **Billing Contact**: Our records indicate the invoices should be addressed to the attention of the following contact. Please provide correct information as appropriate. ··

   Accounts Payable _____
   Contact E-Mail Address _____

3. **Billing Contact Telephone Number**: Please provide the appropriate contact telephone number if the one below is not correct.

   (925) 201-2000 _____

4. **PO Number**: Please indicate which of the following numbers will be required on your invoice.

   _____ Purchase Order # _____ (Check if required)
   _____ Reference # _____ (Check if required)
   _____ None (Check if required

5. **Sales/Use Tax Status**: Our records indicate that you have provided a tax exemption certificate for the following states.

State	Asset Type	Expiration

Note: Lessee will be responsible for all applicable taxes until CSCC has received a qualifying exemption certificate or direct pay permit.

Lessee, *please elect one of the following options* related to any upfront tax:

_____ 1) Pay any applicable upfront tax on the first invoice, or

_____ 2) Finance any applicable upfront tax over the term of this Agreement

* If Lessee elects Option 2, an amendment or correction to original Lease Agreement may be required to adjust the total amount financed.

CISCO Capital Cisco System Capital Corporation
170 West Tasman Drive, Mailstop SJ-13/3
San Jose, CA 95134

6. **Miscellaneous Billings**: Unless other arrangements have been made, all taxes (other than taxes associated with Rental Payments) and freight charges paid by CSCC to the supplier will be billed on Lessee's initial invoice.

7. **Equipment** Location: Please indicate below the location(s) where the equipment on this schedule will be installed.

Street Address	City	State/Zip	County
Street Address	City	State/Zip	County
Street Address	City	State/Zip	County

8. ____ Check here, if there will be more than three installation addresses for this schedule.

In order to ensure accurate and timet invoicing, it is necessary that we obtain all this information prior to completing

Prepared By /s/ David Hill
Printed Name _____
Phone Number _____

CISCO Capital Cisco System Capital Corporation
170 West Tasman Drive, Mailstop SJ-13/3
San Jose, CA 95134

Legal Name of Lessee	D.B.A Name		Federal Tax ID
Five9, Inc.			
Address			County
7901 Stoneridge Drive Suite 200			Alameda
City	State	Zip	Corporation / Partnership / Proprietorship
Pleasanton	CA	94588	A Delaware private corporation
Contact Name		Phone Number	Fax Number
David Hill		925-201-2000	

		Quantity Model Equipment Description Serial #
Total Amount Financed	$2,040,244.34	
Periodic Rent:		
1 to 12	$73,648.68***	SEE ATTACHED “ANNEX A”
13 to 36	$54,121.93***	
Lease Term:	36 (Months)	
End of Lease Option:	$1 buy out	
Equipment Location:	See Attached “Annex A”	

AGREEMENT TO LEASE EQUIPMENT

1. Lease of Equipment. In accordance with the terms and conditions of this Agreement to Lease Equipment (“Lease”), Cisco Systems Capital Corporation (“Lessor”) shall lease to Lessee, and Lessee shall lease from Lessor, the personal property, and any one-time charges for related expenses financed by Lessor (“Soft Costs”), described in Annex A hereto together with all substitutions, replacements, repairs, parts and attachments, improvements and accessions thereto (the “Equipment”), Annex A hereto is expressly incorporated herein and made a part of this Lease.

2. Terms of Lease. The term of this Lease shall commence on the date of execution of the Certificate of Acceptance (“Commencement Date”), and continue for the number of months set forth above (the “Initial Term”). ·“If Lessee fails to return the Certificate of Acceptance within 5 days of acceptance of the Equipment, Lessee shall (i) be deemed to have accepted and ratified such Certificate of Acceptance and (ii) be deemed to have authorized Lessor to complete and legally sign the Certificate of Acceptance on behalf and in the name of Lessee. Unless (a) Lessor receives written notice, at least 90 days prior the expiration of the Term, of Lessee’s intent to (i) purchase the Equipment pursuant to Section 15, or (ii) not renew the Lease, or (b) the “End of Lease Option” above specifies “$1 buy out”, this Lease shall renew automatically in 90-day non-cancelable increments (each an “Extended Term”, .and any Extended Term, together with the initial Term, the “Term”) m, the “Term”). This Lease is non-cancelable for any reason whatsoever, prior to the end of the Lease Term.

3. Rent. Lessee agrees to pay Lessor the rent set forth above (“Rent”) for the Equipment and any son Costs beginning the first day of the calendar month immediately following the Commencement Date (unless the Commencement Date is the first day of the month, in which case the first Rent payment shall be due on such date) at the address specified above. The Rent for any Extended Term shall be payable monthly, in advance, and shall be in an amount equal to that of the original Rent, adjusted, as applicable, for Soft Costs.

4. Advance Change Agreement. Lessee acknowledges that complete and definitive information regarding the Equipment may not be available at the time of execution of this Lease and any Certificate of Acceptance. Lessee hereby irrevocably authorizes Lessor, without any further action or agreement by Lessee, to (i) modify or replace Annex A or any Certificate of Acceptance in order to supplement, correct, or replace descriptive or location information regarding the Equipment, and (ii) increase or decrease the total amount financed under this Lease, provided such increase or decrease shall in no event exceed five percent (5%) of the amount set forth in the Lease as originally executed by the parties, as Lessor may deem appropriate, to the extent necessary to accurately document the Equipment information and/or the amount financed under this Lease. Lessee agrees to be bound by such changes made by Lessor as though set forth herein at the time of Lessee's execution of this Lease or the Certificate of Acceptance.

5. Disclaimers; Warranties. Lessee represents and acknowledges that the Equipment is of a size, design, capacity and manufacture selected by it. **LESSEE LEASES THE EQUIPMENT AS IS AND, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, THE MANUFACTURER'S AGENT OR THE SELLER'S AGENT, LESSOR MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE EQUIPMENT, OR INTELLECTUAL PROPERTY RIGHTS (INCLUDING WITHOUT LIMITATION ANY PATENT, COPYRIGHT AND TRADEMARK RIGHTS, OF ANY THIRD PARTY WITH RESPECT TO THE EQUIPMENT, WHETHER RELATING TO INFRINGEMENT OR OTHERWISE) WITH RESPECT TO THE EQUIPMENT. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM POSSESSION OR USE OF THE EQUIPMENT.** All transferable manufacturer and supplier warranty rights are, to the extent such rights have been transferred to Lessor, hereby assigned without representation or warranty by Lessor to Lessee for the Lease Term, which warranties Lessee is authorized to enforce.

6. Net Lease; Payments Unconditional. **THIS LEASE IS A NET LEASE. LESSEE'S OBLIGATION TO PAY ALL· RENT AND OTHER SUMS HEREUNDER, AND THE RIGHTS OF LESSOR IN AND TO SUCH PAYMENTS, SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SETOFF, OR RECOUPMENT, FOR ANY OTHER REASON WHATSOEVER**.

7. Use of Equipment. Lessee shall use the Equipment solely in the conduct of its business, in a manner and for the use contemplated by the manufacturer thereat: So long as no Event of Default exists, neither Lessor nor its assignee shall interfere with Lessee's right to use the Equipment under any Lease. Lessee acknowledges and represents that the Equipment shall be and remain personal property, notwithstanding the manner by which it may be attached or affixed to realty. ·

8. Delivery; Installation; Return; Maintenance and Repair; Inspection. Lessee shall be solely responsible, for (a) the delivery of the Equipment to Lessee, (b) the return of Equipment to Lessor, upon expiration or termination of the Lease, in good repair, condition and working order, ordinary wear and tear excepted, at the location(s) within the continental United States specified by Lessor, . and (c) the installation, de-installation, maintenance and repair of the Equipment. Lessee shall, at its expense, keep the Equipment in good repair; condition and working order, ordinary wear and tear excepted. Unless Lessee is purchasing the Equipment pursuant to Section 15, Lessee shall return the Equipment to Lessor within 15 days of the termination or expiration of this Lease. Lessee shall remain obligated to pay Rent until the Equipment is accepted by Lessor in the condition required by this section. Lessee. warrants that the Equipment, upon return to Lessor, will be acceptable to the manufacturer for maintenance. Lessor shall be entitled to inspect the Equipment at reasonable times.

9. Taxes. Lessee shall pay, and hereby indemnifies and holds Lessor harmless from all fees, assessments, taxes, and charges imposed by any governmental body or agency upon or with respect to any of the Equipment, or the possession, ownership, use or operation thereof. Lessor shall file and shall pay personal property taxes payable with respect to the Equipment. Lessee shall pay to Lessor the amount of all such personal property taxes within 15 days of its receipt of an invoice for such taxes.

10. Risk of Loss. Lessee assumes all risk of loss for Equipment upon delivery to Lessee. If the Equipment is lost or damaged beyond repair (a “Loss Event”), Lessee shall pay to Lessor, within 30 days of a Loss Event, an amount equal to all payments due and payable with respect to such Equipment on or prior to such Loss Event, plus a sum equal to the casualty value (“Casualty Value”) of such Equipment as of such date. The Casualty Value of the Equipment shall be 110% of the total Equipment cost set forth above, decreased from month to month thereafter by 1.69% of I the total Equipment cost. Upon making such payment, the Rent tbr such Equipment shall cease to accrue, the Term of the Lease as to such Equipment shall terminate.

11. Insurance. Lessee shall maintain property damage, liability insurance, insurance against loss or damage to the Equipment in an amount no less than the Casualty Value of the Equipment, with each such insurance policy naming Lessor as loss payee or additional insured thereof. Lessee shall provide Lessor with a Certificate of Insurance upon request.

12. Indemnity. Lessee hereby indemnities and holds harmless Lessor from and against any and all liability, damages, and costs arising from this Lease.

13. Prohibitions Related to Lease and Equipment. Without the prior written consent of Lessor, Lessee shall not assign, lend, pledge, transfer, or sublease the Equipment or the Lease, permit to exist any security interest, lien or encumbrance with respect to any of the Equipment; or cause or permit any of the Equipment to be moved from the location specified in Annex A.

14. Alterations and Modifications. Any alteration or improvement to any item of Equipment shall belong to and become the property of Lessor unless, at Lessee. risk, cost, and expense~’ it is removed prior to the return of such item of Equipment by Lessee.

15. End of Term Purchase. If the “End of Lease Option” at the beginning of this Lease specifies “FMV”, then upon termination or expiration of this Lease: (a) provided no Event of Default exists, and (b) Lessee has provided 90 days prior written notice to Lessor of its intent to purchase, Lessee shall have the option to purchase all (not part) of the Equipment at Fair Market Value without recourse or warranty. The Fair Market Value of the Equipment shall be the then retail market price determined by the mutual agreement of Lessor and Lessee. Title to the Equipment shall automatically pass to Lessee upon payment in full of the purchase price but in no event earlier than the expiration of the Term of this Lease. If the parties are unable. to agree on the purchase price, or the terms and conditions of the purchase, then this Lease shall remain in full force and effect, and Lessee will he invoiced, and agrees to pay Rent for the Equipment beyond the termination or expiration of the Lease until the Fair Market Value payment has been received by Lessor. If the “End of Lease Option” at the beginning of this Lease specifies “$1 buy out”, then upon expiration of the Initial Term, provided no Event of Default exists, Lessee shall purchase the Equipment hereunder by remitting One Dollar ($1.00) to Lessor on the last day of the Initial Term. Notwithstanding any purchase option hereunder, until all obligations of this Lease have been fulfilled, Lessor shall retain a purchase money security interest in the Equipment and this Lease shall constitute a security agreement under the Uniform Commercial Code of the state in which the Equipment is located.

16. Financial Statements. Lessee shall promptly furnish to Lessor such financial or other statements regarding the condition and operations of Lessee and any guarantor of any Lease, and information regarding the Equipment, as Lessor may from time to time reasonably request.

17. Events of Default. The occurrence of any of the following shall constitute an “ Event of Default” hereunder if(a) Lessee fails to pay any Rent or other amount due within ten days after it becomes due and payable; (b) Lessee fails to maintain insurance as required herein; (¢) Lessee is in breach of Section 13, (d) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings are instituted by or against Lessee; (c) Lessee defaults under any other Lease or agreement between the parties.

18. Remedies. If an Event of Default exists, Lessor may exercise any one or more of the following remedies, in addition to those arising under applicable law: (a) cancel any or all Leases by notice to Lessee and peacefully take possession of any or all of the Equipment; (b) recover all stuns due and accelerate and recover the present value of the remaining payment stream of all Rent due under this Lease, together with Rent and all other amounts currently due including without limitation, any and all direct, indirect and consequential damages; (c) sell or re-lease any or all of the Equipment, through public or private sale or lease transactions, and apply the proceeds thereof to. Lessee's obligations hereunder, and (d) exercise any other remedy in accordance with applicable provisions of the Uniform Commercial Code. Lessee shall remain liable for any resulting deficiency and Lessor may retain any surplus it may realize. Lessee shall pay all costs and expenses (including reasonable attorneys' fees) incurred by Lessor in retaking possession of, and removing, storing, repairing, refurbishing and selling or leasing such Equipment and enforcing any obligations of Lessee hereunder.

19. Assignment by Lessor. Lessor may assign or transfer any or all of Lessor's" interest in this Lease without notice to Lessee. Any assignee of Lessor shall have all of the rights, but none of the obligations (unless otherwise. provided in the applicable assignment), of a "Lessor" under this Lease. Upon notice of such assignment or transfer, Lessee will pay all Rent and other sums due ·under this Lease to such assignee or transferee. Lessee agrees that it will not assert against any assignee any defense, counterclaim or offset that Lessee may have against Lessor or any preceding assignee.

20. Entire Lease. No waiver or amendment of, or any consent with respect to, any provision of this Lease shall bind either party unless set forth in a writing signed by both parties. **TO THE EXTENT PERMITTED BY APPLICABLE LAW AND NOT OTHERWISE SPECIFICALLY GRANTED TO LESSEE HEREUNDER, LESSEE HEREBY \VAIV.ES ANY AND ALL RIGHTS OR REMEDIES CONFERRED UPON A LESSEE UNDER THE CODE OR ANY OTHER APPLICABLE LAW OR STATUTE**.

21. Default Rate. Any nonpayment of Rent or other amount payable hereunder shall result in Lessee's obligation to promptly pay. Lessor on such overdue payment, for the period of time during which it is overdue (including during any grace period), interest at a rate equal to the lesser of 14% per annum, or (b) the highest rate of interest permitted by applicable law (each, the "Default Rate").

22. Governing Law. The parties expressly agree this Lease shall be governed in all respects by the laws of the state of California. Lessee hereby consents to personal jurisdiction and venue in the courts of the State of California.

23. Survival. All obligations of Lessee to make payments to Lessor under this Lease or to indemnify Lessor, and all rights of Lessor hereunder with respect to this Lease, shall survive the termination of this Lease and the return of the Equipment.

24. Security. Lessee hereby appoints Lessor as its attorney-in-fact, coupled with an interest, to file such financing statements, amendments and any other instruments related to this Lease without Lessee's consent. Lessee hereby grants Lessor a security interest in Lessee's right, title and interest, now existing and hereafter arising, in and to all Equipment and any other rights to payment arising out of this Lease. The original of this Lease shall constitute chattel paper for purposes of the Uniform Commercial Code. If there exist multiple originals of this Lease, the one marked "Lessor's Copy" or words of similar import, shall be the only chattel paper.

25. NOTICE. Any notice, request, demand, consent, approval or other communication provided for or permitted in relation to this Lease shall be in writing (including via facsimile) and shall be delivered to the parties at their respective addresses set forth above.

LESSEE, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES THAT IT HAS READ THIS LEASE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. EACH PERSON SIGNING BELOW ON BEHALF OF LESSEE REPRESENTS AND WARRANTS THAT HE OR SHE IS AUTHORIZED TO EXECUTE AND DELIVER THIS LEASE ON BEHALF OF LESSEE.

LESSOR: CISCO SYSTEMS CAPITAL CORPORATION	LESEE:
Signed: _____ Date: _____	Signed /s/ David Hill Date: 10/27/11
Name/Title _____	Name/Title VP—Finance

WINMARK CAPITAL CORPORATION

Lease Agreement Number FI110812

Lease Agreement

This Lease Agreement, dated November 8, 2012, by and between WINMARK CAPITAL CORPORATION, a Minnesota Corporation (the "Lessor"), with an office located at 605 Highway 169 N, Suite 400, Minneapolis, Minnesota 55441, and FIVE9, INC. AND SUBSIDIARIES (the "Lessee") with an office located at 4000 Executive Parkway, Suite 400, San Ramon, California 94583

Lessor hereby leases or grants to the Lessee the right to use and Lessee hereby rents and accepts the right to use the equipment listed by serial number and related services, and software and related services on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, the equipment, software and services are the "Equipment"), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule. The term "Lease Agreement" shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.

1. Term

This Lease Agreement is effective from the date it is executed by both parties. The term of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the "Initial Term") and shall continue from year to year thereafter until terminated. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or any year thereafter by either party mailing written notice of its termination to the other party not less than one-hundred twenty (120) days prior to such termination date.

2. Commencement Date

The Installation Date for each item of Equipment shall be the day said item of Equipment is installed at the location of Installation, ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation of all the Equipment on the Lease Schedule, unless the latest installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case that is the Commencement Date. The Lessee agrees to complete, execute and deliver a Certificate of Acceptance to Lessor upon installation of the Equipment.

3. Lease Charge

The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate "Monthly Lease Charge(s)" as set forth on each and every Lease Schedule executed pursuant hereto (the aggregate "Monthly Lease Charge(s)" are the "Lease Charges"). Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. The Lease Charge for the period from the Installation Date to the Commencement Date (the "Installation Period") shall be an amount equal to the "Monthly Lease Charge" divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date, and such amount shall be due and payable upon receipt of an invoice from Lessor. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor on the due date, Lessee agrees to and shall pay, to the extent permitted by law, on demand, as a late charge, an amount equal to two and one-half percent (2 ½%), or the maximum percentage allowed by law if less, of the amount past due ("Late Charges"). Late Charges will accrue until billed by Lessor. Late Charges shall be charged and added to any past due amount(s) on the date such payment is due and every thirty (30) days thereafter until all past due amounts are paid in full to Lessor.

4. Taxes

In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, gross receipts taxes, personal property taxes and other taxes now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession or use of the Equipment, whether the same be assessed to Lessor or Lessee (the "Taxes"). Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessees own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee's actions or inactions. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor's failure to timely remit such tax payments.

5. Delivery and Freight Costs

Lessee shall accept delivery of and install the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee's designated Location of Installation are to be paid by the Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expense necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

6. Installation

Lessee agrees to pay for the actual installation of the Equipment at Lessee's site. Lessee shall make available and agrees to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

7. Return to Lessor

On the day following the last day of the lease term associated with a Lease Schedule (the "Return Date"), Lessee shall cause and pay for the Equipment on that Lease Schedule to be deinstalled, packed using the manufacturer's standard packing materials and shipped to a location designated in writing by Lessor (the "Return Location"). If the Equipment on the applicable Lease Schedule is not at the Return Location within ten (10) days of the Return Date, or Lessee fails to deinstall and ship the Equipment on the Return Date, then any written notice of termination delivered by Lessee shall become void, and the Lease Schedule shall continue in accordance with this Lease Agreement. Irrespective of any other provision hereof, Lessee will bear the risk of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor.

8. Maintenance

Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall enter into, pay for and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the manufacturer of the Equipment providing for continuous uninterrupted maintenance of the Equipment (the "Maintenance Agreement"). Lessee will cause the manufacturer to keep the Equipment in good working order in accordance with the provisions of the Maintenance Agreement and make all necessary adjustments and repairs to the Equipment. The manufacturer is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer full and free access to the Equipment. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer's customer engineers incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer's specification and eligible for the manufacturer's standard maintenance agreement upon delivery to and inspection and testing by the Lessor. If the Equipment is not free of physical defect or damage, operating according to manufacturer's specification, in good working order and/or eligible for the manufacturer's standard maintenance agreement, then Lessee agrees to reimburse Lessor for all costs, losses, expenses and fees associated with such equipment and the repair or replacement thereof.

9. Location, Ownership and Use

The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessor shall be permitted to display notice of its ownership on the Equipment by means of a suitable stencil, label or plaque affixed thereto.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment. Without Lessor's written permission, Lessee shall not attempt to or actually (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with possession; (iv) dispose of; or (v) remove from the Location of Installation, any item of Equipment. If any item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or

credit or otherwise to acquire new or different equipment (the "New Equipment") without Lessor's prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery which are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with all applicable laws and with the applicable vendor's or manufacturer's manual of instructions by competent and qualified personnel.

10. Financing Statement

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

11. Alterations and Attachments

Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments to the Equipment shall become part of the Equipment leased to Lessee and owned by Lessor. If, in Lessor's sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee's expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

12. Loss and Damage

Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged (collectively, the "Loss") then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the following amounts: (i) the Monthly Lease Charges (and other amounts) due and owing under this Lease Agreement at the time of the Loss, plus (ii) the applicable percent of the original cost of the Equipment subject to the Loss (or Event of Default, as defined hereinafter) shown on the casualty loss table part of a particular Lease Schedule (collectively, the sum of (i) plus (ii) shall be the "Casualty Loss Value"). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule and (ii) Lessee's obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) which swears out the facts supporting the Loss of any item of Equipment.

13. Insurance

Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value and naming Lessor and its assigns as the sole loss payee; and (ii) comprehensive public liability and third-party property insurance in such amounts and with such limits as Lessor may require and naming Lessor and its assigns as an additional insured. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued on the Equipment. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least "A" rated by A.M. Best. The proceeds of any loss or damage insurance shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition or (ii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

14. Enforcement of Warranties

Lessee, in its own name, shall, so long as this Lease Agreement is in force, enforce any manufacturer's Equipment warranty.

15. Warranties, Disclaimers and Indemnity

Lessor warrants that at the time the Equipment is delivered to Lessee, Lessor will have full right, power and authority to lease the Equipment to Lessee. EXCEPT FOR THE WARRANTY IN THE SENTENCE DIRECTLY PRECEDING THIS ONE, THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY

PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE REPRESENTS AND WARRANTS THAT IT IS NOT A FOREIGN "FINANCIAL INSTITUTION" OR ACTING ON BEHALF OF A FOREIGN "FINANCIAL INSTITUTION" AS THAT TERM IS DEFINED IN THE BANK SECRECY ACT, 31 U.S.C. 5318, AS AMENDED. LESSEE ACKNOWLEDGES THAT LESSOR, IN COMPLIANCE WITH SECTION 326 OF THE USA PATRIOT ACT, WILL BE VERIFYING CERTAIN INFORMATION ABOUT LESSEE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR AND ITS REPRESENTATIVES AND EMPLOYEES HAVE NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE'S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) THE ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE. LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE LESSOR AND LESSEE, THIS LEASE AGREEMENT OR THE PERFORMANCE, POSSESSION, LEASE OR USE OF THE EQUIPMENT. THIS LEASE AGREEMENT IS A "FINANCE LEASE" AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or nature, whether based upon a theory of strict liability or otherwise, caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, ownership, lease, possession, maintenance, operation, use or performance of any item of Equipment, including software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including software; (v) patent, trademark or copyright infringement; or (vi) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. Lessee's duty to defend and indemnify Lessor shall survive the expiration, termination, cancellation or assignment of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee's successors and permitted assigns.

16. Event of Default

The occurrence of any of the following events shall constituted Event of Default under this Lease Agreement and/or any Lease Schedule:

(1) the nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which non-payment continues for a period often (10) days from the date when due;

(2) the failure of Lessee to perform any other covenant or condition of this Lease Agreement, any Lease Schedule or any document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days after written notice thereof from Lessor;

(3) Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment;

(4) Lessee ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary petition in bankruptcy, is subject to an involuntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation;

(5) any of Lessee's representations or warranties made herein or in any oral or written statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect;

(6) Lessee defaults under or otherwise has accelerated any material obligation, credit agreement, loan agreement, conditional sales contract, lease, indenture or debenture; or Lessee defaults under any other agreement now existing or hereafter made with Lessor;

(7) the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement;

(8) the acquisition by any individual, entity or group of beneficial ownership of 20% or more of either (i) the then outstanding ownership interests of Lessee or (ii) the combined voting power of the then outstanding voting interests of Lessee entitled to vote generally in the election of directors or managers; or

(9) consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of Lessee or the acquisition of assets of another company,

17. Remedies

Should any Event of Default occur, Lessor may, in order to protect its interests and reasonably expected profits, with or without notice or demand upon Lessee, retain any and all security deposits and pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

(1) recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default;

(2) recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder;

(3) accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of four (4%) percent;

(4) cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment which Lessee agrees is not a penalty but rather the fair measure of Lessor's loss in or damage to Lessor's interests in the Equipment and Lease caused by Lessee's default hereunder;

(5) terminate any or all of the Lessee's rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement;

(6) retake (by Lessor, independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee;

(7) require Lessee to deliver the Equipment to a location designated by Lessor;

(8) proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or .

(9) pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and expenses (including attorneys' fees) incurred by Lessor by reason of the Event of Default.

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private pale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

18. Costs and Attorneys' Fees

In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor's participation (individually and collectively, the "Claim"), Lessee, in addition to ail other sums which Lessee may be called upon to pay under the provisions of this Lease Agreement, shall pay to Lessor, on demand, all costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, attorneys' fees and out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

19. Lessor's Performance Option

Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within ten (10) days of notice thereof.

20. Quiet Possession and Inspection

Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, at any and all reasonable times by appointment during business hours, enter Lessee's premises for the purposes of inspecting the Equipment and the manner in which it is being used.

21. Assignments

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. LESSEE, HOWEVER, SHALL NOT ASSIGN THIS LEASE AGREEMENT OR SUBLET ANY OF THE EQUIPMENT WITHOUT FIRST OBTAINING THE PRIOR WRITTEN CONSENT OF LESSOR AND ITS ASSIGNS, IF ANY. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee" herein) which will rely upon and be entitled to the benefit of the provisions of this Lease Agreement. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, notwithstanding any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligation's. Any such assignment shall be subject to Lessee's rights to use and possess the Equipment so long as Lessee is not in default hereunder.

22. Survival of Obligations

All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

23. Corporate Authority

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. The Lessee will, if requested by Lessor, provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto.

24. Landlords' and Mortgagees' Waiver

If requested, Lessee shall furnish waivers, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located.

25. Miscellaneous

This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of Minnesota. Lessee and Lessor consent to the exclusive jurisdiction of any local, state or federal court located within Minnesota. Venue must be in Minnesota and Lessee hereby waives local venue and any objection relating to Minnesota being an improper venue to conduct any proceeding relating to this Lease Agreement. At Lessor's sole election and determination, Lessor may select an alternative forum, including arbitration or mediation, to adjudicate any dispute arising out of this Lease Agreement. LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LESSEE AND/OR LESSOR MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE.

This Lease Agreement was jointly drafted by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement.

The Monthly Lease Charge is intended to be fixed from the Commencement Date to the end of the term. The three year treasury rate is an integral part of the lease rate. The Lessee and Lessor agree that the lease rate shall also be fixed during the Installation Period but should the three year treasury note increase during such Installation Period, the lease rate will be adjusted on the Commencement Date.

Lessor is entitled to review a complete set of Lessee's financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request. If during the Installation Period the Lessee's financial condition changes in any material respect (as

determined by the Lessor in its sole discretion), then Lessor shall be entitled to stop purchasing equipment to be leased to Lessee and commence the applicable lease schedule(s).

There shall be one original of this Lease Agreement and of each Lease Schedule and it shall be marked "Original." To the extent that any Lease Schedule constitutes chattel paper (as that term is defined by the Uniform Commercial Code), a security interest may only be created in the Lease Schedule marked "Original."

This Lease Agreement shall not become effective until delivered to Lessor at its offices and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor's option five (5) days after the date of Lessor's execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

26. REPOSSESSION

LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER. LESSEE HEREBY WAIVES THE RIGHT, IF ANY, TO REQUIRE LESSOR TO GIVE LESSEE NOTICE AND A JUDICIAL HEARING PRIOR TO EXERCISING SUCH RIGHT OF REPOSSESSION.

27. Net Lease

This Lease Agreement is a net lease and Lessee's obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment, or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes intangible (or intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any software license and/or other, agreement with respect to any software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any software or software license. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment.

28. Headings

Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representative.

Every Term is Agreed to and Accepted:

WINMARK CAPITAL CORPORATION

By: /s/ Brett D. Heffes

Print Name:

Title: Chief Financial Officer and Treasurer

Date: November 15, 2012

Every Term is Agreed to and Accepted:

FIVE9, INC. AND SUBSIDIARIES

By: /s/ David Hill

Print Name:

Title: VP—Finance

Date: November 13, 2012

Exhibit 10.21

Fountain partners
50 California Street, Suite 3330
San Francisco, CA 94111
Phone 415 683-1442
Fax 415-276-4172
www.fountainpartners.com

December 16, 2010

Mr. Craig Klosterman
Chief Financial Officer
Five9, Inc.
7901 Stoneridge Drive, Suite 200
Pleasanton, CA 94588

Re: LEASE LINE LETTER AGREEMENT

Dear Mr. Klosterman,

This Lease Line Letter Agreement ("Agreement") between Fountain Leasing 2010 LP ("Lessor") and Five9, Inc. ("Lessee"), sets forth certain legally binding terms governing the leasing of Equipment under that certain Master Lease Agreement together with any lease Schedules as defined in the Master Lease Agreement numbered MLA-F2010-CA-001-01 between Lessor and Lessee of even date herewith, collectively referred to as (the "Lease"). This Agreement must be read in conjunction with the Lease and any conflict between the Lease and this Agreement shall be governed by the Lease. Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in the Lease.

Equipment:	Servers, Audio Code Boards, Switches Storage and Software
Lease Line Amount:	Up to $3,400,000
Term:	36 Months
Lease Rate Factor:	3.20% per month
Security Deposit:	If Lessee requests application Software and/or Storage to be added to a lease schedule, Lessor shall require a security deposit of twenty percent (20.0%) of the total cost of the Equipment on such schedule if such Software exceeds five percent (5%) or such storage exceeds ten percent (10%) of the total cost of the Equipment on a single lease schedule. After Lessor has already leased Servers, Audio Code Boards and Switches totaling in aggregate more than $350,000, Lessee may request on a lease schedule Storage and Software up to fifteen percent (15%) of the total cost of all Equipment on such lease schedule, provided, however that such request may not contain Software totaling in aggregate more than five percent (5%) of the total cost of all Equipment on such lease schedule. As consideration for this and other terms contained herein Lessee promises to use its reasonable best efforts to submit a request to lease Equipment that has been or will be delivered to Lessee by December 30, 2010 with the related Lease Schedule having an Effective Date of December 30, 2010, provided that Lessor offers its Master Lease Agreement and formal Lease Line Agreement no later than December 21, 2010.

Draw Window:	Through March 31, 2012 unless extended by the parties.
Mechanics:	Lessee may offer Equipment to Lessor that has been ordered or delivered to Lessee provided that such Equipment has been delivered to Lessee no later than 90 days from the Effective Date of the Lease Schedule; that is the date that Lessor pays for Equipment and begins billing for rent on such Equipment.
Advance Rent:	First and any partial month's payment are due at the beginning of each lease schedule.
End of Lease Options:	As defined in the Lease.
Minimum Schedule:	The minimum schedule size is $100,000. Lessor will continue to add purchased equipment to the then open lease schedule until the earlier of either the lease schedule totaling $100,000 or more or the end of the Draw Window. Any lease schedule less than $100,000 is subject to a processing fee equal to Nine Hundred and Fifty Dollars ($950).
Transaction Costs:	Lessee will reimburse Lessor for all reasonable out-of-pocket costs related to this transaction including UCC search, filing, insurance, and legal costs (if any). UCC search, filing and insurance are estimated at not to exceed $900 for every $1,000,000 lease schedule. Initial UCC search costs are expected to not exceed $250. Legal costs will not exceed $2,500 without Lessee's prior written consent.
Documentation Fee:	A fee to cover the cost of documenting each lease schedule of $400 will apply for each lease schedule.
Financial Reporting:	As defined in the Lease.
Defaults under Lease:	If an Event of Default has occurred and is continuing under the Lease, Lessee may not make any additions to or provide any new lease schedules. If such Event of Default has been cured by Lessee within 30 days, Lessee and Lessor may agree that Lessee may resume making additions to and providing new lease schedules.

Cross Defaults: Lessee shall disclose to Lessor, and continue to keep Lessor informed for so long as amounts are owed to Lessor, the terms of any events of default and remedies thereof. Default for non-payment on any debt whose future minimum payments exceed $500,000 shall constitute an event of default on the Lease. A default for something other than payment on any debt whose future minimum payments exceed $500,000 shall constitute an event of default on the Lease except that no remedies will be exercised by Lessor without first providing Lessee the lesser of 90 days or the number of days allowed by the subject creditor for the Lessee to cure such default. Lessor shall not be required to fund new leases during any time in which Lessee has defaulted on any obligation whose future minimum payments exceed $500,000.

Unused Line Fee: A good faith deposit of One Percent (1.0%) of the Lease Line Amount is required. $7,500 has been received by Lessor. Should Lessor not move forward with the transaction substantially as summarized in this letter by December 21, 2010, this Unused Line Fee less the greater of any Transaction Costs incurred with prior approval by Lessee will be immediately refunded to Lessee. Should Lessee decide not to move forward with this transaction substantially as summarized in this letter, the Unused Line Fee will be retained and deemed earned by the Lessor. Should Lessor and Lessee agree to move forward with the proposed equipment lease, the Unused Line Fee shall be applied ratably to the first lease payment of each lease schedule. The outstanding $26,500 balance due on the Unused Line Fee will be payable upon execution of the Master Lease Agreement but in no event later than December 30, 2010. Any portion of Unused Line Fee not applied to any lease payment by the end of the Draw Window shall be deemed earned by Lessor at that time. Any Unused Line Fee not previously applied to a lease payment shall be deemed earned by Lessor in the event of a default for non-payment by Lessee of any lease payment beyond any applicable grace periods.

Signature page follows

AGREED TO AND ACCEPTED BY:

Five9, Inc.

/s/ Craig Klosterman

Signature
By: Craig Klosterman
Title: CFO
Date: 12/22/10

Fountain leasing 2010 LP

By: Fountain Leasing, LLC its general partner

/s/ H. Thomas Carter

Signature
By: H. Thomas Carter
Title: Manager
Date:

12/27/10

Master Lease Number MLA-F2010-CA-001-01
Fountain Leasing 2010 LP — ("Lessor")
50 California Street, Suite 3330, San Francisco, California 94111
415-683-1442 FAX: 415-276-4172

Lessee: Five9, Inc. ("Lessee")

Address: 7901 Stoneridge Drive Pleasanton, CA 94588

This is a MASTER LEASE AGREEMENT (herein called "Lease"). Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the items of tangible and/or intangible property (collectively called "Equipment" and individually called "Item") described on any Lease Schedule(s) ("Schedule") now or in the future annexed hereto and made a part hereof, subject to the terms and conditions set forth herein. Each Schedule annexed hereto incorporates the terms of this Lease and is independent and enforceable as a separate transaction.

1. QUIET ENJOYMENT. So long as no Event of Default (as defined below) shall have occurred and be continuing, , Lessor shall not disturb Lessee's quiet enjoyment of the Equipment, subject to the terms and conditions of this Lease.

2. NO WARRANTIES AND UNIFORM COMMERCIAL CODE ACKNOWLEDGMENT. Lessee acknowledges that Lessor is not the manufacturer, vendor, developer, distributor, publisher or licensor (for purposes of this Lease, all of which are called "Manufacturer," both collectively and individually) of the Equipment. Lessee further acknowledges and agrees that LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, DESIGN, CAPACITY, SUITABILITY OR PERFORMANCE OF ANY OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO, IT BEING AGREED THAT, AS BETWEEN LESSEE AND LESSOR, THE EQUIPMENT IS LEASED "AS IS." LESSEE FURTHER REPRESENTS THAT ALL ITEMS OF EQUIPMENT ARE OF A SIZE, DESIGN AND CAPACITY SELECTED BY IT, AND THAT IT IS SATISFIED THE SAME ARE SUITABLE FOR LESSEE'S PURPOSES. Lessor assigns to Lessee any and all Manufacturer warranties, to the extent assignable, for the term of the Lease. Lessor shall have no liability to Lessee or anyone claiming through Lessee for the breach of any such warranty or for any claim, loss, damage or expense of any kind or nature resulting, directly or indirectly, from the delivery, installation, use, operation, performance, or lack or inadequacy thereof, of any Item of Equipment. This Lease is a "Finance Lease" as defined in, and for the purpose only of, Division 10 of the California Commercial Code and not necessarily for any accounting or other purpose. Lessee acknowledges that Lessor has informed or advised Lessee, either previously or by this Lease, of the following: (i) the identity of the "Supplier," unless Lessee has selected the Supplier, (ii) that Lessee may have rights under the "Supply Contract" and (iii) that Lessee may contact the Supplier for a description of any such rights. (The terms "Finance Lease," "Supplier" and "Supply Contract" as used herein have the meanings ascribed to them under Division 10 of the California Commercial Code.)

_____/_____
Initials: Lessee/Lessor

3. TERM. The "Commencement Date" for each Item shall be the day that the Item has been delivered to and is usable by Lessee as evidenced by an Acceptance Certificate duly executed by Lessee or, in the absence thereof, the Manufacturer's delivery certification. The "Base Term" as indicated on any Schedule shall be the period beginning on the first day of the calendar quarter following the Final Commencement Date ("Final Commencement Date") of the Schedule and continuing for the number of months specified on the Schedule. This Lease with respect to any Schedule may be terminated as of the last day of the Base Term by Lessee in accordance with Section 6. Any termination notice given by Lessee shall stipulate the End of Term Option (as defined below) elected to be exercised by Lessee. Lessor may terminate any Schedule and this Lease immediately, without prior notice, upon the occurrence of a change of control event, in which more than 50% of the outstanding stock or substantially all of the assets of the Lessee are sold to any entity except a Qualified Buyer as defined in Section 15 of this agreement. In the event of a termination due to Lessee change of control to an entity other than a Qualified Buyer, any outstanding balances owed at that time along with all remaining lease payments and the Purchase Option Amount as defined in each Schedule shall be due in full within 30 days of the date of such a change of control event. The "Term" of each individual Schedule is hereby defined as the period beginning on the first Commencement Date that occurs with respect to all Items subject to the Schedule and continuing through the Base Term and all Extension Terms (as defined below), if any. Each Schedule now or in the future annexed hereto shall be deemed to incorporate therein these specific terms and conditions and shall have an independent Term.

4. RENT. The monthly rent as shown on each Schedule for the Base Term shall be due and payable by Lessee in the amount of the monthly rent multiplied by the number of months in the billing cycle indicated on the respective Schedule (one month in a monthly billing cycle, three in a quarterly cycle, six in a biannual cycle, etc.) on the first day of the Base Term and on the first day of each billing cycle thereafter, for the remainder of the Term. For Items having a Commencement Date prior to the first day of the Base Term, rent shall be due on a pro rata basis only in the amount of one-thirtieth of the Item's proportional monthly rent for each day from the Item's Commencement Date until, but not including, the first day of the Base Term and, together with any advance rent or security deposit (which shall be non-interest bearing) specified on a Schedule, shall be payable by Lessee five days after receipt of invoice from Lessor. If any rental or other amounts payable hereunder are not paid within five business days of their due date then Lessee shall pay to Lessor upon demand "Delinquency Charges" which shall equal interest compounded monthly at the rate of eighteen percent per annum (or the highest rate allowable by law, whichever is less) on the delinquent balance from the date due until the date paid, plus a monthly administrative fee of five percent of the cumulative delinquent balance to offset Lessor's collection and accounting costs. Any deposit paid by Lessee to Lessor shall be refundable if the Schedule is not accepted by Lessor. THIS IS A NET LEASE AND LESSEE'S OBLIGATION TO PAY ALL RENTAL CHARGES AND OTHER AMOUNTS DUE HEREUNDER SHALL BE ABSOLUTE AND UNCONDITIONAL UNDER ALL CIRCUMSTANCES AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, DEFENSE, COUNTERCLAIM, SETOFF, RECOUPMENT OR REDUCTION FOR ANY REASON WHATSOEVER EXCEPT AS OTHERWISE PROVIDED HEREIN, IT BEING THE EXPRESS INTENT OF LESSOR AND LESSEE THAT ALL RENTAL AND OTHER AMOUNTS PAYABLE BY LESSEE HEREUNDER SHALL BE AND CONTINUE TO BE PAYABLE AS PROVIDED HEREIN. LESSEE HEREBY WAIVES ALL RIGHTS IT MAY HAVE TO REJECT OR CANCEL THIS LEASE, TO REVOKE ACCEPTANCE OF ANY OF THE EQUIPMENT, AND/OR TO GRANT A SECURITY INTEREST IN ANY OF THE EQUIPMENT FOR ANY REASON EXCEPT AS PERMITTED HEREIN.

_____/_____
Initials: Lessee/Lessor

5. USE, MAINTENANCE AND LOCATION. Lessee at its own expense shall properly use the Equipment, keep the Equipment in good working order, repair and condition, comply with all Manufacturer's instructions as to use and operation, and comply with all applicable laws, rules, regulations or orders of any governmental agency with respect to the use, operation, maintenance, care, storage or location of the Equipment. During the Term, Lessee shall keep in force the standard maintenance agreement with the Manufacturer, or such other qualified party, including qualified self-maintenance by Lessee, as is reasonably acceptable to Lessor, that will ensure that: the Equipment is maintained to all current engineering specifications; all repairs, adjustments and replacements are properly made; and subject to Lessee's commercially reasonable discretion all relevant upgrades, enhancements and changes that are available from time to time from the Manufacturer are made to the Equipment. Lessee shall provide Lessor with locations of all Equipment upon request to Lessee and shall not relocate the Equipment to different premises without Lessor's prior written consent. Lessee shall pay all reasonable costs associated with the delivery, installation, use, and relocation of the Equipment. If Lessor requests, Lessee shall affix in a prominent place labels or tags to the Equipment stating that the Equipment is owned by Lessor. Lessor or Lessor's agent may inspect the Equipment upon reasonable notice to Lessee throughout the lease term during any and all hours that Lessee has access to Equipment. If Lessee has not made payment within 10 days after payment is due, Lessor reserves the right to inspect Equipment at any time and Lessee shall be responsible for Lessor's out of pocket travel expenses or the costs of the hired agent to inspect the Equipment on behalf of the Lessor.

6. END OF TERM OPTIONS. At the expiration of the Base Term of any Schedule, the Lessee may exercise any of the following options described below (the "End of Term Options") by giving Lessor at least six months, but not more than twelve months, written notice prior to the expiration of the Base Term of the End of Term Option it elects: (i) purchase the Equipment subject to the applicable Schedule (the "Purchase Option"), (ii) extend or renew the Lease for the Equipment subject to the Schedule (the "Renewal Option"), or (iii) return the Equipment to the Lessor (the "Return Option"). If Lessee fails to elect any of the End of Term Options as required by this Section 6, then Lessor shall have the right at the end of the Base Term , in its sole discretion, to either cause Lessee to purchase the Equipment at "Fair Market Value" (as determined below) or to return the Equipment in accordance with the provisions of Section 6(c), and in either case, until Lessee has purchased the Equipment or complied with all of the requirements of Section 6(c), rent payment obligations on the Equipment will continue on a month-to-month basis at the monthly rent delineated on the Schedule (such rent to be calculated on a pro rata basis for any partial month). If Lessee elects to exercise a purchase or renewal option under any Schedule, or if Lessee elects to return Equipment under any Schedule, then Lessor, in its sole discretion, may require that all Schedules be similarly disposed of.

a. PURCHASE OPTION. Lessee may purchase all but not less than all of the Equipment subject to any Schedule, provided that no Event of Default (as defined below) shall have occurred and be continuing, t and upon proper written notification to Lessor, as of the expiration of the Base Term of said Schedule. In the event Lessee notifies Lessor it elects to

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Initials: Lessee/Lessor

purchase the Equipment, the purchase price shall be the greater of (x) the specified Purchase Option Amount for such Schedule (which will be quantified on each Schedule) or (y) the "Fair Market Value" of the Equipment. For the purpose of this Lease, "Fair Market Value" is defined as the total cost(s) it would take to replace the Equipment on an in-place, installed basis, including all current cost(s) and expense(s) for the purchase, assembly, installation, delivery, freight, consulting, training, site preparation and any other services that would be required to render such Equipment fully installed, ready and acceptable for use by an end user as of the termination of the Term, taking into account the then-current condition and age of the Equipment. If Lessor and Lessee cannot agree on a purchase price then the purchase price shall be determined by the average of two Senior Appraisers accredited by the American Society of Appraisers, one chosen by Lessor and one by Lessee, both using the definition of Fair Market Value hereunder in determining their purchase price, the cost of which shall be borne by Lessee.

b. RENEWAL OPTION. After the completion of the Base Term, and assuming no Event of Default (as defined below) shall have occurred and be continuing, the Lessee may also elect to extend and renew the Lease for the Equipment subject to any Schedule for an additional twelve (12) months by paying monthly rent equal to the amount defined in the Schedule or one tenth of the Fair Market Value of the Equipment if no renewal amount is defined in the Schedule. At the end of the Extension Term, Lessee may either exercise the Return Option as described in Section 6(c) or purchase the Equipment for Fair Market Value not to exceed Ten Percent (10%) of the original sum paid for the Equipment by Lessor.

c. RETURN OF EQUIPMENT. If the Equipment is to be returned upon termination of the Term with respect to any Schedule or if for any other reason, Lessee shall immediately discontinue all use of the Equipment and at its own cost, de-install, pack and ship the Equipment to a location or locations as instructed by Lessor. In the case of Equipment which is software, Lessee will also certify in a written form acceptable to Lessor that: (i) all tangible software has been delivered to Lessor; (ii) all tangible records and intangible software have been destroyed; (iii) Lessee has not retained the software in any form; (iv) Lessee will not use the software after termination; and (v) Lessee has not received from Manufacturer anything of value relating to or in exchange for Lessee's use, rental or possession of the software during the duration of the Lease (including a trade-in, substitution or upgrade allowance). Upon return of the Equipment, Lessee shall take all actions necessary to ensure that the Equipment is in good working order, ordinary wear and tear excepted, and will be eligible for a standard Manufacturer Maintenance Contract if such a contract is offered by a Manufacturer or a third party and shall pay all fees, charges and expenses for maintenance certification or recertification by the Manufacturer or a third party in connection with the repairing and/or restoring of such Equipment as required to meet such standards. Lessee shall pay for any and all costs for repair or replacement of any damaged Equipment, subject to normal wear and tear. Until Lessee has complied with all of the requirements of this Section, rent payment obligations will continue on a month-to-month basis at the monthly rent delineated on the Schedule (such rent to be calculated on a pro rata basis for any partial month). Lessee shall allow Lessor to inspect, at Lessee's cost, all of Lessee's locations to ensure compliance hereunder. If Lessee fails to return any Equipment as required hereunder, then all of Lessee's obligations under the Lease (including, without limitation, Lessee's obligation to pay Rent for the Equipment at the rent then applicable under the Lease) shall continue in full force and effect until such Equipment shall have been returned in the condition required under the Lease. If requested by Lessor, Lessee shall store the Equipment at

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its place of business for up to 90 days prior to return, at Lessee's risk and expense; provided, that no rental payments shall be charged for such period. If Lessee elects to return the Equipment, a restocking fee equal to five percent (5%) of the original cost of the Equipment will be due and payable on or before the first day of the month following the end of the term.

7. RESERVED.

8. TITLE; PERSONAL PROPERTY. Except as otherwise provided in this Lease or any Schedule, title to the Equipment shall remain in Lessor. Lessee shall at all times keep the Equipment free and clear of all liens, claims, levies, and legal processes, and shall at its expense protect and defend Lessor's title and/or license rights in the Equipment. In the event any of the Equipment is software governed by a software license, Lessee shall keep said license current for the entire Term and, to the extent the license allows title to the software to pass to licensee, such title shall vest and remain in Lessor. Lessee acknowledges that the license to use the software is being provided by the Manufacturer solely because of payments made by Lessor and in consideration therefor Lessor has obtained Lessee's interest in the License. Lessee hereby agrees and does hereby appoint Lessor or its assigns its true and lawful attorney-in-fact to prepare financing statements or other instruments necessary, and authorizes Lessor to cause this Lease or other instruments in Lessor's determination to be filed or recorded at Lessee's expense in order to protect Lessor's interest in the Equipment, and grants Lessor the right to execute and deliver such instruments for and on behalf of Lessee. If requested by Lessor, then Lessee agrees to execute and deliver any such instruments and agrees to pay or reimburse Lessor for any searches, filings, recordings, inspections, fees, taxes or any other out-of-pocket costs incurred by Lessor as reasonably necessary to protect Lessor's interest in the Equipment. Lessee also authorizes Lessor to insert on any Schedule and on related supplemental lease documentation information commonly determined after execution by Lessee such as: serial numbers and other Equipment identification data, Equipment locations, Commencement Dates, and Final Commencement Date. Lessee shall take all steps necessary to ensure that the Equipment is and remains personal property.

9. ALTERATIONS. Lessee shall make no alterations, modifications, attachments, improvements, enhancements, revisions or additions to any of the Equipment that degrades the quality or usability of the Equipment (collectively called "Alterations"), without Lessor's prior written consent, which shall not be unreasonably withheld. All Alterations that are made shall become part of the Equipment and shall be the property of Lessor. Equipment which is software shall include all updates, revisions, upgrades, new versions, enhancements, modifications, derivative works, maintenance fixes, translations, adaptations and copies of the foregoing or of the original version of the software whether obtained from the Manufacturer or from any source whatsoever, and references in this Lease to software will be interpreted as references to any and all of the foregoing.

10. TAXES. Lessee shall pay all fees, assessments and taxes (except for income taxes based solely on Lessor's net income assessed by the U.S. Internal Revenue Service and/or any State of the United States of America), including but not limited to, sales, use, property, excise, intangibles, single business, stamp, documentary and any other costs imposed by any taxing authority, with respect to the use, delivery, rental/lease, possession, purchase, ownership or sale of the Equipment and shall at its own cost and expense keep the Equipment free and clear

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Initials: Lessee/Lessor

of all levies, liens or encumbrances arising therefrom. Lessee shall file all required personal property tax returns relating to the Equipment. In the event Lessor files appropriate property tax returns or other reports, Lessee shall upon demand immediately reimburse Lessor for all taxes paid by Lessor, plus processing costs.

11. LOSS OR DAMAGE. Unless caused by the negligence of Lessor, Lessee shall bear the entire risk of loss, damage, theft, destruction, confiscation, requisition, inoperability, erasure or incapacity, for or from any cause whatsoever, of any or all Items during the period the Equipment is in transit to or from, or in the possession of, Lessee ("Event of Loss") and shall hold Lessor harmless against same. Within five (5) business days from its discovery, Lessee shall fully inform Lessor of an Event of Loss. Except as provided herein, no Event of Loss shall relieve Lessee of any obligation hereunder, and all Schedules shall remain in full force and effect without any abatement or interruption of rent. In an Event of Loss, Lessee at its option (provided no Event of Default (as defined below) shall have occurred and be continuing hereunder), shall: (a) continue to timely make all rental payments and pay all other amounts due under the Lease and, within a commercially expedient time frame, place the Equipment in good working order, repair and condition, or replace the affected Equipment with identical equipment with documentation creating clear title thereto in Lessor; or (b) terminate the Lease with respect to the affected Schedule by paying to Lessor within thirty days the "Casualty Value" which is defined as the sum of: (i) the present value of the unpaid balance of the aggregate rent reserved under the related Schedule calculated using a discount rate of the then-current 1 year U.S. Treasury Rate, plus (ii) all accrued but unpaid rentals, taxes, Delinquency Charges, penalties, interest and all or any other sums then due and owing under the related Schedule, plus (iii) the amount of any applicable end of Term purchase option or other end of Term payment or, in the absence thereof, the Fair Market Value of the Equipment.

12. INSURANCE. Lessee, at its expense, shall provide and maintain in full force and effect at all times that this Lease is in force such casualty, property damage, comprehensive public liability and other insurance in sufficient amounts to satisfy all future minimum amounts required in the lease schedule with such companies as shall be satisfactory to Lessor. All such insurance shall provide that it may not be canceled or materially altered without at least thirty days prior written notice to Lessor, shall name Lessor as additional insured and loss payee, and shall not be rescinded, impaired or invalidated by any act or neglect of Lessee unless replaced with insurance meeting the requirements of this Agreement.

13. INDEMNITY. Lessee shall indemnify, defend, protect, save and hold harmless Lessor, its employees, officers, directors, agents, assigns and successors (the "Indemnified Parties") from and against any and all claims, actions, costs, expenses (including reasonable attorneys' fees and expenses), damages (including any interruption of service, loss of business or other consequential damages), liabilities, penalties, losses, obligations, injuries, demands and liens (including any of the foregoing arising or imposed under the doctrines of "strict liability" or "product liability") of any kind or nature arising out of, connected with, relating to or resulting from the manufacture, purchase, sale, lease, ownership, installation, location, maintenance, operation, condition (including latent and other defects, whether or not discoverable), selection, delivery, return, or any accident in connection therewith, of any Item or Items of Equipment, or by operation of law (including any claim for patent, trademark or copyright infringement), regardless of where, how or by whom operated (the "Claims"). The foregoing indemnification obligation of Lessee shall not apply to any Claims resulting from the gross negligence or willful misconduct of any Indemnified Party. The provisions of this paragraph shall survive termination or expiration of this Lease.

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Initials: Lessee/Lessor

14. AUTHORITY OF LESSEE TO ENTER LEASE. With respect to this Lease and each Schedule now or in the future annexed hereto, Lessee hereby represents, warrants and covenants that: (i) the execution, delivery and performance thereof have been duly authorized by Lessee; (ii) the individuals executing such have been duly authorized to do so; (iii) the execution and/or performance thereof will not result in any default under, or breach of, any judgment, order, law or regulation applicable to Lessee, or of any provision of Lessee's certificate of incorporation, bylaws, or any agreement to which Lessee is a party; and (iv) all financial statements and other information submitted by Lessee herewith or at any other time are true and correct without any intentionally misleading omissions.

15. ASSIGNMENT. Lessee hereby agrees and acknowledges that Lessor may without notice to Lessee, assign all or any part of Lessor's rights, title and interest in and to this Lease, any Schedule, the Equipment and any of the rentals or other sums payable hereunder, to any assignee ("Assignee") provided any such assignment shall be made subject to the rights of Lessee herein. Lessee hereby acknowledges that any such assignment does not change the duties of, nor the burden of risk imposed on the Lessee and that Lessee shall not look to Assignee to perform any of Lessor's obligations hereunder and shall not assert against Assignee any defense, counterclaim or setoff it may have against Lessor. Lessee agrees that after receipt of written notice from Lessor of any such assignment Lessee shall pay, if directed by Lessor, any assigned rental and other sums payable hereunder directly to Assignee and will execute and deliver to Assignee such documents as Assignee may reasonably request in order to confirm the interest of Assignee in this Lease. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, LESSEE SHALL NOT ASSIGN, TRANSFER, ENCUMBER, SUBLET OR SELL THIS LEASE, ANY SCHEDULE, ANY OF THE EQUIPMENT, OR ANY OF ITS INTEREST THEREIN, IN ANY FORM OR MANNER; PROVIDED, HOWEVER THE LESSEE MAY ASSIGN THIS LEASE, SCHEDULES, AND ITS INTEREST THEREIN TO ANY QUALIFIED BUYER ACQUIRING ALL OR SUBSTANTIALLY ALL THE ASSETS OR VOTING SECURITIES OF LESSEE. For the purpose of this agreement, a "Qualified Buyer" is defined as an entity with at least $20 million in tangible net equity as reported within three (3) months of the date of a definitive agreement in which more than 50% of the outstanding stock or substantially all of the assets of the Lessee are sold and at least $20 million in revenue for the trailing 12 month period prior to the same. Revenue shall be measured according to Generally Accepted Accounting Principles.

16. FURTHER ASSURANCES; FINANCIAL REPORTING. Upon Lessor's request, Lessee, promptly and at its expense, shall execute and/or deliver such documents, instruments and/or assurances, and shall take such further action, as Lessor deems prudent in order to establish and/or protect the rights, interests and remedies of Lessor, and for the confirmation, assignment and/or perfection of this Lease and any Schedule hereto, and for the assurance of performance of Lessee's obligations hereunder; such as (but not limited to): a secretary's certificate certifying the authority of the person(s) signing, and/or the resolutions authorizing, this Lease and/or any Schedule; delivery and/or acceptance certificates; insurance certificates; an opinion of Lessee's counsel if applicable; financial and other credit information

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as reasonably requested by Lessor; intercreditor agreements and subordinations if applicable; and a landlord/mortgagee waiver of rights and interests in the Equipment. If Lessee fails to complete when due any such requested item, Lessor, in its sole discretion and notwithstanding the provisions of Section 3, may elect to delay the Final Commencement Date of the affected Schedule until any or all such requested items are completed. Until duly executed by an authorized officer of Lessor, Lessee agrees that this Lease and any Schedule executed by Lessee shall constitute an offer by Lessee to enter into the Lease with Lessor. So long as there are amounts due Lessor under this Lease, Lessee will provide Lessor with (i) unaudited financial statements no less frequently then quarterly basis and no less promptly than 50 days following the end of the quarter, (ii) audited financial statements within 270 days after the end of each fiscal year of Lessee and draft versions of the same within 15 days after Lessee receives such draft statements from auditor, and (iii) at Lessor's request, twelve (12) month forward-looking cash operating plans on annual basis or as reasonably requested by Lessor if Lessee has updated such plans . Lessor reserves the right to request detailed schedules of assets and liabilities and Lessee shall comply reasonably to such requests. At the request of Lessor, Lessee will schedule occasional telephone calls with Lessor to update Lessor on the progress of Lessee's business; such calls may be quarterly in frequency and/or made in response to follow on equipment financing requests. Lessee shall provide, and keep on file with Lessor at all times, current copies of (x) all agreements, documents or instruments evidencing indebtedness of any kind whose future minimum payments are in excess of $500,000 owed to any individual or entity other than Lessor that are entered into after the effective date of this Lease, (y) any other agreement, document or instrument pursuant to which such indebtedness was created, secured or guaranteed, and (z) any other agreement, document or instrument which imposes on Lessee a financial covenant of any kind (the agreements, documents and instruments described in clauses (x), (y) and (z), (the "Material Agreements"). Lessee shall promptly notify Lessor of any breach or waiver of any covenant contained in a Material Agreement and of any material adverse change in its financial condition.

17. DEFAULT. The occurrence of any of the following shall constitute an event of default hereunder ("Event of Default"): (a) Lessee fails to pay when due any installment of rent or any other amount due hereunder and such failure continues for a period of 10 days after such due date regardless of whether Lessor has provided written notice of such payment default to Lessee); (b) any financial or other information or any other representation or warranty given to Lessor herein or in connection herewith, proves to be materially false or materially misleading; (c) Lessee assigns, transfers, encumbers, sublets or sells this Lease, any Schedule, any of the Equipment, or any of its interest therein, in any form or manner, without Lessor's prior written consent, except as expressly permitted herein; (d) Lessee fails to observe or perform any other material covenant, condition or obligation to be observed or performed by it under this Lease and such failure continues for a period of 15 days after receipt of written notice thereof; (e) any transaction or series of transactions that results in an ownership change of 50 percent or more of the equity interests of Lessee of this Lease if the financial position of the Lessee is materially adversely effected after the completion of such transaction; (f) Lessee of this Lease consolidates with or merges into, or sells or leases 50 percent or more of its assets to any individual, corporation, or other entity if the overall value of the surviving entity is substantially less than the value of Lessee prior to the consolidation, merger, sale or lease; (g) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its insolvency, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files

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a petition seeking for itself any reorganization, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of any substantial part of its assets, or if its shareholders take any action looking to its dissolution or liquidation; (h) within 60 days after the commencement of any proceeding against Lessee seeking reorganization, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 60 days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of it or of any substantial part of its assets, such appointment shall not be vacated; or (i) Lessee defaults under any of its obligations under any of its Material Agreements or any other agreements, documents or instruments evidencing indebtedness of Lessee of any kind, and such default, either in Lessor's reasonable judgment materially affects Lessee's ability to perform its obligations under this Lease or causes or permits the holder of any such indebtedness created thereunder to cause the same to be due prior to its stated maturity (whether or not such default is waived by the holder thereof).

18. REMEDIES. If an Event of Default shall occur, Lessor may, in addition to all available remedies it may have at law or in equity do any or all of the following: (a) to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof; (b) by written notice to Lessee, terminate this Lease and/or all or any Schedules hereto and Lessees rights hereunder and/or thereunder; (c) personally or by its agents enter the premises where any of the Equipment is located and take immediate possession of the Equipment without court order or other process of law, but in compliance with the law, and free from all claims by Lessee; (d) nullify any end of Term purchase or renewal option; and/or (e) recover as damages all unpaid amounts then due and owing including applicable late charges, plus accelerate and declare to be immediately due and payable the unpaid balance of the aggregate rent (discounted to present value using the then-current 1-year U.S. Treasury Rate) and other sums reserved hereunder plus the Purchase Option Amount as specified on each Schedule, without any presentment, demand, protest or further notice (all of which are expressly waived by Lessee). In the event Lessor repossesses any of the Equipment, Lessor may sell, lease or otherwise dispose of said Equipment in such manner, at such times, and upon such terms as Lessor may reasonably determine. If Lessor does repossess and sell the Equipment, the proceeds thereof shall be applied to: (i) all costs and expenses (including attorneys' fees) of such disposition; (ii) the unpaid accrued rentals, taxes, fees, delinquency charges interest and all or any other sums due and owing; (iii) the unpaid accelerated rentals; and (iv) the Purchase Option Amount as specified on each Schedule. Any excess proceeds shall be remitted to Lessee. If Lessor re-leases the Equipment, the re-lease rentals received for the period through the end of the original Base Term of the Lease shall be first applied as described in (i), (ii), (iii) and (iv), above, with any excess to be remitted to the Lessee. The exercise of any of the foregoing remedies by Lessor shall not constitute a termination of the Lease or of any Schedule unless Lessor so notifies Lessee in writing. All remedies of Lessor shall be deemed cumulative and may be exercised concurrently or separately. The waiver by Lessor of any breach of any obligation of Lessee shall not be deemed a waiver of a breach of any other obligation or of any future breach of the same obligation. The subsequent acceptance of rental payments hereunder by Lessor shall not be deemed a waiver of any prior or existing breach by Lessee regardless of Lessor's knowledge of such breach. If any Schedule is deemed at any time to be a lease intended as security, Lessee

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Initials: Lessee/Lessor

grants Lessor a security interest in the Equipment to secure its obligations under this Lease and all other indebtedness at any time owing by Lessee to Lessor. Lessee agrees that upon the occurrence of an Event of Default, in addition to all of the other rights and remedies available to Lessor hereunder, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. Notwithstanding the foregoing, (a) if an Event of Default has occurred as a result of a default under any agreements, documents or instruments evidencing indebtedness of any kind whose future minimum payments are in excess of $500,000 owed to any individual or entity other than Lessor that are entered into after the effective date of this Lease (other than a payment default), Lessor agrees not to exercise any remedies provided in this Section 18 until the earlier of 90 days or the number of days allowed by the subject creditor for the Lessee to cure such default (the "Material Contract Grace Period") and (b) if any other Event of Default has occurred and is continuing, Lessor agrees not to exercise any remedies provided in this Section 18 unless such Event of Default is continuing for at least 30 days (the "Other Grace Period"). Lessee may not make any additions to or provide any new lease schedules during any Material Contract Grace Period or Other Grace Period. If any such Event of Default has been cured by Lessee within the Material Contract Grace Period or other Grace Period, as applicable, Lessee and Lessor may agree that Lessee may resume making additions to and providing new lease schedules upon such cure. Lessor shall not be required to fund new leases during any Material Contract Grace Period or other Grace Period.

19. PERFORMANCE OF LESSEE'S OBLIGATIONS BY LESSOR. If Lessee fails to perform any of its obligations hereunder, Lessor shall have the right upon notice to Lessee, but shall not be obligated, to perform the same for the account of Lessee without thereby waiving Lessee's default. Any amount paid and any expense, penalty or other liability incurred by Lessor in such performance shall become due and payable by Lessee to Lessor upon demand.

20. PURCHASE AGREEMENTS. In the event any of the Equipment is subject to any acquisition or purchase agreement ("Acquisition Agreement") between Lessee and the Manufacturer, then Lessee, as part of this Lease when approved by Lessor, transfers and assigns to Lessor any and all of Lessee's rights, title and interest (excepting that which is inherent to or granted by this Lease), but none of its obligations (except Lessee's obligation to pay for the Equipment, which Lessor shall do after Lessee's acceptance of the Equipment, provided all documentation required by Lessor has been completed and that Lessor's approval remains valid), in and to the Acquisition Agreement(s) and the subject Equipment. IN THE EVENT LESSEE ISSUES A PURCHASE ORDER TO LESSOR WITH RESPECT TO THIS LEASE, ANY SCHEDULE, OR ANY OF THE EQUIPMENT, IT IS AGREED THAT ANY SUCH PURCHASE ORDER IS FOR LESSEE'S INTERNAL PURPOSES ONLY AND THAT NONE OF ITS TERMS AND CONDITIONS SHALL MODIFY THIS LEASE OR ANY RELATED DOCUMENTATION, OR AFFECT EITHER PARTIES' RESPONSIBILITIES AS SET FORTH IN THIS LEASE.

21. NOTICES. All notices hereunder shall be in writing and shall be given by personal delivery or sent by certified mail, return receipt requested, or reputable overnight courier service, postage/expense prepaid, to the address of the other party as set forth herein or to any later address last known to the sender. All notices to Lessor must be executed by an authorized officer of Lessee to be effective. Notice shall be effective upon signed receipt or other evidence of delivery.

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22. APPLICABLE LAW / ARBITRATION. The parties agree that any action brought to enforce any of the terms, or to recover for any breach, whether based in tort, contract or otherwise, relating to or arising out of this Lease (collectively, "Lease Disputes") will be submitted to the San Francisco County, California, office of JAMS/Endispute LLC ("JAMS"), for a trial of all issues of law and fact conducted by a retired judge or justice from the panel of JAMS, appointed pursuant to a general reference under California Code of Civil Procedure, Section 638(1) (or any amendment, addition or successor section thereto) unless Lessor or its assignee selects an alternative forum. If the parties are unable to agree on a member of the JAMS panel, then one shall be appointed by the presiding Judge of the California Superior court for the County of San Francisco. In the event that JAMS in the County of San Francisco ceases to exist, then the parties agree that all Lease Disputes will be filed and conducted in the appropriate court having jurisdiction in the County of San Mateo, unless Lessor or its assignee selects an alternative forum. Lessee agrees to submit to the personal jurisdiction of the appropriate California Court for all Lease Disputes. Lessee waives its rights to a jury trial in any action arising out of or relating to this Lease. The prevailing party in any Lease Disputes is entitled to recover from the other party reasonable attorneys' fees, expenses and costs, including all JAMS related costs and costs of collection (including judgment enforcement and collection costs). This Lease has been entered into and shall be performed in California and, therefore, this Lease shall be construed in accordance with and shall be governed by, the internal substantive laws of the State of California (exclusive of principles of conflict of laws). TIME IS OF THE ESSENCE.

23. GENERAL; TRANSACTION COSTS; PAYMENTS. Neither this Lease nor any Schedule shall bind Lessor in any manner, and no obligation of Lessor shall arise, until the respective instrument is duly executed by an authorized officer of Lessor. If more than one Lessee is named in this Lease or there is a Guarantor of this Lease, the liability of each shall be joint and several. This Lease and each Schedule shall inure to the benefit of and be binding upon Lessor, Lessee and their respective successors except as expressly provided for herein. All representations, warranties, indemnities and covenants contained herein, or in any document now or at any other time delivered in connection herewith, which by their nature would continue beyond the termination or expiration of this Lease, shall continue in full force and effect and shall survive the termination or expiration of this Lease. Each party agrees to keep confidential and not to disclose to any third party, except as required by law or to enforce rights and remedies hereunder, any information designated as confidential by the other party. Lessee will reimburse Lessor for all reasonable costs related to this transaction, including search and UCC filing fees, recording fees, shipping costs, due diligence costs and appraisal fees (if applicable) and legal costs. Legal costs, if any, arising from the origination of this Lease shall not exceed $2,500 without prior approval in writing by Lessee. Lessee shall elect to make payments either by electronic transfer to Lessor's bank account or by authorizing Lessor to collect payments by ACH debit of Lessee's bank account. If Lessee fails to transfer payment to Lessor's bank account within the time frame as set forth in Section 4 of this Lease and later makes or offers payment, lessee shall transfer any and all Delinquency Charge as set forth in Section 4 on that same day. Lessor will provide Lessee with and keep current its bank account information.

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Initials: Lessee/Lessor

SIGNATURE PAGE

Lessee: Five9, Inc.

Signature: /s/ Craig Klosterman
Name: Craig Klosterman
Title: CFO
Date Offered: December 16, 2010

Lessor: Fountain Leasing 2010 LP
By: Fountain Leasing, LLC its general partner

Signature: /s/ H. Thomas Carter
Name: H. Thomas Carter
Title: Manager
Date Accepted: 12/27/10

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Initials: Lessee/Lessor

HP Financial Services

invent

MASTER LEASE AND FINANCING AGREEMENT

This Master Lease and Financing Agreement Number **3604686364** (together with Annex A and Exhibits A and B attached hereto and hereby made a part hereof, this "Master Agreement") is entered into by and between Hewlett-Packard Financial Services Company[1], a Delaware corporation ("Lessor"), and **Five 9, Inc.**, a Delaware corporation ("Lessee"). Capitalized terms used in this Master Agreement without definition have the meanings specified in Annex A to this Master Agreement.

1. MASTER AGREEMENT; SCHEDULES. This Master Agreement sets forth the general terms and conditions upon which (a) Lessor shall lease to Lessee and Lessee shall lease from Lessor items of Hardware, Software or both (such Hardware and Software being collectively referred to as "Equipment") and (b) Lessor shall provide financing to Lessee for software program license fees, maintenance fees, fees for other services, and other costs and one-time charges ("Financed Items") Lessee desires to finance hereunder. If Lessor and Lessee agree to a lease of particular Equipment (a "Lease") and/or a financing of particular Financed Items (a "Financing"), each item of Equipment and/or Financed Item will be described on a schedule in the form of Exhibit A, which schedule will incorporate this Master Agreement by reference ("Schedule"). Each Schedule, when executed by Lessee and Lessor, will constitute a separate Lease and/or Financing. If specific terms of a Schedule conflict with the terms of this Master Agreement, the provisions of the Schedule will control.

2. ACCEPTANCE; INITIAL TERM AND TERM. (a) Acceptance. Lessee shall unconditionally and irrevocably accept all Equipment under a Lease and, if applicable, all related Financed Items subject to a Financing as soon as such Equipment is delivered and inspected by Lessee and found to be satisfactory. In the case of a Financing of Financed Items unrelated to any Equipment subject to a Lease, Lessee shall unconditionally and irrevocably accept such Financed Items as soon as it shall have become liable to pay for such Financed Items. In either case, Lessee will evidence such acceptance by executing and delivering to Lessor a properly completed Acceptance Certificate as soon as reasonably practicable. (b) Initial Term of Leases and Term of Financings. The Initial Term of each Lease and, if applicable, the Term of any related Financing stated in and evidenced by a Schedule executed pursuant to this Section 2 will begin on the Acceptance Date of the Equipment subject to that Lease and will continue for the period described in the applicable Schedule; the term of each Financing stated in and evidenced by a Schedule executed pursuant to this Section 2 that is unrelated to any Lease will begin on the Acceptance Date for the related Financed Items and will continue for the period described in the applicable Schedule.

3. RENT; LATE CHARGES. As rent for the Equipment under any Lease and the Financed Items under any Financing (in either case, referred to in this Master Agreement and any Schedule as "Rent"), Lessee agrees to pay the amounts specified in the applicable Schedule on the due dates specified in the applicable Schedule. If any part of any Rent payment or other amount due under this Master Agreement is not paid within 10 days of its due date, Lessee agrees to pay Lessor: (a) in the first month, a late charge to compensate Lessor for collecting and processing the late amount, which late charge is stipulated and liquidated at the greater of $.05 per dollar of each delayed amount or $50; plus (b) a charge for every month after the first month in which the amount is late to compensate Lessor for the inability to reinvest the amount, which charge is stipulated and liquidated at 1- ½% of the delayed amount per month (or the lesser rate that is the maximum rate allowable under applicable law).

4. LEASES AND FINANCINGS NON-CANCELABLE; NET LEASES; WAIVER OF DEFENSES TO PAYMENT. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT EACH LEASE AND FINANCING HEREUNDER SHALL BE NON-CANCELABLE, AND THAT EACH LEASE HEREUNDER IS A NET LEASE. LESSEE AGREES THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY ALL RENT AND OTHER AMOUNTS WHEN DUE. LESSEE IS NOT ENTITLED TO ABATE OR REDUCE RENT OR ANY OTHER AMOUNT DUE, OR TO SET OFF ANY CHARGE AGAINST ANY SUCH AMOUNT. LESSEE HEREBY WAIVES ANY RECOUPMENT, CROSS-CLAIM, COUNTERCLAIM OR ANY OTHER DEFENSE AT LAW OR IN EQUITY TO ANY RENT PAYMENT OR OTHER AMOUNT DUE WITH RESPECT TO ANY LEASE OR FINANCING, WHETHER ANY SUCH DEFENSE ARISES OUT OF THIS MASTER AGREEMENT, ANY SCHEDULE, ANY CLAIM BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNEES OR SUPPLIER, OR OTHERWISE.

5. ASSIGNMENT OF PURCHASE DOCUMENTS. Lessee assigns to Lessor all of Lessee's right, title and interest in and to (a) the Equipment described in each Schedule, and (b) the Purchase Documents relating to such Equipment. Such assignment of the Purchase Documents is an assignment of rights only; nothing in this Master Agreement shall be deemed to have relieved Lessee of any obligation or liability under any of the Purchase Documents, except that, as between Lessee and Lessor, Lessor shall pay for the Equipment within 30 days after Lessee's delivery to Lessor of a properly completed and executed Acceptance Certificate and all other documentation necessary to establish Lessee's acceptance of such Equipment under the related Lease. Lessee represents and warrants that it has reviewed and approved the Purchase Documents. In addition, if Lessor shall so request, Lessee shall deliver to Lessor a document acceptable to Lessor whereby Seller acknowledges and provides any required consent to such assignment. For the avoidance of doubt, Lessee covenants and agrees that it shall at all times during the Total Term of each Lease comply in all respects with the terms of any License Agreement relating to any Equipment leased thereunder. **IT IS ALSO SPECIFICALLY UNDERSTOOD AND AGREED THAT NEITHER SUPPLIER NOR ANY SALESPERSON OF SUPPLIER IS AN AGENT OF LESSOR, NOR ARE THEY AUTHORIZED TO WAIVE OR ALTER ANY TERMS OF THIS MASTER AGREEMENT OR ANY SCHEDULE.**

6. ASSIGNMENT OF PURCHASE DOCUMENTS. To the extent permitted, Lessor hereby assigns to Lessee, for the Total Term of any Lease, all Equipment warranties, indemnities, and representations provided in the applicable Purchase Documents. Lessee shall have the right to take any action it deems appropriate to enforce such warranties, indemnities and representations provided such enforcement is pursued in Lessee's name and at its expense. Any recovery resulting from any such enforcement efforts will be divided between Lessor and Lessee as their interests may appear.

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1 Authorized to do business in the name of Hewlett-Packard Financial Services Company Inc. in the States of Alabama and New York.

7. EQUIPMENT RETURN REQUIREMENTS. Not later than 5 days after the last day of the Total Term of each Lease (and any other time Lessee is required to return Equipment to Lessor under the terms of this Master Agreement or any Schedule), for all Equipment to be returned to Lessor, Lessee shall (a) remove any Lessee labels, tags or other identifying marks on the Equipment and wipe clean or permanently delete all data contained on the Equipment, including without limitation, any data contained on internal or external drives, discs, or accompanying media, (b) pack the Equipment in accordance with the manufacturer's guidelines, and (c) deliver such Equipment to Lessor at any destination within the continental United States designated by Lessor. In the case of any item of Software to be returned to Lessor, Lessee shall also deliver to Lessor the original certificate of authenticity issued by the licensor of such Software, if any, the end user license agreement, any CD-ROM, diskettes or other media relating to such Software and any other materials originally delivered to Lessee with such Software. All dismantling, packaging, transportation, in-transit insurance and shipping charges shall be borne by Lessee. All Equipment shall be returned to Lessor in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted, and, except in the case of PC Equipment and Software, shall qualify for maintenance service by the Supplier at its then standard rates for Equipment of that age, if available. Lessee shall be responsible for, and shall reimburse Lessor promptly on demand for, the cost of returning the Equipment to good working condition or, in the case of Equipment other than PC Equipment and Software, qualifying the Equipment for the Supplier's maintenance service, if available. The return of the Equipment shall constitute a full release by Lessee of any leasehold rights or possessory interest in the Equipment.

8. EQUIPMENT USE; MAINTENANCE AND ADDITIONS. Lessee shall, at its own expense, at all times during the applicable Total Term (a) operate and maintain the Equipment in good working order, repair and condition, and in accordance with the manufacturer's specifications and recommendations, (b) except in the case of PC Equipment and Software, maintain and enforce a maintenance agreement to service and maintain the Equipment, upon terms and with a provider reasonably acceptable to Lessor, such that the Equipment shall qualify for Maintenance Service at the time the Equipment is returned to Lessor, and (c) make all alterations or additions to the Equipment required by any applicable law, regulation or order. Lessee shall make no alterations or additions to the Equipment, except those that wilt not void any warranty made by the Supplier of the Equipment, result in the creation of any security interest, lien or encumbrance on the Equipment or impair the value or use of the Equipment either at the time made or at the end of the Total Term of the applicable Lease, and that are readily removable without damage to the Equipment ("Optional Additions"). All additions to the Equipment or repairs made to the Equipment, except Optional Additions, become a part thereof and Lessor's property at the time made. Optional Additions that have not been removed prior to the return of the Equipment shall become Lessor's property upon such return. On at least 72 hours prior notice to Lessee, Lessor and Lessor's agents shall have the right, during Lessee's normal business hours, to enter the premises where the Equipment is located for the purpose of inspecting the Equipment.

9. EQUIPMENT OWNERSHIP; LIENS; LOCATION. As between Lessor and Lessee, Lessor is the sole owner of the Equipment and has sole title thereto, Lessee covenants that it will not pledge or encumber the Equipment or Lessor's interest in the Equipment in any manner whatsoever nor create or permit to exist any levy, lien or encumbrance thereof or thereon except those created by or through Lessor. The Equipment shall remain Lessor's personal property whether or not affixed to realty and shall not become a fixture or be made to become a part of any real property on which it is placed without Lessor's prior written consent. If Lessee has been provided tags or identifying labels, Lessee will at Lessee's expense affix and maintain the same in a prominent position on each item of Equipment to indicate Lessor's ownership. Lessee may relocate any Equipment from the Equipment Location specified in the applicable Schedule to another of its business locations within the United States within five days written notice to Lessor specifying the new Equipment Location, provided Lessee remains in possession and control of the Equipment. Lessee shall not locate or relocate any Equipment such that any third party comes into possession or control thereof without Lessor's prior written consent; provided, however, that Lessor shall not unreasonably withhold its consent to the location or relocation of Equipment to a third party co-location or hosting facility if such third party shall have executed and delivered to Lessor a waiver agreement in form and substance acceptable to Lessor pursuant to which, among other things, such third party shall have waived any rights to the Equipment and agreed to surrender the Equipment to Lessor in the event of a Lessee Default under this Master Agreement.

10. RISK OF LOSS AND INSURANCE. Lessee assumes any and all risk of loss or damage to the Equipment until such Equipment is returned to and received by Lessor in accordance with the terms and conditions of this Master Agreement. Lessee agrees to keep the Equipment insured at Lessee's expense against all risks of loss from any cause whatsoever, including without limitation, loss by fire (including extended coverage), theft and damage, and such insurance shall cover not less than the Stipulated Loss Value of the Equipment. Lessee also agrees that it shall carry commercial general liability insurance in an amount not less than $1,000,000 total liability per occurrence. Lessee shall cause Lessor and its affiliates, and its and their successors and assigns, to be named loss payees and additional insureds, as applicable, under such insurance policies. Each policy shall provide that the insurance cannot be canceled without at least 30 days prior written notice to Lessor, and no policy shall contain a deductible in excess of $25,000. Lessee shall provide to Lessor (a) on or prior to the Acceptance Date for each Lease, and from time to time thereafter, certificates of insurance evidencing such insurance coverage throughout the Total Term of each Lease, and (b) upon Lessor's request, copies of the insurance policies. If Lessee fails to provide Lessor with such evidence, then Lessor will have the right, but not the obligation, to purchase such insurance protecting Lessor at Lessee's expense. Lessee's expense shall include the full premium paid for such insurance and any customary charges, costs or fees of Lessor. Lessee agrees to pay such amounts in substantially equal installments allocated to each Rent payment (plus interest 011 such amounts at the rate of 1-1/2% per month or such lesser rate as is the maximum rate allowable under applicable law).

11. CASUALTY LOSS. Lessee shall notify Lessor of any Casually Loss or repairable damage to any Equipment not later than 30 days following the date of any such occurrence. In the event any Casualty Loss shall occur, on the next Rent payment date Lessee shall pay Lessor the Stipulated Loss Value of the Equipment suffering the Casualty Loss. Upon Lessor's receipt of such payment of Stipulated Loss Value in full: (a) Lessor shall transfer to Lessee all of Lessor's interest in the Equipment suffering the Casualty Loss "AS IS, WHERE IS," without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor, (b) the applicable Lease shall terminate as it relates to such Equipment, and (c) except as provided in Section 26(m), Lessee shall be relieved of all obligations under the applicable Lease as it relates to such Equipment. In the event of any repairable damage to any Equipment, the Lease shall continue with respect to such Equipment without any abatement of Rent and Lessee shall at its expense cause such Equipment to be repaired to the condition it is required to be maintained in pursuant to Section 8 not later than 30 days from the date of the occurrence.

12. TAXES. Lessor shall report and pay all Taxes now or hereafter imposed or assessed by governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Rent or other charges payable hereunder, or otherwise upon or in connection with any Lease or Financing, whether assessed on Lessor or Lessee, other than any such Taxes required by law to be reported and paid by Lessee. Lessee shall within 30 days of invoice reimburse Lessor for all such Taxes paid by Lessor, together with any penalties or interest in connection therewith attributable to Lessee's acts or failure to act, excluding (a) Taxes 011 or measured by the overall gross or net income or items of tax preference of Lessor, (b) as to any Lease or the related Equipment, Taxes attributable to the period after the return of such Equipment to Lessor, and (c) Taxes imposed as a result of a sole or other transfer by Lessor of any portion of its interest in any Lease or Financing or in any Equipment, except for a sale or other transfer to Lessee or a sale or other transfer occurring after and during the continuance of any Lessee Default.

13. GENERAL INDEMNITY. Lessee shall indemnify, defend and hold harmless Lessor, its employees, officers, directors, agents and assignees from and against any and all Claims arising directly or indirectly out of or in connection with any matter involving this Master Agreement, the Equipment, the Financed Items or any Lease and/or Financing.

14. TAX BENEFIT INDEMNITY. Lessor and Lessee agree that Lessor is entitled to certain federal, state and local tax benefits available to an owner of Equipment (collectively, "Tax Benefits"), including without limitation, accelerated cost recovery system deductions for 5-year property and deductions for interest incurred by Lessor to finance the purchase of Equipment available under the Code. Lessee represents, warrants and covenants to Lessor that (a) Lessee is not a tax-exempt entity (as defined in Section 168(h) of the Code); (b) all Equipment will be used solely within the United States; and (c) Lessee will take no position inconsistent with the assumption that Lessor is the owner of the Equipment for federal, state, and local tax purposes. If, due to any act or omission of Lessee or any party acting through Lessee, or the breach or inaccuracy of any representation, warranty or covenant of Lessee contained in any Fundamental Agreement, Lessor reasonably determines that it cannot claim, is not allowed to claim, loses or must recapture any or all of the Tax Benefits otherwise available with respect to the Equipment subject to any Lease (a "Tax Loss"), then Lessee shall, promptly upon demand, pay to Lessor an amount sufficient to provide Lessor the same after-tax rate of return and aggregate after-tax cash flow through the end of the Then Applicable Term of such Lease that Lessor would have realized but for such Tax Loss.

15. COVENANT OF QUIET ENJOYMENT. So long as no Lessee Default exists, and no event shall have occurred and be continuing which, with the giving of notice or the passage of time or both, would constitute a Lessee Default neither Lessor nor any party acting or claiming through Lessor, by assignment or otherwise, will disturb Lessee's quiet enjoyment of the Equipment during the Total Term of the related Lease.

16. DISCLAIMERS AND LESSEE WAIVERS. LESSEE LEASES THE EQUIPMENT FROM LESSOR "AS IS, WHERE IS". IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT (A) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 15, LESSOR MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY, OPERATION, OR CONDITION OF ANY EQUIPMENT OR FINANCED ITEMS (OR ANY PART THEREOF), THE MERCHANTABILITY OR FITNESS OF EQUIPMENT OR FINANCED ITEMS FOR A PARTICULAR PURPOSE, OR ISSUES REGARDING PATENT INFRINGEMENT, TITLE AND THE LIKE; (B) LESSOR SHALL NOT BE DEEMED TO HAVE MADE, BE BOUND BY OR LIABLE FOR, ANY REPRESENTATION, WARRANTY OR PROMISE MADE BY THE SUPPLIER OF ANY EQUIPMENT OR FINANCED ITEMS (EVEN IF LESSOR IS AFFILIATED WITH SUCH SUPPLIER); (C) LESSOR SHALL NOT BE LIABLE FOR ANY FAILURE OF ANY EQUIPMENT OR FINANCED ITEMS OR ANY DELAY IN THE DELIVERY OR INSTALLATION THEREOF; (D) LESSEE HAS SELECTED ALL EQUIPMENT AND FINANCED ITEMS WITHOUT LESSOR'S ASSISTANCE; AND (E) LESSOR IS NOT A MANUFACTURER OF ANY EQUIPMENT. IT IS FURTHER AGREED THAT LESSOR SHALL HAVE NO LIABILITY TO LESSEE OR ANY THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS MASTER AGREEMENT OR ANY SCHEDULE OR CONCERNING ANY EQUIPMENT OR FINANCED ITEMS, OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT NOTHING IN THIS MASTER AGREEMENT SHALL DEPRIVE LESSEE OF ANY RIGHTS IT MAY HAVE AGAINST ANY PERSON OTHER THAN LESSOR. LESSOR AND LESSEE AGREE THAT THE LEASES AND THE FINANCINGS SHALL BE GOVERNED BY THE EXPRESS PROVISIONS OF THIS MASTER AGREEMENT AND THE OTHER FUNDAMENTAL AGREEMENTS AND NOT BY THE CONFLICTING PROVISIONS OF ANY OTHERWISE APPLICABLE LAW. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES THOSE RIGHTS AND REMEDIES AGAINST A LESSOR CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC AND THOSE RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE, IN EITHER CASE THAT ARE INCONSISTENT WITH OR THAT WOULD LIMIT OR MODIFY LESSOR'S RIGHTS SET FORTH IN THIS MASTER AGREEMENT.

17. LESSEE WARRANTIES. Lessee represents, warrants and covenants to Lessor that as of the date of this Master Agreement and for so long as this Master Agreement shall remain in effect: (a) ALL EQUIPMENT WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; (b) Lessee is duly organized, validly existing and in good standing under applicable law; (c) Lessee has the power and authority to enter into each of the Fundamental Agreements; (d) all Fundamental Agreements arc enforceable against Lessee in accordance with their terms and do not violate or create a default under any instrument or agreement binding on Lessee; (e) as of the date of its execution of this Master Agreement and as of the Acceptance Date of any Equipment or Financed Items, there are no pending or threatened actions or proceedings before any court or administrative agency that could reasonably be expected to have a material adverse effect on Lessee or any Fundamental Agreement, unless such actions are disclosed to Lessor and consented to in writing by Lessor; (f) Lessee shall comply with the requirements of all applicable laws and regulations the violation of which could have an adverse effect upon the Equipment, Lessor's rights and remedies under any Fundamental Agreement or Lessee's performance of its obligations under any Fundamental Agreement; (g) each Fundamental Agreement shall be effective against all creditors of Lessee under applicable law, including fraudulent conveyance and bulk transfer laws, and shall raise no presumption of fraud; (h) all financial statements and other related information furnished by Lessee shall be prepared in accordance with generally accepted accounting principles and shall fairly present Lessee's financial position as of the dates given on such statements; (i) Lessee's name set forth in the signature block below is Lessee's full and accurate legal name' (j) Lessee is a Corporation organized under the laws of ; (k) Lessee's "location" (within the meaning of UCC Section 9-307) is Pleasanton, CA (l) Lessee's organizational number assigned to it by its jurisdiction of organization is ; (m) Lessee's federal tax identification number is ; (n) Lessee and all Lessee Affiliates do not export, re-export, or transfer any Equipment, Software, System Software or source code or any direct product thereof to a prohibited destination, or to nationals of proscribed countries wherever located, without prior authorization from the United States and other applicable governments; (o) Lessee and all Lessee Affiliates do not use any Equipment, Software or System Software or technology, technical data, or technical assistance related thereto or the products thereof in the design, development, or production of nuclear, missile, chemical, or biological weapons or transfer the same to a prohibited destination, or to nationals of proscribed countries wherever located, without prior authorization from the United States and other applicable governments; and (p) Lessee and all Lessee Affiliates are not entities designated by the United States government or any other applicable government with which transacting business without the prior consent of such government is prohibited. Lessee agrees to provide Lessor advance written notice of any change in any of the representations and covenants set forth in clauses (i) through (m) of this Section 17.

18. DEFAULT. Any of the following shall constitute a default by Lessee (a "Lessee Default") under this Master Agreement and all Leases and Financings: (a) Lessee fails to pay any Rent payment or any other amount payable to Lessor under this Master Agreement or any Schedule within 10 days after its due date; or (b) Lessee defaults on or breaches any of the other terms and conditions of any Material Agreement, and fails to cure such breach within 10 days after written notice thereof from Lessor; or (c) any representation or warranty made by Lessee in any Material Agreement proves to be incorrect in any material respect when made or reaffirmed; or (d) any change occurs in relation to Lessee's or Guarantor's business, management, ownership or financial condition that would have a material adverse effect on Lessee's ability to perform its obligations under this Master Agreement or any Schedule or Guarantor's ability to perform its obligations under its guaranty; or (e) Lessee or Guarantor dissolves or otherwise terminates its existence, ceases to do business or becomes insolvent or fails generally to pay its debts as they become due; or (f) any Equipment is levied against, seized or attached; or (g) Lessee or Guarantor makes an assignment for the benefit of creditors; or (h) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed by or against Lessee or Guarantor (and, if such proceeding is involuntary, it is not dismissed within 60 days after the filing thereof) or Lessee or Guarantor takes any action to authorize any of the foregoing matters; or (i) any letter of credit or guaranty issued in support of a Lease or Financing is revoked, breached, cancelled or terminated (unless consented to in advance in writing by Lessor); or (j) any Guarantor fails to fulfill its obligations in favor of Lessor pursuant to its guaranty.

19. REMEDIES. If a Lessee Default occurs, Lessor may, in its sole discretion, exercise one or more of the following remedies: (a) declare all amounts due and lo become due under any or all Leases and Financings to be immediately due and payable; or (b) terminate this Master Agreement or any Lease or Financing; or (c) lake possession of, or render unusable, any Equipment wherever the Equipment may be located, without demand or notice and without any court order or other process of law in accordance with Lessee's reasonable security procedures, and no such action shall constitute a termination of any Lease; or (d) require Lessee to deliver the Equipment to a location specified by Lessor; or (e) declare the Stipulated Loss Value for any or all Equipment to be due and payable as liquidated damages for loss of a bargain and not as a penalty and in lieu of any further Rent payments under the applicable Lease or Leases; or (f) proceed by court action to enforce performance by Lessee of any Lease or Financing and/or to recover all damages and expenses incurred by Lessor by reason of any Lessee Default; or (g) terminate any other agreement that Lessor may have with Lessee; or (h) exercise any other right or remedy available to Lessor at law or in equity. Also, Lessee shall pay Lessor all costs and expenses that Lessor may incur to maintain, safeguard or preserve the Equipment, and other expenses incurred by Lessor in enforcing any of the terms, conditions or provisions of this Master Agreement (including reasonable legal fees and collection agency costs). Upon repossession or surrender of any Equipment or Collateral, Lessor may lease, sell or otherwise dispose of the Equipment and/or Collateral in a commercially reasonable manner, with or without notice and at public or private sale, and apply the net proceeds thereof to the amounts owed to Lessor hereunder, but only after deducting (1) in the case of a sale, the estimated Fair Market Value of the Equipment sold as of the scheduled expiration of the Then Applicable Term of the related Lease, (2) in the case of a lease, the rent due for any period beyond the scheduled expiration of the Then Applicable Term of the related Lease, and (3) in either case, all expenses (including reasonable legal fees and costs) incurred by Lessor in connection therewith, or propose to retain any or all of the Equipment and/or Collateral in full or partial satisfaction, as the case may be, of amounts owed to Lessor hereunder; provided, however, that Lessee shall remain liable to Lessor for any deficiency that remains after any sale, lease or retention by Lessor of such Equipment. Any proceeds of any sale or lease of such Equipment in excess of the amounts owed to Lessor hereunder shall be retained by Lessor. Lessee agrees that with respect to any notice of a sale required by law to be given, 10 days' notice shall constitute reasonable notice. Upon payment of all past due Rent and the Stipulated Loss Value as provided in clause (e) above, together with interest at the rate of 1-1/2% per month (or such lesser rate as is the maximum rate allowable under applicable law) from the date declared due until paid, Lessor will transfer to Lessee all of Lessor's interest in the Equipment for which such Rent and Stipulated Loss Value has been paid, which transfer shall be on an "AS IS, WHERE IS" basis, without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor. With respect to any exercise by Lessor of its right to recover and/or dispose of any Equipment or other Collateral securing Lessee's obligations under any Schedule, Lessee acknowledges and agrees as follows: (i) Lessor shall have no obligation, subject to the requirements of commercial reasonableness, to clean-up or otherwise prepare the Equipment or any other Collateral for disposition, (ii) Lessor may comply with any applicable state or Federal law requirements in connection with any disposition of the Equipment or other Collateral, and any actions taken in connection therewith shall not be deemed to have adversely affected the commercial reasonableness of any such disposition, and (m) Lessor may convey the Equipment and any other Collateral on an "AS IS, WHERE IS" basis, and without limiting the generality of the foregoing, may specifically exclude or disclaim any and all warranties, including any warranty of title or the like with respect to the disposition of the Equipment or other Collateral, and no such conveyance or such exclusion or such disclaimer of any warranty shall be deemed to have adversely affected the commercial reasonableness of any such disposition. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or separately from time to time.

20. PERFORMANCE OF LESSEE'S OBLIGATIONS. If Lessee fails to perform any of its obligations hereunder, Lessor may perform any act or make any payment that Lessor deems reasonably necessary for the preservation of Lessor's interests therein; provided, however, that the performance of any act or payment by Lessor shall not be deemed a waiver or release of Lessee from the obligation at issue. All sums so paid by Lessor, together with expenses (including legal fees and costs) incurred by Lessor in connection therewith, shall be paid to Lessor by Lessee immediately upon demand.

21. TRUE LEASE; SECURITY INTEREST; MAXIMUM RATE. Each Lease is intended to be a "Finance Lease" as defined in Article 2A of the UCC, and Lessee hereby authorizes Lessor to file a financing statement to give public notice of Lessor's ownership of the Equipment. The parties' intent that each Lease be a "Finance Lease" within the meaning of Article 2A of the UCC shall have no effect on the characterization of any Lease for accounting purposes, which characterization shall be made by each party independently on the basis of generally accepted accounting principles. Lessee, by its execution of each Schedule, acknowledges that Lessor has informed it that (a) the identity of Seller is set forth in the applicable Schedule, (b) Lessee is entitled under Article 2A of the UCC to the promises and warranties, including those of any third party, provided to Lessor in connection with, or as a part of, the applicable Purchase Documents, and (c) Lessee may communicate with Seller and receive an accurate and complete statement of the promises and warranties, including any disclaimers and limitations of them or of remedies. If (1) notwithstanding the express intention of Lessor and Lessee to enter into a true lease, any Lease is ever deemed by a court of competent jurisdiction to be a lease intended for security, or (2) Lessor and Lessee enter into a Lease with the intention that it be treated as a lease intended as security by so providing in the applicable Schedule, or (3) Lessor and Lessee enter into a Financing, then to secure payment and performance of Lessee's obligations under this Master Agreement and all Leases and Financings, Lessee hereby grants Lessor a purchase money security interest in the Collateral. In any such event, notwithstanding any provisions contained in this Master Agreement or in any Schedule, neither Lessor nor any Assignee shall be entitled to receive, collect or apply as interest any amount in excess of the maximum rate or amount permitted by applicable law. In the event Lessor or any Assignee ever receives, collects or applies as interest any amount in excess of the maximum amount permitted by applicable law, such excess amount shall be applied to the unpaid principal balance and any remaining excess shall be refunded to Lessee. In determining whether the interest paid or payable under any specific contingency exceeds the maximum rate or amount permitted by applicable law, Lessor and Lessee shall, to the maximum extent permitted under applicable law, characterize any non-principal payment as an expense or fee rather than as interest, exclude voluntary prepayments and the effect thereof, and spread the total amount of interest over the entire term of this Master Agreement and all Leases and Financings.

22. ASSIGNMENT. Lessor shall have the unqualified right to sell, assign, grant a security interest in or otherwise convey any part of its interest in this Master Agreement, any Lease or Financing or any Equipment, in whole or in part, without prior notice to or the consent of Lessee. If any Lease or Financing is sold assigned, or otherwise conveyed, Lessee agrees that (a) Assignee shall (1) have the same rights, powers and privileges that Lessor has under the applicable Lease or Financing, and (2) have the right to receive from Lessee all amounts due under the applicable Lease or Financing, in either case, to the extent assigned; and (b) it may not require Assignee to perform any obligations of Lessor, other than those that are expressly assumed in writing by Assignee. Lessee agrees to execute such acknowledgements thereto as may be reasonably requested by Lessor or Assignee. Lessee further agrees that in any action brought by such Assignee against Lessee to enforce Lessor's rights hereunder, Lessee will not assert against such Assignee any set-off, defense or counterclaim that Lessee may have against Lessor, Assignee, or any other person. Unless otherwise specified by Lessor and Assignee, Lessee shall continue to pay all amounts due under the applicable Lease or Financing to Lessor; provided, however, that upon notification from Lessor and Assignee, Lessee covenants to pay all amounts due under the applicable Lease or financing to Assignee when due and as directed in such notice. Lessee further agrees that any Assignee may further sell, assign, grant a security interest in or otherwise convey its rights and interests under the applicable Lease or Financing with the same force and effect as the assignment described herein. Lessee may not assign, transfer, sell, sublease, pledge or otherwise dispose of this Master Agreement, any Lease or Financing, any Equipment or any interest therein.

23. TERM OF MASTER AGREEMENT. This Master Agreement shall commence and be effective upon the execution hereof by both parties and shall continue in effect until terminated by either party by 30 days' prior written notice to the other. However, no termination of this Master Agreement pursuant to the preceding sentence shall be effective with respect to any Lease or Financing that commenced prior to such termination until the expiration or termination of such Lease or Financing and the satisfaction by Lessee of all of its obligations hereunder with respect thereto.

24. WAIVER OF JURY TRIAL. LESSEE AND LESSOR HEREBY EXPRESSLY WAIVE ANY RIGHT TO DEMAND A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING INSTITUTED BY LESSOR OR LESSEE IN CONNECTION WITH THIS MASTER AGREEMENT OR ANY FUNDAMENTAL AGREEMENT.

25. NOTICES. All notices, requests, demands, waivers and other communications required or permitted to be given under this Master Agreement or any other Fundamental Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed via certified mail or a nationally recognized overnight courier service, or sent by confirmed facsimile transmission, addressed as follows (or such other address or fax number as either party shall so notify the other):

If to Lessor:
Hewlett-Packard Financial Services Company
420 Mountain Avenue—P.O. Box 6
Murray Hill, New Jersey 07974-0006
Attn: Director of Operations, North America
Fax: (908)898-4109

If to Lessee:
Five 9, Inc.
7901 Stoneridge Dr, Ste 200
Pleasanton, CA 94588
Attn: David Hill
Fax: 929-342-3463

26. MISCELLANEOUS.

(a) Governing Law. THIS MASTER AGREEMENT AND EACH LEASE AND FINANCING SHALL BE GOVERNED BY THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) OF THE STATE OF NEW JERSEY.

(b) Consent to Jurisdiction. Lessor and Lessee consent to the jurisdiction of any local, state or Federal court located within the State of New Jersey and waive any objection relating to improper venue or forum non-conveniens to the conduct of any proceeding in any such court.

(c) Credit Review. Lessee consents to a credit review by Lessor for each Lease and Financing.

(d) Further Assurances. Lessee agrees to promptly execute and deliver to Lessor such further documents and take such further action as Lessor may require in order to more effectively carry out the intent and purpose of this Master Agreement and any Schedule. Without limiting the generality of the foregoing, Lessee agrees (a) to furnish to Lessor from time to time, its certified financial statements, officer's certificates and appropriate resolutions, opinions of counsel and such other information and documents as Lessor may reasonably request, and (b) to execute and timely deliver to Lessor any financing statements or other documents that Lessor deems necessary under applicable law to perfect or protect Lessor's security interest in the Collateral or to evidence Lessor's interest in the Equipment; provided, however, that Lessee authorizes Lessor to file any such financing statement or other document without Lessee's authentication to the extent permitted by applicable law. Lessee hereby appoints Lessor and any agent of Lessor as Lessee's attorney-in-fact, with full power of substitution, for the sole purpose of executing on behalf of Lessee such UCC financing statements as Lessor deems necessary to perfect or protect Lessor's security interest in the Collateral or to evidence Lessor's interest in the Equipment. Lessee acknowledges and agrees that such appointment is coupled with an interest and is irrevocable until the expiration or termination of all Leases and Financings and the satisfaction by Lessee of all of its obligations hereunder. It is also agreed that Lessor or Lessor's agent may file as a financing statement, any lease document (or copy thereof, where permitted by law) that Lessor deems appropriate to perfect or protect Lessor's security interest in the Collateral or to evidence Lessor's interest in the Equipment. Upon demand, Lessee will promptly reimburse Lessor for any filing or recordation fees or expenses (including legal fees and costs) incurred by Lessor in perfecting or protecting its interests in any Collateral or the Equipment.

(e) Captions and References. The captions contained in this Master Agreement and any Schedule are for convenience only and shall not affect the interpretation of this Master Agreement. All references in this Master Agreement to Sections, Annexes and Exhibits refer to Sections hereof, Annexes hereof and Exhibits hereto unless otherwise indicated.

(f) Entire Agreement; Amendments. This Master Agreement and all other Fundamental Agreements executed by both Lessor and Lessee constitute the entire agreement between Lessor and Lessee relating to the leasing of the Equipment and the financing of Financed Items, and supersede all prior agreements relating thereto, whether written or oral, and may not be amended or modified except in a writing signed by the parties hereto.

(g) No Waiver. Any failure of Lessor to require strict performance by Lessee, or any written waiver by Lessor of any provision hereof, shall not constitute consent or waiver of any other breach of the same or any other provision hereof.

(h) Lessor Affiliates. Lessee understands and agrees that Hewlett-Packard Financial Services Company or any affiliate or subsidiary thereof may, as lessor, execute Schedules under this Master Agreement, in which event the terms and conditions of the applicable Schedule and this Master Agreement, as it relates to the lessor under such Schedule, shall be binding upon and shall inure to the benefit of such entity executing such Schedule as lessor, as well as any successors or assigns of such entity.

(i) Lessee Affiliates. A Lessee Affiliate may enter into a Lease or Financing under and subject to the terms and conditions of this Master Agreement by executing a Schedule incorporating this Master Agreement by reference, in which case such Lessee Affiliate shall be deemed, for purposes of such Lease or Financing, to be the "Lessee" under this Master Agreement, The undersigned Lessee hereby unconditionally guarantees to Lessor the full and prompt payment, observance and performance when due of all obligations of all Lessee Affiliates (collectively, "Guaranteed Obligations") under all such Leases and Financings. The foregoing guarantee is absolute, continuing, unlimited and independent and shall not be affected, diminished or released for any reason whatsoever. The undersigned Lessee waives diligence, presentment, demand for payment, protest or notice of any Lessee Default or nonperformance by any Lessee Affiliate, all affirmative defenses, offsets and counterclaims against Lessor, any right to the benefit of any security or statute of limitations, and any requirement that Lessor proceed first against a Lessee Affiliate or any collateral security. Until the Guaranteed Obligations shall have been paid in full, Lessee shall have no right of subrogation.

(j) Invalidity. If any provision of this Master Agreement or any Schedule shall be prohibited by or invalid under law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Master Agreement or such Schedule.

(k) Counterparts. This Master Agreement may be executed in counterparts, which collectively shall constitute one document,

(l) Lessor Reliance. In connection with its execution of this Master Agreement, Lessee shall deliver to Lessor an officer's certificate (or partner's or member's certificate as appropriate) in form and substance acceptable to Lessor, executed by a duly authorized officer (or partner or member) of Lessee and certifying as to, among other things, Lessee's authority to enter into this Master Agreement and Leases and Financings hereunder and the authority of Lessee's officers or representatives specified therein to execute this Master Agreement and all other Fundamental Agreements. Lessor may act in reliance

upon any instruction, instrument or signature reasonably believed by Lessor in good faith to be genuine. Lessor may assume that any employee of Lessee who executes any document or gives any written notice, request or instruction has the authority to do so.

(m) Survival. All representations, warranties and covenants made by Lessee hereunder shall survive the termination of this Master Agreement and shall remain in full force and effect. All of Lessor's rights, privileges and indemnities under this Master Agreement or any Lease or Financing, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the expiration or termination of such Lease or Financing, shall survive such expiration or termination and be enforceable by Lessor and Lessor's successors and assigns,

27. Lessee acknowledges that neither this Master Agreement nor any other Fundamental Agreement may be amended or modified except by a writing signed by Lessor and Lessee. Lessee Initials: _____

IN WITNESS WHEREOF, LESSEE AND LESSOR HAVE EXECUTED THIS MASTER AGREEMENT ON THE DATES SPECIFIED BELOW.

LESSEE:	**LESSOR:**
FIVE 9, INC.	**HEWLETT-PACKARD FINANCIAL SERVICES COMPANY[2]**
By: /s/ David Hill	By _____
Name: David Hill	Name: _____
Title: VP—Finance	Title: _____
Date: 11/1/10	Date: _____

2 Authorized to do business in the name of Hewlett-Packard Financial Services Company Inc. in the States of Alabama and New York.

HP Financial Services

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BILLING INFORMATION REQUEST FORM

Master Agreement Number: 3604686364

IN ORDER FOR HEWLETT-PACKARD FINANCIAL SERVICES COMPANY TO PROPERLY BILL AND CREDIT YOUR ACCOUNT, IT IS NECESSARY THAT YOU COMPLETE THIS FORM AND RETURN IT WITH THE SIGNED DOCUMENTS.

CUSTOMER LEGAL NAME: **Five9, Inc.**

PURCHASE ORDER NUMBER: _____

BILLING ADDRESS: _____

_____

BILL TO ATTENTION & TITLE: _____
(Name of individual who will approve and process payments)

TELEPHONE NUMBER: _____ FAX NUMBER: _____

EMAIL ADDRESS: _____

EQUIPMENT LOCATION (if different from above): _____

_____

_____

ARE YOU SALES/RENTAL TAX EXEMPT? _____
IF SO, PLEASE ATTACH A COPY OF YOUR CERTIFICATE AND RETURN WITH THIS FORM.

SPECIAL INSTRUCTIONS: _____

_____

_____

THANK YOU,
Hewlett-Packard Financial Services Company

/s/ David Hill
_____
CUSTOMER SIGNATURE

10/29/2010

HP Financial Services

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OFFICER'S CERTIFICATE

LESSEE: Five 9, Inc.	LESSOR: Hewlett-Packard Financial Services Company
Street Address: 7901 Stoneridge Dr, Ste 200	Street Address: P.O. Box 6, 420 Mountain Avenue Murray Hill, NJ 07974
City, State, Zip Code: Pleasanton, CA 94588	Master Lease and Financing Agreement Number: **3604686364** ("Master Agreement")

I, Craig Klosterman, DO HEREBY CERTIFY that I am the duly qualified and acting of the Corporation referenced above as Lessee ("Corporation"); that the Corporation is a duly organized corporation, validly existing and in good standing under the laws of the State of California and qualified to do business in each jurisdiction where the Equipment (as such term is defined in the Master Agreement) will be located; that based on an examination of the Corporation's charter, bylaws and other relevant records, as of the date set forth below the following persons in the respective capacities appearing after their names, on behalf of the Corporation with full authority to bind the Corporation thereto, have been authorized to execute the Master Agreement and all other agreements, documents and instruments executed and delivered and to be executed and delivered in connection therewith, including without limitation, any Schedules to the Master Agreement, Acceptance Certificates and any other documents attendant to the Master Agreement (collectively referred to as the "Documents"); and that the signature appearing after the title of each such person is his or her true and authentic signature:

Name	Title	Signature
David Hill	VP Finance	/s/ David Hill

On behalf of the Corporation, I hereby certify the due and effective ratification, approval, and confirmation of all such acts and things that any of the above-referenced persons has done or may do in connection with the matters outlined above prior or subsequent to the date of this Certificate. The foregoing authority and empowerment of the above-named persons shall remain in full force and effect, and Lessor shall be entitled to rely upon the same, until written notice of the modification, rescission or revocation of the same, in whole or in part, has been delivered to Lessor, but no such modification, rescission or revocation shall, in any event, be effective with respect to any Documents executed or actions taken in reliance upon the foregoing authority and empowerment prior to the delivery to Lessor of said written notice of the modification, rescission or revocation. The execution and delivery of the Documents for and on behalf of the Corporation is not prohibited or in any manner restricted by the terms of the Corporation's Articles of Incorporation, by-laws, or any loan agreement, indenture or contract.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Corporation this 1st day of November, 2010.

By: /s/ Craig Klosterman

(Corporate Seal)

Name: Craig Klosterman

Title: CFO/Secretary

HP Financial Services

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INSURANCE INFORMATION REQUEST FORM

Broker / Agent Name: John Mackin		
Address:		
Contact:	Telephone Number:	Fax Number:

Insurance Broker / Agent:

We have entered into a Master Lease and Financing Agreement Number **3604686364** with Hewlett-Packard Financial Services Company for the lease/finance of equipment listed below.

Equipment: Computer Equipment	Equipment Cost: $250,000

Please insure the equipment, issue a written endorsement naming Hewlett-Packard Financial Services Company as X Additional Insured and/or X Loss Payee, and provide Hewlett-Packard Financial Services Company with thirty (30) days written notice of any material changes in coverage, cancellation or non-renewal. The policy should include the following endorsement:

> The insurance under this policy shall be primary insurance and the company insurer shall be liable under this policy for the full amount of the loss up to and including the total limits of liability herein without right of contribution from any other insurance effected by Hewlett-Packard Financial Services Company under any policy with any insurance company covering a loss covered under this policy.

Please provide Hewlett-Packard Financial Services Company with proof of insurance in the form of a certificate of insurance. The certificate should include proof of the following: ¿¡g.

__X__ Physical Damage (All Risk) in an amount equal to or greater than the Equipment Cost as stated above
__X__ Bodily Injury and Property Damage Liability with limits of no less than $ 1,000,000.00 per occurrence
__X__ The deductible on each policy does not exceed $25,000.00

If Hewlett-Packard Financial Services Company requests additional or updated certificates in the future, you should provide such certificates to Hewlett-Packard Financial Services Company.

Forward certificate(s) of insurance to: Hewlett-Packard Financial Services Company
420 Mountain Avenue
Murray Hill, NJ 07974
Attn: Linda Gonzalez

Lessee/Insured:

By: /s/ David Hill

Date: 11/1/2010

Please forward a **copy** to your Broker/Agent immediately and return the **original** with the executed lease documents.

CONFIDENTIAL TREATMENT REQUESTED—CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION.

Quality Investment Properties Metro, LLC

Master Space Agreement

This Master Space Agreement between Quality Investment Properties Metro, LLC, ("QTS") and Five9, Inc. ("Customer) is made effective as of November 1st, 2012 ("Effective Date") and governs Customer Space licensed to Customer under a Work Order and Service(s) purchased by Customer under a Work Order. Capitalized terms used herein shall have the meaning given in the definition section of this Agreement.

1. LICENSES OF CUSTOMER SPACE AND ORDERS FOR SERVICES. This Agreement is a master agreement under which Customer may license Customer Space and order Services from time to time by written agreement between Customer and QTS. To the extent of any inconsistency between this Agreement and the Work Order, the Work Order shall govern. Customer may cancel a Work Order by written notice to QTS at any time prior to Work Order written acceptance by QTS.

2. TERM. The Term for this Agreement shall begin on the Effective Date and expire at the termination of the last order for services. The Term for each Work Order shall begin on the Start Date and expire on the Expiration Date. QTS may provide Customer a Target Date for a Work Order, and if so, will use commercially reasonable efforts to deliver the Customer Space or Services on the Target Date. Notwithstanding, should QTS fail to deliver the Customer Space or commence delivery of the Services by the Target Date, and fail to cure same within thirty (30) days of Customer's written notice of such failure, Customer may terminate the specific Work Order in its sole discretion, upon written notice delivered to QTS within thirty (30) days of such failure to cure. In the event of such termination, neither party shall be liable for damages arising out of the failure to perform, other than any accrued amounts owed. The termination or expiration of a Work Order will not affect Customer's other Space or Services under one or more separate Work Orders.

3. FEES AND PAYMENT TERMS.

3.1 *Payment Terms*. QTS will invoice Customer for all Customer Space and Services on a monthly basis, with fixed recurring charges invoiced in advance and all other changes invoiced in arrears. Customer will pay, by check or wire transfer, each undisputed invoice in full upon receipt. If Customer disputes any portion of an invoice, Customer will notify QTS in writing of such dispute within thirty (30) days of the invoice date. A dispute as to any portion of an invoice does not relieve Customer from timely payment of the undisputed portion. Fees for each of the licensed Customer Spaces or Services in a Work Order begin to accrue at the Start Date.

3.2 *Ability To Pay/Security Deposit*. Upon request, Customer shall provide QTS with information reasonable requested by QTS to determine Customer's ability to pay. A security deposit *** as set out in the Work Order may be required to accompany each Work Order. The security deposit shall be applied to the last two months of Licenses or Services with any short fall or overage adjustment applied to the last month of Licenses or Services. In the event of an uncured breach of this Agreement by Customer, QTS shall, with written notice and without limiting its remedies otherwise available, have the right to apply the deposit to the damages suffered by QTS as a result of such breach. QTS shall not be required to keep the security deposit in trust, segregate it or keep it separate from QTS's general funds, but QTS may commingle the security deposit with its general funds and Customer shall not be entitled to interest on such deposit.

3.3 *Late Payments*. Any payment not received by QTS within thirty (30) days of the invoice date will accrue interest at a rate of one and one half percent (1 ½%) per month (compounded daily), or the highest rate allowed by applicable law, whichever is lower.

3.4 *Taxes*. Customer shall be responsible for all taxes related to the provision of Customer Space or Services, except for taxes based on QTS's net income.

3.5 *Credit History*. QTS may in its sole discretion report Customer's payment history to reporting agencies, including but not limited to, Dun & Bradstreet.

4. SPACE AND SERVICES SELECTED.

4.1 *Services*. (i) QTS agrees to provide the Customer Space and Services and Customer agrees to pay the applicable fees for the Customer Space licensed and the Services set forth in each Work Order and (ii) in the event Customer requests QTS to perform consulting or technical Service of a specialized nature, the details, deliverables, milestone dates, fees and other pertinent information relating to such Service will be set forth on an attached, executed Work Order. In the event QTS is requested to provide specialized Services as described in clause (II) above. QTS shall provide said Service to Customer using employees or subcontractors of QTS and/or its affiliates, in QTS's sole discretion.

4.2 Customer represents and warrants that Customer does not appear on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and is not otherwise a person prohibited by applicable law to whom QTS may not legally provide the Customer Space. Customer may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction or missiles, in a country listed in Country Groups D:4 and D:3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations. Customer may not provide administrative access to the Service to any person (including any natural person or government or private entity) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

5. MUTUAL REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION. Each party represents, warrants and covenants that: (i) it as has and will maintain the legal right to use, operate and locate its equipment in the Data Center, (ii) the performance of its obligations hereunder will not violate any applicable Laws; (iii) neither the execution of this Agreement nor the

performance of its obligations hereunder will constitute a breach by it of any agreements to which it is a party or by which it is bound; (iv) it has duly, authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of such party and shall be enforceable against such party in accordance with its terms and (v) all equipment, materials and other tangible items placed by it at Data Center will be installed, operated, used and maintained in compliance with all applicable Laws and manufacturer specifications. Customer will indemnify, defend and hold harmless QTS, and its representatives, agents, employees, officers, directors, members, partners, principals, managers, affiliates, lenders, contractors, subcontractors and other Data Center users and customers from any and all Losses arising from or relating to (i) any claim, action or omission by any of the Customer Parties (including claims for personal injuries while in or around the Facilities); (ii) any claim, action or omission by a customer or end-user of Customer or other third party, relating to, or arising out of, Customer's or any of its customers' services or the Customer Space licensed or Services provided under this Agreement (including claims arising from or relating to interruptions, suspensions, failures, defects, delays, impairments or inadequacies in any of the aforementioned Licenses or Services); and (iii) any claim, action or omission by a customer or end-user of a Customer or other third party relating to or arising out of violation of the AUP by Customer, Customer Parties or any end-user or customer of Customer. QTS will indemnify, defend and hold harmless Customer, and its representatives, agents, employees, officers, directors, members, partners, principals, managers, affiliates, lenders, contractors, subcontractors from any and all losses arising from or relating to personal injury or property damage caused by QTS's negligence or willful misconduct. QTS will indemnify, defend and hold harmless Customer, and its representatives, agents, employees, officers, directors, members, partners, principals, managers, affiliates, lenders, contractors, subcontractors from any and all Losses arising from QTS' infringement of third party intellectual property rights. Both parties shall defend and indemnify the other for any breach of the mutual insurance provisions in Section 8.

6. REMEDIES AND DAMAGES, AND LIMIT ON WARRANTIES

6.1 *No Other Warranty*. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT, THE CUSTOMER SPACE AND SERVICES (INCLUDING ALL MATERIALS SUPPLIED AND USED THEREWITH) AR PROVIDED "as is where is", AND CUSTOMER'S USE OF THE CUSTOMER SPACE AND SERVICES IS AT ITS OWN RISK. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT, QTS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WHETHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, NONINFRINGEMENT, TITLE, OR ARISING FROM A COURSE OF DEALING, OR TRADE PRACTICE.

6.2 Intentionally Omitted.

6.3 *Consequential Damages Waiver*. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ARISING UNDER THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. THE FOREGOING LIMITATION OF LIABILITY AND DAMAGES SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5 ABOVE, BREACH BY EITHER PARTY OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 7, OR A BREACH BY CUSTOMER OF THE AUP OR SECTION 10.15 OF THIS AGREEMENT.

6.4 *Basis of the Bargain*. The parties acknowledge that the prices have been set, and the Agreement is entered into in reliance upon the limitations of liability, remedies, damages, and the

disclaimers or warranties and damages set forth herein, and that all such limitations and exclusions form an essential basis of the bargain between the parties. The specific remedies provided herein for QTS failure to meet a Service Level Guarantee are the exclusive remedies available to Customer for such failure.

7. MUTUAL CONFIDENTIALITY

7.1 *Disclosure and Use*. Each party agrees that it will not use in any way, nor disclose to any third party, the other party's Confidential Information, and will take reasonable precautions to protect the confidentiality of such information, at least as stringently as it takes to protect its own Confidential Information, but in no case will the degree of care be less than reasonable care. Nothing herein shall preclude disclosure by a party (i) to that party's attorneys, accountants, lenders and other advisors and employees who have a bona fide need to know the other party's Confidential Information in connection with the receiving party's performance under this Agreement and are under an obligation of confidentiality no less stringent than this Section 7, (ii) to any potential transferee or assignee of all or any portion of the Data Center, or in connection with a merger or acquisition of all or substantially all of its assets, or (iii) any disclosure that a party concludes that it is required to make as a matter of law (including, without limitation, in accordance with the rules and regulations of a national stock exchange, the Securities and Exchange Commission or other securities law regulators), provided that such disclosure is made after good faith consultation with counsel with respect thereto. Each party agrees to only make copies of the other's Confidential Information for purposes consistent with this Agreement, and each party shall maintain on any such copies a proprietary legend or notice as contained on the original or as the disclosing party may request.

7.2 *Exclusions from Confidentiality Obligations*. Notwithstanding the confidentiality obligations required herein, neither party's confidentiality obligations hereunder shall apply to information which: (a) is already lawfully known to the receiving party (other than the terms of this Agreement); (b) becomes publicly available without fault of the receiving party; (c) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or such Confidential Information is approved for release by written authorization of the party having the rights in such Confidential information; (d) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (e) is required to be disclosed by Law, provided that prior to making such required disclosure, the party who is required to disclose the Confidential Information shall, if not prohibited by the application of law, notify the owner of such Confidential Information that disclosure is legally required;

7.3 *Specific Performance and Injunctive Relief*. Each of QTS, Customer and their respective representatives agree that a breach of Sections 7.1 and .2 above will give rise to irreparable injury to the other party for which damages may not be adequate compensation, and consequently, that the other party shall be entitled, in addition to all other remedies available to it at law or equity, to injunctive and other equitable relief to prevent a breach of Sections 7.1 and 7.2 and to secure the specific performance of such sections without proving actual damages or posting bond or other security.

8. MUTUAL INSURANCE REQUIREMENTS

8.1 *Minimum Levels*. Each party agrees to keep in full force and effect during the Term of this Agreement: (i) commercial general liability insurance with a combined single limit in an amount not less than $1,000,000 per occurrence, and $2,000,000 aggregate (or coverage under an "umbrella" policy in an amount not less than $3,000,000), including broad form premises and operations, products and completed operations, personal injury, contractual, and broad form property damage liability coverage and (ii) workers' compensation insurance covering such party's employees in an amount not less than that required by Law. QTS shall maintain property insurance (all risks) covering QTS's Facilities, including the Data Center, Customer agrees that it will insure and be solely responsible for insuring the injuries to and claims of its representatives, unless such injuries are the fault of QTS. All such policies shall be written by insurance carriers licensed in the state in which the Data Center is located. and shall be rated A-, IX or better by A.M. Best; and, except for workers compensation insurance, such policies maintained by Customer shall name QTS and its lenders as additional insureds. Parties agree that upon request, they will deliver to each other the applicable certificates of insurance naming the other party as a certificate holder. A party shall give the other party at least thirty (30) days written notice of expiration, cancellation, or material changes in the coverage of any of the policies to which such other party ls an additional insured. Each party will cause and ensure that each insurance policy of such party required under this Agreement will provide that the underwriters waive all claims and rights of recovery by subrogation against the other party's Parties in connection with any liability or damage covered by the insurance policies. Each Party hereby indemnifies and holds harmless the other for a breach of such Party's obligations under this Section 8.1.

9. TERMINATION

9.1 *Termination for Cause*. QTS may terminate this Agreement or any Service (in whole or in part), at any time, without liability, for any one or more of the following: (a) Customer breaches any material term of this Agreement and fails to cure such breach (susceptible to cure) within thirty (30) days after receipt of written notice of the same (provlded, however, in the event this Agreement provides that termination of any rights shall be immediate for any specific breach, then such notice period shall not be required); (b) QTS becomes aware that Customer has knowingly threatened the security of the Data Center or any other QTS network or system; (c) failure to pay undisputed amounts when due, after fifteen (15) days written notice and failure to cure; (d) QTS is unable to provide Customer Space or Services due to Customer's unlawful, willful misconduct or negligent acts or omissions; (e) Customer becomes the subject of a voluntary or involuntary proceeding relating to insolvency, bankruptcy, receivership, liquidation for the benefit of creditors, and such petition or proceeding is not dismissed within ninety (90) days of the filing thereof; or (f) a court or other government authority having jurisdiction over the Services prohibits QTS from furnishing the Customer Space or Services to Customer. Customer may terminate this Agreement in the event that QTS breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same; provided, however QTS' failure to meet a Service Level Guarantee is not a material breach of this Agreement if QTS provides the required Service Level Credit (as defined in the Addendum attached hereto and incorporated by this reference herein) as set forth in·the Addendum.

9.2 *Early Termination*. In the event Customer desires to terminate any License or Services prior to the end of the Term (other than as provided in Section 9.1 herein or Section 5.7(b) of the Colocation Addendum attached hereto), or if the Licenses or Services are terminated by QTS as provided in Section 9.1 herein, Customer shall pay a termination charge equal to the costs incurred by QTS in returning the space to a condition suitable for use by other paties, plus the percentage of the remaining monthly recurring fees that would have been charged for the Customer Space and Services for the Term (as applicable on the date of said termination) calculated as follows:

(a) 100% of the remaining monthly recurring charges that would have been charged for the Customer Space and Services for months *** of the Term (as applicable on the effective date of termination); plus

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

(b) 75% of the remaining monthly recurring charges that would have been charged for the Customer Space and Services for months *** (as applicable on the effective date of termination); plus

(c) 50% of the remaining monthly recurring charges that would have been charged for the Customer Space and Services for months *** through the end of the Term (as applicable on the effective date of termination) (the "Termination Fees").

Such Termination Fees are not penalties, but due to the difficulty in estimating actual damages for early termination, are agreed upon charges to fairly compensate QTS.

9.3 *Holdover Customer*. If Customer continues to use any Customer Space or Service after the expiration or earlier termination of the Term for such License or Service, then Customer shall remain subject to the terms and conditions of this Agreement at one hundred (100%) of the monthly recurring charge and usage charge in effect for the full month before such expiration or termination. In the event such hold-over period is greater than ***, the recurring monthly charge during such hold-over period shall increase to *** of the recurring monthly charge and usage charges for the last full month before expiration or earlier termination of the Term. During any hold-over period, this Agreement becomes a month-to-month Agreement and can be terminated on thirty (30) days notice by either party.

9.4 *Suspension of Licenses or Services by QTS*. QTS may suspend Customer's rights to use any or all Customer Space or Services if Customer fails to pay any undisputed sum .for Licenses .or Services when such payment is due and. such failure remains uncured·for a period of fifteen (15) days after written notice is given Customer by QTS. In the event of a suspension of Licenses or Services pursuant to this Section 9.4, Customer agrees that QTS may, without notice or liability, suspend Services and take possession of any Customer Equipment and store it at Customer's expense, provided however, QTS shall (i) not allow anyone to access the data on Customer Equipment and (ii) use reasonable care in removing and storing Customer Equipment, including·without limitation ensuring it is handled and stored in a secure·fashion and unexposed to: external conditions that are reasonably known to damage such Customer Equipment. If Customer's Licenses or Services are suspended pursuant to this Section 9.4 and QTS determines, in its sole discretion,·to reconnect Customer Space or Services, Customer agrees to pay, in addition to any other fees or sums for Licenses or Services owing under this Agreement, the Reconnection Fee. The remedies of QTS under this Section 9.4 are in addition to any other rights that QTS may have under this Agreement.

9.5 *Effect of Termination by Either Party*. Upon the effective date of termination of the Agreement: (a) QTS will immediately cease providing Services and Customer's License shall terminate and QTS shall not be responsible for any loss of access or or data as result of such cessation of Services, subject to·Section 9.5(c) and any other applicable provisions hereunder; (b) any payment obligations of Customer under this Agreement for Licenses or Services provided through the date of termination and any applicable Termination Fees will become due and payable as set forth hereunder; and (c) within ten (10) business days of such termination Customer shall (i) remove from· the Data Center(s) all Customer Equipment and any other Customer property located at the Data Center(s); (ii) make available all QTS Provided Equipment to an authorized representative of QTS and (iii) return the Customer Space to QTS in the same condition as existed on the Start Date, normal wear and tear excepted. If Customer does not remit the sums payable under (b) and/or does not remove the Customer Equipment and its other property as provided in (c), QTS will have the right to do one or more of the following, with notice, without liability therefor, and without prejudice to any other available remedies: (x) re-claim the Customer Space, remove all property therefrom and re-license .the Customer Space; (y) move all such Customer property to secure storage and charge Customer for the cost of such removal and storage; and (z) if Customer does not claim such property within thirty (30) days following such notice, liquidate the Customer property in accordance with applicable law, applying all proceeds first to the cost of such liquidation, then to all payment obligations due hereunder, and the balance thereof, if any, shall be paid to Customer.

10. MISCELLANEOUS PROVISIONS

10.1 *Force Majeure*. Neither party shall be liable to the other for any failure of performance or equipment due to causes beyond its reasonable control; including but not limited to, acts of God, fire, explosion; any law or direction of any governmental entity; emergencies; civil unrest, wars; unavailability of rights-of-way, third party services or materials; or strikes, lock-outs, work stoppages, labor shortages or other labor difficulties; viruses, denial of service attacks, telecommunications failures, failure of the Internet or other events of a type or magnitude for which precautions are generally not taken in the industry (each, a "Force Majeure Event"). If QTS is unable to deliver the Customer Space or Service for five (5) consecutive days, Customer shall have the right to terminate any affected Work Order pursuant hereto.

10.2 *Relocation of Customer Equipment or Customer Space*. If it is necessary or desirable, for QTS's use of the Data Center, to relocate the Customer equipment or Customer Space to another area in the Data Center or other similar data center owned by QTS, the parties will cooperate in good faith with each other to facilitate such relocation, QTS shall be solely responsible for the costs incurred by QTS in connection with any such relocation. Relocation made by QTS at the request ot Customer, will be at the sole expense of Customer. QTS will use commercially reasonable efforts to minimize and avoid any interruption in Services during such relocation.

10.3 *Regulatory Changes*. In the event that a tariff is filed against QTS or there is a change in law, rule or regulation, increased power costs or similar circumstance that materially increases the costs or other terms of delivery of Licenses or Service, the parties agree to negotiate the rates to be charged, or other required terms of service to reflect such increased costs or change in term of space or service. If the parties are unable to agree on new rates within (30) days after QTS's delivery of written notice regarding the rate change, then either party may terminate the Licenses or Services without penalty by giving thirty (30) days written notice.

10.4 *Notice*. Any notice or communication required or permitted dto be given hereunder may be delivered by hand, deposited with an overnight courier, sent by e-mail or facsimile (provided delivery is confirmed), or U.S. Mail registered or certified return receipt requested and postage prepaid, in each case to the address set forth below or to such other address as may hereafter be furnished in writing by either party to the other party in accordance with this Section. Such notice will be deemed to have been given as of the date it is received.

To QTS at:

Quality Investment Properties Metro, LLC
12851 Foster Street, Suite 205
Overland Park, KS 66213
Attn: Legal Department
Fax: (913) 814-7766

To Customer at:

_____
_____
_____
_____
_____

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

10.5 *Assignment*. Customer may not assign or transfer part or all of its rights and obligations under this Agreement without the prior written consent of QTS, which shall not be unreasonably withheld; provided however, no consent shall be required in the event of a merger, acquisition, or change of control involving Customer or for an assignment by Customer to a Customer subsidiary or Customer's parent company. Customer or its permitted assignee shall not resell or lease the Services or sublicense or lease the Customer Space without the prior written consent of QTS. QTS may require any transferee to execute documentation reasonably acceptable to QTS in connection with the applicable transfer, including, without limitation, an assumption agreement whereby the transferee assumes all of Customer's liabilities, duties and obligations under this Agreement. In any event, no Transfer shall relieve or release Customer of its obligations under this Agreement. QTS may assign or transfer part or all of its respective rights and obligations under this Agreement with notice, provided that such notice may be made subsequent to the transfer, to Customer, including without limitation, to any entity that is a subsidiary or affiliate of QTS or to any entity that is the survivor of a merger with QTS and any entity that acquires all or substantially all of the assets of QTS. In the event of any transfer or termination of QTS's interest in the Data Center by sale, assignment, transfer, foreclosure, deed-in-lieu of foreclosure or otherwise whether voluntary or involuntary, QTS whall be automatically relieved of any and all obligations and liabilities incurred or accrued .on the part of QTS from and after the date of such transfer or termination, and any subsequent owner of the Data Center shall only be responsible for such obligations and liabilities under this Agreement which accrue from and after the date such transferee or assignee acquires QTS's interest as licensor under this Agreement. Customer agrees to attorn to the transferee upon any such transfer and to recognize such transferee as the licensor under this Agreement. This Agreement shall apply to, bind, and inure to the benefit of, any permitted transferees, assignees or successors, all of whom shall execute counterparts of this Agreement, and Customer shall remain liable for the payment of all charges due and payable under each Work Order or otherwise due or to become due and payable under this Agreement.

10.6 *Entire Understanding*. This Agreement constitutes the entire understanding and agreement of the parties related to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, agreements and understandings regarding such subject matter. Each Work Order and Addendum includes terms which are in addition to, and not in lieu of the Agreement, and shall be deemed to be part of this Agreement. Unless expressly provided for in the Agreement, any Work Order or Addendum, Customer agrees not to claim any reliance on any other opinion, advice, recommendation, statement, representation, warranty of QTS regarding the suitability, fitness, quality, merchantability, or the compatibility or functionality of any equipment or software. Any additional or different terms in any purchase order or other resposne made by Customer shall be deemed objected to by QTS without need of further notice of objection, and shall be of no effect or in any way binding upon QTS.

10.7 *No Competitive License or Service*. Customer may not at any time, without QTS's prior written consent, permit any QTS facility to be utilized for the resale to QTS clients of Internet access, co-location or managed services similar to the Services.

10.8 *Relationship of the Parties*. QTS and Customer are independent contractors; this Agreement will not establish any relationship of partnership, employment, franchise or agency.

10.9 *Execution and Counterparts*. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

10.10 *Modification*. This Agreement may be changed only by a written document signed by authorized representatives of QTS and Customer.

10.11 *Severability*. If any provision of this Agreement, as applied to either party or to any circumstance, is adjudged by a court or arbitrator to be invalid, illegal or unenforceable, the same will not affect the validity, legality, or enforceability of any other provision of this Agreement. All terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law.

10.12 *No Waiver; All Rights Cumulative*. The failure by either party to enforce any rights hereunder shall not constitute a waiver of such right(s) or of any other or further rights hereunder. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default.

10.13 *Governing Law*. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia except its conflicts of law principles.

10.14 *Third Party Beneficiaries*. The provisions of this Agreement and the rights and obligations created hereunder are intended for the sole benefit of QTS and Customer, and do not create any right, claim or benefit on the part of any person not a party to this Agreement. The parties do not intend any provision of this Agreement to be enforceable by or to benefit any third party.

10.15 *Intellectual Property Rights*. QTS shall remain the sole owner of and retain all right, title and interest in any service, technical information and/or intellectual property rights ("IPR") provided to Customer hereunder, including, without limitation, all trademark, trade names, service marks, copyrights, computer programs, general utility programs, software, methodology, databases, specifications, systems designs, applications, enhancements, documentation, manuals, know-how, formulas, hardware, audio/visual equipment tools, libraries, discoveries, inventions, techniques, writings, designs and other IPR either used or developed by QTS or its agents in connection with the provision of service hereunder and all derivative works or improvements therein ("QTS Technology"). Any QTS Technology will not be work-for-hire and Customer agrees to assign and hereby does assign to QTS all such IPR in and to the QTS Technology. Customer receives no rights, license and interest to the QTS Technology except those expressly set forth in this Agreement, in return for payment of all fees and charges, QTS grants to Customer a royalty fee, non-exclusive, non-transferable, non-assignable (except as otherwise provided in Section 10.5) license to use any IPR provided with Service hereunder solely for the purpose of receiving such Service. QTS shall be free to provide such IPR to other parties and shall retain the right to unrestricted use of such IPR. Customer further agrees to execute and deliver all documents and do all acts that are reasonably necessary to scure to QTS' right, title and interest in and to such IPR.

10.16 *General*. Neither party shall issue andy publication relating to this Agreement, except as may be required by Law. Notwithstanding, either party may publicly refer to the other, orally and in writing, as a customer/licensee or service provider/licensor of the other, as applicable. If either party retains an attorney to enforce the terms of this Agreement or to collect money due hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs. The terms and provisions contained herein that by their sense and context are intended to survive the performance thereof by the parties shall so survive termination of this Agreement, including, without limitation, provisions for indemnification, limitation of liability, Confidential Information, and the making of any payments.

10.17 *Time of the Essence*. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

10.18 *Estoppel Certificate*. Subject to the facts existing at the time, Customer shall, within ten (10) days' prior written notice from QTS (but only in connection with a sale, financing, transfer, lease or similar transaction), deliver to QTS a signed statement certifying the following information (but not limited to the following information in the event further information is reasonably required by QTS): (i) that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as modified is in full force and effect); (ii) the dates to which the fees and other charges due under this Agreement are paid in advance, if any; (iii) the amount of Customer's security deposit, if any; and (iv) acknowledging, if true and correct, that there are not any uncured defaults or breaches on the aprt of QTS under this Agreement (including, without limitation, all Addendum and Work Orders), and no events conditions then in existence which, with the passage of time or notice or both, would constitute a default or breach on the part of QTS under this Agreement (including, without limitation, all Addendum and Work Orders), or specifying such defaults events or conditions, if any are claimed. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrance of all or any portion of the Data Center. Customer's failure to deliver such statement within such ten (10) day period shall constitute an admission by Customer that all statements there are true and correct.

10.19 *Subordination*. Customer accepts this Agreement subject and subordinate to any mortgage, deed of trust, deed to secure debt, ground lease or master lease of QTS and to any renewals, modifications, consolidation, refinancing and extensions thereof. It is understood that QTS's interest in the Customer Space and Data Center may be that of ground lessee, rather than owner. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement, provided, however, Customer shall, within ten (10) days after QTS's written request therefor, execute, acknowledge and deliver any documents reasonably requested by QTS to assure the subordination of this Agreement to any of the same. Notwithstanding the foregoing, if the lessor under any such lease or the holder of any such deed to secure debt advises QTS that they desire to require this Agreement to be prior and superior thereto, upon written request of QTS to Customer, Customer agrees to promptly execute, acknowledge and deliver any documents which QTS or such lessor, holder or holders reasonably deem necessary for purposes thereof.

DEFINITIONS

(a) **"Addendum"** means an addendum to this Agreement Stating additional terms and conditions application to the specific License or Service.

(b) **"Adhoc Engineering Services"** means any technical support considered to be above any beyond Remote Hands which usually includes technical support from a consultative or operational perspective.

(c) **"Acceptable Use Policy" or "AUP"** means the acceptable use policy posted at www.QualityTech.com.

(d) **"Agreement"** means this Agreement, the general terms and conditions herein and includes any Addendum, Product Description, Work Order, Specification, Statement of Work, Scope of Work, Customer Access Roster, the Rules and Regulations, and the Acceptable Use Policy, and all other items expressly incorporated herein.

(e) **"Burstable"** means Customer has the ability to use Services provided with respect to Customer Space in excess of the Committed Data Rate.

(f) **"Committed Data Rate"** means Customer's agreement to pay for a minimum amount of bandwidth per month (expressed in Megabits per second (Mbps)), as set forth in a Work Order, in connection with its License of Customer Space.

(g) **"Confidential Information"** means information which (i) derives actual or potential economic value from not being generally known to, and not available through proper means, by other persons who could obtain economic value from receipt or use of such information, (ii) is the subject of reasonable efforts by its owner to maintain its confidentially or secrecy, or (iii) is by its nature confidential, trade secrets or otherwise proprietary to it owner. Confidential information includes the terms and conditions of this Agreement, software source and object code, inventions, know-how, data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, configurations, plans, processes, financial and business plans, names of actual or potential customers or suppliers, and data or information of actual or potential customers or suppliers. With respect to QTS, Confidential Information shall also include Data Center configuration and QTS Technology.

(h) **"Customer Access Roster"** means the official register of Representatives.

(i) **"Customer Equipment"** means software, computer hardware, and all other equipment, goods, and personal property owned by Customer or licensed by Customer from third parties.

(j) **"Customer Maintenance"** means steps taken by Customer to properly maintain the Customer Equipment in accordance with manufacturer instructions and requirements.

(k) **"Customer Space"** means the portion of the Data Center(s) and associated power and cooling which QTS licenses to Customer under a Work Order. The location of the Customer Space shall be determined by QTS in its sole discretion, provided however, Customer's reasonable preferences shall be considered.

(l) **"Data Center"** means any of the buildings and facilities owned or leased by QTS at which Customer Space is located or from which Services are provided.

(m) **"Down"** means not responding to the network management system's polling engine with a positive acknowledgment from a PING to a specific network interface for the specified device.

(n) **"Expiration Date"** as to any Work Order means the date which is the date calculated by adding the Term of the Work Order to the Start Date.

(o) **"Facilities"** means any and all devices generally used by QTS to provide Customer Space or deliver Services to its customers, but excluding QTS Provided Equipment and Customer Equipment.

(p) **"Facilities Maintenance"** means the times QTS monitors and maintains its network, QTS Provided Equipment or Facilities.

(q) **"Internet Intrusion Testing"** means tests employing tools or techniques intended to gain unauthorized access to Customer's environment.

(r) **"Laws"** means rules, regulations, statutes, ordinances, orders and rulings of a government and administrative and regulatory authorities, as well as the Rules and Regulations.

(s) **"Licenses"** means licenses of Customer Space to a Customer under a Work Order.

(t) **"Losses"** means claims, demands, actions, suits, proceedings, and all damages, judgments, liabilities, losses, and expenses (including, but not limited to, reasonable Attorneys' fees and court costs.)

(u) **"Party" or "Parties"** means representatives, agents, employees, officers, directors or contractors, or subcontractors.

(v) **"Point of Demarcation"** means the first point where Customer receives telecommunications or internet access into the Customer Space.

(w) **"Product Description" or "Product Catalog"** shall mean the written description of a License or Service provided to Customer by QTS.

(x) **"Professional Services"** means professional engineering or computer design, software development, support or other consulting service provided, pursuant to a Statement of Work or Scope of Work.

(y) **"QTS Provided Equipment"** means any hardware, software and other tangible telecommunications or internet equipment leased, subleased, licensed or sublicensed by QTS to Customer

(z) **"Reconnection Fee"** means a fee of *** per hour billed in quarter-hour increments for each hour or partial hour spent by QTS reconnecting the Services provided Customer.

(aa) **"Remote Hands"** means general Customer directed actions such as power cycling equipment, basic power or data cabling support and simple key stroke commands to reboot or configure equipment.

(bb) **"Representatives"** means the individuals identified on the Customer Access Roster who are authorized to enter the Data Center(s) and access the Customer Space.

(cc) **"Rules and Regulations"** means the data center rules posted at www.QualityTech.com.

(dd) **"Services"** means all offerings of services and goods under a Work Order, but not including Licenses of the Customer Space.

(ee) **"Specifications"** means the detailed description of Licenses of Customer Space or Services, other than Professional Services, attached to any Work Order.

(ff) **"State Date"** means the start date specifically set forth on the Work Order or, if there is not a start date specified on the Work Order that date which on which QTS provides notice to Customer that provisioning is complete and Services shall begin. For the purposes of this notice, email notification shall be adequate.

(gg) **"Statement of Work," "Scope of Work" or "Work"** means the detailed description of Professional Services attached to any Work Order.

(hh) **"Target Date"** means the date the Customer Space or Services are expected or anticipated to be available to Customer, as set forth in a written notice.

(ii) **"Term"** as to any Work Order, means the lesser of the following: (i) the period of time specified in a Work Order for which QTS will provide the Customer Space or Services to Customer or (ii) the period of time that ends on the last day QTS provides the Customer Space or Services to Customer pursuant to early termination of the Agreement or Work Order by a party.

(jj) **"Work Order" or "Order"** means Customer's written order for a License of Customer Space, or the provision of Services that has been accepted by QTS and executed by both parties. The Work Order includes backup detail, including without limitation, any Addendum to the Master Space Agreement, Specifications and Statements of Work, and shall set forth the Licenses and Services, the prices to be charged for Licenses and Services and any applicable Term and/or Committed Data Rate.

[Signatures on following page]

IN WITNESS WHEREOF, authorized representatives of Customer and QTS have read the foregoing Agreement and agree to bound thereby as of the Effective Date.

CUSTOMER:		**QTS:**	
Signature:	/s/ Tom Schollmeyer	**QUALITY INVESTMENT PROPERTIES METRO, LLC**	
Print Name:	Tom Schollmeyer	Signature:	/s/ Eric E. Jacobs
		Print Name:	Eric E. Jacobs
Title:	CTO	Title:	EVP, Commercial
Address:		Address:	
Telephone:		Telephone:	
Facsimile:		Facsimile:	
E-mail:		E-mail:	
Date:		Date:	
Signature:	31-Oct-2012	Signature:	1-Feb-2013

Quality Investment Properties Metro, LLC

Company Name	**Five9, Inc.**
Contact Name	**Eric Lin**
Customer Address	400 Executive Parkway, Ste 400 San Ramon, CA 94588
Contact Phone Number	9(25) 201-2000
Contact Email Address	Eric.lin@five9.com

60 Month Term Expiration Date: the last day of the final month of the Term.	Now Recurring Charges	Monthly Recurring Charges
Colocation and Connectivity	$ ***	$ ***
(does not include sales tax) Total Charges	$ ***	$ ***

Work Order Notes

The private suite will accommodate 200kw of power. If Five9's exercises the ROFR for the additional ***, the watts per sq. ft. will increase to 188.

By signing below, the Authorized Representatives of Customer and QTS acknowledge (i) that they have reviewed the QTS Work Order, the Master Space Agreement and the relisted Addenda and Statements of Work: and (ii) that they understand the requirements of said documents and do hereby agree to be bound by the terms and conditions embodied therein.

Please print and sign two complete copies of this work order and mail back to your sales representative for processing. One countersigned copy will be sent back to you.

Five9, Inc. Company	Quality Investment Properties Metro, LLC Company
/s/ Tom Schollmeyer Signature	/s/ Eric E. Jacobs Signature
Tom Schollmeyer Print Name	Eric E. Jacobs Print Name
CTO Title	EVP, Commercial Sales Title
31-Oct-2012 Date	1-Feb-2013 Date

Colocation and Connectivity	Unit NRC	Unit MRC	Qty	NRC	MRC
Power Custom – Monthly	***	***	***		***
Space Services – Suite	***	***	***	***	***
Totals				***	***

Product Configuration Notes

-Space Services – Suite (1) square feet supports up to [150] usable watts.

Additional Notes

Customer will be provided a private suite approximately *** in size and supporting up to 200,000 consumable watts (“Customer Space”). Customer may use up to 200,000 watts, regardless of circuit tpes and quantities, but must not exceed 200,000 watts. If 200,000 watts is exceeded, Customer must reduce power consumption, or contract for additional space and power. Minimum Billing Schedule “Ramp”.

Months 1 – 12 80kw ***

Months 13 – 18 140kw ***

Months 19 – 60 200kw ***

QTS reserves the right to audit the power consumption for the cage and should the customer exceed the power noted on the Minimum Contracted Billing schedule. QTS will adjust the minimum MRC to the highest level of kilowatt usage consumed, plus an additional ***. This new minimum will continue until exceeded or until the next scheduled tier.

Customer has a Right of First Refusal on *** for up to 12 months. During the term of this Work Order and in the event QTS has a potential or current customer interested in licensing the closest 150,000 watts, QTS shall first inform Customer of the availability of such customer space before QTS can license such customer space to a third party. Within ten (10) business days of Customer’s receipt of such notification, Customer shall execute a work order containing the terms of a license for such new power. If Customer does not execute a work order for the new space within such ten (10) day period, this right of first refusal shall expire and OTS shall be entitled to license such space to a third party.

The following installation charges will apply on future orders (separate Work Order(s) required):

- Single Phase Power Circuits *** (NRC) per circuit
- 3Phase Power Circuits *** (NRC) per circuit
- Standard Empty Rack Installation *** (NRC), includes securing and grounding (customer will provide racks).
- QTS provided Racks MRC *** per Rack.
- Additional Cross Connects *** (NRC) and ***

Start Date for this Work Order will be Upon Provisioning. Standard delivery for an environment of this size is forty-five (45) calendar days from receipt of this Work Order. QTS will work in good faith to deliver the environment, or a subset of the environment ahead of this schedule so the Coustomer can begin deployment as soon as possible.

QTS will apply a *** increase on the MRC in each of years 4 & 5 to offset the increases in power from the utility.

Quality Investment Properties Metro, LLC

Company Name	**Five9, Inc.**
Contact Name	**Eric Lin**
Customer Address	400 Executive Parkway, Ste 400 San Ramon, CA 94588
Contact Phone Number	9(25) 201-2000
Contact Email Address	Eric.lin@five9.com

60 Month Term Expiration Date: the last day of the final month of the Term.	Now Recurring Charges	Monthly Recurring Charges
Colocation and Connectivity	$ ***	$ ***
(does not include sales tax) Total Charges	$ ***	$ ***

Work Order Notes

By signing below, the Authorized Representatives of Customer and QTS acknowledge (i) that they have reviewed the QTS Work Order, the Master Space Agreement and the relisted Addenda and Statements of Work: and (ii) that they understand the requirements of said documents and do hereby agree to be bound by the terms and conditions embodied therein.

Please print and sign two complete copies of this work order and mail back to your sales representative for processing. One countersigned copy will be sent back to you.

Five9, Inc. Company	Quality Investment Properties Metro, LLC Company
/s/ Tom Schollmeyer Signature	/s/ Eric E. Jacobs Signature
Tom Schollmeyer Print Name	Eric E. Jacobs Print Name
CTO Title	EVP Title
31-Oct-2012 Date	1-Feb-2013 Date

Colocation and Connectivity	Unit NRC	Unit MRC	Qty	NRC	MRC
4 Post Rack – Custom Pricing	$ ***	$ ***	***	$***	$***
Power 208v 30Amp Primary	$ ***	$ ***	***	$***	$***
Power 208v 30Amp Redundant	$ ***	$ ***	***	$***	$***
	$ ***	$ ***	***	$***	$***
	$ ***	$ ***	***	$***	$***
Totals				$***	$***

Quality Investment Properties Metro, LLC

Company Name	**Five9, Inc.**
Contact Name	**Eric Lin**
Customer Address	400 Executive Parkway, Ste 400 San Ramon, CA 94588
Contact Phone Number	9(25) 201-2000
Contact Email Address	Eric.lin@five9.com

One Time Project	Now Recurring Charges	Monthly Recurring Charges
Data Center Labor	$ ***	***
(does not include sales tax) Total Charges	$ ***	***

Work Order Notes

By signing below, the Authorized Representatives of Customer and QTS acknowledge (i) that they have reviewed the QTS Work Order, the Master Space Agreement and the relisted Addenda and Statements of Work: and (ii) that they understand the requirements of said documents and do hereby agree to be bound by the terms and conditions embodied therein.

Please print and sign two complete copies of this work order and mail back to your sales representative for processing. One countersigned copy will be sent back to you.

Five9, Inc Company	Quality Investment Properties Metro, LLC Company
/s/ Eric Lin Signature	/s/ Eric E. Jacobs Signature
Eric Lin Print Name	Eric E. Jacobs Print Name
VP Ops Title	EVP Title
12/20/12 Date	1/2/2013 Date

Data Center Labor	Unit NRC	Unit MRC	Qty	NRC	MRC
Installation of Materials (non-tax) Setup Fee	$ ***	$ ***	***	$***	$***
Data Center Operations labor to conduct installation of horizontal rails, vertical power strip (PDU), and adjust their cabinet rails per Statement of Work					
Totals				$***	$***

Quality Investment Properties Metro, LLC

Company Name	**Five9, Inc.**
Contact Name	**Eric Lin**
Customer Address	400 Executive Parkway, Ste 400 San Ramon, CA 94588
Contact Phone Number	9(25) 201-2000
Contact Email Address	Eric.lin@five9.com

12 Month Term Expiration Date: the last day of the final month of the Term.	Now Recurring Charges	Monthly Recurring Charges
Colocation and Connectivity	$ ***	$ ***
(does not include sales tax) Total Charges	$ ***	$ ***

Work Order Notes

By signing below, the Authorized Representatives of Customer and QTS acknowledge (i) that they have reviewed the QTS Work Order, the Master Space Agreement and the relisted Addenda and Statements of Work: and (ii) that they understand the requirements of said documents and do hereby agree to be bound by the terms and conditions embodied therein.

Please print and sign two complete copies of this work order and mail back to your sales representative for processing. One countersigned copy will be sent back to you.

Five9, Inc. Company	Quality Investment Properties Metro, LLC Company
/s/ Eric Lin Signature	/s/ Eric E. Jacobs Signature
Eric Lin Print Name	Eric E. Jacobs Print Name
VP Ops Title	EVP Title
12/20/12 Date	1/2/2013 Date

Colocation and Connectivity	Unit NRC	Unit MRC	Qty	NRC	MRC
Cross Connect (fiber) MRC	$ ***	$ ***	***	$***	$***
Totals				$***	$***

Quality Investment Properties Metro, LLC

Company Name	**Five9, Inc.**
Contact Name	**Eric Lin**
Customer Address	400 Executive Parkway, Ste 400 San Ramon, CA 94588
Contact Phone Number	9(25) 201-2000
Contact Email Address	Eric.lin@five9.com

One Time Project	Now Recurring Charges	Monthly Recurring Charges
Data Center Labor	$ ***	$ ***
(does not include sales tax) Total Charges	$ ***	$ ***

Work Order Notes

By signing below, the Authorized Representatives of Customer and QTS acknowledge (i) that they have reviewed the QTS Work Order, the Master Space Agreement and the relisted Addenda and Statements of Work: and (ii) that they understand the requirements of said documents and do hereby agree to be bound by the terms and conditions embodied therein.

Please print and sign two complete copies of this work order and mail back to your sales representative for processing. One countersigned copy will be sent back to you.

Five9, Inc. Company	Quality Investment Properties Metro, LLC Company
/s/ Eric Lin Signature	/s/ Eric E. Jacobs Signature
Eric Lin Print Name	Eric Jacobs Print Name
VP Ops Title	EVP Title
12/27/12 Date	1/2/2013 Date

Data Center Labor	Unit NRC	Unit MRC	Qty	NRC	MRC
Installation of Materials (non-tax) Setup Fee	$***	$ ***	***	$***	$***
Totals				$***	$***

Additional Notes

QTS will provide (1) hour of labor and procure material to install (2) Corning CCH-02U Fiber Enclosures and (4) Corning CCH-CP24-A9 panel adapters in ***

(1) Corning CCH-02U Fiber Enclosures and (2) Corning CCH-CP24-A9 panel adapters in ***
(1) Corning CCH-02U Fiber Enclosures and (2) Corning CCH-CP24-A9 panel adapters in ***

QUALITY INVESTMENT PROPERTIES METRO, LLC

ADDENDUM TO MASTER SPACE AGREEMENT
ADDITIONAL TERMS AND CONDITIONS
FOR COLOCATION AND INTERNET ACCESS

This Addendum is attached to and made a part of the Master Space Agreement between Customer and Quality Investment Properties Metro, LLC ("QTS"), and the terms hereof are incorporated therein by this reference and are applicable where Customer orders the use of space with the Data Center(s) to be used for the purpose of collocating computer equipment and associated telecommunications equipment (the "Customer Space"); or Customer orders communications or connectivity including connection to the internet. Capitalized terms used herein and not otherwise defined herein shall have the same meaning such terms are given in the Master Space Agreement. Reference herein to the "Agreement" shall mean the Master Space Agreement, this Addendum and all other Addenda attached thereto, and all Orders placed thereunder. No other discussions, proposals, brochures, or statements of work are incorporated herein, and neither customer nor QTS have relied thereon. The Master Space Agreement, all Addenda attached thereto, including this Addendum, and all Orders placed thereunder, fully and completely reflect the understanding and obligations of the parties.

1. CUSTOMER SPACE AND QTS OBLIGATIONS

1.1 Upon acceptance by QTS of an Order for collocation and completion of build-out (if necessary), Customer will be granted a license to use the Customer Space, effective on the Start Date. The location of the Customer Space shall be determined by QTS in its sole discretion provided, however, Customer's reasonable preferences identified to QTS may be considered.

1.2 QTS shall use commercially reasonable efforts to complete the build-out and make the Customer Space available to Customer on or before the Target Date. The Term of use of the Customer Space shall begin on the Start Date. Build-out shall mean QTS's construction and installation of the Customer Space pursuant to Order. QTS shall provide the following Services in connection with the Customer Space.

(a) Physical space as identified in the applicable Order (i.e. Half Cabinet, Full Cabinet, Cage, Suite)

(b) Physical security for the Data Center(s) (security station and personnel, 24 hours/day, 365 days/year);

(c) Power to the Customer Space and generator back-up to the Data Centers(s);

(d) Data Center environmental controls (temperature and humidity, including the appropriate cooling systems); and

(e) Security alarms and fire/alarm/suppression systems for the Data Center(s).

1.3 QTS shall provide cabling for services provided by QTS (i.e. network services, network monitoring) and maintenance on equipment and cabling owned by QTS up to the Point of Demarcation. The "Point of Demarcation" shall mean the first point where Customer received telecommunications or Internet access service from QTS into the Customer Space. Except as otherwise agreed pursuant to a separate Addendum for Services attached to the Master Space Agreement and set forth in a corresponding Order, QTS shall not provide installation, configuration, connection, inter-connection, maintenance or support for any cabling, lines or equipment which is not owned or operated by QTS, whether or not such cabling, lines or equipment occurs before or after the Point of Demarcation.

1.4 QTS shall perform Remote Hands and Adhoc Engineering Services as requested by Customer on an as needed basis. Remote Hands and Adhoc Engineering Services shall be billed in quarter-hour increments and shall include all time expended to receive Customer instructions, travel to and return from Customer Space, perform the operations and report any findings or results. Remote Hands will be billed at the rate of *** per hour. In no case, does this rate include the cost of any materials or equipment supplied by QTS. Remote Hands and Adhoc Engineering Services shall be provided to Customer's Equipment within the Customer Space only pursuant to the express instructions of customer, and as such, Customer hereby releases and shall hold QTS, its employees and contractors harmless from and against all Losses relating to QTS's performance of such Remote Hands of Adhoc Engineering Services actions (except to the extent such Losses arise from the negligence or willful misconduct of QTS or QTS; employees or contractors). Customer agrees that all requests for Remove Hands and Adhoc Engineering Services will be billed to Customer at the rates specified, provided that QTS may, in its sole discretion, waive all or a portion of such Remote Hands or Adhoc Engineering fees, where the need for such service arises out of a system failure directly caused by QTS. The response time for Remote Hands and Adhoc Engineering Services will be based upon available resources at time of Customer request and at no time does QTS imply or guarantee a specific response time for these services except as otherwise set forth hereunder.

1.5 QTS shall perform such janitorial services, environmental systems maintenance, power plant maintenance and other maintenance actions as QTS deems reasonably necessary or desirable with respect to the Data Center(s) in which the Custer Space is located. QTS may from time to time monitor and maintain its network, QTS Provided Equipment and Facilities ("Facilities Maintenance"). Customer acknowledges and agrees that the performance of Facilities Maintenance and Customer Maintenance may cause the network to be temporarily inaccessible and the Services temporarily unavailable to Customer. QTS will use its commercially reasonable efforts to conduct such Facilities Maintenance in a manner and at such times so as to avoid or minimize the inaccessibility of the network and/or unavailability of the Services. Except in the event of an emergency. If Facilities Maintenance is reasonably expected to interrupt access to the network or the availability of Services, QTS shall give Customer notice by e-mail no less than two (2) weeks prior to conducting such maintenance, identifying the time and anticipated duration of the Facilities Maintenance. Upon receipt of the aforementioned notice, Customer may request that QTS delay or reschedule the planned Facilities Maintenance. QTS will honor Customer's request when possible which QTS will determine, in its sole discretion.

2. CUSTOMER OBLIGATIONS

2.1 Customer shall use the Customer Space only for placement and maintenance of telecommunications and computer equipment and related personal property in accordance with this Agreement. Customer shall not store any parts or equipment in the Customer Space other than Customer Equipment which is operational and integral to the use of the network, unless otherwise authorized by QTS. Customer shall not install any equipment or personal property (including QTS Provided Equipment and Facilities) in the Customer Space (including, without limitation, ramps, and aisles therein) that individually or in combination exceeds 1,250 lbs. per tile. Customer shall inform QTS of any equipment and property anticipated to be housed in the Customer Space, and QTS may require that the Order include build-out of reinforced flooring if, in QTS's opinion, such equipment and/or property will exceed the weight limits proscribed herein.

2.2 Except as otherwise set forth hereunder, the Master Space Agreement or the applicable Order, Customer shall provide all end-user equipment, software and all other telecommunications, Internet access and related equipment that Customer deems necessary or desirable for Customer's use of the Customer Space as permitted by the Agreement. Except as otherwise set forth hereunder, the Master Space Agreement or a Work Order, Customer shall be solely responsible for installation, maintenance, configuration, connection, inter-connection, and all other

CONFIDENTIAL TREATMENT REQUESTED—CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION.

support in connection with (a) all equipment and personal property to be used by Customer in the Customer Space, including without limitation, Customer Equipment, and (b) all telecommunications, data, Internet and power cabling of lines and connections from the Point of Demarcation into and throughout the Customer Space as provided by Customer.

2.3 Throughout the Term of the Agreement, Customer shall maintain the Customer Space in an orderly and safe condition in accordance with all applicable laws, and the Rules and Regulations. Customer shall provide the Customer Access Roster to QTS on or prior to the Start Date, and thereafter, from time to time, as the information in the Customer Access Roster may change or be amended by Customer (including names, addresses, signatures, pager numbers, e-mail address and telephone number of the then current Representatives). Customer or its contractors shall be responsible for and shall properly maintain in accordance with manufacturer instructions and requirements the Customer Equipment and all personal property located in the Customer Space ("Customer Maintenance").

2.4 Except as more specifically set forth on a Work Order, Customer is entitled to use up to, but not to exceed, 150 watts of electric power per square foot of Customer Space ("Power Capacity"). QTS will notify Customer when electric power usage reaches 90- 95% of Power Capacity. In the event that Customer's electric power consumption exceeds 100% of Power Capacity consistently for five (5) consecutive hours ("Excess Demand"). Customer agrees that it will immediately reduce its electric power consumption to below 100% of Power Capacity or upgrade its contract with QTS by executing a Work Order to increase Power Capacity. The only method of increasing Power Capacity is to contract for additional contiguous Customer Space (the purchase of non-contiguous customer space will not increase Customer's Power Capacity). If contiguous customer space is not available, Customer must immediately reduce it electric power consumption to below 100% of Power Capacity. If Customer fails to execute a Work Order to increase Power Capacity within five (5) days after receipt of notice for QTS of Excess Demand, or fails to reduce its electric power consumption, Customer will be subject to suspension of electric power. According to the National Electrical Installation Standards, the maximum utilization of any power circuit is 80% of the maximum capacity of that power circuit. Customer shall take the necessary precautions to avoid exceeding 80% utilization on any power circuit, in the event that Customer's utilization exceeds 80% of maximum capacity on any power circuit, the power related remedies and Service Level Credits set forth in Section 5.2 herein shall not apply.

2.5 In the event of a data security breach, Customer shall coordinate with QTS in its efforts to comply with applicable data breach notification laws and shall submit any data security breach notices, press releases, announcements or other disclosures to QTS prior to mailing of other publication. QTS shall provide Customer with prompt notice (but no later than forty-eight (48) hours) of any security breach to which QTS is aware with respect to the Data Center, Facilities, Customer Space, and the QTS Provided Equipment that has an impact on the Customer Space (or Customer Equipment.

3. ACCESS TO DATA CENTER(S) AND CUSTOMER SPACE

3.1 Customer's 24 x 7 x 365 access to the Customer Apace and the Data Center(s) will be limited solely to the Representatives identified on the then current Customer Access Roster. Customer shall ensure that the information contained therein shall be true, complete and accurate in all respects. QTS shall have no obligation to verify that any information contained in the Customer Access Roster then on file with QTS is current or accurate, and QTS shall be entitled to rely upon all such information in admitting persons identified therein to the Data Center(s). QTS may require Representative to be accompanied by an authorized QTS representative or security personnel. QTS shall have the right to refuses access, or limit access, to the Data Center(s) to any person who is not a Representative or to any Representative whom QTS (in its sole discretion) reasonable considers to be a risk to security to the safety of persons or property, or who is not qualified to perform the tasks for which such person purports to access the Customer Space, or for any other lawful reason.

3.2 Security personnel may require individuals desiring access to sign-in, present photo identification, submit to physical inspection of their person and properties and otherwise answer such questions and provide such information as the security personnel may reasonably require to authenticate such person and verify that such person is an authorized Representative of Customer.

3.3 Customer shall not (and shall not permit others operating at its request, under its instruction, direction, control or supervision to) access, rearrange, reconfigure, disconnect, remove, repair, replace, damage or otherwise tamper with (or attempt to do any of the foregoing to) any of the Facilities or the properties or customer space of any other person using the Data Center(s). Any violation of this Section 3 shall be material breach by Customer of this Agreement and, in addition to all other remedies available to QTS therefor, and notwithstanding any provisions contrary hereto, Customer shall upon demand (a) pay QTS the cost to repair or remedy all damage caused to the Facilities or the properties or Customer Space of its customers (including replacement of any such properties, if deemed necessary by QTS or the owner of such property), and (b) shall indemnify QTS, its employees, agents, representatives and other Data Center users and customers, from all Losses resulting therefrom, pursuant to the Master Space Agreement. Further, Customer shall indemnify, defend and hold harmless QTS, its employees, agents representatives and contractors, pursuant to the Master Space Agreement, for any injury to any person or damage to property of any person (including employees and representatives of QTS) caused by or related to Customer's and its Representatives' access to and use of the Customer Space or the Data Center(s) (except to the extent such injury or damage arises from the negligence or willful misconduct of QTS or QTS' employees or contractors).

3.4 In addition to the requirements set forth herein, Customer's access shall be subject to any and all lawful rules, regulations, security and access requirements imposed by QTS governing the Data Center(s), including without limitation, Rules and Regulations posted on the QTS portal and the Visitor Acknowledgment and Release. Customer agrees (and shall cause each of its Representatives) to strictly abide by all such requirements for the Data Center. Customer agrees to periodically access the website and familiarize itself with the then current version of the Rules and Regulations. Notwithstanding, QTS agrees to provide Customer with thirty (30) days prior notice of any changes to said Rules and Regulations.

3.5 QTS retains the right to access the Customer Space at any time for any legitimate and lawful business purpose of QTS. Customer shall not render the Customer Space an unsafe place for QTS personnel to work. Customer shall allow QTS access to the Customer Space to the extent reasonably necessary (as reasonably determined by QTS) for the installation, inspection, removal relocation, replacement, and scheduled or emergency Facilities Maintenance, or as may otherwise be necessary to provide the Services.

4. INTERNET ACCESS SERVICES

4.1 Customer's use of the Internet access Services and that of its customers, personnel or other end-users shall at all times comply with QTS's then current Acceptable Use Policy and Privacy Policy ("Acceptable Use Policy"), as amended by QTS from time-to-time and which is available through the QTS portal. QTS will notify Customer of complaints received by QTS regarding each incident of alleged violation of QTS's Acceptable Use Policy, whether by Customer or third parties that has gained access to the Service through Customer. Customer will require its customers, personnel and other end-users to comply with the Acceptable Use Policy. Customer agrees that it will promptly investigate all such complaints and take all reasonably necessary actions to remedy and to prevent any further violation of QTS's Acceptable Use Policy. Customer agrees that QTS may identify to the complainant that Customer or a third party is investigating the matter and QTS may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications. QTS reserves the right to install and use, or to require Customer to install and use, any appropriate devices to prevent violations of QTS's Acceptable Use Policy, including devices designed to filter or terminate access to the Services. If QTS is notified of any allegedly infringing, defamatory, damaging, obscene, pornographic, illegal, or offensive use, content or activity. QTS may (but shall not be required to) investigate the allegation, or refer it to Customer or a third party for

investigation QTS reserves the right to remove or require the removal of the illegal or objectionable content from the Web page or any other text or item linked to the Internet, and require Customer

to cease (or cause its users to cease) all illegal activities or use. If Customer refuses such requirements, QTS may, at its option, immediately remove the subject Web page or other text or item from the Internet, suspend the Services provided hereunder, and/or terminate this Agreement, all without limiting any other remedies available to QTS, and QTS shall not be liable to Customer or any other person as a result of any such action.

4.2 Customer shall diligently comply with the notice and takedown procedures of the Digital Millennium Copyright Act.

4.3 Unless specifically provided for in a separate Addendum, QTS does not provide, and Customer shall indemnify, defend and hold QTS harmless from any and all Losses arising from or relating to, user or access security with respect to any of the Customer's facilities (or facilities of others as provided by Customer) for which QTS is not expressly responsible for hereunder, and Customer shall be solely responsible for user/access security and network access to customer's facilities. QTS does not provide any service to detect or identify any security breach of Customer's websites, databases or facilities, except as may be set forth in a separate written agreement between Customer and QTS.

4.4 Unless specifically provided for in a separate Addendum, QTS does not perform any tests employing tools and techniques intended to gain unauthorized access to Customer's environment ("Internet Intrusion Testing"). Customer shall indemnify, defend, and hold QTS for any Losses incurred in connection with any Internet Intrusion Testing by Customer or any third party acting on Customer's behalf.

4.5 Unless otherwise agreed in writing by QTS, QTS shall not be responsible for the installation, removal, operation, maintenance or replacement of any Customer Equipment.

4.6 The parties understand and agree that use of telecommunications and data communications networks and the Internet may not be secure and that connection to and transmission of data and information over the Internet and such facilities provides the opportunity for unauthorized access to computer systems, networks, and all data stored therein. Information and data transmitted through the internet or stored on any equipment through which Internet information is transmitted may not remain confidential and QTS does not make any representation or warranty regarding privacy, security, authenticity, and non-corruption or destruction of any such information. QTS does not warrant that the Services or Customer's use will be uninterrupted, error-free, or secure. QTS shall not be responsible for any adverse consequence or loss whatsoever to Customer's (or its users' or subscribers') use of the Internet. Use of any information transmitted or obtained by Customer using the QTS network or the Internet is at Customer's own risk. QTS is not responsible for the accuracy of information obtained through its network, including as a result of failure of performance, error, omission, interruption, corruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or unauthorized access to, alteration of, or use of information or facilities, or malfunctioning of websites. QTS does not control the transmission or flow of data to or from QTS's network and other portions of the Internet. Such transmissions and/or flow depend in part on the performance of telecommunications and/or internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet. QTS does not represent or warrant that such events will not occur and QTS disclaims any and all liability resulting from or related to such acts or omissions.

4.7 Customer may not resell IP addresses, IP numbers, or IP from a QTS provided leased line, including, without limitation, serial line Internet protocol (SLIP) or point-to-point protocol (PPP) dial=up accounts, point-to-point leased lines, switched packet leased lines, or any TCP/IP transmission that uses resources on QTS's network without the prior written consent of QTS and such account addresses are not portable. Customer shall own its own registered domain names and shall disclose any private or proxy domain name registrations to QTS immediately on request.

4.8 To the extent Customer orders any Service designated as "Burstable" (meaning Customer has the ability to use Services in excess of the Committed Data Rate), Customer will be billed for (a) the Committed Data Rate, and (b) the Excess Use at the price per Mbps set forth in the Order. Customer's use will be sampled in five-minute inbound and outbound averages during each month. At the end of the month in which such use is measured, the top five percent (5%) of the inbound and outbound averages shall be discarded. The highest of the resulting ninety-five percent (95%) for inbound and outbound averages will be compared to the Committed Data Rate, and if that ninety-fifth percentile (95) of traffic is higher than the Committed Data Rate, the difference between the highest of either average and the Committed Data Rate shall be the "Excess Use".

4.9 If Customer is an international, federal, state, or local governmental agency, the purchase order submitted by Customer shall contain the following language:

> *"Notwithstanding any provisions to the contrary on the face of this purchase order or on any attachments to this purchase order, this purchase order is being used for administrative purposes only, and this order is placed under and subject solely to the terms and conditions of the QTS Master Space Agreement and Addendum for Colocation and Internet Access, executed between Customer and QTS."*

5. SERVICE LEVEL GUARANTEE

5.1 Internet Access Guarantee. Except in the event of Facilities Maintenance (subject to the notice requirements of Section 1.5), Customer use of a single physical connection and Force Majeure conditions, QTS shall have the contracted Internet access available for the Customer to transmit information to, and receive information from the Internet *** of the time during the Term of this Addendum ("Internet Access Guarantee"). Customer acknowledges that incremental usage in excess of the Committed Data Rate is subject to available bandwidth of the QTS network.

Internet Access Remedy. In the event QTS fails to provide the level of service provided in the Internet Access Guarantee, Customer shall receive the applicable remedy ("Service Level Credit") described below. The Internet Access Guarantee is measured on a calendar month basis.

LENGTH OF INTERNET OUTAGE	SERVICE LEVEL CREDIT
More than *** but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Internet Access
*** per month, but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Internet Access
*** per month, but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Internet Access
More than *** per month.	Credit of *** of total Monthly Recurring Charge for Internet Access, plus the applicable credit for any partial hour, not to exceed ***; provided however, if said outage occurs three (3) or more times within a twelve (12) month period, Customer has the right to terminate the Agreement, the Service, any and all Work Orders with six (6) months prior notice without penalty of any kind (including without limitation the Termination Fees).

5.2 Power Guarantee. Except in the event of Facilities Maintenance (subject to the notice requirements of Section 1.5), Customer Maintenance and Force Majeure conditions, QTS shall have the contracted power available for the Customer as follows: *** of the time during the Term of this Addendum when configured with redundant power, or if the Customer does not choose the redundant power option on the Customer order form, *** of the time during this Addendum ("Power Guarantee").

Power Remedy. In the event QTS fails to provide the level of service provided in the Power Guarantee, Customer shall receive the applicable remedy ("Service Level Credit") described below. The Power Guarantee is measured on a calendar month basis and is based upon Customer's selection on the Order form of either single or redundant power.

POWER UNAVAILABILITY CALCULATIONS	SERVICE LEVEL CREDIT FOR REDUNDANT POWER SUPPLY	SERVICE LEVEL CREDIT FOR A SINGLE POWER SUPPLY ONLY
More than *** but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Customer Space	NONE
*** per month, but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Customer Space	NONE
*** per month, but less than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Customer Space	Credit of *** of total Monthly Recurring Charge for Customer Space
More than *** in a given month.	Credit of *** of total Monthly Recurring Charge for Customer Space, plus the applicable credit for any partial hour, not to exceed ***; provided however, if said outage occurs three (3) or more times within a twelve (12) month period, Customer has the right to terminate the Agreement, the Service, any and all Work Orders with six (6) months prior notice without penalty of any kind (including without limitation the Termination Fees).	Credit of *** of total Monthly Recurring Charge for Customer Space, plus the applicable credit for any partial hour, not to exceed ***.

5.3 Latency Guarantee. Except in the event of Facilities Maintenance (subject to the notice requirements of Section 1.5), Customer Maintenance and Force Majeure conditions, QTS shall provide the contracted Internet access capable of one-way transmissions of a monthly average of *** or less between the QTS switch port and the QTS transit routers during the Term of this Addendum ("Latency Guarantee"). It is mutually understood that customers who purchase Burstable bandwidth may necessarily suffer increased latency should volume exceed the Burstable access ordered.

Latency Remedy. In the event QTS fails to meet the Latency Guarantee, Customer will receive a Service Level Credit equal to *** for every *** (or portions thereof) over the guaranteed *** monthly average.

5.4 Packet Delivery Guarantee. Except in the event of Facilities Maintenance (subject to the notice requirements of Section 1.5), Customer Maintenance and Force Majeure conditions, QTS guarantees Network Packet Loss ("Packet Guarantee") of less than *** monthly average measured from the QTS switch port to the QTS transit routers ("Network"). It is mutually understood that customers who order fixed Committed Data Rates (not Burstable), may necessarily suffer packet losses should volume exceed the fixed Committed Data Rate ordered, and customers who purchase Burstable bandwidth may necessarily suffer packet losses should volume exceed the Burstable access ordered. As such, the remedy (Service Level Credit) is only available for packet losses occurring within the ordered bandwidth.

Packet Delivery Remedy. In the event QTS fails to meet the Packet Guarantee, Customer will receive a Service Level Credit equal to *** for every *** (or portions thereof) over the guaranteed *** monthly average.

5.5 Temperature Guarantee. Except in the event of Facilities Maintenance (subject to the notice requirements of Section 1.5), Customer Maintenance and Force Majeure conditions, QTS guarantees the Data Center temperature will not exceed 75 degrees Fahrenheit ("Temperature Guarantee").

Temperature Remedy. In the event any QTS sampling point registers a monthly average deviation in excess of the Temperature Guarantee, Customer will receive a Service Level Credit equal to *** for every one (1") degree Fahrenheit per day above the Temperature Guarantee during the applicable month.

5.6 Humidity Guarantee. Except in the event of Facilities (subject to the notice requirements of Section 1.5). Customer Maintenance and Force Majeure conditions, QTS guarantees the Data Center humidity will not exceed 55% ("Humidity Guarantee").

Humidity Remedy. In the event any QTS sampling point registers a monthly average deviation in excess of the Humidity Guarantee, Customer will receive a Service Level Credit equal to *** for every one (1%) percent the humidity per day exceeds the Humidity Guarantee during the applicable month.

5.7 Remedies.

(a) If, during the term of this Addendum, QTS fails to meet any of the Internet Access Guarantee, Power Guarantee, Latency Guarantee, , Packet Delivery Guarantee, Temperature Guarantee, or the Humidity Guarantee (each referred to herein individually and collectively as a "Service Level Guarantee"). Customer shall be entitled to receive, as its sole and exclusive remedy, the applicable Service Level Credits described in Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 of this Addendum. QTS shall apply all of the Customer's Service Level Credits directly to the Customer's total Monthly Charges. In no event shall the Customer's total amount of Service Level Credits exceed *** for a given month.

(b) If QTS shall fail to meet the Internet Access Guarantee two (2) times in any calendar quarter or shall fail to meet the Power Guarantee two (2) times in any calendar quarter, Customer shall be entitled to terminate this Agreement upon the delivery of written notice received by the other party within thirty (30) days of the date of the second failure. Termination pursuant to this section shall be effective five (5) days after Customer's delivery of the required termination notice.

(c) Notwithstanding anything herein to the contrary, if, following the application of any Service Level Credits to the Customer's Monthly Charges for the failure by QTS to meet the same Service Level Guarantee two (2) times in any calendar quarter, QTS determines in its sole and reasonable discretion that it will be unable to meet such guarantee in the future, QTS reserves the right, upon written notice to the Customer, to terminate this Addendum without penalty. In the event of a termination pursuant to the foregoing sentence, upon Customer's written request, QTS will continue to provide Customer the Services governed by this Addendum for a period of not less than ninety (90) days, provided, however, Customer continues

to make timely payment of the Monthly Charges (less applicable Service Level Credits) as provided herein. Customer acknowledges that QTS will not be responsible for payment of any additional Service Level Credits (other than the maxim allowed by this Section 5 above), of any nature whatsoever, during this sixty (60) day period.

(d) Notwithstanding anything herein to the contrary, QTS will not knowingly or purposefully fail to meet any Service Level Guarantee. In the event that a Service Level Guarantee is not met and QTS determines in its reasonable judgment that such failure was a result of (i) any Force Majeure condition, (ii) any unlawful or negligent actions or inactions of Customer, (iii) any activity under Customer's control or within the obligations undertaken by Customer (including, without limitation, inaccurate or corrupt data input, use of network or the Services other than in accordance with the documentation or the directions of QTS, failure or inability of Customer to obtain or the failure or inability of a vendor to provide upgrades, new releases, enhancements, patches, error corrections and fixes for software equipment and problems in Customer Equipment or Customer's local network), or (iv) any Facilities Maintenance subject to the requirements of Section 1.5 of this Addendum or any Customer Maintenance, then QTS shall have no obligation to credit Customer any amount for any such failure.

[Signatures on the following page]

CUSTOMER:	Five9, Inc.	**QTS:**	
		QUALITY INVESTMENT PROPERTIES METRO, LLC	
Print Name:	Tom Schollmeyer	Print Name:	Eric E. Jacobs
Title:		Title:	EVP, Commercial Sales
Address:		Address:	
Telephone:		Telephone:	
Facsimile:		Facsimile:	
E-mail:		E-mail:	
Date:	31-Oct-2012	Date:	1-Feb-2013
Signature:	/s/ Tom Schollmeyer	Signature:	/s/ Eric E. Jacobs

MASTER LICENSE AND SERVICE AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this Master License and Service Agreement (together with any Order Forms, the "**MSA**") is entered into as of November 1st, 2011 by and between (i) **CORESITE CORONADO STENDER, L.L.C.**, **a Delaware limited liability company** ("**CoreSite**"), as licensor for certain purposes hereunder, as applicable, and **CORESITE SERVICES, INC**., a Delaware corporation ("**CoreSite Services**"), as licensor for certain other purposes hereunder, as applicable, and (ii) Five 9, Inc., a Delaware corporation ("**Customer**"), as licensee of certain facilities, premises, equipment, and services, as set forth and describe herein. CoreSite and CoreSite Services are sometimes referred to herein individually as "**Licensor**" and collectively as "**Licensors**." CoreSite, CoreSite Services, and Customer are each referred to individually herein as a "**Party**" and collectively as the "**Parties**."

CoreSite and CoreSite Services are both wholly owned subsidiaries of CoreSite, L.P., a Delaware limited partnership. The general partner of CoreSite L.P. is CoreSite Realty Corporation, a Maryland corporation ("**CoreSite REIT**"). CoreSite REIT is a "real estate investment trust" as defined in the internal Revenue Code of 1986, as amended (the "**Code**"), and is subject to certain restrictions regarding the manner in which it may operate. As a result of these restrictions, licensors' rights and obligations under this MSA will be divided between CoreSite and CoreSite Services as described herein.

BASIC PROVISIONS

The following Basic Provisions are a material part of this MSA. If there is any conflict between the Basic Provisions and the remainder of this MSA, the Basic Provisions shall control.

1. **Term:** Approximately 66 months, as set forth below.

a. **Commencement Date:** December 1, 2011

b. **Expiration Date:** May 31, 2017.

2. **Basic Provisions Relating to the space and space-Related Services Provided by CoreSite**

a. **Data Center:** The data center located on the *** of the building (the "**Building**") whose address is 2972 Stender Way, City of Santa Clara, State of California (the ''**State**").

b. **Space***:

Cage Space: Cage colocation space in the Data center, with a breakered power capacity for Equipment up to the Critical Power limit, and containing approximately *** cage usable square feet, and known as Cage *** as further set forth in Exhibit A-l to this MSA.

Office Space: An office suite, containing approximately *** square feet, known as Office Suite ***, as further set forth in Exhibit A-2.

* Except where identified as "Cage Space" or "Office Space", all references to Space within the MSA shall include the Office Space and Cage Space.

c. **Initial Non-Recurring Fees:**

i. Power NRC: *** per 120V or 208V single-phase circuit and *** per 208V three-phase circuit. Notwithstanding anything to the contrary in this MSA, in connection with any increases in power cost, CoreSite may, from time to time, increase the Power NRC, provided that the applicable percentage increase in the Power NRC shall be commensurate with the percentage increase in CoreSite's applicable costs/expenses relating to the increase in question, as reasonably determined by Licensor.

d. **License Fees:**

Cage Space:

Months of the Term	Monthly License Fees
1	$ ***
2	$ ***
3	$ ***
4	$ ***
5	$ ***
6—Expiration Date	$ ***

Office Space: Customer **shall** not be charged any Monthly License Fees for the Office Space during the initial Term.

e. **Security Deposit:** ***

f. **Power Limit:**

i. **Critical Power Limit:** An aggregate power load from 225A 208V 3-phase dedicated power panels (four (4) A panels and four (4) B panels supplied from a separate UPS) ("Dedicated Panels"), which shall be provided to Customer by CoreSite pursuant to the following schedule:

Months of Term	Critical Power Limit*
1	43.2 kWs
2	86.4 kWs
3	129.6 kWs
4	172.8 kWs
5	216.0 kWs
6—Expiration Date	259.2 kWs**

* Notwithstanding the foregoing, the aggregate power draw by Customer shall never exceed the Critical Power Limit above in the schedule
** The combined load of any A/B pair of Dedicated Panels shall never exceed a combined load of 64.8 kWs.

g. **Power Pricing:**

i. **Power Fee:** *BRANCH CIRCUIT MONITORING*

ii. **Power Overdraw Charge:** *** per day, per circuit in violation.

iii. **Post-Term License Fee Percentage:** ***

h. **Common Facilities Fees:**

i. Common Facilities Multiplier: ***

ii. Minimum Common Facilities Amount: *** per month.

3. Basic Provisions Relating to the Non-Space-Related Services Provided by CoreSite Services

a. **Initial Non-Recurring Fees:**

i. Space NRC: ***

b. **Any2 Fees – Current: Subject to increase pursuant to this MSA:**

Non-Recurring Fees Per Port	Monthly Recurring Fees Per Port Per Month
***	***
***	***
***	***

c. **Cross Connection Fees—Current: Subject to increase pursuant to this MSA:**

Non-Recurring Fees Per Connection	Monthly Recurring Fees Per Connection Per Month
***	***
***	***
***	***

d. **Inter-Site Connection Fees- Current: Subject to increase pursuant to this MSA:**

Non-Recurring Fees Per Connection	Monthly Recurring Fees Per Connection Per Month
***	***
***	***
***	***

4. Amount payable by Customer Upon its Execution of this MSA: ***

5. Notice Addresses and Payment Information

Address of Customer for Notices:

7901 Stoneridge Drive, Suite 200
Pleasanton, CA 94588
Attention: Five9, Inc.
Facsimile: (925) 476-1563
Telephone: (925) 201-2000
Email: tom.schollmeyer@five9.com

Customer Payment Contact:

7901 Stoneridge Drive, Suite 200
Pleasanton, CA 94588
Attention: Accounts Payable
Facsimile: (925) 397-3463
Telephone: (925) 201-2000
Email: AP@Five9.com
(the "Invoice E-Mail Address")

Address of Licensors for Notices:

c/o CoreSite, L.L.C.
1020 17th Street, Suite 800
Denver, Colorado 80265
Attention: General Counsel

Address of Licensors for Payment:

CoreSite Services, Inc.
P.O. Box 74338
Cleveland, Ohio 44194-4338

Licensors' Wiring Instructions:

Bank Name: ***
Account Number: ***
ABA Number: ***
Swift Number: ***

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

Licensors and Customer further agree as follows:

1. *LICENSE AGREEMENT & TERM*

(A) The Basic Provisions are incorporated herein. Undefined capitalized terms used in this MSA are defined in Section 13 of this MSA.

(B) For the Term, CoreSite shall license the Space to Customer for the purposes described in this MSA, and provide the Space-Related Services to Customer, subject to and in accordance with the provisions of this MSA; accordingly, CoreSite hereby grants to Customer a license, for the Term, to use the Space to install, maintain, repair and operate Equipment, subject to and in accordance with the terms and conditions set forth in this MSA. For the Term, Customer shall license the Space from CoreSite for the purposes described in this MSA and agrees to pay all amounts under this MSA in connection with such license and the Space-Related Services received by it.

(C) For the Term, CoreSite Services shall provide the Non-Space-Related Services to Customer, subject to and in accordance with the provisions of this MSA and Customer agrees to pay all amounts under this MSA in connection therewith.

(D) The Term of this MSA shall commence on the Commencement Date and shall expire on the Expiration Date, subject to any extension or termination of this MSA if and to the extent set forth in this MSA.

(E) The Parties acknowledge and agree that this MSA is a space license and service agreement and does not constitute a lease, sublease or easement. Except to the extent set forth to the contrary in this MSA, no Party shall have any right to cancel or terminate this MSA (or any Order Form), or any license(s) under this MSA (or any Order Form), and the Parties shall remain fully responsible for all obligations and amounts payable under this MSA for the entire Term. In no event shall Customer record this MSA or any memorandum or notice thereof. Except with respect to Customer's right to use the interior of any cabinet or cage constituting the Space, all rights of Customer (and all licenses hereunder) shall be on a non-exclusive basis.

(F) CoreSite shall use commercially reasonable efforts to deliver the Space to Customer by the Commencement Date; provided, however, if CoreSite falls to deliver the Space to Customer by the Commencement Date, CoreSite shall not be subject to any liability, and such failure shall not affect the validity of this MSA nor the obligations of the Parties under this MSA nor the date that CoreSite is able to deliver, and delivers, the Space shall thenceforth be the Commencement Date (and, in such event, the length of the Term shall not be reduced thereby, and the scheduled Expiration Date shall be extended, if necessary, to provide for the full Term). On the date of the expiration or termination of the Term, Customer shall have no further rights with respect to the Space and shall, by such date, (i) remove from the Space (and Building) all Equipment, and repair all damage resulting from such removal, and (ii) vacate and return and surrender the Space to CoreSite in the same condition as it was when delivered to Customer, with the same property as existed when delivered to Customer (e.g., ladder racking, cage walls, power drops, power panels and ductwork), ordinary wear and tear and casualty damage excepted. If Customer does not timely remove the Equipment, or if Customer is past due or otherwise Delinquent in any payments when this MSA expires or is terminated, CoreSite may, without limiting any other rights or remedies, at Customer's expense, remove and. store the Equipment and/or sell or otherwise dispose of the same (and apply the proceeds therefrom to amounts owing to CoreSite) in accordance with Laws.

(G) All Services shall be ordered and provided via separate Order Form or other non-discriminatory system and procedure reasonably designated by Licensors. Upon the expiration or termination of the Term, Licensors may discontinue any or all Services for which they are responsible to provide hereunder during the Term, and may, upon the expiration or termination of the term set forth in any Order Form with respect to a particular Service discontinue such Service.

(i) If Customer continues to use or occupy the Space after the expiration or termination of the Term with CoreSite's consent, such use shall be from month-to-month and terminable by either CoreSite or Customer upon 30 days' written notice. Such use or occupation of the Space shall not constitute a renewal or extension of this MSA or any Order Form. In such case, Customer shall pay CoreSite monthly License Fees for the Space equal to the Post-Term License Fee Percentage of the full monthly License Fees in effect during the final month of the Term (without taking into account any credit, reduction or abatement), in addition to all other amounts, including, without limitation, any Space-Related Service Fees owing to CoreSite for Customer's receipt of any Space-Related Services during such use or occupation.

(ii) If Customer continues to use or occupy the Space after the expiration or termination of the Term with CoreSite's consent in accordance with Section l(G)i, and during such use or occupation continues to receive any Non-Space-Related Services with CoreSite Service's consent, such use will be co-terminous with Customer's continued use and occupation of the Space, unless terminated by CoreSite Services or Customer upon 30 days' written notice. The receipt of such Non-Space-Related Services shall not constitute a renewal or extension of this MSA or any Order Form. In such case, Customer shall pay CoreSite Services the Service Fees for such Non-Space-Related Services in effect during the final month of the Term (without taking into account any credit, reduction or abatement).

Notwithstanding the foregoing, Customer shall not be entitled to use the Space or Space Related Services after the expiration or termination of the Term without CoreSite's prior written consent (in its sole and absolute discretion), and shall not be entitled to use the Non-Space-Related Services after the expiration or termination of the Term without CoreSite Service's prior written consent (in its sole and absolute discretion).

(H) Nothing contained in this MSA shall be deemed (i) to obligate CoreSite Services to meet any obligation of CoreSite arising hereunder, or (ii) to obligate CoreSite to meet any obligation of .CoreSite Services arising hereunder.

2. *PAYMENT*

(A) Except to the extent otherwise set forth in this MSA, Customer shall pay to Licensors all monthly Service Fees, License Fees, and other amounts in advance, within 30 days after Customer's receipt of invoice. Concurrently with Customer's execution of this MSA, Customer shall pay to CoreSite the Monthly License Fees for the 1st full month in which Bi Monthly License Fees are payable, and the initial Non-Recurring Fee for the Space. Payments for partial calendar months shall be prorated based on the number of days in such month. All other amounts payable by Customer shall be paid by Customer to Licensors within 30 days after the date of Licensors' invoice. License Fees and Service Fees shall be payable for the entire Term regardless of whether Customer uses the Space or Services. Notwithstanding anything to the contrary in this MSA, without limiting either Licensor's ability to send invoices via other means, (i) an invoice shall be considered properly delivered by a Licensor and received by Customer upon such Licensor's e-mailing of the invoice to the Invoice E-Mail Address set forth in the Basic Provisions (or any other e-mail address that such Licensor reasonably considers to be a working e-mail address for Customer), and (ii) an invoice shall be considered properly delivered by Licensors and received by Customer upon the Licensors making the invoice available for Customer's review on the Licensor's on-line Customer account system (currently, the "**OSS**").

(B) Without limiting any other rights or remedies of Licensors, any amounts payable by Customer that are not paid when due (a "**Shortfall**"), a late fee of *** (or the maximum amount permitted by Law if such maximum amount is less than such late fee) of the Shortfall shall be due and payable to Licensors. Licensors shall apportion any late fees accruing on the Shortfall in proportion to the relative amount owed by Customer to each Licensor for the month in which the Shortfall occurs.

(C) All License Fees and Service Fees are exclusive of all taxes (including, without limitation, sales, use, transfer, privilege, excise, VAT, GST, consumption and other similar taxes), fees, duties, governmental assessments, impositions and levies imposed on the transaction in question (including, without limitation, the delivery of Services), all of which Customer shall pay in full (including, without limitation, any and all of the foregoing relating to carbon and: climate/environment control), other than Licensors' income, estate, gift or, except as may be set forth in this MSA, real estate taxes. All payments by Customer shall be made without offset or deduction, in United States Dollars, in immediately available funds, to the address designated by Licensors in good faith from time to time. The initial payment address for Licensors is set forth in the Basic Provisions; provided, however, either Licensor may change its payment information upon written notice to Customer. Payments shall not be made by Customer via Federal Express or other overnight courier, or by messenger. All non-recurring fees are non-refundable and shall be paid by Customer to the Licensor entitled to receive such non-recurring fees, and shall belong to such Licensor. Customer shall be responsible for any fees incurred by either Licensor as a result of any check not being honored by the drawee thereof. In the event any check provided by or on behalf of Customer to either Licensor is not honored by the drawee thereof more than twice, in

the aggregate, then either Licensor may require that Customer pay all amounts in connection with this MSA by wire transfer only, in accordance with wire transfer instructions provided by such Licensor.

(D) Notwithstanding any provision to the contrary set forth herein, unless and until Customer is notified otherwise in writing by Licensors, CoreSite Services shall act as agent for CoreSite for the purpose of collecting all payments due and payable to CoreSite hereunder. In furtherance of the foregoing, CoreSite hereby directs Customer to make all such payments to CoreSite Services, which payments shall be made together with, and shall be in the form requested by CoreSite with respect to, payments due and payable to CoreSite Services hereunder. Customer will continue to make such payments due and payable to CoreSite to CoreSite Services until directed otherwise in writing by CoreSite, and CoreSite acknowledges and agrees that payment of any fees hereunder, including License Fees and Power Fees or any other amount that is due to CoreSite by Customer, in accordance with the provisions of this Section 2 shall constitute performance by Customer under this MSA as to all such amounts paid. CoreSite Services agrees that any payments collected by CoreSite Services as agent for CoreSite shall be remitted to CoreSite. For purposes of clarity and without limiting the generality of the application of this Section 2(D), Licensors may, in their sole discretion, provide Customer with separate invoices setting forth the fees and charges owing to each Licensor, and Licensors are not obligated hereunder to provide Customer a single invoice setting forth the charges owing to Licensors under this MSA.

(E) If Customer, in good faith, disputes any amount in an invoice that has been charged by Licensors to Customer under this MSA, Customer may notify Licensors in writing of such good faith dispute ("**Good Faith Dispute Notice**") no later than thirty (30) days after Customer's receipt of such invoice; provided, however, that Customer shall not be permitted to dispute any amount that is set forth in the MSA or Order Form as a specific dollar amount. Customer shall not be responsible for any late fees accruing on any such disputed amount only if Customer is able to demonstrate, to the reasonable satisfaction of Licensors, within thirty (30) days after Licensors' receipt of Customer's Good Faith Dispute Notice, that such disputed amount was erroneously charged to Customer. If Customer does not demonstrate, to the reasonable satisfaction of Licensors, within thirty (30) days after Licensor's receipt of Customer's Good Faith Dispute Notice, that such disputed amount was erroneously charged, Customer shall pay such disputed amount to Licensors within ten (10) days after Licensor's demand. If Customer fails to dispute an amount in accordance with the terms and time periods of this Section 2(E), then Customer shall be deemed to have waived all rights to dispute or, otherwise object to such amount.

3. *SPACE AND EQUIPMENT*

(A) Customer, at Customer's sole cost and expense, is responsible for providing, installing, maintaining, repairing and operating the Equipment. The Equipment shall be industry accepted and communication technology equipment suitable for a use in a data center. All Equipment, where possible, must be accompanied by industry-standard banking panels and *** reasonably acceptable to CoreSite, and the location and power density of all racks and other Equipment shall be subject to the prior consent of CoreSite, which consent shall not be unreasonably withheld or delayed. The Equipment, and placement thereof, shall comply with all of CoreSite's reasonable, non-discriminatory floor load requirements. Customer shall, at its sole cost and expense, provide janitorial service to the Space and clean any raised floor surface and subsurface, in accordance with the highest industry standards and procedures for cleaning mission critical data center environments; provided, however, any and all cleaning of subsurface environments (i.e., beneath the raised floor) must be approved in advance by CoreSite, supervised by CoreSite, and performed in accordance with CoreSite's reasonable rules and regulations for performing such work.

(B) Customer may use the Office Space only for the purpose of general telecommunications office use and in accordance with the terms of this MSA. Customer may use the Cage Space only for the purpose of installing, maintaining, repairing and operating unmanned Equipment in accordance with the terms of this MSA. CoreSite shall have the right to relocate the Space upon at least 60 days' prior written notice to Customer (or such shorter time as CoreSite reasonably deems necessary in the event of emergency). Subject to the terms of this MSA, and the Building and Data Center rules, regulations and policies, Customer shall have access to the Space 24 hours per day, 7 days per week. CoreSite may access the Space and Equipment at any reasonable time, for any reasonable purpose; provided, however, except in the event of emergency, and except when delivering Space-Related Services, CoreSite shall provide prior

notice to Customer prior to entering the Space if such entry will last more than 30 minutes, and CoreSite shall not unreasonably interfere with Customer's permitted use of the Space in connection with any such entry. Customer shall not allow people to occupy or work in the Space (other than intermittent installation, testing and maintenance of Equipment in accordance with industry standards) and shall not use the Space for office use or for any other purpose. Customer shall, at all times, at its sole cost and expense, keep the Space neat and clean, free of debris, trash, boxes, packaging and other similar items. Customer shall comply with all Laws, and with all of Licensors' reasonable, non-discriminatory rules, regulations and procedures in effect from time to time.

(C) CoreSite may discontinue, turn off, shut down or suspend the Space-Related Services (including, without limitation, power) or deny Customer access to the Space, Data Center and Building in the event CoreSite is required to do so by Law. Customer shall obtain and maintain all necessary and required approvals, permits, certificates and licenses relating to the Equipment and/or use of the Space and Services.

(D) Customer shall not cause or permit any Hazardous Material to be brought, kept or used in the Space, Data Center or Building, and shall not unreasonably interfere with the use, systems, equipment or operations of Licensors or Licensors' other customers. Notwithstanding anything to the contrary in this MSA, no improvements, modifications, changes or alterations to the Space, Data Center or Building shall be performed by Customer unless approved in writing by CoreSite (in its sole and absolute discretion).

(E) Customer shall not cause or allow any liens or encumbrances to be imposed upon the Space, Data Center or Building (or any related property), or upon any of Licensors' or the Building owner's (or any other Master Landlord's) property; in the event of a breach of this sentence, without limiting any other rights or remedies, Licensors may pay all amounts necessary to extinguish, eliminate and remove (including, without limitation, from public record) any such liens and encumbrances, and Customer shall reimburse CoreSite *** of all such amounts within 30 days after receipt of invoice. Customer shall ensure that all parties performing work for Customer work in harmony with any workers at the Data Center and Building, and comply with all non-discriminatory union labor, bonding, insurance and other requirements imposed by CoreSite in good faith in connection therewith.

(F) Except to the extent expressly set forth in this MSA, Customer shall not be entitled to (i) access or use outside of the Space any space, conduits, innerducts, shafts, risers, fiber, wiring or cabling; (ii) make connections with any, other customer or other party in connection with the Data Center, Building or this MSA; or (iii) use or consume any power, electricity, water, gas or other utilities or services. Without limiting any other rights and remedies of Licensors, in the event of a breach of the preceding sentence, Customer shall be obligated to pay to Licensors *** of Licensors' prevailing charges for the items in question. Unless and to the extent otherwise set forth in this MSA, Licensors shall have no obligation to provide any electricity, power, water, gas, other utilities or janitorial or cleaning services.

4. *LENDER, SECURITY REQUIREMENTS*

(A) This MSA (and Customer's rights, licenses, use and occupancy hereunder) shall be subject and subordinate to any mortgage and/or deed of trust of CoreSite (and, if CoreSite is the owner of the Building, to any ground or underlying lease of CoreSite), whether existing or future, and to any renewals, modifications, consolidations, extensions and replacements thereof (including, without limitation, all advances thereon, whether existing or future). Notwithstanding the foregoing, if the lessor under any such lease or the holder of any such mortgage or deed of trust advises CoreSite that such lessor or holder requires this MSA to be prior and superior thereto, then, upon CoreSite's written notice, CoreSite's interest in this MSA shall be prior and superior thereto. In the event any proceedings are brought for the foreclosure of any mortgage or deed of trust of CoreSite or any deed in lieu thereof (or, in the event CoreSite is the owner of the Building, if any ground or underlying lease of CoreSite is terminated), and CoreSite loses its possession of the Space and/or Building (or applicable portion thereof) as a result thereof, then Customer shall attorn to the purchaser or any successors of CoreSite upon any such foreclosure sale or deed in lieu thereof (or to the ground or underlying lessor, if applicable) if so requested to do so by such party and shall recognize such party as CoreSite under this MSA. CoreSite's interest herein may be assigned as security at any time to any lienholder or lender. Customer shall agree to such modifications to this MSA reasonably required by CoreSite's lender or lessor, provided such modifications may not materially increase Customer's

liabilities or obligations, or materially decrease Customer's rights and remedies, under this MSA. Customer shall, within 10 days after written request, execute end acknowledge such agreements as reasonably required by CoreSite or its lender in connection with this paragraph.

(B) Concurrently with Customer's execution of this MSA, Customer shall deposit with CoreSite the Security Deposit. The Security Deposit shall secure the compliance of Customer with the terms of this MSA. Notwithstanding any provision of this MSA to the contrary, either Licensor shall have the right, upon written notice to Customer, to apply that portion of the Security Deposit necessary to pay for any overdue amounts, damages incurred by either Licensor for Customer's breach or default and any other damages caused by Customer or any of the Customer Parties. Customer shall, within 3 business days after CoreSite's demand, deposit funds with CoreSite necessary to replenish the Security Deposit to its full original amount. CoreSite shall not be required to keep the Security Deposit in trust, segregate it or keep it separate from CoreSite's general funds, but CoreSite may commingle the Security Deposit with its general funds and Customer shall not be entitled to interest on the Security Deposit. CoreSite shall return the Security Deposit, or if a portion thereof has been applied hereunder, any such unapplied portion, to Customer within 30 days after the final expiration or termination of the Term.

(C) This paragraph shall not be applicable in the event Customer is a publicly traded company on a national stock exchange, with its financial statements filed with the Securities and Exchange Commission and available to the public. Within 10 business days after either Licensor's written request (but not more than once during any calendar year), Customer shall provide Licensors with current audited (together with an opinion of a certified public accountant) financial statements of Customer for the then current fiscal year of Customer and the immediately preceding 3 fiscal years of Customer. Such statements shall include income statements and balance sheets, shall be prepared in accordance with Generally Accepted Accounting Principles, consistently applied, shall be certified by an authorized officer of Customer as being true and correct, and shall otherwise be in form and content reasonably satisfactory to Licensors.

(D) Customer shall, within 10 business days' prior written notice from either Licensor, deliver to the requesting Licensor (or both Licensors, if so requested in such notice) a signed statement on Licensors' form certifying the following information (but not limited to the following information if further information is reasonably requested by the requesting Licensor): (i) that this MSA is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this MSA, as modified, is in full force and effect); (ii) the dates to which Service Fees, License Fees and other charges are paid; (iii) the amount of Customer's Security Deposit; and (iv) there are not any uncured breaches or defaults on the part of Licensor(s) under this MSA, and that there are no events or conditions then in existence which, with the passage of time or notice or both, would constitute a breach or default on the part of Licensor(s), or specifying such breaches or defaults, events or conditions, if any are claimed. Any such statement may be relied upon by both Licensors and any of their designees, including, without limitation, any prospective purchaser, assignee, lessor or lender.

5. *INSURANCE AND INDEMNITY*

(A) Customer shall, at its sole cost and expense, procure and maintain the following insurance: (i) commercial general liability insurance in an amount not less than $2,000,000.00 per occurrence and $3,000,000.00 in the annual aggregate for bodily injury and property damage and personal injury coverage; and (ii) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), in an amount equal to the full replacement value new without deduction for depreciation of all Equipment arid other property of Customer. All insurance under this paragraph shall be with reputable insurers licensed to do business in the State, shall have commercially reasonable deductibles, shall be written on an occurrence basis, shall name Licensors and their designated lenders, lessors and managers as additional insureds, and shall provide that such insurance cannot be canceled or modified upon less than 30 days prior written notice to each Licensor. Prior to any access to, or installation of Equipment in, the Space and prior to any expiration date of the insurance policies, Customer will furnish copies of certificates to Licensors which evidence that Customer has obtained the insurance required hereunder, and shall provide evidence to Licensors of the deductibles in connection with all policies hereunder. Customer shall require its insurers to waive (and its insurers shall waive) any rights of subrogation that such companies may have, and Customer waives, any and all rights, remedies, claims, actions and causes of action, against each Licenser and each Licensor's

Indemnified Parties, as a result of any loss or damage to Equipment or other property which is (or would have been, had the insurance required by this MSA been carried) covered by insurance.

(B) Licensors shall, at their sole cost and expense, procure and maintain the following insurance during the Term: (i) commercial general liability insurance in an amount not less than $2,000,000.00 per occurrence and $3,000,000.00 in the annual aggregate for bodily injury and property damage and personal injury coverage; and (ii) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), in an amount equal to the full replacement value of Licensors' equipment in the Data Center. All insurance hereunder shall be with reputable insurers licensed to do business in the State, shall have commercially reasonable deductibles, and shall be written on an occurrence basis and may be under an umbrella, blanket or similar policy.

(C) Except to the extent caused by Licensors' (or the applicable Licensor's Indemnified Party's) negligence or willful misconduct, Customer shall and does hereby indemnify, defend, protect and hold harmless Licensors and their respective Indemnified Parties from and against any and all Claims resulting from any Action brought by any third party alleging or arising out of (i) infringement or misappropriation of any intellectual property right or other illegal action by Customer or any of the Customer Parties; (ii) any Customer Default; and/or (iii) the use by Customer or any of the Customer Parties of the Space, Services, Data Center, or Building. Except to the extent caused by Customer's (or the applicable other Customer Party's) negligence or willful misconduct, CoreSite shall and does hereby indemnify, defend, protect and hold harmless Customer and the Customer Parties (other than customers, licensees, invitees, contractors and sublicensees, and their respective successors and assigns) from and against any and all Claims resulting from any Action brought by any third party (other than customers or sublicensees, and other than in connection with or as a result of the Services or any Failure or disruption, outage, breakdown or other failure or degradation of Services) alleging or arising out of (1) infringement or misappropriation of any intellectual property right or other illegal action by CoreSite or any of its Indemnified Parties; and/or (2) any Licenser Default caused by the gross negligence or willful misconduct of Licensors. This paragraph shall survive the expiration or termination of this MSA.

6. *ENFORCEMENT*

(A) A Customer Default with respect to one Licensor shall constitute a Customer Default with respect to both Licensors. In the event of a Customer Default with respect to the Space, Space-Related Services, and/or Non-Space-Related Services, each Licensor as applicable) shall have the right to exercise all of the available rights and remedies at law and in equity, and may, without limitation and free from any and all liability, (i) terminate this MSA (including any and all Order Forms); (ii) recover from Customer the applicable Basic Contract Damages, subject to any mitigation requirements under Law (provided that CoreSite shall not be required to give preference to the Space over any other Space in its mitigation efforts); (iii) discontinue, turn off, shut down or suspend any Space-Related Service (including, without limitation, power) or Non-Space-Related Services; (iv) prevent Customer from ordering or licensing any Space-Related Services or Non-Space-Related Services; (v) prevent Customer from accessing or using the Space, Data Center and Building and/or prevent Customer from removing any Equipment from the Space :or Building (including, without limitation, by means of locks or other access barriers); and/or (vi) perform such acts necessary to cure the Customer Default, on Customer's part, and all costs incurred by the Licensors in connection therewith shall be paid by Customer to the applicable Licensor. In the event of any shutdown of Space-Related Services or Non-Space-Related Services hereunder, Customer shall he responsible to pay CoreSite or CoreSite Services, whichever may be the case, the standard commercially reasonable reinstatement fee in the event of any reinstatement of any Space-Related Services or Non-Space-Related Services (as applicable).

(B) Notwithstanding anything to the contrary in this MSA, Customer will not be permitted to remove any Equipment from the Space or Building, and Customer waives any and all rights and remedies in connection therewith, during any period in which Customer is past-due or otherwise delinquent in any amounts payable, during any period in which Customer is under a payment plan with either Licensor, or during any period in which a Customer Default exists.

(C) In the event of a Licensor Default, Customer shall have the right, subject to the terms of this MSA, and subject to any mitigation requirements under Law, to exercise au of its available rights and remedies at law and in equity.

(i) Notwithstanding anything in this MSA to the contrary, any remedy of Customer for the collection of a judgment (or other judicial process) requiring the payment of money by CoreSite or any claim, cause of action or obligation, contractual, statutory or otherwise by Customer against CoreSite concerning, arising out of or relating to any matter relating to this MSA and all of the covenants and conditions or any obligations, contractual, statutory, or otherwise set forth herein, shall be limited solely and exclusively to an amount which is equal to the License Fees paid by Customer in the *** months immediately preceding the date of entry of such judgment, claim, cause of action or obligation, net of any amounts due and owing from Customer to CoreSite as of such date.

(ii) Notwithstanding anything in this MSA to the contrary, any remedy of Customer for the collection of a judgment (or other judicial process) requiring the payment of money by CoreSite Services or any claim, cause of action or obligation, contractual, statutory or otherwise by Customer against CoreSite Services concerning, arising out of or relating to any matter relating to this MSA and all of the covenants and conditions or any obligations, contractual, statutory, or otherwise set forth herein, shall be limited solely and exclusively to an amount which is equal to the Non-Space-Related Service Fees paid by Customer in the *** months immediately preceding the date of entry of such judgment, claim, cause of action, or obligation, net of any amounts due and owing from Customer to CoreSite Services as of such date.

(iii) Except as set forth in Sections 6(C)i and 6(C)ii, no property or assets of Licensors or any their respective Indemnified Parties shall be subject to levy, execution or other enforcement procedure for the satisfaction of Customer's remedies under or with respect to this MSA, Licensors' obligations to Customer, whether contractual, statutory or otherwise, the relationship of the parties hereunder, or Customer's use or occupancy. Without limiting the foregoing, no personal liability is assumed by any of the Licensors' respective Indemnified Parties, and no Claim shall be asserted against any of the Licensors' respective Indemnified Parties.

(D) Notwithstanding anything to the contrary contained in this MSA, no Party shall, under any circumstances, be liable for any consequential, indirect, punitive, exemplary or special damages of any nature, or for any loss of data, lost revenues, lost profits, loss of business, loss of goodwill or anticipatory profits, regardless of the form of action, whether in contract, tort (including, without limitation, negligence), strict liability or otherwise, even if the such Party has been advised of the possibility of such damages; provided, however, the foregoing shall not limit or affect, and Customer shall be responsible for, the Basic Contract Damages, License Fees and Service Fees and all other amounts payable by Customer under this MSA (including, without limitation, future amounts, regardless of when payable). Notwithstanding anything to the contrary contained in this MSA, Customer shall not be permitted to exercise any self-help or offset remedies, or to perform any of Licensors' obligations. Except as set forth in this MSA, no Party makes any express or implied representations or warranties, including, but not limited to, warranties of fitness for a particular purpose, merchantability, noninfringement of intellectual property rights and title, or any warranties arising from a course of dealing, usage, or trade practice.

(E) Notwithstanding anything to the contrary in this MSA, this MSA and the obligations of Customer shall not be affected or impaired, and neither Licensor shall be in breach or default, in the event either Licensor is unable to fulfill any of its obligations under this MSA or is delayed in doing so, if such inability or delay is caused by reason of Force Majeure Event, and Licensors' obligations under this MSA shall be suspended by any such Force Majeure Event. Notwithstanding the foregoing, if, as a result of a Force Majeure Event claimed by a Licensor that is not caused by Customer or any of the Customer Parties, such Licensor is unable to provide Service to Customer and Customer is prevented from receiving Service as a result of such Force Majeure Event then, during such time as Licensor is so unable to provide Service to Customer as a result of such Force Majeure Event, Customer shall not be obligated to pay the Service Fees for the particular Service that such Licensor is so unable to provide to Customer as a result of such Force Majeure Event, unless' such Licensor is able to provide a reasonable alternative.

(F) Time is of the essence with respect to the performance of this MSA. In any action, legal proceeding or suit relating to. this MSA, the losing Party shall pay the prevailing Party, a reasonable sum for attorneys' fees and costs in such action, legal proceeding or suit, as applicable. Any obligations of the Parties occurring prior to the expiration or termination of this MSA shall survive such expiration or termination. Additionally, the terms and conditions of this MSA that by. their sense and context are intended to survive the expiration or termination of this MSA shall survive such expiration or termination.

(G) If any provision of this MSA is held by a court of competent jurisdiction to be invalid, void or illegal, the remaining provisions of this MSA will reimburse in full force and effect. A Party shall not be deemed to waive any of its rights or remedies under this MSA unless such waiver is in writing and signed by the Party to be bound. The acceptance of any amounts by a Party shall not be deemed to be a waiver of any preceding breach or default. No acceptance of a lesser amount than the amount due shall be deemed a waiver of a Party's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and each Party may accept such check or payment without prejudice to its right to recover the full amount due. No acceptance of monies by a Party after the expiration or termination of the Term shall in any way after the, length of that Term or Customer's rights to the Space or any Service, or reinstate, continue or extend the Term. Unless otherwise agreed to in writing by the receiving Party, a Party may apply any payments received from the other Party to any amounts and in any order that the receiving Party may determine from time to time in its sole and absolute discretion, notwithstanding any contrary designation or writing by the paying Party. Additionally, in the event either Licensor receives a payment by or on behalf of Customer or any affiliate of Customer that may cover other locations, such Licensor may apply such payment to amounts owing or that will become payable under this MSA, and shall not be obligated to ensure that any amounts are applied at any other location.

(H) This MSA shall be governed by the Laws of the State. All, controversies, claims, actions or causes of action arising between the Parties hereto and/or their respective successors and assigns, shall be brought, heard and adjudicated by the courts of the State. Each of the Parties consents to personal jurisdiction by the courts of the State in connection with any such controversy, claim, action or cause of action, and each of the Parties consents to service of process by any means authorized by the Law of the State and consent to the enforcement of any judgment so obtained in the courts of the State on the same terms and conditions as if such controversy, claim, action or cause of action had been originally heard and adjudicated to, a final judgment in such courts. Each of the Parties further acknowledges that the Laws and courts of the State were freely and voluntarily chosen to govern this MSA and to adjudicate any claims or disputes hereunder.

(I) TO THE EXTENT NOT PROHIBITED BY LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION SEEKING SPECIFIC PERFORMANCE OF ANY PROVISION OF THIS MSA, FOR DAMAGES FOR ANY DEFAULT UNDER THIS MSA, OR OTHERWISE FOR ENFORCEMENT OF ANY RIGHT OR REMEDY UNDER THIS MSA.

7. *ASSIGNMENT*

(A) This MSA (and the rights and licenses accorded Customer under this MSA) are personal to Customer and may not be assigned, sublicensed, or otherwise transferred by Customer in any fashion without the prior written consent of Licensors (except as set forth below), which consent may not be unreasonably withheld or delayed. Customer shall not allow any other party to use any of the Space or Services without the prior written consent of Licensors, which consent may not be unreasonably withheld or delayed, or operate what is commonly known as a meet-me-room or data center without the prior written consent of Licensors, which consent may be withheld in Licensors' sole and absolute discretion.

(B) Notwithstanding the foregoing, an assignment of this MSA (together with all Order Forms) in its entirety to an "Affiliate" of Customer shall be permitted, provided that (i) Customer notifies Licensors of any such assignment at least ten (10) business days prior to its effective date and promptly supplies Licensors with any documents or information reasonably requested by Licensors regarding such assignment and/or such assignee, (ii) the net worth of the assignee immediately after the date of assignment shall be no less than the net worth of Customer as of the date of this MSA and no less than the net worth of Customer immediately preceding the date of assignment, (iii) such assignment is not a subterfuge by Customer to avoid its obligations under this MSA, and (iv) following such assignment, the assignee executes an assumption agreement assuming the obligations and liabilities under this MSA (including, without limitation, all Order Forms) and such other reasonable related matters requested by Licensors. The term "Affiliate" of Customer shall mean an entity which is controlled by, controls, or is under common control with Customer. The term "control" or "controlled" as used in this paragraph shall mean the

ownership, directly or indirectly, of at least fifty percent (50%)of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty percent (50%) of the voting interest in, an entity.

(C) For all other assignments, sublicenses or other transfers not involving Customer's Affiliate, Licensors may require any assignee, sublicensee or other transferee to execute documentation reasonably acceptable to Licensors in connection with any Transfer, including, without limitation, an assumption agreement whereby the transferee assumes all of Customer's liabilities, duties and obligations under this MSA. In any event and unless otherwise provided for in the transfer documentation, no Transfer shall relieve or release Customer of its obligations, duties or liabilities, and Customer shall remain fully liable under this MSA (including, without limitation, all Order Forms), jointly and severally with the transferee.

(D) Notwithstanding anything to the contrary in this MSA, either Licensor may, in its sole and absolute discretion, assign this MSA without obtaining the consent of Customer or any other party (such Licensor, the "**Assigning Licensor**"). Customer shall attorn to the Assigning Licensor's assignee upon any assignment by the Assigning Licensor of this. MSA and shall recognize such assignee as the Assigning Licensor under this MSA. No assignment or sale by the Assigning Licensor (or the owner of the Building) shall, in and of itself, result in a termination of this MSA (or any license under this MSA). In the event of any assignment by the Assigning Licensor, the Assigning Licensor shall automatically be released from all liability under this MSA and Customer agrees to look solely to such assignee for the performance of the Assigning Licensor's obligations under this MSA and such assignee shall be deemed to have fully assumed and be liable for all obligations of this MSA to be performed by the Assigning Licensor after the date of the assignment, including, without limitation, the return of any Security Deposit. There shall be no third party beneficiaries to this MSA.

8. *PROCEDURE.*

(A) Any notice or communication required or permitted to be given under this MSA may only be delivered by hand, sent by overnight courier, sent by United States certified mail, return receipt requested, or sent by facsimile, at the addresses set forth in the Basic Provisions or at such other address as may hereafter be furnished in writing to the other Party.

(B) The Parties are independent of one another and this MSA will not create any partnership, joint venture, employment, franchise or agency between Licensors, on the one hand, and Customer, on the other. This MSA constitutes the complete and exclusive agreement between Licensors and Customer with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This MSA may be executed in counterparts, each of which, when combined, shall constitute one MSA. Facsimile signatures, and signatures by electronic mail in PDF or similar scanned format, shall each have the same force and effect as original ink signatures.

(C) Each individual executing this MSA on behalf of each Party represents and warrants to the other Parties to this MSA that, and each Party represents and Warrants to the other Parties that, each individual executing this MSA on behalf of a Party is duly authorized to execute and deliver this MSA on behalf of such Party in accordance with its organizational documents. Customer further represents and warrants that it is not now and had never been listed or named as, nor has it ever acted directly or indirectly for or on behalf or any person, group or entity or nation named in any Executive Order or by the United States Treasury Department or any other state or federal agency as a terrorist, or a "Special Designated National and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control ("**OFAC**") or any other governmental agency.

(D) Each Party represents and warrants to the other Parties of this MSA that it has not had any dealings with any person or entity who is or might be entitled to a commission, finder's fee or other like payment in connection herewith and does hereby indemnify, defend and agree to hold the other Parties harmless from and against any and all Claims that such other Parties incur should such warranty and representation prove incorrect. This paragraph shall survive the expiration or termination of this MSA.

(E) Each Party may disclose to the other Party confidential or proprietary information ("**Confidential Information**"). Confidential

Information includes, without limitation, business, financial and technical information that is marked or otherwise identified as confidential or proprietary by a Party or which, by its nature, the receiving Party should reasonably know is confidential. Each Party agrees to: (i) take all reasonable steps to maintain the confidentiality of Confidential Information and not to disclose it without the other Party's prior written consent; and (ii) not use or copy Confidential Information for any purpose other than the purposes of this MSA. The obligations under this Section 8(E) will survive MSA termination for a period of one (1) years; provided, with respect to trade secrets, the obligations will survive for the maximum period allowed by law. Each Party may disclose such confidential information to a Party's partners, assignees purchasers, investors, lenders, lessors, affiliates and financial and legal consultants, provided such parties agree in writing to keep such information strictly confidential and to not disclose such confidential information to any third party. Confidentiality obligations do not apply to the extent that Confidential Information: (1) is already known to a Party without restriction; (2) becomes publicly available through no breach hereof; (3) is received from a third party rightfully and without restriction; (4) is independently developed without access to or use of the Confidential Information; or (5) is required to be disclosed by Law. This MSA (and the terms and conditions of this MSA) and related documents are confidential information. No Party: shall release or cause or permit to be released any press release or other publicity, advertising or promotion relating to this MSA (including, without limitation, the terms and conditions of this MSA) or any related documents; provided, however, CoreSite may disclose the fact that Customer is a customer in the Data Center and Licensors may use Customer's name or logo in marketing materials, customer lists or other similar materials. Customer shall not use the picture or representation or the Data Center or Building (or any part thereof) without the prior written consent of CoreSite. Notwithstanding the foregoing, Licensors may provide any information as required to any receiver or governmental or quasi-governmental entity, or to any person or entity with a valid court order. Licensors are and shall remain exclusively entitled to all right, title and interest in and to their respective Intellectual Property and Customer shall not have any right, title or interest whatsoever in or to Licensors' Intellectual Property (including, without limitation, any ownership rights); Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from Licensors' Intellectual Property. The terms of this paragraph shall survive the expiration or termination of this MSA.

9. *POWER.*

(A) Subject to the terms and conditions of this MSA (including, without limitation, the 80% limitation set forth below), Customer may only license primary AC UPS power for the Cage Space from CoreSite up to the Critical Power Limit, for the Power Fee. The combined load of any A/B pair of Dedicated Panels shall never exceed a combined load of 65 kWs

(B) All power circuits for a Dedicated Panel shall be ordered and provided pursuant to separate Order Form. The minimum breakered circuit shall be 20 amps and the provision of power shall be in 10-amp increments above the 20-amp minimum. Notwithstanding anything to the contrary set forth. in this MSA, at no time shall the combined load connected to any primary circuit and its designated redundant circuit, or the combined draw on any primary circuit and its designated redundant circuit, exceed 80% of the primary circuit's breakered capacity.

(C) CoreSite may estimate the Power Fee for any particular month(s), in which case the Power Fee payable by Customer for the month in question shall initially equal CoreSite's estimated Power Fee, subject to reconciliation, as set forth below. Not less than once in any 12-month period, CoreSite shall, based on the actual information available to CoreSite, determine the actual Power Fee for any previous Estimated Months. If the actual aggregate Power Fees for any particular period exceed the estimated aggregate Power Fees paid by Customer for such period, then Customer shall pay such excess to CoreSite; if the actual aggregate Power Fees for any particular period are less than the estimated aggregate Power Fees paid by Customer for such period, then CoreSite shall credit Customer with the amount of Customer's overpayment against the Power Fee payable for the month (or months, if applicable) following the applicable reconciliation. The obligations of the parties under this paragraph shah survive the expiration or termination of this MSA.

(D) Notwithstanding anything to the contrary set forth in this MSA, Customer shall also pay to CoreSite the Power NRC for each and every power circuit CoreSite may require that Customer pay any Power NRCs (including, without limitation, estimated Power NRCs) to CoreSite in advance, prior to the commencement, or during the performance, of

the applicable work, within 5 days after CoreSite's demand (and CoreSite shall not be responsible to commence or continue with any work prior to its receipt of the Power NRC in question, and shall not be responsible for any delay in the applicable work caused by delay in receipt of the applicable Power NRC). Additionally, CoreSite may estimate any Power NRCs, in which event Customer shall pay the applicable Power NRC to CoreSite as set forth above based on CoreSite's estimate; once CoreSite knows the actual amount of the applicable Power NRC, then CoreSite shall perform a reconciliation as soon as reasonably practicable; if the actual Power NRC is less than the Power NRC paid by Customer, then CoreSite shall credit any such overpayment against the Space-Related Service Fees next becoming due; if, however, the actual Power NRC is more than the Power NRC paid by Customer, then Customer shall promptly pay such excess to CoreSite,

(E) Except as expressly set forth in Section 9(A), Customer shall not be entitled to any power whatsoever. Notwithstanding anything to the contrary in this MSA, (i) Customer's use/consumption and ordering/licensing of primary power shall never exceed the Critical Power Limit, (ii) Customer shall ensure, at its sole cost and expense, that the load connected to, and the draw on, any and all circuits shall be in compliance with the National Electrical Code (and all other Laws and insurance requirements), and (iii) in no event shall the load connected to any circuit, or the draw on any circuit, exceed 80% of the circuit's breakered capacity. CoreSite may, from time to time, audit Customer's circuits and use of power and may enter the Cage Space to do so. Customer shall reasonably cooperate with CoreSite in connection with any such audit. Without limiting the foregoing, within 10 days after receipt of written request from CoreSite (which request may be made from time to time), Customer shall deliver to CoreSite a detailed list of its then-existing circuits. If CoreSite discovers that Customer has violated the Critical Power Limit or violated such 80% limitation, then, without limiting CoreSite's other rights and remedies, Customer shall pay to CoreSite the Power Overdraw Charge, and CoreSite may disconnect the circuit in violation until the violation is remedied by Customer to CoreSite's reasonable satisfaction. If, requested by CoreSite, concurrently with Customer's execution of this MSA, Customer shall pay to CoreSite the 1 month's estimated Power Fee, the 1 month's Minimum Common Facilities Amount, and initial estimated Power NRC.

10. *COMMON FACILITIES FEE*

(A) Customer shall pay to CoreSite the Common Facilities Fee, which covers CoreSite's costs to provide centralized HVAC services to the Space and to provide HVAC, lighting, security, other power requirements and other services to the Data Center, as well as to CoreSite's associated administrative costs.

(B) CoreSite may estimate the Common Facilities Fee for any particular month(s), in which case the Common Facilities Fee payable by Customer for the month in question shall initially equal CoreSite's estimated Common Facilities Fee (subject to reconciliation, as set forth below). Not less than once in any 12-month period, CoreSite shall, based on the actual information available to CoreSite, determine the actual Common Facilities Fees for any previous Estimated Months. If the actual aggregate Common Facilities Fees for any particular period exceed the estimated aggregate Common Facilities Fees paid by Customer for such period, then Customer shall pay such excess to CoreSite; if the actual aggregate Common Facilities Fees for any particular period are less than the estimated aggregate Common Facilities Fees paid by Customer for such period, then CoreSite shall credit Customer with the amount of Customer's overpayment against the Common Facilities Fee payable for the month (or months, if applicable) following the applicable reconciliation. The obligations of CoreSite and Customer under this paragraph shall survive the expiration or termination of this MSA

11. *NON-SPACE-RELATED SERVICES.*

(A) **Cross Connections**. During the Term of this MSA, subject to availability, cross connections on CoreSite's Main Distribution Frame may be licensed by Customer from CoreSite Services, for the Cross Connection Fees. All cross connections by Customer shall be via the MDF/Main Distribution Frame designated by CoreSite Services, or other system reasonably designated by CoreSite Services, and no cross connections shall be performed in any other manner or location, unless otherwise permitted by CoreSite Services in writing (in its sole and absolute discretion). The term of the license of any such cross connections shall commence on the date of installation (or the first date of use, if earlier) and shall continue during the remainder of the Term; provided, however, Customer may terminate the license of any such cross connection earlier (but without affecting the

remainder of this MSA), upon at least 30 days' prior written notice to CoreSite Services (provided that, without limiting such notice period, the effective date of termination must be the 1st day of a calendar month). Customer shall not be entitled to any other cross connections or other connections. All cross connections shall be subject to the consent of the party with whom Customer wishes to connect (which shall be Customer's responsibility to obtain). CoreSite Services may, from time to time, audit Customer's cross connections and other connections relating to the Space and/or Building, and may enter the Space to do so. Customer shall reasonably cooperate with CoreSite Services in connection with any such audit. Without limiting the foregoing, within 10 days after receipt of written request from CoreSite Services (which request may be made from time to time), Customer shall deliver to CoreSite Services a detailed list of its then-existing cross connections and other connections relating to the Space and/or Building (including, without limitation, the identities and locations of the parties to whom Customer is connected).

(B) **Any2 Exchange**. CoreSite Services currently has in place a peering exchange commonly known as Any2. During the Term of this MSA, subject to availability and the payment of the Any2 Fees, Customer may license internet exchange ports from CoreSite Services on Any2. Customer's use of Any2 shall be subject to the consent of all applicable third parties from whom consent is required (which shall be Customer's responsibility to obtain). The term of the license of any such exchange ports shall commence on the date of installation (or the first date of use, if earlier) and shall continue during the remainder of the Term; provided, however, Customer may terminate the license of any such exchange port earlier (but without affecting the remainder of this MSA), upon at least 30 days' prior written notice to CoreSite Services (provided that, without limiting such notice period, the effective date of termination must be the day of a calendar month). CoreSite Services may, from time to time, audit Customer's connections to the Any2 peering exchange, and may enter the Space to do so. Customer shall reasonably cooperate with CoreSite Services in connection with any such audit.

(C) **Inter-Site Connections**. CoreSite Services currently has in place certain rights to connectivity between the Building and a CoreSite point of presence in the building located at 55 S. Market Street, San Jose, California, through telecommunications connections. During the Term of this MSA, subject to availability and the existence of such connectivity and point of presence, and subject to the payment of the Inter-Site Connection Fees, Customer may license from CoreSite Services connections between the Space and third parties in locations reasonably approved by CoreSite Services in such point of presence, using such connectivity, Customer shall be responsible for. obtaining all third party consents necessary in connection with any such connections. The term of the license of any such connections shall commence on the date of installation (or the first date of use, if earlier) and shall continue during the remainder of the Term; provided, however, Customer may. terminate the license of any such connections earlier (but without affecting the remainder of this MSA), upon at least 30 days' prior written notice to Licensor (provided that, without limiting such notice period, the effective date of termination must be the 1st day of a calendar month).

12. *SERVICE LEVEL AGREEMENT ("**SLA**").*

Licensors acknowledge the importance of up-time and uninterrupted services In the data center industry. Accordingly, Customer may be entitled to certain abatement under the Service Level Agreement attached hereto as Exhibit B in the event of certain service Failures (as defined in such SLA).

13. *DEFINITIONS.*

For purposes of this MSA, the following terms shall have the following definitions:

Action: Any legal claim, suit, action, or proceeding.

Any2 Fees: The monthly recurring fees and nonrecurring fees payable by Customer to CoreSite Services for Any2 exchange ports, as set forth in the Basic Provisions, which fees are subject to increase by CoreSite Services from time to time, in its sole and absolute discretion.

Assigning Licensor: Defined in Section 7 of this MSA.

Basic Contract Damages: All of the License Fees and Service Fees that would otherwise have been payable by Customer for all of the remaining Term (i.e., that would otherwise have been payable under this MSA) absent any termination of this MSA.

Branch Circuit Monitoring System: Energy allocation equipment used by CoreSite to determine Customer's consumption of power per Dedicated Panel (or circuit). The Power Fee and Common

Facilities Fee will be based on readings of the Branch Circuit Monitoring System, and any and all disputes by Customer relating to the amount of the Power Fee, Common Facilities Fee and/or the accuracy of the Branch Circuit Monitoring System will be solely between Customer and CoreSite.

Building: Defined in the Basic Provisions.

Claims: All claims, judgments, damages, penalties, fines, costs, liabilities, and losses (including, without limitation, reasonable attorneys' fees and costs).

Commencement Date: Defined In the Basic Provisions.

Common Facilities Fee: A monthly fee payable by Customer to CoreSite equal to the greater of (a) an amount equal to the aggregate Power Fees for that month, multiplied by the Common Facilities Multiplier, or (b) an amount equal to the Minimum Common Facilities Amount.

Common Facilities Multiplier: Defined in the Basic Provisions.

Cross Connection Fees: The monthly recurring fees and non-recurring fees payable by Customer to CoreSite Services for cross connections, as set forth in the Basic Provisions, which fees are subject to increase by CoreSite Services from time to time, in its sole and absolute discretion.

Customer Default: Any of the following items, whereby Customer shall be in default beyond notice and cure periods: (i) the failure by Customer to pay Service Fees, License Fees or other amounts for 5 days after written notice that the applicable amount is overdue; (ii) any breach of Section 3 above for 5 days after a Licensor's delivery of written notice to Customer; provided, however, if a Licensor shall deliver 3 notices of any such breach within any 12-month period, there shall be no cure period and a Customer Default shall be deemed to have occurred; (iii) any default by Customer (or any affiliate of Customer) under any other agreement with Licensors (or any affiliate of Licensors); or (iv) the failure by Customer to cure any other breach within 15 days after written notice is delivered by either Licensor.

Customer Parties: Customer's customers, members, affiliates, partners, representatives, officers, directors, principals, licensees, invitees, employees, agents, trustees, contractors and sublicensees, and their respective successors and assigns. Unless otherwise designated by a Licensor (in its sole and absolute discretion), Customer will be responsible for all acts and omissions of the Customer Parties and all such acts and omissions shall be attributed to Customer for all purposes under this MSA.

Data Center: Defined in the Basic Provisions.

Equipment: The equipment and other property placed by or on behalf of Customer in the Space (including, without limitation, racks, servers, cabling and wiring), specifically excluding any items licensed from Licensors or owned, leased or licensed by Licensors. Unless otherwise designated a Licensor (in its sole and absolute discretion), any equipment or other property of any of the Customer Parties shall, at Licensor's option, be deemed part of the Equipment (without limiting the terms of Section 7 above).

Estimated Months: The months for which CoreSite estimated the Power Service Fees or Common Facilities Fee, as applicable, and for which CoreSite possesses all of the relevant information in order to determine the actual fees for such months.

Expiration Date: Defined in the Basic Provisions.

Force Majeure Event: Any event beyond a Licensor's reasonable control, including, without limitation, acts of war, acts of God, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot sabotage, labor shortage or dispute, governmental act, Insurrections, shortages, epidemics, and quarantines.

Hazardous Material: Any material which is or becomes regulated by any applicable governmental authority, or any other hazardous or toxic material.

Indemnified Parties: With respect to either Licensor, such Licensor's members, affiliates, partners, officers, directors, principals, shareholders, representatives, employees, agents, trustees, lenders, lessors and managers, and their respective successors and assigns.

Intellectual Property: Technology, software tools, hardware designs, algorithms, software, user interface designs, network designs, patents, trademarks, trade secrets, copyrights, business methods, and any other intellectual property rights and also including, without limitation, any derivatives, improvements, enhancements, extensions, or applications relating to the foregoing.

Inter-Site Connection Fees: The monthly recurring fees and non-recurring fees payable by Customer to CoreSite Services for connections to the building located at 55 S. Market Street, San Jose, California, as set forth in the Basic Provisions, which fees are subject to increase by CoreSite Services from time to time, in its sole and absolute discretion.

Law(s): All applicable laws, rules, codes, regulations, court orders, and ordinances and matters of record.

License Fees: The license fees payable by Customer to CoreSite for the license of the Space, as set forth in the Basic Provisions.

Licensor Default: Failure by a Licensor to perform its obligations under this MSA within 15 days after written notice is delivered by Customer to such Licensor specifying the obligation which Licensor has failed to perform; provided, however, that if the nature of such Licensor's obligation is such that more than 15 days are required for performance, then such Licensor shall not be in breach or default (and a Licensor Default shall not exist) if such Licensor commences performance within such 15-day period and thereafter diligently prosecutes the same to completion.

Minimum Common Facilities Amount: Defined in the Basic Provisions.

Non-Space-Related Service Fees: The fees and all other amounts payable by Customer to CoreSite Services for Non-Space-Related Services (including, without limitation, the Space NRC, Cross Connection Fees, Any2 Fees, and Inter-Site Connection Fees), as identified in this MSA; provided, however, if the Non-Space-Related Service Fees for a particular Non-Space-Related Service are not set forth in this MSA, then the Non-Space-Related Service Fees shall be as agreed between CoreSite Services and Customer.

Non-Space-Related Services: All services which may be provided by CoreSite Services from time to time, including, without limitation, the licensing of cross connections, inter-site connections, Internet exchange ports, and the building out of Space in anticipation of the commencement of the term, to the extent expressly set forth in this MSA.

OFAC: Defined in Section 8(B) of this MSA.

Order Form: An order form on Licensors' standard form submitted by Customer and accepted by a Licensor in accordance with such Licensor's prevailing procedures in connection with this MSA. In the event of conflict between the terms of this MSA and the terms of an Order Form, the terms of this MSA shall control. Unless otherwise indicated, all references to the MSA include a reference to any applicable Order Forms.

OSS: Defined in Section 2(A) of this MSA.

Post-Term License Fee Percentage: Defined in the Basic Provisions.

Power NRC: Defined in the Basic Provisions.

Power Overdraw Charge: Defined in the Basic Provisions.

Power Fee: A monthly fee payable by Customer to CoreSite for each and every power panel. The Power Fee per Dedicated Panel per month shall equal CoreSite's cost of power relating to the applicable Dedicated Panel for the month in question (as reasonably determined by CoreSite through the Branch Circuit Monitoring System).

Critical Power Limit: Defined in the Basic Provisions.

Security Deposit: Defined in the Basic Provisions.

Service Fees: The Space-Related Service Fees payable by Customer to CoreSite and the Non-Space-Related Service Fees payable by Customer to CoreSite Services.

Services: The Space-Related Services licensed by Customer from CoreSite and the Non-Space-Related Services licensed by Customer from CoreSite Services, as expressly set forth in this MSA.

Space: Defined in the Basic Provisions.

Space-Related Services Fees: The fees and all other amounts payable by Customer to CoreSite for Space-Related Services (including, without limitation, the Common Facilities Fees), as identified in this MSA; provided, however, if the Space-Related Service Fees for a particular Space-Related Service are not set forth in this MSA, then the Space-Related Service Fees shall be as agreed between CoreSite and Customer.

Space-Related Services: The provision of Space, power, and related services that CoreSite may provide from time to time.

State: State of California.

Term: The term of this MSA and Customer's license of the Space and Services from Licensors.

Transfer: An assignment, sublicense or other transfer.

14. *RIGHTS TO EXPAND.*

During the initial twelve (12) months of the Term (the "**Expansion Term**"), Licensors hereby grant the original Customer named in this MSA ("**Original Customer**") the right to increase the Critical Power Limit of the Cage Space by an increment of 64.8 critical kWs (or an (A) Dedicated Panel and (B) Dedicated Panel) and the additional contiguous space capable of accommodating such power increase, in CoreSite's reasonable discretion (an "**Expansion Option**"). An Expansion Option shall be exercisable only by written notice delivered by Customer to CoreSite as set forth below and Customer may only exercise an Expansion Option no more than *** occasions during the Expansion Term. The rights contained in this Section 14 shall be personal to the Original Customer and may only be exercised by the Original Customer (and not any assignee, sublicensee or other transferee of the Original Customer's interest in this MSA).

Provided no Customer Default exists, Customer may exercise an Expansion Option during the Expansion Term by providing CoreSite sixty (60) days prior written notice (each an "**Expansion Notice**") of its intention to expand. The additional License Fees and Service Fees payable by Customer for each Expansion Option shall be equal to the then-current license fees and service fees (and increases thereto) that are in effect for the initial Cage Space. If Customer timely and properly exercises and Expansion Option, the Parties shall document the exercise of the Expansion Option by entering into an amendment to this MSA. Notwithstanding anything to the contrary contained in this MSA, the license of all additional space and power associated with an Expansion Option shall be coterminous with the Term of the initial Cage Space.

15. *RENEWAL OPTION.*

Subject to the terms of this Section 15, Licensors hereby grant the Original Customer *** option (the "**Renewal Option**") to extend the Term of this MSA for a period of *** (the "**Renewal Term**"), which Renewal Option shall be exercisable only by written notice delivered by Customer to Licensor as set forth below. The rights contained in this Section 15 shall be personal to the Original Customer and may only be exercised by the Original Customer (and not any assignee, sublicensee or other transferee of the Original Customer's interest in this MSA).

The License Fees and Service Fees payable by Customer during the Renewal Term shall be equal to the "Market Fees" (as defined below). "**Market Fees**" shall mean the applicable license fees and service fees (and increases thereto) that would be charged to unaffiliated customers for telecommunications data center space and services comparable to the subject Space and Services in comparable data centers in the Santa Clara, California area and in the Building, as of the commencement of the Renewal Term (taking into account the available Services, any improvement expenses and allowances to be incurred by Licensor, any other monetary concessions granted by Licensors (such as brokerage commissions)). Notwithstanding the foregoing, the Market Fees shall not exceed *** of the License and Service Fees (except for Power Fees, which are subject to local utility rates) immediately preceding the expiration of the initial Term.

The Renewal Option shall be exercised by Customer, if at all, only in the following manner: (i) no Customer Default exists on the delivery date of the Interest Notice (defined below) and Customer's Acceptance; (ii) Customer shall deliver written notice ("**Interest Notice**") to Licensor not more than 12 months nor less than 6 months prior to the expiration of the initial Term, stating that Customer is interested in exercising the Renewal Option, (iii) within 15 business days of Licensors' receipt of the Interest Notice, Licensors shall deliver notice ("**Renewal Fees Notice**") to Customer setting forth the Market Fees for the Renewal Term; and (iv) if Customer desires to exercise the Renewal Option, Customer shall provide Licensors written notice within 15 business days after receipt of the Renewal Fees Notice ("**Customer's Acceptance**"). Customer's failure to deliver the Interest Notice or Customer's Acceptance on or before the dates specified above shall be deemed to constitute Customer's election not to exercise the Renewal Option. If Customer timely and properly exercises the Renewal Option, then, the Term of this MSA shall be extended for the Renewal Term upon all of the terms and conditions set forth in

this MSA, except that the License Fees and Services Fees for the Renewal Term shall be as indicated in the Renewal Fees Notice. Within fifteen days following the receipt of Customer's Acceptance, the Parties shall document the exercise of the Renewal Option by entering into an amendment to this MSA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this MSA as of the date first above written.

CUSTOMER:

Five 9, Inc., a Delaware corporation

By: /s/ Tom Schollmeyer
Name: Tom Schollmeyer
Title: CTO

LICENSORS:

CORESITE CORONADO STENDER, L.L.C.,
a Delaware limited liability company

By: CoreSite, L.L.C., a Delaware limited liability company, its authorized agent

By: /s/ Derek McCandless
Name: Derek McCandless
Title: SVP & GC

CORESITE SERVICES, INC.,
a Delaware corporation

By: /s/ Derek McCandless
Name: Derek McCandless
Title: SVP & GC

CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THIS OMITTED INFORMATION.

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EXHIBIT B

SERVICE LEVEL AGREEMENT

This Service Level Agreement (this "**SLA**") provides certain abatement to Customer in the event of certain Failures (as defined below). This SLA applies only to the Space set forth in this MSA, and applies only to dedicated suite, cage and cabinet Space (and not to conduit or innerduct or other Space). An individual cage or cabinet that is part of the Space under this MSA is sometimes referred to herein as the "**Individual Space**." Notwithstanding anything to the contrary, the abatement described in this SLA shall be Customer's sole and exclusive remedy in connection with the Failures (as defined below), and Customer shall not have any other Claims, rights or remedies, and neither CoreSite nor CoreSite Services shall have any other liabilities, in connection with any Failures, Customer hereby waiving all other Claims, rights and remedies.

I. Power Availability.

A. Power Failure.

(i) Redundant UPS-Level 1 Power Failure. A "**Redundant UPS-Level 1 Power Failure**" shall be deemed to have occurred on a particular day if any particular Redundant UPS Power Circuit (as defined below) licensed by Customer from CoreSite (and otherwise used by customer in the ordinary course of business immediately prior to the unavailability) is unavailable to Customer (on both the A Circuit and B Circuit) for more than *** at the demarcation point (i.e, the receptacle to which the applicable licensed electrical service is delivered) in the applicable Equipment (the "**Demarcation Point**"), provided that such unavailability simultaneously occurs and continues with respect to both the primary A power circuit (the "**A Circuit**") and the redundant B power circuit (the "**B Circuit**") at all times in question. A "**Redundant UPS Power Circuit**" is defined as an A Circuit together with its corresponding B Circuit (not including any panel redundant circuits).

(ii) Redundant UPS-level 2 Power Failure. A "**Redundant UPS-Level 2 Power Failure**" shall be deemed to have occurred in a particular calendar month if any particular Redundant UPS Power Circuit licensed by Customer from CoreSite (and otherwise used by Customer in the ordinary course of business immediately prior to the unavailability) is unavailable to Customer (on both the A Circuit and B Circuit) for more than *** in any calendar month at the Demarcation Point, provided that such unavailability simultaneously occurs and continues with respect to both the A Circuit and the B Circuit at all times in question.

(iii) Single/Panel Redundant-Level 1 Power Failure. A "**Single/Panel Redundant- Level 1 Power Failure**" shall be deemed to have occurred in a particular calendar month if any particular single power circuit (with only an A Circuit, and no B Circuit) (a "**Single Circuit**") licensed by Customer from CoreSite (and otherwise used by Customer in the ordinary course of business immediately prior to the unavailability), or any particular redundant panel power circuit with both an A Circuit and a B Circuit (a "**Panel Redundant Circuit**"), licensed by Customer from CoreSite (and otherwise used by Customer in the ordinary course of business immediately prior to the unavailability), is unavailable to Customer for more than *** in any calendar month at the Demarcation Point, provided that, with respect to any such Panel Redundant Circuit, such unavailability simultaneously occurs and continues with respect to both the A Circuit and the B Circuit at all times in question.

(iv) Single/Panel Redundant-Level 2 Power·Failure. A "**Single/Panel Redundant- Level 2 Power Failure**" shall be deemed to have occurred in a particular calendar month if any particular Single Circuit licensed by Customer from CoreSite (and otherwise used by Customer in the ordinary course of business immediately prior to the unavailability), or any particular Panel Redundant Circuit licensed by Customer from CoreSite (and otherwise used by Customer in the ordinary course of business immediately prior to the unavailability), is unavailable to Customer for more than *** in any calendar month at the Demarcation Point, provided that, with respect to any such Panel Redundant Circuit, such unavailability simultaneously occurs and continues with respect to both the A Circuit and the B Circuit at all times in question.

A Redundant UPS-Level 1 Power Failure, Redundant UPS-Level 2 Power Failure, Single/Panel Redundant-Level 1 Power Failure and Single/Panel Redundant-Level 2 Power Failure are each referred to herein as a "**Power Failure**."

B. Abatement to Customer.

(i) Redundant UPS-Level 1 Power Failure. In the event any Redundant UPS- Level 1 Power Failure occurs on any particular day, then, with respect to the Redundant UPS Power Circuit that is the subject of the Redundant UPS-Level 1 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for that particular day shall be partially abated by the Daily Circuit Abatement Amount (as defined below). The "**Daily Circuit Abatement Amount**" is defined as ***. The "**Total Power Circuits**" is defined as ***.

(ii) Redundant UPS-Level 2 Power Failure. In the event any Redundant UPS- Level 2 Power Failure occurs on any particular day (a "**Redundant UPS-Level 2 Power Failure Day**"), then, with respect the Redundant UPS Power Circuit that is the subject of the Redundant UPS-Level 2 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for the particular calendar week in which the Redundant UPS-Level 2 Power Failure Day occurs shall be partially abated by the Weekly Circuit Abatement Amount (as defined below). The "**Weekly Circuit Abatement Amount**" is defined as ***.

(iii) Single/Panel Redundant-Level 1 Power Failure. In the event any Single/Panel Redundant-Level 1 Power Failure occurs on any particular day, then, {A) with respect to each Panel Redundant Circuit (if any) that is the subject of the. Single/Panel Redundant-Level 1 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for that particular day shall be partially abated by the Daily Circuit Abatement Amount, and (B) with respect to each Single Circuit (if any) that is the subject of the Single/Panel Redundant-Level 1 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for that particular day shall be partially abated by the Single Circuit Daily Abatement Amount (as defined below). The "Single Circuit Daily Abatement·Amount" is defined as ***.

(iv) Single/Panel Redundant-Level 2 Power Failure. In the event any Single/Panel Redundant-Level 2 Power Failure occurs on any particular day (a "**Single/Panel Redundant-Level 2 Power Failure Day**"), then, (A) with respect to each Panel Redundant Circuit (if any) that is the subject of the Single/Panel Redundant-Level 2 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for that particular calendar week in which the Single/Panel Redundant-Level 2 Power Failure occurs shall be partially abated by the Weekly Circuit Abatement Amount, and (B) with respect to each Single Circuit (if any) that is the subject of the Single/Panel Redundant-Level 2 Power Failure, Customer's pro rata Monthly License Fees for the affected Individual Space for that particular calendar week in which the Single/Panel Redundant-Level 2 Power Failure occurs shall be partially abated by the Single Circuit Weekly Abatement Amount (as defined below). The "**Single Circuit Weekly Abatement Amount**" is defined as ***.

(v) Total Abatement. Notwithstanding anything to the contrary set forth in this SLA, (w) in no event shall the total abatement in any one (1) calendar month under this Article I for any Individual Space exceed ***; in the event there would otherwise be abatement under this Article I in excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; (x) in no event shall the total abatement under this Article I for the applicable Individual Space on any one (1) day exceed ***; in the event there would otherwise be abatement under this Article I in

excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; (y) in no event shall the total abatement under this Article I in any one (1) calendar month for any individual power circuit exceed the Monthly Circuit Cap (as defined below) (notwithstanding the amount or length of any Power Failures relating to that power circuit or otherwise); in the event there would otherwise be abatement with respect to a particular power circuit in excess of the Monthly Circuit Cap, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (z) in no event shall the total abatement with respect to any individual power circuit on any one (1) day exceed the Daily Circuit Cap (as defined below) (notwithstanding the amount or length of any Power Failures relating to that Power Circuit or otherwise); in the event there would otherwise be abatement with respect to a particular power circuit in excess of the Daily Circuit Cap, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect. The "**Monthly Circuit Cap**" is defined as ***. The "**Daily Circuit Cap**" is defined as ***.

II. Humidity Stability Availability.

A. HS Failure.

(i) HS-Level 1 Failure. A "**HS-Level 1 Failure**" shall be deemed to have occurred on a particular day if (A) conditioned air provided by CoreSite on that day to a cold aisle reasonably designated by CoreSite in the applicable Individual Space (a "**Cold Aisle**") exceeds fifty-five percent (55%) relative humidity for more than twenty-four (24) consecutive hours, or is below forty percent (40%) relative humidity for more than twenty-four (24) consecutive hours, all as measured by CoreSite's humidity sensors, and (B) the Equipment in the applicable Individual Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.

(ii) HS-Level 2 Failure. A "**HS-Level 2 Failure**" shall be deemed to have occurred on a particular day if (A) conditioned air provided by CoreSite on that day to a Cold Aisle exceeds eighty percent (80%) relative humidity, or is below twenty percent (20%) relative humidity, all as measured by CoreSite's humidity sensors, and (B) the Equipment in the applicable Individual Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.

A HS-Level 1 Failure and HS-Level 2 Failure are each referred to herein as a "**HS Failure**."

B. Abatement to Customer.

(i) HS-Level 1 Failure. In the event any HS-Level 1 Failure occurs on any particular day, then Customer's Monthly License Fees for the affected Individual Space in question shall be partially abated for that particular day by the Daily HS Abatement Amount (as defined below). The "**Daily HS Abatement Amount**" is defined as ***.

(ii) HS-Level 2 Failure. In the event any HS-Level 2 Failure occurs on any particular day (a "**HS-Level 2 Failure Day**"), then Customer's Monthly License Fees for the affected Individual Space for the particular calendar week in which the HS-Level 2 Failure Day occurs shall be partially abated by the Weekly HS Abatement Amount (as defined below). The "**Weekly HS Abatement Amount**" is defined as ***.

(iii) Total Abatement. Notwithstanding anything to the contrary set forth in this SLA, (A) in no event shall the total abatement under this Article II for the applicable Individual Space in any one (1) calendar month exceed ***; in the event there would otherwise be abatement under this Article II in excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (B) in no event shall the total abatement under this Article II for the applicable Individual Space on any one (1) day exceed ***; in the event there would otherwise be abatement under this Article II in excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

III. Temperature Stability Availability.

A. Temperature Failure.

(i) Temperature-Level 1 Failure. A "**Temperature-Level 1 Failure**" shall be deemed to have occurred on a particular day if (A) sustained temperatures in a Cold Aisle exceed 80.6 degrees Fahrenheit, as measured by CoreSite's temperature sensors, and such temperatures in such Cold Aisle in excess of 80.6 degrees Fahrenheit continue for a period of more than twenty-four (24) consecutive hours, and (B) the Equipment in the applicable Individual Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.

(ii) Temperature-Level 2 Failure. A "**Temperature-Level 2 Failure**" shall be deemed to have occurred on a particular day if (A) sustained temperatures in a Cold Aisle exceed 89.6 degrees Fahrenheit, as measured by CoreSite's temperature sensors, and (B) the Equipment in the applicable Individual Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.

A Temperature-Level 1 Failure and Temperature-Level 2 Failure are each referred to herein as "**Temperature Failure**."

B. Abatement to Customer.

(i) Temperature-Level 1 Failure. In the event any Temperature-Level 1 Failure occurs on any particular day, then Customer's pro rata Monthly License Fees for the affected Individual Space in question shall be partially abated for that particular day by the Daily Temp Abatement Amount (as defined below). The "**Daily Temp Abatement Amount**" is defined as ***.

(ii) Temperature-Level 2 Failure. In the event that Temperature-Level 2 Failure occurs on any particular day (a "**Temp-level 2 Failure Day**"), then Customer's pro rata Monthly License Fees for the affected Individual Space for the particular calendar week in which the Temp-Level 2 Failure Day occurs shall be partially abated by the Weekly Temp Abatement Amount (as defined below). The "**Weekly Temp Abatement Amount**" is defined as ***.

(iii) Total Abatement. Notwithstanding anything to the contrary set forth in this SLA, (A) in no event shall the total abatement under this Article III for the applicable Individual Space in any one (1) calendar month exceed ***; in the event there would otherwise be abatement under this Article III in excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (B) in no event shall the total abatement under this Article III for the applicable Individual Space on any one (1) day exceed ***;

in the event there would otherwise be abatement under this Article III in excess of ***, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

IV. Connectivity Availability.

A. Connectivity Failure. A "**Connectivity Failure**" shall be deemed to have occurred on a particular day if (A) CoreSite Services fails to use commercially reasonably efforts to ensure that all of CoreSite Service's critical pathways and Main Distribution Frame equipment in the Data Center are properly operating, and (B) as a result of such failure, either (i) a redundant cross connection licensed by Customer from CoreSite Services in the applicable Individual Space is unavailable and interrupted on both the primary and redundant connections (simultaneously) for more than twenty-six (26) cumulative seconds within a calendar month after CoreSite Services receives notice of any such failure, or (ii) any Any2 Exchange connection licensed by Customer from CoreSite Services in the applicable Individual Space is unavailable and interrupted for more than twenty-six (26) cumulative seconds within a calendar month after Core Site Services receives notice of any such failure.

B. Abatement to Customer.

(i) Connectivity Failure. In the event any Connectivity Failure occurs on any particular day (a "**Connectivity Failure Day**"), then Customer's Monthly Service Fees for the affected cross connection, or the affected Any2 Exchange connection, as applicable, for the particular calendar month in which the Connectivity Failure Day occurs shall be abated.

(ii) Total Abatement. Notwithstanding anything to the contrary set forth in this Article IV, (A) in no event shall the total aggregate abatement under this Article IV for any particular cross connection in any one (1) calendar month exceed ***; in the event there would otherwise be abatement under this Article IV in excess of *** for that cross connection, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (B) in no event shall the total aggregate abatement under this Article IV for any particular Any2 Exchange connection in any one (1) calendar month exceed ***; in the event there would otherwise be abatement under this Article IV in excess of *** for that Any2 Exchange Connection, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

V. SLA Applicability.

A. For purposes hereof, a Power Failure, HS Failure, Temperature Failure and Connectivity Failure shall each be referred to herein as a "**Failure**." Notwithstanding anything to the contrary in this SLA, Customer shall not be entitled to any abatement whatsoever (and shall have no rights or remedies under this SLA or otherwise), and no Failure of any kind shall be deemed to have occurred, if any of the following exists:

1. Customer is in breach or default under this MSA at the time of the Failure in question;

2. Customer has not opened a trouble ticket with CoreSite (in the case of a Power Failure, HS Failure, or Temperature Failure) or CoreSite Service (in the case of a Connectivity Failure) (in accordance with each Licensor's then prevailing procedures of which Customer has notice) with respect to the Failure in question, within three (3) days of the Failure in question; or

3. The Failure in question results from any of the following: (i) any equipment (including, without limitation, any Equipment) or applications of (or otherwise used by or in possession of) Customer or any of the other Customer parties; (ii) any act or omission of Customer or any of the other Customer Parties, including, without limitation, any breach or default by Customer under this MSA, or (iii) Force Majeure Event.

B. Notwithstanding anything to the contrary in this SLA, (i) in no event shall Customer be entitled to abatement under more than one of Articles I through IV above in connection with the same event that caused the applicable Failures; in the

event the same event causes more than one (1) Failure, then Customer shall receive abatement only with respect to one (1) single Failure (and not with respect to multiple Failures), which abatement shall be calculated based on the Failure that would yield the highest abatement to Customer (and if more than 1 of such Failures exists, Licensors shall stipulate which Failure shall apply for purposes of calculating the abatement), and (ii) in the event a particular Failure continues, only one (1) Failure shall be deemed to have occurred (and shall be deemed to have occurred on the day that the Failure first comes into effect), regardless of the length of such Failure.

C. Notwithstanding anything to the contrary in the SLA, (i) in no event shall the total aggregate abatement for a Power Failure, HS Failure or Temperature Failure under this SLA exceed an aggregate amount equal to *** for the Space under this MSA (calculated at the average rate payable during the initial Term for such Space); and (ii) in no event shall the total aggregate abatement for a Connectivity Failure under this SLA exceed an aggregate amount equal to *** under this MSA (calculated at the average Non-Space-Related Service Fee payable during the initial Term for the Non-Space-Related Services). In the event there would otherwise be abatement under this SLA in excess of the aggregate amounts set forth herein, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

Via Electronic Mail

July 16, 2013

David W. Hill
Vice President – Finance
Five9, Inc.
4000 Executive Parkway, Suite 400
San Ramon, CA, 94583

THIS IMPORTANT INFORMATION
IS A BINDING LEGAL AGREEMENT THAT
REQUIRES YOUR RESPONSE
-DO NOT DISCARD-

RE: Letter Agreement Promissory Note to Pay Delinquent Federal Universal Service Fund Contributions—Five9, Inc., Filer ID #829544 (Debtor)

Dear Mr. Hill:

The purpose of this Letter Agreement Promissory Note (Note) is for Five9, Inc. (Debtor) to acknowledge its debts and to confirm the terms and conditions under which Debtor promises to pay its delinquent Universal Service Fund (USF) contributions in installment payments under an Installment Payment Plan. Debtor certifies that the person signing is duly authorized and empowered to represent and bind Debtor, and to acknowledge Debtor's legal obligation to pay the full amount of the delinquent debts and accrued interest and fees in accordance with the following terms:

- For value received, Debtor promises to pay to the order of the Universal Service Administrative Company, the not-for-profit corporation designated as the administrator of the federal universal service program that is authorized to act on behalf of the Federal Communications Commission ("FCC" or "Commission") with respect to the terms and conditions of the Promissory Note, the principal sum of **FOUR MILLION SEVENTY-FIVE THOUSAND FORTY-NINE AND 92/100 DOLLARS ($4,075,049.92)** (Principal Amount), together with accrued interest, computed at the annual rate of **12.75% per annum** on the unpaid Principal Amount hereof, from the Effective Date of this Note, **July 16, 2013**, until the entire Principal Amount has been paid in full.
- Debtor acknowledges and agrees that the Principal Amount is the current total of Debtor's unpaid mandatory contributions to Universal Service Support plus accrued but unpaid interest and administrative charges, which is a debt owed to the United States as defined by 31 U.S.C. § 3701, and the DCIA,[1] and any amendments thereto.

[1] Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Debtor's Initials: _____

- Debtor agrees to remit, on or before **July 16, 2013**, an Administrative Fee of **SEVEN THOUSAND AND 00/100 DOLLARS ($7,000.00).**
- Commencing on **August 15, 2013**, and continuing on the 15th day of each successive month, except that if said due date is not a Business Day, then payment is due and payable on the prior Business Day, Debtor shall make 42 monthly payments of principal and interest equal to **ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED EIGHTY-FOUR AND 63/100 DOLLARS ($120,784.63) (Monthly Payment)**. The entire unpaid Principal Amount together with accrued and unpaid interest thereon, and all other remaining obligations of Debtor hereunder, if not sooner paid, shall be due and payable on **January 13, 2017 (Maturity Date)**.
- Prepayment and Partial Payment. Debtor may prepay all or any part of the Principal Amount without premium or penalty upon ten (10) days' prior written notice to Universal Service Administrative Company (USAC) (Attn: USAC Manager of Financial Operations). Partial prepayments of a Monthly Payment shall not postpone or reduce regular payments to be made hereunder. All such prepayments shall be applied first to applicable accrued late charges, costs and expenses, administrative penalties or charges, second to applicable accrued and unpaid interest, and third to principal. In the event Debtor prepays all or a portion of the Principal Amount, interest shall be calculated on the Principal Amount remaining after such prepayment, and the interest portions of the payments thereafter required shall be reduced accordingly.
- True-up Credits. In addition to the Debtor's required Monthly Payment, in any month in which USAC determines that Debtor may be due a True-up Credit, USAC will first apply the Monthly Payment, and thereafter apply any True-up Credit to reduce the unpaid Principal Amount effective as of the due date of the payment of the invoice projecting the credit amount. Furthermore, Debtor acknowledges and agrees that any True-up Credit will not be applied to satisfy a Monthly Payment, and that any failure to make a Monthly Payment on or before the due date specified in this Note shall be an Event of Default.
- All payments to be made hereunder, of principal, interest, costs, expenses, or other sums due, shall be made to the holder of this Note in Lawful Money of the United States of America in the following manner: ***Debtor's Administrative Fee is due on or before July 16, 2013, for $7,000.00, and first installment payment of $120,784.63 is due on or before August 15, 2013. The Administrative Fee, first installment and all subsequent installment payments shall be remitted in one of the following ways:***

Debtor's Initials: _____

- U.S. Postal Service/Standard Mail for Payments to: Universal Service Administrative Company, P.O. Box 105056, Atlanta, GA 30348-5056;
- Courier/Overnight Packages to: Bank of America c/o USAC, Lockbox 105056, 1075 Loop Road, Atlanta, GA 30337;
- Wire Transfers: Bank Name: Bank of America, Location: 100 West 33rd Street, New York, NY 10001, Bank ABA Routing Number: 026009593, Bank Account Number: 5590045653, Account Type: DDA, Account Name: UNIVERSAL SERVICE ADMINISTRATIVE COMPANY; or
- Via ACH CCD+ format to: ABA #071000039, Account #5590045653.

- By signing this Note, Debtor certifies that it is not delinquent in any other payments to the United States (*e.g.*, Telecommunications Relay Services Fund (TRS), North American Numbering Plan (NANP) contributions, and Local Number Portability (LNP) contributions, and/or fees or non-tax debts), and all other charges to the Federal USF and/or the FCC are current and paid as of the signature date of this Note and shall remain current and paid through duration of this Note.
- Debtor certifies it has filed all required Telecommunication Reporting Worksheets (FCC Forms 499-Q and 499-A), that the reported information is accurate and correct, and it will file all subsequent Forms 499-Q and 499-A on or before their respective due dates.
- Debtor agrees that an Event of Default shall occur upon any failure by Debtor (1) to pay (a) the full amount of any Installment Payment on or before the due date specified in this Note, (b) any USF contribution pursuant to 47 U.S.C. to the USAC due after the Effective Date of this Note, within two (2) Business Days after its due date, or (c) any additional discovered underpayment or financial obligation within 30 days of notice to Debtor, or (2) to fail to comply with any Commission rule pertaining to the accurate and timely filing of Telecommunication Reporting Worksheet and/or paying contributions and/or fees, *e.g.*, but not limited to 47 C.F.R. 1.1154, 1.1157, 52.17, 52.32, 54.711, and 64.604, as may be amended.

In the Event of Default under this Note, the unpaid Principal Amount, plus all unpaid interest accrued thereon, together with any late fee(s) and or administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Debtor.

Debtor's Initials: _____

In the Event of Default under this Note, Debtor shall be responsible for any resulting interest and/or administrative charges (including collection costs) as permitted by the DCIA, other law and/or regulation, and/or the terms of this Note. Effective on the Date of an Event of Default and continuing until such Event of Default is cured to the satisfaction of the Commission, the unpaid Principal Amount, plus all unpaid interest accrued and unpaid administrative charges shall bear a **Default Interest Rate of fourteen percent (14.0%) per annum,** or such other higher rate as is authorized by law.

If you have any questions concerning the foregoing, you should contact Michael Lawrence, USAC Manager of Financial Operations, at 202-776-0200 (voice) or 202-776-0080 (facsimile transmission).

Sincerely,

/s/ Michelle Garber
Michelle Garber
Director of Financial Operations

(Signature Page Follows)

Debtor's Initials: _____

Signature Page and Debtor's Agreement to a Payment Extension Plan

I, an officer of **Five9, Inc., Filer ID #829544**, by signing below and affixing my initials to each page of this Note, certify that I am authorized to represent the above named Debtor, and that the Debtor understands and agrees to the terms of this Payment Extension Plan as set forth in this Letter Agreement Promissory Note with the Universal Service Administrative Company acting on behalf of the Federal Communications Commission.

I further certify that I have read the terms set forth in the Acknowledgment Letter provided on **April 23, 2013**, and I have provided USAC with all required documentation also as set forth in the Acknowledgement Letter including, but not limited to Financial Documentation (as described therein), copies of Debtor's most current financial statements which, if unaudited, have been certified under penalty of perjury, and a completed ***Billing of Federal USF Certification***. Finally, I certify that except as may be provided in attached supplemental Financial Documentation, there has been no material change to Debtor's Financial Documentation previously provided.

Effective Date:	**July 16, 2013**
Signature:	/s/ David Hill
Printed Name:	David Hill
Title:	VP—Finance
Company:	Five9, Inc.
Address:	4000 Executive Parkway, Suite 400
	San Ramon, CA 94583
Telephone Number:	
Facsimile Number:	

Debtor's Initials: _____

Exhibit 16.1

Deloitte & Touche LLP
Suite 600
225 West Santa Clara Street
San Jose, CA 95113-1728
USA

Tel: +1 408 704 4000
Fax: +1 408 704 3083
www.deloitte.com

February 7, 2014

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7561

Dear Sirs/Madams:

We have read the disclosures under the heading “Change in Accountants” included in the prospectus (the “Disclosures”) forming a part of Five9, Inc.’s Confidential Draft Submission No. 4 of its registration statement on Form S-1 submitted to the Securities and Exchange Commission on February 7, 2014, and have the following comments:

1. We agree with the statements made in section (a) of the Disclosures.
2. We have no basis on which to agree or disagree with the statements made in section (b) of the Disclosures.

Yours truly,

/s/ Deloitte & Touche LLP

Member of
Deloitte Touche Tohmatsu Limited

Exhibit 21.1

SUBSIDIARIES OF FIVE9, INC.

Name of Subsidiary	Jurisdiction of Organization
Five9.ru	Russia
Five9 Philippines Inc.	Philippines
Five9 Acquisition LLC	Delaware
Five9 Inc. Ireland Limited	Ireland
Five9 India Private Limited	India
2058413 Ontario Inc.	Canada

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Five9, Inc.:

We consent to the use of our report dated March 3, 2014 included herein and to the reference to our firm under the heading “Experts” in the prospectus.

/s/ KPMG LLP

Santa Clara, California

March 3, 2014

Exhibit 23.2

CONSENT OF INDEPENDENT AUDITORS

We hereby consent to the use in this Registration Statement on Form S-1 of Five9, Inc. of our report dated January 16, 2014, relating to the financial statements of Face It, Corp., as of and for the years ended December 31, 2011 and 2012, which appears in such Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

Moss Adams LLP

Campbell, California
February 28, 2014

JONES DAY

SILICON VALLEY OFFICE — 1755 EMBARCADERO ROAD — PALO ALTO, CALIFORNIA 94303

TELEPHONE: +1.650.739.3939 — FACSIMILE: +1.650.739.3900

CERTAIN PORTIONS OF THIS LETTER HAVE BEEN OMITTED AND DELIVERED SEPARATELY TO THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED BY FIVE9, INC. FOR THE OMITTED PORTIONS PURSUANT TO 17 C.F.R. §200.83. THE OMITTED PORTIONS HAVE BEEN REPLACED WITH "[***]."

March 3, 2014

VIA EDGAR AND HAND DELIVERY

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Attention: Barbara C. Jacobs, Assistant Director
Jeffrey Kauten, Attorney-Advisor
Stephen Krikorian, Accounting Branch Chief
Morgan Youngwood, Staff Accountant

RE: Five9, Inc.
Registration Statement on Form S-1
Filed March 3, 2014
CIK No. 0001288847

Ladies and Gentlemen:

Five9, Inc. (the "*Company*") has today filed with the Securities and Exchange Commission (the "*Commission*") its Registration Statement on Form S-1 (CIK No. 0001288847) (the "*Registration Statement*"). On behalf of the Company, we are responding to the comments of the staff of the Division of Corporation Finance of the Commission (the "*Staff*") contained in the letter dated February 21, 2014. For ease of reference, the text of the Staff's comments is included in bold-face type below, followed in each case by the Company's response. Except as otherwise provided, page references included in the body of the Company's responses are to the Registration Statement.

General

1. Please update your financial statements and related financial information included in the filing, as necessary, to comply with Rule 3-12 of Regulation S-X.

Response: The Company has revised its disclosure in response to the Staff's comment.

Face it Corporation-Consolidated Financial Statements

Revenue Recognition, page F-38

2. We note your response to prior comment 11 and that you employ the stated renewal rate method to establish VSOE of fair value for your maintenance and support services. Please explain how you determined that VSOE of fair value for your maintenance and support services is substantive. We refer you to ASC 985-605-25-67.

Response: The Company advises the Staff that there was one arrangement that would have potentially qualified for treatment in accordance with the guidance under ASC 985-605 as it involved the licensing, selling, leasing or otherwise marketing of computer software and related elements. However, this agreement was evaluated and Face It, Corp. determined that the nature of the deliverables did not meet certain revenue recognition criteria until all deliverables under the arrangement had been completed. As a result, revenue under this arrangement was fully deferred until all deliverables under the arrangement had been delivered. The Company has revised its disclosure in response to the Staff's comment to ensure accuracy as to the revenue policies and accounting applied during the periods presented in the financial statements. Please see page F-40.

Supplemental Matters

The Company supplementally advises the Staff that, on February 25, 2014, representatives of J.P. Morgan Securities LLC and Barclays Capital Inc., on behalf of the underwriters for the Company's proposed initial public offering ("IPO"), and the Company discussed preliminary valuations, based on current market conditions and recent initial public offerings of other companies in the technology industry, and determined that the preliminary price rage would be between [***] per share (the "Preliminary Price Range"). The Preliminary Price Range assumes a [***] reverse stock split prior to the completion of the IPO. Prior to February 25, 2014, the Company had not held discussions with the underwriters regarding a preliminary price range for the IPO. The Company understands that it will need to narrow the Preliminary Price Range in accordance with CD&I 134.04 when it commences the road show for the IPO.

The Company supplementally advises the Staff that the Company does not intend to disclose the Preliminary Price Range in the Registration Statement until immediately before it commences the road show for the IPO, which is currently scheduled to commence on or about [***].

* * * * * * *

Please acknowledge receipt of this letter and the enclosed materials by stamping the enclosed duplicate of this letter and returning it to the undersigned in the envelope provided.

If you have any questions, please feel free to contact me at 650.739.3987 or Ruben A. Garcia at 650.687.4191. Thank you for your cooperation and prompt attention to this matter.

Sincerely,

/s/ Timothy R. Curry

Timothy R. Curry

cc: Michael Burkland, President and Chief Executive Officer, Five9, Inc.
Barry Zwarenstein, Chief Financial Officer, Five9, Inc.
Anthony J. McCusker, Goodwin Procter LLP
Richard A. Kline, Goodwin Procter LLP